

CONTROLLING CLIP JOINTS

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THE VALLEY OF THE SUN is justly famous for its clean air, blue skies, warm days, cool nights, and dedication to libertarian enterprise: an oasis, indeed, in a society increasingly given to governmental paternalism and regulatory overkill. Yet even this earthly paradise is not without its flaws—or, depending on one's point of view, its tendency to become more and more like the rest of American society. As a case in point, consider Arizona's regulatory scheme for entry into, preparation for, and the practice of, barbering. Again depending on one's point of view, this scheme represents either a model for emulation or the ultimate demonstration of where good intentions do in fact lead.

And, certainly, Arizona's effort to guarantee barbering of surpassing quality within its borders is well-intentioned. (Even if the motives were job protection and cutting off competition at the pass—which would seem to be the effects of the regulatory scheme, in fact—the public rationale is beyond reproach.) Occupational licensing, which typically goes in tandem with professional self-regulation, is a direct descendant of the medieval guilds. It became institutionalized in nineteenth-century America with the delegation of regulatory power to professional associations. The usual justifications for licensing are protecting the consumer from the incompetent and the dis-

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honest and insuring that the occupation is practiced under healthy and safe conditions. The licensing of barbers in particular—and Arizona's scheme (initiated in 1928) is fairly representative—is supposed to ensure sanitary conditions in barber shops. Who can possibly be against cleanliness?

Barbers are regulated in Arizona by a three-member State Board of Barber Examiners, whose functions are so broad that they even include acting as “mediator and arbitrator” of any controversy relating to barbering that may arise. Two of its members must be practicing barbers and the third a lay person “not experienced in barbering.” (This would seem to put a premium on spinsters and bald bachelors, to ensure maximum insulation from any form of “experience” with barbers or their craft.) Common as it may be, this involvement of practitioners increases the anticompetitive effect of occupational licensing. It is both logical and likely that such persons will be tempted to protect their own economic self-interest, and their involvement obviously bears heavily on the fundamental fairness of the process to those who wish to become licensed (that is, potential competitors) or who are subject to disciplinary proceedings (that is, potential troublemakers). These anticompetitive problems are aggravated by the requirement that the barber members of the Arizona state board have been licensed or have practiced for five years in the state prior to their appointment, which tends to keep the “establishment” firmly in charge. The power of the old-boy network is further aggrandized by the requirement that the chairman of the board shall also be its chief inspector, thereby producing the rare (and what is ordinarily considered unfair) result of combining prosecutorial and judicial functions in the same person.

The dice *would* appear to be loaded. Moreover, the Arizona licensing scheme leaves no regulatory avenue unexplored. It deals in exquisite detail not only with barbers per se, but also with barber schools and barber shops.

Becoming a Barber

To qualify as a barber in Arizona, it is necessary first to be certified as an apprentice, and that requires, among other things, graduation from a registered barber school. The schooling

involves fully 1,250 hours of instruction, fifty hours *more* than is traditionally required in most law schools, and must include:

(1) Not less than 250 hours devoted to the study of scientific fundamentals of barbering, hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head, face, and neck, elementary chemistry relating to sterilization and antiseptics, and diseases of the skin, hair, and glands.

(2) The remaining hours devoted to the practice and study of massaging and manipulating of muscles of the scalp, face and neck, hair cutting, and shaving.

After graduation, the apprentice-to-be must then pass an exam. If the student fails the exam, further instruction of at least 250 hours in a registered barber school is required—but there are only three tries, after which the apprentice certificate is revoked. All is not lost, however: the student can apply for a second certificate, if 250 *more* hours of instruction are taken within three months.

And that is just step one. The budding barber must next practice as an apprentice for eighteen months under the immediate supervision of a licensed barber—two apprentices to one licensed barber (whose own welfare is also well protected: the rules prescribe a lunch hour and two hours of breaks per day). Then comes yet another examination, which covers the subjects already described in the course of instruction. Failure entails six months more of apprenticeship. When the examination is passed, *and* if the candidate is of good moral character (as attested in writing by two business or professional persons who have known him for a minimum of three years), *and* if he has a tenth-grade education or its equivalent, then and only then will he be certified to practice barbering in the state of Arizona—older, wiser, and (as we will see) substantially out-of-pocket. (A footnote: there is no provision for reciprocity for licensed barbers from other states. Hair in Arizona is apparently *sui generis*. However, credit is given for time spent as an apprentice in another state, and a person licensed in another state seems exempt from the apprenticeship requirement altogether.)

