Readings
of particular interest

Justifying the Expense

Vehicle Safety Inspection Systems: How Effective? by W. Mark Crain (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1980), 70 pp.

In this study, economist W. Mark Crain examines the effects of the federally mandated vehicle-safety inspection programs now administered by more than half the states. He finds that they make no detectable contribution to improving highway safety and, indeed, may even contribute to accidents by making drivers overconfident. Yet, in spite of this report card and the enormous costs associated with these programs, the pressure is growing in Congress to expand their scope to include control of automobile emissions and gasoline consumption.

The author, an associate professor at Virginia Polytechnic Institute and State University, estimates the annual costs of safety inspections at \$200 million in fees, \$2–7 billion in unneeded repairs, \$300 million in lost time to vehicle owners, and \$200 million in resources diverted to obtaining inspection licenses.

He traces the history of vehicle safety inspection from its beginning in 1926 as a voluntary Massachusetts program through the passage in 1966 of the two laws that support current federal involvement, the Highway Safety Act and the National Traffic and Motor Vehicle Safety Act. The Highway Safety Act mandated uniform nationwide safety standards for state-administered vehicle registration, operation, and inspection; any noncomplying state risks the cutoff of federal highway aid. The Motor Vehicle Safety Act required that standards for "vehicles in use" be issued by 1968 but it was not until September 1973, after being so ordered by the U.S. district court, that the National Highway and Traffic Safety Administration issued the required standards.

Twenty-seven states and the District of Columbia currently have some form of mandatory vehicle inspection affecting approximately 76 million vehicles a year. Through the years, legislation has given NHTSA more discretion in its annual approval of state safety programs, and states have been given more leeway to tailor their programs to specific needs. And this, in Crain's judgment, "makes even more relevant the question of the merits of periodic inspection programs."

The author finds five unresolved issues in the present situation: First, even if vehicle inspection improves safety, its effect may be dissipated if drivers take more risks than they would if their cars were not periodically inspected, or if they assume that inspection will take care of mechanical defects. Second, even if voluntary behavior produces "suboptimal investment" in vehicle maintenance, it is not obvious that vehicle inspection is a feasible means of detecting equipment problems. Furthermore, even if it were, it is not clear that inspection agents have sufficient incentives to perform well. In addition, even if vehicle inspection does lead to corrections in mechanical problems, the programs may not be a cost-effective means of improving highway safety. Finally, the extent to which individuals accurately evaluate the expected costs of highway accidents is not known; thus it is not clear that drivers do underinvest in vehicle safety maintenance in the absence of periodic inspections.

An empirical analysis of the relationships between several alternative systems of vehicle inspection and highway safety leads Crain to a number of conclusions: (1) mandatory periodic inspection programs do not appear to reduce accidents; (2) twice-yearly inspections are no more effective than yearly inspections in reducing highway accidents; (3) state owned and operated inspection stations are no more effective than private inspectors in reducing accidents; and (4) spot or random checks appear to reduce death and nonfatal accident rates, at least as effectively as periodic checks. In the author's opinion, this last point argues for the sanctioning of random inspection to replace periodic inspection on a permanent basis.

Who, then, benefits from periodic safety inspection programs, if not the motorist or the potential accident victim? The author cites various "special interest groups" and "numerous trade associations involved in inspection-related activities"—for example, service stations and windshield-wiper manufacturers. Such interests, he notes, are now exerting pressure to establish even more stringent standards and to expand the scope of inspections to include emission controls and mandatory tuneups. They also would prefer direct administration by the federal government. Crain finds it "ironic that a program with no demonstrated effectiveness is being expanded to encompass additional aspects of motor vehicle operation."

Age as a Blunt Instrument

"The Graying of Civil Rights Law: The Age Discrimination Act of 1975" by Peter H. Schuck, in *Yale Law Journal*, vol. 89 (November 1979), pp. 27-93.

In this article, Peter H. Schuck of the Yale Law School contends that the Age Discrimination Act of 1975 constitutes a highly flawed policy instrument—one that reflects many of the tensions arising from efforts to use nondiscrimination laws to attack conditions that are not rooted primarily in bias or enmity. Schuck takes the position that Congress, in passing this law, abdicated its policy-making responsibilities to the courts, which are poorly equipped to perform them. He suggests a conceptual and legal approach to age discrimination for guiding the courts in their implementation of the law.

