



Regulation: Benefit or Bane

A Campus Debate Featuring
Murray Weidenbaum and
Carol Tucker Foreman
at Washington University

CSAB Forum
Number 6

July 1999

Center for the Study of American Business
Washington University in St. Louis

This booklet is one in a series designed to enhance understanding of the private enterprise system and the key forces affecting it. The series provides a forum for considering vital current issues in public policy and for communicating these views to a wide audience in the business, government, and academic communities.

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Virginia Weldon, Murray Weidenbaum, and Carol Tucker Foreman at the debate, "Regulation: Benfit or Bane," March 30, 1999.

Virginia Weldon is director of the Center for the Study of American Business at Washington University. Weldon previously was senior vice president of public policy at the Monsanto Company, where she had worked since 1989. Prior to that, she served Washington University for more than 20 years as deputy vice chancellor for medical affairs, professor of pediatrics,

and vice president of the Washington University Medical Center. In 1994, she was named one of 18 members of the President's Committee of Advisors on Science and Technology.

Murray Weidenbaum has been an economist in business, government, and academia. He holds the Mallinckrodt Distinguished University Professorship at Washington University, where he also serves as chairman of the Center for the Study of American Business. In 1981 and 1982, Dr. Weidenbaum was President Reagan's first chairman of the Council of Economic Advisers. From 1982 to 1989, he was a member of the President's Economic Policy Advisory Board. Earlier, Dr. Weidenbaum was the first assistant secretary of the treasury for economic policy. He also served as fiscal economist in the U.S. Bureau of the Budget.

Carol Tucker Foreman graduated from Washington University with a degree in political science and has served as a member of its Board of Trustees. In 1978, she received the University's Distinguished Alumni Award. From 1973 to 1977, she was executive director of the Consumer Federation of America. From 1977 to 1981, she served as assistant secretary of agriculture for food and consumer services. In 1981, she formed her own public policy and political consulting firm, Foreman Heidepriem & Mager Inc. In March 1999, Foreman rejoined the Consumer Federation of America as distinguished fellow and director of its Food Policy Institute.

Remarks by the Moderator, Virginia Weldon

The Center for the Study of American Business welcomes all of you this afternoon to what we believe will be an interesting debate on the role of federal regulation and how it affects our free-market economy. We are probably past the point of a debate about being for or against regulation. We're really down to, "How much regulation?" and "How do we make it work in a reasonable way?"

Our two debaters bring decidedly different perspectives to this issue, but who knows what the outcome will be—they may even agree on some substantive suggestions that might lead to major public policy reforms. We'll see.

First, let me introduce our visitor. **Carol Tucker Foreman** of Washington, D.C. is no stranger to Washington University. She received her degree in political science from Washington University and has served as a member of its Board of Trustees. In 1978, she received the Washington University Distinguished Alumni Award. From 1973 to 1977, Carol was executive director of the Consumer Federation of America, where she became a lead spokesperson for consumers on food issues. From 1977 to 1981, she served as assistant secretary of agriculture for food and consumer services and became the lead administration advocate for consumers on food issues. She led the development of the first dietary guidelines for Americans, and strengthened the Women's, Infant, and Children's Supplemental Feeding Program known as WIC. In 1981, she formed her own consulting firm and has been president of Foreman Heidepriem & Mager Inc. until last month, when she left the firm to rejoin the Consumer Federation of America as distinguished fellow and director of CFA's new Food Policy Institute. It's a great pleasure to welcome Carol back to her alma mater.

Murray Weidenbaum almost needs no introduction to this audience. He is the Mallinckrodt Distinguished University Professor of Economics and founder and chairman of the Center for the Study of American Business. In 1981-82, he served as chairman of the Council of Economic Advisers to President Ronald Reagan. He also was a member of the President's Economic Policy Advisory Board from 1982 to 1989. He served as assistant secretary of the treasury for economic policy to President Richard Nixon. Earlier in his career he was chief economist for Boeing. Constantly on the go, and a prolific contributor to journals and writer of op-ed pieces, Murray has recently been appointed to the bipartisan Trade Deficit Review Commission at the recommendation of Senator Trent Lott and was also the project director for the Committee for Economic

Development's report entitled, "Modernizing Government Regulation: The Need for Action."

So now you know a bit about our two debaters; let's get on with it. Here are the ground rules. Each will have a maximum of 10 minutes for opening comments, followed by five minutes each for rebuttal. We'll decide who will go first by a coin toss. Following their opening comments and rebuttals, the two debaters will have an opportunity to question each other and to take questions from the audience. Each response will be limited to two minutes. Each debater will be allowed five minutes for summation, and then I will try to determine if there are any common threads that might lead to substantive recommendations for regulatory reform.