This elaborate licensing scheme creates substantial barriers to entry without apparent justification, or without adequate justification

in terms of any conceivable public benefits. The extended period of training is costly, in time as well as money. And much of the training seems unnecessarily broad, as do the requirements of a tenth-grade education and the character qualifications. Without in any way denigrating the craft of barbering, the word that springs to mind is “excessive”—even absurdly

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excessive. Then, too, the mandatory apprenticeship program creates significant potential barriers to entry by giving existing practitioners absolute control over the number and identity of their future competitors, which is not precisely what free enterprise is all about.

Operating the Schools and Shops

Not surprisingly, there is a parallel scheme for the licensing of barber schools—just as elaborate and apparently unjustified, just as restrictive in practical effect. (And it is important to recall that attendance at a barber school is mandatory for anyone wishing to be a barber.

The number of barber schools is limited as a practical matter by a chain of interlocking requirements. First, a barber school must be operated under the general supervision of a licensed instructor. Moreover, no course shall be taught except by an instructor certified by the board *in that course*. And it is not easy to become a licensed instructor. To receive the necessary certificate, a person must have been a licensed barber for not less than six months, have been employed as a probationary instructor in a licensed barber school for at least four of the seven months preceding the date of application, and have passed an examination consisting of one hundred written questions on subjects commonly taught in barber schools, ten oral questions on the relevant laws and regulations, and a practical exam.

Furthermore, detailed regulations govern the premises, minimum equipment, and financial responsibility of barber schools. The prem-

ises must consist of at least two rooms, with a working area of at least 14x22 feet and adequate arrangements for student cloaks and lockers. An application for a proposed school must provide a complete plan of the physical facilities to be used and indicate their exact location; and the applicant must provide a minimum two-year lease or other documents indicating the owner's right of possession of the premises. The minimum setup must consist of ten chairs spaced at least five feet apart and other specified electrical equipment and supplies. An applicant must also demonstrate that he has sufficient financing to purchase the necessary facilities and equipment and *to operate the school for a minimum of twenty-four months without income*. And a certified barber school must of course offer the mini-med school curriculum described already. One begins to suspect that there is some intent in this scheme to protect one or a very small number of barber schools. In fact, until 1975, when a second school got under way in Phoenix, there was but one barber school in all of Arizona, with branches in Phoenix and Tucson.

In addition to these practical limitations on the number of schools, various provisions effectively limit the number of students in any one school. The initial barrier involves such admission requirements as a tenth-grade education or its equivalent, and no student may be enrolled without specific board approval. Furthermore, a barber school is required to have one instructor for every twelve students and one chair for each student. In addition, a barber school seeking approval must state the maximum number of students it proposes to train at any time. None of this comes cheap. In 1978, the cost of basic education for barbering ranged from \$803 to \$1,327, covering a little over eight months of instruction for eight hours a day, five days a week.

For all its concern over the meticulous education of potential barbers, the Arizona regulatory scheme also ensures—on a more crass level—that barber schools do not compete unduly with licensed barbers. If a school engages in the practice of barbering it must display a sign indicating that the work is done by students exclusively. Indeed, a licensed barber is prohibited from rendering barber services in a barber school—or anywhere else for that matter “for personal reward”—except those

services that are incidental to instruction. Conversely, a teacher is specifically prohibited from serving customers independently. Finally, a barber school that displays a price list that may be seen from outside the school must also display placards in clear and legible type, visible both inside and outside, with letters not less than eight inches high, clearly indicating to the public that the establishment is a school.

