

SOME NORMATIVE CONSIDERATIONS OF DEREGULATION*

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The Problem

In recent years, economists have amassed evidence about the effects of government regulation of people's economic affairs. (1) The general consensus among scholars is that, by the standard economic measures of cost and benefit, the government's regulatory policies and actions have failed. In a number of studies it has also been shown that the avowed goals of regulation have not, in fact, been achieved by regulation. Comparative analyses show, on the other hand, that in the absence of regulation those same goals *are* being attained. (2)

Despite the wide acceptance of the methods employed in these studies, the results have not produced the deregulation that they would appear to warrant. (3) In view of the lack of significant progress in that direction, some have advanced theories aiming to explain why deregulation is not proceeding. Henry G. Manne, for example, has proposed that bureaucrats are acting in the pursuit of their self-interest, which results, in part, in their refusal to institute deregulation measures. Revising his theory in some measure, Professor Manne later proposed that, in addition to the bureaucrats, the managers of regulated firms are acting in pursuit of their self-interest. (4) So both regulators and the regulated, acting from economic self-interest, promote regulatory activities in the face of evidence showing the failure of these in terms of costs and benefits or of their avowed purpose.

Several other economists and legal theorists have also focused on the issue of why deregulation is not proceeding. (5) I will not attempt here to summarize the findings or theories of these economists but merely note that the method of analysis employed by them draws heavily from the standard 'economic man' model of human behavior. For example, Professor Milton

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Friedman uses this model in a recent non-technical article when he claims that “every individual serves his own private interest The great Saints of history have served their ‘private interest’ just as the most money-grubbing miser has served his interest. The *private interest* is whatever it is that drives an individual.” (6)

I want, instead of scrutinizing the economic approach to the problem of regulation and deregulation, to propose a different explanation for why despite the economists’ findings there is no serious move toward deregulation. The fact is that proponents of deregulation are not presenting a powerful and persuasive moral case. They are arguing *solely* from the “efficiency” perspective — and they argue from this perspective because they ultimately deny the ability of human beings to know moral truth. As one author of an economic textbook maintains, “As an economist, it is *not* his job to spit out a bunch of ‘I believes,’ but rather, ‘the implications will be thus and so’.” (7) The implications, however, of the ‘economic man’ model of human action for purposes of understanding the conduct of regulators preclude any consideration of motivation based on moral or political convictions — or, alternatively, such an approach subsumes such motivation within the more general idea that we all are driven to serve our private interest. Both the rejection and subsumption of normative motivation effectively eliminates the possible additional significance of normative considerations for purposes of understanding such public affairs as the future of government regulation of the economy. Indeed, both of the major advocates of the free market economy, although they approach economics from somewhat different theoretical frameworks, reject either the possibility of moral truth (Friedman) (8) or the appropriateness of normative considerations in this context (Hayek). (9)

On the other hand, those who reject the free market economic system, including those who advocate numerous vigorous government regulatory measures, do base their recommendations on various ethical principles which, they believe, override the call for efficiency and, therefore, economic liberty as advocated by the economists. They also have, therefore, an argumentative edge in the general public debate about the free versus planned economy and, in particular, about the

issue of whether to deregulate or to continue, even increase, government regulation.

For example, Ralph Nader, John Kenneth Galbraith, and political leaders of the outlook of the late Senator Hubert Humphrey clearly accept that we can arrive at conclusions about what is right and wrong for governments to do apart from what is efficient or expensive. Others, such as the influential socialist social philosopher Michael Harrington, advance an entire philosophical theory in support of their call for government *control*, not just regulation, of the American economic system. (10) Again, such philosophers as John Rawls, Thomas Nagel, Thomas Scanlon, and George Kateb make no secret of their view that we can identify some basic ethical principles of justice and equity that should guide us in forging government policy. (11) Thus we find Professor Roger Noll commenting in a recent discussion about whether to establish an agency for consumer advocacy:

My conclusion, after reading what everyone else has said about the consumer advocacy agency, is that I cannot understand why people are so strongly opposed to it or so strongly in favor of it. If I were forced to vote, I would vote for it — because I accept the *principal argument for it* — that the consumer advocacy agency will promote justice and fairness. (12)

Ralph Nader too states that “it is important to look at regulation issues in terms of the needs of society . . . we should ask ourselves what human purposes regulation fulfills, whether it is just or unjust.” (13)

It will be worthwhile, then, to consider whether outside the economists’ case showing the inefficiency of government regulation there might not be a more forceful (non-skeptical) argument in support of freedom in general and deregulation in particular. The idea is to see if there is a theoretical basis not only for the economic discussion but for the ethical and political discussion. It is no secret that among those who are now supporting deregulation, economists dominate the discussion. The modest aim of this paper is to examine some themes that would, at least, balance the discussion outside the economic framework or, at most, make a case for the moral and political priority of liberty within the context of public policy. None of this is to dismiss entirely the usefulness of

economic explanations of why deregulation is not proceeding. When concern for ethical issues and political justice seems to support regulation, it is not unlikely that many will join in support of such a policy who are really simply seeking to preserve their vested interests by giving lip-service to such concerns, provided that the normative ideas promulgated are never challenged head on. In addition, the intellectual climate itself discourages fundamental changes in the moral perspectives of influential people in society and government, partly due to the very method economists opposed to government regulation employ. (14) In view of the apparent influence of some normative considerations — noted above — and the recent theoretical concern with arriving at rational social policy via the economic man model, (15) it will be useful to consider some of the ethical and political (normative) ideas that might indeed give support to the free society and, thereby, to deregulatory efforts.

My plan is to introduce some normative considerations that are pertinent to the possibility that government regulation is wrong or improper public policy. I will then sketch a *moral* case for the value of political liberty, that is, the political basis of the free market system and of deregulatory policy.

The Normative Case for Freedom

Within a very plausible framework it can be shown that government regulatory activities are wrong, improper, indeed immoral — where this means that they fall within the class of activities, policies, or institutions that can rationally be considered as unjustified on grounds that a standard or principle of human conduct is being violated. The idea is not that such practices are legally unjustified, of course, if by “illegally” we mean only that the legislative and judicial practices of our society have been adhered to more or less faithfully. But it is possible, in a different sense of “legal” or “lawful,” to regard some established public policy as lawless, if, that is, we mean by “lawful” an adherence to fundamental conditions of human community life (as this is meant within the tradition of natural law legal and political theory). (17)

Instead, however, of a concern with legality, which is today mostly conceived along lines of legal positivism, the present discussion will focus on the extra-legal question of what kind of

public policy should be followed. The issue is not whether the kind of policy that should be followed may be followed ineptly, unprofessionally, incompetently — the most appropriate of policies (e.g., the military defense of a country) can be mis-managed by governments or other groups of people. The point is whether as a certain kind of agency in a human community, government should assume certain functions, such as the regulation of the economy. (18)

With these preliminaries mentioned, let us consider what may be good reasons, from the normative point of view, to oppose government regulation and to support deregulation. We can admit at the outset that the *goals* that are pursued in our day via coercive government regulation can be important, even if we would conclude that such coercive methods are not the proper means by which to pursue them. Such goals are certainly of value to some members of a human community, even though one would probably have to challenge their frequent characterization as public goods or as being in the public interest. (19) For example, meeting health care needs is valuable for those in such need, preserving the wilderness is valuable for those who are inclined to enjoy the outdoors, and fostering the arts is valuable for art lovers. Even more, securing safety in food and drug manufacture would probably benefit everyone.

There are other morally crucial matters to be considered, however, aside from the admitted value some of these goals have for various members of the community. As an example, consider the principle of justice whereby, when accused of a wrong-doing, a person's guilt must be demonstrated before penalty or punishment is imposed. In the ordinary criminal proceedings such considerations fall under the legal principle of due process. This principle is usually conceived as specifying the need for the state to follow the law, including that portion of it that requires that an accused be proven guilty before any action is taken that can be construed as punishment. The normative underpinning of this idea is, generally, that without a demonstration that the accused is indeed guilty of having wronged someone (or violated a law that stands to protect the rights of the members of a society), *there is no justification for placing burdens upon him*, e.g., for depriving him of liberty or property.