[Foreman won the coin toss and opted to follow Weidenbaum.]

Opening Comments

Weidenbaum: To put it simply but accurately, business and government need each other. Without government there is anarchy. Without private enterprise there is poverty. However, the relationship between these two basic components of a modern society is usually uneasy, and often adversarial.

The range of interaction between business and government is complex. The same government that is the unfriendly regulator and tax collector is also the most welcome customer and provider of subsidy and credit. The relationship between business and government is uneven. The largest company cannot raise taxes or throw you in jail. The smallest unit of government can.

A central issue facing any modern society is how to deal constructively with the dynamic tension between the public sector and the private sector. Government sets the rules that are so essential for a private enterprise system—enforcing private property rights and business contracts—and establishing money itself.

In turn, business creates the jobs, income, and goods and services that are at the heart of the economy and that generate the revenues to finance government. The competitive forces in the marketplace are key to a free society. It is a remarkable uniformity of history that no collectivized economy has ever produced a single free election or a free press.

The continuing challenge is how to constructively harness the innovative power and motivating incentive of the business enterprise so that it meets society's needs without weakening business's unique characteristics that are at the heart of a free society. That is a difficult task under the best of circumstances.

Given the emotional nature of most debates on business-government relations, we should try to raise the information level, not the decibel level.

To get the discussion going, I offer a set of questions. They may seem to be loaded questions—and they are. My purpose is to get the policy debate to deal with real and tough issues.

1. *Should the government regulate everything?* The scope of regulation is constantly expanding. The rationale for compulsory helmet laws for motorcyclists could extend to controlling the diets of badly overweight people. Both impose heavy medical costs on society. That is the reasoning in support of helmet laws.

2. *Haven't we exceeded the limits of sensible regulation?* For example, smelly old clunkers represent the bulk of the pollution generated by autos. Yet public policy requires making new cars even more expensive, encouraging people to hold on to those clunkers longer. Worse yet, the much lighter cars that meet energy efficiency standards are far less safe to drive.

The relationship between business and government is uneven. The largest company cannot raise taxes or throw you in jail. The smallest unit of government can.
—Weidenbaum

Perhaps the biggest problem is that Congress does not know how to legislate common sense on the part of the regulatory agencies.

- EPA's air standards assume an individual lives 218.7 yards from the source of air pollution and never leaves the spot. She stays outdoors for 70 consecutive years without ever going indoors.
- EPA's water pollution standards assume an individual drinks 2.1 quarts of contaminated water every day for 70 consecutive years.
- The regulators are in the process of requiring every bank to report to the government any time an individual varies from his or her "normal" banking habits. That's really scary. It could cover every graduating senior who gets a full-time job.

3. *Does it make sense for regulation to focus almost exclusively on business?* OSHA—the workplace regulator that is business’s favorite four-letter word—places no responsibility on employees—even when their actions endanger other employees. Important EPA laws exempt government agencies and nonprofit institutions, no matter how much they pollute. Federal highway safety legislation regulates car manufacturing in excruciating detail. But the Feds ignore the role of drunk drivers and drunk pedestrians—even though they account for most highway fatalities. It is easier to regulate business than to deal with the problems directly.

4. *Reforming regulation isn’t necessarily a trade-off between dollars and lives.* The most current example is the compulsory air bag. It kills children and small women. Supposedly, the air bags save large adults—but only if they don’t already buckle up. Yet the critics of regulation get lambasted for supposedly caring more for dollars than for people.

What’s the answer? We need to reconcile economic concerns (jobs, competitiveness, and profits) with social concerns (environment, health, and safety). Policymakers keep them in separate compartments, but shouldn’t. For example, many federal tax and expenditure subsidies supposedly help some sector of the economy, but they mess up the environment. In turn, the typical environmental statute prohibits taking account of economic factors and thus it may take the least efficient and most costly approach in reaching its objectives.

Foreman: In a complex, technologically advanced society, government establishes the rules needed to protect public health and safety, assure fair markets and promote the general welfare.

In our representative democracy, the rules evolve from a constant tugging and shoving and balancing of competing interests and conflicting values. Economic efficiency is one of those values. Market mechanisms have served our nation very well, and Americans have a justifiable fondness for them. But surely the founding fathers were stirred by a vision of something more than generating the greatest output for the least input and, from the beginning of the nation, Americans have consistently put basic social values including equity, safety, and public health above the market. The regulatory process is one of the tools we have developed to allow us to enjoy the benefits of market capitalism while managing the undesirable consequences of the single-minded pursuit of profit.

