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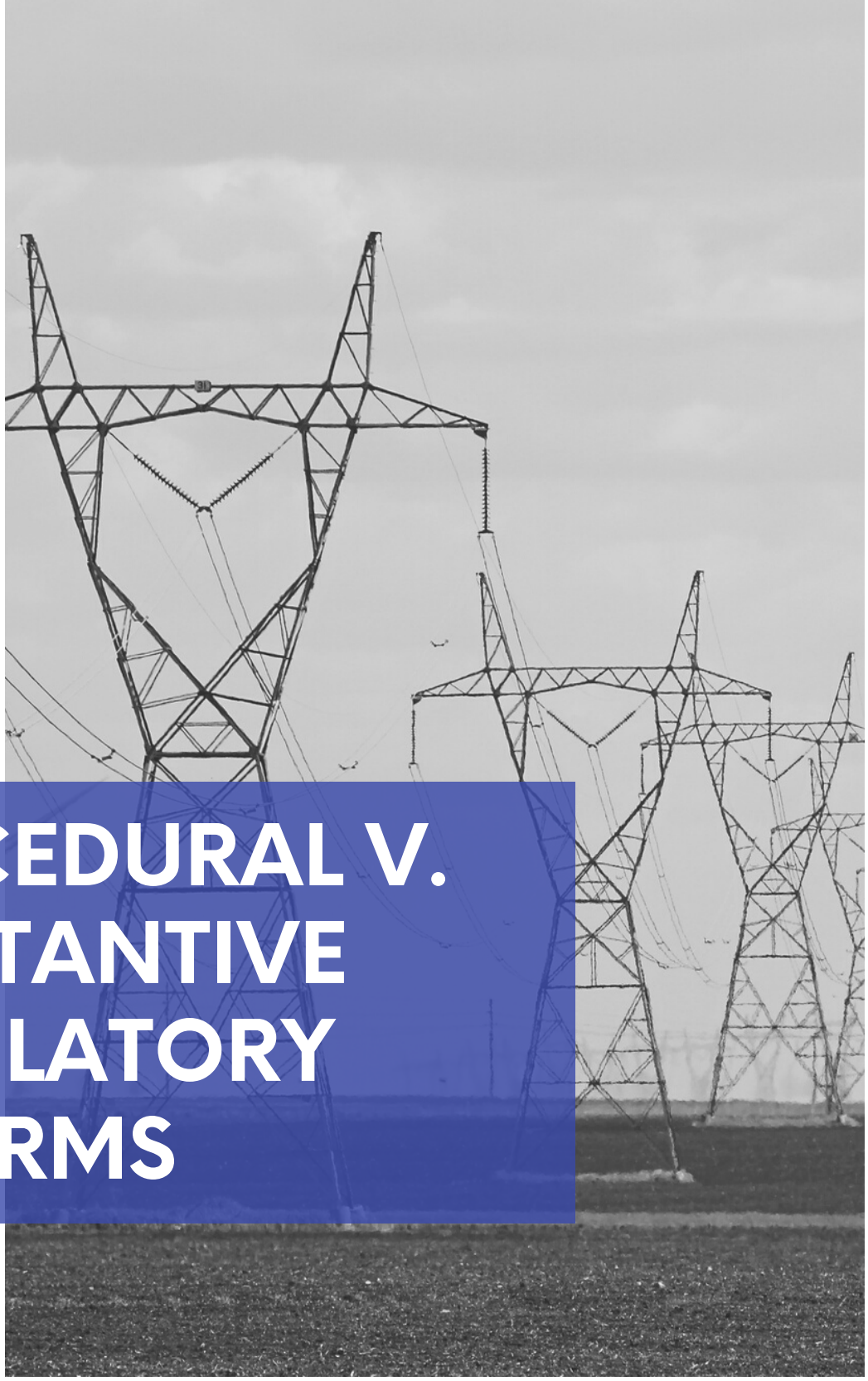

