

SYLLABUS

Comparative Regulation and Public Policy

Law 378-001

Spring 2024

Professor: Patricia Sampaio (Visiting Professor)

Class meetings: Tuesdays, 09:50-11:50 am

Contact Information: patricia.pinhoiro@fgv.br

Office hours: Tuesdays from 2 pm to 3:15 pm, or by appointment. I am usually available for questions immediately after class.

Course description: The purpose of this course is to provide students with knowledge about the foundations of regulation and how they relate to public policies.

The course begins with a set of classes dedicated to the discussion of several key concepts. Introductory classes focus on assessing the concepts of public policy and regulation, followed by remarks on market failures and social matters as reasons for regulating certain markets. The course discusses the theory of public choice and the risks of regulatory capture as alternative explanations for regulation.

After assessing the pros and cons of regulation, we discuss the merits of privatization and the different reasons for countries deciding to delegate public services under concession agreements and public-private partnerships or having them delivered by public agencies or state-owned enterprises.

A second part of the course dives into the tools available to reduce the risks of regulatory failures, such as public consultation, regulatory impact assessments, and agencies' governance. As per the tools available for regulators to reach the outcomes envisaged by regulatory policies, besides administrative penalties, the course addresses the roles of other instruments such as information disclosure and nudge, taking into consideration the contributions of behavioral law and economics.

In the absence of market failures, societies are usually better served when governments refrain from intervening in the markets and let competition prevail. However, market power distorts competition, so most jurisdictions have rules that allow States to intervene in economic agents' practices to restore competition standards. Competition

law provides another set of instruments for State market intervention; hence, it is key to study the intersection between regulation and antitrust rules.

The last part of the course is dedicated to discussing how to evaluate the results of regulatory policies; regulatory policies' oversight; and how alternative dispute resolution mechanisms may be useful to prevent and settle regulatory conflicts.

The course adopts a comparative approach. Part of the bibliography includes documents and papers from multilateral agencies, such as the Organization for Economic Cooperation and Development (OECD), the World Bank, and the Inter-American Development Bank (IDB). Some papers also include experiences from Latin American and the Caribbean, as well as from the European Union. During classes we will have the opportunity to debate some public policies and cases involving public utilities, transportation, and other regulated sectors.

Learning outcomes: By the end of the semester, you should be able to understand why some markets are more regulated than others, and when access, price, quantity, or quality should be regulated. You should also be able to analyze public policies and their implications, in view of regulatory tools available to policy makers, such as command and control, nudge, informational transparency. You should also understand the relevance of the administrative process to regulatory outcomes, as well as the role of institutions such as the Legislative Power, the Executive Power, regulatory agencies, and competition authorities in designing and implementing regulatory policies.

Participation: Students are expected to attend all class sessions, complete all reading assignments, and make informed contributions to class discussions on a regular basis. Except for the class of January 30, which will be online, all other classes shall take place at GMU's premises, unless otherwise previously informed.

Link to the Jan 30, 2024, class: <https://fgv-br.zoom.us/j/97637123084?pwd=ZjR4VE52Qno2NnlpXk3eDdHZ29jdz09>

Use of electronic devices: Feel free to bring your computer, iPad, and other electronic device to class, but please be responsible and refrain from using them for purposes other than academic.

Paper Presentation: Each class is based on paper discussion. Each paper will be assigned to a discussion leader. The discussion leader is responsible for summarizing the paper at the beginning of the class and moderate the debate.

Class Preparation: You should prepare for class by reading and thinking carefully through the assigned material. You are expected to be prepared for class. I will assume familiarity with the assigned reading. Discussions will play a central role. Bringing

examples to illustrate the topics being discussed is encouraged. Quality of participation is weighed much more heavily than quantity.

Substantial Paper: The primary assignment for this class will be the writing of a substantial term paper that fulfills the Law School writing requirement. You should plan to have your paper topic chosen and approved no later than Week 5 of the semester and you should plan to have an outline of your paper by Week 10. I am available to discuss the topic you choose before you start writing and a draft version of the paper before end of the semester. You must send an email to me informing the topic you have chosen before February 20, 2024.

The written papers should be typed, double-spaced, with one-inch margins. The final paper must be between 5,000-7,000 words, not including footnotes. Each paper must be your own independent work. Paper must present the problem the student intends to assess, the methodology used, and the main findings. The choice of a case study is encouraged. The paper must address one or more topics of the course and quote at least part of the course's bibliography.