Critics of federal regulation charge that too often rules are constructed by legislators and regulators who are oblivious to market necessity and too beholden to a fickle electorate. And the rules

themselves impose irrational, unreasonable burdens on business. There are three serious weaknesses in that argument.

First, as one who has labored as a lobbyist for many years, getting a bill through Congress and signed by the president is no easy task. It requires massing enough data and public support to overcome the many institutional barriers to action. Many would argue that, in fact, our system of checks and balances causes the U.S. government to be too slow in addressing the problems generated by a technologically sophisticated world.

Second, far from being disadvantaged by the decision-making process in Washington, corporate America, with its lobbying budgets and campaign contributions, has the tools and the access to influence government decision making.

Third, examine the range of federal regulation. You will find that American business spends much of that influence seeking not to reduce federal regulation, but to maintain and even increase it.

Surely the founding fathers were stirred by a vision of something more than generating the greatest output for the least input, and Americans have consistently put basic social values ... above the market.

—Foreman

Let me note a few examples. New Deal-era economic regulation provided a nice, comfortable, competition-free niche for truckers, airlines, and railroads. They held on to their regulatory protection long after there was much public value to the rate- and route-setting of the ICC and the CAB. Economic regulation restricting markets still thrives. Banks have spent millions of dollars lobbying to keep securities companies out of their business. Peanut, sugar, and dairy farmers fight fiercely to keep government regulators allocating markets and setting prices for their products.

Today, the debate centers on social, not economic, regulation. Economists, conservative commentators, and think tank leaders argue that health, environmental, and civil rights regulation is strangling the market and must be pared back. Fortunately, the markets just keep ignoring their dire predictions. We meet here one day after the Dow reached a rather important milestone.

The argument that regulation throttles growth is further undermined by the constant efforts of business leaders to stay under the yoke of federal control.

For example, to assure that meat and poultry labels are accurate, USDA regulations require a company representative to appear at the Department to have the label examined and approved. Vice President Gore's "reinventing government" project suggested ending the practice and cutting back on the rigid control over labels. Consumer advocates didn't object, but some regulated companies did. They feared their competitors would cheat. And companies that sell label "expediting" services to the industry not only objected, they got a court injunction to prevent the change.

If the Food and Drug Administration didn't exist, food companies would be forced to invent it. Without FDA's assurance of its safety, cheese and yogurt makers would never have bought milk from cows treated with Monsanto's recombinant bovine growth hormone.

The primary legislative goal of the Grocery Manufacturers of America this year is to expand the reach of federal regulation. The GMA wants Congress to expand federal authority over the food industry, to pre-empt state action regulating food safety and labeling. Does that surprise you? It shouldn't. Business frequently prefers federal regulation to state because, in the pithy words of one trade association executive, "I'd rather be regulated by one federal gorilla than fifty state monkeys."

The inconsistency of the anti-regulation forces doesn't stop there. Leading opponents of regulation, including some running for president of the U.S., want federal regulators out of the boardroom, but favor moving them into our bedrooms. They want federal regulations to govern medical decisions between a woman and her doctor about whether to end a pregnancy, and to limit sexual practices between consenting adults. Does anyone think a cost-benefit analysis would contribute anything worthwhile to those debates? Business leaders and social conservatives decry federal regulation in theory, but drink from the cup of federal power when it is convenient to do so.

It's almost impossible to find anyone who is unabashedly pro-government regulation. Most of us are ambivalent about it at best. We'd like to get rid of the regulations that protect the other guy and keep the ones that protect our own interests. As one wise participant in the process once stated, "When it comes to regulation, where you stand depends upon where you sit."

Rebuttals

Weidenbaum: Thank you. That was very interesting, because Carol is often right and often wrong. Let me disentangle that.

She's absolutely right—Congress devotes a lot of time and energy before it passes a law to try to make sure that there's really a compelling need for it. But examine that Congressional process carefully. Overwhelmingly, maybe 80-90 percent of the time and effort is devoted to hearings on the nature of the problem. The solution, the actual law establishing the regulatory regime, gets rushed through with very little attention from the Congress. Typically the staff is still preparing it when the Congress votes the bill. That staggers the imagination, but it's true. A copy of the Clean Air Act, for example, wasn't available to the members of the Congress when they had to vote yes or no on it. And I don't mean to pick on that—the same is true with every major tax bill. But it helps explain the shortcomings of the actuality of government.

