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**The Re-Regulation
Explosion: Costs
and Consequences**

Edited by Edward L. Hudgins



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The Re-Regulation Explosion: Costs and Consequences

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The Re-Regulation Explosion: Costs and Consequences

Edward L. Hudgins

Speakers often open their talks with a joke. However, I have a bit of a problem doing that in this particular case. For example, I could ask, "Did you hear about the bureaucrat who wanted all hard hats worn on construction sites to be sterilized before use?" Or, "Did you hear about the regulator who wanted to force dentists to dispose of children's teeth as toxic waste, rather than allowing them to return the teeth to the children for a later exchange with the Tooth Fairy?" Or I could ask you, "Did you hear about the bureaucrat who wanted automatic teller machines at drive-through banks to be made accessible to blind drivers?"

Now the good news is that these regulations, though they were actually proposed within the last year or two, did not go into effect. They were headed off by Vice President Dan Quayle's office, especially by his Council on Competitiveness. But, unfortunately, the joke is still on the American people. Many more regulations from Washington, turned out by the same system that has given rise to the absurd examples just mentioned, are in effect today. And more are always being concocted.

Over the last three and a half years regulations have grown at an alarming rate after declining in the 1980s. In 1980, for example, the *Federal Register*, the publication in which regulations are listed, was approximately 87,000 pages long. By 1988, Ronald Reagan's last year in office, the number had gone down to about 53,000. Unfortunately, last year that number had jumped up to 67,700. In 1980 there were 121,000 federal employees involved directly in issuing and enforcing regulations. In 1988 that number had dropped down to 104,360. Well, guess what? It is now up to an all-time high of 124,994.

The plague of growing federal regulations, like the more direct kind of taxes that we are getting all too used to, have a weakening and debilitating effect on the American economy, harming both consumers and businessmen and -women. But unlike a direct tax, regulations are a kind of silent killer. The public might see an extra form to fill out here and perhaps a ban on interstate banking there. The public might see, for example, a restriction on their use of their own land today and perhaps a mandate to businesses requiring wheel chair ramps tomorrow.

But there is a pattern here. The federal government turns out regulations with very little or no regard for their costs or their consequences, which often more than offset any benefit that the public gains from the regulations. The government, as it were, is like someone to whom you give a hammer: he is going to find something to bang. Giving the government the power to regulate the economy assures that it is going to find that something always needs more regulating. That seems to be the nature of government.

Regulations often are administered in a very arbitrary manner. But at other times, there is no leeway whatsoever given to regulators. Thus, even if they want to do the right thing and administer regulations responsibly, regulators must treat businesses and individuals in a manner that most objective observers would describe as simply stupid. And of course, regulations are so voluminous that no business, individual, or regulator really knows exactly what they face and must comply with.

I am going to talk about some of the generic problems with regulation. Next, Bill Laffer will talk more about the cost of regulations. Finally, Brink Lindsey will examine how regulations, in fact, undermine this country's tradition of freedom.

Let me now examine a number of harmful attributes found in most regulations.

- 1) A major problem with the regulatory process is that members of Congress and the Administration often fail to ask if the free market can offer a better or a cheaper way to provide the kind of public benefits or protection that they seek with regulations. For example, the government of the city of Paris did not develop and enforce building codes the way we did in the U.S. In this country, of course, we have lots of government building codes. In Paris, however, insurance companies have the primary responsibility for building safety. How is this done? A builder seeking a loan from a bank will be told by the banker that the proposed building must be insured before the banker will hand over the money. This is very logical. The insurance company will not insure the building unless the builder takes proper steps to assure the safety of the building. After all, the insurance company has a very strong incentive to see that the building does not collapse or does not burn down. That would be money out of the pocket of the insurance company. The point is, there is a simple, non-governmental way of providing for the public safety, as opposed to the government means that we use in this country.
- 2) A second generic problem with regulations is their sheer volume. This means that no one actually can understand what is there. Going back as far as the ancient Greeks, one of the main attributes of law is that it must be publicly known and understandable. Hammurabi, the King of Babylon, set up his famous Code of Laws before 2000 B.C. This was one of the first times that the public actually was told what the monarch decreed that an individual could and could not do. Unfortunately, our system does not function that way, at least not in terms of regulations. I mentioned that the U.S. has some 68,000 pages of regulations. These are just the generic regulations. There are thousands and thousands of pages of additional regulations specifying exactly how bureaucrats are to regulate, what procedures they must follow, and so forth. Thus, we are drowning in paperwork.

