THE REGULATORY REVOLUTION AND THE NEW BUREAUCRATIC STATE

by John Adams Wettergreen

Over five years ago, I began to study what I call "The Regulatory Revolution." Today, I intend to explain this drastic change of the ends and means of American government that took place between 1970 and 1974. In my second lecture, I shall explain the reason for the Reagan Administration's failure to reform the regulatory system, and I shall also indicate what could still be done by some enlightened administration of the future to improve the regulation of commerce.

The most obvious sign of the regulatory revolution was an enormous increase in the number of federal agencies regulating commerce and an enormous increase in the number of social, political, and commercial activities regulated by the federal government. Between 1970 and 1974, while Americans contended bitterly over the Watergate scandals and the war in Vietnam, President Nixon and the Congress cooperated in a vast augmentation of federal regulatory power. In that short time, sixteen of the seventy major agencies that currently exist were established. Of the twenty most important agencies, nine were established during the regulatory revolution. This includes such mainstays of U.S. public life as the Environmental Protection Agency, the Occupational Safety and Health Administration, the Federal Election Commission, and the Equal Employment Opportunities Commission. But also included are a number of lesser known, but very important agencies: the Farm Credit Administration, which administers billions in loans; the Federal Financing Bank, now the largest bank in the country; the Pension Benefit Guarantee Corporation and the Labor-Management Services Agency, which oversee billions in pension funds; and the Cost Accounting Standards Board, an agency of the Congress which sets the standards for federal contracts.

Nor is this all. During the regulatory revolution, thirty-five of the fifty agencies that existed when Richard Nixon took office were substantially reformed.

Unprecedented Authority. In sum: over 70 percent of the current regulatory apparatus is, in one way or another, the product of the regulatory revolution. The amount of change that took place in those four years is unmatched in any equal period in American political history. During the whole twenty years of Franklin Roosevelt's New Deal and Harry Truman's Fair Deal, a period when the federal government asserted unprecedented authority over national commerce, the federal regulatory apparatus did not change as much as in the four years of the regulatory revolution.

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However, such merely quantitative measures conceal the fact that the regulatory revolution was a marked departure from traditional American principles of free government, and as such, it was not in the public interest. There were five qualitative changes consequent to the regulatory revolution:

1) Great increase in the economic burdens of government.
2) Centralization of administration and a consequent weakening of the central government.
3) Unlimited and unconstitutional extension of regulatory authority.
4) Social and political debilitation.
5) Corruption of American politics.

My full argument would be partly historical, somewhat abstract, even subtle. So I would like to introduce each of these five significant changes in the American system with a brief anecdote that illustrates the problems of the regulatory revolution.

BURDENSOME AND WASTEFUL GOVERNMENT

In the late 1970s, the National Highway Traffic Safety Commission, a federal regulatory agency, became alarmed by the high accident rate of motorcyclists. At great expense, NHTSC ordered the construction of a radically new motorcycle, which would steer with the rear wheel, not the front. The prototype was found to be much safer, far more stable, at all speeds over 30 m.p.h. However, at all speeds less than 30 m.p.h., the prototype fell over, crushing the rider's leg. The Commission was undaunted: it added two training wheels to the machine. Thus it succeeded in producing the world's safest motorcycle, while at the same time proving beyond doubt that the safest motorcycle is an automobile.

The cost of this foolish experiment was over $250,000. And this is the first point to be understood about the regulatory revolution: it is foolishly and wastefully burdensome.

Contemporary social science tends to look at policy problems as if they could be explained by a calculus of private economic benefits and costs. So, as an introduction to the moral and political problems of regulation, let me summarize the three kinds of material costs of regulation.

In the first place, there is a direct cost to citizens for operation of the agencies. This cannot be calculated with any precision, because some of the expenditures for these agencies are kept "off-budget." Experts estimate that total outlays, both on and off the budget, were in excess of $120 billion for the past fiscal year. Of course, this is a lot of money, but still it is about 10 percent of what are believed to be total federal outlays.

Loss of Productivity. Second, citizens also pay directly with their time and labor in filling out forms for federal regulatory agencies. The burden of federal paperwork became so serious in the late 1970s that a Federal Paperwork Commission was established by President Carter. According to its report, the American people spend at least 833 million hours per year filling out forms. If they were compensated at the minimum wage for this

dreary labor, which they are not, it would amount to about $3 billion. These direct costs bring the cost of federal regulation to about $123 billion, but they are a drop in the bucket.