I don't think that the proper, sensible, desirable way of looking at government regulation is from a viewpoint of government or of business....The proper way is to look at the whole phenomenon of government, and especially government regulation, from the viewpoint of the consumer. —Weidenbaum

Yes, Carol is right—many businesses get so used to regulation that they use it to keep out new competition. Exactly! That's one of the shortcomings that economists constantly cite as a key reason for *reducing* the array of government regulation. That's not an excuse to *keep* the regulation.

But there is a red herring I really want to object to. Whatever your view of government in the bedroom is—and I have a hunch that Carol and I are rather close on that one—that's irrelevant to the subject of government regulation of business. If it's not a red herring, it's like my shirt, blushing pink.

I don't think that the proper, sensible, desirable way of looking at government regulation is from a viewpoint of government or of business. In a sense both are middlemen or middlewomen. The

proper way is to look at the whole phenomenon of government, and especially government regulation, from the viewpoint of the consumer. And here the consumer bears the burden of government regulation in terms of higher costs, reduced variety of products, as well as getting whatever benefits there are from government regulation.

But that's the proper way of looking at it: "Is the consumer better off or worse off from a given government regulation?" Not: "Do you care about clean air? Do you care about a safe workplace?" We all do. The difficult question—that's why I raised some of those loaded questions earlier—the real serious concern is, on balance, is this specific government intervention you're talking about helpful or hurtful to the average citizen, to the average taxpayer? That's the question that is avoided in most of the debates, unfortunately, and avoided on both sides. Even if it's a boon to business, if it's a bane to the consumer, we ought to oppose it. Not that we oppose clean air or clean water, but we oppose the specific bureaucratic intervention, in a sense saying to the Congress and to the regulators, "Back to the showers. This doesn't hack it. Take another stab at it."

And let me say finally, there's a limit to the amount of activity that government can sensibly perform. You take a look at the thousands of pages—the *library*—that is filled by all of the statutes and regulations issued by government. Common sense tells you that even if the government were staffed by Newtons and Einsteins, they couldn't sensibly carry out that whole array. To get down to it, there's a case for economizing—not eliminating—economizing on government regulation.

Weldon: Carol?

Foreman: Thank you. My friend Murray argues in his recent essay on regulatory reform that regulation impairs economic growth. On the way out here this morning, I remembered that Missourians kind of like newspapers as props. I couldn't find the Harry Truman *Chicago Tribune*, but I thought maybe I'd bring this morning's *Wall Street Journal*. It proclaims that yesterday the Dow passed 10,000 for the first time in history.

Government regulation has frequently stimulated innovation and the development of new products. Until recently, the Department of Agriculture argued that it didn't have the authority to regulate the presence of pathogens in raw meat and poultry. The result: There were no tests for discovering the presence of those pathogens. In the couple of years since the Department began to regulate them, there's been an enormous amount of technology transfer and a whole raft of new tests to detect the existence of these patho-

gens and improve public health protection.

I think it is wonderful Murray is in his “on the one hand, ... on the other hand” mode today. On the one hand he argues that government’s gone too far in regulating individual behavior, for example the helmet laws. But then he suggests that perhaps it would be more appropriate to take the burden of highway safety off of the automobile manufacturers and put more of it onto the drunk drivers and drunk pedestrians who are responsible for most of the traffic fatalities. I’m not sure where he goes on that. One of the reasons, incidentally, that the federal government does regulate highway safety and ignores the problem of drunk driving and drunk pedestrians is that the states regulate those areas. It hasn’t been determined to be interstate commerce. Last year, however, in the Congress, there was an effort to try to influence the states and get them to be a little more vigilant about drunk drivers by attaching strings on the highway trust fund and encouraging states to lower the blood alcohol that qualified you as being under the influence. It went down to defeat because the alcohol industry and conservatives in the Congress argued that this would be an inappropriate new expansion of federal regulatory power.

Government regulation has frequently stimulated innovation and the development of new products.

—Foreman

The banking regulation that Murray mentioned is an interesting one. It was proposed, but withdrawn. It was not the idea of social regulation advocates but of conservatives, the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco and Firearms. They wanted the banks to keep these records in order to help keep tabs on organized crime and drug dealers.

The most important difference between Murray and me—and it’s one that I’ll come back to in my recommendations—is determining when something is the fault of regulators and when it is because a law has been badly drafted by the Congress. Murray made reference to that in his comments on the EPA and the tax laws. But it’s not often that critics of regulation are as precise as he was in making that criticism. In his recent paper, Murray criticizes the

Department of Agriculture for continuing to look at every one of the 4 billion chickens that are slaughtered each year. It is a silly thing. But it continues because the meat industry does not support changing the archaic law that requires it.

