Letters

We welcome letters from readers, particularly commentaries that reflect upon or take issue with material we have published. The writer's name, affiliation, address, and telephone number should be included. Because of space limitations, letters are subject to abridgment.

Politics and Economic Inefficiency

TO THE EDITOR:

George Stigler ("Economists and Public Policy," *Regulation*, May/June) argues that economists have little influence on public policy. His evidence is that governments still pursue policies, such as tariffs, minimum wages, and rent control, that economists have known for centuries reduce overall welfare. Whether or not economists approve, he says, the advocates of such policies have enough political power to obtain the laws they want.

The evidence Stigler offers for this view, however, is weaker than he himself generally demands before asserting that a proposition has been tested. Only a limited number of cities control rents. Minimum wages are generally set at about half of the average wage in manufacturing, not as high as they might be. Tariffs likewise are usually not prohibitive. It is possible that all of these inefficient policies would be worse if economists had remained silent, just as it is possible that their advice has had no effect. This is an empirical proposition which must be tested with quantitative evidence, not qualitative assertions.

In response to Stigler's claims, I, James Kau, and other researchers have developed some empirical evidence on the factors that influence how members of Congress vote on economic issues. (See, for example, *Journal of Political Economy*, April 1978, and *Quarterly Journal of Economics*, May 1982.) We assigned variables to the nature of proposed bills, the economic interests of a member's constituents and campaign contributors, and the ideological leanings of both constituents (as measured by voting in presidential elections) and members themselves (as measured by their ADA ratings, a variable suggested to us by Stigler). In all cases we found that, while the economic interests of constituents and contributors are significant in explaining voting, ideology is also significant, and in fact more often significant than the other variables. It is important to note that when we statistically controlled for the economic interests of constituents and contributors, we still found ideological variables significant.

Although we have not tested for the influence of economists per se, their views on such matters as tariffs and minimum wages surely help shape, at least in part, the ideological beliefs of voters. Thus the issue of their influence on policy is at least an open question worthy of more examination.

Paul H. Rubin,
Baruch College,
City University of New York

TO THE EDITOR:

As George Stigler reminds us, economists often provide policy advice notable for its political unacceptability. They do not realize, Stigler asserts, that the political process promotes redistribution to favored groups ("rent-seeking") even when the result is to reduce real output. . . .

But he leaves a number of issues unresolved. First, how extensive can the inefficient policies get and how long can they continue before countertendencies arise? Will the dairy program go on forever, for example, and if not, will its fate provide an object lesson that will help end other inefficient subsidies?

Second, Stigler does not tell us how political structures influence the choice of policies. Will dictatorships be more or less prone to inefficient redistribution than democratic majorities? Would alternative constitutional rules that reduce or eliminate the gains from rent-seeking lead to different outcomes, and how durable might such rules prove to be?

Third, even given that the dissemination of economic knowledge will not of itself keep households from pressing for redistribution, how will that knowledge in fact be distributed? How important is the cost to households of acquiring new knowledge?

Stigler warns us not to give gratuitous free trade advice to our protectionist brethren; he does not tell us what advice to give to the multitudes who suffer net damage from the entire set of rent-seeking policies. We might propose new rent-seeking coalitions; or new coalitions to block the existing coalitions; or we might propose new constitutional rules to curb inefficient measures. That these puzzles remain suggests to me that Stigler's magisterial comprehension of economics is not matched by the completeness of his treatment of collective choice. We are thus entitled to be skeptical about the generality of his findings so far.

Bertram F. Levin,
University of Delaware

Judicial vs. Technical Expertise

TO THE EDITOR:

I was intrigued by Martin Shapiro's observations ("On Predicting the Future of Administrative Law," *Regulation*, May/June 1982), particularly his prediction that courts may find themselves in a box when they are asked to review decisions made by technocratic experts in the agencies. I think judges are more clever than that. . . .

