

POLICY REPORT

SHIPPING IDEAS
TO POLAND—P. 6

Volume V Number 6

A Publication of the Cato Institute

June 1983

Telecommunications Regulation and the 98th Congress

by Milton Mueller

Since 1969 the Federal Communications Commission has spent as much time figuring out how to deregulate communications as it has regulating them. The word "deregulation," however, understates the significance of the transformation of telecommunications law and regulation. Airline and trucking deregulation were introduced in established, stable industries. But telecommunications deregulation is not freeing an existing industry so much as it is getting the FCC out of the way of the development of an entirely new one. A torrent of new information technologies and services—computers, satellites, teletext, electronic publishing, optical fiber, electronic banking—is shattering the old order in communications and replacing it with an entirely new and as yet inchoate information economy. This is a social change every bit as significant as the transition from feudal to industrial society centuries ago.

In this context, old debates about the merits of "free markets vs. government regulation" can miss the point. Even the freest of markets requires an appropriate legal order; without legal definition or recognition of property rights, for example, there can be no marketplace. Deregulation, then, is only the first phase of what is bound to be a two-stage process. After the obsolete and restrictive rules of the 1934 Communications Act have been cleared away—a process that is by no means complete—a new set of rules more appropriate to the technology of the 21st century must be formulated.

Milton Mueller is co-author of *Telecommunications in Crisis* (Cato Institute, forthcoming).

Consequently, the focal point of change is shifting away from the FCC, whose deregulatory thrusts are fast approaching the limits of its legal charter, to Congress and the courts, where the new rules must be forged.

Two important bills have been introduced in the 98th Congress. One, S. 55, addresses itself to broadcasting; the other, S. 66, deals with cable television. Both are reincarnated versions of bills

"Defining a system of property rights is essential to providing a permanent alternative to government control."

that failed to pass in the waning hours of the 97th Congress. Both are attempts to translate the deregulatory momentum generated by the FCC into law. In addition, several bills and court cases dealing with the sticky problem of copyright in the electronic media will come to a head this year.

S. 55 is an attempt by Senate Republicans to codify (or incorporate into the Communications Act) previous deregulation orders by the FCC. Thus, to understand its features and its significance, we must back up and consider the progress of deregulation at the Commission.

Letting Go and Letting In

There are two prongs to deregulation:

"letting go" and "letting in." The first refers to the FCC relinquishing or reducing its control of existing players, the second to its efforts to allow new competitors into a market that has been artificially restricted by governmental barriers for many years. The Ferris administration during the Carter years emphasized the latter, while the Reagan-appointed Fowler administration has gone about the former with a vengeance. Significantly, all of the attempts to "let in" new competitors involve liberalizing access to the radio frequency spectrum: authorization of low-power television, frequency allocations for direct broadcast satellites, making room for new VHF channels (called "drop-ins"), and the unsuccessful proposal to reduce the bandwidth of AM broadcasters from 10 khz to 9 khz.

Unfortunately, there is no movement in Congress to restructure the way the FCC allocates the radio frequency spectrum; all of the deregulation bills under consideration fall into the "letting go" side of the deregulatory divide. At the FCC, "letting go" has proceeded along three fronts:

1) The "public interest" model of regulation articulated by the Communications Act subjected broadcasters to intense scrutiny by the FCC. This, in turn, necessitated reams of paperwork so that the regulators could peer into every aspect of the business. Beginning with Ferris and accelerating under Fowler, the FCC has declared war on this paperwork, simplifying some of it and eliminating other parts of it. While popular with broadcasters, such deregulation will not have a major impact on the business.

2) Program content rules also are being changed. Until recently, the FCC set

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Airline Deregulation Is Working

One of the clearest demonstrations that sound economic analysis can have positive results is the deregulation of the airline industry. For 20 years economists conducted studies, invariably concluding that Civil Aeronautics Board regulation held airline fares above their market levels and made the industry inefficient. The CAB was a prime impetus to the development of a whole theory of economic regulation—the “capture” theory, which suggests that since the regulated industry has the most to gain from the decisions of the regulators, it will expend sufficient resources to “capture” the agency and use it as a cartellizing force. Despite being an almost perfect illustration of this theory, the CAB nevertheless demonstrated another aspect of regulation: After an initial period, even protective regulation does not raise the profits of the cartellized industry because companies will compete away their excess profits until their rate of return is no greater than average. The airlines did this by offering more frequent service and more amenities than would have been offered in a free market.

By the mid-1970s this state of affairs was obvious enough that even politicians noticed. First in the Ford administration and then in the Carter years, economists were appointed to the CAB who began easing regulations. Simultaneously, deregulatory legislation began slowly working its way through Congress. By the end of 1978 the airline industry had been substantially deregulated, and the CAB was scheduled for an unfortunately slow phase-out.

The results have been impressive. In 1978 airline fares declined for the first time since 1966, despite a high rate of inflation. Fares have increased since then, but by less than operating costs. The number of CAB-certificated airlines increased from 36 to 86. Midway Airlines was the first of the new jet airlines, followed by such competitors as New York Air, People Express, and Pacific Southwest. Demonstrating the increasing ability of the industry to respond to segmented market demand, the newest entrant into the field is all-first-class Air One, designed to attract business travelers.

The market share of the major trunk carriers declined in three years from 87.3 to 80.4%, which is not surprising considering that the trunks had been so protected from competition that the CAB had not certified a single new trunk carrier between 1938 and 1978. Market share for the local, intrastate, and new airlines increased from 11.5 to 16.4%. The percentage of domestic markets with four or more carriers increased from 13 in May 1978 to 73 in May 1981.

One of the clearest examples of the improved coordination between scheduled service and demand was that load factors rose from about 55% to about 59%.