For example, at a panel here at The Heritage Foundation this spring, the operator of a factory in Baltimore complained that he had about five and a half feet on his bookshelf filled with government regulations. He admitted that he was not exactly certain what was contained in these regulations. How can a businessman find time to read five and a half feet worth of books to figure out exactly what he can and cannot do? In another interesting conversation, a representative of a major U.S. corporation told me that his corporation might erect a separate building simply to store its copies of the paperwork that it must submit to the government. Does this not suggest that the system has simply broken down, that no one knows what regulations demand or permit?

- 3) A third generic problem with regulations is that they often contradict one another. This is in part because there are so many of them. How can anyone know exactly what is permissible and what is not? How can a lawmaker know whether the regulation he is passing now contradicts something that another regulation is doing? For example, the Baltimore factory manager I just mentioned said that he had one government agency telling him that, for health reasons, he must have the floor in his plant wet-mopped every two hours. Yet he had another government agency telling him that the floor, for safety reasons, must be dry at all times.

Another example is found in federal regulations mandating fuel efficiency. The principal ways to increase a car's fuel efficiency often involve technologies that are more polluting. Thus, they can violate other government standards meant to reduce pollution. The point is, one often finds regulations pushing business in opposite directions. One is reminded on the one hand of federal programs warning that smoking is bad for you, and

on the other hand, of programs paying the tobacco farmers money to support their crop production. It makes very little sense.

- 4) A fourth generic problem with regulations is that there is often little or no relationship between the penalties that they mandate and the public interest they allegedly serve. Let me give you several examples. Watertown, a city in upstate New York that I visited late last year had had a multi-year EPA-mandated project underway to replace the capacitors in its electric grid, because these capacitors contained the chemical PCB, which is banned by the EPA. The city officials, however, discovered they would be a few months late completing this project. They asked the EPA not to fine them, arguing that they had made a good-faith effort to complete the project. In any case there was no real immediate threat to the public safety and health.

Well, not only did the EPA fine this city \$3,000 for being two months late, it also fined the city \$20,000 additional—\$10,000 for each of two years—because the city did not have a specific piece of paper in the paperwork for the EPA. The city had in its records the location of all of the capacitors, identifying the ones that had been replaced, and their replacement dates, and the ones still to be replaced, with the dates of the scheduled replacements. But they did not have a separate piece of paper saying, “To the city,” that is, the owner of the electric grids, “From the city,” that is, the local political authority: “This is to remind you that you still must replace the following capacitors.” The result: a \$20,000 fine.

Consider another example of a penalty that has little to do with protecting the public health or safety. I spoke last year to a union leader from Seattle, working in a Boeing plant. He told me of an incident in which he entered the plant’s cafeteria after being in the plant and ate a cup of chicken soup. After he finished the soup, he used a napkin that he had been carrying with him to wipe his mouth and then proceeded to throw the napkin away. It happened that an EPA bureaucrat was there at the time. The EPA representative said, “Sir, you cannot do that. I’m sorry.” “Why not?” asked the union leader. The EPA man’s response: “Given the regulations around here and where you have just been in the factory, this napkin now is officially classified as toxic waste.” In other words, the EPA bureaucrat was telling the union man that he was supposed to go through an expensive process of disposing of a napkin that was clean enough for him to wipe the chicken soup from his mouth.

Other examples of how the penalties and the regulations have virtually nothing to do with protecting the public health and safety are far more serious and tragic. John Poszgai, an Hungarian immigrant in Morrisville, Pennsylvania, purchased land on which he planned to build a garage. He cleaned up some twenty years’ worth of illegally dumped tires, parts of junk cars, and other debris, and began to put down fill dirt as a base on which to construct his garage. Now, the property was not listed as a wetland; indeed, it was dry through most of the year. However, EPA bureaucrats apparently found certain kinds of vegetation on that land that are associated with wetlands. They secured a restraining order against Mr. Poszgai, ordering him to stop dumping in the fill dirt. Now Poszgai actually began to erect a fence to keep out the local contractor whom he had hired to dump the dirt. But apparently some dirt was dumped after the restraining order was issued. Poszgai was convicted of 41 counts for violating the Clean Water Act and sentenced to three years in jail for polluting a “navigable waterway.”

What on Earth does this penalty have to do with protecting the public health and safety? It is clearly an arbitrary act by bureaucrats. And it is interesting that Poszgai, who had managed to survive the Nazi occupation of Hungary and subsequent communist take-

over, was not able to escape the EPA bureaucrats, who arrested him at gunpoint for putting some fill dirt on his own property.

