

With Ralph Nader. "Government Regulation—Too Much or Too Little?"* Moderated by Hugh Sidey. In *Proceedings, 98th Annual Meeting, The Proprietary Association, May 12-16, 1979, The Greenbrier, White Sulphur Springs, West Virginia*, pp. 21-40. Washington, D. C.: The Proprietary Association, 1979.

SIDEY: Thank you very much. I must say that I am delighted to be back here. I don't know that I have been sandwiched between two such powers since the time I was a reporter and took Henry Luce into the White House to visit with John Kennedy. After that meeting (which went badly), I met Mr. Luce outside the Oval Office and stood between him and John Kennedy as the President said the magazine was lousy and was trying to do him in, while Mr. Luce defended his rights.

So here I am again and I guess having survived that, I will survive this, but I am not part of this program. These two gentlemen represent part of the debate that is going on in our nation. Beneath and beyond the talk about SALT treaties, the energy crunch, and the other programs that Mr. Carter proposes and sometimes the Congress disposes, there lies this matter of government regulation—intrusion into the life of America—a simple burden, the size and the cost of the United States federal government. As you well know, I am sure, it has been estimated by some that the cost of regulation, excessive regulation, to American business is \$100 billion a year. Even now there is on the President's desk in the White House a study on America's ability to innovate and compete in the modern world. Within the next few weeks I am told that that study will be translated into legislation, proposals of reform of corporate America and other ideas, to somehow get the United States back into a more competitive stance.

As a matter of fact, many people in Washington believe that America is bound up by too much regulation, that it can't act. A part of the debate is: How safe can we be? How much should

we look after ourselves in all of these matters? These two gentlemen will enlighten us this morning.

On my left and your right is Ralph Nader. In the matter of the American environment, I suspect that he is one of the single most influential people to come along in the last decade. The matter of regulation, of course, has been of particular concern to him and I am sure that he will give you a spirited rebuttal, or at least a proposition on the matter of whether regulation has been good or bad. If I read him right (and if I don't, I am sure he will correct me), he suggests that there is a great saving in much of our regulation.

On my right and your left is Dr. Milton Friedman, a Nobel Prize-winning economist who used to be at the University of Chicago, is now from other parts of the country, I guess all over; but in any event he will, I am sure, answer Ralph Nader.

He not only has doubts about the need for regulation but has muttered some time ago that perhaps we wouldn't even need the FDA if a close study were made of that institution.

So with such heresy and ideas afloat, let's continue. Let me tell you a little about the order of business here. Each of these gentlemen, beginning with Mr. Nader, will make a statement. It will be about 15 minutes long, and then when they are done, in keeping with good debate procedure, we will allow each one to rebut the other for two or three minutes. Finally, we will entertain questions of either or both of these men. Mr. Nader!

Ralph Nader

Thank you, Mr. Sidey. I think it is worthwhile to define what regulation is in a broader context than simply calling it government regulation before we get under way in our discussion.

Regulation implies a degree of coercion. Coercion can be legitimate or illegitimate. It can also be governmental or nongovernmental. To the extent that people are walking down the streets in New York City and being exposed to carbon monoxide or nitrogen oxide or lead, they are being exposed to a coercively compulsory consumption of those harmful ingredients. So in many

regulatory areas we are confronted with private coercion and public coercion. We try to legitimize the regulatory process in government by having due process, public hearings, appeals—full public decision-making with reasons well established.

There is no legitimacy to coercion in the private area. The function of government and police power is to keep certain private forces from engaging in predatory activities on other private forces—as with one landowner using his land so as to damage nearby landowners with, let's say, long-range pesticide carcinogens that the victim landowners or homeowners cannot detect.

In this discussion, we are going to be focusing on government regulation. An important point to keep in mind is that regulation comes in many forms and can be extremely serious in the private sector. Worker diseases and injuries, unsafe products, and exposure to pollutants are only a few of these forms of coercion.

Two Kinds of Government Regulation

Under the rubric of government regulation we have different aspects that need to be delineated: First, most government regulation deals either with establishing standards or approving or establishing rates—health and safety standards as set by the Food and Drug Administration, and rates established by the Interstate Commerce Commission. Other parts of the regulatory framework involve government research and development, either directly or through grants and contracts, and recall authority in the case of defective or harmful products. Regulation involves providing or requiring consumer information such as more detailed labeling, and it involves regulating monopolies in two ways, either legitimizing them and establishing some sort of rate regulation or breaking them up under the antitrust laws.

It is important to note also that the nature of the regulatory process is inescapably political, although it has technical and economic components. It also is inescapably tied to the subsidy state. The extension of subsidies and loan guarantees can be seen as a form of indirect regulation. When the government passes a law called the Price-Anderson Act for the nuclear industry, it is telling people and property owners that there is only so much they are going to be able to collect

in case of a nuclear catastrophe because of the limited liability of the nuclear industry. That is a form of regulation.

When the government increases its loan guarantees, it is, in effect, telling borrowers that some borrowings are going to be at a disadvantage compared with other borrowings that are backed by government loan guarantees—a kind of credit allocation. So, we shouldn't at all discount the importance of subsidies; they fill a 100-page compendium in the Joint Economic Committee print on the subject. While all of these direct and indirect subsidies may be desirable from the point of view of the subsidized institution or industry, they impose certain regulatory penalties on the nonsubsidized part of the economy or on consumers.

Economic Regulation

We have traditionally made a distinction between health and safety regulation and the kind of economic regulation that may be called cartel regulation. I think we will agree that the Interstate Commerce Commission type of regulation, the CAB type, and the Federal Maritime Commission type are basically ways to circumvent the antitrust laws and legitimize rate-making conferences in particular cartel-like industries. They are then given a stamp of approval by the ICC or the Maritime Commission.

We have criticized these cartel-type regulatory processes for many years in the reports and books that we have put out, and it is useful to note that there is a consensus developing among the so-called liberal and conservative camps on abolishing, or at least diminishing, this type of regulation. But do not discount the very powerful special interest groups, like the trucking industry or the maritime industry, that want to continue it.