It is one thing to empower agency experts to determine what our options may be on an issue, but quite another to empower them to resolve fundamental normative choices. Thus, for example, an agency expert may be the one to determine the costs of various degrees of hazard reduction, but not the one to choose how much society *should* pay per unit of risk reduction.

Although I do not want the "experts" to make the latter decisions, I would not be satisfied to have courts make them either. They should be made openly, by officeholders who are politically vulnerable to attack should their decisions be too far removed from the consensus. Moreover, this would

take much of the pressure off expert rulemakers who must now try to reach such a normative consensus but know full well that major viewpoints are unrepresented or underfunded. My own guess is that bureaucrats may well be led into regulatory excesses as a way of overcompensating for the lack of "public" participation....

Thomas G. Field, Jr.,
Franklin Pierce Law Center

Competition between the States

TO THE EDITOR:

It is interesting to see what happens when the logic of Steven Kelman's analysis of federal-state regulatory competition ("The Ethics of Regulatory Competition," May/June 1982) is extended to the international level, as suggested by Walter Olson ("A Response"). Since the ethical and economic logic of Kelman's argument applies alike to both situations—however much the political realities differ—Kelman would presumably favor setting environmental standards through a single international body, rather than through the competition of nations.

One doubts, however, whether he would be satisfied with the decisions of that august body. Rather, he would likely find that the majority view on the environment, as expressed in the votes of the delegates from Shanghai, Karachi, São Paulo, Kuala Lumpur, and so on, was entirely too lenient for his taste. One suspects that Kelman would be among the first to insist on the right of individual nations like the United States to impose stricter standards.

It would seem that a hidden premise of Kelman's position must be that the standards enacted by federal authority be minimal only, and that local authorities be allowed to enact stronger ones. His article does not raise this issue in the national context, since it assumes that state standards will inevitably be more lenient. In fact, this is not always the case, as illustrated by the struggles of some states to impose stricter controls over offshore drilling and nuclear waste. One wonders: given his preference for federal standards, might Kelman not permit individual counties within those states to ignore the higher state standard and adopt the lower federal standard? And if so, under a world government might he not allow the states to reject U.S. federal controls in favor of a lower international standard?

Comparison with other nations suggests that present U.S. environmental standards, far from being a moral imperative, are largely a luxury good, bought at the price of other products of economic affluence. To be sure, there is certainly an absolute floor below which environmental degradation becomes intolerable. However, it is a delusion to imagine that there is something inherently sacred about the standards presently encoded into federal law. Is it really an ethical issue that automotive emissions of carbon monoxide should be set at 3.4 grams per mile, and not, say, 3.5 or 3.3? And is there really *no price* that the people of a state should be willing to allow business to pay in return for permitting the higher figure?

It should be noted that world economic competition makes this a real issue even in the absence of world government. Indeed, competition largely negates Kelman's conclusion that by agreeing not to compete, "states can attain a greater sum total of jobs and environmental protection." While it is true that steelworkers in Youngstown will not have to compete with steelworkers in Birmingham, the fact remains that both will still face international competition. One response might be a protective import policy—effectively paying the cost of environmental protection through reduced national income. In short, there is no avoiding the costs of Kelman's regulatory centralism.

Dale H. Gieringer,
Stanford University

STEVEN KELMAN responds:

I argued that states and their citizens can make themselves better off by agreeing not to compete with each other to attract business. Although some might condemn such agreements as "anticompetitive," I said, we should not necessarily regard them the way we regard normal producers' cartels, because their essential effect might be to keep business firms from attaining goals that are unethical.

As Gieringer correctly notes, my argument applies to agreements by states to achieve a certain *minimum* level of regulatory protection (or tax-supported social services) and is silent on the issue of whether states should adopt standards stricter than that minimum level. The problems competition among the states creates for individual states and their citizens all arise from the *downward* pressure it puts on the level of regulatory protection. Except for the potential trade barriers posed by variations among state standards (which may not, of course, be a trivial exception), it does one state no harm if another adopts a stricter standard: if the citizens of the first state wish a stricter standard, they can adopt it. The same argument would apply to stricter national regulation in a hypothetical international regulatory regime.