- 5) A final point about the problems of regulation. Because of their arbitrary and damaging nature, regulations have undermined our system of law, and, indeed, have given rise to what I call regulatory terror. Businessmen, and often private citizens, will complain to us at Heritage about the regulatory burden. They will give us examples such as the ones that I have related in this talk. "Can you write that down?" I will ask. "Can you put that in writing so that we can tell other lawmakers and the public about these abuses?" The individuals and the businessmen are often very reluctant to do that. Why? Because they say, "Look, you will go back to Washington, but I have got to live with that federal bureaucrat. And I am scared that he is going to use his arbitrary power to get back at me, to punish me, for what I have said in public."

I have suggested to some Congressmen and Senators that they should hold town meetings in their various state capitals and provide a darkened booth for witnesses, or allow witnesses to wear masks or hoods to protect their identities. This approach might be necessary since people have become so frightened of federal regulators that they will not step forward and say in public, "This is what this bureaucrat has done to me. This is what he has done to my business. This is why my business is shutting down—because of the arbitrary actions of this federal regulator."

Incidentally, in an off-the-record conversation with one of my researchers doing background work, one particular federal regulator bragged of having driven 100 enterprises out of business with high fines. So the fear among the public of the regulators is not an idle fear at all.

These are some of the generic problems with regulation. I have considered these problems especially from the level of the small businessman and the small property owner. I want to add that we here at The Heritage Foundation are interested in stories of regulatory abuse. Please call us and tell us your problems.

The burden of regulations on the economy is heavy and will grow heavier in the years to come. And this is on top of an already weak economy. To lift this burden, to fight back, it is important for Americans to realize that the abuses I have discussed are not isolated incidents. They are part of a pattern of federal regulations that impoverish us and restrict our freedoms. It is time for the victims of regulation to stand up for their prosperity and for their liberty.

William G. Laffer

My goal today is to give you a sense of the scope of the problem of regulation, and also a sense of the amazing variety of forms that the cost of regulation can take. It is easy to become bogged down in numbers. The eyes can glaze over with different figures and estimates of the total cost of regulation.

There are two dangers I want to try to steer you away from. One is the danger of getting so bogged down in total cost figures that you do not have an appreciation for what they mean. Thus, I am going to try to make the magnitude of the damage concrete. The other danger is that in looking at the specific effects of different regulations, it is easy to miss the forest for the trees. There is a whole other dimension of regulation that you see only when you step back and look at regulation in total. So, I am going to try to give you each of these perspectives.

Let me start by reviewing a few of the ways that regulation can harm the economy as a whole and each individual in particular.

There are as many different ways that regulations create harm as there are different regulations, and each has its own specific effects. For example, there are restrictions on agricultural imports and federal crop price support programs that restrict what farmers can produce, how much of it they can sell, and what prices they can charge. These sorts of market entry restrictions and regulations reduce the availability of goods to American consumers and raise prices. Another example would be restrictions on imports of sugar that raise the price of that commodity, forcing households to substitute other products, such as corn syrup or other sugar substitutes that they do not like as well, or to spend more money to purchase the sugar.

Destroying Jobs. Other regulations generally raise the cost of doing business in the United States, thus harming America's competitiveness and reducing the number of jobs available to American workers. Imagine yourself in the position of a multi-national corporation or in the position of a foreign investor who is trying to decide where to build a factory or where to invest his money. You can choose between the United States or some other country that does not have all of the regulations that America has. The regulations that are imposed here raise the total cost of doing business in the United States, and hence naturally reduce the profitability of investments made in the United States. Thus, some factories are going to locate outside of the United States, and investment capital will be steered toward countries with a less stringent regulatory climate.

Regulatory compliance costs, for example, those mandated by environmental regulations and occupational safety and health regulations, divert corporate funds away from investments in new machines that would increase worker productivity, reduce prices to consumers and increase the workers' take-home incomes. Instead, businesses must channel the money into compliance costs. For example, some might be forced to add special equipment onto their factories to reduce emissions, because they are told to reduce emissions in a particular manner, even though there may be some other alternative method that achieve the same effect that costs the manufacturer less. Or others might find it necessary to keep extra people on the payroll whose only job is to supervise compliance with regulation. All of this represents waste. In the lingo of economists this is called a "dead weight loss" to the economy. Funds are expended, and yet no added value is provided to consumers. Often little or no improvement in workplace safety is achieved by such regulations.

