I. General Perspectives on Regulation

A. Meaning of Regulation

1. **What do we mean by regulation?** "To control, to direct, to govern directly or indirectly." Shaffer, 1979, p. 722. In this light, the market can be seen as an instrument of regulation rather than an object of regulation. Aim is to make private incentives compatible with public goals (as expressed through the political system). So the question is one of how actors are disciplined to do what is socially useful, which is brought about by state and market actions/incentives.

2. **What do we mean by "private property"?** Private property always requires a public sanction.

3. In this sense, we are dealing with a political-economic nexus rather than an economy in which there is policy or politics superimposed upon it.

4. Marketing systems operate within, and in fact are, a complex set of institutional arrangements including:
   a. Unwritten rules of conduct embedded within custom and tradition; social norms of morality. E.g., historical arguments for anti-trust policies were made in terms of Common Law (Sherman).
   b. Basic laws
   c. Evolving sets of administrative rules and regulations, all of which create incentives and sanctions for different types of participant
behavior.

d. **So what do we mean by market deregulation?**
   
   (1) There is no such thing as an "unregulated market."
   
   (2) All markets are part of a system of rights and obligations. There is no market "free" of obligations or rules.

5. **All regulation is reciprocal**—Granting one person rights implies imposing obligations on others to respect those rights.

   a. For example, granting one person the right to dump effluent into the air (through “deregulation” obliges someone else either to breathe the effluent or pay the other party to refrain from dumping it.)

   b. In this sense, all regulation is **political**—a choice of whose interests the state will help enforce.

6. But this does not mean that every form of state action with respect to the market is equally desirable. Need to look at the impact of different rules on various performance dimensions.

7. The policy challenge is to find the sets of policies most consistent with social goals.

B. **Political nature of regulation**
1. By definition, regulation is changes whose interests get counted with what weight in the system, and hence is political.

2. Regulation takes place at 2 basic levels:
   a. Prior to the sale: Determination of basic rights: Who is the buyer and who is the seller?
   b. After rights are allocated, rules governing exchange of those rights (e.g., whether you allow monopoly; rules regarding “fair dealing”, etc.)

3. Perhaps most fundamental judgement is that of whether public action is required. I.e., which "market failures" justify public remedy.
   a. Typically economists ask themselves why market won't solve the problem itself.
   b. But deciding which externalities to internalize always involves political choices.

4. Historical background to U.S. anti-trust legislation (See earlier material in course and readings by Manchester and Padberg
   a. Cf. Political setting and cultural ideology--e.g., US and UK vs France

5. Firms lobbying to change the rules of the game.

C. **Objectives of Regulation**: For regulation to succeed it must create a set of predictable expectations
1. Role of regulatory uncertainty in restricting trade and increasing transaction costs, especially when rules are changing.
   a. Increase the costs of marketing, or
   b. Costs get so high that socially useful functions are not undertaken.
   c. This leads to personalized exchange relying on reputation for enforcement. The problem is that this may restrict the scope of exchange. There are economies of scale in 3rd party enforcement.

2. Enforceability of contract is key, including finding low-cost dispute resolution methods if market is to grow. Otherwise, move to:
   a. Self-sufficiency--autarchy
   b. Internal management through vertical integration--e.g., enclave economies

3. But the regulation is more productive if it also promotes a sense of justice in the system, so that people have some incentives to contribute hard to the system.

D. Incremental nature of regulation over time in most countries, although with fall of eastern bloc, we have witnessed some radical changes of regulatory frameworks in some countries (e.g., Poland).

1. In an expanding, industrializing, and urbanizing economy there is an evolving build-up of market regulations, sometimes internally conflicting. Problem of having regulations evolve to keep pace with markets--e.g.,
obsolescence of U.S. anti-trust law in dealing with conglomerate merger.

2. Also problem of **jurisdictional boundaries**, particularly in a federal system like the US (or now with Europe). This is the key issue in debates about both decentralization and regionalization (e.g., expansion of EU). E.g., current debate in EU about proper role of federalism.

E. **Intended vs. unintended consequences**

1. System effects deriving from intercommodity linkages. For example, effects of changing from price support to deficiency payment for corn on the sugar industry (by making high-fructose corn syrup more competitive).

2. Based partly on poor administration, enforcement, and follow-up. Difference between decision taken at the top and enforcement at the bottom. E.g., Eleni’s work.

3. Key role for ag. economists in documenting and analyzing how current regulations actually work out and in analyzing likely impact of alternative measures (marketing policy analysis).

II. Food System Regulation in the U.S.

A. **Anti-monopoly regulation**

1. In spite of reputation of U.S. as home of international capitalism, a large number of laws channel that capitalism in ways considered to be socially desirable. Various models tried in U.S. history (see readings in Schertz and Daft).
a. Note:

(1) Political nature of the process

(2) Pressures from regulation came from not only farmers and consumers but also from the industries (e.g., railroads) to be regulated.

(3) “Demand driven” regulation–buy by whom? Question of how demands for regulation demands get articulated. There is an I-O of politics (analyzed by political scientists) just like an I-O of economics.

(4) Extremes considered--e.g., FTC proposal in 1918 to nationalize the meat trade led to the consent decree.

(5) Use of market regulation in the U.S. as an explicit economic development tool--e.g., to build export markets through use of standard grades.

(6) Strong emphasis on the concept of fairness and fair trading.

b. Laissez-faire--much of 19th Century (and some in 1980s)

c. Private enterprise regulated by Anti-Trust laws designed to achieve or maintain effectively competitive market structures and conduct--e.g., Sherman Anti-trust act.

d. System of private enterprise with direct regulation of specific aspects of conduct and performance--e.g., Pure Food and Drug Act
of 1906, and subsequent food safety rules

e. Direct public ownership of key industrial sectors, particularly natural monopolies--e.g., TVA, Land-grant Universities.