More recently, some analysts have perceived problems in the airline industry. Braniff Airlines, which had over-expanded following deregulation, went bankrupt in May 1982. Other airlines (like many other major companies) seemed likely to follow. There are two basic ways to look at this situation. The first is that economic conditions in general are bad, and the solutions to the airlines’ problems lie not in reregulation but in improving the overall economy. The second is that ours is a profit and loss system, and the essence of the free market is that companies that don’t satisfy consumers will go out of business. This competitive process keeps entrepreneurs responsive to market demand and allocates resources to the most efficient competitors.

The air traffic controllers strike (see *PR*, October 1981) has created other problems. Some analysts have charged the Reagan administration with reregulating the airlines through government allocation of a reduced number of landing and take-off slots at major airlines. The solution here is market allocation of landing slots. Let the airlines buy and sell slots so the market process can allocate them to their most valued use.

Recently there have been a few suggestions of comprehensive reregulation of the airlines. These have come especially from members of Congress who feel their states have suffered reduced service under deregulation. Sen. Barry Goldwater (R-Ariz.) has been an outspoken critic of deregulation, while Sen. Robert Byrd (D-W.Va.) objects to the airlines’ charging more per mile for short hauls (Washington to Charleston, say) than for longer flights where they face more competition and lower per-mile costs.

Most recently, Sen. Mark Andrews (R-N.D.) complained about high fares to Fargo, North Dakota, but insisted that his real concern was helping out the airlines who apparently don’t understand pricing as well as the Senator does. He called for reregulation of airline fares “to help alleviate the threat of airline bankruptcies in 1983.” Some businessmen might hesitate to take orders on avoiding bankruptcy from the chairman of an appropriations subcommittee of an economic entity (the federal government) that will run up a \$200 billion deficit this year.

While some airlines face problems because of either general economic conditions or their own poor response to market conditions, airline deregulation is working. Fares are lower than they would be under continued CAB regulation, and the industry is responding to market demand more efficiently. The answer to the growing calls for reregulation is a terse line from American folk wisdom: “If it ain’t broke, don’t fix it.” ■

Regulation (Cont. from p. 1)

guidelines telling broadcasters how much of their time had to be devoted to news and public affairs, how many commercials they could run each hour, etc. They also must comply with the infamous “equal time” and “fairness” doctrines, which subject their editorial decisions regarding controversial public issues to oversight by the FCC. Under Ferris, the FCC lifted the program content guidelines, except for equal time and fairness, from radio broadcasters. Fowler wants to extend this move to television, and is waging a courageous ideological war against the equal time and fairness doctrines.

3) On the third front is license renewal. Like the printing press under the English monarchy, broadcasters are not allowed to operate without a license. Licensing is the crux of broadcast regulation because it gives the government life and death power over the broadcaster and serves as the pretext for all other forms of regulation. The FCC is supposed to issue licenses only to stations which serve the “public interest,” but this standard has never been defined clearly and its meaning changes with every new administration of the FCC. During the heyday of the “citizens movement” in broadcasting in the late ‘60s and early ‘70s, political activists would use the “petition to deny” at license renewal time or the comparative hearing (the administrative process by which the Commission compares the qualifications of two or more applicants for the same license) to wrest licenses away from applicants they didn’t like. In addition, established broadcasters often used the petition to thwart or delay new competitors.

Deregulation in this area is a matter of stabilizing and simplifying the license renewal process, but it does not challenge licensing itself. The Ferris FCC adopted a simplified, “post card renewal” form; shortly after, the 97th Congress passed legislation extending the license terms of radio stations by four years and television stations by two years. Together with other deregulatory moves, this has made the license more and more like a property right. This year the FCC reinforced this tendency by repealing its “anti-

trafficking” rules, which restricted the sale and transfer of broadcast licenses.

Congress and the Courts

Broadcast deregulation now faces two important tests. S. 55 codifies the FCC’s deregulation of radio, abolishes comparative hearings, and imposes license fees on broadcasters (\$1,200 for a license application and \$6,000 for a hearing). It has already passed the Senate and is on its way to the House, where an unsympathetic Rep. Timothy Wirth (D-Colo.), chairman of the House telecommunications subcommittee, will determine its fate. If it passes, S. 55 will be the first significant penetration of the Communications Act by the forces of broadcast deregulation. On the other hand, the United Church of Christ, a pioneer of the “citizens movement” and an opponent of deregulation, has challenged the FCC’s radio deregulation order in court, arguing that such action makes the Commission unable to enforce the public interest standard and thus violates the law. A decision is expected this summer.

During the Senate debate over S. 55, Sen. Frank Lautenberg (D-N.J.), voiced his reservations about the elimination of comparative renewals. He wants to make sure that WOR-TV, a New York station that is being moved to New Jersey, will “serve the public interest” when it gets there. He was assured by the bill’s sponsor, Sen. Barry Goldwater (R-Ariz.), that its passage will not change the fact that licenses will be renewed only if “the licensee substantially met the problems, needs and interests of the residents of its service area.” This little exchange underscores just how far we are from a truly free broadcast system. Congressmen still take a personal interest in particular television stations, as if they were pork-barrel dam projects and not communications media with First Amendment rights, and they still view the license as a privilege to be bestowed on those who behave themselves.

But even these minor adjustments in the antiquated mechanisms of broadcast regulation go too far for Rep. Wirth. Twice similar broadcast bills have passed the Republican-controlled Sen-

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POLICY REPORT

ISSN: 0190-325X

Published by the Cato Institute, *Policy Report* is a monthly review that provides in-depth evaluations of public policies and discusses appropriate solutions to current economic problems.

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Subscriptions and correspondence should be addressed to: *Policy Report*, 224 Second Street SE, Washington, D.C. 20003. The annual subscription rate is \$15.00 (12 issues). Single issues are \$2.00 per copy. *Policy Report* is published monthly by Cato Institute, 224 Second Street SE, Washington, D.C. 20003. Second-class postage paid at Washington, D.C.