Please email the paper to me directly by the last day of the semester (April 22, 2024) or submit a copy to the Records Office. I prefer that the electronic document be sent in either pdf or Word format. If you turn your assignment in late, there will be a negative effect on your grade.

Please note that, per Law School policy, the professor cannot grant deadline extensions for final papers; requests must be submitted to the Associate Dean for Student Affairs & Academic Support.

Grading: Grading will be based on class participation (25%) and on the delivery of an individual paper (75%).

Syllabus is Preliminary and Subject to Change: I may deviate from the original syllabus with assignments taken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc. All changes will be informed in advance by e-mail.

Intellectual Property: All materials used or delivered during the course, such as PPT slides, regardless of form (electronic, print, audio/ video, etc.), are professor's proprietary information. You are forbidden to use them with, or distribute them to, anyone other than your classmates on this course.

Class Recording Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me.

Academic Integrity: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never

provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Classroom Accommodations: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Associate Dean for Student Affairs & Academic Support for more information.

General Academic Regulation: [Available here.](#)

University Life: University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

Dates, subjects, and reading materials:

	Subject	Reading
<p>Session 1</p> <p>January 16</p>	<p>The relationship between market and government. The cycle of public policies.</p> <p>Introduction to regulation.</p>	<p>WHEELAN, Charles. <i>Introduction to public policy</i>. New York and London: W.W. Norton & Company, 2011, Section 1 (What is public policy)?</p> <p>OGUS, Anthony. <i>Regulation, legal form, and economic theory</i>. Oxford: Hart Publishing, 2004, chapter 2 (The context of regulation: The market and private law).</p> <p>PINHEIRO, Armando Castelar; SCHNEIDER, Ben. <i>Markets and Hierarchies in Social Services in Latin America: Incentives, Institutions, and Politics. WB Paper Series, No.13, Sep. 2009.</i></p>

		https://polisci.mit.edu/files/ps/imce/faculty/documents/CastelarandSchneider.pdf
<p>Session 2</p> <p>January 23</p>	<p>What is regulation and what should be regulated: natural monopolies, informational asymmetry, externalities, public goods. Market failures</p> <p>Public utilities, public services, and services of general interest. Social services and services of economic general interest.</p>	<p>OGUS, Anthony. <i>Regulation, legal form, and economic theory</i>. Oxford: Hart Publishing, 2004, chapter 3 (Public interest grounds for regulation).</p> <p>VISCUSI, W.; HARRINTON JR., Joseph; VERNON, John. <i>Economics of regulation and antitrust</i>. Cambridge: The MIT Press, 2005, pp. 357/362.</p> <p>EUROPEAN COMMISSION. <i>Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. A Quality Framework for Services of General Interest in Europe</i>. Brussels, 2011. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0900</p> <p>EUROPEAN COMMISSION. <i>Evaluation of the State subsidy rules for health and social services of general economic interest ("SGEIs") and of SGEI de minimis regulation</i>. Brussels, 2022. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0388</p>
<p>Session 3</p> <p>January 30</p> <p>Attention: online class</p>	<p>Government failure. The theory of economic regulation.</p>	<p>STIGLER, George. The theory of economic regulation. <i>The Bell Journal of Economics and Management Science</i>, Vol. 2, No. 1, (Spring, 1971). Available at http://www.jstor.org/pss/3003160, pp. 3-18.</p>

		<p>PELTZMAN, Sam. The Economic Theory of Regulation after a Decade of Deregulation. <i>Brookings Papers on Economic Activity</i>. Microeconomics, 1989, Vol. 1989 (1989), pp. 1-59. Available at https://www.brookings.edu/wp-content/uploads/1989/01/1989_bpea_micro_peltzman.pdf</p>
<p>Session 4 February 6</p>	<p>Concessions and PPPs: Pros and cons. The problem of renegotiation</p>	<p>GUASCH, J. Luis. <i>Granting and renegotiating infrastructure concessions: doing it right</i>. Washington: The World Bank, 2004. Available at https://openknowledge.worldbank.org/entities/publication/a50cbcc8-8f22-50d5-b273-f06ea4723e99</p>
<p>Session 5 February 13</p>	<p>Independent regulatory agencies. Regulatory process and regulatory tools</p>	<p>MEDIANO, Andrés Pavón. <i>Agencies' formal Independence and credible commitment in the Latin American regulatory state: A comparative analysis of 8 countries and 13 sectors</i>. Regulation and governance (2020) 14, 102-120. Available at https://onlinelibrary.wiley.com/doi/abs/10.1111/rego.12187</p> <p>CROLEY, Steven. Regulation and public interests: <i>The possibility of good regulatory government</i>. Princeton: Princeton University Press, 2008, cap. 2, 3 e 4.</p>
<p>Session 6 February 20</p>	<p>RIA. Regulation and Governance. Responsive regulation.</p>	<p>COOK, Paul; KIRKPATRIC, Colin; MINOGUE, Martin; PARKET, David. <i>Leading issues in competition, regulation, and development</i>. Chapter 1 (Competition, regulation and regulatory governance: an overview,</p>

