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Daniele Capone

Dan Williams

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The History of Evaluation through Regulatory Impact Analysis: A Path from Accounting to Accountability

Daniele Capone and Daniel W. Williams

ABSTRACT

Evaluation of public policy is an important element of intervention by government in the economy and society. This paper analyzes the path of evaluation in the U.S. system through its development in the related scientific field and through the use, by different administrations, of Regulatory Impact Analysis (RIA). The history of evaluation shows how over time there has been a bipartisan acknowledgement of the importance of these tools and an interesting change in the approach and use of them. At the beginning, RIA and evaluation were conceived as control and accounting instruments with a strong utilization of an economic analysis, but afterwards, they became an effective support to the decision making in the direction of more accountability.

Keywords: Regulatory Impact Analysis; Accountability; Policy Analysis.

Introduction

Evaluation is a term used in many aspects of society and even in the public sector where it can be defined by three key elements as (1) a planned program of deliberate intervention, not just any natural or accidental event, (2) an objective or goal which is considered desirable or has some positive value, not simply whatever occurs, and (3) a method to determine the degree to which the planned program has achieved the desired objective (Suchman

1967).

Why is it interesting to talk about evaluation related to public administration and to study its path? In the public sector, evaluation (here we refer in particular to the *ex ante* evaluation) has become a crucial element of intervention by government in the economy and society. Therefore, the way evaluation is conceived and used affects the degree and quality of interventions that impact the public good. In particular, we will look in depth at Regulatory Impact Analysis (RIA), a tool for appraising the effects of law used in different countries around the world.

There are many definitions of RIA (OECD 1997; Hahn 1997; Radaelli and De Francesco 2008), but all agree in defining RIA as a tool for supporting the decision maker in his action and in recognizing two key components: (1) the accurate description of the object and reasons which should generate a regulatory intervention, and (2) an economic analysis of policy options available (including the option of non-intervention). Jacobs (1997) defines RIA as “A decision tool, a method of (i) systematically and consistently examining selected potential impacts arising from government action and of (ii) communicating the information to decision-makers. Both the analysis and communication aspects are crucial. It is a flexible tool. Its objectives, design, and role in administrative processes differ among countries and even among regulatory policy areas” (14).

The choice of RIA as indicator of the steps and changes of evaluation is due to various reasons related to certain characteristics which make it a paradigmatic example for understanding how governments have acted during the years: it is one of the most used evaluation tools around the world (OECD 1997); it is composed by an economic analysis and so it is easily comparable; lastly, at the origin, RIA was connected to regulation of the markets and in this context has to be considered very important. The research assumption is related to this last element: the main idea is that evaluation was born as a solution to the problems of public expenditure and with an accounting commitment with the scope of

favoring the free market, but it became much more than a control instrument. It is now above all a form of support to decision making in an effective manner and a benefit for the whole system. So, we use RIA as a paradigm of the evolution of evaluation and in relation to the role of government with respect to the governance of economy, regulation of market and affirmation of accountability.

In the first part of this article, we will analyze the historical path of evaluation under the policy analysis area and in the connected scientific fields to understand the evolution over time. In light of this study, we will address the journey of RIA through the formal steps taken by the different American presidential administrations. We choose the U.S. case, because it is the country where evaluation has had substantial development historically and accountability is a shared and common value at the institutional level. In this context it should be clearer to identify the steps made by the government in terms of conception and use of evaluation and RIA.

Accountability and the Advent of Evaluation: Policy Analysis and the Introduction of Evaluation Criteria in the U.S.

Prior to addressing the specific issue of RIA, it is necessary to step back and investigate the more general subject of evaluation of public policies: in fact, it is within this context that historically, culturally, and scientifically RIA can be placed.

The origin of evaluation is found in the U.S. in the presence of an environment characterized by a remarkable blend of public and private sectors, by a pragmatic political culture and a federal and decentralized institutional system in which autonomy and possibilities for experimentation are left to local governments. It is within this framework that there is the affirmation of the value of accountability: the liability of administrators recognized through a system of controls that compare the results realized with their aims.

The institutional oversight is a sign showing this affirmed interest in policy knowledge as support to the decision making. At the central level, as well as at the local one (Hird 2005), the American

administration makes use of research institutions and institutional watchdogs which evaluate the performance and implementation of public policies and support the decision making through research on the different issues of the political agenda. For example, the Congressional Research Service conducts research for the Congress since 1914, and the Congressional Budget Office assists U.S. lawmakers for issues of budget, the estimates of expenditure, and tax measures. Instead, a service of the executive branch is the Office of Management and Budget (OMB) that, in addition to preparing the first formulation of the federal budget, makes projections about the policies that the government proposes to undertake. In terms of accountability, it is furthermore essential to control the executive action and the General Accountability Office (GAO), which assists the legislature in monitoring the work of the executive branch, performs this role. This body has been operating since 1921, has gained over the years a credible position, and is now considered one of the most important institutions in the American political system.

Precisely because of the close cooperation between these independent bodies and the administration, we can speak today of the institutionalization of policy analysis. In this favorable cultural and political situation, public policy approach and evaluation have found a rich soil of development, but there has been a long journey inside the policy science field that it is interesting to investigate.