Regulation (Cont. from p. 3)

ate only to be fatally bottled up in Wirth's committee.

Wirth's rationale is that the airwaves are owned by the public and that broadcasting is insufficiently competitive to be deregulated. But these objections are irrelevant. The Wirth subcommittee's own massive study of telecommunications classified radio broadcasting as highly competitive; why, then, has he derailed deregulatory legislation affecting that medium? "Public ownership" of the airwaves may make fine rhetoric, but for all practical purposes the broadcast license has become a de facto property right. Licenses can be bought and sold without restriction now that the antitrafficking rules have been repealed. The renewal rate for licenses is 99%. In the past 40 years only two stations have lost their license as a result of petitions to deny. The FCC itself has no consistent licensing goals or policy and is far more responsive to industry lobbyists than to the public. Under these conditions it is ludicrous to contend that the average citizen has any significant input into the licensing process.

While license renewal serves no public interest goals, it does take its toll on the medium. It restricts entry into broadcasting and makes spectrum use far less efficient than it could be. Like others, Wirth has criticized the Fowler FCC for moving slowly on pro-competitive measures such as VHF drop-ins and LPTV, and for killing the 9 kHz proposal. But these obstacles to competition are a direct consequence of the "public ownership" argument Wirth takes pains to defend. If radio channels could be bought and sold rather than parcelled out by a niggardly FCC, competition would flourish. To translate the FCC's deregulatory initiatives into a lasting, fair, and fully competitive system, Congress will have to abolish licensing altogether and create private property rights in radio channels.

Wirth may pick up the gauntlet by tacking some kind of spectrum fee onto the Senate legislation. The precedent for fees is already in the bill, and Wirth has indicated that he favors charging

broadcasters for the privilege of using the "publicly owned" airwaves. There is also a widespread perception, shared by Commissioner Fowler, that broadcasters will have to offer a quid pro quo for deregulation.

Cable Television

The politics of cable regulation are even more intricate than broadcast politics because state and local government enter the picture. Thus S. 66, unlike its sister bill, did not zip through the Senate and is still bogged down in intense negotiations between the National Cable Television Association, which supports it, and the National League of Cities, which opposes it.

"Cable should be liberated from city regulation, but it should also be stripped of its monopoly franchise."

Several years ago, when the FCC decided to stop squelching cable, it "deregulated" it—which meant that cable was left to the tender mercies of state public utility commissions and municipal governments. Now Congress, at the behest of the cable industry, is bringing the federal government back into the picture in an attempt to check the regulatory excesses of the cities. S. 66 would codify the FCC's authority to put a ceiling on the franchise fees cities force cable to pay, reduce the number of channels cable systems must make available for "public access," prohibit any city control of program content, and permit the FCC to eliminate the cities' authority to regulate rates. For this reason it is called a cable deregulation bill, but it ducks the truly central issue of cable regulation: franchising.

The cable operators' case for the bill rests on characterizing their service as competitive. As evidence, they cite the

growth of pay TV services such as Multipoint Distribution Service (MDS), a service that uses microwave frequencies, pay TV that uses UHF channels, and the future prospect of direct broadcast satellite service. None of these services, however, have the multichannel capacity of cable. Propertization of the frequency spectrum would allow them to compete more effectively because owners of channels would be able to utilize innovative radio techniques to maximize their use. Case in point: One MDS company has proposed a frequency allocation that would permit 5-channel MDS services in the top markets. The FCC has been sitting on this proposal for seven years.

A more significant cable competitor is the Satellite Master Antenna TV (SMATV), an arrangement whereby an apartment complex or housing development will set up a receiving dish and distribute its signal by cable to its residents. SMATV is simply a private cable system and thus can deliver all of the services and capacity of publicly extended systems.

In making his argument that cable's competitive nature justifies its deregulation, NCTA President Thomas Wheeler made a valid point about the need for a "level playing field" in telecommunications law. Cable's competitors, he says,

don't have to pay franchise fees, they don't have to give away service, they don't have to underwrite various local ventures from production studios to police firing ranges, they don't have to go to a local regulatory body to adjust rates or services, and they don't have to expose their business to local political hijinks when their license is up.

The issue raised here is vital. Having permitted a cornucopia of telecommunications services to develop relatively free of federal regulation, the FCC and Congress now face the question of how they all fit together. Ideally, there should be a uniform set of rules to

govern the competition among the various technologies. It is unfair and inefficient to concoct a different set of regulations for each technology.

But Wheeler's call for a level playing field becomes rather disingenuous when placed in context. He knows perfectly well why cable is subject to special regulation: it is the quid pro quo for the monopoly franchises cable systems are granted. This franchise gives them exclusive access to the public rights of way and protects them from the competition of other systems. In exchange, the city extracts all the promises and goodies the cable operators complain about. In many cases, cable operators are not unwilling participants in this exchange. Cable franchisees have been known to sue SMATV operators, competing cable systems, and even television translator operators for "poaching" on "their" territory. In Indianapolis, for example, the Omega Satellite Products Company, an SMATV operator, was prevented from running a cable across the street to connect two apartment complexes to the same dish because such use of the public rights of way conflicted with the city's cable ordinance. Thus we have cable claiming that it should be deregulated because of competition while attempting to shut down some of that competition through legal action. As Sen. Larry Pressler (R-S.D.) said during the hearings on S. 66, "it seems to me cable wants the protection of being a common carrier without the responsibility."

The future development of cable is stranded between two conflicting and wholly incompatible models. Either cable is one player in an integrated market of telecommunications transmission services, or it is a public utility, a common carrier like the phone companies. If it is the former, it should certainly be liberated from city regulation as S. 66 seeks to do, but it should also be stripped of its monopoly franchise. If it is the latter, then it will have to accept rate regulation and community service giveaways along with the franchise.