PROCEDURAL V. SUBSTANTIVE REGULATORY REFORMS

THE COUNCIL TO MODERNIZE GOVERNANCE

Procedural Improvements Can Advance Substantive Standards: Sunset & Measure, Clarify Accountability, Focus on Real Harms

Stephen Hollingshead, Ph.D.
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Executive Summary

Critics of regulatory reforms sometimes suggest that efforts to streamline the process are really backdoor efforts to undermine the underlying standards those procedures enforce.[2] The opposite is very often true: A better process can lead to better compliance with public standards. This paper groups procedural reforms into three types—sunsetting ineffective regulatory regimes, improving accountability, and punishing real harms rather than paperwork. It provides examples that demonstrate how reform can lead to better implementation of the substantive standards that regulation aims to promote.

When the Costs of Regulation Exceed the Benefits, Just Stop

Cass Sunstein, President Obama's head of the White House Office of Information and Regulatory Affairs (OIRA) gently observed that since bureaucracy has a natural tendency to push toward exercising and increasing its authority ("gap filling"), the job of the reformer is to simplify—to pare back regulations that cannot show enough benefits to justify their costs.[3]

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[2] David Blackmon, "Manchin's Permitting Side Deal Highlights the Energy Transition's Central Conundrum," *Forbes,* August 22, 2022 https://www.forbes.com/sites/davidblackmon/2022/08/22/manchins-permitting-side-deal-highlights-the-energy-transitions-central-conundrum/?sh=5db4c4157e05.

[3] Cass R. Sunstein *Simpler: The future of government* (Simon and Schuster, 2013) 181.

While government has a tendency to overestimate benefits and undercount costs,[4] it is nevertheless important to make a good faith effort to try. Economist Michael Greenstone argues that the benefits and costs of a regulation have usually only been measured by government *before* the regulation was imposed, when uncertainty about the value of benefits and costs was at its highest.[5] Moreover, those values are a moving target. This demonstrates the need for ongoing review of every regulation, so that any regulatory activity that costs more than the benefits it creates can be stopped.[6] Including sunset provisions in regulations is a good way to facilitate this.

Crying over Spilt Milk. President Obama was amused by the fact that, since the 1970s, the US government had regarded milk as an "oil," subject to costly rules designed to prevent oil spills.[7] Farmers had long sought relief from this miscategorization. The EPA, in its retrospective review, ruled to exempt them—for a savings of an estimated $147 million per year.[8]

One of the dangers of government regulation is that regulators are susceptible to errors of this type because their knowledge is and must be imperfect. Like all of us, they sometimes tend to force things into a prior construct they have without understanding the consequences of what they are doing. In this case, this error foolishly cost milk producers (and ultimately milk consumers) $147 Million per year.

COVID Emergency Permission for Telemedicine. Perhaps the pandemic's silver lining was accelerating some trends to bring the future faster. One long overdue reform was the ability for telemedicine to be practiced across state lines. This temporary

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[4] Flyvbjerg, Bent and Bester, Dirk W., The Cost-Benefit Fallacy: Why Cost-Benefit Analysis Is Broken and How to Fix It (September 6, 2021). Journal of Benefit-Cost Analysis, October, pp. 1-25, doi 10.1017/bca.2021.9.: https://ssrn.com/abstract=3918328

[5] "The single greatest problem with the current system is that most regulations are subject to a cost-benefit analysis only in advance of their implementation. This is the point when the least is known and any analysis must rest on many unverifiable and potentially controversial assumptions." Michael Greenstone, "Toward a Culture of Persistent Regulatory Experimentation and Evaluation," in New Perspectives on Regulation, eds. David Moss and John Cisterno (Cambridge, MA: Tobin Project, 2009), 113.

[6] Per Coase, *all* benefits and costs should be compared among the four possible regulators of any given activity: The market, the firm, the regulator, or no regulation at all. "The Problem of Social Cost," *The Journal of Law and Economics* (1960).