2. Basic Acts (overheads)

a. Sherman Anti-trust Act - 1890 (Brief word on history of trusts)

(1) Outlaws restraints of trade aimed at monopolization or attempts to monopolize [Structure]- Aims to preserve competition

(2) Both a criminal act (felony) and a civil act. The gov't can sue for divestiture, and private individuals can sue for treble damages--treble--aimed at stimulating private enforcement)

b. Clayton Act - 1914

(1) Proscribes specific trade practices (conduct) thought to injure competition even though they fall short of attempts to monopolize under the Sherman Act--i.e., aims at preventing the emergence of monopoly

(a) Price discrimination (later amended by Robinson-Patman Act)

(b) Exclusive dealing and tying contracts

(c) Mergers (structure)
(d) Interlocking directorates - Cf Japan.

c. Federal Trade Commission

(1) Prohibits unfair methods of competition (conduct)

(2) Set up panel of experts (FTC) to figure out what these were and to enforce the law. View was that Congress couldn't specify all of these.

(3) FTC has authority to protect consumers as well as competitors.

d. Robinson-Patman Act

(1) Prohibits price discrimination that lessens competition or helps create monopoly through vertical “preferences”

(2) The Anti-Trust Modernization Commission *(http://www.amc.gov/)* recommended in 2007 that Robinson-Patman be repealed (consistent with recent Supreme Court rulings regarding rule of reason on vertical arrangements like tied sales, MRSP, etc.)

e. Capper-Volstead

3. Types of provisions--Restraints on structure (monopolization) and conduct (unfair pricing practices)--latter aimed at nipping monopoly in the bud.

a. Restraint of trade--exercise of market power--

(1) Per se violations:
(a) Price fixing

(b) Allocating territories among competitors (except for soft drinks and beer)

(c) Tying the purchase of one product to the purchase of another. [Now rule of reason applies]

(2) Other violations judged individually, based on whether there is evidence that they were more restrictive on trade than was necessary to achieve a legitimate business objective.

b. Price discrimination that lessens competition
c. Mergers and acquisitions that promise to reduce effective competition--an attempt to prevent monopoly from developing.

B. Trade Practice regulation at national level (USDA, FDA, and FTC) - Overhead

1. Basic provisions
   a. Anti-trust
   b. Unfair trade practices - e.g., predatory pricing
   c. Prompt and full-pay
   d. Discriminatory practices
e. labeling, truth in advertising

2. Federal Acts
   a. Packers and Stockyards Act
(1) Antitrust agency for the US livestock and meat industry

(2) Mandatory reporting of trades and prices

b. Perishable Agricultural Commodities Act
c. Commodity Futures Trading Commission Act
d. Capper Volstead Act - enabling legislation for cooperatives
e. Agricultural Fair Practices Act
f. U.S. Warehouse Act
g. Federal Seed Act

3. Impact Assessment of selected ones:

a. PACA:

   (1) Aimed at facilitating the development of a national market for perishable commodities

   (2) To do this, need a system of adjudication for trade disputes regarding quality and trade practices

   (3) The Act provides this by requiring mandatory inspection for those commodities sold under grade in interstate commerce.

   (4) Licensing and its revocation as an incentive for compliance (licensing pros and cons)

   (5) Necessary for development of national mkt in perishables--Objective, third-party enforcement.
(6) Generally well supported by trade, as evidenced by willingness to pay user fees for it.

(7) Problems that have arisen with globalization and foreign exporters limited knowledge of and access to this act.

b. U.S. Warehouse Act. - Aim is to increase the liquidity of the grain trade.

(1) Importance in creating mechanism for uniform, tradeable warehouse receipts for financing of the trade

(2) Some assurance of being paid

c. Commodity Futures Trading Commission Act--important in generating enough confidence in a poorly understood but very useful economic tool (futures markets) to allow them to play their role in economic coordination.

d. Evolving nature of the trade vs. existing legislation--e.g., Packers and Stockyards Act only covers auction and stockyard trading, not direct sales, which now account for 80% + of livestock sales.

III. Market regulation in developing countries

A. Any lessons from U.S. experience?

1. Markets don't just develop into socially useful tools by themselves

2. Rules can greatly affect distribution of benefits from market. There are a myriad of ways of constituting a market, and the devil is in the details.
3. North’s point: low-income countries should not just mimic the regulatory structure of high-income countries but rather look at incentive structures in their own economies and try to graft similar incentives onto existing institutions and organizations.

B. Problems

1. Anti-intermediary bias--
   a. Lack of appreciation of marketing as a productive activity, that leads to socially useful services and incurs costs of production like any other productive activity.
   b. Often complicated by ethnic biases

2. Unrealistic legal requirements
   a. Often modeled after industrial country regulations, with little adaptation to local conditions. E.g., tax rules in Mali that ignore social "taxes" on successful merchants.
   b. Licensing as a barrier to entry
   c. Lack of enforcement capability

3. Corruption

4. Recent moves to liberalization as "anything goes", as in Russia.

C. Recommendations--need to avoid both extremes

1. Marketing inherently slimy and corrupt
2. The magic of the unfettered market will lead to the best of all worlds.
Market forces are the wind that fills the sail of the economy, but you still need someone at the tiller.

3. As McMillan stresses, details of design of regulations make a big difference, which implies there is a big role for applied economists to play in analyzing and helping to shape regulatory institutions.