Challenge to Monopoly

Because of the industry's penchant for the franchise, there was until recently no one to fight for the free-market alternative. But now the Mountain States Legal Foundation has stepped into the breach with a lawsuit that is shaking the foundations of the cable industry.

In February of 1982 the city of Denver awarded its cable franchise to Mile Hi cable, a subsidiary of American Telecommunications Corporation, a tentacle of the massive Time, Inc. The city's study of cable concluded that a single, monopoly system coterminous with its boundaries would be best; Mile Hi won the bidding with a proposal for a \$100

"Once producers stop whining for protection and start responding to the market, they will find that technology creates more profit opportunities than it eliminates."

million interactive system with 110 video channels.

Before construction could begin, however, MSLF filed suit in federal court. The lawsuit is a conscious attempt to "establish a national precedent that the first amendment's guarantee of freedom of speech bars the government from granting one company an exclusive right to disseminate information by cable." The lawsuit contends that the franchise is de facto exclusive and challenges virtually every aspect of the franchise bargain: exclusive use of the city's rights of way, the city's power to regulate program content, the requirements to provide non-revenue-producing community services, rate control and cross-subsidiza-

tion. This is a wholesale attack on the foundation of the public utility model of cable regulation, and because it is based on the First Amendment, which takes precedence over home rule and any other local or state law, it just might succeed.

According to *Broadcasting* magazine, "the cable industry finds itself torn over this new development. On the one hand, many of its leading lights have made deals which depend on the stability of municipal regulation. On the other, the industry would prefer a federal pre-emption that would take it out from under the gun of the local political process."

The MSLF suit is now stalled in federal court, awaiting a ruling on a routine motion to dismiss. In the meantime, Mile Hi has hurriedly renegotiated its contract with the city, scaling down its construction plans to 55 channels because of the possibility of competition should the MSLF prevail. This development adds fuel to the argument that franchising has led to overblown, gold-plated systems. The situation is closely analogous to the early days of railroad development, when state governments eager to encourage the railroads with subsidies and generous charter provisions overextended the industry and created problems which then became the pretext for further regulation.

Copyright and Home Taping

There is not enough space here to adequately discuss the legal and regulatory developments related to copyright. A brief survey of the essentials will have to suffice.

The problem of intellectual property is central to the emerging information economy. Advances in electronic recording technology have made it possible for virtually anyone to duplicate and store information, giving the producers of television programs, computer software, books, and music correspondingly less control over the distribution of their ideas. As yet, however, there is no satisfactory theory of property in ideas capable of guiding

Shipping Ideas to Poland

Every month the Cato Institute sponsors a Policy Forum at its Washington headquarters, where distinguished analysts discuss their work with an audience drawn from government, the public policy community, and the media. A recent Forum featured Don C. Lavoie, an economist at George Mason University and editor of the Cato Institute's Polish-language book, *Solidarnosc z Wolnoscia* [Solidarity with Liberty]. Also commenting was Zdzislaw Rurarz, former Polish ambassador to Japan who defected after the December 1981 imposition of martial law, who wrote the introduction to *Solidarnosc z Wolnoscia*.

Don Lavoie: The questions that first may hit you when you hear about a Polish language book on some economic topic are who's going to hear about it, what difference will it make, and who's going to read it. A recent poll of high school students in Poland, reported in the *Washington Post*, asked, "Do you consider socialism even as an ideal to be something worth working for?" And they found that some 90% of high school students in Poland do *not* consider socialism even as an ideal something worth working for.

This is, I think, indicative of what the future holds. The young people are going to be the majority at one stage, and these people no longer believe the lies that have been influencing earlier generations. Thus, as I usually do, I think we should take a fairly long-run view about what kind of impact we can have. Ideas are more powerful than any other kind of tool. Ideas will change the world, but ideas don't work overnight. In time this book—and more importantly the ideas that it's trying to suggest as an alternative to central planning—have a real chance of influencing future generations of people not only in Poland but in all of Eastern Europe and hopefully in the world.

Let me say a few words here about the content and structure of the first and last essays, by myself and Roy Childs. Both try to describe the alternative philosophy we're offering. It's one

thing to criticize central planning, but if you have no alternative to suggest then the result may be just a sort of deep pessimism. We don't want people to say, "Since we can't have socialism as an ideal, we should abandon ideals." Quite the contrary, I would even argue that one of the most serious problems of Marxism was that it was not sufficiently utopian—in the sense that it was unwilling to describe the future world that the Marxist analysis was aiming at. I believe we should describe the world that we seek in great detail, to the extent that we can understand what the future would look like if we could get there. Only if you can describe it in some way can you get anyone to advocate it and ultimately achieve it.

A Cato Institute Policy Forum

Another article, by Leszek Kolakowski, one of the best Polish philosophers, was written after the Solidarity revolt and talks about the potential there.

An article called "Lights Out in Poland" by P. M. Johnson argues the sad fact that the hopes were not completely borne out and that things now do not look extremely optimistic in Poland. Both of them argue that the cause of the difficulty is the extreme concentration of power in the Communist Party government, and that if there is ever a way to improve the plight of the Polish people it is going to be by undermining that—by dispersing power to more individuals.

The other essays are not specifically about Poland. I had a very specific reason to use articles that talked about the general logic of planning and the way planning has worked in any country. I thought it would be somewhat presumptuous of us who don't even speak

Polish to tell the Poles what their circumstances are like and try to direct their revolution. That's not our purpose. Our purpose is more to give them the intellectual tools whereby they could make a much better critique of the concentration of power. So it's those general economic tools that I was trying to supply.

Four of the essays are about the political philosophy of central planning, that is, what is bound to happen to liberty when you have the tremendous concentration of power that's necessary to plan a modern technological economy.

Vladimir Bukovsky's essay, "The Soul of Man Under Socialism," is one of the most eloquent statements of what it's like to live in a world where you have no right to speak your own mind, and yet in that essay there is a strong appeal to the hope that in such a society all that is needed is for people to recognize that it's their own fear that keeps them from winning.