The Age Discrimination Act was modeled directly on Title VI of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color, or national origin in the vast range of federally assisted activities. Yet the analogy between age and race discrimination, Schuck argues, is crude and misleading. First, decision makers do not use age and race to distinguish among people in the same ways. For example, age is often used as a proxy for other characteristics, such as maturity, the likelihood of possessing certain risk factors, or expected duration of future employability. This may lead to injustice in particular cases because of under- or over-inclusiveness of categories; yet countervailing equitable or administrative considerations, such as the cost of attempting to measure such characteristics directly, may argue strongly for using the proxies anyway. Similarly, age is an immanent, inescapable characteristic, and it is easily verified; thus, individuals are less likely to alter their behavior in response to the incentives created by an age rule than they might be in response to a rule based on, say, income. In short, the use of an age criterion to classify people will often be reasonable in circumstances in which the use of a racial criterion would be invidious. By the same token, the consequence of forbidding the use of income, education, and other non-age factors that produce age-specific differentials would be very extreme, because virtually all such factors will produce such differentials.

From this analysis, Schuck concludes (1) that "the use of age as a classificatory criterion entails a far smaller risk of arbitrariness and oppression than the use of race, alienage, or other criteria that have been held to exacting standards by the courts" and (2) that an appropriate definition of age should "necessarily be one of relatively limited reach, leaving decision-makers free to employ age distinctions and non-age criteria in a wide variety of social choice contexts."

The political and legislative setting in which Congress developed the Age Discrimination Act represents a classic instance of procedural and substantive failure in the policy-making process. Added to pending legislation almost as an afterthought, the act sailed through Congress without any real consideration of the necessity or implications of such a sweeping law. When troubling questions about the bill's meaning and consequences were finally raised in conference committee, Congress passed the legislation anyway, requiring only that regulations under the law be deferred until the Civil Rights Commission had conducted a study of age discrimination.

That commission study, Schuck argues, was both conceptually and analytically defective. For example, it employed an absurdly broad definition of age discrimination and uncritically adopted the analogy to race discrimination. As a result, the commission denounced as discriminatory a welter of policies and practices that appear to be bona fide—though often flawed—efforts by decision makers to accommodate policy objectives to limited resources, and it recommended changes in the still unimplemented law that would have prohibited even "reasonable" uses of age. These recommendations were actually approved by the House, but were turned back in conference.

Schuck analyzes the critical legal and policy issues raised by the law. Perhaps the most far-reaching, in his view, is the extent to which decision makers may use cost-benefit judgments in allocating scarce resources among potential program beneficiaries. May medical schools bar applicants in their fifties? May job training programs focus on unemployed teenagers and youths rather than the middle-aged? These difficult decisions will have to be made by the courts with little guidance from Congress or the Department of Health and Human Resources, whose predecessor issued the government-wide implementing regulations.

Structurally, the Age Discrimination Act combines two types of group protection remedies—the "nondiscrimination model" (based on the Title VI analogy) and the "allocative model" (which affords decision makers some leeway in using age criteria to allocate program benefits). While these models are not logically inconsistent, Schuck argues, they have "distinctive tendencies and implications that are at war with one another." They differ in their approach to the notion of legal entitlement; they command decision makers in different ways; they attempt to address a different range of problems and activities; and they pursue redistributive ends in a different manner. Each of the models, Schuck suggests, is appropriate for addressing particular kinds of social problems. By rejecting the kind of refined, targeted, problem-oriented approach to the age discrimination problem that the allocative model would have encouraged, Congress may have created unanticipated difficulties. In particular, it has thrust upon the courts a major role in determining policy under the act, a role that will embroil them in essentially allocative tasks armed only with the crude tools that a nondiscrimination model provides. When this occurs, it will be denounced as "judicial usurpation." But the abject failures of Congress and the executive branch in this matter, Schuck suggests, make one wonder where buckpassing ends and usurpation begins.