Of course once some laws are in effect, all the state needs

to do to satisfy the due process requirement is to demonstrate that these laws have been violated. Yet there is a more stringent way of understanding the idea of due process, one that is not so widely considered, even by legal theorists, in our times. Sometimes it may be argued that inherent in certain types of legislation we find an abridgement of due process, at least if this idea is understood to involve considerations of justice that are extra-legal and not merely statutory. (In tyrannies or dictatorships we can observe due process if by this we mean only that statutes are followed consistently; but we may argue that certain statutes should never have been permitted to become part of the legal system, and we may insist that their having become part of the system is itself a violation of due process, that is, an abridgement of the proper domain or limits of governmental action.) If, for example, the constitution or legal code of a just human community should prohibit statutes abridging freedom of speech or contract or trade, then any legislation or related procedure which has in fact established such statutes must be construed as undue. It is in this broad, substantive instead of procedural sense of the idea of due process that it can be argued that various statutes of our legal system fail to respect the principle of due process. But whatever the term "due process" may be used to mean — admitting that today it is far from being used in this sense — the idea is clear enough. Government regulatory practices have led to the result that prior to having violated anyone's rights or having imposed any harm or caused any injury to others, members of various industries, professions, and other commercial associations are made to suffer burdens. True, these burdens are required by legally well-founded statute, (20) but this can be said, as noted above, of the burdens that tyrannies or dictatorships impose on the members of the communities they rule by brute force. This brute force is "backed" by law of a certain kind. It is not at all impossible that various less drastic impositions on the members of our society constitute merely less brutal but still unjust exercises of force, backed by unjust legal measures.

The upshot of these remarks is that there is a firm and well developed moral objection to the bulk of government regulation, namely, that such regulation declares the regulated parties guilty and deserving of numerous burdens without it having been demonstrated that those burdened are guilty of violating

anyone's rights and, therefore, deserving of shouldering the imposed burdens. The point is, to stress the matter again, moral, not legal. The toy maker, dress manufacturer, barber, or restaurateur who is forced by the state to meet various requirements set by a regulatory agency, thus forced to incur expenses, hardship, even ruin, (21) simply *has* not done anything wrong to another person. It is true, any one of these individuals or groups of individuals might do (i.e., is capable of doing) such harm. Yet it is also true that anyone might murder (i.e., is capable of murdering) someone, but this does not seem to be regarded as sufficient grounds for government imposition of anti-murder regulations. It seems sufficient, and certainly more just, to make murder illegal. Would it not seem comparably sufficient and just to regard various forms of injury to others illegal? — so that once some manufacturer has engaged in conduct injurious to others — or is regarded to be probably engaged in such conduct (within the framework of the idea of probable cause or clear and present danger) — he is liable to criminal charges. This admittedly cumbersome procedure, due to citizens in numerous other circumstances, is shortcut by way of government regulation of manufacture, etc., not although, without serious consequences (as, to emphasize again the value of the economists' work on the subject, this is demonstrated by the results of such measures of preventive justice).

Let me illustrate how the above considerations have a bearing on arguments for government regulation based on moral considerations. The following points are raised by Ralph Nader in support of such government policy (although Nader, as most other advocates, is not an unqualified champion of the various regulatory agencies):

As you know, there are too many useless drugs in the market-place. The National Academy of Sciences documents this. Many of these drugs should be taken off the market. I think if you read the Senate Small Business study of the assertion ["for every case you can bring up of a drug that slipped by the Food and Drug Administration and has been harmful to some people, you can bring up dozens of cases of the Food and Drug Administration going too far"], you'll see that they simply are not supported by the evidence. What we do know is that

fortunately our Food and Drug Administration stopped the drug Thalidomide, which caused 10,000 deformed births in Western Europe and Japan, from coming into this country.