Health and Safety Regulation

Focusing on the area of probable disagreement, health and safety, it is often contended that the competitive market will advance health and safety in the aggregate more than government regulation will. This is one of the most indefensible propositions that can ever be laid before you,

for several reasons. One is that the ability of the consumer to detect and reject hazards in the modern marketplace, assuming it is competitive, is limited by the consumer's sensory abilities and cognitive capabilities. It is limited by what the consumer can see, taste, smell, and feel in order to translate judgments to the mind and make decisions in the marketplace.

It is also limited by consumers' inability to run their own laboratory tests to find out what is in a particular product. As a result, when consumers were using fluorocarbons in their aerosols, they did not know that these fluorocarbons were threatening the ozone layer which, in turn, would increase the amount of cancer on earth, among other consequences.

They couldn't see, smell, taste, or feel the damage to the ozone level. They weren't told about the consequences of fluorocarbons until a number of university scientists from Cambridge to Southern California began making a public issue out of it.

Furthermore, in the area of drugs and food, it is pretty hard for even the sensitive and knowledgeable consumer to find out when there may be harmful additives or contaminants or side effects. For instance, about 10 million consumers take over-the-counter sleep-inducing drugs. Recently a number of studies asserted that methapyrilene, an ingredient in these over-the-counter drugs, is a carcinogen, and this is not something that is going to be detected by your average consumer.

What is required is what can be called community intelligence. Community intelligence can also be called government—people getting together through the processes of law and establishing systems of alert, systems of prevention, of labeling, of meeting standards.

With 15,000 parts in your automobile, you simply cannot develop the information necessary to wisely choose between various makes and models on the basis of, say, pollution control or safety. The fact that the producer of a consistently dangerous car may in due time lose sales doesn't help the people who were sent to their graves or to the hospital because of these extraordinary hazards of a particular manufacturer.

The function of regulation in all its variety is one that involves a decision by a particular agency to initiate or not to initiate a regulatory enforcement process. The administrative procedure laws then provide people, interested parties as they are called, or companies, with the right to petition, to initiate certain regulatory procedures. Whether the initiation is going to occur depends on two forums: (1) the agency and (2) the courts.

“Private” Regulation

There is, of course, another deterrent in the economy which might be called private regulation. When consumers can get together in a consumer class action and file suit against a company, they don’t have to ask a regulatory agency for permission; they file suit directly. When somebody is injured because of a dangerous drug, MIR 29 or thalidomide for example, they can invoke product liability laws.

There are a few developments in which this country is ahead of many countries in the world. One might be called private law enforcement, using laws of contract in tort, but it has its limitations. One, of course, is economic barriers that keep people from using the tools. They can become very expensive, very bogged down in litigative delays, which lawyers have become expert in developing. They also are not comprehensive in terms of the necessary preventive approach. They are *ex post facto* after the damage is done—sometimes a great deal of time after the damage is done.

Private law enforcement, however, is nothing to be denigrated. It is a point to be preserved and protected, to expand product liability, to expand consumer class action rights and other direct recourse remedies by injured or otherwise damaged parties.

The Need for "Community Intelligence"

This is largely a partial remedial approach. The community intelligence that we know as regulation with its ability to conduct research, to see alternative technologies, to develop a process of deterrents in compliance matters, is by far the area of greatest return. Fluorocarbon

aerosols are now off the market and that was a regulatory move. We now have discovered, because of the EPA, the existence of some 35,000 chemical waste dumps in the country, many of them unmarked, not posted for people to be aware of as they moved around. The Love Canal tragedy in Niagara Falls is a situation that can happen when you don't have a regulatory process either at the local, state, or national level.

In the factories themselves, and in the mines, we have the problem of worker health and safety. Here, again, to say that if workers are harmed excessively they will move away, they won't live and work in the area and then there will be a labor shortage and the factory will clean up, is to defy the historical record.

First of all, workers are often exposed to silent, cumulative violence they cannot detect. Vinyl chloride is a classic example of this, being a proven carcinogen leading to liver cancer. A few years ago when the vinyl chloride matter was brought up publicly, the chemical manufacturers announced that a proposed OSHA standard on vinyl chloride would cost 2 million jobs and \$65 to \$90 billion. It cost nothing of the sort. Indeed, the standard was rather quickly and substantially complied with. One or two companies indicated they even found a way to comply and save money and there were no job losses.

Would that have been done by waiting for years until the liver cancers due to vinyl chloride exposure were detected by the workers themselves and their physicians, until the workers decided to stop work and move to another area? How soon would the labor shortage lead the company to shape up?

The anti-regulatory school of thought in this country tends to have a peculiar concept of time. It deals with an aggregate-type consequence that it tries to predict, not considering the deaths and the injuries that occur in the meantime, even assuming that their aggregate consequences come true 10, 20, 50, or 100 years from now.

I think it is important to note (and we will have more details to go over, of course) that many corporate executives have increasingly recognized that without regulation they would not have

been able to produce such a safe product as they have produced. Henry Ford, for example, stated over a year ago (and he is not one known to be friendly to regulatory efforts) that cars would not be as safe as they are today and they would not be as pollution-controlled or fuel-efficient without federal laws. This is the approach that says that the nature of competition is such that it penalizes the manufacturer who sticks his neck out in terms of advanced safety and, therefore, it is better for the government to have a uniform rule requiring all of them to meet certain minimum standards.

Let me just conclude on this point: When we have a situation in which the consumers themselves cannot possibly detect the hazards that they are exposed to, we must have enough people with common values with respect to the sanctity of human life to develop a system of law that will establish standards below which products cannot or should not be sold.

Indeed, Dr. Friedman has been on record as saying that the main obligation of a corporation is to increase its profits, and I am sure you would agree that it would also mean to obey the law. To the extent that there are antitrust laws and health and safety laws, I would hope that the focus would be on making them work better, eliminating those that don't work because they are nothing more than cartel sanctions, and trying to connect the advances in science and technology and innovation with the regulatory thrust for higher and higher health and safety standards.