There is one kind of non-economic cost of regulation I would like to highlight, namely the toll of regulation on health and safety. Regulation tends to discourage innovation and the introduction of new products. One area where this is especially true is in the development of new drugs. Federal drug regulations, in conjunction with state product liability laws, have had a devastating effect on the rate of introduction of new drugs in this country over the last twenty or thirty years. One study, done by economists at the University of Chicago, shows that before the federal Food, Drug and Cosmetic Act was amended in 1962 to increase the federal Food and Drug Administration's (FDA) enforcement powers, an average of 46 new drugs were introduced each year in this country. After the 1962 amendments, the figure dropped off to an annual average of about 16, about a two-thirds reduction. Yet the same study showed that there was no change in the effectiveness or safety of the drugs. Drugs were safe before the amendments, they were safe after.

Deadly Effects. Another example of how regulations can harm the public is federal fuel economy standards that require manufacturers to increase the average fuel economy of all the automobiles they sell. One way the manufacturers achieve their targets is by making their cars smaller and lighter. But this makes the cars more accident prone and provides less safety in the event of an accident. The narrower wheel base in smaller cars makes it easier for the car to flip over. With lighter cars there is less body mass and less steel in the frame of the car to absorb the impact of the blow. Thus accidents that would have been minor end up producing major injuries, while accidents that might have been major but non-fatal end up killing people. A study done by Brookings Institution economist Robert Crandall and Harvard University professor John Graham estimates that the current fed-

eral fuel economy standards each year cause between 2,000 and 4,000 additional deaths, and an additional 11,000 to about 19,500 serious injuries.

Taken together, all the regulations produce the equivalent of a huge hidden tax, raising the cost of doing business, raising the cost of employing workers, and raising the cost of producing goods. The problem with the tax is that precisely because it is hidden, its harmful effects are not clear. But if you take these additional effects into account, there is another dimension of regulation that often is overlooked. Regulations do more than divert resources to unproductive uses and cause people to waste time complying with government paperwork requirements. Regulations also prevent economic activity from occurring and jobs from being created. What we do not see is the GNP that does not occur or the economic growth that never takes place because of regulation.

Studies have added up the direct compliance costs of the regulations and the direct consumer welfare costs due to higher prices or fewer available goods. The most recent and comprehensive, done by Thomas Hopkins at the Rochester Institute of Technology, found this cost to range between \$475 billion to \$600 billion. But his study did not take account of the indirect costs and the reduced growth.

When taking into account the indirect costs and the reduced GNP growth caused by regulations, several points must be kept in mind. One is that the cost of each regulation increases with the total number of regulations in the economy. That is, the whole is greater than the sum of the parts. And second, the cost of regulation increases over time. Regulations initially might reduce the growth rate of the economy by a small amount. If this slower growth rate lasts for only a year or two, then two years later GNP will be just a little bit lower than it otherwise would have been. But, if you have a slightly slower growth rate for ten or twenty years, it adds up to a considerable sum.

It is very difficult to estimate these indirect effects, but in a recent study for The Heritage Foundation, Nancy Bord and I tried to take those factors into account as well. We found a staggering cost imposed by regulations on the economy, somewhere between \$800 billion and \$1.6 trillion. That is a stunning figure when one considers that the total size of the economy right now is only about \$5.7 trillion. To put it on a more personal level, the cost of regulation comes out to between \$8,000 and \$17,000 per household. Now, this does not mean that if all regulations were done away with overnight each household would be making that much more money. It does mean that if the economy had not been saddled with these regulations for the past twenty or thirty years, each household today would be on average somewhere between \$8,000 and \$17,000 better off.

It is important to note that in calculating our figures we specifically took account of the fact that regulations occasionally produce benefits as well as costs. In the case of a regulation that produced certain costs but produced even greater benefits, we did not count those costs. Thus the cost of \$8,000 to \$17,000 per household is what you would have left over even after taking account of the benefits of regulations.

Brink Lindsey

I want to spend my time talking about some of the broader social and political costs of regulation. In particular, I want to look at three things: one, the connection between regulation and special interest abuses; two, the connection between regulation and the quality of democratic self-government; and three, the connection between regulation and the follies of the so-called transfer society.

Now in the first place, it inevitably is the case that a large and complicated regulatory structure such as the one in Washington will be shot through with special interest abuses and corruption. In other words, in countless ways and on a massive scale, public power is being diverted to serve purely private ends. Our Founding Fathers called this the problem of faction. This is a problem that today has spun completely out of control.