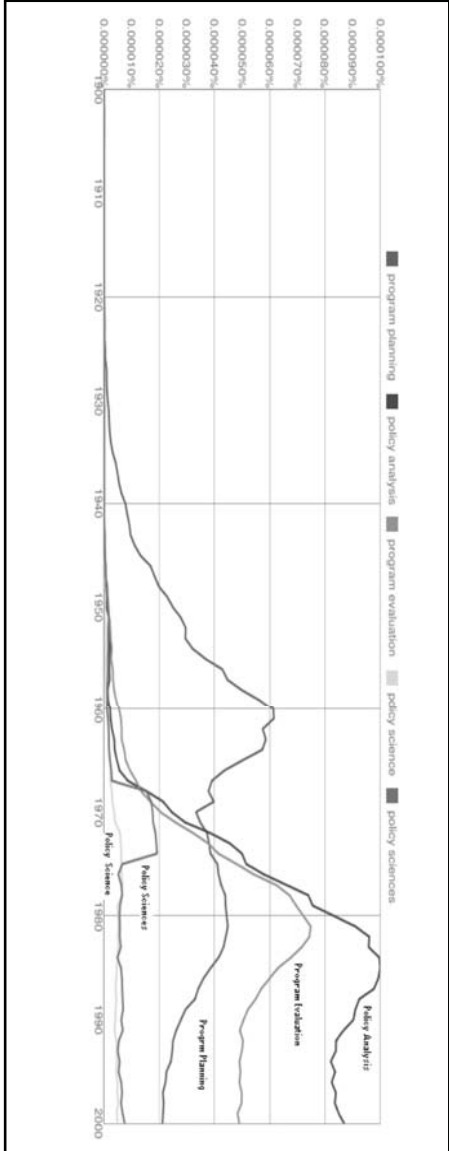
Policy science and its near cognates, such as, policy analysis, program evaluation, and performance measurement, refer to the use of systematic empirical techniques to examine the various phases of public policy or programs created by law or regulation. Merriam (1923) traces systematic empirical study of government in the U.S. to the 1910s or a little earlier at the Bureau of Municipal Research and in the work of Charles H. McCarthy in Wisconsin. Merriam's opinion is relevant because he is seen as the founder of the *behaviorism* school in political science, where that term principally refers to the move to empirical research (Karl 1974). Merriam used the Social Science Research Council, formed in 1923

and President Hoover's Research Committee on Social Trends to promote this agenda (Potter 1923). Hoover's committee was funded by the Rockefeller Foundation (Angell 1933; Beard 1933; Educational News and Editorial Comment 1933; Odum 1933; Research Projects and Methods in Educational Sociology 1930), as the New York (original) Bureau of Municipal Research had been in its early years (Allen 1912; Schachter 1995) and as was the Social Science Research Council (Roberts 1994).

One branch of Merriam's empirical influence involves Clarence Ridley, who was hired in 1928 as the executive director of the International City Managers Association (ICMA) and as a half-time faculty member at the University of Chicago through Merriam's assistance (Vogel 1967). The ICMA was one of the fifteen professional associations located first at 850 East 58th Street and later at 1313 East 60th Street on the campus of the University of Chicago linked not only to Merriam, but also to Louis Brownlow's Public Administration Clearing House, another Rockefeller associated organization (Merriam 1926; Mitchell 1926; Ogg 1924, 1928; Roberts 1994). Ridley's 1927 dissertation focused on performance measurement (Ridley 1927a, 1927b). At Chicago and ICMA, Ridley took on a graduate student assistant, Hebert Simon, who updated Ridley's dissertation in a series of articles in *Public Management* (Lee 2003; Ridley and Simon 1937; 1938) and later published the work at a manual for performance measurement (Ridley and Simon 1938; 1943). This branch of empirical work is the root of performance measurement and management practices in the U.S. and was exported from there to the world.

A branch more closely related to the subsequent development of RIA involves Merriam's student Harold Lasswell, who is generally treated as the founder of policy science (Ascher 1986; Ascher and Hirschfelder-Ascher 2004; Barton 1969), one of several labels applied to using social science methods for public policy advice. This practice, using the current-for-the-era social science methods for policy advice, is easily traced 100 years earlier in the British Parliament (Redgrave 1838), and, in fact, Theodore Porter and others

Figure 1. Policy Analysis Compared with Other Terms



(Source: Google Ngram January 20, 2011 using "smoothing = 3.")

attribute the rise of statistical thinking to the attempt to use crude analysis in the 1660s (Meitzen and Falkner 1891; Porter 1986).

Lasswell's accomplishment is more in the form of developing a discipline or sub-discipline associated with policy sciences. He did this through the promotion of method (Barton 1969). This discipline was slow in starting as shown in Figure 1 and has, from the first, been subject to controversy concerning what it addresses as well as the very possibility of its existence "[L]et us welcome any scientific contribution to public policy without deceiving ourselves that policy itself will ever be a science" (Friedrich 1953, 281).

Figure 1 shows that the term of art for systematic thought concerning public policy was Program Planning (Ascher 1950) from the 1930s through the 1960s. Beginning about 1970, Policy Analysis and Program Evaluation, became a partial, and more dominate, substitute. As shown in Figure 1, Policy Science and Policy Sciences follow the same general trajectory as Policy Analysis and Program Evaluation, but do not achieve the same level of saturation. Based on the subsequent literature, Policy Analysis continues the legacy of Policy Science.

This linguistic behavior shows the difficulty of achieving disciplinary status for this cross-disciplinary aggregate of activities. Nothing could make that lack of cohesion clearer than the obvious correlation between Program Evaluation and Policy Analysis in Figure 1. One searches *Evaluation Roots* (Alkin 2004), a recent history of evaluation, in vain looking for any reference to either Harold Lasswell or Charles Merriam. Likewise a search of JSTOR for the combination of "policy analysis" or "policy science" with "Ralph Taylor," the asserted founder of modern program evaluation in the *Evaluation Roots*, turns up a total of four references, one of which is the wrong Ralph Taylor (Rosenthal 2003), two are apparently the same announcement in two different journals and incidentally mention an Undersecretary for Policy Analysis and Program Evaluation a few pages away from mentioning an Assistant Secretary Ralph Taylor (Ink 1967a, 1967b), and the last one refers to possibly the same Ralph Taylor as the head of Model

Cities and mentions a RAND use of a policy analysis model at a distant part of the article (Light 2008). Despite the irony of the title of the undersecretary in the last sentence, it appears that the practices are sharply divided.

