
—just as medieval priests, and more recently the ICC, sat in judgment on the “just price.”

Now, the reformer-economist who believes in at least a modicum of intellectual progress thinks that some questions were answered long ago. Such as: why does water, whose intrinsic worth is very great, fetch less in the market than diamonds, whose intrinsic worth is very

small? It is a little dispiriting to see this puzzle raised as a pressing political issue centuries after economists answered it correctly. It could put greater pressure on the deregulators—both the stick-to-principle libertarians and the case-by-case economists—than anything we have seen to date, and make our occasional successful strategies seem very frail indeed. ■

The Reagan Record

Where's the Reform?

Walter Olson

I THINK IT WOULD BE fair to say that the Reagan administration has a fine record on regulatory reform. The only problems it has are in areas like agriculture, international trade, trucking, education, the environment, health and safety, civil rights, and so on.

And that's the whole problem: almost every regulatory issue leads a double life—because it is also some other kind of issue. Almost no regulation got on the books because some official took sheer joy in regulating; it is there because it served the purpose of some group or other, some group that is probably still around to defend it.

That is why we should remember that although the White House appointed the OMB officials who went to bat against agricultural marketing orders, it also appointed the Department of Agriculture officials who fought the OMB officials, and it was the Agriculture officials who wound up winning. This is certainly progress of a sort, since many administrations

would never have let OMB get involved in the first place. But it does suggest that an administration should be judged not only by how many reformers it hires but by how far it lets them reform things.

I DO NOT WANT to take away from the Reagan administration its genuine accomplishments, such as stopping the Carter administration's midnight regulations and speeding up the deregulation of the oil industry. (One might wish, of course, that the high-water mark of deregulation had not come in the first six weeks after the inaugural.) But a commitment to regulatory reform ought to go beyond slowing down the flow of new regulation and simplifying compliance with existing regulations, if for no other reason than that it is not very inspiring to march into battle under the banner of reducing the rate of growth of something. Nor would I leap to the barricades to fight for a four-in-eight-factor test on job quotas.

DeMuth suggests that we can expect more modest reform efforts in areas where the re-

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form prescription is less clear-cut and less widely held, so that environmental regulation, for example, will not be reformed as quickly as price-and-entry regulation. This sounds plausible to me, but I note for the record that a popular charge against the Reagan administration is that it has tried to do the reverse: ease up on price-and-entry deregulation at the ICC while "gutting" environmental regulation. The current Environmental Protection Agency may not be "gutting" the Clean Air and Clean Water Acts, but it is also not pressing to reform them. It is true that, as DeMuth says, reformers do not know all the answers on environmental issues. They do know some of the answers, though. Why are they being ignored?

In some of the areas where the administration is making progress, such as the deregulation of financial institutions, it has not yet faced the real test of its will. That test will come if Congress gets its act together and passes a law to protect the small bankers and others who benefit from the current system. At that point President Reagan will face the decision of whether or not to use his veto. The record suggests that the White House will go to considerable lengths to avoid casting vetoes on this or almost any other matter. There was a recent test on the retrograde telecommunications legislation that DeMuth cites. Congress withdrew that bill only after the Federal Communications Commission voluntarily agreed to postpone its movement towards market pricing of telephone services. More victories like that and we will be undone.

The White House may well pride itself on the quality of some of its regulatory appointees, like Mark Fowler at the FCC, Ray Peck, late of the National Highway Traffic Safety Administration, Jim Miller at the Federal Trade Commission, and Chris DeMuth. But if it wants to take credit for them, it must also take responsibility for the appointees who have been disappointing, to say the least, including those at the Interstate Commerce Commission who make the Teamsters so happy.

Of course, the White House may wish to argue that, after all, its less inspired choices mostly preside over independent agencies and are legally free to do as they will; besides, who knew at the time that they would turn out to be disappointing? In that case, I will take the liberty of dissociating the administration slight-

ly from the virtuous actions of the Fowlers and the Millers, especially since the last time Mark Fowler tried to do something good and brave—that is, give the networks the right to own their syndication royalties—the White House called him in and told him to stop.

The administration can cite a number of reasons why it has not made as much progress as its supporters had hoped. The most plausible of these reasons is that it is saddled with an unsympathetic Congress and judiciary. When it introduces protectionist measures, on this theory, it is trying to stave off even worse protectionist measures on Capitol Hill; when it leaves bad regulations in place, it simply recognizes that any attempt at repeal would be struck down by the U.S. Court of Appeals for the D.C. Circuit. The argument covers quite a broad territory. Still, there are many issues that it seems not to cover at all. For example, DeMuth points to the case of quotas and race-conscious hiring requirements for federal contractors, which the Reagan administration was unable to make any headway in deregulating. Not many people are aware that this program, as the creature of an executive order, exists essentially at the discretion of the President, aside from one small corner that deals with the employment of handicapped veterans by federal contractors. In other words, President Reagan could have abolished with one stroke of his pen the government's most important quota program. If the executive branch finds it so difficult to reform the areas for which it has sole responsibility, it will naturally run into even more trouble when Congress or the judiciary has anything to say about the matter.