International regulatory issues are complex ones, and there are a number of differences between federal preemption to forestall competition among the states and international preemption to forestall competition among nations. For one thing, a value attaches to national sovereignty, especially in a world with so few democratic nations, that does not attach in nearly the same way to the sovereignty of individual states in this country.

As an empirical matter, I also suspect that when businesses make investment choices between industrialized countries (whose environmental regulations are very similar to each other) and third world countries, issues of political stability, wage rates, work force quality, and transport costs generally overwhelm differences in regulation as a determinant. That is not so much the case with respect to location decisions within the United States, especially between neighboring states. Finally, I certainly agree with Gieringer that the poverty afflicting so many people in underdeveloped countries complicates the ethical choices involved in, say, environmental protection, compared with here.

Finally, I wish to say just a word about Walter Olson's reply to my article. I found Olson's description of the exploitation to which I was willing to subject entrepreneurs ("What if . . . an inventor had spent long and weary decades perfecting a device that would bring untold benefit to the world, and all the potential buyers conspired to pay him only so much as would barely compensate him for not having pursued the next most advantageous possible career—say, as a day-laborer?") to be overdrawn to the point of unrecognizability. But what was more upsetting, perhaps, was that Olson, after demonstrating a deep and ethical concern about people not getting fruits of their labor

to which they enjoy a right, went on to attempt to score cheap debater's points by suggesting that I, "like certain medieval monks, [believe] there is no action so trivial as not to be super-charged with ethical content." Such remarks are unworthy of the libertarian philosophical tradition that Olson upholds, a tradition that sees rights in far more absolutist terms than I do.

Congress and the FTC

TO THE EDITOR:

While Barry Weingast and Mark Moran are to be complimented on their effort to explain regulatory conduct in terms of congressional politics ("The Myth of Runaway Bureaucracy," *Regulation*, May/June 1982), it is not clear that the leadership of the Federal Trade Commission should escape responsibility for both its successes and its failures.

True, it was liberals in Congress who helped pass laws expanding the commission's authority and shifting the legal balance more toward consumer interests. But it is also true that the FTC's Republican leadership lobbied strongly for these. Don't forget, either, that it was under Nixon appointees that the FTC had its most activist staff in recent memory. Commission staffers needed no prodding from congressional liberals to get on their white horses and charge against corporate evil. Indeed, it was one of those liberals, Michael Pertschuk, who later accused staff activists of having conducted a vendetta against American businessmen.

As Weingast and Moran observe, the 1976 election brought about shifts in committee assignments to legislators less ideologically committed to consumer interests. . . . But the ideological measures they use, such as ADA ratings, are imprecise predictors when it comes to specific issues such as overseeing the FTC. For instance, Senator Wendell Ford (Democrat, Kentucky), chairman of the Subcommittee on Consumer Affairs, may have had a low ADA rating, but he had a good record on matters of consumer protection and had been a firm supporter of the FTC in years past.

The authors cite the eventual reduction in the commission's caseload as evidence that it gave in to congressional pressure. The drop in Robinson-Patman cases, however, was more a result of Paul Rand Dixon's leaving the chairmanship, while the drop in Bureau of Consumer Protection cases reflected the commission's turn toward rulemaking instead of a case-by-case approach. Indeed, if anything, Congress was pressuring the FTC to *increase* its caseload, by reverting to its previous approach.

I am afraid that if the impact of congressional politics on regulatory policies is to be documented—as I believe it can be—it will take more than simplistic and imprecise statistical correlations that disregard the complex nature of agency-congressional dynamics.