There are also various kinds of indirect costs. Every federal regulation commands an expenditure of wealth, time, or ingenuity. One 1975 study found that federal regulations add $1.00 per square foot to the price of a house. A 1978 study estimates that $665 of the price of a new car is a result federal regulations. The National Highway Traffic Safety Agency's demand that air-bags be installed in all new cars would add about $1,000 to their price. If Representative Gephardt were serious about making automobiles cheaper for Americans, he would better spend his time attacking the regulatory bureaucracy than the South Korean tariff system.

Such regulations at least result in the production of something, but, the specialists tell us, the greatest cost of complying with federal regulations is the loss of productivity. For example, an OSHA-designed drill press might be so cumbersome to operate that a job that used to take five minutes now takes six, a 20 percent loss of productivity. In 1975, when the cry to reform the regulatory system first began, Murray Weidenbaum, an economist who specializes in these matters, estimated that losses of productivity and other costs of compliance amount to around 3.6 percent of gross national product. Probably that figure is higher today, but even at that rate, the cost this year would be well over $130 billion.

An Army of Clever Lawyers. Another kind of indirect cost is truly impossible to calculate, but it is probably at least as great as those mentioned so far. This is the cost of opportunities foregone. These include inventions not invented, labors frustrated, investments not made, and new products not produced, either because regulation imposes start-up costs that are especially difficult for even the most innovative and diligent businesses to bear, or because regulation redirects capital, labor, and human ingenuity toward compliance and away from dreams of wealth. Of course, regulation has produced an army of clever lawyers, politicians, intellectuals, bureaucrats, and accountants, but that army is better at consuming and preserving wealth than at producing it.

My hunch is that these so-called opportunity costs of regulation are greater than all the others put together. For this hunch, I cite only the authority of Abraham Lincoln, who saw that where there is opportunity there is hope. "The power of hope upon human exertion, and happiness," Lincoln said, "is wonderful. A slave, whom you cannot drive with a lash to break seventy pounds of hemp in a day, if you task him to break a hundred, and promise to pay him for all he does over, he will break you a hundred and fifty [because] you have substituted hope" for compulsion. Of course, regulation is not the harsh lash of the despot, but it does crush the hopes of many Americans.

Endless, Unenlightening Quibbles. So the economic costs of regulation are very great. But are they too great? Some, like the Reagan Administration, say they are; some, like Ex-Speaker of the House Tip O'Neill and his successor or Ralph Nader or Dr. Sidney Wolfe, say they are not. (Strangely, hardly anyone says that they should be greater.) In my opinion, the proponents of the current regulatory system have a point: there must be some benefits for these costs. Suppose an EPA regulation, which costs $50 million, saves fifty lives from lung disease. Isn't that price worth paying? Suppose the OSHA-designed drill press saves the index finger of a thousand apprentice machinists. Isn't the price in declining

productivity, whatever it might be, worth bearing? Or, suppose the regulation of banking raises interest rates one-half percent. Isn't that worth it, if we can prevent borrowers from being defrauded by an unscrupulous lender? In the past decade, such questions have led to endless, unenlightening quibbles about the private costs and benefits of federal regulations. These questions, however, cannot be answered by any calculus of economic cost-beneficence, because health, safety, and feelings of economic security and well-being are not economic goods.

Business Favors Regulation. There is, in fact, some startling evidence that federal regulation serves the economic interest of this nation. The largest, and most powerful commercial interests in the nation today are not opposed to — in fact, they favor — the maintenance of the current regulatory system. The Business Roundtable, which speaks for the interest of the largest corporations, has repeatedly declared that it "favors the goals of regulation." Over the past fifteen years, it has been in the forefront of Washington lobbies in arguing against virtually every proposal to limit the regulatory agencies' authority by law. The Chamber of Commerce, which is the most broadly based commercial organization in the country, has been only slightly less enthusiastic in its support for the established regulatory apparatus. Of course, most individual corporations and their lobbies wish that regulatory agencies would be, as they say, "more flexible." And, of course, every business wants lower costs, including the costs of compliance with federal regulation. However, what all corporations singly and collectively lobby for is agencies that are more willing to make exceptions to their regulations in particular cases. At the urging of businesses, the Reagan Administration's policy of deregulation was transformed into a policy of regulatory relief. That is, the current Administration has, on the whole, pursued a policy of freely granting exceptions to regulation, not a policy of decreasing regulatory authority. Therefore, I conclude: if businesses are the best judges of their own interests, then federal regulation must be serving the current economic interests of American business.