In many cases regulation exists and thrives in the absence of any legitimate public purpose whatsoever. Probably the most glaring example of this is the entire category of regulation known as economic regulation. This kind of government intervention is premised on the existence of so-called market failures which government regulators supposedly must step in to correct. Probably the most oft-cited category of market failure is natural monopoly. The existence of such a monopoly is cited as the theoretical justification for electric utility regulation, for telephone rate regulation, for gas pipeline regulation, for cable TV re-regulation.

Another category of supposed market failure of great historic significance is excessive competition. Excessive competition served as the rationale for the government creation of cartels in the airline and trucking industries with market entry and prices controlled. A popular form of alleged market failure these days is "unfair" competition. This "error" is supposed to be corrected by anti-trust laws which prohibit American businesses from cooperating even in the face of foreign competition. Unfair competition also is used as an excuse for many international trade restrictions. It is argued that imports, which allegedly are dumped in the U.S. market at less than the cost of production or subsidized by other governments, enjoy an unfair advantage over domestically produced goods. Therefore, the imports of these goods are restricted.

In fact, however, in all of these cases there is clear and abundant evidence that regulation harms, rather than helps, economic performance. Thus, the only purpose served by these regulatory structures is to benefit particular special interests at the expense of their competitors and of the general public. This, basically, is the conclusion of the public choice school theory of economic regulation. The public choice school seeks to understand and explain regulation basically as the offspring of the unholy union between rent-seeking companies and power-seeking bureaucrats. In effect, businesses can extort higher profits from the public by enlisting the government to act against competitors.

Phoney "Public Goods." There are other forms of regulation, such as those covering health, safety, and the environment, that seek to promote a legitimate public purpose. But even here, it is all too often the case that this public purpose serves as a front for behind-the-scenes special interest maneuvering. A notorious example of this resulted from the Clean Air Act of 1970. This Act set certain emission standards for utilities to meet, but left it up to them to decide how best to meet these air quality standards. Many utilities found it economical to meet these enhanced air quality standards by switching from high sulfur dirty coal mined in the East, to low sulfur clean coal mined in the West. Well, this just wouldn't do for the Eastern states' dirty coal industry. It lobbied furiously and, with the 1977 Clean Air Act amendments, the law was changed. Under the new requirements, utilities had to meet certain percentage reductions in sulphur emissions, regardless of the original sulphur content of the coal. In effect, it was all but mandated that utilities meet regulatory requirements by installing expensive scrubbers on smoke stacks rather than through the use of the more economical method of switching to less polluting coal. This meant that it made no difference if industries used clean or dirty coal. So here, on the surface, is what looks like a public-spirited environmental regulation designed to clean our air. In fact, under the surface, it is an attempt by miners of dirty coal, a special interest group, to use state power for their own selfish gain and at the expense of environmental quality.

Another example is the recent stringent EPA landfill regulations which, oddly enough, were supported by giants in the waste management industry. Why would companies ardently support new regulatory initiatives that might cost them millions of dollars? The large waste disposers figured out they would be able to shoulder these additional costs much better than their smaller and pesky competitors. Here again you have on the surface what looks like public-spirited regulation, but behind the scenes it is just special interest maneuvering.

The reason why this kind of corruption is inevitable becomes clear when you contrast regulation with a form of legal control that it replaces, namely the fundamental, common law rules of property,

contract, and tort. It is important to realize that the absence of all regulations does not mean anarchy. These fundamental common law rules protecting private property and governing contracts still form the basic legal framework for a market economy. These rules are, for the most part, truly general. That is, they apply to everybody in all walks of life and all industries.

While, of course, these rules produce “winners” and “losers,” generally it is very difficult to tell in advance who the winners and losers are going to be. This is not the case with modern regulation. Such regulation is highly complex and technical, and hence, highly specific. Accordingly, particular economic interests and industries, and even particular companies, are going to know in advance whose ox will be gored by any given regulatory proposal. Therefore, this complex regulatory structure provides a perfect breeding ground for well-heeled, well-organized special interests to capture the regulatory process for their own benefit.

This is not a new insight. Over 200 years ago the authors of the *Federalist Papers* had this to say about overly complex and fast-changing laws:

Another effect... is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation... presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow citizens. This is the state of things in which it may be said with some truth that laws are made for the *few* and not for the *many*.