Thank you. [*Applause*]

SIDEY: Now I turn it over to you, Dr. Friedman.

Milton Friedman

Unaccustomed as I am to agreeing with Ralph Nader, I agree with him that Price-Anderson is a mistake. A fundamental principle of private enterprise is that private enterprises must be responsible for their actions, and I do not believe that it is appropriate for the United States government to limit the responsibility of a nuclear company to a particular sum.

I think also that the nuclear companies should have been responsible for disposing of their waste. One of the major subsidies we have in this area—and I suspect Ralph will agree with me on this—is having the government assume responsibility for the disposal of the waste. Had we left both of those to private enterprise, many of our problems in the nuclear area would have disappeared long since, because private enterprise would have been far more efficient than government has been in finding ways to get rid of that waste in a way that would have been tolerable and in making sure that the damages that might occur from accidents were limited.

What's Wrong with Regulation?

If you want a prime example of what is wrong with regulation, that's it. It is when government takes over. It is not that there aren't evils to be corrected but that the government action almost invariably makes the problem worse rather than better.

I agree with Ralph on many of the specific agencies that he mentioned, particularly those in the cartel area. All in all, Mr. Sidey is of course right that I believe there is too much government regulation. I don't know why he limited himself to just the three letters FDA. I would go through ICC, CAB, FEA, CPSC, and you can add any other three or four letters you want and abolish them, too.

That doesn't mean, I repeat, that if you get rid of all this regulation we would be in a state of nirvana, of utopia, in which there would be no problems, no difficulties. Of course there would be problems, and of course some good things have been done through the process of regulation; but we have to take an overall view and look at both the good and the bad before we reach a judgment about reducing government regulation.

The standard objections to government regulation are those that Mr. Sidey mentioned. It is extremely costly; it imposes heavy burdens on industry, which means on the consumer. To say that industry has a burden is not really a logical expression. Industry doesn't have any burdens—only people have burdens—and the so-called costs are borne by you and me, the consumers.

Regulation interferes with productivity and efficiency, generates massive bureaucracies, and so on. All of those objections are valid but they are not my major objection to the government regulation which we now have.

Regulation Hurts the Consumer

My major objection is very different. It is that these programs not only pick out pockets of billions of dollars, but they hurt us as consumers. They leave us less well-protected than we were before. Entirely aside from their economic effect, they tend to destroy the basic freedom that has characterized this country. They tend to substitute government for individual decisions; they tend to convert us all into wards of the state.

Traditionally, regulation was organized on vertical lines, on an industry basis—the Interstate Commerce Commission, the Civil Aeronautics Board, and so on. In those areas, the problem in the past has always been that once you get a regulatory agency set up, it invariably is taken over by the industry that it was supposed to regulate. Your industry has been no exception. In the early days the FDA was, and to a considerable extent still is, very much under the influence of the drug industry and operated so as to benefit that industry.

That's not because the people in industry are bad; it's not because the bureaucrats are bad; it is because the industry consists of the only people who have a full-time interest in what is going on. It is quite natural that they should exert a disproportionate influence. So Ralph and I would agree that the effect of almost all that regulation has been to strengthen monopoly power at the expense of the consumer.

But currently (and I am passing over that very rapidly because of our agreement) the problem is a different one. Currently, the character of regulation has been changing. It has been changing from vertical regulation to horizontal regulation that cuts across industry—antipollution, OSHA, and so on—and in this area the problem is that those agencies are taken over not by the industries that they regulate but by the activist, so-called public interest groups, by Mr. Nader and his

associates. In my opinion, their capacity for harm is far greater than the capacity of industry ever has been.

It is not because the Naderites or the bureaucrats are bad people, of course. They are human beings, decent human beings like you and me, operating in accordance, with the instinct, the strongest instinct that moves all of us, and that is to promote those interests that we value.

Regulation Stops Growth, Progress

The motives professed are always excellent and I have no reason to question those motives, but we have to look at what happens. You have to look at what the regulators do, not at what they say. You have to look at the results of the activist public interest policy groups, not at what they say their objectives are. You will see one common element in the results of what they do—they stop growth and they stop progress. They hold back the enormous economic drive, the enormous movement toward improving the lot of mankind that converted this country over the past 20 years into the kind of country it is.

Moreover, their actions are very hard to understand. I am baffled, and I'd like to find out what people like Ralph Nader are really after. You cannot tell me that anybody seriously believes that saving the snail darter is an appropriate justification for stopping a \$100 million dam. There are billions and billions of species in the world. The process of evolution is a process of eliminating some species.

Look at the recently proposed or suggested environmental regulations which would essentially stop all oil drilling until a solution is found for a supposed problem with the mud thrown up in the course of the drilling. You cannot tell me that those regulations are really being proposed for the ostensible reasons given. Wherever you turn—whether in the environmental area, in the antipollution area, or whatever—the major effect of regulation has been to halt progress.

I attended a dinner recently with Edward Teller, the atomic scientist. He commented, "You know, it is a funny thing that the first nuclear reactor that was ever built took 18 months. It now

takes over 10 years.” It takes 10 years, not because the technology has become more complicated but because of all the regulatory apparatus that intervenes between the beginning of a project and the end of it.

The Case of the FDA

It is no accident that these regulatory activities always end up being antithetical to progress. Take the case of the FDA, a case that Mr. Nader brought up indirectly. Let us suppose that you are a bureaucrat, a civil servant at the FDA judging whether a particular product or a particular drug ought to be sold. There are two kinds of mistakes you can make. You can approve a bad product or you can reject a good one. If you approve a bad product, if you approve a thalidomide, your name is going to be mud; you are going to be spread over the front pages of every newspaper in the country. You are in real trouble.

But suppose you reject what would have been a good product, a product that could have saved 10,000 lives; who is going to know about it? The people whose lives might have been saved won't be around. Ralph Nader appealed to your emotions by talking about the people who have died from ingesting a pollutant. He's right, they won't know about it; but neither will those people whose lives might have been saved by the drugs that were not approved.