		<p>pp. 3-23). Available at https://web.archive.org/web/20121006032147/http://www.competition-regulation.org.uk/publications/crc_books/Leading%20issues.pdf</p> <p>OECD. <i>Building an institutional framework for regulatory impact analysis</i>. Available at http://www.oecd.org/dataoecd/44/15/40984990.pdf, pp. 11-29.</p> <p>AYRES, Ian; BRAITHWAITE, John. Responsive regulation. <i>Transcending the regulatory debate</i>. Oxford: Oxford University Press, 1992, Chapter 1 (The benign big gun).</p>
<p>Session 7 February 27</p>	Behavioral regulation	<p>ZAMIR, Eyal; TEICHMAN, Doron. <i>Behavioral law and economics</i>. NY: Oxford University Press, 2018, chapters 3 and 4.</p> <p>THALER, Richard; SUNSTEIN, Cass. <i>Nudge</i>, introduction and chapter 4.</p>
<p>Session 8 March 12</p>	Competition and regulation. The roles of competition authorities and regulators in public utilities' sectors.	<p>AREEDA, Philippe. Antitrust policy and public utility regulation. <i>The Bell Journal of Economics and Management Science</i> Vol. 3, No. 1 (Spring, 1972), pp. 42-57.</p> <p>DEMSETZ, Harold. Why regulate utilities? <i>Journal of law and economics</i>, v. 11, n.1 (April 1968). Available at https://www.jstor.org/stable/724970</p> <p>OECD. Competition Enforcement and Regulatory Alternatives. OECD <i>Competition Committee Discussion Paper</i>, 2021. Available at https://www.oecd.org/daf/competition</p>

		/competition-enforcement-and-regulatory-alternatives-2021.pdf
Session 9 March 19	Network industries, competition policy and regulation. The essential facilities' doctrine	ECONOMIDES, Nicholas. <i>Public policy in network industries</i> . Available at https://neconomides.stern.nyu.edu/networks/Economides_Public_Policy_In_Network_Industries.pdf Verizon v. Trinko. Available at https://supreme.justia.com/cases/federal/us/540/398/
Session 10 March 26	Self-regulation and its limits	BLACK, Julia. <i>Decentring regulation: Understanding the role of regulation and self-regulation in a 'post regulatory' world</i> . Disponível em http://clp.oxfordjournals.org/ . GAROUPA, Nuno; MARKOVIC, Milan. Deregulation and the Lawyers' Cartel (2022) 43(4). <i>University of Pennsylvania Journal of International Law</i> 935. https://heinonline-org.sbproxy.fgv.br/HOL/Page?handle=hein.journals/upjil43&div=25&&collection=journals
Session 11 April 2	Evaluating regulatory performance	COGLIANESE, Cary. Measuring regulatory performance: Evaluating the impact of regulation and regulatory policy. Available at https://www.oecd.org/gov/regulatory-policy/1_coglianesse%20web.pdf
Session 12 April 9	Accountability and over-accountability	HALLACK et al. <i>PPPs and Supervisory Bodies in Latin America and the Caribbean: Role and Challenges</i> . Washington: IDB, Nov 2021, available at

		<p>https://publications.iadb.org/publications/english/viewer/PPPs-and-Supervisory-Bodies-in-Latin-America-and-the-Caribbean-Role-and-Challenges.pdf</p> <p>GERSE, Jacob E. and STEPHENSON, Matthew C. Over-accountability. <i>Journal of Legal Analysis</i>. Winter 2014: Volume 6, Number 2. Available at https://dash.harvard.edu/handle/1/16073949</p>
<p>Session 13</p> <p>April 16</p>	<p>ADR in the regulatory state</p>	<p>GALLAGHER, Deirdre McCarthy; MILES, Richard; PURDY, Jerrilynne. <i>Alternative Dispute Resolution in the Regulatory Process</i>. Michigan: Michigan State University Press, 2020. Available at https://www.jstor.org/stable/10.14321/j.ctvvsqc25</p>