In fact,when calculated in terms of external goods, the cost of federal regulation is trivial compared with the political and social costs.

CENTRALIZED ADMINISTRATION AND INEFFECTUAL GOVERNMENT

In the mid-1970s, scatologists at the Occupational Safety and Health Administration decreed that most of the commercially owned toilet seats in American were unsafe. Horseshoe-shaped seats would have to replace the traditional ovals. This decree vindicated the mothers of America who have been lecturing their children on the hazards of the traditional oval for generations. And toilet seat manufacturers loved it.

However the benighted owners of traditional seats, stuck in their old-fashioned ways, were outraged by OSHA's presumption. Under the mocking pressures of Congressmen, OSHA withdrew the decree.

That a federal agency could even presume to regulate every public toilet in America and that it took an act of Congress, or rather the threat of such an act, to prevent that regulation are signs of the enormous centralization of administration that came about in the 1970s.

Less than twenty years ago, virtually all matters of public health, such as the shape of toilet seats, were administered by local governments. Today, not one mile of sewer line is laid in the United States without the approval, in detail, of the EPA. There has been an enormous change in the administration of this nation in less than one generation.

Now centralization of administration, or bureaucratization as it is sometimes called, is not very well understood, because it is confused with powerful government. Bureaucratization actually weakens governing power.

Bungling, Meddling, and Arbitrariness. The power of the central government depends upon its authority over matters of general concern to the nation. Central administration, however, is not concerned with the interests of the nation, but with such details as the shape of a toilet seat. The greatest expenditure the national government makes when it centralizes administration is that of its authority. As Jerome J. Hanus has noted:

> "Unfortunately, ignored by writers on the subject [of the extension of bureaucratic power] is the cost to government itself of reduced confidence in it by the citizenry. This type of cost ...[is] an authority cost."

Nor is it only the popular authority of the government that suffers. Its legal authority does too.

Our Congressmen discovered very quickly what a monster they had created by the regulatory revolution. Bureaucratic bungling, meddling, and arbitrariness were so overwhelming even as early as 1975 that the Administrative Procedures Act of 1946 had to be radically reformed. The Administrative Procedures Act defines the basics of regulation for almost all agencies — how they may make rules, how they may adjudicate disputes under those rules, and how they may enforce their decisions. The 1975 amendments to this Act were intended to produce two effects: first, to open up the whole regulatory process to influences outside the agencies themselves, especially to the opinions of organized interest groups and Congressmen; second, to restrict appeals to courts of law against the actions of the agencies.

Not Democratic, Effective, or Representative. Senator Kennedy, the chairman of the subcommittee that wrote these amendments, defended them as follows: Opening the agencies to outside influences would make them more "representative" and more "democratic." Restricting legal appeals against the agencies would give them the upper hand in disputes, and thus, Kennedy thought, make them more "effective."

One must doubt that these amendments made regulation any more democratic, effective, or representative. However, what did happen within a few years of the regulatory revolution was: Complaints against the agencies became so great that thousands of new administrative law judges had to be appointed by the Carter administration. This meant, it should be noted, that the vast bulk of the commercial disputes in this nation are now settled in a legal system that is not part of the constitutional system of the rule of law.

A further effect of the Kennedy amendments to the Regulatory Procedures Act was the politicization of regulation. Appeals against the agencies in courts of law were difficult, and appeals against the agencies in the non-Constitutional, administrative legal system were adjudicated by the agencies themselves. So, in practice, political appeals against the agencies were the most effective means available. Accordingly, they became so much more common that *ex parte* proceedings (private negotiations among the parties and non-parties to a dispute), which were often felonious in the days before the regulatory revolution, became standard procedure. In short, political appeals were practically invited by the reforms of the Administrative Procedures Act. This is how the main job of the contemporary Congressmen became liaison with regulatory agencies, not legislation.