But who else will know about it? There will be a few research people, a few physicians, all of whom will be pilloried by people like Mr. Nader. They will be labeled greedy people pushing their own special professional interests and they won't have much impact. So if you are a civil servant approving drugs, it is in your self-interest to be biased in the direction of rejecting good products. I'm not talking about narrow self-interest, an immediate monetary incentive. I am talking about what you will inevitably want to do for your own respect as well. You, yourself, will forget about this, will not know about the good consequences that could have come from the drug you rejected; but you would know if you passed a bad one. You would condemn yourself for the one far more than you will condemn yourself for the other. That's why the regulatory process in the hands of civil servants becomes a political matter, as Mr. Nader quite properly says it must

be. However, this inevitably stops progress, inevitably shifts the center of power from individuals separately to bureaucrats.

Of course, the market doesn't work perfectly. It has many defects. I would agree with Mr. Nader, and I could add many that he hasn't, but we aren't comparing an imperfect market with a perfect governmental process. We are comparing the market as it actually works with the governmental process as it actually works. If you compare both imperfect processes, the government failures are vastly more serious than the market failures, and they are vastly more serious simply because under governmental programs power is concentrated, not dispersed to eliminate its worst effects.

Who Loses?

Who are the people hurt most by stopping progress, by preventing economic growth, by moving toward the fashionable present prescription of a "no-growth" economy? Not you and me, not those of us who are comfortably well off, not the people in the middle class. It is the very poorest and most disadvantaged among us. The people who have always benefited the most through economic progress have been the poor. They are the ones for whom economic progress has made possible a life that, in earlier centuries, was available only to a select few, and they are the ones who will be hurt now.

But they have very little voice. They are at a disadvantage in the economic scene. Unfortunately, they are at an even greater disadvantage in the political scene.

The proximate motive that animates so many of these public interest groups is clear—to judge from their actions. There is a simple principle in economics called revealed preference. If you want to know what the people prefer you don't ask them; you see what they do. Similarly, if I want to know what the motive is, I ask what they are doing. The answer is that they are stopping progress.

The question I want to ask Mr. Nader is: Why? I have much too much respect for his intelligence and for his sincerity to believe that he fails to recognize how counterproductive many

of the so-called public interest activities have been if judged by the stated motive of protecting the consumer. They have protected the consumer against one thing, I will admit. They have protected the consumer against low prices, but it is very hard to find much else that they have protected the consumer against.

To provide the consumer with knowledge is one thing. To prevent him from making his own choices about what to do with that knowledge is another thing. The principles that have animated so many of these activities, if carried through to their logical conclusion, involve control over every aspect of our lives. There is nothing that the FDA prohibits that does people as much harm as the cigarettes they smoke. If it is appropriate to prohibit people from taking saccharin or cyclamate, logic would drive them to prohibiting cigarettes. If it is appropriate to regulate the safety of automobiles to protect people against, themselves—seat belts, passive restraints—surely there are much more dangerous activities that have to be prevented. How can you possibly permit people to engage in hang-gliding or skiing? Those cost many more lives on a per unit basis in terms of the number of people who engage in them. So the logic of that approach drives you inevitably to a completely controlled society. I know that Mr. Nader doesn't want this and, therefore, I ask what are, in fact, the deeper motives that underlie the proximate motive of stopping progress.

Thank you. [*Applause*]

SIDEY: Each of these gentlemen will give a few minutes of rebuttal and then we will go on to the questions.

Rebuttal by Ralph Nader

There are 200,000 people in this country who are alive today because of federal regulation of highway and auto safety since 1967, plus many more millions who have been less severely injured or who have avoided injury. This includes safer automobiles, the 55-mile-an-hour limit, standards for highways, and so forth.

Maybe that's why we are doing it. Maybe it is because we think that human intelligence needs assistance in different dimensions to compensate for the individual's inability to have x-ray vision in the marketplace.

Community intelligence is inescapable; we are either going to have it in a corporate form or we are going to have it in government form or we are going to have it in a cooperative form. The question is: How can we use the assets of each to fill the deficiencies of the others?

The historical evidence is overwhelming that industry is insensitive to third-order effects, pollution effects, harmful effects, nonmarket effects. This insensitivity seems not to abate through industry's own self-regulatory process unless there is either the likelihood of regulation or actual regulation.

Simple things like child-resistant caps on bottles, which have been around for a long time; simple things like providing machine guards in factories so that workers don't get harmed—all of these occurred because of the pendency of regulation or regulatory standards. I might add that on the railroad, when at the turn of the century thousands of trainmen were killed as they tried to couple the railroad cars, the advent of the automatic coupler and the intervention of government were effective life savers. This development also showed that innovation, which is often on the shelf and not used, tends to be incorporated by industry when the situation requires it. A recent MIT study showed how regulatory standards stimulate innovation and speed the process between the innovative stage and the marketing stage.

It is true that many regulatory agencies reflect concentrated power. Some of these agencies are created by industry and we don't support those agencies. The CAB was literally created by the airline industry with the firm of Covington & Burling in Washington leading the way. This has happened repeatedly and, indeed, whenever we try to ask the Chamber of Commerce in Washington to join us in issuing a press release recommending the abolition of several regulatory agencies, they demur. They demur because a lot of what is called government regulation is induced by business lobbying efforts.

Regulation: Costly to Consumers?

As far as being costly to consumers is concerned, it is difficult to see how the prohibition of thalidomide was costly to consumers. Ten thousand horribly deformed infants were born in the early '60s in Western Europe, and to some extent in Japan, with arms and legs in the form of flippers. It is difficult to see how regulatory moves that require an ounce of prevention instead of a pound of cure are more costly to consumers. It is difficult to see how the removal of worthless drugs or harmful drugs in the marketplace could be costly to consumers.