I really think that what we have to ask ourselves in this discussion is, to what extent can these agencies reflect the value system of a population by operating openly, accountably, and subject to citizen or consumer participations? (22)

Nader and others accept the view that useless drugs, as well as ones that might have some side effects that are harmful, but by standard testing procedures do not indicate such a probability, "should be taken off the market," that is, their manufacture and sale should be legally prohibited. He is not speaking of what *manufacturers* should do themselves, as a matter of their moral responsibility, but what should be forced upon society. And he calls this approach justified because he believes that "these agencies" of prohibition would "reflect the value system of a population, etc.," even though it is certainly very doubtful that the exercise of force is the means by which the value system of a society should be reflected. It is of the essence of a virtuous citizenry that it practices its virtues *voluntarily*.

Nader is also convinced that government should act to prevent individuals from injuring themselves and other individuals from participating in the self-injury of others (or by selling them the means to do it). The alternative is to leave citizens to take preventive measures and to call upon government only when demonstrable injury from others (which is not consented to) is at issue — not for purposes of prevention but for purposes of protection and retaliation, the valid purposes of a government of a free society. This preventive conception of proper government policy is well illustrated by Senator Jacob Javits's reply to a question regarding the alleged need for regulation of Vitamin C production, sale, and consumption:

While we protect the right of the individual to buy vitamins, we must at the same time safeguard him and those individuals who may be not aware of the dangers of potential over-use of vitamins against the possible hazards. (23)

To these sorts of arguments the present normative

perspective supplies the following reply: Individuals have as their responsibility in life to pursue their well-being while at the same time refraining from interfering with the similar pursuits of others. The desire to “help” others by directing their lives may be strong, but to yield to this desire is to undermine the very human dignity of the person who is being benignly coerced. In a society that accords with the principles based on the political theory of natural human rights to life, liberty, and property (with government assigned the role of serving its members by protecting and preserving these rights), paternalism is not authorized. Where such paternalism is legally authorized, the laws should be changed. Deregulation of the economic system is a species of the kind of change that will accomplish bringing the legal system into accord with the crucial normative principles at issue; therefore, deregulation should be pursued. (24) To put the matter differently, in line with the points raised as to placing burdens on people only after they have been shown to have violated the rights of others, deregulation should be pursued because government regulation of the kind we have discussed is a violation of the basic rights of individuals, derived from all persons’ responsibility to pursue success, well-being, and overall excellence in their particular lives.

Of course, the foregoing normative approach will not accord with the normative approach presupposed in the argument Mr. Nader and others have advanced. (25) But here the issue is at least being faced at the level at which the relevant discussion has occurred, namely, the normative validity of government regulation in general. And, in addition to the relatively narrow normative point raised above — based, however, on a broad normative framework — some other objections may be mentioned concerning the practice of government regulation. Regulatory policies are inherently redistributive; that is, they involve the seizure of earned income for purposes of allocating this income in ways the government’s policy makers believe are more important than do those whose income has been seized. By not allowing the people to live with the choices they have made, the government is engaging, via the redistribution of funds, in the assignment of priorities against their expressed choices (e.g. the widespread opposition of the public, as indicated by public opinion polls, to enforced and costly school busing programs).

Within the normative framework of the present essay it is improper for government to obtain funds for purposes other than providing the protection and preservation of the rights everyone in the society possesses. The latter purposes, such as national defense, maintenance of judicial and policy provisions, and the related technical services, are to everyone's objective benefit, and so do not involve any policy of income redistribution.

But this is not the case with the kind of public interest theory to which Mr. Nader and his friends adhere. The following exchange between Nader and former California governor Ronald Reagan brings to light the problem with Nader's conception of the public interest, as well as with some aspects of government regulation:

Reagan: . . . I would join any propaganda or public relations campaign to urge motorcyclists to wear helmets — since I happen to think anyone is foolish to ride a motorcycle at all and very foolish to do so without a helmet. But I don't think government has any business telling a person he has to wear a helmet . . . a person who wants to ride a motorcycle without a helmet is only endangering himself, and I don't think it is any of government's business

Nader: Of course, if a motorcycle operator who is not wearing a helmet is in an accident and is sprawled on the highway, you would expect a police car, taxpayer-paid, to drive the victim to a taxpayer-paid hospital; and you could expect the risk of secondary accidents to increase with the motorcycle driver sprawled on the highway unconscious — which he wouldn't be if he were wearing a motorcycle helmet.

