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Daniel A. Crane
University of Michigan Law School, dancrane@umich.edu
Samuel Gregg

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Introduction

DANIEL A. CRANE AND SAMUEL GREGG

The regulation of economic life, whether through law or politics, has been a fixture of daily life from time immemorial. Formal regulation occurs through a variety of formal devices, the efficacy of which is argued about by legal scholars, economists, policymakers, legislators, and governments. Even expressions like "to regulate" or "to deregulate" carry a range of political and even moral connotations, depending on who is using the phrase and how they are deploying it.

Different historical periods are marked by greater and lesser degrees of regulation. Much of Adam Smith's *Wealth of Nations* amounts to a critique of the extensive regulation of trade and commerce that was part and parcel of the mercantile system. The nineteenth century witnessed efforts to diminish regulations and broader laws in many Western countries that had allowed the hundreds – if not thousands – of guilds to control the entry of individuals into various professions, the prices charged to customers by those in different occupations, etc., for several hundred years. Re-regulation of considerable portions of economic life had, however, begun by the beginning of the twentieth century and accelerated after World War I and the Great Depression. From the mid-1970s, a significant amount of deregulation occurred in many Western economies. Following the Great Recession of 2008, there was a swing back toward regulation, especially with regard to the financial sector.

The reasons for these developments varied. They have included ongoing concerns about the emergence of potentially anticompetitive behavior, the belief that the state must have a role in ensuring health and safety in the workplace and the making and selling of products and services, and, in some cases, the desire on the part of governments and legislators to be seen to be "doing something" in the wake of a major economic scandal or severe economic downturn that is deemed to be the result of inadequate regulation.

One reason that the topic of regulation evokes considerable argument is that it is inseparable from issues of the extent and character of state power. Regulation is, after all, the requirements that the state enacts and enforces on private and collective economic actors in order to realize specific ends. This can be further broken down in to the type of regulation that defines who can create a business or profession as well as the prices that they charge, and the type of regulation that governs how individuals and companies act in order to address what are often considered market failures.[1]

On one level, regulation does touch on issues of utility and efficiency. Much economic literature, for instance, focuses on whether a given regulation will contribute (or not) to the smooth workings of the economy, or whether it will end up distorting incentives. At the same time, the topic of regulation cannot be separated from questions of liberty, justice, and the common good. Regulation not only seeks to shape the ways in which market actors operate. To some extent, it is concerned with what people owe each other as a matter of commutative, distributive, and legal justice, and is directed (at least ostensibly) toward helping to realize what is often called "the common good": that sum of conditions that help people to pursue the types of goods that are central to the flourishing of all individuals and groups in a given community.[2]

There is, however, another way of thinking about regulation. Law, legislation, and the state are formal ways of shaping economic action and are accompanied by legal coercion. But there are other elements that can guide our free choices and actions from without and that operate separately from government. What was called, for example, the *lex mercatoria* that regulated much international trade and commerce throughout the medieval and early-modern period was, for the most part, something that emerged from below rather than being imposed from above.[3]

Though it was often adjudicated by what were effectively private arbitrators and occasionally enforced by public courts, the *lex mercatoria* consisted primarily of customs and practices adhered to, at least initially, on a voluntary basis and very much influenced by the experiences of merchants rather than governments and political leaders. The *lex mercatoria* also embodied a certain degree of self-regulation by merchants. Awareness that breaking informal rules

[1] See Robert Litan, "Regulation," Library of Economics and Liberty, www.econlib.org/library/Enc/Regulation.html

[2] See John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 154–156.

[3] See Leon E. Trakman, *The Law Merchant: The Evolution of Commercial Law* (Littleton, CO: F.B. Rothman, 1983).

may lead other merchants and customers to mistrust you can be a very effective deterrent to unethical and unreasonable actions.

The very idea of self-regulation causes us to ask what might be some of the other sources of norms and principles that encourage marketplace actors to do X rather than Y. In this regard, one can look to specific ethical and philosophical systems, ranging from Aristotelianism to Kantianism. There is little question that a major source of such values and guidelines that influence the free choices of individuals and businesses is religion.

Christianity is a faith that has always taken liberty very seriously. This theme of free will is clearly summarized in the Book of Ecclesiasticus, written by the Jewish scribe Ben Sira of Jerusalem sometime in the second century BC.

> It was he who created man in the beginning, and he left him in the power of his own inclination. If you will, you can keep the commandments, and to act faithfully is a matter of your own choice. He has placed before you fire and water: stretch out your hand for whichever you wish. Before a man are life and death, and whichever he chooses will be given to him.
>
> (Ecclesiastes 15:11–12)

The Decalogue gives human beings very clear direction for right action, especially the second tablet that specifies the negative commandments such as don't steal, don't lie, don't kill, don't be envious, etc. But while Christianity is not a religion that accords a central importance to law and legality as, for instance, most expressions of Islamic faith, it has a great deal to say about the content of freedom and justice. Over the centuries, the Christian church has also developed an ever-growing body of guidance for how to live a life marked by the pursuit of good and the avoidance of evil in the conditions of the world of supply and demand, as well as principles for how we should think about the role played by law, legislation, and state authorities in the regulation of such economic activities so that they contribute to the realization and maintenance of the common good.