It is difficult to see how removal of nuclear power could be costly to consumers. In fact, that is a perfect example of a combination of bureaucratic post-World War II government commitment to nuclear energy with utility and reactor manufacturers to develop a subsidized nuclear industry, heavily shielded from market forces.

So in terms of our differences, Dr. Friedman doesn't hold any truck for regulatory benefits that are in excess of what private market benefits can give us. I think that with increasing risk of modern technology, with the rapid dissemination of perhaps dangerous technology through the marketplace or the environment before the scientists catch up with it because there is no regulation—that these risks are increasing. They are increasing in terms of their geographical scope. PBB, PCB, and many others that are now spreading around large geographical areas are increasing in terms of their generational impact. They are increasing in terms of damaging the genetic inheritance of humankind. This is a more extraordinary level of seriousness than it was a number of years ago. When you are dealing with something like plutonium, its 250,000 years of lethality—it is silent; you can't smell it, taste it, or feel it—that simply cannot be left up to the market. It has to be left up to a community intelligence with legal standards to prohibit it or to make sure it can be stored safely.

Regulation: Stopping Growth, Progress?

As far as halting progress and stopping economic growth, that's an enormous amount of daring that Dr. Friedman is imputing to the consumer movement. Never before have the challengers of corporate power in our country asked corporations to do less. In past decades, the challenge was to the mode of ownership of corporations; it was to much more fundamental issues. The challenge now is simply: Don't harm people. Don't injure people when you know how to avoid it, and put some of the technology that you know exists to work to preserve a more livable environment for present and future generations.

The environmental laws are a principal creator of jobs in this country. There have been almost a million jobs created for producing environmental technology and for maintaining environmental systems. That certainly is better than jobs that put new grimacing grill patterns on automobiles every year simply for stylistic change. Because the automobile companies have had to put in more safety features, they have reduced somewhat the stylistic cost burden on consumers. As you know, consumers are not told what the styling changes every year cost them. The auto industry tells them in highly exaggerated form what safety features cost them but the auto industry does not report a study done by Harvard and MIT economists in the late '50s showing that in those days and those dollars, almost a thousand dollars of the price of a car went into styling.

Many government policies have stimulated economic growth in this country and I don't think that proposition can be denied. The establishment of the Tennessee Valley Authority was a major stimulant for economic development in the Tennessee Valley. The TVA supplanted the private monopoly utilities that were neglecting to provide adequate power to the area.

The government land grants to railroads facilitated their expansion. It was government foresight that passed the Homestead Act which led to the greatest decentralization of our economic systems in our history by making sure that there would be a small-farmer pattern of production in our rural areas rather than large plantations as developed in Brazil.

So I don't think that we can make categorical statements in these areas just as don't think that, because the drug industry produced thalidomide, you can say "Well, nothing they do is good." The same is true about government regulation

What we must try to do is make all kinds of institutional policies more intelligent, more sensitive, more far-seeing.

I don't think it is enough to say, "Well, more people are damaged by government regulations than by a total market preemption." To put it in a nutshell, the difference between Dr. Friedman and myself is that Dr. Friedman wants to abolish the licensing of physicians in this country and I don't think the marketplace can fill that void safely enough. Thank you. [*Applause*]

Rebuttal by Milton Friedman

The fundamental difference between Mr. Nader and me is that he thinks it is enough to express good motives. I think it is desirable to implement them; therefore, you must not choose simple, selected examples without making an overall examination.

To illustrate, I will take a few of the cases Mr. Nader brought up. Concerning the alleged 200,000 lives saved on the roads, Mr. Nader knows as well as I do of a study done by Sam Peltzman of the University of Chicago which indicated that while highway safety regulations have saved lives of drivers, more pedestrians have been killed. The reason is very simple: If you make driving safer at a given speed, people will drive at higher speeds and more recklessly, and will kill more pedestrians. There is a very definite statistical correlation.

Regulation by FDA

Regarding the FDA case, Sam Peltzman made a very careful and thorough study which documented beyond reasonable doubt, that FDA's costs were far greater than the benefits.

In the case of thalidomide, the companies that produced thalidomide in other countries had to pay enormous damages, and properly so. Their incentive to avoid another such outcome is enormous.

But what about the 10,000 lives a year in this country that are lost because of the nonavailability of a beta blocker that has been available in Great Britain for many years? When you look at the studies by Dr. Wardell, Dr. Lasagna, and others at the University of Rochester Center for the Study of Drug Development, you see that they have listed dozens and dozens of prescription drugs which are available in other countries and are not for sale here. Dr. Wardell estimates that 10,000 lives a year could be saved in this country by the availability of a wide range of beta blockers. There is a beta blocker available from one company; I believe a second has recently been approved, but apparently these are effective for different things.

Consider another example of misguided regulation—the label warning on cigarette packages that says, “Smoking is dangerous to your health.” Has that helped consumers or hurt them? There is no doubt whom it has helped. It has helped the cigarette industry.

Mr. Nader and his associates who have advocated that kind of label have performed a great service for the tobacco industry. Earlier, lung cancer victims had brought damage suits against the tobacco industry. No such suit can be entertained now because the warning on the package precludes effective liability.

Mr. Nader is right. It is difficult to see the indirect effects of government regulation. That is precisely why they are so important. The point to be emphasized over and over again is that when you act through governmental regulation you attack the things you can see easily, and you neglect and underweigh all the indirect effects.

Regulation of Transportation

Let me take an example of counterproductive activity still closer to Ralph. One of the classic cases is the Interstate Commerce Commission. One of the subsidiaries of Ralph’s multinational conglomerate did a study on the ICC. It was a very good study, an excellent study; among other things, it pointed out the so-called long-haul, short-haul problem. In the bad old days before the ICC, when there was competition on the roads between New York and Chicago, some of the lines had a monopoly between shorter subsections—Harrisburg and Pittsburgh, for example—and the

fare for the long haul from New York to Chicago might be less than the sum of the fares for the separate short hauls. ICC solved that problem by raising the long-haul fare to equal the sum of the short-haul fares in the name of helping the consumer.