Coping with the Bureaucracy. These reforms of the Administrative Procedures Act were the capstone of the regulatory revolution, because they made it possible for the traditional American political order to cope with the arbitrariness of the massive regulatory bureaucracy it had created. Thus — if I may exaggerate for effect — since the regulatory revolution, American politics can be characterized as "coping with the bureaucracy." We have seen the new character of American politics in the presidential campaigns of 1964, 1968, 1972, 1976, and 1980, if not in 1984 and 1988, when candidates vied with one another in denouncing the evils of "Big Government." We see it in congressional campaigns too. For example, my Congressman's radio and television advertisements consist of nothing but personal testimonials from private citizens, each of whom is in awe of their representative's ability to beat the bureaucracy. He helped one citizen to a loan guarantee by the Small Business Administration, another to a check from the Social Security Administration. Another citizen, a business executive, tells how the Congressman saved jobs at his factory by intervening at the Environmental Protection Agency. One would never guess that there is no greater supporter of bureaucratization on the Hill than Norm Mineta.

Such campaigns evince what leading national politicians themselves tell us: most of their time in Washington is taken up in providing "regulatory relief" for their constituents. For obvious reasons, these politicians seldom remind the voters that the U.S. government itself is the creator of those very burdens from which the citizens seek relief.

Centralization of administration has quite literally divided the government against itself by creating two parallel and ultimately rival legal systems, the Constitutional one and the administrative one. A divided central government is a weak one, and so it should not be surprising that, while the central government possesses the legal authority to do everything, it does not do what a central government should do very well. The extent of federal authority really is astounding.

UNLIMITED AND UNCONSTITUTIONAL AUTHORITY

About five years ago in the Los Angeles county school district, the Affirmative Action regulations of several federal regulatory agencies were interpreted to require that black teachers be assigned to predominantly white schools and white teachers to predominantly black schools. In an effort to avoid the reassignment, black teachers claimed to be white, and whites claimed to be black. So the school bureaucrats decided to establish committees of racial assignation. Each committee would be composed of two members of the race to

which the teacher wished to be assigned and one member of the race from which he wished to be assigned.

Naturally the bureaucrats' plan failed, not only because there was a problem of infinite regression regarding the race of the members of the committees, but also because the teachers were responsible, in the first place, for stating the race from which and to which they wished to be assigned. Presumably, these administrative problems will not be so great when committees of sexual assignation are established.

That the central government would determine the personnel policies of local school districts would have been thought to be simply wrong twenty years ago; that it would assign workers to work places by race would have been thought tyrannical; that it would even attempt to assign people to a race would have been thought fantastic. What is really striking is the totality of the regulatory power that the central government has tried to exercise during the past decade. Let me indicate the genesis of this monstrous authority in the regulatory revolution.

Two Dozen New Agencies. Prior to 1970, agencies were typically established to regulate a single industry for a single purpose, and the law establishing the agency defined that industry and that purpose with the greatest possible precision. Thus the first independent regulatory commission, the Interstate Commerce Commission, was established to regulate the surface transportation industry, not in every respect, but only to establish regular rates and services for the nation. For the regulation of the rates and services of the fledgling air transportation industry, a new agency was established in 1938, the Civil Aeronautics Board. And for the safety of air transportation still another agency was established, the Federal Aviation Administration. This practice of narrowly, and precisely defining an agency's authority resulted in about two dozen agencies, each regulating a single industry for a single purpose.

Agencies Regulating One Another. Some believe that too many single purpose, single industry agencies were established, but it is clear why this happened. Prior to the regulatory revolution, American politicians understood that, when they created an agency, they were, in effect, turning a part of their political authority over to bureaucrats. A narrow, precise definition of purview is the best way to insure that a regulatory agency would in fact regulate commerce in the same way that the government itself would, if it had not created an agency for that purpose.

During the regulatory revolution, the American government proceeded in almost the opposite manner. That is, Congress and the President cooperated to produce a large number of agencies with extraordinarily broad and vaguely defined purview. Ten agencies were established that do not have any particular industry within their purview, or that have authority over every kind of commercial activity and most kinds of government activity. Social scientists call such agencies as the Consumer Products Safety Commission, the Equal Employment Opportunity Commission, and the Environmental Protection Agency "economy-wide" agencies, in order to distinguish them from the "industry-wide" agencies created prior to 1970. But these new agencies have considerably more than just "economy-wide" authority. Their authority extends beyond commerce to the activities of state and local governments, including school boards and sewer and water districts. In some

cases, their authority extends over individual citizens. Moreover, some of these agencies regulate one another; thus we have the interesting spectacle of the government regulating the government's regulation. Therefore, the purview of these agencies is not precisely described as "economy-wide." It is more accurately described as "total."