Likewise the administration can argue that it is constrained by public opinion. But there are quite a few issues where it would be fair to say that the public is broadly in tune with what the Reagan administration would like to do. Bilingual education, for example, is surely an issue in which 80 or 90 percent of the public would favor deregulation. Yet even there business has gone on as usual. In the early days of the administration, the Department of Education announced with much fanfare that it was not going to require local school districts to teach their third graders arithmetic in, say, Laotian. As a number of published accounts have pointed out, however, the bureaucrats who run the program at the operational level



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continued and continue to this day to fasten new agreements on local school districts requiring just such measures.

THE ADMINISTRATION might point out, of course, that the bureaucracy has a great deal of inertia: it is terribly difficult to undo things once they have made it into the *Federal Register*, while it is much easier to stop the flow of new proposals. Those who make this argument, however, would seem to have a special responsibility to prevent bad regulations from getting onto the books in the first place. Otherwise, future administrations will wind up citing the very same rationale when they inherit an even bigger flock of turkeys.

Exhibit A, in this respect, is the latest scare campaign that drove a chemical off the market—the pesticide ethylene dibromide. As Bill Havender has said in these pages, when EPA issued its new regulations, it had good reason to know that the two pesticides that will replace EDB are at least as hazardous and quite possibly more so than EDB itself. (“EDB and the Marigold Option,” January/February 1984.) It is very hard to tell the Reagan administration’s response to the EDB scare from the Ford and Carter administrations’ response to the scares over cyclamates, saccharin, DDT, and so forth.

For Exhibit B, we can again turn to the civil rights issue or, more accurately, to the way the idea of civil rights has been inverted to justify coercive and race-conscious policies. DeMuth says the Reagan administration is now pursuing a “resolute, stick-to-principle strategy” against this abuse. If so, it is coming rather late in the day. In the past three years the administration has backed legislation making it possible to impose affirmative action on an entire university even if only one department gets federal funds (reversing the *Grove City College* decision); to fasten affirmative action on any remaining holdouts through the process of tax exemption; to bring the principle behind quotas—that discriminatory effects are illicit even if there is no discriminatory intent—into voting rights law, with incalculable political consequences; and to start a program to entrap and coerce local realtors in pursuit of balanced racial housing patterns.

Naturally there was great political pressure to ban EDB and to support measures with the civil rights label, whatever their content. But for leaders to plead political pressure merely shifts the terms of the argument to two other grounds. The first is whether they are willing to take the political heat for their stand on some regulatory reform. We can all agree, actually, that some prudent line has to be
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drawn: one need not take infinite political heat for a trivial reform. What disappoints many reformers is where the White House has drawn the line.

The second question, and perhaps the more interesting one, is whether the leaders are willing to *generate* the heat. And this brings us to a more substantive objection: that the administration has not brought its case to the public properly even when it has been bold about trying to deregulate. If an agency is not willing to take the lead in explaining the rationale for its proposals, it can at least get the word out to those who are most sympathetic, so that they can help make the case for it. Yet some agencies seem to think that if they only keep mum they can get regulatory reform without running into hostile comment—imagining, perhaps, that they can free us all without our noticing, or impose a cost-benefit regimen in secret. The attempt to avoid publicity usually fails dismally: the interests harmed by deregulation are typically quite aware of what is going on and quite good at generating publicity. Indeed, they can often get their way without it.

This is really the only pervasive criticism that I could level at OMB's regulatory review operation. When OMB has gotten into disputes with the agencies, the agencies have sometimes gone to sympathetic people in the press and leaked their side of the story, making OMB look, on the surface, pretty bad. In the instances I know about, however, OMB has refused to respond tit for tat; it has refused to take its side of the story to the press. Now, this is good for the administration in that it makes OMB a better team player, and prevents the emergence of an open schism within official ranks. What it is bad for is the substantive cause that OMB was fighting for in the first place. That is one reason why, although it is too early to reach any final judgment, the regulatory review process does not seem to have lived up to all the hopes we had for it when Reagan first issued Executive Order 12291.

The first head of OMB's review operation, Jim Miller, said that his office would win its battles for regulatory reform because "if you're the toughest kid on the block, most kids won't pick a fight with you." The danger now is that OMB will turn into the *niciest* kid on the block: the kid that has the best character in the world, is a credit to his parents—and gets beaten up by every other kid on the block. ■

Pension Reversions

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may not recover any surplus from a terminated plan until it has fully provided for all benefits, including those not insured by the PBGC.

Current law, then, does not rest on the principle that stock market gains belong to employees. Even the reformers do not carry that principle to its logical conclusion. If Congress passed a law against reversions, employers would still continue to profit from investment gains, since they could simply reduce their contributions to the plan. One might then ask: why not abolish this unfairness, too? When stock market rallies create a surplus, why not raise employee benefits automatically to restore the balance?

If the workers are to get all the pleasures of investment gains, however, symmetry suggests that they should also have to take the pains of investment losses. (The alternative is

for market gains to ratchet pensions upward, and market losses to ratchet contributions upward, until random fluctuations carry both upward to infinity.) It is not entirely clear why abolishing defined-benefit pension plans and shifting all the risks of investment performance onto employees would leave employees better off. To date, of course, the reformers have not pressed their argument this far.

Anti-reversion legislation also has other economic consequences that have been neglected in the debate so far. If money used in overfunding may never be reclaimed, the effect in the long run might well be to make employers more careful not to overfund their plans, and more eager to press for amendments to ERISA to let them make direct use of their pension plans' assets. If so, pension promises might become less secure than they are now—surely an unintended outcome of a crusade to defend workers against "raids" and "robbery."