I am not arguing here that all regulation is unnecessary, or that common law rules alone can solve all social problems. What I am saying is that when you abandon those fundamental common law principles of generality and neutrality, and instead attempt to micromanage social problems through highly specific, technical, and targeted regulation, you inevitably will open a Pandora’s box of special interest abuses.

Undermining Self-Government. The problem of special interests is related to another problem of over-regulation: Its overwhelming complexity is fundamentally incompatible with the health of democratic self-government. This is a deeper problem than the Keating Five scandal in which a banker sought to bribe members of Congress in exchange for a bailout, or than honoraria paid by lobbyists to members of Congress for speeches, or even than vote buying masquerading as constituent services. This problem goes to the fundamental structure of the regulatory state. Basically, the sheer bulk of current regulation overwhelms the capacity of democratic institutions to oversee and control them. Under democracy, laws are supposed to reflect public opinion. They can do this two different ways: one, directly, when some public outcry forces legislative or administrative change; and two, indirectly, through the decisions of elected representatives who are supposed to represent the public that elects them. Because current regulation is so horribly complex, both of these mechanisms of democratic control are breaking down.

If you hand an average citizen a copy of the *Federal Yellow Book*, which is the telephone directory for the federal government’s executive branch, he could not tell you what half of the departments, divisions, agencies, offices, and commissions even do, much less express an opinion about the specific regulations that they administer. Public opinion cannot constrain political action when there is no public opinion. And there cannot be public opinion when the public has no idea what is going on. Every day there are thousands and thousands of trees falling in the Washington, D.C., forest, but almost none of them make a sound outside of the Beltway. In fact, our regulatory system has become so overgrown that even our elected officials do not know what is going on. Congress routinely passes regulatory legislation that is hundreds of pages long, pages written mostly by staff-

ers and lobbyists, pages that many Members of Congress have not even read. This shows Congress's incapacity to keep up with new regulatory emissions.

Congressional oversight of regulations thus at best is a hit or miss process. This isn't just a problem of personnel; it is a fundamental problem of system overload. Even with the best of intentions, if you had a Congress full of saints, there is only so much that 535 people can do in 24-hour days. Here again, the authors of the *Federalist Papers* were prophetic. They saw that over-regulation and self-government don't mix.

It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow.

From Producers to Parasites. Finally, I would like to point out one of the broader social costs of regulations. More and more of our energies, talents, and manpower are being swallowed up in the tar pits of the regulatory state. As a result, the dynamism and vitality of wealth creation are giving way to the sterility and sclerosis of wealth re-allocation. Basically, our free society is degenerating into a transfer society.

One way to measure the growth of what *National Journal* contributing editor Jonathan Rauch recently called the "parasite economy" is to look at trends in the number of lawyers. These numbers have risen dramatically as the regulatory state has expanded. In 1970 there were 1,200 lawyers for every million Americans. Today there are 3,100 lawyers for every million Americans.

And the problem is not just one of numbers. It is also the sad fact that the best and the brightest increasingly are going into what are fundamentally non-productive pursuits. In the 1940s, only 5 percent of Phi Beta Kappa college graduates went on to become lawyers and judges. Today, over 20 percent of Phi Beta Kappa grads go into the legal profession. Of Rhodes Scholars graduating in the 1940s, only one-eighth became lawyers; now one-third do.

I could offer a host of other numbers—explosions in the number of trade associations, public interest groups, Washington offices, and hired lobbyists. All of these point to the large and growing extent to which our social energies are being frittered away in complying with regulations, attempting to circumvent regulations, attempting to stop the circumvention of regulations, lobbying for and against regulations, interpreting regulations and changing regulations—all of which add nothing to the productivity or well-being of the country.

Let me close by suggesting that a greater appreciation of and emphasis on these non-economic, broader social costs may be useful ultimately in the battle to bring regulation under control. As this political year has demonstrated vividly, there is widespread public disgust with our present political leadership and with the sorry state of our political institutions. This disaffection could provide powerful momentum for sweeping regulatory reform — if only the connection can be made between special interest abuses, out-of-touch government, frustrating, intractable gridlock, which are the objects of public discontent, and their underlying cause, which is overgrown and over regulating government.

Questions & Answers

Q: Ed, you touched on an interesting point, the prospect of the unknown. For instance, the Americans With Disabilities Act, which is now being phased in, is very sketchy on actual details. It says that an employer must make certain provisions for a handicapped person if these provisions do not put too great a hardship on the business person. What exactly this means will be decided in the courts. When the first phase of the Act went into effect, there was an article in the paper about a handicapped person who went around town looking at different businesses that he could sue. Do you want to elaborate on this?

