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## General Discussion

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THOMAS HOPKINS: If I have properly caught the gist of the subtle comments made by the presenters this afternoon, there's some room for improvement in the Reagan administration's performance on regulation. [Laughter.] Actually, I wonder how any administration's regulatory program could possibly look good if measured by the ambitious standards implicit in most of those comments. But I'll let that question pass.

We in the administration faced at the outset, and still do face, three different kinds of regulatory problems—the very rapid and substantial flow of new regulations, the large stock of existing regulations, and the need to revise existing statutes. Our view was that we couldn't do everything at once. If we tried to focus equally on all three problems, while at the same time making a major push in the Congress for fiscal and monetary reforms, we might not accomplish any of the objectives that we had in mind. Thus our emphasis so far has been on trying to bring greater control to the flow of new regulations. And here, I think, a credible record is being racked up.

ROBERT CRANDALL: I don't think the record is that good. Granted that the administration couldn't do everything at once—and, in particular, couldn't possibly try to throw legislative proposals all over Capitol Hill in its first year when it had other priorities. But I get the feeling that, as Nino Scalia has said on a couple of occasions, the regulatory reform movement is somehow losing momentum and that it's ending up as a kind of Henry George Society—meeting once a year to dream about what might have been. The impetus is being lost.

And I wonder whether the correct explanation is simply that other

matters have taken over the national agenda, with Haig and Weinberger talking about firing nuclear warning shots over Europe and other exciting things. Or is the explanation that a Republican administration is simply incapable of putting together a political coalition to deregulate—since many of its constituents had a great deal to say about how existing regulation was engineered in the first place. Or am I being too pessimistic? Could it be that we are only seeing a calm before a storm of innovative ideas blows in from OSHA and elsewhere?

JIM TOZZI: When evaluating the administration's record, I think it is necessary to divide the analysis between independent and executive branch agencies. We have heard seven presentations today, four on independent agencies and three on executive branch agencies. Two of the latter three were, if not positive, at least neutral. But all of the presentations on the independents were negative. I think much of the explanation for the difference lies in the differing degree of presidential control.

With respect to the independents, the President certainly has the authority to appoint. He also has budget clearance authority—which in the past wasn't terribly effective but now is somewhat more so, because of the national priority on reducing federal expenditures. But the White House just does not have the day-to-day contact with independent agencies that it has with executive branch agencies. And however well intentioned any administration's appointee to an independent agency may be, when you have a mere handful of appointees supervising an agency of 2,000 or 3,000 people—many of whose actions have to be substantiated by studies

and justified on a record—those few appointees simply cannot move policy and programs as fast as is possible in those agencies where the leadership can draw on all the supportive resources of the executive branch.

You may say that the executive branch agencies haven't moved as fast as they should either. That may be true. But they've done a great deal better.

Professor Scalia raised the question of structural changes. One of the changes being considered in the regulatory reform bill is whether the independents should be subjected to the executive order and to the type of centralized oversight that it establishes for executive branch agencies. If that provision survives—and it may not—it would help a great deal.

GEORGE EADS: With all due respect, Jim, I just can't accept your argument. Lots and lots of people told Reagan administration officials what would happen if they named Reese Taylor to the ICC chairmanship. He isn't a regulatory reformer who has been captured by the existing ICC bureaucracy and then moved backwards. In Taylor, the administration got what it knew it was going to get.

I think more of the problem—and this bears on Bob Crandall's point—is that the administration is at war with itself. There are people in it who believe that better analysis and better attention to costs and benefits will produce better results. But there are a lot of other people who believe that regulation is inherently evil and that it doesn't really matter whom you appoint or how you instruct them. Regulations are going to mess things up so we might as well use regulatory appointments to pay off some political debts.

One major difference between this administration and the Carter administration, in my view, is the amount of attention given at high levels to the quality of regulatory appointments. You may not have liked many of the regulatory decisions that came out under Carter, but of the last three administrations, his was the one that gave the

most thought to whom to appoint and what they would be likely to do to get things moving. That is particularly the case for the independent agencies.

**HENRY GELLER:** Let me agree with George. If you're an administration that has a genuine deregulation program for an agency—which you want for all its beneficial effects on the market, the economy, inflation—you appoint a Fred Kahn and you get deregulation. But if you really don't give a damn how it comes out, then you use the agency as a dumping ground for political appointees and you get industry capture and so forth. In short, I think the administration has to bear responsibility for everything that happens at those independent regulatory agencies.