It isn't that simple. If you are on your own private road on your farm and you don't want to wear a motorcycle helmet, fine, I agree with you (26)

First, Nader evidently has a point, but only because the public domain today includes virtually every domain of society. Most everything is touched by the taxpayer and is, thus, taxpayer-paid in some measure. In line with Nader's reasoning there really should be very few domains, if any, left to private choice. One might wonder, for example, whether Nader supports freedom of speech, since most speech is performed on property that comes under some kind of government jurisdic-

tion. Broadcasting news, for instance, is carried on the public airwaves. Newspapers are distributed on public street corners. Art shows are presented in public museums. Books are mailed through the public mails.

But this simply accentuates the imperative not only to commence deregulation but to disengage the various levels of government from the numerous private and voluntary social spheres that they now invade. As to what remains, properly, within the jurisdiction of governments, the issue is not government regulation but public management or administration. Because today there is no principled distinction between the private and the public spheres of life in the United States, not to mention in other countries, the issue of deregulation needs to be considered carefully enough to observe that what seems to be government regulation is in fact government management or administration. Yet the confusion that exists in view of these considerations should not be permitted to obscure the virtue of proceeding with deregulatory efforts where they apply. Governor Reagan's reply to Nader's argument did not heed this point, so that he simply admitted that he finds "it very hard to determine what exactly victimless crimes are" and that "there is a gray area in all of these things." (27) He also said that a person in a motorcycle accident "is going to be somewhat disabled and will end up lying on the highway with or without the helmet," to which Nader responded by citing studies that allegedly show that what the Governor said is "not true." (28)

That is not the way to discuss these issues, but when those party to these discussions haven't the moral frame of reference from which to object to what they vaguely perceive to be unjustified government intrusion into the lives of individuals, one cannot really expect better results.

In Summary

The thesis of this paper is that government regulation of people's commercial activities is wrong because it violates certain provisions of justice derivable from the theory of natural rights (a la John Locke) and the underlying morality of ethical individualism. (29) Some of the points raised in support of the free society and deregulation can be expressed in the language of law, provided it is recalled that it is not

simply positive law but law conceived as a system of justice that is being referred to. Thus reference to the concept of "due process" should be understood simply as an attempt to stress the possible connections between the idea of justice that this concept gives expression to and some existing legal system that is intended to abide by this idea of justice. (The point is most clearly discussed in connection with the debate about whether the U.S. legal system is committed to substantive due process or merely procedural due process, especially in relation to economic or commercial aspects of human conduct.) (30)

It is not the thesis of this paper that if these normative considerations are heeded and make their way into our legal system there will be perfect attainment of the goals now sought via government regulation. Nor does my argument rest on the view, held by some, that all government regulation must be inefficient; on occasion regulatory measures taken by government can have overall beneficent results — *e.g.*, in the particular instance of Thalidomide. This paper does not *reject* the research that has convinced many economists of the economic inefficiency of government relation; it merely rejects the idea that such economic arguments suffice to make the case for deregulation. Economic arguments must be supplemented by normative arguments.

With both the economic and the moral position well developed, however, the case for the ever-widening network of government regulation and coercive economic control is clearly seen to lack legitimate foundations.