There is a natural presumption on the part of people, especially people who live in a relatively free society, to suppose that just because Jaruzelski has the tanks and the guns he is omnipotent, but the relevant point here is that it's human beings who drive tanks and point guns; and it's ideas that drive human beings and it's ideas that will change Poland.

The essays by Hayek and Friedman are about the necessary connections between economic freedoms and political freedoms. Unfortunately, the typical American liberal will take the view that civil liberties and freedom of thought are important but economic liberties should not be defended; a businessman should not be free to do what he wants, but a dissident should be free to *write* what he wants. It's our position that freedom is indivisible and every person should be free to do whatever he wants so long as he's not aggressing against the similar freedom of others. If you deny economic freedoms, you will almost certainly deny

civil liberties. The best way to put this point is that in Poland it's illegal to have a photocopy machine. They're common property of the state, so it's going to be hard to propagandize for any alternative point of view.

The next series of essays all deal with the economic argument against central planning. Besides political crisis and loss of liberty, central planning will also lead to a reduction in the wealth of the populace. The original goals of planning were to actually bring about abundance. Marx and the earliest socialists seemed to think that as soon as the socialist revolution was achieved, tremendous abundance would come upon the face of the earth. The articles in our book show that this is a pipe dream, that in fact central planning reduces the wealth of the people. It can't really produce the goods and services that people want. The only thing it can do is produce the goods that the central planners want, which might be weapons for foreign aggression or guns for their police, but it's not going to be the goods and services that the average person wants.

The first of these economic essays is by Walter Lippmann. Lippmann was an American liberal, but his book *The Good Society* has an excellent critique of the idea of collectivism or centralized planning, and he also gets across the sort of goal the original planners were aiming at. Why was it that anyone would favor planning in the first place? He talks about what one might call the "poetry" of central planning—the imaginary ideas of what they thought they could achieve. This assumes that the planners are somehow extremely intelligent and knowledgeable about not only everyone's tastes but also the best ways of producing goods and services. And there's no reason to believe that the people who happen to man the offices of the central planning bureau are so intelligent.

The particular argument about why people in a bureaucracy cannot have enough knowledge to do the sort of task that central planning demands was best made in 1920 by Ludwig von

Mises. I've included a later statement of it where he also responded to critics. He called this the calculation argument. Essentially it says that in a free market economy we rely on knowledge that is generated by competitive action among individuals. It's only by decentralization and competition that we are able to generate the knowledge that allows any of us to plan in any rational way. Central planning tries to get rid of

The next essay, also by Nutter, begins to apply this basic theoretical idea to the actual operation of central planning in Eastern European countries. Part of his theme, as well as that of the essay by Michael Polanyi, is to say that there is a sense in which these economies are not really centrally planned at all. The goal of central planning is really to have only one plan and to have everyone pre-coordinate their actions with one an-



Don Lavoie listens as Ambassador Rurarz speaks.

competition and to unify all action into one coherent plan. Thus they're destroying the very basis of most of the knowledge in society.

The following article by Hayek is a fairly modern restatement of this role of competition as a generator of knowledge, so I think it enhances the point that Mises made. And the article by G. Warren Nutter enhances the point that Hayek made, because Hayek's point about competition implicitly assumes that we have private ownership. You can't just have competition among everyone who's a member of the same bureau. If effective competition is really going to generate knowledge, you also have to have private ownership of the means of production. So Nutter's essay points out that you can't have a market without having private property.

other. Now, what really goes on in these so-called centrally planned economies is a tremendous degree of chaos. It's far more chaotic than any free market would be. So what we have is a very active central planning bureau which interferes at every stage with all the plans that all the individuals at the plant level are trying to do—interferes so drastically that it's almost by accident that real goods and services end up being produced in such economies. The inefficiencies of these economies are legendary to anyone who studies them. What we really have is a disguised interference by the government, and not really a plan.

The final essay by Roy Childs gives an excellent survey of not only what's wrong with the doctrine of Marxism, but more importantly, offers an alterna-

Ideas (Cont. from p. 7)

tive radical ideology that could inspire the masses of Poland. He tries to pique the curiosity of the people in Poland and show them what I think is true: that the Solidarity movement and the libertarian movement in the United States are both asking the same kinds of questions. We're both asking, do we need to rely on one group of people, who have power over the rest of us, to determine how to produce our goods and services and how to run our lives? And I think both movements are answering no.

Zdzislaw Rurarz: May I say that all the Poles can only be deeply grateful to the American libertarians for providing them with the bombshell that this book certainly will be. The Poles know a lot about freedom and democracy, but when it comes to very specific things they may lack certain knowledge because for many years they have been cut off from anything like the ideas in this book. Some, especially the workers who are revolting against the regime, had the instinct, but sometimes they were lacking the knowledge. And you are now providing them with that weapon, and I can only on their behalf express my most cordial thanks for that.

The regime from the very beginning was not yielding to anything. Everything was tactical. Very soon after that historical agreement with Solidarity on August 31, 1980, I spoke to one of the Politburo members in Warsaw. I congratulated him that finally the regime came to reason and agreed to the establishment of the free trade unions. He told me, "Don't be stupid. The Soviets told us we will establish complete control over this movement or we are obliged to do away with that movement." However, that movement was so much stronger that it took 16 months to declare martial law.

Believe me, Solidarity was not, at that time at least, trying to reach out for the power. But they really wanted to participate in the power, and they were denied even that. All the negotiations—or even the talks, because the negotiations as a matter of fact never existed—

were in bad faith. At the same time when there were some would-be talks with those people, the preparations for declaring martial law were going on.

