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Free Markets and Their Umpires: The Appeal of the U.S. Regulatory Model

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In promoting economic reforms abroad, free market enthusiasts too often overlook the vital role of an umpire in ensuring a level playing field. Yet interestingly, other countries and multinational institutions have adopted, with modifications, the U.S.- bred model of the independent regulatory agency—an innovation that Americans take for granted—in such sectors as energy, water, and communications. The model has spread to both advanced and developing societies, albeit with some accompanying difficulties, and with adaptations to suit local circumstances. This essay attempts to explain how and why.

Regulation signifies rules, principles, or laws meant to control or govern conduct, whether in the public or private sector. Such oversight can be variously structured. The U.S. model is a hybrid of executive, legislative, and judicial functions. The regulatory agency is not simply carved out within a ministry or department overseeing privatesector activities, nor is it part of the judicial or legislative system. Individual regulators, who are formally outside the normal civil service framework, are chosen by politicians (by the president at the federal level and by governors at the state level, and confirmed by the respective legislatures) for fixed terms that are unconnected to the terms of the appointing politicians. They cannot be discharged without cause. In addition to issuing and implementing generally applicable rules, the regulatory body possesses quasi-judicial powers for resolving individual disputes. What bolsters the independence of the regulatory commission is its final decision-making authority. Its findings can be appealed only to a court, subject to a standard of review that treats the regulatory body with a significant degree of deference.

The driving forces behind the development of the regulatory model in the United States were economic and philosophical. The growth during the nineteenth century of population, industry, and wealth, combined with the emergence of powerful monopolies, created the need for governmental oversight to protect the public: trains could not be permitted to collide and monopolies could not be left to gouge customers.

Interestingly, the inevitable governmental growth that accompanied regulation was channeled into distinct, independent, legislatively created agencies as opposed to fattening existing ministries with added personnel and departments, as occurred elsewhere. This happened not only because of the laissez-faire principles of the U.S. economic system, but also owed much to the "scientific" philosophy accompanying the industrial revolution.

The independent regulator is thus a child of the nineteenth-century faith in science and technology. Dazzling advances in the core sciences prompted the application of scientific principles to all human endeavor. Technological advances in industry could be mirrored in government through analogous methodology. The independent scientific expert, removed from politics and above the fray, was deemed a more objective umpire than the politicians.

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