Ralph Nader has just done the same basic thing to air travel. He has hurt me by not taking advantage of the knowledge that he had of the long-haul, short-haul case. How? Well, as you probably know, the CAB controls interstate fares. In California there is Pacific Southwest Airlines, an intrastate controlled by the state agency. PSA fares from San Francisco to Los Angeles were roughly half the fares mandated by the CAB. What did Ralph Nader do? He brought a successful suit against the CAB order affecting intrastate fares in California. The result is that the cost of a standard ticket from San Francisco to Los Angeles could go up from the current \$30 to \$57.41.

It's the long-haul, short-haul case over again. Now I ask Ralph: Was that a pro-consumer action or was that an anti-consumer action? Deregulating the CAB is fine, but suing the CAB to make them raise fares in California?

Jobs: Not the Ultimate Objective

Let me say only one more thing. Creation of jobs is not an objective in life. The objective in life is to get as much as possible while working as little as possible. Work per se is not a good thing. We don't want to have people digging holes just to fill them. We can have all the jobs in the world if we want them.

What we want are productive jobs. To say that the antipollution business has spawned a million jobs is probably a low estimate. He isn't counting all the jobs in the governmental agencies. I agree with him that this whole movement has been job-creating, but it has been creating unproductive jobs at the expense of productive jobs.

Finally, he says human intelligence needs assistance. Is there some other kind of intelligence? There obviously is for those who are religious, and I don't mean to disallow the possibility that there may be some superhuman intelligence, but the only intelligence available to us is human

intelligence. There is no such thing as community intelligence. If you take that seriously—and I know that Ralph does not intend to take that seriously—you are talking about an organismic state.

There is only human intelligence and the question is: How do we use our intelligence? Given the undoubted evils to which he points, what are the most effective ways of countering those evils?

In conclusion, I am pro-free enterprise. I am not pro-business. I share almost everything that Mr. Nader says about the Chamber of Commerce's attitude or position on many of these matters. I am pro-free enterprise because it is the only system under which capitalists don't have too much power. [*Applause*]

SIDEY: I guess we have now come to the question portion of the program. I noticed that Mr. Nader has been writing answers, so maybe rather than asking questions myself, Ralph, you could give some answers to questions that I haven't asked.

Discussion

NADER: I will very quickly go through all of Dr. Friedman's errors of the last five minutes. [*Laughter*]

First, we all know that Dr. Friedman has a sense of humor and he bases his sense of humor in part on the so-called Peltzman Studies, one of which purports to say that if you have safer cars you are going to increase death on the highway, because with the safe cars you are going to drive with wild abandon and knock down pedestrians, motorcyclists, and now moped drivers.

The other says that there have been more people whose lives have been lost than saved because of the so-called drug lag and drugs that have not been approved by the FDA.

I want to make the point that there have been concrete rebuttals to the Peltzman Auto Study by a Yale economist, Richard Nelson, in an economic journal; by the National Highway Transportation Safety Board which has done a very good job; by the Insurance Institute for Highway Safety.

There have also been rebuttals and critiques to Peltzman's FDA study. They include the massive report, "Comment on Drug Regulation, Innovation and the Pharmaceutical Industry," by Ashford, Butler & Zolt at the Center for Policy Alternatives at MIT, and also the data contained in the Paul DeHane Compilation of Statistics.

About the drug lag—first of all, there is a lot of international reduction in the significant drugs that are going to market. The great creative burst, as drug company officials have pointed out, occurred in the '40s and the '50s. They now await breakthroughs in molecular biology and therapeutic mechanisms, or perhaps an understanding of disease sources, for the next leap forward. A great many of these drugs represent therapeutic gain over existing drugs. For example, among the so-called beta blockers in Europe that aren't here, there was one in Britain that had to be restricted because it had long-term toxic effects. It was called Practolol. Many of the beta blockers are, themselves, of very dubious therapeutic value.

It isn't a numbers game; it is a quality game. The question is: Have any really valuable drugs been held off the market? I believe the FDA pushed Abbott Laboratories to move for an approval of an epilepsy drug. According to Dr. Donald Kennedy, head of the FDA, the FDA accelerated its process and there are proposals now before Congress to accelerate the process where there is an emergency need and there is a proven drug.

In terms of the so-called drug lag, the evidence of net therapeutic gain from drugs that have not been approved in this country is sorely lacking.

Thalidomide was not caught when it was first known to be dangerous. The company itself had animal tests indicating that it was hazardous and continued to sell it through its West German operation. Thalidomide was caught when the animal evidence was brought to public hearing and the FDA stopped it from being used in this country.

As far as cigarette labeling is concerned, I think Dr. Friedman, as always, gives me more credit than is warranted. I was not behind the cigarette labeling provision, but to say that informing people that cigarettes are dangerous to their health is bad because it eliminates the

likelihood of product liability recovery, is to focus on the individual compensation of 1 or 2 or 10 people for lung cancer instead of on the more preventive warning to the public in general. I might add that before the labeling occurred, product liability cases in the cigarette area were singularly unsuccessful. It is a very difficult type of case to win because of the causation problem. No person has been proved to have died of cigarette smoking. It has been a solid statistical correlation but that is a very hard case to win under product liability doctrine.

As far as air deregulation is concerned, we favored deregulating all airline rates. We did not ask that the fares be raised in California.

As far as unproductive jobs, I can't think of any more productive jobs than people working to build machinery that prevents emphysema, cancer, and other diseases.

The difference between individual intelligence and community intelligence is the difference between Bristol-Myers Company, for example, and your trade association. It is the difference between an individual consumer and a consumer association. It is the difference between an individual citizen and a properly run governmental regulatory agency. In short, there are things that we can do together by amassing our resources—technical, financial, civic—that we cannot do separately. That is one of the reasons why “divide and rule” has always been a strategy of those who hold too much power.