Questions from the Floor

Weldon: Thanks, Carol. Well, you've heard from our two debaters now, and you've heard their rebuttals. There will now be an opportunity to take questions from the audience directed to one or both. Each will have approximately two minutes to respond to your questions. The two debaters can also question each other, and I have a few questions in case we don't have enough from the audience.

Question 1: *Dwight Lee, adjunct fellow with the Center for the Study of American Business.* I would argue that business often fights for regulation, but what they're really doing is fighting against the most effective type of regulation. It seems to me many of the business attempts to get regulated, as you pointed out, are attempts to protect themselves against competition and the forces of the market, which I think provides much more effective regulation in many cases than many of the regulatory advocates think or believe, and businesses are trying to get out from under that regulation by getting tariffs or getting other forms of regulation like the CAB—trucking—to eliminate or reduce the competition.

Tucker Foreman: Clearly businesses go for economic regulation in order to protect themselves against the weaknesses of the market. A vigorous antitrust regulatory system, in my view, is the best way to go after that problem. Sometimes it requires weaning businesses that have been dependent upon federal regulation for a long time. One of the reasons that I oppose the regulatory budget is that it says, "This is the amount of money that we'll have for regulation" and makes no effort to differentiate between the billion dollars a year cost of looking at every fool chicken slaughtered and another regulation that could pass anybody's test for preserving life and health in a modern society.

Weidenbaum: I'd like to point out that, with an awful lot of regulation, the statute initially is enacted over the objection of business. But of course business adheres to it once it becomes law—learns to live with it, and then, yes, often becomes an enthusiastic defender of the regulation to keep out new competition. That's just the normal process of adjusting to some dumb law that shouldn't have been enacted in the first place.

Question 2: *Leonard Guarria, World Agricultural Forum.* You've correctly noted that regulation and business have a special relationship. But it's much more complex, it would seem to me now, in the international arena. Regulation is often proposed by governments against other governments or their industries. I'd like to hear your views on regulation in an international sense.

Weidenbaum: It's always difficult to generalize in such an array of regulation, but so much of the current emphasis on international regulation is designed, as I can see it, to be a trade barrier, to protect. An example: The European Union is using regulation in lieu of tariffs. Tariff increases will run afoul of the World Trade Organization agreement, so therefore they are using a second-best alternative, health and safety regulations, although it seems clear the concern isn't health or safety but the financial health of the producers in the European Union. And the health and safety regulations are in effect a loophole used to restrict international commerce. I think that's a very undesirable development. In fact, if we went back to the early regime when we had tariffs, it wouldn't be as bad because tariffs operate through the price system. You cut costs enough, you can absorb the tariffs and still compete. But if you have an absolute prohibition through a regulatory barrier, you're out of the picture. Competition is reduced. I think that's something we ought to worry a great deal about and learn more about.

Foreman: I ought to go back to Washington and say Murray Weidenbaum wants to go back to Smoot-Hawley!

Weidenbaum: That's a good line!

Foreman: And I agree with him. Clearly it's being used as a non-tariff barrier. On the other hand, we're in a new era here, and you can't disregard the need for reasonable health and safety legislation and regulation in the United States because some other country might decide to challenge it as a non-tariff barrier.

There is an interesting piece of business going on between the Australian government and the U.S. government over Australia's changes in their meat inspection system. Our government, instead of fighting it fiercely, is using it to help construct a change that will help build the case for modernizing the U.S. inspection law. The USDA has pushed the Australians to defend each of the changes they've made and to show they meet the U.S.-set performance standards for reductions of pathogens in raw meat. That, I think, is a model that we might use in other instances. But don't hold your breath until the Europeans decide to apply it to hormones and BST.

Question 3: *Clarence C. Barksdale, Trustee of Washington University.* I just want to make a comment and then maybe direct a question. You gave the example of the inspection of the chickens, and Murray talked about the banking business. I know a little bit about the latter. In these cases I think these companies have used these as marketing opportunities. You definitely don't want to sell a chicken unless it's stamped "government inspected." And you definitely don't want to be in the banking business unless it says "insured by the FDIC"—at least I wouldn't want to be today. These are old regulations, and I think these are examples that businesses have learned to live with them. We haven't been given the choice of living without them. I would say that the banking business would probably like to, but with 50 or 60 years of regulation, it's hard to market in an environment without having that stamp of approval. So I think the biggest challenge to the problem is these newer regulations that are coming out—how do they become more flexible? As I said, the old regulated companies get used to it. But I think the example of the air bag is a great one, where we see it may not be a great safety device now—it may be a detriment. How do we get that changed?