Paul L. Chassy,
Columbus School of Law,
Catholic University

TO THE EDITOR:

Barry Weingast and Mark Moran presume that there are essentially two distinct and mutually exclusive approaches to agency decision making, the "bureaucratic" and the "congressional dominance" theories. The bureaucratic theory, they say, holds that agencies are insulated from and act independently of the legislature. When Congress curbed the authority of the FTC between 1979 and 1981, on this view, it was finally catching up with a "runaway bureaucracy." The other theory —congressional dominance—maintains that agencies operate in alliance with Congress or its committees. On this view Congress controlled the FTC all along, and the curbs were simply a reversal of previous congressional policy rather than the reining in of an out-of-control agency. Weingast and Moran also assert that certain policy recommendations necessarily flow from these views of agency behavior—for example, that adherents of the bureaucratic model would support the legislative veto as a way to rein in the bureaucracy.

I take issue with all three points. First, the authors' description of the bureaucratic approach oversimplifies the literature, largely in political science, to which it refers. Second, followers of the bureaucratic approach do not necessarily support such proposals as the legislative veto. Third, the congressional dominance approach that Weingast and Moran support is, in my view, an incomplete perspective on agency decision making.

On the first point, bureaucratic theorists do not claim that Congress fails to oversee the bureaucracy. (Elsewhere Weingast and Moran have treated my own book, *Regulatory Bureaucracy*, as representative of the "bureaucratic" theory.) To be sure, Congress did not rigorously use the various oversight devices at its disposal during most of the 1970s. The reason, in my view, is that it did not think it necessary to do so: congressional committees believed that the FTC was performing well. Congress did try to affect some FTC decisions in the early and mid-seventies: the *Exxon* case (the most expensive FTC antitrust action in history) and the food investigation, among others, both were in part prompted by vigorous congressional prodding. For the most part, the FTC used its discretion within the bounds of what it saw as the congressional will. What the bureaucratic view does hold is that agency outcomes are very much influenced by internal organizational factors—which is not to deny due weight to external variables such as the will of Congress.

Second, it is erroneous (as well as arbitrary) to assume, as do Weingast and Moran, that those who try to understand the effect of internal agency dynamics on outcomes necessarily support such recommendations for regulatory reform as the legislative veto (which I, for one, have opposed). Even if a whole school of doctors agrees on a diagnosis, some may be wary of cures that are worse than the disease.

Third, I do not think Weingast and Moran's congressional dominance theory offers an adequate explanation of agency decision making. To suppose that the commission's caseload is simply determined by congressional preferences is to ignore a whole list of organizational factors that affect any agency's decisions: how power is distributed among decision makers, what their professional norms and personal objectives are, and what information is gathered and how. It is also to ignore a whole list of factors specific to the FTC, such as the interactions between lawyers and economists, the value of precedents, and the role of the commissioners.

Weingast and Moran do not even provide much of a test for the argument that Congress has dominated FTC decisions, since they disregard the House of Representatives and look only at the Senate—and mostly at a single subcommittee (the Senate Commerce Committee's Subcommittee on Consumer Affairs).

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The turnover of membership on this subcommittee coincided with other important trends: the growing sophistication of business lobbyists, disaffection with the FTC across the political spectrum, and changing public attitudes about the efficacy of government intervention in the market. These developments all defy labeling, and their dynamics are not captured by studying, almost exclusively, changes in the composition of a Senate subcommittee.

Robert A. Katzmann,
The Brookings Institution

BARRY WEINGAST and MARK MORAN respond:

Chassy and Katzmann challenge our "congressional dominance" view of agency policy making: if Congress is the linchpin of the policy-making process, they ask, then just what are the two or three million bureaucrats in Washington doing? Certainly the 535 members of Congress, even with the aid of their large and growing staffs, cannot possibly direct all the major decisions made by bureaucrats.

Our answer is that aggressive, entrepreneurial bureaucrats are essential to the smooth operation of the congressional dominance system. To view their creative role as the exercise of sheer bureaucratic discretion, however, is to misunderstand the process. We must ask: among all possible bureaucratic initiatives, which ones ever see the light of day? Which survive, and which are stymied by congressional intervention? According to the congressional dominance theory, the policies that succeed will be those that satisfy congressional constituents.