A final point that Dr. Friedman made, that he is pro-free enterprise but not pro-business, is a most delicious distinction. When we are dealing with this issue, it would be more interesting if Dr. Friedman spent more time on the need for enforcing the anti-monopoly laws, for opposing the insurance industry's determination to weaken and destroy the product liability laws, and for opposing other attempts to weaken access to the federal courts and consumer class action.

I still go back to a point of disagreement with him, and that is that he believes that you are better off if physicians are not licensed than if they are licensed. That is what troubles me a great deal. I think that single difference can perhaps illuminate our varying perceptions of modern reality.

SIDEY: Dr. Friedman, do you want to answer that?

FRIEDMAN: I will only refer you to a detailed discussion of why I believe you would have better medical care, cheaper and more widely distributed, if you did not have the licensing of physicians. The reason is very simple; it is because the licensure of physicians is the basic source of the monopoly power of the American Medical Association.

I have studied that at enormous length. I will refer you to a book that I wrote 30 or 40 years ago with Simon Kuznets, *Income from Independent Professional Practice*, which discusses the effect of the AMA monopoly on physicians' income and on the cost of care. I refer you to a chapter in my book, *Capitalism and Freedom*, which indicates why, although prima facie, the idea of the licensing of physician seems a good one, it is one of those ideas which, on deeper examination, you will come to question.

I don't for a moment feel any lack of confidence in my judgment about licensure of physicians. On the contrary, it is one of the cases which, if you examine the evidence and look into the argument, I have great confidence you will agree with me. What I argue is that with unlicensed practice of physicians you would have better medical care, you would have a larger number of physicians, and you would have a different type of medical care altogether than you have now. You would have a much more extensive development of things like the Mayo Clinic and the Kaiser Permanente and Group Health, and so on, than you do with the present system.

Questions and Answers

SIDEY: Why don't we take some questions from the audience?

QUESTION: Dr. Friedman, you mentioned that if a bad product is approved, a company's name would be mud and their reputation would be ruined, and so forth, and it doesn't make sense for a company to let a bad product get through, knowing that those would be the consequences.

But, as physicians in training and as physicians for the future, we are particularly concerned about the long-term effects of many harmful additives in the products that we consume and we

are concerned about what our case load will be like in the next 10, 20, or 30 years. My question is: What mechanism are you proposing or are you saying is inherent in the system that prevents products from coming to market that may not show their deleterious effects for 10, 20, or 30 years?

FRIEDMAN: There are no good mechanisms—there are no good governmental mechanisms and there are no good private mechanisms for knowing what the ultimate long-term effects will be.

Let me give you a simple example to show the difficulties on the governmental side and why it isn't clear that having the government stop these things on the ground improves matters. Consider the case of TRIS. Originally, all producers of infant nightwear were required to impregnate those garments with TRIS. I am not sure which agency—I think it was the Consumer Product Safety Commission—required that all nightwear for children be impregnated with TRIS.

NADER: It was a performance test.

FRIEDMAN: TRIS was the only thing that could be used.

NADER: They had no authority to check on the toxicity—just the inflammability.

FRIEDMAN: That's right, but I am saying that one governmental agency, an agency set up to protect the consumer, the CPSC, required a non-inflammable standard on nightwear which was satisfied by introducing TRIS. Five to seven years later (I'm not sure of the exact interval) the FDA discovered that TRIS was a carcinogen and all nightwear which was impregnated with TRIS had to be removed from the market immediately.

It is interesting to speculate on what would have happened in the absence of those governmental measures, both of them. TRIS would never have been introduced as widely as it was—it might have been introduced on a smaller scale, and the whole thing would have had more time to develop.

The point is that when the government acts, it can act uniformly in a way that individuals don't and, therefore, when government makes a mistake it is going to be a whopper.

Now, it is also true that government can do good for us. That is really the great temptation of people who want to do good. What really disturbs people who want to do good is that in a free market voluntary exchange system, it is very hard to do good. By the same token, it is hard to do evil. The problem is that when government steps in, it sometimes does a great deal of good but you have to balance that against the cases in which it does evil.

There is no foolproof mechanism (in answer to this last question) that will enable us in advance to know the long-term effect of things we cannot know about. All you have to do is try to use the least imperfect mechanisms you have to try to develop a much knowledge about the long-term effects as you can. That's all. I know of no panacea.

NADER: The government standard of inflammability was performance, not design standard. The companies chose to meet it with TRIS. At the time, there were three pertinent factors. First, the Consumer Product Safety Commission had no authority to deal with toxicity—it was supposed to deal just with inflammability. Second, when the carcinogens associated with TRIS were discovered, the industry fought the government tooth and nail to try to keep these products on the market. Third, the ability of government to detect something like TRIS was obstructed because the Toxic Substances Act was held up in Congress for four years by industry opponents.

A lot of the problems that Dr. Friedman points out are due to industry's resistance to the authority that is required. Industry does not have an interest in finding out if something is going to harm you 30 or 40 years from now. Industry is very time-bound. They judge themselves by balance sheets—this year, next year, etcetera. The longer the range of the risk, the less interest there is.

Industry hasn't been interested in finding out that mothers' milk is contaminated with pesticide residues or PCB, as studies have now shown. Which studies? Studies financed by government health grants to do the requisite tests and survey. The government has the capability, but unless citizens make the government work properly, it is not going to automatically work very well.

The government has the capability of a long-range mandated testing process such as for fluorocarbons and the ozone level, whereas the immediate priority of business is meeting that bottom line this year, next year.

FRIEDMAN: But surely the facts are the reverse. There is no group in the country so shortsighted as the U.S. government. The time span of the U.S. government is until the next election. You cannot tell me that any industry would be so shortsighted as to follow the kinds of inflationary policies that governments have followed repeatedly in the last 20 years in order to try to provide a good climate for the next election.

You cannot tell me that any industry would be as time-bound as Mr. Nixon 1971 when he imposed wage and price controls. He knew perfectly well, there was never the slightest doubt in his mind, that from a long-range point of view that was an extremely “toxic substance” for the body politic. Did it prevent him from imposing them? Surely it is the government that is time-bound.