The Affirmation of the Economic Approach: Cost-Benefit Analysis, Planning, Programming, and Budgeting System

One of the disparate components of the policy science family is cost-benefit analysis. The basic idea of cost-benefit analysis is quite simple: for a public policy to be worth pursuing benefits should equal or exceed costs. This result can be expressed as a ratio or a net value. Net values have been recommended since the mid-1950s (McKean 1956; Seventh National Meeting of the Society Los Angeles 1955). A difficulty with using ratios, as opposed to net values, is that very low cost policies may provide very little benefit, yet achieve a positive ratio. By revealing net values, one gains a sense of whether the benefit is significant in the ordinary sense. When costs and benefits expand over time, especially when they expand in a non-uniform manner, such as when there are more costs earlier and more benefits later, an adjustment is made to put all the money in the same time frame. The use of monetized costs and benefits is a substitute for using *utiles*, the actual utility achieved by individuals. While *utiles* theoretically exist, they cannot be observed; monetization is considered to be an adequate indicator of *utiles*. In the public sector, benefit is not specifically the gain achieved by government. Yet, it is the gain achieved by the public as a whole, both private and public, and without respect to distribution. The theory of benefit with respect to cost-benefit analysis is quite complex and beyond the scope of this paper, but the essential element is that the public sector should consider benefit to all parties, not only the government itself. Cost-benefit analysis has been controversial for much of the twentieth century due to uncertainty over critical assumptions, such as interest rates used in calculating present value, and due to the difficulty in monetizing certain costs and benefits.

Porter (1995) says that the U.S. got into the business of cost-benefit analysis with the Flood Control Act of 1936. Hammond (1966) suggests the Rivers and Harbors Act of 1902 as the source. Porter's (1995) account shows the practice began among railway engineer-economists in France, spread in Europe and eventually spread to the U.S. However, it is not very specific about the spread to the U.S. Relating costs to benefits was well established in American governmental literature long before 1936. In 1899, Davidson cites an example from 1826 referring to a public policy decision involving "less cost and greater benefit" (quoted in Davidson 1899, 218). A frequent concern in the early twentieth century is the relationship between taxation (cost) and the benefit received.

However, the on-point concern is the ratio of costs to benefits with respect to public projects. In 1908 the editors of the *Annals of the American Academy of Political and Social Science* say:

"Many cautious and conservative people will look askance upon the project, and from every standpoint it is necessary, if we wish to make it successful, that we should enter upon it only under conditions which will guarantee the Nation against waste of its money, and which will insure us against entering upon any project until after the most elaborate expert examination, and reliable calculation of the proportion between cost and benefit" (1908, 3-4).

Other early twentieth century uses of this construct for public policy address railways and workmen's compensation (Downey 1917; Rossignol and Stewart 1909). In 1919, the construct appears in a private sector topic concerning building a manufacturing plant, "This method frequently precludes proper study and the cost benefit of competition" (Noyes 1919, 83). The subsequent uses through the 1920s and 1930s are not substantially different. Gilbert White's (1936) sentence, "A ratio of total cost to benefit is given for each project" (148) in an article on the flood control on the eve of the passage of the Flood Control Act of 1936 is not substantially advanced over the 1908 usage.

According to Arthur Smithies (1955), "[T]he Flood Control Act of 1936 required that 'all benefits to whomsoever they may accrue'

be taken into account” (343). This requirement reflects a growing awareness of economic theory. Following the Flood Control Act of 1936, cost-benefit analysis gradually became more commonly used in the U.S. In the first decade following, it was continued to be used in relation to water projects (Frank 1942; Mason 1936) and began to spread to other land use issues (Joss 1946; Weitzell 1943).

During the next decade, 1947 through 1956, the use of cost-benefit analysis became much more common, although it remained primarily focused on land use and water projects (Barlowe 1953; Brownlee and Heller 1956; Ciriacy-Wantrup 1955; Harding 1950; Kollmorgen 1953, 1954; Maass 1950; McConnell 1954; McKean 1956; Morgan 1956; Nielson 1955; Ransmeier and Russell 1951; Raushenbush 1952; Regan and Weitzell 1947; Seventh National Meeting of the Society, Los Angeles 1955, 1955; Singer 1953; Smithies 1955; Steele 1949; Timmons 1954; Upchurch 1953; Weitzell 1947; Wiecking 1950; Wolf 1955; Young 1954). There were several significant developments. First, the literature shifted sharply to economics, with a smattering only in political science and law. A small portion appeared in operations research journals. Second, the economics became more sophisticated, for both good and bad. The good involved using more developed economic constructs such as marginal cost (Regan and Weitzell 1947). The bad involved, “constant pressure to lower the standards of feasibility as the costs of the remaining projects have increased. This has resulted in bringing a continuous list of marginal projects within the standards of feasibility required for construction” (Harding 1950, 560), or “Many other peculiar cost-benefit manipulations serve to justify a clutter of dams in the wide floodplains of the Midwest” (Kollmorgen 1953, 213). Third, there are signs that these early analysts believed that what they did was not merely provide advice but make decisions (Horner 1951). As explained in the discussion:

“It seems to me that on the question of the cost-benefit criterion, Mr. Horner is caught in a dilemma. As an engineer, he seeks in this criterion an objective measure of economic justification. Yet he is reluctant to include in benefit summations consideration

of such factors as recreational advantages or benefits to wildlife although in some cases these advantages, on a level of federal significance, have proved to be very real. It may be that Mr. Horner's hesitation is explained by the uncertainty of these benefits. But I wonder whether it does not really spring from his unconscious adherence to the proposition of the Cooke Commission *from which he believes he dissents*; namely, that however useful benefit-cost ratios may be as preliminary guides to public action, final decisions must be made in the light of total social policy" [emphasis added] (Ransmeier and Russell 1951, 308).

