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PUBLIC POLICY AND REGULATION

R. J. Hildreth

A few years ago, it was unlikely anyone would write a paper on public policy and regulation. The field was reasonably well-developed, the issues well-defined, and the consequences of policy alternatives agreed-upon. It was generally agreed that the purpose of government regulation of business was to cure competitive imperfections in the marketplace. Most scholars agreed the regulatory agencies were largely captured by the regulated interests, and there was a comfortable and cooperative relationship between the regulator and the regulated. Most of the agencies were organized on an industry-by-industry basis, i.e., Interstate Commerce Commission, Civil Aeronautics Board, and the Federal Communications Commission. The Congressional Acts creating the regulatory agencies were general statements which conferred extremely broad powers to the agencies, and provided little specific policy guidance except to tell the agency to act in the public interest.

Most students of the politics of regulation described the political relationships as an "iron triangle" — that is, a coalition made up of the regulated industry, the regulatory agency, and the congressional subcommittees with jurisdiction over the agency. Business had the power to gain a dominant position in the triangle, but had to operate within the discipline and constraint of the "iron triangle." The net result was that the regulatory agencies did not serve the public interest, but promoted special interest at the expense of the public. Businessmen would complain about regulations, but did not strongly oppose them. Argument existed in academic quarters as to whether the whole process of regulation was truly concerned with remedying imperfections in the marketplace or was a technique firms used to escape the competitive forces of the marketplace.

Recently, new and different phenomenon have appeared on the regulation scene. Horror stories of regulation by new agencies and new regulations by old agencies are coming to the fore. An example was given at the 1976 Public Policy Education Conference by William Allewelt, who is president of the Tri/Valley Growers, a cooperative canning enterprise in California. Allewelt tells the story of the Tri/Valley Growers, Food and Drug Administration (FDA), and a mold with the name of *geotrichum*, viewed as totally harmless by the industry. Wherever fruit is grown, the mold exists in the summertime. Thus, it is impossible to avoid it in the summer season fruit canning operations, as well as in household kitchens. The applicable regulations of the FDA contained no tolerance for this mold. Thus, in effect, the agency mandated a zero tolerance when it decided to be concerned about the mold. Tri/Valley Growers was forced to move from three seven-hour shifts to two shifts working nine to ten hours each, in order to achieve proper sanitation to reduce the level of the mold. This led to an estimated loss of 1800 seasonal jobs in the communities where the fruit canning plants

were located. Allewelt estimates the total cost to Tri/Valley for the entire incident was at least \$2,000,000, and a loss for the cooperative of \$500,000 for the fiscal year.

"OLD REGULATION" AND "NEW REGULATION"

The cry of anguish contained in Allewelt's story is quite different than the conventional wisdom of regulation a few years ago. Something must have happened. Paul Weaver, Associate Editor of *Fortune Magazine*, in an article in the Winter 1978 issue of *Public Interest*, suggests what the "something" is. Weaver argues that there is a "New Regulation" which is quite different from the "Old Regulation."

Weaver holds the "New Regulation" agencies were established to operate as adversaries of the interest they regulate and, at least to the regulated, appear to administer the law as adversaries, not in the old comfortable cooperative relationship of past regulatory agencies. The laws establishing the agencies under the "Old Regulation" were short and provided little specific policy guidance, while the laws establishing the "New Regulation" agencies are very lengthy and very specific. He also points out the "New Regulation" laws often give nearly anyone that is interested a standing to sue the agency for failure to do precisely what the law tells it to do. The batting average for the new agencies in court is very low, i.e., they lose most of the cases. The "New Regulation" agencies are organized along functional lines, thus, their jurisdictions cut across industry boundaries. As a result, the possibility of capture by the regulated is minimized. Weaver holds that the "New Regulation" agencies operate with little or no concern for the cost or consequences of their pursuit. He states: "The EPA, for instance, is explicitly forbidden by law to pay attention to the cost in setting and enforcing the nation's primary ambient air/quality standards." (Weaver, p. 52)

If we follow Weaver's argument, the traditional "iron triangle" is no longer at work. Many of the supporters of the "New Regulation" are strong in their opposition to the "iron triangle" of the "Old Regulation." Should an agency appear to be operating in the mode of the traditional "iron triangle," the public interest groups will bring court suit to put the agencies back on the straight and narrow. Supporters of the "New Regulation" often argue for deregulation under the "Old Regulation" framework. Thus, we see the possibility of deregulation of the airline industry, the trucking industry, and the communications industry.

The consequences of the "New Regulation" are not fully determined. It has been argued that the "New Regulation" is one of the major reasons for our continued stagflation, contributing to inflation by adding significantly to costs but not to production. The actions taken to comply with the new regulations siphons capital from investments that would create employment and puts it into capital items that produce neither product nor jobs. On the other hand, it is argued the consequence of regulation is to shift to the firm the costs of pollution or harm to workers borne by others before the regulation. Further, production of equipment required to meet regulations

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add to jobs. The *Wall Street Journal* of May 8 reports a meeting of representatives of 27 environmental groups with Robert Strauss, President Carter's Counselor on Inflation, to discuss these issues.