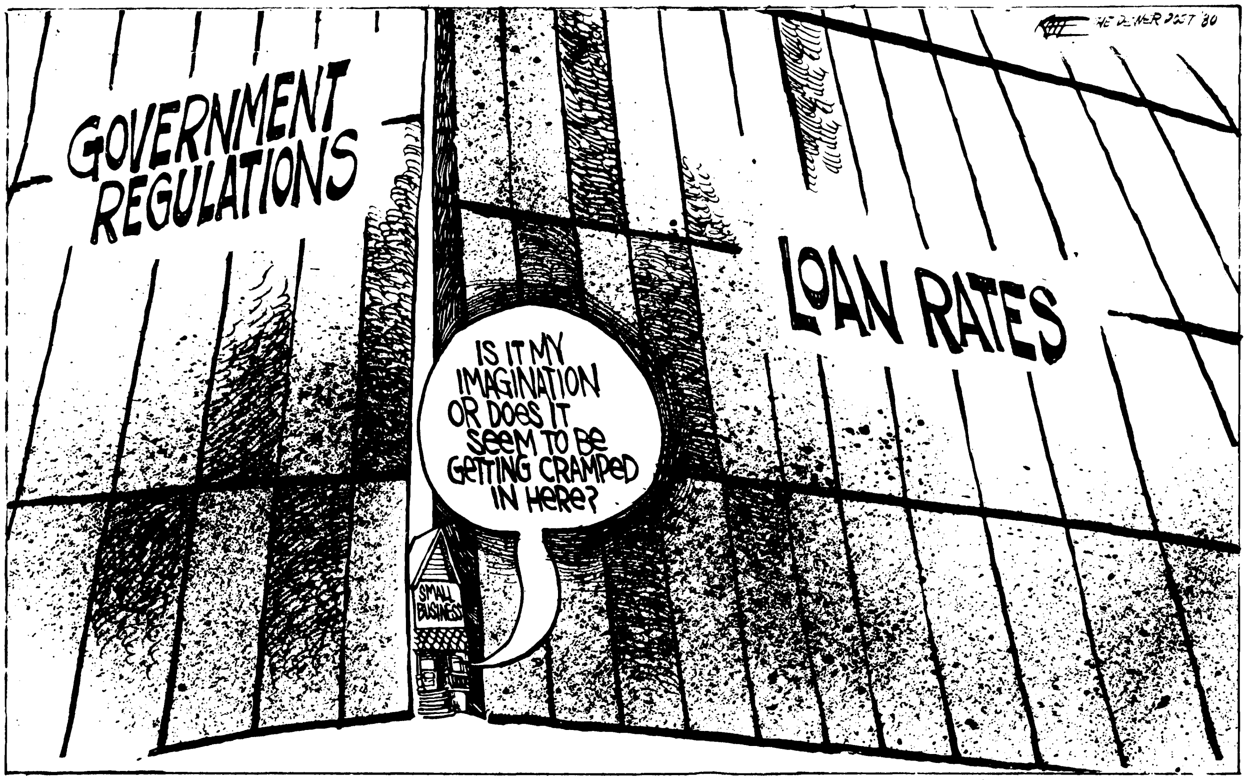
Squeezing the Little Guy

Small Business Performance in the Regulated Economy by Kenneth W. Chilton and Murray L. Weidenbaum (St. Louis, Mo.: Center for the Study of American Business, 1980), 43 pp.

"In spite of the widespread concern about the various burdens imposed by government regulation in America today, there seems to be a naive belief . . . that the regulatory system is neutral with respect to the size of the business firm. In reality, a great deal of government regulation has disproportionately adverse effects on smaller businesses." Kenneth W. Chilton and Murray L. Weidenbaum—acting director and director, respectively, of the Center for the Study of American Business at Washington University in St. Louis—document this assertion by examining the effects of federal regulation on small businesses in a wide range of industries and for the gamut of federal requirements, from paperwork to mandated capital expenditures and product bans.

According to the authors, because small businesses rely on relatively more expensive short-term debt, they are particularly vulnerable to the burden of the large capital expenditures imposed by the regulations of such agencies as the Environmental Protection Agency and the Occupational Safety and Health Administration. They point out as well that a small firm does not have the same capability as a large one to pass along the resulting increased production costs to the consumer. That is, the small firm must attempt to spread its compliance costs over a smaller number of units, thus eroding its competitive position vis-à-vis a large firm in the same industry. "In other words," the authors state, "capital expenditures mandated by government regulation produce artificial 'economies of scale.' "

Chilton and Weidenbaum focus on the manufacturing sector because, while it is burdened by government regulation in general, it is particularly hard hit by the capital expendi-



tures required to comply with federal regulations. In addition to assembling case studies of the effects of regulation on the foundry, battery, trucking, masonry construction, and apparel manufacturing industries, they report the results of their own survey of the chemical specialty and forging industries. There EPA and OSHA rules cause the greatest difficulties for small firms, and the effects can be profound:

> Fifteen percent of those firms having difficulty with EPA regulations felt that the agency's regulations could cause the firm to close for an unspecified duration. In addition, nearly 12 percent of the small chemical specialty manufacturers felt that EPA regulations could cause a change in ownership of their firm. Twenty-two percent of the forging firms felt that OSHA could cause such a closing and 17 percent felt that EPA could have a similar effect.