To make matters worse, the new regulatory system is almost unchecked by any general public laws. For during the regulatory revolution, Congress and the President took little care in defining the mission or general public purpose of the new agencies.

Consider two examples. There is no legal definition of "the environment," which the EPA was established to protect. Nor does any general public law set standards of "protection" by which citizens or courts could judge whether or not the EPA is doing its job. Moreover, the agency is not even enjoined to act in the public interest, and so it tends to regard the interest of the environment as if it were distinct from or even opposed to the public interest. Thus the EPA has gone so far as to claim a right to protect the "cultural and scenic heritage" from polluters, even when those so called polluters do nothing to harm the purity of the air, water, or land.

"Tribunal of Experts." Similarly, the law establishing the Consumer Products Safety Commission does not state what products are consumer products, nor what constitutes a hazard from them. Under the law, anything from a toothpick to a skyscraper could be a consumer product, and a sliver in the finger from a child's toy truck is as much a hazard as a severed jugular from a chainsaw.

Such vague, broad definitions of regulatory authority, in practice, amount to open invitations to bureaucratic arbitrariness and meddling. Thus, prior to 1970, there is only one case in which the U.S. government deliberately tried to create a regulatory agency with "economy-wide" authority and an ill-defined purpose. The Federal Trade Commission Act of 1914 grants to the FTC authority over virtually every kind of commercial activity. According to that act, the Federal TradeCommission's purpose is the prohibition of all "unfair methods of competition in commerce." Francis G. Newlands, who managed the bill for President Wilson in the Senate, argued that the FTC should be left free to decide for itself what is an "unfair method," because no legal definition of commercial unfairness was possible. Rather, the proponents of the FTC argued, a "tribunal of experts — not experts in the law, but experts in trade and commerce" should decide. However, because there were no public standards from which to measure the performance of the FTC, the agency was gutted within six years of its creation — first by the actions of the federal courts, then by the President, and finally by Congress itself. Between 1920 and 1970, the FTC was a regulatory nonentity, a laughingstock on Capitol Hill. However, as one might expect, the regulatory revolution revived the FTC. Today, it is one of the most powerful regulators. Thus, the chief exception to my characterization of pre-revolutionary regulation proves that characterization.

Vaguely Defined Purpose. Before the regulatory revolution, the American system of government could barely tolerate even one agency with broad, vaguely defined authority. After the regulatory revolution, agencies with even broader purview, even more vaguely defined purpose than the FTC's, became the norm.

Today, the typical activity of the central government is regulation. Big government, it seems, does not govern. It regulates. The shift to regulation, from governance, as the chief activity of the American regime is beautifully documented by a report on the federal regulatory apparatus, issued by the House Government Operations subcommittee in the Spring of 1975. According to that report, "In its broadest sense, everything the government does is regulation...."

This apparently unremarkable sentence beautifully expresses the innermost conviction of those who made the regulatory revolution. They could see no distinction between the government's power to regulate, and the government's power to govern. Although a distinction of regulation from governance might seem precious, the observation of it is in fact a hallmark of the government of a free society.

Artificial Distinctions. To understand the purport of the regulatory revolution, we must grasp the Constitution's distinction of regulation from governance. Throughout the Constitution, but especially in Article I, section 9, the Framers distinguished between the government's power to govern, and its power to regulate. For example, the Constitution declares that government has the power to regulate commerce and the value of money, that it has the power to govern territories, and that it has both the power to govern and the power to regulate the armed services. Ignorance of this distinction between governance and regulation was characteristic of the regulatory revolutionaries of the 1970s. One way to explain the constitutional distinction is simple: constitutional government has the power to govern the "public sector," but only the power to regulate the "private sector." The power to regulate, then, is a more restricted power than the power to govern. So, for example, one might suppose that government properly provides for the government of the armed services by establishing an officer's corps, but that it would be improper for it to govern commerce by appointing the officers of business corporations. Congress does not have the constitutional power to appoint a corporation's chief executive officer, because it does not have the power to govern, but only the power to regulate commerce.