[7] As related firsthand in Sunstein, *Simpler*, p. 181.

[8] "Improving Our Regulations: A Preliminary Plan for Periodic …." 24 May. 2011, https://obamawhitehouse.archives.gov/files/documents/2011-regulatory-action-plans/EnvironmentalProtectionAgencyPreliminaryRegulatoryReformPlan.pdf.

permission should be made permanent.[9] Public perception from that experience now supports interstate licensure.[10]

The danger that physicians licensed in their own states will somehow offer substandard care across state lines in the absence of regulation is far outweighed by the benefit of allowing access to care (that could prevent life threatening deferrals of diagnoses). Regulators have a tendency to think that things will run better if they are in charge. In cases like this, measurement of costs and benefits would show that there is scant evidence of this supposed market failure.

IRS 501(c)3 Determination Letters. In our previous paper, we discussed the economic importance of allowing the private sector to act without having to wait on a decision from government. Napoleonic permission authority is particularly susceptible to corruption. A good illustration of why was seen during the Obama administration when Lois Lerner and her IRS colleagues brought shame on the civil service when they discriminated against groups they thought inimical to the administration.[11] A prior study showed that the IRS focused fewer audits on the ruling party's constituency.[12] This type of corruption illustrates why government executives should not be given so much discretionary power. But the IRS scandal illustrates more than the dangers of government corruption in an overweening bureaucracy.

Why should organizing a nonprofit require waiting on the government—often more than a year—in order to achieve the tax benefits that donors have been taught to expect? The IRS recognized this problem by allowing nonprofits to accept tax-deductible gifts before their determination letter arrives.[13] But the bureaucracy subverted the statute with a regulation that prevents other 501(c)3s (the largest potential donors) from giving money to nonprofits before they have a determination letter (i.e., a permit from the IRS).[14] By delaying the organization of nonprofits in response to crises, this chills competition and innovation in civil society activity.

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[9] Shachar, Carmel, Amar Gupta, and Gali Katznelson. "Modernizing medical licensure to facilitate telemedicine delivery after the COVID-19 pandemic." In *JAMA Health Forum*, vol. 2, no. 5, pp. e210405-e210405. American Medical Association, 2021.

[10] Nguyen, Ann M., Jennifer J. Farnham, and Jeanne M. Ferrante. "How COVID-19 emergency practitioner licensure impacted access to care: Perceptions of local and national stakeholders." *Journal of medical regulation* 108, no. 4 (2022): 7-19.

[11] Kahng, Lily. "The IRS Tea Party Controversy and Administrative Discretion." *-100 Cornell L. Rev. Online* 99 (2013): 41.

[12] Shughart II, William F., Marilyn Young, and Michael Reksulak. "The political economy of the IRS." *Economics and Politics* 13 (2001): 201.

[13] "Contributions to Organization with IRS Application Pending," Internal Revenue Service. https://www.irs.gov/charities-non-profits/charitable-organizations/contributions-to-organization-with-irs-application-pending

[14] cite

Since the standards of what constitute tax-protected activities are fairly straightforward, why not allow those standards to operate more like a general rule,[15] as the statute appears to allow? Even when the IRS is not corrupt, waiting for determination letters creates uncertainty and is slowing humanitarian response to crises. This kind of reform would allow the IRS to shift resources from permission-granting to harm-punishing, a shift from the Napoleonic civil law approach back toward the American common law approach. The private sector would lose the safe harbor of determination letters, but that would be a small loss compared to the gain of greater freedom to form and operate nonprofits. It would also strengthen the sense of responsibility in the private sector for operating in accordance with the published standards, on pain of audit and enforcement action.

Whatever the dangers of government overcounting benefits or undercounting costs, ongoing analysis will tend to improve the opportunity to sunset regulations that do not provide net benefits. This will allow government resources to be repurposed to more valuable activities. More importantly, it will allow the private sector more space to grow—to innovate and extend the offering of products and services.