What we need ... is not to go at this straw thing out there, but to go at regulations individually and substantively and see if each one meets the particular needs that it was designed to attack. If it doesn't, let it go.

—Foreman

Foreman: Let me respond quickly. Unfortunately, "flexible" usually means that the industry has learned not only to live with it, but has managed to turn it to its advantage through the application of the economic power that comes from lobbying and campaign contributions. If you attack specific regulations as being poorly written or not being backed up by adequate data, I'm prepared to walk through the process, and if the regulation doesn't measure up, let's get rid of it. But don't attack regulation nonspecifically, as though it were some toxic cloud. In the end, we all have regulations we like, and we want to keep those. And we have regulations we don't like, and we don't want to keep those.

What we need, if we want to be productive about this, is not to

go at this straw thing out there, but to go at regulations individually and substantively and see if each one meets the particular needs that it was designed to attack. If it doesn't, let it go. I find that every time we talk about this, there is this great Mammon "regulation." I don't think you can sustain that argument.

Weidenbaum: Let me take a twist to that one. A number of years ago our Center for the Study of American Business issued a nonpartisan inventory of government regulation—just inventorying. I think it was just one page for each regulatory program. Even though it was many years ago, that was a big fat book. I used to be fascinated watching people turn pages on this, whether they were workers, employers, consumers, retired people, students, faculty, liberals, conservatives, independents—it didn't matter. They'd wind up shaking their heads: "The Feds are regulating this?" They'd turn some more pages: "The Feds are regulating that?" Before they'd finish, they'd usually wind up with some comment like, "My goodness! The Feds are trying to regulate everything!"

To put it mildly, Congress has assigned more regulatory tasks to the government than it's feasible to carry out with any degree of efficiency. ... You have to choose what's really important, and Congress has never done that.

—Weidenbaum

I suggest it's a real eye opener to sit down and go through the array of government regulation of business. To put it mildly, Congress has assigned more regulatory tasks to the government than it's feasible to carry out with any degree of efficiency. It's a question of priority. You have to choose what's really important, and Congress has never done that. They examine each regulatory statute in isolation, as if Congress and the government don't regulate anything else. It's a way of thinking that has to be changed. But as I say, you have to go back to the birth stage of government regulation, and that birth stage usually is, if you attend those congressional hearings, very emotional testimony on the shortcomings of the status quo and why the government needs to intervene. And that, unfortunately, so distorts the process that what comes out is the nonsense I was talking about.

Foreman: Wait a minute. If you hold a hearing because 9,000 people a year are dying from foodborne illness, and we clearly have a system that's not attacking that adequately, that's nonsense?

Weidenbaum: The nonsense, Carol, is not the complaints about the problem. The nonsense is the hastily written and enacted response. That's the problem. I think it's just plain wrong.

Foreman: Well, the last time they amended that law was 1967.

Weidenbaum: The fact that they didn't have a copy of the 800-page Clean Air Act when they voted on it, I think it's awful—especially when you sit down and try turning pages on that. I served on the Clean Air Act advisory committee at the EPA for a number of years. That was an eye opener. Look at all of the provisions of the Clean Air Act that EPA was supposed to carry out. They couldn't. And of course a lot of environmental organizations had a lot of fun suing the bejesus out of EPA for not carrying out the 800 pages of requirements when they knew when the bill was being voted on there was no way that all of those requirements could feasibly be carried out.

Foreman: And I would argue that that's a problem with a specific law, not a problem with regulation generically. If you end up with a regulatory budget in which you, as you did, list all of the regulations, and say we're going to get rid of 10 percent of them next year, the ones that will end up staying are the ones that everybody's most comfortable with because they've been around the longest time. And the ones that will end up going are the ones that address the problems that we confront today as our society changes—the problems that come about from increasing air pollution, the problems that come about from women trying to be in the workforce on an equal footing. And it seems to me the solution is to write a better law, not to say we are going to deal with regulation qua regulation and do away with it.

Weldon: Things are beginning to get exciting here! This is getting a little bit like *Crossfire* now.

Foreman: Oh, no, come on! We'd never sink to that.

Weidenbaum: The regulatory budget that Carol Foreman has just described is awful. I'd vote against it if I had the opportunity. Let me describe my version of the regulatory budget—it's very different.