Turning to the so-called paperwork burden, the authors point out that, although there have been various attempts to quantify the costs of federal paperwork requirements, the effect of these requirements appears to be essentially qualitative. "The very notion of paperwork is anathema to many small business people," they observe.

Various regulatory reforms have been proposed to alleviate the disproportionate impacts of regulation on small business: exemption from minor paperwork requirements, two-tiered regulations for small and large firms, small business impact statements, and even total exemption of small firms from some forms of regulation. Interestingly, according to the authors' survey, small businesses find general regulatory reform preferable to remedies designed specifically for them.

Therefore, the authors encourage regulators to consider innovative approaches, such as requiring the dissemination of information on comparative product safety instead of mandating safety standards, or emphasizing performance incentives instead of standards and compliance enforcement. "The simplest reform measure," they argue, "would be for the regulatory agencies to weigh carefully the effects of their activities on business in general and small business in particular, prior to final rule setting." This approach would require a changed attitude on the part of those many regulators who currently see small business as "an unfortunate but necessary casualty of their mission to serve 'the public interest.' "

Toward a Value for Human Life

Reducing Risks to Life: Measurement of the Benefits by Martin J. Bailey (Washington, D.C.: American Enterprise Institute, 1980), 66 pp.

Can an economic value be placed on human life? Economist Martin Bailey of the University of Maryland confronts this issue directly and asserts at the outset that "whether we do so directly or by implication," we do indeed "place a value on human life." But what is that value and how should it be determined?

Economists have offered various approaches, including analysis of how much people pay for accidental death or injury insurance, and what they can be expected to contribute to society over their lifetimes as measured by real income (that is, the discounted value of future earnings). Bailey rejects both of these approaches and instead concentrates on workers' "willingness-to-pay" for safety as revealed by their employment decisions.

As the author sees it, "The most direct evidence of the amount people are willing to pay for their own safety comes from the job market, which offers a variety of working environments with various degrees of personal risk." Simply put, workers demand and receive higher wages for riskier jobs. And the wage "premium" accepted for an increased risk of death or injury reveals implicit assumptions about the value workers place on their lives.

Bailey analyzes four economic studies of occupational wage differences resulting from risk differentials and one study of "willingness-to-pay" for safety based on data from seat-belt usage. Two of the wage-risk differential studies, one by Richard Thaler and Sherwin Rosen for the National Bureau of Economic Research in 1976 and the other by Alan Dillingham in his 1979 Ph.D. dissertation, are adjusted by Bailey to allocate wage premiums between risk of death and risk of injury, to reflect the fact that low-income workers accept smaller premiums than high-income workers, and to account for third party contributions such as employers' worker compensation premiums and indirect business taxes. The seat-belt study, a 1979 Ph.D. dissertation by Glenn Blomquist, is adjusted to include indirect business taxes and third party medical and insurance payments. These three studies, when also adjusted for inflation, produce "value of life" estimates ranging from $170,000 to $715,000 per life—which figures are judged "reasonable" by the author.

The two wage studies by Robert Smith and W. Kip Viscusi provide estimates of the value of a life that are much higher than the other three estimates—in Viscusi's case ranging as high as $3.25 million per life (current dollars). Results from both of these studies, however, are based on representative samples of workers from various industries and on job-risk statistics calculated from industry averages. In Bailey's view, the difference between the Viscusi/Smith estimates and the other three stems from the broader aggregation levels used by Viscusi and Smith—that is, from the use of data that do not come from specific workers. Bailey feels this makes it difficult to attribute wage levels directly to higher risks as opposed to other factors, such as differing characteristics of workers in the occupation. Viscusi's position on this point is that such studies as those by Thaler-Rosen and Dillingham apply only to self-selected workers who are least averse to risk and who therefore place a low implicit value on life. Conceding this possibility, Bailey says that although his "evidence is internally consistent and gives no indication of worker error in this respect, it is also consistent with systematic worker error in estimating this risk."