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The licensing scheme deals, finally, with barber shops—in loving detail. Required doors and windows are specified, and the addition of any door or window must be approved in writing by the local health department. The regulations require certain minimum equipment and provide for inspection and approval of newly established shops. A shop must display a clearly visible exterior sign. And the board is given the power to specify the kinds of services and merchandise that may be sold in a barber shop. Carrying on barbering in a residence or in the quarters of another business is permitted by the rules—perhaps. The health department may require construction of a floor-to-ceiling wall (no doors or windows allowed) to set the “barber shop” apart.

The regulatory scheme also extends to several forms of site control. It is, for example, unlawful for barbers to render service in an establishment that lacks a license—and the meaning of “establishment” is left unclear. If this term is interpreted so as to prohibit services in a home or in such institutions as hospitals or nursing homes, it would create a monopoly for fixed shops whether convenient to the public or not. A second type of site control provides that a barber shop that moves to a new location and installs new equipment is treated as a new shop requiring an establishment license *de novo*. The regulations also recognize that mobile units may be licensed as barber shops—but only if a schedule is filed with the board (at least thirty days in ad-

vance) of the locations of the unit on each day of the month; also, the water and sewage connection at each location must be approved and a \$5 fee for each location paid in advance, in addition to the initial \$100 fee for a "new shop" inspection. Mobile units might well be a worthwhile innovation to serve persons confined to their homes or distant from fixed-site operations. But these regulations are more likely to inhibit than to encourage their operation.

To What Effect?

The available data tell us nothing about the effect of this licensing scheme on the quality of barbering in Arizona—only that there are fewer barbers than one would expect. In the last six years, available barbering services in Arizona have not kept pace with population growth. Whereas population has increased by 22 percent, the number of barbers has increased by only 7 percent—and the number of shops has actually declined. Today there are 718 licensed barber shops in the state, down from 768 in 1974. This decline is something of a mystery. One possibility is the reorganization of barbering into fewer shops with a greater number of barbers per shop. Another is that more and more Arizonans are getting fewer and fewer haircuts.

For many years there were only two barber schools in Arizona—under the same ownership, the reader will recall; now there are three. And the creation of new instructors has kept to the same slow pace. In the last eight years, only seven new instructors have been licensed, and only fifteen have taken the examination.

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Indeed, there was no increase at all in the total number of licensed instructors between 1973–1974 and 1978–1979. In addition, the overall pass rate—47 percent—for the instructor examination during that period seems rather low, particularly because the examinees were already certified barbers.

As a general rule, it might be expected that service industries would grow at about the

same rate as the population. Yet during the 1974–1979 period, when Arizona barbering has been a low- or no-growth industry, the annual increase in the population of Arizona has ranged from 2.5 to 8.0 percent. There is also a presumption that the various service industries and licensed professionals will show roughly comparable rates of growth—but again, not so for barbers in Arizona. For example, while there are obvious dissimilarities between lawyers and barbers—a matter that this writer has no intention of pressing—some comparisons are intriguing. During this period, when the number of barbers increased 7 percent, the number of licensed attorneys increased 45 percent. Moreover, in 1979, almost three times as many lawyers were licensed as barbers. It is just possible—not proven by any means or even provable—that occupational licensing may have had a more restrictive effect on entry for barbers than has been the case in other occupations. At the very least, no better explanation comes readily to mind.

For all the explicit concern that Arizonans' health and safety be protected from unscrupulous and inept barbers, perhaps restricted entry and tight "establishment" control are the driving forces behind this absurdist, mind-boggling licensing scheme. Another possibility—somewhat more compelling although this writer cannot prove it—is that such schemes, put in motion for the best of motives, tend to develop their own momentum and soon cross the line from reasonable oversight to a kind of self-propelled regulatory overkill. All it takes is one simple, even disarming, initial assumption—namely, that the consuming public must be protected from its own worst judgment.

Well, maybe so. Free markets in goods and services do entail risks. Some unwary consumers do get ripped off. But, on balance, the peculiar genius of free-market decision making is that the unscrupulous and the inept tend to get shaken out—quite without the tender mercies of governmental authority, and with minimum distortion in resource allocation.

In the case of barbering, moreover—meaning no disrespect—the risks to consumers are tolerable. About the worst that can happen is four to six weeks of unsightly hair (or nicked chins or even painful skin rash). After that, even in Arizona, if given a chance, nature does have a way of taking its course. ■