The distinction between the "public sector" and the "private sector" does not adequately explain the constitutional distinction of regulation from governance. It cannot, because the distinction between the "public sector" and the "private sector" is artificial. In the first place, there are certain private matters that are in fact of considerable public concern: drug abuse, sexual and religious practices, and economic well-being are examples. In the second place, at least in the United States, the public sector is not one uniform, undifferentiated thing. By a constitutional necessity, there exist many different public sectors, the various States. The Framers were not ignorant of these simple social and political facts, and so there is no radical distinction between the public and the private in the Constitution.

Autonomous Associations. Rather, the constitutional power to regulate, as distinguished from the power to govern, implies that in a free society there must exist what sociologists like Robert Nisbet and Michael Novak call "intermediary associations." In other words, a free society is not only a collection of private individuals, who are to be ruled by the government, but it is also an association of autonomous associations, which must be regulated, not governed. Indeed, the Federalist papers say that the "principal task" of modern government is "the regulation" of these associations, especially the commercial ones.

In the United States, autonomous associations are both social and political. They include families, churches, and various kinds of commercial and other narrowly interested associations, as well as the states. These associations do not need to be governed, because they are autonomous. That is, each has its own proper government or authority, which exists independent of the authority of the central government: parents govern the family for the sake of its material prosperity and the education of the children to adulthood; God, or his designee governs the church for the sake of salvation in the next world; the owner, or his designee governs the commercial association for the sake of the production of wealth. Since each intermediary association is self-governed with respect to its own purpose, it is not necessary for government to govern it. However, insofar as these various autonomous associations conflict with one another in their pursuits, it might be necessary for government to regulate them in order to produce harmony among them. Therefore, the regulatory power, as distinguished from the power of governance, implies one kind of public or political good: the harmonious, or mutually beneficial association of a vast variety of autonomous human associations. In fact, that harmony of self-ruling human associations is a free society.

Regulatory Revolutionaries. The central government's constitutional power of governance, on the other hand, relates to those activities of a strictly public or political nature. The activities of the armed services are the case in point. A free society cannot exist without an army. Nor can it exist if its army is self-governed. We have recently witnessed in Lebanon the disastrous consequences for liberty of privately governed armies. Accordingly, the Constitution say that Congress must provide for the "Government" of the armed services. And it also says that Congress must "regulate" the armed services. If the central government did not both govern and regulate the armed services, then they might become self-governed, and therefore, a threat to the free government of the nation.

But the regulatory revolutionaries believed that "everything the government does is regulation." Theoretically, this belief ignores the difference between the public interest, for the sake of which government governs some activities and regulates others, and the partial, parochial, or private interests of the various autonomous associations. Such ignorance amounts to blindness to the public interest. So, from the point of view of the regulatory revolutionaries, society must appear to be a chance collection of special interest groups, each of which is just as capable of ruling itself as it is of ruling society as a whole.

Increased Salaries and Perquisites. But if there exists no public interest, for the sake of which government governs and regulates, then government itself must be, or become just one more special interest group among the many that happen to exist within the country's borders. Government, then, would be the group whose interest happens to be the provision of a service, called public authority, which, for some reason, manifold other interest groups happen to demand of it. As such, this government interest group happens to be composed of elected and appointed "regulators," who happen to earn their salaries and perquisites — both of which have increased enormously since 1970 — by supplying regulatory authority or regulatory relief for their customers, who happen to be called voters. Naturally, the government interest group has an interest in producing a superabundance of regulatory authority, because then it can go into the business of producing what the Reagan Administration likes to call "regulatory relief."

Plainly, the regulatory revolutionaries acted in accord with this theory of government and society. In the early 1970s, Congress might have enacted general public laws forbidding the pollution of the air or prohibiting hazardous consumer products, and bigoted employment practices. The executive could then have enforced those laws. Perhaps those laws would not have been good ones, but at least constitutional and political judgment could have been passed upon them by the citizens or even the courts. Instead, regulatory agencies were established. They, in turn, were directed to direct others, chiefly business corporations, toward some ill-specified purpose. The regulatory revolutionaries were not concerned with the possibility of bureaucratic folly, arbitrariness, or waste because they believed that, if some person happened to be disadvantaged, he could appeal to his representative and the agencies for relief. In other words, they did not consider that the public interest was harmed by their refusal to govern. And the representatives knew that the regulatory bureaucracies would heed their appeals on behalf of their constituents, because they had authority over the agencies' programs and budgets. Thus, private counsels have tended to replace public deliberations in the government of the United States.