Clarify Accountability

Often, in bureaucracy, people within the government *think* someone has responsibility (usually someone else), which creates a situation where nobody has responsibility. The executive's job is to *clarify* exactly who is in charge, and hold that person accountable.

In *Federalist* No. 70, Publius (here Alexander Hamilton) famously proposes in his argument that energy in the executive is required for good governance:

> That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.[16]

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[15] For the purposes of this paper, we are using "general rule," to demonstrate the most purely common law form of permitting activity, that is, no government permitting process in any form. Only standard setting and *ex post* enforcement.

[16] "Federalist No 70: Version A - The Avalon Project." https://avalon.law.yale.edu/18th_century/fed70.asp.

What is often missed about this argument is its context—that good government, in Publius' view, *republican* government, requires both a) a due dependence on the people, and b) a due responsibility.

Understood in this context, the brilliance of Publius' understanding of public administration is clearer: Dividing responsibility will inevitably erode *accountability* and create unnecessary delay.[17]

Real responsibility is unitary, not divided across a large group.

Clarifying accountability often involves putting one person in charge, accountable for the final product or decision. It can also mean clarifying the rules for redress (i.e., the consequences for failure to perform as duty requires).[18] The following examples illustrate the principle that clarifying accountability streamlines and quickens the process, yielding better results.

Fast-41 Program. As discussed in our previous paper, the element of Fast-41 that appears to help is improving accountability by naming a lead agency, and requiring participating agencies to develop and commit to a timeline for completing their review. Increased accountability creates social pressure for performance. When no one is clearly in charge, delay is likely. A longer process is not any more likely to be more substantively thorough than a shorter one.[19]

Judicial Relief in Freedom of Information Act (FOIA) Requests. Humans (and puppies) are so constituted that we often neglect to perform our duty in the absence of clear consequences. Government agencies are no different. Administrative deadlines without clear avenues for relief are ineffective.

Congress recognized this reality when it amended FOIA in 1974. Indeed, FOIA (1966) is itself an expansion of Administrative Procedure Act (APA) disclosure obligations enacted in 1946. But agencies were not being responsive. So Congress provided in the 1974 amendments that, once administrative deadlines (10 and sometimes 20 days) had passed, requestors' obligation to pursue administrative relief was satisfied, so they could

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[17] For a similar argument, see Bernhardt, p.118. Moreover, Bernhardt's larger point about the different management styles of Presidents he worked for accords with Publius' argument as well—a more unfiltered direct oversight by the President of agency heads yields much more energy in the executive. (cite)

[18] R. J. Lyman suggests, for example, automatic approval if agencies delay beyond the time allotted for review of permit applications. "What it takes to streamline state regulations." 16 Jan. 2023, https://commonwealthmagazine.org/opinion/what-it-takes-to-streamline-state-regulations/.

[19] Pleune, Jamie and Boling, Edward, "This Permit Reform Already Works. Why Aren't More Mine Permit ...." 22 Mar. 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4390921.

sue in district court. Moreover, requestors could recover attorney's fees if they "substantially prevailed" in court.[20]

After a 2001 Supreme Court opinion effectively undermined this incentive, Congress moved to restore it in 2007 with the OPEN Government Act.[21] This goes to show that while Congress could see the benefits of public disclosure of government procedure and policy decades before, those requirements did not have real force until they were given a reliable method of accountability.

Reform of the Surname Process at the Department of the Interior (DOI). When he was Deputy Secretary of DOI, David Bernhardt reformed the process for vetting environmental reviews up the chain of command.

The process had become sedimented many years prior, when an agency chief of staff had been surprised by something from the agency that appeared in the news. Over the years, the process (which was not based on any statute or regulation, but merely administrative tradition) became more and more cumbersome, with more and more signatures required on a document before it could be presented to the Deputy Secretary (who, like a COO, was ultimately responsible for approving it). The problem was, not only did this waste an inordinate amount of time, all those signatories tended to leave it to others to see that these environmental analyses were rigorous and correct. Everybody's responsibility became nobody's responsibility.