I know communism in practice. I have no doubt that the system doesn't work and never will really work. However, in the Polish geopolitical situation it was obvious that any changes must be very careful, because not many people realize that Poland has a special mission to play in the Warsaw Pact. And what was allowed by the Soviets for the Hungarians was never allowed for the Poles. This I can tell you with all the authority because I myself was traveling to



Ambassador Rurarz talks with David Henderson of the Council of Economic Advisers and Roger Pilon of the Office of Personnel Management.

Moscow and talking with the Soviets on that.

Our room for maneuver was almost nonexistent, so the prospects for reform—logically speaking—were none. However, the workers defied the realities and tried again to do something. It must have taken a lot of courage and even romanticism to start anything like that, but that was absolutely necessary. I had no doubt that that would never be successful, but I thought that the time had come to support it and to stop thinking that communism and the Soviet domination in Poland can really work. So that when the Solidarity delegation with Lech Walesa was coming to

Tokyo and I was specifically forbidden to have any contact with them, I defied the governmental instructions and received them at my residence. For that even Soviet television criticized me.

Let me say something about my experience with how the centrally planned economy works. I, myself, having stayed at the center of power officially representing the Communist regime, have not the slightest doubt that communism—the centrally planned economy as such—simply does not function, especially in Poland. The Polish crisis is a classical crisis of central planning. When I was economic

advisor, in 1972, the crisis was far away, and many Western bankers even believed that Poland was undergoing an economic miracle. (I believed it was a crisis, and therefore I resigned by the end of 1972. But when I visited the West, I was invited by many Western economists to give an address on how successful Poland was, and I refused.)

But I told Gierek, "Listen, Mr. Secretary, there is a tension growing on the market. We are reducing investment. The money incomes of the population are growing worse. The supply of consumer goods isn't really growing."

"Oh, don't worry. I have settled that situation."

Regulation (Cont. from p. 5)

I was astonished that he could have settled anything like that without my knowing about that. So I asked him, "How have you done that?"

"Oh well, ah, very easily."

He had published a letter instructing the workers to give additional production of 25 billion zlotys. So there was a plan.

This in itself is a proof that they themselves quite simply did not believe in a planned economy as such. Because a really planned economy would have not such big reserves as to generate this additional production upon receiving the letter from Gierek.

I can fully share the view expressed by Professor Mises that the planned economy is not an economy at all. The plan in a planned economy is, at best, the so-called annual plan—not more than that. And even the annual plan was never adopted for the current year before the end of April. It was already too late. And then, believe me, it was being changed on a daily basis.

What they really want in a centrally planned economy is to have discretion over the rate of savings and over the direction of the economy. And I would say these directions are mostly dictated by strategic reasons. Even ideological reasons are secondary.

The GNP of Poland was even then at least 15% devoted to war production. The martial law seems to be successful for the time being because the Poles know only too well that there are 84 Soviet and other satellite divisions in and around Poland. Even if the Polish army would revolt, we'd have no chances. We have to be a bit patient and careful. Poland is not Afghanistan. We have no assistance from the outside. We are too surrounded, but nevertheless it is also true that the Poles will never surrender.

Don't forget that we have quite an experience with that, and that martial law, physically speaking, has not decimated the Polish nation. The time will come that Poland will be freer, and I thank you noble American libertarians for participating in that struggle with the Poles for their freedom. ■

our legal response to this problem. In the absence of such a standard, the fight over copyright has become a political brawl in which the interests attempt to avoid copyright payments altogether; motion picture and recording industry interests want to soak the consumer to retaliate against home recording; and broadcasters complain about inadequate copyright payments from cable, but also want to force cable systems to carry their signals.

In recognition of the problem, the Senate has created a new Subcommittee on Copyrights, Patents and Trademarks, which its chairman, Sen. Charles McC. Mathias (R-Md.) says will "examine copyright protection for semiconductor chips . . . computer programs, the treatment of cable television under copyright law, and . . . library photocopying."

The proper extent of private property rights is the crux of the home taping issue. Record companies and motion picture interests argue that home recording is detrimental to their business and violates the copyright of the program producer. These powerful interests are well positioned to make their views the law of the land. In 1976, Walt Disney Productions and Universal Studios filed suit against the Sony Corporation to curb home taping. After a favorable decision by the 9th U.S. Circuit Court of Appeals, the case has gone to the Supreme Court, which is expected to hand down a decision this year. They have also prodded Sen. Mathias to introduce the "Home Recording Act of 1983," which would exempt home recording from copyright violation but impose a royalty fee on recording machinery and blank tapes to compensate copyright holders for the "damage" done by home recording.

All this represents a lamentable abuse of copyright doctrine. Bootlegging aside, home taping of television programs simply allows the receiver of information to control the *time* at which it is used. Extending the usability of information in this way may exert downward pressure on the price of records, television programs, and other

kinds of recordable information—but so what? Home vegetable gardens may exert downward pressure on grocery prices, too. Copyright holders have no more right to a guaranteed annual income than any other segment of the population.

Indeed, once producers stop whining for government protection and start responding to the new realities of the information market, they will probably find that the new technology creates more profit opportunities than it eliminates. This year, ABC plans to introduce its Home View Network, a service in which movies and other pay TV programming is broadcast in scrambled form to subscribers' VCRs in the wee hours of the night. Subscribers receive special decoding equipment that allows them to record the program and view it at their leisure.

Record sales have been declining since 1978; the industry, of course, blames home recording. But this year album sales are showing a 5-10% increase, mainly because the record companies finally cut prices after years of increases. "It seems to be stimulating sales," says Warner Communications' Elliot Goldman. Surprise!

The spread of home recording technology helps to even up the bargaining power of information producers and consumers. The attempt to slap royalty payments or other penalties on the consumer is a thoroughly reactionary, exploitative response to one of the most beneficial aspects of the information revolution.