Towards the end of this period, the use began to expand to other forms of economic development such as highways and international loans (Brownlee and Heller 1956; Singer 1953; Wolf 1955). "Benefit-cost analysis" appears in budgeting literature (Burkhead 1956, 251), which will lead to broader diffusion in the subsequent period. Last, it is worth noting that at the end of this period Paul Samuelson developed what is now known as the theory of public good, which Charles Tiebout extended with the theory of local goods (Samuelson 1954, 1955; Tiebout 1956). Public goods and local goods are precisely the problems discussed in the many water resource debates in the preceding decades.

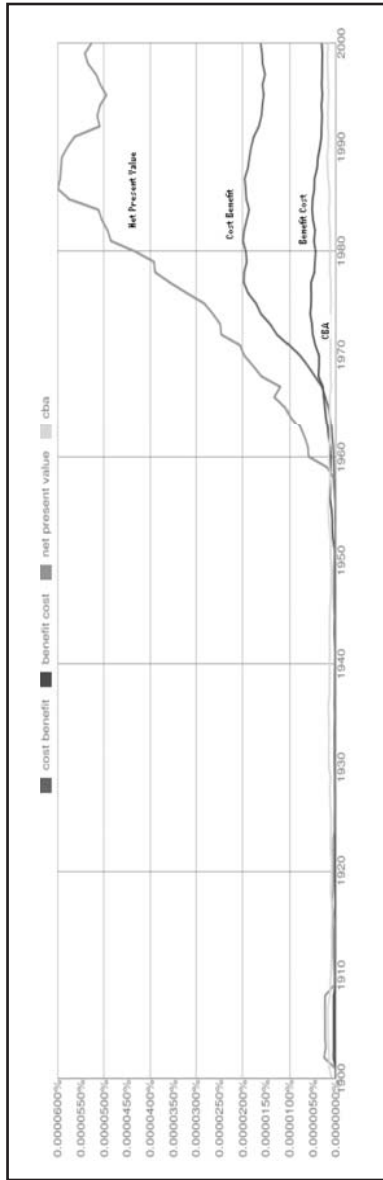
The next decade (1957-1966) saw explosive growth in the use of cost-benefit analysis. There is, of course, continuing and expanding use in land use, much of it focused on watersheds, but expanding into such areas as fisheries, forestry, and urban renewal (Barber 1961; Davis and Whinston 1961; Dehaven and Hirshleifer 1957; Forer 1961; Johnson 1960; Marts and Sewell 1959; Morgan 1957; Neuner 1957; Regan 1958; Richards 1958; Smith 1960; Wengert 1957). Other areas where the construct is used are health economics, transportation, international trade, planning, education, defense, space exploration, foreign aid, and technology (Enke 1965; Johnson 1963; Kaufmann 1962; Kerr 1965; Lichfield 1964; Mushkin 1958; Nelson 1966; Pakenham 1966; Renshaw 1959; Thomas 1964). The list could continue. For 1966 alone, there are over 100 published articles using either "cost-benefit" or "benefit-cost" in

the JSTOR database. In welfare economics, the term was used with respect to individual decision making as compared with its older public sector use (Bator 1957; Tang 1961). Krutilla (1961) draws an explicit connection between cost-benefit analysis and welfare economics particularly the, at the time, relatively new topic of public goods. Staats (1965) uses the term cost-effectiveness, a morphing of cost-benefit to getting the best available option rather than the optimal use of resources. Another variant of cost-benefit analysis that developed about this time is life cycle costing (Chen et al. 2005; Hansen 1963; Staats 1974). Greenhouse (1966) associates cost-benefit with Planning-Programming-Budgeting-Systems (PPBS), from which Aaron Wildavsky later rescued policy analysis (1969). It is at approximately this time that cost-benefit analysis more firmly transfers from the public sector to the private sector.

It is apparent that by the end of this third decade after the Flood Control Act of 1936, cost-benefit analysis had achieved wide diffusion. As shown in Figure 2, the term of art had become “net present value,” reflecting McKean’s (1956) criticism. In this thirty-year period, there was limited crossover between cost-benefit (or net present value) analysis and policy analysis, generally occurring near the end of the last decade (Brinser 1962, 1964; Brown and Gilbert 1960; Calkins 1966; Eckstein 1961; King 1966; Maas and Varon 1949; Mushkin 1958; Smith 1960; Wildavsky 1961). In an apparently completely ignored article, Calkins (1966) predicts the growing involvement of economists in public policy making through policy analysis. As shown in Figures 1 and 3, by the late 1960s, “policy analysis” had become the term denoting providing professional advice to decision makers.