Bernhardt decided to change the process so that a single executive was responsible for making sure each document was fully edited and vetted until it was ready for the Deputy Secretary's signature. "They were now directly accountable for the environmental impact statements, not forty people whose names were on a surname sheet."[22]

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[20] Forthcoming paper on FOIA by Gary Lawkowski and Curtis Schube. Council to Modernize Governance, p.9.

[21] *OPEN Government Act,* § 3; U.S. Congress, House Committee on Oversight and Government Reform, *Freedom of Information Act Amendments of 2007*, 110th Cong., 1st Ses., H. Rep. 110-45, Mar. 12, 2007, 6. https://nsarchive2.gwu.edu/nsa/foialeghistory/2016-02-12/(7)%20Com.%20Oversight-Overview%20.pdf.

CMG FOIA paper, p 15, describing 2007 changes to FOIA in the OPEN Government Act: "Restoring the 'catalyst' theory to recover attorney's fees and costs in litigation. Under FOIA, prevailing parties could recover attorney's fees and costs in litigation since the 1974 amendments. Under applicable case law, a requester could show that they substantially prevailed either by obtaining an enforceable court order or by showing that their actions prompted a unilateral change in the agency's position, *i.e.*, that the lawsuit was the catalyst for a change in agency position. In 2001, the Supreme Court rejected the catalyst theory in a case concerning the Fair Housing Amendments Act and the Americans with Disabilities Act. The OPEN Government Act effectively reversed this decision with respect to FOIA claims, permitting requesters to recover costs and fees when they obtained relief through 'a voluntary or unilateral change in position by the agency, if the complaint's claim is not insubstantial.'"

[22] David Bernhardt. *You Report to Me: Accountability for the Failing Administrative State* (Encounter Books, 2023), 14

By making one person accountable, suddenly the quality of the documents was much higher. And the reviews were completed in far less time. As Bernhardt wrote, "We made the review process more efficient without changing a single environmental standard."[23] That is the key point—process reforms not only do not require watering down substantive standards, they often improve adherence to them.

Punish Real Harms, Not Paperwork

Measurement is important. But measuring what matters in an organization, public or private, is often hard. So trying to show progress, we very often fall into the easy trap of measuring inputs (hours worked, paperwork submitted) rather than outcomes (goals achieved).

This mistake is so prevalent that perhaps the most common misattribution gracing the pages of the *Harvard Business Review* is the claim that Peter Drucker said, "What gets measured gets managed." But he never said it.

The real quotation, Simon Caulkin's gloss of V.F. Ridgway, is much more telling:

> "What gets measured gets managed—even when it's pointless to measure and manage it, and even if it harms the purpose of the organisation to do so."[24]

Government organizations are just as susceptible to this mistake as private ones. In order to demonstrate progress, government managers routinely reward the punishment of process errors, even when the cumulative effect of doing so is detrimental to the mission of the organization.

The following examples illustrate this point:

Department of Housing and Urban Development (HUD) Enforcement Backlog. One of the authors of this paper was assigned by HUD Secretary Alphonso Jackson to reform the Departmental Enforcement Center (DEC) after it had received an unfavorable audit by the Inspector General related to its 5-year backlog of 4,500 overdue enforcement cases, mostly in the Federal Housing Administration (FHA)

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[23] *Ibid*, 13.

[24] "'What gets measured gets managed' — It's wrong and Drucker never said it." 8 Apr. 2019, https://medium.com/centre-for-public-impact/what-gets-measured-gets-managed-its-wrong-and-drucker-never-said-it-fe95886d3df6. Of course, measuring inputs *can* be useful, especially in terms of personal development. The danger is confusing means for ends. Organizations should be judged by what they actually achieve that advances their mission.

multifamily housing portfolio. This presented a material risk to HUD, and caused a restriction in the supply of new affordable housing units coming into the market.