The defenders of the status quo have even learned to use the courts and the "New Regulation" to achieve their ends — witness the opponents to the enforcement of the 160 acre limitations on irrigated land successfully bringing suit to require an environmental impact statement on the effect of enforcing the 160 acre limitation.

The cost to government can be measured. The *Wall Street Journal* for March 14, 1978 reported an interview with Murray Weidenbaum, Washington University, on the cost of regulation. The 41 regulatory agencies in the federal government have a combined budget of 4.82 billion dollars for fiscal 1978. Consumer health and safety regulatory agencies have a budget of 2.67 billion dollars, environment and energy agencies 1.12 billion dollars, and regulatory agencies in the USDA have a budget of 830 million dollars.

THE ROLE OF THE ECONOMIST

The current debate over regulation is rather unsatisfactory. The public interest groups are screaming at the established business interests, and the established business interests scream back. Suits are brought in court. Charges and counter charges between the agencies and firms are put forward. Meanwhile, very little useful information goes to Congress for changes in the laws which started the entire process. The neat economic arguments of the "Old Regulation" do not apply. Under the "Old Regulation," one could use data and logic to determine if the competitive market structure was flawed and then initiate regulation to modify performance. Weaver points out that, for political scientists and journalists, regulation is a part of the battleground for the ongoing conflict between private interest groups and the public interest. He suggests the "New Regulation" may be more a social policy than an economic policy.

What then is the role of the economist? It is very difficult to define the optimum amount of regulation. Much of the rationale for the "New Regulation" is an attempt to internalize the external costs placed on society by the actors in the marketplace. Determining the optimum amount of internalization and, thus, the optimum amount of regulation, is most difficult. Internalization usually involves major changes in the property rights of individuals, as well as the placing of value on items that are not exchanged in the marketplace.

I would propose that we approach the area of regulation policy in the traditional public policy research and education mode. This mode involves: issues, alternatives, and consequences. The first step is to define the policy issues, then alternatives are developed to deal with the issues, and the consequences of choosing among the alternatives are spelled out. Major contributions to public policy developments have been made with this framework. We have done it in agricultural policy for years. It seems to me that, by taking this stance, policy research can make significant and useful contributions to the debate and dialogue about regulations.

A brief digression may be useful at this point. The social science community usually views policy research and education as problem-solving, which explains much of the frustration of both social scientists and politicians. Rein and White examine the question of how policy research can help policy formulation.

They state: "The long-standing problem-solving model is in large part a myth. Research may solve problems, but it also has three other important functions: (1) identifying problems as a step toward putting issues on the agenda, (2) mobilizing government action, and (3) confronting and settling dilemmas and trade-offs." (Rein and White, p. 130) They also hold that: (1) the search for an issue is the lifeblood of politics; (2) policy dilemmas involve a conflict of values; and (3) politics is quite different than science. I cite their ideas to illustrate the validity of the agricultural policy research and education mode, which has been effectively used for decades.

ISSUES

The identification of meaningful issues in regulation public policy is difficult. The "Old Regulation" issues seemed much simpler, at least now. They focused on obtaining sufficient competition. Much of the "New Regulation" legislation passed in the late 1960's and early 1970's had as its focus concerns for the environment, health and safety. The rise of the consumer movement and the reduction in legitimacy of science and the political process also played a role in obtaining legislation. Now the issues of cost and effectiveness of regulation and the impact on capital investment and jobs are being raised.

Charles Schultze, in his book, *The Public Use of Private Interest*, raises two specific and separate issues: (1) whether government should intervene, and (2) how. He states: "The basic theme of this book is that there is a growing need for collective influence over individual and business behavior that was once the domain of purely private decisions. But as a society we are going about the job in a systematically bad way that will not be mended simply by electing and appointing more competent officials or doing a better analysis of public programs." (Schultz, p. 5)

Useful and effective regulation policy research and education will require careful thought and analysis to arrive at a clear statement of specific issues. Definition of issues is perhaps the most difficult part of policy research and education. It requires understanding and insight of the production and marketing processes, as well as political and governmental processes, as they apply to the problem under consideration.