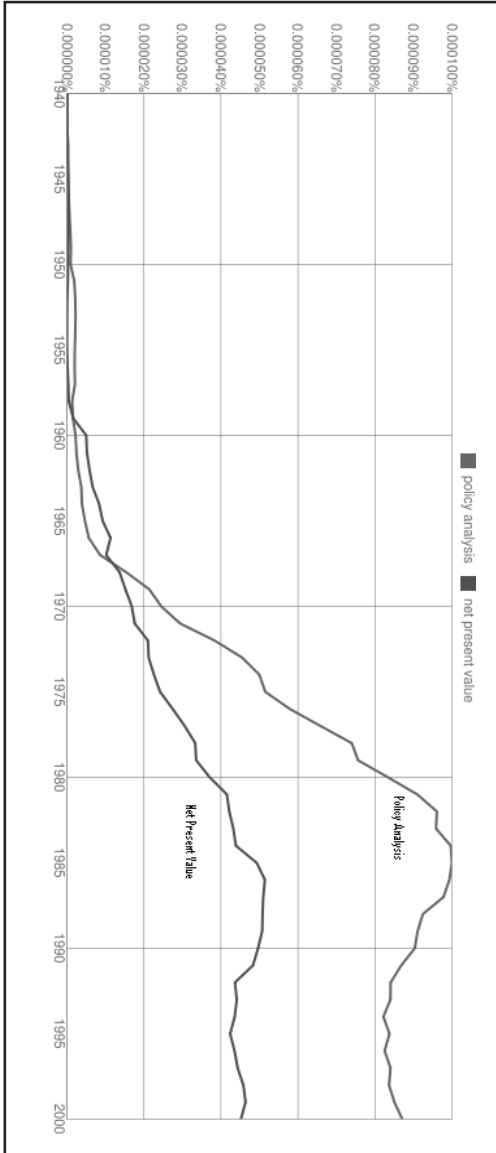
The integration of cost-benefit analysis/net present value analysis with policy analysis/policy science begins, excepting the handful of instances mentioned above, in approximately 1967. It is in that year that Dror (1967) writes that policy analysis has become a new governmental role and says, “The roots of this approach are in economic theory, especially micro-economics and welfare economics, and quantitative decision-theory; the main tools of this

Figure 2. Net Present Value, Cost Benefit Analysis, and Other Terms



(Source Google Ngram January 20, 2011 using "smoothing=3.")

Figure 3. Policy Analysis Compared with Net Present Value



(Source: Google Ngram January 20, 2011 using "smoothing=3.")

approach are operations research, cost-effectiveness and cost-benefit analysis, and program budgeting and systems analysis; and the new professionals of this approach are the systems analysts” (197).

The apparent chief vehicle for this integration is program budgeting, with its reliance on analytics (Balderston and Weathersby 1973; Churchman and Schainblatt 1969; Crecine 1971; Dror 1970; Friedman 1979; Hatry 1971; Hoffenberg 1970; Howard 1971; Kelso 1968; MacRae 1970; Newland 1976; Report of the Committee on Measures of Effectiveness for Social Programs 1972; Rhoads 1978; Sayeed 1973; Schick 1973; Shipman 1971; Terleckyj 1970; Wald 1973; Weathersby and Balderston 1972; Woolfson 1975). PPBS had its brief life in the Johnson administration and, like many federal management and budget initiatives, lived on for some years in state and local government as well as wherever we happened to have exported it. Its main legacy, however, was program budgeting and the use of analytic methods, such as a grab bag of microeconomic techniques, operations research, policy analysis, and systems analysis, which were widely adopted in the Americanized world. The integration was also promoted by schools of public administration and public affairs, possibly urged on by the intellectual crisis identified by the proponents of public choice (Buchanan and Piore 1969; Miles 1967; Ostrom 1973; Wald 1973). The public choice angle was particularly compatible with the worldview of the anti-government views promoted by presidents from Nixon through Reagan, thus setting the scene for Reagan’s RIA.

Within this path it is possible to trace the acknowledgement of evaluation at the legislative level and with it, the beginning of regulation reform. In fact, in the 1970s and 1980s, the U.S. promoted a regulatory reform based on deregulation and simplification with the primary purpose of giving greater flexibility and a more open market to develop the business venture.

The 1970s: the First Steps of RIA

In 1971, President Nixon introduced the Quality of Life Review Process, a project created with the idea of reducing environ-

mental regulations on firms. It was the first mechanism to require agencies to conduct cost-benefit analyses of proposed rules and to require agencies to submit their regulations to the OMB prior to their publication in the Federal Register. While “it cannot be treated as a proper analysis of the impact of regulation, however, [it] can certainly be considered a first attempt to evaluate the effects of regulation” (Radaelli 2001, 73).

A direct ancestor of today’s RIA, instead, is certainly the content of Executive Order (EO) 11821 under which the Gerald R. Ford administration agencies, for the first time, were required to accompany draft legislation with a report on possible inflationary effects of the rules were they adopted (EO 11821, 1974). This document, called the Inflation Impact Assessment, should then be assessed by the Council of Wage and Price Stability, a body formally established by the government with the task of judging and reporting regularly to the President the validity of bills with reference to the consequences on price trends and inflation in the country.

This period of administrative reform which lasted through the 1970s ended with the creation of the Regulatory Analysis Review Group (RARG), by the Carter administration: it is a body composed of representatives of regulatory agencies and OMB employees, directed by the Council of Economic Advisors which has the task of assessing the ten most important rulings of the year. A fundamental characteristic of RARG is certainly the beginning of a real form of cooperation between agencies and these first oversight institutions and, with it, a common goal towards the administrative reform of the country.

The American experience of the 1970s marked a growth in number and importance of regulatory agencies and with it a greater government intervention, especially in the economic sector. From the perspective of the techniques used, one can see one of the first introduction of cost-benefit analysis, but not yet a real implementation of RIA as a tool for system growth or as a source of efficiency and effectiveness of the rules.