The reform and realignment of this enforcement agency wiped out the aged case backlog in 18 months, while dramatically increasing portfolio recoveries and civil money penalties. Paradoxically, this dramatic improvement in enforcement was achieved by finding the innocent first and dismissing their cases.

Statistical analysis of the aged case backlog revealed that nearly all (above 95%!) of the companies stuck in enforcement got there via erroneous flags—because HUD's accounting system's chart of accounts did not align with the Generally Accepted Accounting Principles (GAAP) used in the private sector. Bureaucratic inertia and legacy government systems made it too difficult to solve the government's accounting problem in the waning years of a presidential administration. So the enforcement agency could do little about the bad information it was getting. But it *could* change what it did with that information.

Once it was clear that the enforcement backlog contained mostly innocent companies being harassed by government,[25] the perplexing problem was why, then, was it taking so long to close these cases? The answer was that the cultural distrust of private sector entities within the agency led to a practice where every aspect of the operation was examined—not merely the flag that landed the company in enforcement—before releasing the flag.

Yet it was these regulated, private sector entities (both for-profit and non-profit) that were actually producing the affordable housing that HUD was charged with promoting. Since flagged companies could not complete new transactions until they were cleared from enforcement, this aged case backlog had caused a serious restriction in the production of new affordable housing stock. So HUD's own inefficiency was hurting its mission.

Once employees at every level of the organization were made aware of how the backlog was contributing to problems in the real world, *and were measured* on the speed with which they found and released innocent companies, the backlog was cleared quickly (two-thirds of a five-year backlog were eliminated in the first nine months). Because this freed up significant enforcement resources, it had the paradoxical effect of radically increasing successful enforcement actions.

[25] If "harrassed" sounds too strong, imagine the stress of government lawyers and enforcement agents with vast resources and all the time in the world asking you to defend yourself with your own accountants and lawyers at great expense and no clear end in sight—putting your livelihood in danger when in fact you had done nothing wrong.

This reform constituted a shift from a civil law approach (making sure that absolutely everything was done in a way the government approved of) back to a common law approach (finding and punishing real harms). It advanced the department's mission.

When we focus our resources on actual harms we can prove, we catch a lot more bad guys. When we focus on auditing everything we can about an organization, we seldom find much, and cost a lot of work and money and pain in the process.

Obamacare Changes to Medical Billing Codes. There is a small but expensive provision in Obamacare that is not widely appreciated. It required the bureaucracy to revamp the Medicare billing codes that form an important part of our healthcare finance system. These codes must be used by physicians to bill Medicare or other insurers for healthcare services and products.

The bureaucratic implementation of this mandate brought the number of billing codes from about 18,000 to almost 140,000. There are many ridiculous codes, including codes for injuries sustained while playing a brass instrument, wielding a crochet hook, or getting burned by flaming water skis.[26] There are 10 separate codes reserved for injuries sustained by contact with a chicken.[27]

Certainly there is some public health benefit to the specificity of billing codes, insofar as better data can help researchers understand the prevalence of particular injuries. So why does it matter that there are a risible number of extra codes?

Because the statute, while dramatically increasing penalties for making a mistake, also *lowers the standard of proof* required to prosecute healthcare fraud,[28] which can be punished administratively, civilly, or criminally.[29] The lower standard does not require proof that the perpetrator intends a fraud, or knows his action is illegal. The government need not prove intent in order to punish.[30]

