An interesting new paper from the Mercatus Center, “The Legacy of the Council on Wage and Price Stability”, takes an instructive look back at the origins of centralized review of federal regulations. While the President has always had the authority to supervise executive branch regulatory actions, there were few formal procedures, and no dedicated professional staff within the Executive Office of the President, until the creation of the Council on Wage and Price Stability (CWPS) in 1974.

Richard Nixon had just resigned, and Vice President Ford became President. CWPS was created by statute and tasked with administering voluntary wage and price guidelines, to replace the wage and price “freeze” that Nixon had announced in 1971 and the mandatory controls he imposed in 1973. CWPS also had an Office of Government Programs and Regulations that evaluated government regulations for their contribution to inflation. In accord with the agency’s voluntary nature, CWPS’ regulatory review function was organized as a classic “intervention shop,” similar to those that could be found at the Federal Trade Commission or the Department of Justice’s Antitrust Division. That is, a staff of economists would analyze proposed rules during the public comment period, and file their comments on the record for the agency’s consideration.

One notable difference was that, while the antitrust agencies naturally focused their public comments on the effects of rules on industry structure and competition, CWPS advocated the broader use of benefit-cost analysis to evaluate regulatory options – certainly a sound way to weigh the public interest, even if the connection to inflation is a little bit vague. The practice of filing “public interest comments” at the Mercatus Center and at GW’s Regulatory Studies Center both were inspired by CWPS filings.

CWPS lasted through the Carter years, when inflation accelerated and morphed into stagflation – inflation combined with an absence of real economic growth. During the Carter-Reagan transition CWPS economists turned their analytical skills inward, doing a retrospective evaluation on the agency’s own programs. While it is always difficult to know the counterfactual, CWPS concluded that its wage and price guidelines had likely outlived their usefulness (as wage and price controls always do), and that its regulatory review function, while sound and useful, was having an uncertain impact.

Reagan abolished CWPS (it was the one government agency that the President had unilateral authority to abolish) in 1981, but moved the regulatory review function, and its staff, into the

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newly formed Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. Reagan’s Executive Order 12291 codified the use of benefit-cost analysis in rulemaking, and it altered the regulatory review procedures radically. Rather than intervene during the public comment period, OIRA would review both proposed and final rules prior to their publication in the Federal Register. This gives the President more direct control over major regulatory decision in the executive agencies, but it also leaves less of a public record to review. It also means that the OIRA regulatory review function generally does not reach the independent agencies where economic regulation tends to be housed, so that the focus of attention since 1981 has been more on the health, safety, and environmental regulations that are generated by executive branch agencies.

The Mercatus paper takes advantage of the detailed record left by CWPS filings in 1974 - 1981, plus the additional benefit of hindsight, in order to look for lessons that might be applicable today. One of its authors, Tom Hopkins, is supremely qualified for the task. He served as an Assistant Director of CWPS and supervised the regulatory review program. He also wrote the 1981 evaluation of that program and, as acting CWPS Director, turned out the lights at the agency when it closed. He then became one of two Assistant Administrators of OIRA, and helped shape the regulatory review function as it evolved under its first two Administrators, Jim Miller and Christopher DeMuth.

Hopkins, then and now, resists the temptation to brag or to attribute too much credit to CWPS for the profound regulatory changes that took place during its watch. 1974 was the beginning of the decade of deregulation, when an unusual bipartisan consensus worked dramatic changes in the regulatory landscape. It was the year that Steven Breyer (now a Supreme Court Justice), as Special Counsel to the Senate Judiciary Committee under Ted Kennedy, began to organize a series of hearings on the Civil Aeronautics Board, with Cornell economist Alfred Kahn as the star witness. Kahn would later chair the CAB and preside over airline deregulation; still later he would chair CWPS. Economic deregulation of surface transportation (intercity bus service, trucking, railroads, and pipelines) and of telecommunications soon followed. Kahn protégé Darius Gaskins chaired, and subdued, the oldest and largest of the economic regulatory agencies, the Interstate Commerce Commission.

The decade of deregulation owed much to academic research by antitrust lawyers and economists, which concluded that economic regulation, although intended to serve as a remedy for natural monopolies, was in fact perpetuating some very unnatural monopolies. Indeed, an ambitious trust-buster, hunting for monopolies in 1974, would find that virtually all of the most egregious examples were protected and sustained by a regulatory program at either the federal or state level. The intervention shops, both at the antitrust agencies and at CWPS, helped propel events forward by drawing on this scholarship to articulate the rationale for deregulation. But it is difficult to attribute change to any one organization; it may well have been the case that stagflation, as much as anything else, created the economic and political conditions under which the public interest could overcome the entrenched special interests, and achieve real regulatory reforms.

The Mercatus paper is well worth reading, to see the themes that still resonate today. One prominent theme deserves to be highlighted: in advocating the use of benefit-cost analysis,
CWPS consistently argued that the analysis needed to begin with the identification of a market failure. Without that, coercive regulation could only make people worse off. Only a regulation that corrected a market failure could have any chance of generating positive net benefits. That principle remains a part of OIRA’s mandate, but has not been consistently applied. Regulatory agencies today will make implausible claims of enormous regulatory benefits that have no foundation in economic theory, but seem to arise out of the agencies’ firm belief that they are simply smarter than irrational consumers. This amounts to economic planning, and we don’t need a retrospective review to know how that turns out.