The 1980s EO 12291: Deregulation and Competitiveness

A fundamental step in the development and affirmation of RIA was EO 12291, signed by President Reagan in 1981; it is, in fact, an example of renewal as part of a broader regulation reform, which was considered one of the priorities of the Republican agenda in that period. The goal was to realize a more efficient regulatory system by reducing as much as possible the production of rules, thus initiating a substantial deregulation of the normative system. The reform process initiated by Reagan had a fundamental objective: to liberate economic initiative, reducing state intervention in the economy by reducing regulation and the costs and constraints created by it (EO 12291, 1981).

First of all, from a procedural point of view, a mechanism was formally created under which the OMB would be required to review all the most important rules before they were sent to Congress; the most important rules, in this case, were those rules having an economic impact of at least one hundred million dollars, resulting in an increase in costs or prices and their negative effects on competition, employment, investment, productivity, innovation, or ability of U.S. firms to compete with foreign companies in internal and external markets.

The novelty of EO 12291 was the drafting of a set of principles that agencies should follow including the requirement to use cost-benefit analysis and the inclusion of a description of the alternatives that could achieve the same objectives. In summary, the most important rules were now accompanied by an impact analysis of regulation and with it, a cost-benefit analysis; further, oversight power and the supervisory role of the Council of Wage and Price Stability were transferred to the OMB. This task would be carried out in practice by the Office of Information and Regulatory Affairs (OIRA), a department born within OMB, which was given the power to suspend a rule produced by the agencies for reasons concerning the accuracy of analysis done. In the event of a dispute between OIRA and agencies, the task of resolving it was in the hands of the Task Force on Regulatory Relief headed by the

Vice President. In particular, the document promoted by Reagan has an approach that could be called a rupture or, as mentioned previously, a reformatory one. EO 12291, with its introduction, is a description of the objectives which express the desire to eliminate obstacles and loads of regulation, increase the accountability of the agencies, provide to the presidency elements of control and supervision of the legislative process, and minimize duplication and conflicts between rules and standards to ensure that they are well thought out from the onset.

Another fundamental aspect of the EO 12291 is the introduction of standards of transparency and publicity. The agencies will have to make available to the public the RIAs carried out; it is further agreed that each agency must publish twice per year (in October and April) an agenda and list of rules that have been proposed up to that time or that will be proposed in the near future. It is also specified in detail that each agenda must contain a summary of the nature of the standards, the most important goals and their legislative basis and a program of the approximate procedure of law making action, the name and phone number of a person responsible for each agency, and a list of rules which should be checked and revised on the basis of the principles written in the Order (EO 12291, 1981). EO 12291 has collected a number of criticisms in analytical standards about its intention of centralizing power and control, but especially from trade unions and environmentalists about the risks that excessive deregulation may produce against workers and the environment. With the EO 2498, the project was extended by mandating agencies to submit each year a regulatory agenda to the OMB that would contain details of the bills in progress; the OMB, in turn, was responsible to make any changes, reviews, and criticism. The result was the publication of an annual Regulatory Program for the U.S., which contained a discussion of all the proposed actions. This second order has certainly increased the authority of OMB, allowing substantial supervision over the entire regulatory activity with an unbreakable interdependence with the regulatory agencies.

In general, these actions promoted by the administration led to a fundamental impulse toward a reduction in the production of new rules and, with it, greater transparency in the legislative process.

President George Bush continued in the same path laid out by Reagan, and in fact the main innovation during his term was the creation of the Council on Competitiveness, headed by the Vice President, which acts as a kind of supervisor with the OMB. The council promoted a series of principles and proposals that were intended primarily to eliminate all rules that were in contradiction with the principle of competition. A key element in terms of contents of RIA, during the Reagan-Bush era, was the institutionalization of cost-benefit analysis as a tool to assess the effectiveness and efficiency of the law. The device that had been introduced for use with water projects at the beginning of the twentieth century and expanded slowly then more rapidly at mid-century, was now applied to issuance of regulations, having the effect of narrowing administrative discretion and substantially limiting the options available for government agencies to comply with the law.

While this period had the great merit of starting a process of innovation in the regulatory system including a stronger policy of simplification, the Republican administrations suffered a number of criticisms about the process of centralization of power that in practice was in the hands of the President through his Vice President. The President unleashed real battles with the same regulatory agencies that claimed more freedom and independence and with environmentalists and trade unions that expressed their dissent towards an approach to regulation which had as its cardinal principle free competition and would endanger (in their opinion) the environment and workers. Moreover, Congress and especially the committees led by Democrats opposed the reform program, and sought to reduce funds for the OIRA and supporting legislation that restricted the powers of discretion in determining the performance criteria used in the RIA (Hahn and Litan 2004;

Morrall 1997). This situation together with the contingency of other more urgent issues in the political agenda at the time, such as containing the deficit and foreign policy issues, led, after a very strong start, to a slight slowing of the reform process started in the 1980s.

The Clinton Era and the Achievement of RIA: EO 12866, Right to Know Act and Circular A-4

In the early 1990s, with the Clinton administration, a new period of reform began, guided by the Reinventing Government philosophy of Osborne and Gaebler (1992). This reform affected all aspects of public administration by pursuing more efficiency in administrative action, establishing rules for compliance with criteria of efficiency and effectiveness. In this sense, evaluation and RIA return to be two key issues in American politics.