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[26] "New Medical Codes Provide Precision - WSJ." 13 Sep. 2011, https://www.wsj.com/articles/SB10001424053111904103404576560742746021106.
[27] "Find-A-Code." https://www.findacode.com/search/search.php?str=chicken.
[28] Elizabeth R. Sheyn, *Toward a Specific Intent Requirement in White Collar Crime Statutes: How the Patient Protection and Affordable Care Act of 2010 Sheds Light on the "General Intent Revolution,"* 64 FLA. L. REV. 449 (2012). https://scholarship.law.ufl.edu/flr/vol64/iss2/4 and Benson Weintraub, The Patient Protection and Affordable Care Act of 2010 Reduces the Criminal Mens Rea Requirement for Healthcare Fraud and Increases Penalties Under the Federal Sentencing Guidelines, WHITE COLLAR CRIME PROF BLOG (Sept. 6, 2010), https://lawprofessors.typepad.com/whitecollarcrime_blog/2010/09/the-patient-protection-and-affordable-care-act-of-2010-reduces-the-criminal-mens-rea-requirement-for.html
[29] *Ibid,* p.456
[30] "...and no proof of specific intent to defraud is required." United States Code, 2010 Edition

So enforcement agents can quibble—and punish—over whether a particular chicken strike was a first or subsequent occurrence, or whether a split lip came from an oboe rather than a tuba. Surely there are many more prosaic complexities in these 140,000 codes that will present themselves as well. Physicians, who already employ several people each in billing departments, will have to spend more on employees and consultants to protect themselves from accusations of fraud.

This dramatically increases the complexity and risk of healthcare billing, and so its cost, without a corresponding benefit to the quality of care. While this particular bureaucratic implementation is only one of the over 1,000 times[31] the 2,700-page statute says, "the Secretary shall," it epitomizes an unfortunate Napoleonic trend in our public administration today. Rather than punishing real harms (such as failure to deliver care as promised) we punish process errors.

The $PM_{2.5}$ Debate—Better Process without Undermining Standards. The ongoing debate over $PM_{2.5}$ (fine particulate pollution) emission standards tends to ignore the question of *how* those standards should be enforced most effectively. In this paper, we take no position on the scientific, economic, or political questions about the *substance* of what those standards should be. Our concern is the most effective *mechanism* for achieving adherence to the standard at the lowest cost.

The National Environmental Policy Act (NEPA) regulations often require an Environmental Impact Statement (EIS). The process has grown lengthy and cumbersome over the years, driving up electricity costs by delaying the construction of needed production facilities.[32]

There are good NEPA process reform ideas on both ends of the political spectrum. While Mark Rutzick offers more structural legislative and executive NEPA reform ideas,[33] Jamie Pleune offers some process reforms that, while requiring additional funding, do

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42 Sec. 1320a-7a - Civil monetary penalties" https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap7-subchapXI-partA-sec1320a-7a.htm.

[31] "Public Law 111–148 111th Congress An Act - GovInfo." 23 Mar. 2010, https://www.govinfo.gov/link/plaw/111/public/148.

[32] "US renewables industry joins Big Oil to fight delays to project permits." 23 Apr. 2023, https://www.ft.com/content/adf4d72c-9c7b-46a5-960f-70a700072721.

[33] Mark C. Rutzick, "A Long and Winding Road: How the National Environmental Policy Act Has Become the Most Expensive and Least Effective Environmental Law in the History of the United States, and How to Fix It," released by the Regulatory Transparency Project of the Federalist Society, October 16, 2018 (https://rtp.fedsoc.org/wp-content/uploads/RTP-Energy-Environment-Working-Group-Paper-National-Environmental-Policy-Act.pdf). While NEPA review is a process that informs but does not really bind agency decisions, it does invite costly litigation, and Rutzick's reforms (especially having Congress limit causes of action) would address this problem.

not require legislative or regulatory changes, and would not compromise environmental standards.[34] Her ideas for making the process more transparent and accountable seem especially helpful (including some that are similar to FAST-41 reforms). But we would like to consider a more fundamental rather than incremental reform.