The first step is to know the magnitude of resources—we do that in dollars, typically—that is devoted to carrying out government regulation. Depending on the estimates, it's 400, 500, 600, 700 billion dollars. There are arguments for each of these numbers, but each of them is a very large number. But in the budgeting

process, the Congress at some point votes a lid—let's be generous and say \$700 billion a year for the compliance costs of government regulation. Now that \$700 billion doesn't show up in the federal budget. It shows up initially in the budgets of the organizations—whether it's Washington University or McDonnell Douglas—that are complying with the government regulation. But ultimately it shows up in the prices of all the goods and services consumers buy.

How to administer that \$700 billion ceiling each year? Very simply, in concept. Each agency comes in with its regulatory programs, and sure enough, they come in with more than \$700 billion. I grew up in the old budget bureau, so government budgeting is something I do know something about. They come in predictably with more than \$700 billion of compliance costs of regulation, and therefore, the government is forced to set priorities: Which are the most productive, effective government regulatory programs? Let's assure them a place in the budget, and the ones that aren't worth it, that aren't cost effective, that would flunk the simplest benefit-cost test, let's cut them back. And that \$700 billion lid, or wherever you draw the line, would force that priority process that is absent from the regulatory regime at the present time. Will a regulatory budget work perfectly? No, but I'm tempted to say anything would be better than the chaotic status quo.

Foreman: What is the compliance cost for sugar price supports? If you've got that in a regulatory budget, you can bet that the same people who have been so effective in maintaining sugar price supports long after there was any justification for them, if there ever was, will end up with their piece of a federal regulatory budget. And changes that need to be made in worker safety and civil rights are likely to get squeezed out because the lobby supporting them has less money for campaign contributions.

Weidenbaum: No, Carol. There is a little problem with what you said, and that little problem is you're describing a boondoggle subsidy program, and subsidies by definition are in the federal budget to begin with. So there's no opportunity or need or reason for putting them into the regulatory budget.

Summations

Weldon: Well, I hate to interrupt, but we need to give our two debaters some time for summations. We could go on for another hour at least, and I know you're all enjoying it. But I also know you probably have places that you've got to be. So at the risk of leaving you disgruntled because I didn't allow more time for questions, I'm

going to ask Murray to go first with his summation. It sounds as though these two debaters won't agree on anything, but I have a feeling we will probably find some sources of agreement. Murray?

Weidenbaum: I'd like to offer four specific approaches for improving the status quo in government regulation.

1. Policy reform should start with the lightest touch—require economic impact statements before issuing a regulation. This is a close cousin to the existing environmental impact statements. Just make sure that regulatory decision makers know the economic consequences of their actions before they act. This may include identifying and analyzing advantages and disadvantages—but does not extend to performing a formal benefit-cost analysis.

2. The next step is to estimate the benefits and costs to see if the benefits justify the costs (not that they necessarily have to be greater). In that spirit, President Carter required regulatory agencies to compare costs and benefits before they issued a new regulation. President Clinton has taken the same position. However, the Carter people took this requirement seriously. The General Accounting Office reports that most regulatory agencies ignore the Clinton executive order.

Perhaps at times the answer is to give the private sector the benefit of the doubt: if Congress can't write a sensible regulatory law, it should hold off adding to the clutter on the statute books.

—Weidenbaum

3. An approach with more teeth is to require each new regulation to pass a formal benefit-cost test. President Reagan required new regulations to take such a benefit-cost test, except where the law prevented it. It turns out that the statutory exceptions are numerous. These include specific statutes such as the Clean Air Act and the so-called independent regulatory agencies—FCC, ITC, NRC, FERC, and NLRB. Yes, it will take a new law to remedy this deficiency.

4. A regulatory budget is yet another way of controlling regulatory costs. This would be a ceiling on the high costs that regulators impose on the private sector—compliance costs now run in the

hundreds of billions of dollars a year. This is not a recipe for rigidity. New priorities could replace old within the overall budget ceiling.

Perhaps at times the answer is to give the private sector the benefit of the doubt: if Congress can't write a sensible regulatory law, it should hold off adding to the clutter on the statute books. Existing regulatory statutes already fill up a good-sized library. Likewise, if a regulatory agency is unable to issue a workable regulation it should restrain its normal impulse to expand its realm of activity. More is not always better than less.

The experience of the Interstate Commerce Commission provides a pertinent case in point. A few years ago, Congress decided to close down this oldest of regulatory commissions. The demise of the ICC goes unmourned. Nobody misses it! What a great precedent.