Some of these stories make us smile because they are lavish displays of human folly and they have happy endings. But not every story of bureaucratic incompetence has a happy ending.

SOCIAL AND POLITICAL DEBILITATION

In 1975, the Environmental Protection Agency decided that, beginning in 1980, motorcycles would have to be equipped with emission control devices. Antismog devices add substantially to the cost of motorcycles and subtract from their reliability. Thus it was amazing when EPA admitted that it had no reason at all to believe that these devices would reduce air pollution in any measurable degree. And why should motorcycles have to be so equipped? EPA claimed that it would be "unfair" to the purchasers of automobiles not to require purchasers of all other vehicles powered by internal combustion engines to pay for an emission control device. In other words, this costly regulation was promulgated merely in anticipation of a feeling of being treated unfairly that automobile owners might have.

The type of regulation that was established in the 1970s is sometimes called "social," in order to distinguish it from the economic regulation that existed prior to the 1970s. However, a study of the creation of all the pre-revolutionary regulatory agencies shows that they were created for social purposes too. For example, the founders of the Securities Exchange Commission thought that it would help preserve stable family life, the founders of the Federal Communications Commission thought that it would advance the cause of enlightened democracy, and the founders of the Civil Aeronautics Board thought that it would strengthen the nation's air power. Generally speaking, there is seldom a simply economic need for regulation, because economic associations usually govern themselves adequately with respect to their own ends.

The Oblivion of Standards. Regulation is necessary today, as it always has been, to square economic ends with other social or political goals. However, it is nearly impossible to judge either the social and political efficacy or the economic efficiency of the type of

regulation created during the regulatory revolution, or any part of it, because there do not exist any public standards for such judgments. The whole point of the regulatory revolution was the obviation of any such standards.

The current system does not exist because it is believed to be economically efficient. Nor does it exist to harmonize economic ends with other social or political goals. Rather, it exists because it is believed to be morally and politically benevolent to allow every organized private interest group, including the government, to have its say against the regulatory bureaucracy. The existence of the regulators is taken for granted.

New Despotism. One hundred and fifty years ago, Alexis de Tocqueville described an imaginary society much like ours in a chapter of Democracy in America entitled, "What Sort of Despotism Democratic Nations Have to Fear":

> Over this society's members stands an immense, tutelary power. That power is comprehensive, thoughtful of detail, orderly, provident, and gentle....It provides for [men's] security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, [and] directs their industry....All that is necessary is for it to spare them all the trouble of thinking and all the care of living.

Tocqueville imagined that this tutelary power would cover "the whole society with a network of petty, complicated rules that are both minute and uniform, from which men of the greatest ingenuity and enterprise could scarcely escape."

He even imagined that this kind of government would regulate, not rule its subjects:

> This power would not break men's will, but soften, bend and guide it. It would seldom enjoin, but often inhibit action. It would not destroy anything, but would prevent much from being born. It would not be at all tyrannical, but it would burden, restrain, enervate, stifle, and stultify so much that, in the end, the citizen body would be little more than a flock of timid and hardworking taxpayers.

Destruction of Moral Character. The true price of this system, as Tocqueville imagined, is the destruction of the moral character of the people, the systematic undermining of their capacity to rule themselves. For a regulatory system removes all the petty choices of life from the purview of private citizens, parents, pastors, bosses, and local governments.

And if, as Tocqueville puts it, the people are spared "all the trouble of living, and all the care of thinking," if their choices at the market, the factory, the school, and even the church are made for them, then how will they make adequate choices for their government? Is it to be expected that a people could be incapable of purchasing an environmentally sound motorcycle, but capable of choosing a Senator of the United States? If a people is so bigoted that it cannot be expected to hire on the basis of merit, can it be expected to make an adequate choice for President of the United States?

I agree with Tocqueville: the real threat of the regulatory state is the gradual sapping of the citizenry's capacity for autonomy. The Reagan Administration is probably correct in supposing that the capacity for freedom is a condition for prodigious, economic productivity. That capacity is also the condition for happy families, decent social life, effective local governments, and genuine education.

The corruption spread by the regulatory revolution was public and political, not just private and social. One more story can serve to illustrate.

GOVERNMENT CORRUPTION

In 1975, the Federal Elections Commission, another product of the regulatory revolution, began to regulate the so-called political action committees of business corporations and of other private interest groups. At that time, the proponents of the FEC claimed that it would control that age-old bane of American politics — the special interests.