In our first paper, we suggested that regulatory processes are best when they do not require the private sector to wait on the government in order to act (a governance model more aligned with common law than civil law). However, Richard Posner's textbook argument for what circumstances justify *ex ante* regulation would seem to apply in the case of $PM_{2.5}$ emissions—the harms are costly and irreversible, and it will be difficult to identify specific polluters in order to hold them responsible.[35]

Why, then, could we not promulgate standards of compliance the way we do with the CAFE (fuel economy) standards?[36] Rather than having government approve vehicle designs in advance, the government approves vehicle emissions *after* they are built, as long as they meet the standard. Leaving aside for this discussion the question of whether fuel economy standards should be used as a cipher for regulating greenhouse gas emissions,[37] they certainly provide an example of clear, aggressive standards imposed on the private sector *that do not require a private sector entity to wait on government in order to act*. Thus, it has the features of a general rule.

A voluntary pilot program could operate in parallel with the current system, and include those companies willing to purchase a bond to redress the costs of noncompliance with the $PM_{2.5}$ standard. Companies participating could agree to timely testing before bringing the plant online, and submit to enhanced real-time surveillance using Internet of Things (IOT) and blockchain technologies (more on this in our next paper).

In this way, we could retain the benefits of having a permit (promulgating a standard for enforcement and providing safe harbor for economic actors) while minimizing costly delays.

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[34] Pleune, Jamie, Playing the Long Game: Expediting Permitting Without Compromising Protections (November 8, 2022). 52 ELR 10893 (2022), University of Utah College of Law Research Paper Forthcoming. https://ssrn.com/abstract=4220268; or http://dx.doi.org/10.2139/ssrn.4220268 Pluene distinguishes between productive and unproductive delays (p.4), and argues that "Delays that mitigate safety and environmental risks or stop socially unacceptable projects may be inconvenient for investors, but they are ultimately productive for society" (p.5). She would seem to agree (p.13) with us, above, that clarifying accountability is important to streamlining the process. Her ideas for increasing transparency about the process for potential permittees are promising, especially publishing clarifications about the process, and communicating progress via a live dashboard.

[35] Richard A. Posner, *Economic Analysis of Law, Ninth Edition,* eBook, §14.1.

[36] "Corporate Average Fuel Economy (CAFE) - NHTSA." https://www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy.

[37] "CAFE Standards | Cato at Liberty Blog." 7 Aug. 2018, https://www.cato.org/blog/cafe-standards.

Conclusion

Sunset & Measure. The benefit of 20:20 hindsight allows reformers to inspect and prune back unneeded or harmful regulations via retrospective review. Caution is not free; we have a limited supply of care to take over a vast number of problems. The public is better served by an accurate classification of milk spills as less severe than oil spills. Telehealth is here to stay, bringing modern medical consultation on demand into people's homes, and defying the state protectionist attempts to erect barriers. IRS *ex ante* nonprofit designation, having proven itself susceptible to corruption, is ripe for a reform of this kind.

Create Accountability. Responsibility means one entity is held to account. Until assignment of accountability, the best-intentioned measures may never take effect. Deadlines are meaningless without consequences. The history of FOIA illustrates this point. Reform of the surname process at DOI accelerated and enhanced the quality of environmental review by identifying a single executive as primarily responsible. One signature on the document clearly and fairly portions blame or credit to an individual for the work.

Punish Problems, Not Process. Focusing enforcement on actual harms, not on an administrative burden of paperwork, proved successful to beat the backlog at HUD. The presumption of innocence allowed the private sector to move forward in providing a supply of affordable housing, rather than having to wait on government review. On the other hand, the byzantine complexity of medical billing codes and harsh liability for mistakes makes healthcare slower and more costly. CAFE standards saved $5 trillion in fuel and kept 14 billion metric tons of carbon from polluting the air, spurring the innovation of new technologies by simply applying a standard for emissions rather than by trying to command and control any particular design choices.[38] This is a good model for how emissions more generally could be regulated, including $PM_{2.5}$, improving air quality without stopping progress on needed infrastructure improvements.

[38] "U.S. fuel economy standards study show big savings on fuel and …." 25 Aug. 2020, https://acee.princeton.edu/acee-news/comprehensive-look-at-u-s-fuel-economy-standards-shows-big-savings-on-fuel-and-emissions/.