It was our understanding of the importance of this body of knowledge, but also questions about how Christianity can help believers and nonbelievers alike to think about the question of the nature, extent, and goals of regulation, that led us to commission the essays contained in this volume. In some cases, it was the first time that some of our authors have consciously reflected upon the meaning of Christian faith and morality for areas such as corporate law, antitrust legislation, price controls, and financial regulation.

When, however, we see that one feature of Christianity is that it articulates a distinct view of human beings and human nature, we see that it *must* have implications for Christians and those who live in societies and cultures shaped by the Christian faith and culture. Christianity speaks long and eloquently about the nature and ends of human liberty, but it also underscores the truth that humans are flawed, make mistakes, and, while redeemed, cannot escape the effects of human sin. Likewise, Christianity stresses that humans are both individual and social beings as well as capable of being creative in their use of their talents and the material world with which they have, Christianity teaches, been entrusted with dominion and stewardship.

This conception of human beings and the world in which they live has powerful implications for that which regulation seeks to direct: i.e., the economy. The first chapter in this collection, "Christianity and the Morality of Markets," seeks to outline "a Christian view of the central *moral* assumptions of the market economy, so as to elucidate how a Christian might think about a mode of economic life in which millions of Christians and non-Christians live out their lives." That entails clarifying (1) what is meant by "the market economy"; (2) underscoring the fact that there is considerable room for Christians to disagree about what they consider to be the most optimal policies concerning different dimensions of economic life; (3) the complicated relationship between commerce and Christianity over the centuries; (4) Christianity's view of the person and society; (5) the manner in which Christianity addresses the vexed issue of self-interest; (6) the unexpected ways in which Christianity affirms key institutions and protocols of the market; and (7) specific moral, spiritual, and material challenges that arise in market economies to which Christianity has given considerable thought over many centuries.

All these topics have implications for the limits and use of government power in the marketplace, much of which is manifested through regulation. Using the idea of the common good – one that arises from Greek and Roman thought but considerably infused with Christian theological and philosophical meaning – Ian Harper and Brian Rosner outline what they regard as the parameters of government activity with regard to the economy. In "The Common Good and the Role of Government in Regulating Markets," they show the specific ways in which Christianity invests the idea of "common" and "good" with particular meaning that could not be obtained from other sources. They then illustrate how markets contribute to the realization of these goods through facilitating exchange and promoting a type of material welfare, but also the limits of markets in these areas. The issue of market failure features significantly here and the manner in which government is understood as an agency that attempts to prevent or resolve subsequent problems. Harper and Rosner then place all this in the context of what Christianity has to say about the good, the character and effects of economic activity, and the ends and limits of state power. Economics and Christian theology approach some of the questions from different angles; they stress and offer often quite varying perspectives. They maintain, however, that there are areas in which economics and Christian thought can mutually contribute to a better understanding of the nature and limits of regulation in the marketplace, despite their very different starting points.

Economics also teaches us that there are many unintended consequences of our choices in the marketplace as well the policies adopted by government. One school of economic thought that has devoted much reflection to this subject is called "public choice theory." Carroll Rios de Rodríguez seeks to illustrate how "the claims made by public choice scholars regarding the political acts of individuals and groups correspond with the behavior of some historical figures featured in the Bible and with Christian thought more broadly." In Chapter 3, entitled "Public Choice Theory and Interest Group Capture," she outlines the building blocks of public choice theory, and shows how its attention to the ways in which regulation and regulatory bodies can be captured by interest groups (and thus diverted from their proper focus on the common good) is a phenomenon that Christian sources and thinkers have been very aware of. She concludes by demonstrating that Christian thought about the nature of governance and its implications for constitutional order may be one way to address the rent-seeking behavior that regulation can often encourage.

Chapter 4, "Christianity and Antitrust: A Nexus" takes readers in a different direction. The attention of Kenneth G. Elzinga and Daniel A. Crane is upon antitrust institutions, understood as regulatory agencies that play a major role in seeking to address questions ranging from anticompetitive practices to the development of cartels. They ask if "the Christian faith has a nexus with the institution of antitrust," to which their answer is yes and no. Through carefully distinguishing between the economics and morality of antitrust law and institutions, Elzinga and Crane show some of the expected connections between the logic of antitrust and the insights of Christian faith into reality. The latter, they hold, is particularly well-equipped to give direction and deeper purpose to the workings of antitrust so that it gives effect to Christian emphases such as stewardship and justice in ways that help us to comprehend the inefficiency and morally problematic nature of practices such as price-fixing and monopolies.