Property Rights Needed

The legal revolution provoked by technological change in telecommunication is the modern world's greatest experiment in the planned substitution of market forces for government regulation. Although the reforms are definitely moving us toward a less regulated system, decision-makers have yet to squarely confront the problems of defining a durable and just system of property rights, which is essential to providing a permanent alternative to governmental control. ■

The Workings of the Welfare State

Economics of Income Redistribution, by Gordon Tullock. Kluwer-Nijhoff, Boston, 1983. 208 pp. \$28.00.

Gordon Tullock, author of such classics in modern political economy as *The Calculus of Consent* and *The Politics of Bureaucracy*, has produced yet another volume bound to have a major impact on the future direction of economic research and possibly on the future course of the welfare state. Unlike so many other treatments of this topic, this is a dispassionate analysis of the causes and consequences of the redistributive activities of modern governments. What research has been done on redistribution has focused on a very minor portion of government's total redistributive programs—aid to the poor.

Regulation, tariffs, grandfather clauses, etc. lead to a massive transfer of wealth, which may not be listed officially as a transfer, and is not likely to benefit the poor. As Tullock says, the bulk of transfers go to the politically influential and well organized, who are also largely middle and upper income earners.

Tullock breaks down the motives for government income transfers into three categories: the desire for the money by the recipients, charity, and envy. A major theme of the book is that the first motive—the desire to receive the transfer—is predominant. Chapters 2 and 3 examine in detail the first motive as applied to "horizontal transfers"—transfers secured with the aid of the state from one individual or group to another within the same income class. A number of analytic models are developed, based on public choice theory, which explain the process of interest group politics and how it is used to secure wealth transfers.

Unlike many economists who have spent much of their time constructing normative "justifications" for income transfers, Tullock is more concerned with the positive economic analysis of governmental institutions. The essential nature of the government process is

described as

profit-making individuals [seeking] profit out of the use of the coercive power of the state to obtain funds from other people. . . . it seems highly probable that the state did not originate as people voluntarily cooperating, but rather as someone with a comparative advantage in violence conquering his neighbors for the specific purpose of taxing them.

Thus, the welfare state involves, for the most part, massive transfers of wealth *within* middle and upper in-

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come groups, although some transfers do also go to the poor. Tullock discusses specific transfer programs including general welfare, old-age pensions, education, medicine, and regulation. A secondary theme here is that, because so many resources are used to obtain wealth transfers (what economists call "rent seeking") we are generally poorer than we would otherwise be, for those resources are necessarily withdrawn from the process of production.

An important part of Tullock's conclusion is the suggestion that intellectuals use their "control of the communications channels" to inform the voters. Pressure groups basically succeed by convincing a small group of congressmen that something is to their advantage; they convince the rest of the congressmen that the cost will be modest and the public probably will not notice. If, however, the intellectual community (with the help of the press) makes public the cost of such programs and the distributional consequences, it becomes more costly for politicians to continue to play this game.

Tullock has laid out a theoretical framework explaining why the welfare

state is not likely to help the poor and has offered some evidence in support. Since the basic justification for the welfare state is that it helps the poor, more research of this type should go a long way toward debunking that assumption, and will also help to dismantle the welfare state. The end result would be more freedom and more prosperity for all of us—especially the poor.

—Thomas J. DiLorenzo
George Mason University

The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities, by Mancur Olson. Yale University Press, New Haven, Connecticut, 1982. 273 pp. \$14.95.

In one of the most important books on economic growth to date, economist Mancur Olson argues that interest groups are an extremely significant factor in diminishing prosperity and economic stagnation. It is the proliferation of interest group privileges that explains the lackluster performance of the American economy in the 1970s.

Olson argues convincingly that small groups will exert a disproportionately large influence on government policy because of their ability to organize more efficiently. For instance, it is more profitable for Chrysler to lobby for a government bail-out than it is for taxpayers to lobby against such a bail-out. Thus, small elites tend to control the government and to direct economic policy to serve *their* interests at the expense of the economy as a whole. As these interest groups proliferate and increase their ability to control policy, economic growth suffers.

The book includes an ingenious series of examples and illustrations. For instance, Olson produces one of the few convincing (partial) explanations of the postwar economic success of Germany and Japan. Defeat in the Second World War and the succeeding Allied occupation destroyed the power of many German and Japanese interest groups. Once a stable legal order was

restored, rapid economic growth was possible. However, Olson points out that it is only a matter of time before interest groups accumulate in these countries and lower their rate of economic growth.

Olson also discusses the relative economic success of the American South and West vis-à-vis the Northeast, the Industrial Revolution, the Common Market, the growth of capitalism in the 17th century, and the stagnation of ancient China. In each case, interest groups play an important role in Olson's explanation.

The final chapter in this book, on macroeconomics, is one of the most interesting. Olson shows how interest group control over an economy leads to "sticky" wages and prices which cannot adjust properly to changes in market conditions. Instead, these prices are propped up by minimum wages and prices, quotas, entry restrictions, etc. Such inflexibilities are the main cause of persistent unemployment and an important factor behind the stagflation of the 1970s.

The Rise and Decline of Nations has attracted a good deal of well-deserved attention. While the importance of interest groups is well known, only Olson has produced a systematic theoretical and historical study of their influence. The minor flaws in this book, particularly the sketchiness of many of the historical examples, do not detract from its importance.

Help for Families on the Front Lines: The Theory and Practice of Family Allowances, by Joseph Piccione. The Free Congress Research and Education Foundation, Washington, D.C., 1983. 40 pp. \$2.95.

A great deal of concern has focused in recent years on the negative social effects of welfare-state policies. In particular, the fostering of a dependent "underclass" of welfare recipients due to the creation of disincentives to work and to the disintegrative effect of "public assistance" on family structures has received special attention. A number of careful students of welfare policies, notably economist Walter Williams, au-

thor of *The State Against Blacks*, and sociologists Frances Fox Piven and Richard A. Cloward, authors of *Regulating the Poor* and other works, have argued that the creation of welfare dependency is not merely an unintended consequence of welfare-statism, but is central both to the dynamic operation of the modern welfare state and to its understanding.