In Congress's view, the best agency is one that provides benefits to constituents while requiring *a minimum of congressional attention.* As we mentioned in our article, congressmen "know" a program is working well, not by studying or investigating it in depth, but by listening to their constituents. Bureaucrats who understand this system thus have a nearly perfect guide for evaluating policies. As long as bureaucrats avoid policies that bring down the wrath of Congress, they can implement new programs with little direct congressional participation.

The issue is not who performs the task of policy development and implementation, but rather what dictates the form and content of those policies. The bureaucratic discretion view is of little help here. It cannot predict which agencies will be given free rein and which will be most severely hindered in their attempts to implement policy. The congressional view, on the other hand, predicts that the ones given free rein are those most likely to provide benefits to constituents of relevant subcommittees, and that the ones that are hindered are those pursuing policies at variance with congressional goals.

Let us turn to some of the specifics that Chassy and Katzmann raise. Chassy notes that "it is not clear that the leadership of the FTC should escape responsibility for its successes and its failures." We strongly agree that the commissioners and their staff played a creative, entrepreneurial role in the area of consumer protection. Again, this is exactly what the congressional subcommittees wanted them to do, which is why Congress not only allowed but actively promoted these initiatives throughout the early 1970s. Katzmann, too, agrees that little "oversight" took place in the 1970s because "Congress did not think it was necessary. . . . the FTC was performing well." While we can agree here, note how sharply this interpretation contrasts with the conventional view in Congress and the press after 1979 that the FTC was an uncontrollable bureaucracy regulating all kinds of business activity that should not be the concern of government.

Next, consider the critical issue of Congress's influence over the FTC's caseload. We do not argue, as Katzmann asserts, that the FTC's "caseload is simply determined by congressional preferences." Indeed, we agree with Katzmann that most of the organizational factors he identifies—lawyers' desire for trial experience, economists' faith in economic efficiency—affect the commission's decisions. But to focus solely on such issues leads to inappropriate conclusions. Thus, in his book, Katzmann concludes that case selection is dictated by the professional norms of agency staff and influenced by clashes between economists and lawyers. Congressional influence supposedly plays no role. How, then, can he explain the changing mix of cases over time? The statistical analysis in our larger study reveals that the year-to-year variation in FTC caseload is remarkably sensitive to even small changes in the composition of congressional subcommittees. This sensitivity is subtle and not readily observable—indeed, Katzmann missed it entirely—but it exists.

Internal organizational factors may operate as constraints on agency choice, and thus influence the outcome, without being the guiding factors. Consider the parallel case of a profit-making firm. When designing a new factory, it must take into account that certain workers are unionized, that some skills are more expensive than others, and that some inputs may not be reliably available. Although these important factors cannot be ignored, the guiding principle in plant design must nonetheless be profits. We cannot hope to predict what sort of factory will be built if we forget why it is being built. Returning to the FTC, the fact remains that the best interpretation of the commission's behavior during the 1970s is that it aggressively pursued consumerist initiatives when the congressional subcommittees favored those policies, and stopped dead in the water (in the face of congressional sanctions) when opponents of those initiatives came to dominate the subcommittees.

This last point applies more generally, beyond the specific case of the FTC. As an approach to understanding public policy decisions, an exclusive focus on the inner workings of bureaucracy yields no readily identifiable predictions about policy making. It is both misleading and unhelpful because it provides no answer to the question, what policies are pursued? Understanding that bureaucracies provide benefits to congressional constituents leads to a variety of predictions, as it did in this case.

This view also makes it possible to explain matters that might otherwise be puzzling, such as the parallel structure of Congress and the bureaucracy. In Congress, agriculture committees are dominated by members from farm states and oversee agencies that serve farmers. Urban and interior committees are dominated by members from cities and Western states, respectively, and oversee agencies that provide benefits to constituents from those places. The only way to understand this pattern of policy benefits is to acknowledge that congressional committees successfully influence these agencies. The pattern simply cannot be explained by a felicitous coincidence between the views of the committees and the professional norms of those individuals who happen to be employed in the various bureaus. ■