Much of the target of antitrust law and regulation more generally in our time is the modern corporation. In Chapter 5, "Christianity and Corporate Purpose," Stephen M. Bainbridge begins by demonstrating that Christians have expressed mixed views of businesses and corporations, with some stressing the economic prosperity and efficiency that they have engendered, while others argue that they have engaged in morally and economically questionable behavior. For Bainbridge, this raises the question of what the Christian faith might say about the goals of corporations and business, and the role of the state in regulating organizations toward these ends. He is especially attentive to what Christian sources suggest about questions such as corporate social responsibility, the place of profit, the issue of externalities, and the role of law and regulation in shaping the ways in which business understands itself.

Part of the "business" of business is entrepreneurship and the discovery of new ways to create wealth. In Chapter 6, "Entrepreneurship and Market Structure," Andrew Godley "aims to be a catalyst in stimulating informed and constructive debate on the relationship between Christianity and enterprise." A considerable body of Christian opinion, both in the past and present, entertains neutral to outright hostile views of wealth-creation via entrepreneurship and free enterprise, something that, he believes, flows from the fact that Christianity and the social science of economics prioritize different ethical principles. This in turn leads to different conclusions about the nature and effects of policymaking and regulation. But it also allows us to imagine how a Christian-informed ethics might shape how we think about regulation and the goals that it seeks to realize in an economy that stresses the principles of liberty and autonomy.

Few areas of modern market economies are considered to be in need of more regulation than the financial sector, especially since the Great Recession of 2008. It is also an area that has sparked increasing reflection from Christians since that time. In Chapter 7, "Subsidiarity and the Role of Regulation in the Financial Sector," Philip Booth shows how many Christian leaders and thinkers have placed a premium on state regulation as the optimal way to address what they regard various problems associated with the functioning of markets, especially financial markets and innovation. At the same time, they are unaware of the ways in which state regulation and excessive intervention can have counterproductive effects. Booth uses the principle of subsidiarity, much developed in official Catholic social teaching and which has strong echoes in the Reform tradition, to delineate how Christians can approach the very complicated area of financial regulation. He also, however, echoes a theme much stressed by other authors in this volume – that Christianity has a very realist comprehension of human nature (thanks to its consciousness of the element of sin), and that this should shape Christian reflection on the efficacy of different types of regulation in the financial sector but also the economy more generally.

In many ways, modern finance is concerned with the issue of the use and leveraging of debt. At the same time, debt is often something that leads to the insolvency and bankruptcy of individuals and companies. A fact of life in the economy is that many businesses and enterprises fail. This is one area in which there is considerable unanimity that regulation is necessary, both to expedite matters relatively quickly but also to meet the demands of commutative and distributive justice. In Chapter 8, "Christianity and Bankruptcy," David Skeel notes that while the word "bankruptcy" is not to be found in the Hebrew and Christian Scriptures, Christianity has a great deal to say about the topic of debt. Much bankruptcy law concerns trying to resolve issues of debt, and Skeel explores the question of the extent to which developments in bankruptcy law over the past century represent the working-out of Christian thinking about debt, whether at the level of individuals or countries, and what a Christian vision of bankruptcy law might look like.

For many Christians, it may seem crass, inhumane, and materialistic to think about necessities of life in market-based terms. Should health care really be created and allocated on the basis of profit-based incentives and economic competition? In Chapter 9, "Patents, Access to Health Technologies, and Christianity," Margo Bagley and Danielle Lloyd consider the relationship between markets and health care from a Biblical perspective. Focusing particularly on pharmaceutical patents, they show that Christian teaching requires respect for the economic enterprise of the pharmaceutical industry, but also suggests limits on the exploitation of patents in order to promote the Christian virtue of healing.

Our collection of essays ends, in a way, where it began – the observation that much regulation has traditionally been focused on the issue of prices, indirectly or directly. In Chapter 10, "Price Controls and Market Economies," André Azevedo and Inês Gregório examine the long history of price controls, something that predate the Christian era, and engage in detailed analysis of the ways in which Christian thinkers ranging from Thomas Aquinas to prominent Protestant thinkers, including Martin Luther, approached the matter. On this basis, they also attempt "to synthesize (at least to the extent common ground can be found) a general Christian position on price controls and market economies." In doing so, they show the influence of the idea of the just price in shaping Christian thinking on this subject, and the questions that it raises about the efficacy and morality of regulating such an important part of the operations of the market economy.

Regulation will remain, for the foreseeable future, part and parcel of life in the market economy. Christians and others will continue to disagree about its benefits and limitations as well as the manner in which many believe different types of regulations have unintended and often negative consequences. The authors of the chapters in this book, however, provide a comprehensive overview of how Christians can approach issues of market regulation according to the lights of their faith, the long tradition of Christian thought about the origins and ends of government power, and an appreciation of the Biblical mandate to act economically in the world. Believers, we hold, will certainly benefit, but so too will those with a strong interest in how religion can affect human thought, choice, and action in the most unexpected of areas.