To understand the scope, at least in its intentions, of the reform initiated by Clinton, it is helpful at this point to briefly examine the key points proposed by Osborne and Gaebler in their book *Reinventing Government* from 1992. The ideas of the two authors are summarized in ten points that are very simple and effective (Osborne and Gaebler 1992):

1. Catalytic Government: Steering Rather Than Rowing
2. Community-Owned Government: Empowering Rather Than Serving
3. Competitive Government: Injecting Competition into Service Delivery
4. Mission-Driven Government: Transforming Rule-Driven Organizations
5. Results Oriented Government: Funding Outcomes, Not Inputs
6. Customer-Driven Government: Meeting the Needs of the Customers, Not the Bureaucracy
7. Enterprising Government: Earning Rather Than Spending
8. Anticipatory Government: Prevention Rather Than Cure
9. Decentralized Government: From Hierarchy to

Participation and Teamwork

10. Market-Oriented Government: Leveraging Change Through the Market

The method proposed by Osborne and Gaebler (1992) was the subject of the report presented by Vice President Gore in September 1993: *From Red Tape to Results - Creating a government that works better and costs less* (National Performance Review 1993). This report was based on case studies in place of the recommendations provided by the two authors. It can be divided into four parts: (1) the process of simplification of bureaucratic procedures and administrative structures, (2) the introduction of market dynamics and competition in the public administration, (3) more autonomy to the administrators to increase their accountability and, ultimately, (4) the increase in productivity and reduction of costs.

The Clinton administration followed this philosophy in its reformatory approach, even if in a much softer version than the managerial vision of public administration and in its actions regarding the evaluation of public policies and the continuation of the path of the RIA. From this point of view, President Clinton, with the new EO 12866, on the one hand, responded to the criticisms and concerns raised in the previous years (e.g., too much focus on competition and too far market-oriented in terms of deregulation) introducing important changes; on the other hand, he kept most of the principles expressed in the previous EO 12291.

In light of the previous EO 12291, it is interesting to analyze in depth the new text adopted in 1993. EO 12866 can be considered in fact the step taken in relation to reform initiated in the 1970s by Nixon and Carter and continued by Reagan and Bush through the recognition of a bipartisan way. The EO is in fact still standing (the G.W. Bush administration made only few changes) and is therefore the basis on which even today is based RIA in the U.S.

First of all, the premise of the document no longer refers exclusively to the criteria of competitiveness of the system as in the Reagan version, but it emphasizes measures to improve society in the fields of health, safety, environment, and welfare: “The Ameri-

can people deserve a regulatory [system] that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society”(EO 12866, 2004).

The value of the private sector and of the market as well as the different roles and responsibilities of the different local governments are still recognized and protected: “regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable” (EO 12866, 1993).

Subsequently, it gives the principles for regulatory intervention, as well as the criteria for analyzing the impact of such interventions as a list of duties to which agencies must comply. First is the criterion of necessity dictated by the public need and the identification of specific market failures in order to protect and improve conditions for citizens in various aspects of society. If these are the reasons concerning the opportunity to regulate or not, then are dealt the reasons concerning *how* to assess and motivate the intervention option. In this sense, the agencies should assess all costs and benefits of different regulatory options (including the *zero* option and so the *status quo*). To quantify them, for the first time qualitative methods are indicated in addition to the use of the quantitative ones as an aid to the analysis.

It is interesting to notice how the different approach and principles had also brought about a consequential and substantial expansion in the use of different techniques. Thus, not only the cost-benefit analysis, that is a typical economic tool with the principal intent to limit the cost, but also the proposal, especially concerning social policy fields, to use techniques typical of the qualitative research. A further confirmation of this new philosophy is found in the details of the circular A-4 (a RIA guide written in application of the EO, which will be discussed shortly) where the cost-benefit

analysis is called “Benefit-Cost Analysis” in order to give greater emphasis to the primary objective of the legislation which is first to achieve benefits for society and secondly to contain costs.

In this regard, it is important to point out how a few years later, in 1999, the Congress issued the Regulatory Right-to-Know Act. It is a law that affirms the public right to know the benefits and costs of federal regulatory programs with the purpose to increase the degree of accountability of the government, improving in the same time the quality of legislation. For this reason, every year the OMB, in the person of its Director, has to submit to the Congress a report showing the costs and benefits of federal regulatory actions by specifying, in addition to aggregate data, those data divided for each agency, each program and for the more important laws of the year. Also presented will be an analysis of the direct and indirect impacts of the federal rules for the different levels of government, the private sector, small businesses, and the impact on wages and economic growth. At the conclusion of this report, recommendations and guidelines will be proposed for the agencies in order to make standardized and comparable measurements of the costs and benefits. Finally, OMB must attach the report with a review of guidelines written by an external, independent, and nationally recognized public policy research center to examine the accounts proposed in the report (U.S. Senate 1999).

The Circular A-4 and the Proof of the Necessity of Intervention: Market Failures and Social Purposes

To understand how RIA is applied in the U.S., namely what are the criteria such as the methodologies used, it is necessary to refer to its Circular A-4 of September 2003, a kind of manual that, in light of the EO 12866 and the Right to Know Act, shows step-by-step the policies and procedures for implementing the RIA. The circular A-4 is in fact the most complete document designed specifically for the regulatory agencies. The circular can be divided into three parts referring to as many key elements: (1) the demonstration of the actual need for the rule, (2) the examination of

alternatives and an assessment of the costs and benefits, both in terms of quantity and quality, and (3) the choice of one proposal out of all the alternatives. Before considering the merits of these specific elements, the circular proposes some general criteria and some recommendations considered essential to make a good RIA.