ALTERNATIVES

The alternatives for dealing with regulatory public policy issues may be grouped under the two categories given by Schultze; to intervene or not, and how. Little attention has been given to the how. Let me again quote Schultze: ". . . we usually tend to see only one way of intervening — namely, removing a set of decisions from the decentralized and incentive-oriented private market and transferring them to the command-and-control techniques of government bureaucracy. With some exceptions, modifying the incentives of the private market is not considered a relevant alternative . . . Instead of creating incentives so that public goals become private interests, private interests are left unchanged and obedience to the public goals is commanded." (Schultze, p. 6)

It is instructive to examine the contrast between the methods dictated by the basic legislation of the Environmental Protection Agency and the legislation dealing with conservation of agricultural land in the 1930's. The reduction of erosion is a significant goal of both programs: for EPA, reduction of erosion is a means to obtaining clean water; and for USDA programs, reduction of erosion is a means for assuring the long

term productivity of land. The 1930's legislation guided the USDA toward the use of technical information and education, as well as provision for cost-sharing of conservation practices. The EPA was guided toward heavy use of the setting of standards and issuance of regulations, i.e., "command-and-control." The methods to obtain performance are alternatives in the issues, alternatives, consequences framework. Seldom are the implementation methods a part of the political debate about legislation which leads to the "New Regulation." The quality of the debate would be greatly improved by consideration of alternative implementation methods and the consequences of alternative methods, rather than just the usual policy alternatives of whether or not to intervene.

An assessment of the Occupational Safety and Health Act (OSHA) by Nichols and Zeckhauser points out some alternatives to standards and inspections to improve occupational safety and health. The first is provision of information. Current government efforts do include provision of information, but the resources devoted to information are tiny, relative to those used in setting standards and enforcement. The authors state: "Better information should increase the efficiency of private markets, and will increase equity to the extent that it increases the workers' awareness of the risks they face and enables them to demand compensation or protection." (Nichols and Zeckhauser, p. 63)

The second alternative they identify involves incentive mechanisms — e.g., the levying of taxes for injuries. An injury tax would create incentives for the employer to improve safety programs and to attempt to control a whole range of factors which contribute to accidents, including safety training, not just the limited number of physical conditions directly regulated. Workman's compensation could be modified to "make safety pay" for the employer and the employee. While incentive mechanisms are less promising for occupational health, ways can be found to tax the employer for providing a poor environment leading to a reduced health status of workers.

As every policy worker knows, there is always the alternative of a combination of other alternatives. A combination of information, incentive mechanisms, and standards may be much more attractive than the use of only one method.

CONSEQUENCES

The political debate during the passage of recent legislation has included little information on consequences. It has included the consequences of not reducing pollution, increasing worker safety, and limiting or eliminating certain substances in food. After legislation is passed and implementation takes place, horror stories unfold relating to consequences of approaches not thoroughly enough analyzed.

Dale Dahl, University of Minnesota, at a recent session exploring research on regulation in the food sector held by the Farm Foundation and the Economics units of ESCS, USDA, suggested four kinds of research studies: (1) Pre-legislation research — study of the predicted consequences of alternative "rules" or methods to achieve policy goals; (2) Post-legislation research — study of effects of the regulations implemented in terms of meeting the policy goals; (3) Administrative agency research — study of the ability of an agency to "properly" administer a set of regulations to achieve their charge, i.e., the economics of bureaucracy; and (4). Cumulative effect research — study of

the cumulative effect of a mix of regulations on a sector or sub-sector of the economy.

As far as I can determine, the policy debate leading to the passage of OSHA legislation did not include discussion of alternatives to standards, and there was little discussion of the consequences of the standards and enforcement methods. Nichols and Zeckhauser present some information on consequences. "The post-OSHA injury rate data fail to reveal any clear trends or dramatic improvements." They also point out the costs have been high, e.g., OSHA estimates the cost of complying with the standard for coke-oven emissions is between \$11,000 and \$58,000 per worker, per year, and would require a capital cost of between \$451 million and \$860 million for the entire U.S. Even now, little information is available on the effect of economic incentives or provision of information on occupational health and safety, although the costs to producers would likely be lower than the standard and enforcement method.

SUMMARY

Jim Schaffer, in his statement to an Organized Symposium on Regulations at the 1977 American Agricultural Economics Association Meeting, stated that: "Economic regulation results from the attempt of citizens to articulate preferences about the physical and social environment they share. There are many problems in the articulation of preferences by both market and political processes. Economics supposedly deals with the mechanism for expressing preferences as guides to production of goods and services . . . There are no simple solutions to the problems associated with the enactment, design, implementation and evaluation of economic regulation. But it is possible to provide understanding which can lead to improvements in the regulatory system and performance of the political economy." (Schaffer, p. 5)

My proposal deals with trying to provide that understanding, and can be summarized as follows: (1) the political debate on regulation has been rather incomplete; (2) the reason is that the debate has not been cast in the issues, alternatives, and consequences framework; (3) regulation policy needs analytical thought and empirical results from an issues, alternatives, and consequences framework where methods of obtaining desired behavior and action are considered as alternatives; and (4) agricultural economists, with their long, rich, and useful experience in agricultural policy, can make a significant contribution to improving the quality of the political debate.

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