**MR. TOZZI:** I most certainly am not suggesting that we're not responsible for the appointees. But let's look at how those appointees function. Let's say that an assistant secretary who runs a program in an executive agency starts to act in a way that's not consistent with White House policies. Because of his agency's day-to-day working relationship with OMB, that assistant secretary often sees someone in the executive offices of the President—if not for budget, then for legislative clearance or other reasons. He and his aides are not on an island. They have a direct daily working relationship with executive office personnel, which enables them to understand—and capture the spirit of—administration policy.

With independent agencies, we don't tend to have that kind of transaction process, that day-to-day dialogue. And the pedagogical value of that process is enormous.

**MR. GELLER:** I don't think you appreciate how much a chairman controls independent agencies like the FCC. When he takes office, he sets the whole tone. He picks the chief staffers. And I agree with you that the day-to-day contacts are important—but their day-to-day contacts are with him. Believe me, an agency will implement a given philosophy if its chairman believes in that phi-

losophy—because the chairman is the agency.

**MR. TOZZI:** The chairman most certainly has some impact. But take the FCC. It's a collegial body. Its staff investigates a matter and makes findings before the matter ever gets to the chairman. There's a whole paper trail that's completed before the chairman is involved. So while the chairman is certainly important, his impact is not comparable to that of a cabinet secretary, who has full control of an agency.

**MR. GELLER:** The impact is enormous. The new chairman of the FCC has just appointed a chief of the Common Carrier Bureau, a chief of the Broadcast Bureau, and on down the list. And when he puts them in, he says, "Here's what I want you to do"—and they do it.

**ALFRED KAHN:** Jim, I just can't let you get away with it. Carter's administration put Darius Gaskins, Marcus Alexis, and Tad Trantum on the ICC. That's all it had to do to get regulatory reform in surface transportation.

**ANTONIN SCALIA:** I also want to respond to Jim Tozzi's points. There is an explanation other than isolation from OMB for the relative regulatory lethargy of the independent agencies in the present administration. It has to do with a division within the ranks of the administration's regulatory reformers—though not, in my opinion, the split which George Eads suggests between a "regulation-should-be-efficient" group on the one hand and a "regulation-is-inherently-evil" group on the other.

I see the division this way: One group consists of what you might call "principled deregulators"—the Chris DeMuths and Jim Tozzis who want market-based solutions, cost-benefit analysis, elimination of entry and exit barriers, and so forth. Then there's another regulatory reform group, forming a much older part of the traditional Republican constituency. It consists of the business interests, large and small—people who haven't given any systematic thought to regulation in general,

but know that in the past few years things have gotten out of hand. And the respects in which it has gotten out of hand have nothing to do with the old "economic" regulation—the entry barriers and anticompetitive restraints directed by the ICC, the banking agencies, and so forth. Towards those aspects of regulation this business-oriented group is at least indifferent, and perhaps even well disposed. When they talk about deregulation, they're talking about the health and safety regulation that has burst forth in the past decade—the National Environmental Policy Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, and so forth.

There is, by the way, a similar split within the regulatory reform ranks in the Democratic party. There also the "principled deregulators" are represented (George Eads and Fred Kahn surely qualify). But their colleagues in reform are almost the opposite of the second Republican group—the generally anti-business, no-growth, "consumerist" forces typified by Ralph Nader. These people can see quite clearly the inefficiencies of the old economic regulation (or at least many of them), but are generally well disposed towards health and safety regulation.

I would not go so far as to say that the "principled deregulators" in either party are unable to make any progress on their own, but they can move much more rapidly in the particular areas favored by their respective allies. So one would expect the Democrats to make their best progress at deregulation in certain economic fields, and the Republicans in the areas of health and safety.

All this is relevant to the performance of independent regulatory agencies as compared with that of executive branch agencies in the current administration for a simple reason: It so happens that a disproportionate amount of the old economic regulation is administered by the independents (ICC, FERC, SEC, FCC, FHLBB, et cetera) while almost all of the health-and-safety regulation is administered by executive branch agencies (OSHA, EPA, Interior, NHTSA, et cetera). That,

more than the lack of direct OMB contacts with the independents, accounts for the varying record to date.

**JACK MEYER:** One test of Bob Crandall's hypothesis might come in the trade area where, it seems to me, there is a potentially direct conflict between free market principles and a pro-business posture. And I must say that, despite some encouraging general statements of principle from the Reagan administration, I've also heard some rather ominous sounds concerning major sectors of the economy, particularly autos. It has been rumored, for example, that if voluntary agreements restricting auto imports are not concluded, then maybe something like the Danforth bill, S. 396—which should be totally alien to this administration's principles because it would impose quotas on Japanese autos—might not be unacceptable.