One of the criticisms to RIA, especially during the Reagan presidency, concerned the imbalance and the confidence placed mainly on the cost-benefits analysis and with it the imbalance on an economic-financial type of assessment. The new era is indeed characterized by a vision of *ex ante* analysis considerably wider than that former one and it is explicitly written in the Circular: “A complete analysis includes a discussion of non-quantified as well as quantified benefits and costs. A non-quantified outcome is a benefit or a cost that has not been quantified or monetized in the analysis. When there are important non monetary values at stake, you should also identify them in your analysis so policymakers can compare them with the monetary benefits and costs” (OMB 2003, 3).

Therefore, the next indication for the use of Consultation as a means of knowledge of all relevant issues with respect to a problem has been read in the same direction: “Consultation can be useful in ensuring that your analysis addresses all of the relevant issues and that you have access to all pertinent data” (OMB 2003, 3) and the subsequent recommendation not to interpret this analysis as a formula, but “Conducting high-quality analysis requires competent professional judgment. Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions” (OMB 2003, 3).

A final step in this premise is transparency, meaning to make it possible for outsiders to read reports and analyses and to express clearly the conclusions reached. Regarding the possibility of introduction of a new rule (i.e., recommending Federal regulatory action), “an agency must demonstrate that the proposed action is necessary” (OMB 2003, 3) through the definition of the problems

that the new rule is intended to solve and the identification of the specific needs to be answered, foremost being a case of market failure (market failures occur wherein the allocation of goods and services in a free market is not completely efficient) (Boardman et al. 2008). In the Circular is affirmed in fact: “The major types of market failure include: externality, market power, and inadequate or asymmetric information. Correcting market failures is a reason for regulation, but it is not the only reason. Other possible justifications include improving the functioning of government, removing distributional unfairness, or promoting privacy and personal freedom” (OMB 2003, 4).

The last element is the recognition, in addition to market failures, of other social purposes as part of justification for regulatory intervention: “For other interventions, you should also provide a demonstration of compelling social purpose and the likelihood of effective action. Although intangible rationales do not need to be quantified, the analysis should present and evaluate the strengths and limitations of the relevant arguments for these intangible values” (OMB 2003, 4). This is an essential criterion because it marks the importance of others elements and methods different from cost-benefits analysis (and therefore, a pure economic analysis) as reason for regulatory intervention.

Another recommendation is about the use of market-oriented approaches rather than direct controls as criteria of intervention. This approach is related to the use of incentives including “fees, penalties, subsidies, marketable permits or offsets, changes in liability or property rights (including policies that alter the incentives of insurers and insured parties), and required bonds, insurance or warranties” (OMB 2003, 8).

The analysis of Circular A-4 shows how State intervention, in terms of regulation, is determined by many factors and not exclusively by the attention to the market. Certainly the attention to the market, and with it an economic approach to evaluation, remain one of the starting points of the analysis, but at the same time the social purposes and the use of qualitative techniques show how,

over time, RIA is no longer seen only as an *ex ante* evaluation with the principal goal of protecting the market and competition, but it is recognized as a tool to determine the most effective and efficient interventions.

Conclusions and Implications

A Presidential and Federal system such as the American one, with the possibility for the States to experiment and, as a consequence, the possibility for evaluation, as well as a pragmatic political context, certainly encouraged and favored a bipartisan and institutional continuity of the change process.

The last important step of this process was made in the 1990s. In fact, with the Clinton administration was seen the fulfillment of the path of RIA. This journey was marked by a development in the direction of more flexibility in the use of this tool and in general of a vision of evaluation as support rather than control.

In the same manner, President Obama's recent Presidential Memoranda on "Regulatory Flexibility, Small Business, and Job Creation" of January 2011 follows this idea. In fact, it still refers to Clinton's EO 12866 as well as The Regulatory Flexibility Act (2011), recommending "regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses" and states: "it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation" (Presidential Memoranda, January 18, 2011). So the *ex ante* analysis plays not only a role of controlling the burdens of regulation and reduction of public expenditure, but it has an active role in terms of promotion and support to policy decision.

For this reason, looking at RIA as indicator of the use of evaluation and policy knowledge by the governments shows how the value of accountability is important and recognized. In this sense, the whole path RIA shows, regardless of the success of such

events, how the idea of research (analysis or evaluation) as support for more efficient and effective policies developed during the years. Indeed, the gradual change, seen through the development of the discipline, in terms of theoretical and methodological approach, as well as the steps made by RIA through the implementation of the different EOs and its criteria and principles seems to follow this direction. When we talk about accountability here, we are not just referring to the acknowledgment and assumption of responsibility for decisions and policies, but we point to the related and fundamental interest for social purpose and public good. We can ultimately affirm how this approach could represent a new model and a different point of view for all the stakeholders of the economic system of the role of government in society.

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Biographies

Daniele Capone is a Teaching Assistant in Public Policy Analysis at the University of Milan. He has been Visiting Scholar at the Institute for Educational Initiatives at the University of Notre Dame in Indiana and at the Institute for Social and Economic Research and Policy of Columbia University in New York. He is consultant for the Department of Welfare, Family, and Social Policy of the Regional Government of Lombardy, Italy. His research interests include policy analysis, evaluation of public policy, regulatory impact analysis, educational policy, and disability policy. daniele.capone@unimi.it.

Daniel W. Williams is an Associate Professor at Baruch College where he has taught budgeting, performance measurement, ethics, and related matters since 1995. Before that, he was the budget director at the Virginia Department of Medical Assistance Services (Medicaid). Recent publications include articles in the *American Review of Public Administration* and *Journal of Public Affairs Education*. daniel.williams@baruch.cuny.edu.