Foreman: I seem to recall that it was Jimmy Carter who first proposed getting rid of the ICC and I again want to differentiate between economic regulation and social regulation, because Murray cites economic, but his goal is to go after social regulation.

Those of us who support government regulation to protect such values as health, the environment, and civil rights have an obligation to make sure that regulation is as rational, effective, and efficient as possible and generates the fewest possible unintended negative consequences. We are obliged to seek ways to improve both the process and the product.

I have five recommendations for improving regulation.

First, we should join forces to insist that Congress take responsibility for its role in regulation. It's hard to write good regulations implementing a law that has been rendered hopelessly vague and confused by changes made to buy a vote here or there. Congress rarely sets specific time limits on new regulatory authority or establishes deadlines for regulations to be completed. Congress rarely conducts regular and detailed oversight of regulatory agencies. Pushing Congress in this direction would be a worthwhile investment of corporate influence.

Second, Congress and regulators need access to independent, high-quality scientific analysis. Congress has independent auditors and budget analysts, but, in a world driven by sophisticated science, Congress has no capacity to analyze the science underlying demands for legislative action. At a minimum, Congress should reinstate the Office of Technology Assessment.

Regulatory agencies need more and better scientists to review and evaluate industry data and some independent research capacity. They should not have to rely completely on data provided

by interested parties. Instead of cutting agency budgets, regulated industries should lobby to improve their scientific capacity.

The regulatory process would also be improved by a mechanism that outlines the most pressing scientific issues in a field and generates an independent scientific analysis of the options for addressing it. The Health Effects Institute set up under the Clean Air Act has helped develop better regulation. This independent organization funded by both the auto industry and EPA used independent panels of scientists and peer reviewers to determine the key scientific issues on the best way to deal with air pollution caused by gasoline fumes at service stations. EPA was able to make a decision based on scientific data that were accepted by both industry and government.

Third, I support rules that embrace regulatory performance standards and establish financial incentives that reward positive behavior.

Those of us who support government regulation to protect such values as health, the environment, and civil rights have an obligation to make sure that regulation is as rational, effective, and efficient as possible.

—Foreman

Fourth, I support some form of negotiated rule making that brings the stakeholders and regulators together as early in the process as possible and emphasizes a cooperative rather than an adversarial procedure.

Fifth, I support risk assessment, risk analysis, economic impact statements and regulatory impact analyses. I oppose requiring cost-benefit analysis in social regulation and establishing a regulatory budget. Cost-benefit analysis is not either well-developed as a tool nor particularly useful in analyzing human and aesthetic factors.

Finally, in a recent study, Professor Weidenbaum referred to the lack of trust that hampers rational decision making. I agree with him. Effective representative government requires a modicum of trust among the participants. Without it, the best data are useless. It is unlikely that we'll see any improvement in substance or process until the we restore some level of trust and civility to the dialogue.

Weldon: Thank you to both of our debaters for a very interesting afternoon. I think we can find some points of agreement. They may beat me up afterwards if I say they've agreed on something and they haven't, but we are very civil here.

I think there's a possibility that Carol might agree with Murray on starting with a light touch by requiring economic impact statements at least, without a formal cost-benefit analysis. There is no doubt about the fact that Carol opposes a regulatory budget and Murray is for it. However, I think they both would agree that it's critically important that Congress be persuaded to write better laws and exercise more discipline as it writes the laws. I think that both of them would cite the OSHA law as one that basically says "We can't figure this out. Let the regulators do it." And that's what happened.

I think probably that Murray would agree that a sunset provision on regulatory laws would be a good idea. It would be a way of weeding out some that didn't work—the air bag example, for instance. I think when that regulation was put in place, everyone thought it was great. No one realized that there might be some potential injuries that might result.

Carol has indicated a need for a better science base, and I think Murray would definitely agree with that, although I'm not sure he would feel that the agencies need more staff. He might suggest that the agencies find ways to increase their staff of science-based regulators by eliminating other positions.

Certainly I think that as we move into a more technological world, a complex world of biology and genomics, for example, there is going to be unlimited demand from the people and their representatives in Washington to write legislation that increasingly rules how we will live our lives. And I'm thinking in particular about the debate on the ethics of stem-cell development that may result in the growth of replacement organs as just one example.

I think that Murray and Carol would also agree that there is a lack of trust and that something needs to be done to build that trust. We've shown a good example of trust-building this afternoon: two very intelligent people who come from different parts of the political spectrum have come together, have had a reasonable discussion, and have entertained you all for an hour and 15 minutes. I hope you've enjoyed this debate. Thank you all for coming.

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