The policy implications of choosing the Thaler-Rosen-Dillingham estimates or the Viscusi-Smith estimates or the more arbitrary estimates of government regulators can be significant. In the case of government regulators "there is clear evidence both of inconsistency and of systematic error. . . . The performance of experts gives no basis for confidence that their opinions should supersede the evidence of household and worker behavior in the marketplace." But Bailey points out that the range of values he considers defensible—$170,000 to $715,000 a life—is "scarcely definitive" and that further research might provide even better estimates. The point of this study is to show that estimates can be derived from evidence on household and worker behavior. Once a range for estimates of the economic value of life is agreed upon by policy makers, the nation's resources can be better allocated among various health and safety programs.

A Cost Conscience for Regulated Industries

The Regulatory Process and Labor Earnings, Ronald G. Ehrenberg (New York, N.Y.: Academic Press, Inc., 1979), 204 pp.

Starting from the premise that regulatory commissions should adopt a standard for "just and reasonable" labor cost increases in order to hold down service costs to consumers, Ronald G. Ehrenberg of Cornell University's School of Industrial and Labor Relations formulates a detailed methodology for fashioning such a standard.

In this book Ehrenberg develops a conceptual framework for analyzing the complex relationship between the regulatory process and the pay of workers in regulated industries. Regulation can affect pay levels, he points out, by altering the structure of a labor market or the behavior of participants in that market, by reducing competition in the relevant output market, or by limiting monopoly profits through the setting of maximum prices. In addition, regulation can affect labor earnings by forging incentives for managers of regulated companies to limit increases in labor earnings to rates commensurate with increases received by comparable workers in other industries.

Ehrenberg argues that such limits are the key to restoring the link that existed in the 1960s between profit rates in regulated industries and their ability to restrain service cost increases. He argues that a standard which ascertains what part of labor cost increases should be passed on to consumers in the form of rate or price increases will encourage management to bargain harder with unions since "excessive" pay increases would no longer translate automatically into price increases. The author then illustrates the difficulty of developing and implementing such a standard through a case study of a rate increase filed by New York Telephone Co. (NYT), a subsidiary of AT&T, before the New York State Public Service Commission in November 1976. A significant part of the requested rate increase was earmarked to cover expected wage and fringe benefit increases taking effect the following year.

As a first approximation of the extent to which NYT's labor costs are "just and reasonable," Ehrenberg compares the average earnings of NYT's workers with those of comparable employees in other firms in the same labor markets. Insofar as NYT's average earnings across occupations exceed the "norm" set by other employers in the state, Ehrenberg argues, the differences should be borne by NYT's stockholders in the form of lower profits rather than by consumers in the form of higher utility bills. By analyzing wage data from several different sources, the author produces a range of estimates of the "premium" enjoyed by NYT workers and the cost to consumers if a full pass-through were allowed. One methodological approach applied to census data yields an estimated premium of 15 to 20 percent.

Noting the danger of relying solely on wage-scale or earnings data to make fair comparisons among groups of workers, Ehrenberg turns to a discussion of fringe benefits, productivity, and labor turnover. He points out that when these additional factors are taken into account, a preliminary conclusion that a particular company is a "high-wage" employer could be overturned. In the NYT case study, however, Ehrenberg's estimate of the impact of these nonwage factors tended to shore up rather than undermine his tentative conclusion based on wage data alone.

Although the NYT case study—the backbone of this book—involves state regulation of a public utility, both the methodology developed for establishing cost pass-through standards and the theoretical framework for analyzing the interaction of the wage-setting and regulatory processes are applicable beyond the state and utility contexts.

Ehrenberg argues that state public service commissions are not legally precluded from considering whether utilities' labor-cost increases are "just and reasonable" and, indeed, have an obligation to do so. He also stresses that the regulators must provide incentives for utilities' managements to keep cost increases down. Three ways of doing this are suggested: (1) increasing the competition utilities face wherever feasible, (2) implementing executive incentive compensation schemes, and (3) adopting a form of tax-based incomes policy for regulated industries. The third approach would involve smaller fractional pass-throughs for larger wage increases.