FOOTNOTES

(1) See, *e.g.*, Nicholas A. Ashford, *Crisis in the Workplace: Occupational Disease and Injury* (Cambridge: M. I. T. Press, 1976); Lee Benham, "The Effects of Advertising on the Price of Eyeglasses," *Journal of Law and Economics* 10 (1972); John F. Cady, *Restricted Advertising and Competition: The Case of Retail Drugs* (Washington, D.C.: American Enterprise Institute for Public Policy Research [hereafter cited as AEI], 1976); Rita Ricardo Campbell, *Drug Lag* (Stanford, CA: Hoover Institution on War, Revolution and Peace, 1974); H. J. Levin, "Federal Control of Entry in the Broadcast Industry," *Journal of Law and Economics* 5 (1962); Thomas Gale Moore, *Trucking Regulation* (Washington, D.C.: AEI; Stanford, CA: Hoover Institution, 1976); Sam Peltzman, "An

Evaluation of Consumer Protection Legislation: the 1976 Drug Amendments," *Journal of Political Economy* (1973); Richard A. Posner, *The Robinson-Patman Act* (Washington, D.C.: AEI, 1976); Lynn Sagalyn and George Sternlieb, *Zoning and Housing Costs* (New Brunswick, N.J.: Center for Urban Policy Research, Rutgers University, 1973); Murray L. Weidenbaum, *Government Mandated Price Increases* (Washington, D.C.: AEI, 1975); idem, "Reducing Inflationary Pressures by Reforming Government Regulation," in William Fellner (ed.) *Contemporary Economic Problems* (Washington, D.C.: AEI, 1976). Further work on safety, trucking, airline, and other regulation has also been published by AEI.

(2) See the citations in note 1 for Ashford, p. 13, Benham, Cady, Peltzman, and Wiedenbaum ("Reducing Inflationary Pressures," pp. 274-80).

(3) See Friedman, *An Economist's Protest* (Glen Ridge, N.M.: Thomas Horton, 1972); Stigler, *The Citizen and the State* (Chicago: University of Chicago Press, 1975); Moore, *Trucking Regulation*; Brozen, "Wage Rates, Minimum Wage Laws, and Unemployment," in T. R. Machan (ed.), *The Libertarian Alternative* (Chicago: Nelson-Hall, 1974); Manuel S. Klaunser and Robert Poole, Jr., "Working within the System: An Interview with Sam Peltzman," *Reason*, June/July 1972.

(4) Henry G. Manne, "Capitalism: The Impossible Dream?" Business, Education, Media Series (Malibu, CA: Pepperdine University, 1974); idem, address to the Philadelphia Society, Chicago, Illinois, April 18, 1976.

(5) See George Stigler, *Citizen and the State*; Sam Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics* 14 (1976); Paul W. MacAvoy (ed.) *The Crisis of the Regulatory Commissions* (New York: Norton, 1970).

(6) Milton Friedman, "The Line We Dare not Cross," *Ecounter*, November 1976, p. 11. This is perhaps one of the clearest statements of the position. For the history of the concept of interest, see Albert Hirschman, *The Passions and the Interests, Political Arguments for Capitalism before Its Triumph* (Princeton: Princeton University Press, 1977).

(7) Augustus J. Rogers, III, *Choice: An Introduction to Economics* (Englewood Cliffs, New Jersey: Prentice-Hall, 1971), p. 2.

(8) Joe Cobb, Tibor Machan, and Ralph Raico, "An Interview with Milton Friedman," *Reason*, December 1974, p. 5.

(9) Tibor R. Machan, "Economics, Politics, and Freedom: An Interview with F. A. Hayek," *Reason*, February 1975, p. 11.

(10) e.g., in his *The Twilight of Capitalism* (New York: Simon & Schuster, 1976).

(11) John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Thomas Nagel, *The Possibility of Altruism* (Oxford: The Clarendon Press, 1970), Thomas Scanlon, "Preference and Urgency," *Journal of Philosophy*, November 6, 1975; George Kateb, "The Night-watchman State," *American Scholar*, Winter 1975-76.

(12) "The Dilemma of Consumer Protection," in W. S. Moore (ed.),

Regulatory Reform (Washington, D.C.: American Enterprise Institute, 1976), p. 44 (emphasis added).