Hudgins: You are exactly right on this point. If a businessman does not know what the law is going to be tomorrow, then he cannot plan ahead. In the 1970s, for example, one of the problems American auto makers faced was that they did not know what kind of environmental regulation, or other regulation, might come out in six months. When a businessman is making investments for five or ten years in the future, and he does not know what is going to happen in six months, he might say, "I am not going to invest a lot of money."

Here at The Heritage Foundation we had to bring in a lawyer to give us a briefing on exactly what the Americans With Disabilities Act means. And to questions, the lawyer often replied, "Look, we don't know. The courts will decide." It seems that we are moving toward a society in which you will have to have a lawyer next to you at all times so that you can make sure you are doing the right thing. The people must hold the policy makers accountable for such laws and ask the hard questions about who is being helped before such laws are passed.

Many cities, for example, would find it much less expensive to provide free door-to-door van service for people in wheelchairs. However, the Americans With Disabilities Act says that cities must equip their buses with wheelchair ramps. In other words, rather than having door-to-door service, people in wheelchairs may be forced to sit out in the rain or snow in Manhattan or in some other city waiting for a public bus. Now, which approach really helps the handicapped? I think that is a question that should be asked.

Another example: Airlines are being required to take the seats out on one side of the aisle in each plane and put in extra-wide seats. Now, as it happens, only one flight in 25 carries a person who needs a special seat because he or she is in a wheelchair. It would be less expensive for the airlines to give such a passenger an automatic upgrade to first class, because the first class seats are wider, or for that matter, simply to give all people in wheelchairs a free first class ticket. These are the kinds of issues that are not discussed but which deserve public attention.

Another good example is that in the future your local grocery store will be required to have to wider aisles and lower shelves. This, of course, means that it will carry far fewer goods and, because of the narrow profit margins for these stores, food prices will rise. Very likely the handicapped, who tend to have lower incomes, will suffer most from high prices. In essence, regulations often hurt the people they are trying to help.

Q: I want a clarification. You say regulations costs households \$8,000 to \$17,000. Over what time period is this cost?

Laffer: That is an annual rate. But we would not increase household income by that much overnight if we repealed all destructive regulations and replaced others with common law rules of con-

tract. The point is that the economy has grown so much slower over the last twenty or thirty years as a result of the decidedly unenlightened regulations with which the economy has been saddled that, as of today, household income has been reduced by a sizeable chunk. If we did not have destructive regulation and allowed the economy to grow faster for twenty or thirty years, each family today would have a total income on the order of \$8,000 to \$17,000 higher per year before taxes.

Of course, if household income did go up because of a lighter regulatory burden on the economy, some of that additional household income would be paid to state, local, and federal governments in the form of taxes. But that is not necessarily a reason to oppose deregulation. The effect of less regulations on the budgets of the federal government and the state governments is substantial. By our reckoning, federal tax revenues per year would be somewhere between \$80 billion and \$200 billion greater than they are right now. At the same time, outlays for welfare and unemployment benefits would be lower since the economy would have more jobs. Thus, with less regulation of the economy, tax revenues would be higher and government expenditures would be lower, and the deficit would be reduced sharply.

Q: Part of the regulatory problem is that administrations fill in definitions and particulars of general laws that Congress passes. Couldn't the Supreme Court help in deregulating by limiting administrative laws and requiring the Congress to set such definitions.

Lindsey: There was a doctrine of constitutional jurisprudence called the "non-delegation" doctrine which said that Article I of the Constitution establishes and invests legislative power in the Congress and in nobody else. It is not constitutionally permissible for Congress to delegate legislative power to a non-legislative body. This doctrine was used to strike down certain sorts of broad, sweeping delegations of effectively legislative authority to federal agencies. This non-delegation doctrine has fallen into disfavor in the courts with respect to protecting economic rights. But there are a few lonely voices from all parts of the political spectrum that think the non-delegation doctrine would be a healthy thing to revive, not only for protecting individual liberty, but for enforcing democratic accountability.

The problem, however, is that Congress can get around this. In the typical old-style form of regulatory legislation Congress would create an agency. This was effectively a delegation of legislative power. Now Congress passes 1,000-page monster size bills that cover every subject under the sun, and usually in mutually contradictory ways. This kind of tactic is less amenable to constitutional challenge.