NADER: First of all, this is economic theory. We are talking about health and safety. Very often a government’s time-bound nature is a reflection of industry time-bound nature when it comes to political decisions, and it is hard to do differentiate because, as you know, business supported wage-price control.

FRIEDMAN: Of course it did, but I want to distinguish, as I did before in what said about being pro-private enterprise and anti-business, that when you come to a business organization like the Chamber of Commerce, it is just as shortsighted as government is. The thing that has always fascinated me is how individual businessmen in their own enterprises are very farsighted. They are planning plants 20 to 40 years from now. They want to have a long-term existence. When they come into the public policy arena they are as shortsighted as the devil, I agree completely.

SIDEY: There are some other subjects that people obviously want to ask you about, want to tap your intelligence while they have you here.

Mr. Nader, do you believe that the FTC should be proceeding with its “Kid Vid” proposed regulation?

NADER: Yes, I do, because I don’t think the public airwaves, being public property, should be utilized to exploit 3- or 4- or 5-year-old children who can’t possibly understand the difference between a promotional pitch and a program. They are simply not able to perform the necessary consumer judgments that adults can perform for themselves in the advertising area, especially when you consider that the ads, far from promoting carrots, are promoting precisely what health specialists believe are harmful food consumption patterns—high amounts of sugar, high amounts of salt, coloring additives that have no redeeming nutritional value, and some proven carcinogens.

I think the conditions for licensure of the public airwaves should free small children from being exploited in that manner, persuading them to nag their parents to buy these products.

SIDEY: Dr. Friedman, surely you have a response to that.

FRIEDMAN: Yes, I believe the talk about airwaves belonging to the public misses the real point. I do not favor the present type of regulation of television. I think the Federal Communications Commission should be abolished. I believe that licenses should be auctioned off to the highest bidder and converted into private property and that they should then be treated like any other form of private property.

The FCC is a prime example of a regulatory agency that has been taken over by the industry, in this case by the networks who have delayed for 10 to 20 years the development of pay TV which was commercially feasible, technologically feasible a long time ago. If you abolished the FCC, the whole argument about the public airwaves would go away.

I don’t know what it means to say the airwaves belong to the public. The fact is that the radio and TV stations that broadcast are private property—very valuable private property. They have been gifts of the government to those people who have them. People paid for those gifts by spending a lot of money to get their licenses. One of the surest ways to become wealthy in this

country is to get a license for a TV station. There is a former President of the United States who could testify to that.

NADER: Would you turn the air into private property when it comes to pollution permits—our air?

FRIEDMAN: Yes, that is to say, insofar as pollution is concerned, I think effluent taxes, which are the equivalent of what you are saying, are the least bad way.

I don't think there is any good way to handle the kind of pollution problem we have, but the least bad way is through effluent taxes which, in effect, convert the right to issue pollutants into private property.

NADER: I understand there is going to be a futures market in pollution permits!

FRIEDMAN: There should be, of course.

NADER: Meanwhile, back at the lungs.

FRIEDMAN: Why don't we have a futures market in jobs at the EPA?

SIDEY: One last question here, and that is my question. Mr. Nader, where do you draw the line? Can you give us some kind of thumbnail philosophy on that? Would you, indeed, begin at some point to regulate skiers and others who endanger themselves? How do you describe that point? It is obvious to me, going around the country and dealing with this government, that there is great concern about government regulation. I don't think you deny that, either—that it is too much, too heavy.

NADER: It depends on whom you are talking to. The polls are showing repeatedly that the public in a large majority want stronger and more effective regulation against consumer fraud and environmental pollution, in particular.

If you are talking about paperwork, just paperwork, you get a different kind of response. But I think the various polling organizations (not to rely on one) have shown that there is a very high quality-of-life support in this country among the people. They see that big business, which in a

recent Gallup Poll ended up ranking last in people's credibility, needs to be regulated more strongly.

Where would I draw the line? First of all, if somebody is engaging in risk to himself, not on a public highway, not in public areas—if he is climbing mountains or whatever—that's his risk. I would draw the line in terms of protecting children, however. We do that in the laws against pornography to some extent, which has strong conservative support from many elements in the country.

As far as being on the public highway, it is just useless to try to distinguish between safety standards for brakes and mandated air bag restraints. Anything that increases the risk of your loss of consciousness or increases the risk of your not being able to get out of the way after a collision, increases the risk of others coming down the highway and smashing into you and chain-type collisions as well as many other interrelated accidents.

So, I don't make the distinction between stronger brakes to prevent you from hurting someone else on the highway and passive restraints to protect those in your car and yourself. The public highway is extremely interrelated in that way and if you are going to use it, you should adhere to standards that minimize all injury.

As far as where to draw the line elsewhere, it is a matter of case-by-case judgment based on the evidence.

SIDEY: Dr. Friedman, do you have a final last word?

FRIEDMAN: I don't believe it is an answer to say it is a question of case-by-case judgment. Case-by-case judgment has to be based on basic principles and the fundamental question is: What principle do we want to guide our life? The principle that we are responsible for our own life? Or that somebody else is responsible for it?

In my opinion, the better litmus test for the question you asked Ralph is not the passenger staying within the car but the wearing of helmets on the motorcycles. That is really the better

litmus test. I think anybody who rides a motorcycle without wearing a helmet is nuts, but I think one of the basic human rights is the right to be a nut! *[Applause]*

NADER: I have to answer that because that's a critical point. If you are on a motorcycle without a helmet and you have an accident and you strike your head and are sprawled on the highway, you may have the right to be a nut but you could cause another accident, and another accident, and another. If you want to ride it on your own farm or ranch, you can do whatever you want, but not when you are exposing other people coming down the highway to that kind of crash risk. *[Applause]*

SIDEY: As you can see, we could go on for the rest of the day but I thank our two gentlemen. I think they can leave the stage with great dignity, having helped enlighten this group. Thank you. *[Applause]*

Notes

* Debate between Ralph Nader and Milton Friedman, moderated by Hugh Sidey.