(13) Eileen Shanahan (moderator), *Government Regulation: What Kind of Reform?* AEI Roundtable, September 11, 1976 (Washington, D.C.: American Enterprise Institute, 1976), p. 2; see also David Ferber, "The Case Against Insider Trading," *Vanderbilt Law Review* 23 (1970); 622; Edwin M. Zimmerman, "The Legal Framework of Competitive Policies Toward Regulated Industries," in Almarin Phillips (ed.) *Promoting Competition in Regulated Markets* (Washington, D.C.: Brookings Institution, 1975).

(14) A critique of this method as a general approach to the study of human action may be found in A. R. Louch, *Explanation and Human Action* (Berkeley: University of California Press, 1966); Isidor Chein, *The Science of Behavior and the Image of Man* (New York: Basic Books, 1972); Tibor R. Machan, *The Pseudo-Science of B. F. Skinner* (New Rochelle, New York: Arlington House, 1974).

(15) Two prominent examples of influential formal arguments critical of the very possibility of policy making from within the empiricist-utilitarian perspective are Kenneth Arrow, *Social Choice and Individual Values*, 2nd ed. (New York: John Wiley, 1963) and Amartya Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970).

(16) I develop a more detailed argument than is possible to produce here in my *On Petty Tyrannies: Morality and Government Regulation* (Unpublished manuscript prepared for the Hoover Institution on War, Revolution and Peace, 1975-76). The general framework for the present discussion is developed in my *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975), "Recent Work in Ethical Egoism," *American Philosophical Quarterly* (forthcoming), and "Natural Rights and Morality," *American Journal of Jurisprudence* (forthcoming).

(17) For an elaboration of these points see my "Law, Justice and Natural Rights," *Western Ontario Law Review* 14 (1975), and "Human Dignity and the Law," *DePaul Law Review* 26 (1977). The general background which gives rise to these discussions of the nature of law is fully recounted in Shirley Robin Letwin, "Modern Philosophies of Law," in R. M. Hutchins and M. J. Adler (eds.) *The Great Ideas Today* (Chicago: Encyclopaedia Britannica, 1972). For a modern positivist treatment of law, see Gordon Tullock, *The Logic of Law* (New York: Basic Books, 1972).

(18) By concentrating on government economic regulation I do not wish to give the impression that I consider other coercive governmental practices above criticism.

(19) For a detailed examination of the concept of "public," see my "Rational Choice and Public Affairs," *Theory and Decision* (forthcoming). For a discussion of the public interest, see my "Some Considerations of the Common Good," *Journal of Human Relations*, Fall 1970. See also Robert F. Sasseen, "Freedom as an End of Politics," *Interpretation*, Winter 1971. For a clear statement of a contrary, welfare statist position see Thomas C. Grey, "Property and Need: The Welfare State and Theories of Distributive Justice," *Stanford Law Review* 28 (1976), and Nicholas

Rescher, *Welfare* (Pittsburgh: University of Pittsburgh Press, 1975).

(20) For historical accounts of the developments of legal trends favoring government regulation, see Jesse S. Rapheal, *Government Regulation of Business* (New York: Free Press, Macmillan, 1966); Richard Posner, *Robinson-Patman Act*, op. cit., pp. 17-34; William Letwin, *Law and Economic Policy in America* (New York: Random House, 1965); idem, ed., *Documentary History of American Economic Policy* (Chicago: Aldine, 1962), and Jonathan R. T. Hughes, *The Governmental Habit* (New York: Basic Books, 1977). Some legal precedents to the full legitimation of federal government economic regulation include *United States v. E. C. Knight Co.* (1895) and *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937).