Q: The Administrative Procedures Act requires public hearings and other procedures to prevent some of the obvious problems that you have discussed. The fact is that industry and the public in general have a right to comment on rules, which seems contrary to what you have said. Many of us in the Bush Administration have been very involved in addressing regulatory problems under the President's moratorium on new rulemaking. I would like to get your comments on that particular effort.

Hudgins: Supposedly, agencies do have safeguards against economically irresponsible policies. For example, most are required to do a cost-benefit analysis of their procedures. Yet one of the things that we have found is that agencies very rarely do a genuine cost-benefit analysis. Rather, agency officials might take a superficial look at a proposed procedure and assume that they have done a cost-benefit analysis when in fact they have not.

Concerning the Administrative Procedures Act requirement for public hearings, how many people listening to this talk, with the exception of representatives of larger businesses, can afford to keep a

constant watch on hundreds of federal agencies and offices, or can come to Washington and complain that this rule or that law is going to adversely effect him? Bureaucrats know that most individuals and businessmen cannot come to Washington from all over the country to say that this particular regulation is going to do something terrible.

I support the moratorium that President Bush has placed on regulations. I think that the Competitiveness Council in Vice President Quayle's office has done a wonderful job. Yet an indication of the confusion on this issue is found in President Bush's speeches and the public's reaction to them. Bush claims as some of the great achievements of his Administration: the Americans With Disabilities Act; the Clean Air Act which does not clean up the air as much as it provides employment for bureaucrats; and a Civil Rights law, which Bush says is not a quota bill, even though it was a quota bill. Bush also says that American businesses are over-regulated. I do not know if the public fully appreciates this contradiction.

Lindsey: The point the questioner raises about procedural fairness of our federal agencies is an interesting one. It is fair to say that our regulatory process is more open, more legalistic, more rule-bound, more transparent, more amenable to public participation than any other regulatory regime of any other country. Nevertheless, there are ample opportunities inside those rules for arbitrary, and even tyrannical, behavior to take place. Still, on the whole, the federal agencies are open to public pressure and bound by rules.

But that cuts in another way. It is precisely because the American regulatory process is so open to agitation and lobbying that we have this gigantic explosion of trade associations, Washington representatives, hired lobbyists, and so forth. And this entire parasitic economy feeds off the combination of gigantic, sweeping regulatory powers and openness to lobbying. So, while openness to lobbying solves some problems with regard to democratic fairness, it opens up a whole different set of problems elsewhere. And it is the nature of the problem that even an honest business finds that it has to play the game in Washington, otherwise it is going to get eaten up by the other businesses.

Q: The federal government often provides subsidized insurance, which might cost as much as \$30,000, for individuals building in environmentally sensitive areas. What do you think of this practice?

Hudgins: I would say that an individual or businessman should purchase his own insurance without government subsidies. The federal government should not rebuild someone's mansion because he built it on a flood plain or because he was too cheap to get insurance for it. The taxpayers should not bail him out.

Q: A lot of wetlands are filled in because of this government insurance practice. The recent Lucas case, decided by the Supreme Court, involved a property rights question but also an environmental question. Could you comment?

Laffer: David Lucas is a real estate developer in South Carolina. He bought two beachfront lots and planned to build a house on each of them, one to live in, the other to sell. Most of the beachfront lots already had houses on them, though some were still empty. At the time he bought the lots Lucas had a clear right to build.

After Lucas made his purchase, the state of South Carolina passed a law restricting the right to build new houses on the beach because houses there would be vulnerable to floods and hurricanes. Lucas was, in effect, deprived of the use of his property.

Right now the federal government provides heavily subsidized flood insurance for many people who build in flood areas. The questioner points out that without his federal program, Lucas might not have wanted to build so close to the shore in the first place. That is correct. This and other federal intrusions give people an incentive to take actions that they might otherwise avoid, for example, to fill in some wetland for activities that are not economically justified. Our goal here should be to have a level playing field, a policy of neutrality from the state and federal government. They should neither restrict the uses of property nor subsidize certain uses of property.

Hudgins: I just want to say that we at The Heritage Foundation and our friends at the Cato Institute are very concerned about the re-regulation crisis. We are interested in hearing your horror stories of dealing with regulations. We want businesses and individuals to go on the record. Our system of law is being eroded and interest groups more and more dominate the policy process in Washington because of their regulations. This is a problem which affects people in their everyday lives. So we hope that people heed our call and let us bring your concerns to the attention of your Congressmen and Senators.