In this and every election year, *The Wall Street Journal* runs articles on political action committees on its "Politics and Policy" pages; PACs are the chief means through which the FEC regulates political campaigns, their finances, and their other operations. The story is always the same: politicians complain of political action committees, because now they demand that Senators and Congressmen vote their way in return for campaign contributions. To the older representatives, such behavior is outrageous, because they remember the days when such behavior was called "bribery" on Capitol Hill. Today, thanks to the FEC, what was once corruption is now a well-regulated business activity.

In other words, there has been a drastic lowering of public morality and the standards of public morality as an immediate consequence of the regulatory revolution. Let us consider why it was necessary to lower the standards of public morality so drastically. The regulatory revolution, including the aforementioned amendments to the Administrative Procedures Act, vastly enlarged the field of action for lobbyists. In particular, the political pressure to allow corporations to organize politically on a national scale, which Congress had resisted for over a generation, became irresistible once corporations became subject to a welter of agencies with few legal restrictions upon their activities. By amending the Federal Elections Campaign Act in 1974 to allow corporations and other organized special interests to finance political campaigns, Congress recognized that national political action had itself become a business so big that it too needed regulation.

Politics is Big Business. Today, almost every aspect of U.S. national commerce is centrally administered. Yet, unified economic planning and regulation — even for some one industry, however minor — have never been more difficult or more compromised by political pressures. What was once regarded as unethical conduct or even outright corruption in a national politician is now either a part of administrative procedure or a well-regulated activity under the FEC. These changes in public morality were prepared by the reforms of the bureaucracy at all levels of American government that took place prior to 1974. Not only national commercial interests but local political ones as well have been transformed and corrupted by centralization of administration.

In particular, in 1966, the Federal Corrupt Practices Act of 1925 was repealed by the Federal Elections Act. Under this act, as under the old act, politicians had to file statements of their campaigns' contributions and expenditures, but the requirement of the old act that they file a "statement of every promise or pledge...relative to the appointment of any person to any public or private position or employment" was dropped without debate or dissent. At about the same time, leading Democrats in the House, together with the leaders of the public employees' unions, began to press for the repeal of the Hatch Acts' strictures on the bureaucracy's participation in partisan politics; that pressure continues today. Until 1974, these efforts failed in the respect that is crucial for bureaucratization. In that year, amendments to the Federal Election Campaign Act removed the restrictions on that class of State and local employees that the amendments to the Social Security Act of 1939 had placed under federal civil service standards. Thus, between 1966 and 1974, the political importance of the bureaucracy altered dramatically. As a result of centralization of administration, the U.S. government itself has become one of the largest, best organized, and best financed factions in the country.

Willful Defiance of Public Opinion. I have already quoted Tocqueville extensively on the practical effects of bureaucratization. However, as much as I respect Tocqueville's imagination, I must say that, in one respect, he might have been wrong. Tocqueville imagined that the regulatory state would be democratic. He wrote:

> "This brand of orderly, gentle, peaceful slavery which I have just described...[has] the possibility of getting itself established under the shadow of the sovereignty of the people."

At least in the case of the regulatory revolution, that was not the case. Any examination of the public records of the regulatory revolution would show that the American government acted at that time in total ignorance of the public interest in freedom. Indeed, if time permitted, I could show examples of Senators and Representatives who acted in willful defiance of a general public opinion, known to them to be opposed to the extension of regulatory authority. Moreover, the Carter Administration's public policy of deregulation, and the Reagan Administration's public policy of regulatory relief, although they enjoyed widespread popular support, did not result in any legal limitations to regulatory authority so much as in the maintenance and consolidation of the accomplishments of the regulatory revolution. In short, the issues of the regulatory revolution have not yet been put squarely to the American people.

In my opinion, the cancer of bureaucratic regulation has not yet progressed to the point that the citizenry is incapable of a prudent determination of the question of whether the public interest really is served by the total regulation of American life. Recently, an ominous sign appeared in California. Cal-OSHA decreed that the health and safety of the workers depended upon their not telling or hearing dirty jokes or ethnic jokes. Employers are commanded to prevent the workers from telling them; I do not know whether it is permitted to laugh at them if you happen to hear one. We will know when the bureaucratic cancer has gone too far, for it will have become impossible to ridicule regulation, as I have throughout this speech.

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