The welfare state has so far proven impervious to efforts to reform it by bettering the economic condition of its "clients"; this may suggest that the welfare state actually responds to incentives widely divergent from those necessary to provide aid to the poor. If that is true, perhaps mere "tinkering" with the welfare system is insufficient.

This view of the welfare state is not universally held, however. The New Right-oriented Free Congress Foundation, which maintains an ongoing program that "focuses on trends affecting the stability and well-being of American family life," has proposed a "family allowance" program to be added to current welfare-state policies. *Help for Families on the Front Lines* provides an illuminating example of the use of discredited and muddled social doctrines ("the just price"), invalid statistical inference, arguments from authority, historical falsification, and the equivocal use of language to call for government subsidization of child-bearing.

Piccione begins by arguing that the family is the building block of society, proceeds to rhapsodize (in the tradition of nineteenth-century Romantic criticism and aristocratic Toryism) about the idyllic conditions of agricultural workers before the "cruelty" and "suffering" of the Industrial Revolution, and then asserts the equivalence of tax exemptions and outright government subsidies. He thus falls into the politically motivated "tax expenditure" sleight-of-hand whereby any income not taken by the state is considered to be an expenditure *by* the state. "This exemption [for dependents]," writes Piccione, "demonstrates that there is a principle in tax-aid policy of aid to families."

The "cruelty" of the free market

seems to be that wages are not determined by "need" but by self-regulating market processes, where prices reflect the value produced by factors of production (including labor) rather than the factor owner's ability to produce dependents. Piccione resurrects the medieval notion of the "just price," notes that there is often a disparity between the "just wage" and the wage awarded in the marketplace, and argues for state subsidies to make up the difference. Pope Leo XIII's encyclical letter, *Rerum Novarum*, and Pope John Paul II's *Laborum Exercens*, both of which have been thoroughly criticized by Catholic economists and theologians for their economic ignorance, are cited uncritically in support of Piccione's proposal.

Piccione would eliminate the present dependent exemption and institute a non-means-tested monthly subsidy payment to "the parents of all American children under the age of 18, who are living at home or under the family's financial responsibility at school or elsewhere." The proposal would be administered by the Social Security Administration, and Piccione suggests that "registration for the allowance [be] done as a routine matter at birth by the hospital, which sends all necessary papers to the government." All this (and more) "is not state interventionist."

Piccione's discussion of the likely effect of his proposal on taxes is confused and unclear, his use of statistical inference invalid, and his understanding of economics virtually nonexistent. What *Help for Families on the Front Lines* demonstrates is not the "need" for, or superiority of, a new welfare scheme, but the basic anticapitalistic bias of the New Right; the relatively static structure of feudal society serves as its standard of comparison. At the same time that New Right conservatives profess an adherence to "free enterprise," they oppose the social mobility and increased social adaptability to new conditions it brings. And the "solutions" to perceived problems, at least in this study, involve not moves toward economic freedom but merely new entitlements programs. ■

"To be governed . . ."

Lake Scofflaw

The Great Salt Lake, which has no outlet, is rising more dramatically than it has for 90 years. . . .

The state legislature passed a bill prohibiting the lake from rising higher than 4,202 feet above sea level. Without noticeable hesitation or remorse, the lake broke the law on Feb. 1.

—*Washington Post*, April 3, 1983

Maybe the lottery will pay off better now

The general manager of the firm awarded the multimillion-dollar contract to run the District's new lottery game was arrested in 1973 for allegedly running an illegal numbers operation.

—*Washington Times*, April 4, 1983

Paying for your rights

The chairman of the House telecommunications subcommittee set up a conflict with the broadcasting industry and with Senate leaders today by insisting that radio deregulation legislation include a spectrum-fee system for station owners.

Rep. Timothy Wirth (D-Colo.) told a meeting of the National Association of Broadcasters that, with such a fee system, he would aggressively push a radio deregulation plan.

—*Washington Post*, April 13, 1983

Watch out for those people who want to control society

The federal government is using military satellites and high-altitude airplanes to spot marijuana growing on public land, Interior Secretary James G. Watt said today.

"With our technology—high-altitude planes and satellites—we can spot marijuana plants everywhere," he told a breakfast gathering of Republicans. . . .

Liberals, Watt said, want a "centralized, controlled society."

—*Washington Post*, April 20, 1983

How to lose gracefully

Talking in a rambling, exhausted voice, [Chicago Republican mayoral nominee Bernard] Epton said. . . .

"The black friends that I've lost, perhaps it's just as well that I found out at this stage. . . but certainly in the future, I'll save a lot of money in charitable causes."

—*Washington Post*, April 13, 1983

Is this what they mean by democratic socialism?

In Romania, the government wants to restrict typewriters. In an effort to stamp out antigovernment leaflets, President Nicolae Ceausescu has signed a decree banning possession or

use of typewriters by ex-convicts or anybody else who poses "a danger to public order or state security." Beginning this month, Romanians must register their typewriters with police and submit samples of their machines' distinctive type prints. And anyone who wants to buy a new typewriter must get state permission.

—*Newsweek*, April 25, 1983

Honest, I really mean it

Asked about the roots of his commitment to affirmative action, [New Mexico's newly elected Democratic governor Toney] Anaya replied, "Part of it developed spontaneously during the campaign. I was looking for ways to distinguish myself from my opponent. But once I lifted it out of my subconscious I became even more committed."

—*Washington Post*, April 16, 1983

What's \$1.8 billion between friends?

The Farmers Home Administration had made about \$1.8 billion in questionable loans during the 1980 fiscal year, some to agency officials and their close relatives, according to an audit by the Agriculture Department's inspector general.

—*Washington Post*, April 5, 1983

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