What concerns me here is that what's pro-business is also pro-big

labor, and that's a pretty powerful constituency. I think the proposed trade restrictions will be a good test of whether the administration that purports to be concerned about the worker earning \$10-, \$15-, or \$20,000 will in fact sacrifice his interests to subsidize those workers whose earnings are \$40,000 (when you add wages and benefits together). I think the jury is still out, but that's one area that concerns me.

**MR. KAHN:** I have the same concern—the protectionism of this administration in the field of economic regulation. It illustrates the two souls of the Republican party, in contrast with the millions that the Democrats have. [Laughter.]

The best example that occurs to me is the threat that Tom Moore mentioned to the show-cause order on IATA—that is, the CAB's proposal to withdraw antitrust exemption for U.S. airlines to negotiate fares across the North Atlantic with their foreign counterparts in IATA.

I think what's going on is very simple. I can see it so clearly. The Reagan administration is terrified that some U.S. passenger airline might go bankrupt!

When I was offered the chairmanship of the CAB back in 1977, I specifically asked, "What will happen if I introduce more competition and Eastern Airlines goes bankrupt?" And I was absolutely assured, in various ways, that if that were necessary, it would be all right. That was a price President Carter was willing to pay.

What threatens to resurrect IATA right now—and I see it so clearly—is the White House staffers' problem of how to respond to the carriers who come in and say, "You've got to do something. You've got to let us get together and raise rates, because we're losing money." Now I would have advised those staffers to say to the carriers, "You've lost \$200 million, and International Harvester has lost \$635 million. Are we supposed to cartelize

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*"It's not for us. It's for our corporation."*

farm implements too?" But the fact is, no matter how many times you give that advice, they come right back and ask the same question: "Yes, but what are we going to tell them?"

MR. CRANDALL: I wouldn't be quite as pessimistic about the administration's trade policy as Jack Meyer. The problem is that the law, which really ought to be changed, allows private cartels—private interests—to fire the first warning shot over Europe and Japan by threatening to file antidumping or subsidization cases which paralyze trade. There's very little the Reagan administration can do once this shot is fired. It cannot say no to those pleas for protection, because suits will then be filed which will disrupt our foreign economic policy with our major trading partners. As a result, some accommodation has to be reached, and this time, instead of reaching it by changing tax policy or making environmental concessions to the steel industry, the administration is going to have to make a concession on trade policy—by widening even further the gap between the price of U.S. steel on the one hand and European and Japanese steel on the other. I'm afraid we might get into the same situation with automobiles.

I'd also like to ask whether anyone has followed the log-rolling that accompanied the initial successes of the Reagan administration on tax cuts, budget cuts, and AWACS. It occurs to me, for example, that Senator Russell Long (Democrat, Louisiana) was the last to declare himself on AWACS. As a result, I'm watching the price of sugar carefully. Indeed, I'm wondering whether regulatory policy might be one of the areas in which the administration has given it all away in order to get what it wants. Perhaps we're all sitting here this afternoon debating something that—if the White House is to stick to its word—it simply can't buy back again.

AARON WILDAVSKY: Of course, what we are reminding ourselves of is that conservatives are traditionally organized in hierarchies, and they believe in the concentration of priv-

ilege, if not in a faction of cousins, as the British used to do it, then at least in the major segments of labor and industry. That is nothing new.

But I believe the consequence of this is really of enormous importance to the Reagan administration, whereas it would not be to a Democratic administration. The reason is that if the Reagan administration shows that it does not believe in capitalism, which is what the speakers here have been suggesting in innumerable different ways all afternoon, then how will it justify its other programs? What conceivable rationale will there be for cutting out a whole variety of programs in urban areas? Can the White House say that the president of U.S. Steel should be subsidized to a salary of several hundred thousand dollars a year because he is more deserving than the poor? What claim do the people who are being subsidized through regulation conceivably have for public sympathy compared to those whose welfare benefits are being cut?

The rationale can only be that if one follows a capitalist mode of organization, everybody will be better off, even in the medium run. But if this administration shows favoritism toward industry in this way—on the theory that, "Well, we've made a special arrangement for the Teamsters and that's all right because you don't have to have the same arrangements for everybody"—it will cut the heart out of the rationale for its overall program.

How will the White House take on the entitlements? On what grounds will it defend the cuts that have to be made? The elderly, for example, have to be told—as gently as possible—that they can't continue to receive the same rate of social security increase that they have had in recent years. In order to do that, we have to go to them, if not with impeccably clean hands, at least with the willingness to say that if the head of U.S. Steel persists in holding out the tin cup, he won't get any more than anybody else on welfare. Otherwise, the Republican party will find itself in a lot deeper trouble than a few unfortunate appointments suggest. ■

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