(21) Generally when regulation of business is discussed in the popular media, or even in economic and philosophical journals, no consideration is given to the question whether such regulation might not have devastating consequences on the lives of those involved. Since those consequences tend to be gradual and thus are unavailable for purposes of presenting a sensational picture, they are generally treated as non-existent. Yet there is evidence that government regulation often produces severe hardship for those touched by it. See, for example, Raymond D. Walk, "Analysis of Shipment Trends and Foundry Closings in the U.S.," *Modern Castings Market Insight*, publication no. 739, March 31, 1975. See, also, "CPSC Mistake Leaves Company Clinging for its Life," *Industry Week*, November 4, 1974. For more detailed discussion of these matters, see Murray L. Weidenbaum, *Business, Government, and the Public* (Englewood Cliffs, New Jersey: Prentice-Hall, 1977), and Kenneth Chilton, "The Impact of Federal Regulation on American Small Business," prepared for the Center of the Study of American Business, Washington University, St. Louis, Mo. (forthcoming in *Reason* magazine).

(22) In Shanahan, *Government Regulation*, op. cit., p. 7.

(23) Personal communication on U.S. Senate letterhead, November 1, 1973.

(24) Tibor R. Machan, *Human Rights*, op. cit.; see also Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) for more details pertinent to this general framework.

(25) But see note 11, above.

(26) In Shanahan, *Government Regulation*, op. cit., pp. 3-5.

(27) *Ibid.*, p. 5.

(28) *Ibid.*

(29) See Machan, "Natural Rights and Morality," op. cit.

(30) See, e.g., Robert G. McClosky, "Economic Due Process and the Supreme Court," in P. B. Kurland (ed.) *The Supreme Court and the Constitution* (Chicago: University of Chicago Press, 1965) and William Letwin, "Economic Due Process in the American Constitution, and the Rule of Law," in R. L. Cunningham (ed.) *Law & Liberty, Essays on F. A. Hayek* (Lubbock, Texas: Texas Tech. University Press, 1978). See, also, J. Roland Pennock and John W. Chapman (eds.) *Due Process* (New York: New York University Press, 1977) and Rodney L. Mott, *Due Process of Law* (Indianapolis: The Bobbs-Merrill Co., 1926).

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"In this country, *Britain*, I believe the old Fabian left is intellectually bankrupt. It has nothing to say that any longer can excite the enthusiasm of the youth. The young in this country are far more likely to be attracted by the free-market doctrines that are so effectively presented by the *Institute of Economic Affairs* than they are likely to be by the standard socialist tack which still dominates university reading lists."

Hoover Foundation Lecture at Strathclyde Business School, Scotland, April, 1978.

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TYF YR HYN SYDD O'H HYN FU:
AN ANALYSIS OF WELSH NATIONALISM

By H. W. J. Edwards

Mr. Tom Ellis, senior burgess for Wrexham in the British House of Commons at Westminster, has written in *Socialist Commentary* (1977): "It is a sad commentary on the state of socialist theory in Wales that some proclaimed Leftists not only fail to see (that Welsh language activists are in the vanguard of the true struggle for socialism) but actually denounce defenders of the language as privileged cultural élitists." Mr. Ellis' article makes the thesis that members of Cymdeithas yr Iaith Gymraeg (1) and Adfer (2) together with those who campaign for more schools where Welsh is the medium of instruction are attacking the capitalist system at its weakest point. The movement, he contends, is part of a struggle among many nations within Europe against the centralism, hierarchy and uniformity of capitalist state structures especially those in "Britain," Spain, and France: it is difficult for Welsh left-wingers to grasp that the socialist struggle against capitalism has a cultural content as important as the more popularly understood economic goals.

He then denounces the Welsh nationalist movement, Plaid Cymru, for proposing to build its own Welsh 19th century-style sovereign state, rather than work for a European union based on decentralized communities, cutting out the nation-state structure. "The aim of the Left in modern Europe must be the dismemberment of the nation-state and the establishment in its place of a political structure better designed for leading mankind out of the awesome impasse which it has led itself into." (Someone like Mr. Harry Worth might well wonder what substantives "it" and "itself" stand for. "The left," "the nation-state" or "mankind"?)

Mr. Ellis quotes the existentialist, Sartre, who has asserted that to speak an oppressed language is a revolutionary act which effectively attacks capitalism at its softest spot, and that the major threat to capitalism comes from the rejection by nationalists of the conformist authoritarianism and ethnic hierarchy implicit in a multi-ethnic state system.