Readings
of particular interest

The Route to Air Cargo Decontrol

Transition to a Free Market: Deregulation of the Air Cargo Industry by Andrew S. Carron (Brookings Institution, 1981), 45 pp.

Most deregulatory reforms in recent years have proceeded in scheduled stages rather than all at once. In this paper, Andrew Carron of the Brookings Institution examines the background of air cargo regulation, the transitional scheme Congress provided for deregulating that industry, and how that scheme affected the industry's structure and behavior.

The amendments to the Federal Aviation Act of 1958 enacted November 9, 1977, lifted controls from air cargo rates immediately, except for those that were "unjustly discriminatory, or unduly preferential, or unduly prejudicial, or predatory." It did not, however, allow full freedom of entry on routes for eighteen months, but instead loosened entry rules in stages: Carriers that already ran scheduled freight service could apply at once for unrestricted authority to operate both scheduled and charter services, and the Civil Aeronautics Board would have 60 days to grant its approval. Existing charter operators could apply for the same sort of unrestricted nationwide authority beginning April 1, 1978, about five months after their scheduled counterparts, and the CAB would have 45 days to decide on their applications. After November 1, 1978, anyone could apply for nationwide authority. The CAB would have 180 days in which to rule on the application, taking into account the applicant's fitness, willingness, and ability to run a cargo operation.

New carriers did not enter the market rapidly even after the barriers fell. There were several reasons. At the time of deregulation, Carron writes, there was an order backlog of up to four years for new freighters, and obsolescent passenger aircraft suitable for conversion to freighters were scarce. Airport space, likewise, was in short supply: at Chicago's O'Hare and San Francisco International, two of the busiest freight airports, one carrier could expand only if another gave up some of its facilities.

Among the first things the airlines did upon deregulation was to fill up planes that had been flying partly empty because of the rules barring domestic cargoes from international flights. Flying Tiger, for example, which had been touching down at Anchorage on its way from the United States to the Far East, could now for the first time drop off cargo there. Next, carriers began extending their route networks to new cities, "seeking to establish themselves in new markets before entry was permitted to others in the second year." Commuter freight lines like Federal Express, which had been limited by law to smaller planes, bought larger ones.

Some incumbent carriers had expressed fears that newcomers would have an advantage under deregulation because they were not burdened with newly obsolescent route structures and aircraft. The timetable delaying the entry of newcomers was to some extent a political response to this fear. But "[t]his timetable, which was the subject of much of the debate over the reform legislation, appears not to have constrained any carrier." Overall, Carron believes, "[n]ew entrants face the more formidable obstacles under deregulation."

In the cargo market, unlike the passenger market, concentration has increased under deregulation: the top four firms had 62 percent of scheduled cargo traffic in 1980, up from 55 percent in January 1978. This trend also reflects a pronounced shift in the industry away from the passenger airline, which carried substantial amounts of freight in the belly compartments of passenger aircraft, toward the specialized all-freight carrier.

Deregulation not surprisingly brought about large sudden gains and losses in wealth

among various carriers. Carron believes these shifts would have been much the same even if transition policies had been different. The actual timetable that was chosen probably led to losses in economic efficiency, he says, though they were not large enough to be a cause for concern. Economic efficiency was not, he says, the leading concern of the lawmakers who crafted the timetable: the "[t]ransition was, in fact, a means of gaining support for reform and not a means of implementation."

Shippers' Views of Transport Deregulation

"Report on Harbridge House Survey of the Impact of Transportation Deregulation on Major U.S. Manufacturing Firms" (Boston, Mass.: Harbridge House, June 1981), 26 pp.

In May 1981, Harbridge House, Inc., a management consulting firm, asked 2,200 large businesses how deregulation and regulatory reform in transportation had affected them. Two hundred and twenty-four firms responded. Their answers suggest that for many shippers, improvements in the quality of service may have been as important a benefit of deregulation as lower rates. Moreover, while both larger and smaller shippers appear to have been helped by deregulation, large shippers may have been helped more than smaller.

Quite a few firms had expected the effect of deregulation on service to be mixed or bad. The firms that expected to lose rail and air freight service, for at least some company locations, outnumbered those that expected improved service. Predictions for trucking deregulation were more optimistic, but even there one in thirteen firms expected to lose some service.

When the various deregulation schemes took effect, however, service tended to get better, according to the firms surveyed. The most notable improvements were in full-truckload shipments, including such categories as the availability of equipment (39 percent thought it had improved, and only 3 percent said it got worse); transit time (30 percent said it was better, 2 percent worse); transit time reliability (29 percent better, 2 percent worse); and service frequency (34 percent better, 2 percent worse). Truck shipments of less than full truckloads also registered improvements by smaller but still lopsided margins.

Rail deregulation, whose effects on service had been widely feared, was quite popular after the fact. Each of the four major service factors listed above was given an improved rating by 10 to 16 percent of shippers, while only 3 to 4 percent of shippers saw a deterioration. Few respondents thought that the quality of service on air cargo transport had changed much. Transit time reliability received the most favorable comments, while transit time itself drew mixed comments (7 percent better, 5 percent worse). [One reason all of these percentages are low is that a large number of respondents—25 to 35 percent for trucking, 40 percent for rail, and 55 to 65 for air cargo—offered no opinion on the query, perhaps because they were not major users of the mode in question.]

Shippers say the quality of service is very important to them. Asked to name the single factor that was most important in full-truckload shipping, more named equipment availability than named rates, and significant numbers named other service factors. Speed and frequency were especially important for less-than-truckload shipments. Equipment availability and transit time reliability were cited by many rail users. Transit time and reliability were the key factors for air freight shippers.

Under deregulation, the cost of transportation generally decreased. Trucking rates fell for a large majority of shippers and air freight rates for a plurality. On rail rates, however, responses were evenly split. Since the perceived quality of service also improved, it was no surprise that the shippers' overall estimation of deregulation was positive. Trucking deregulation was viewed favorably by 74 to 21 percent; rail, 47 to 27 percent; air freight, 38 to 23 percent; and air express, 37 percent to 12 percent.

Larger companies tended to support deregulation more consistently than smaller ones. The average firm that favored trucking deregulation spent about 20 percent more on trucking (and on transportation generally) than the average firm that opposed it. For rail deregulation, the firms in favor had higher sales and higher overall transport costs—but not, for some reason, higher rail costs—than the firms against. Air freight and air express deregulation likewise won more support from larger firms.

Exploring the Alternatives to Government Regulation

Two recent books explore slightly different facets of a single theme—alternatives to government regulation. The first considers various private and public sector arrangements that might serve in the place of regulation, and examines the legal roadblocks to agency use of such arrangements. The second makes the case for abolishing or curtailing specific federal agencies and replacing them with nonregulatory institutions.

• *Alternatives to Regulation: Managing Risks to Health, Safety and the Environment* by Michael S. Baram (Lexington, Mass.: D.C. Heath and Company, 1982), 245 pp.

Michael S. Baram of the Franklin Pierce Law Center seeks to identify "why . . . nonregulatory options succeed in some respects and fail in others and what can realistically be done to remedy their failings." Baram's alternatives to regulation include common law remedies, such as those for negligence, product defects, nuisance, and trespass; industry self-regulation and professional licensure and certification; means of indemnification, such as workmen's compensation, government-subsidized insurance, and bonding, escrow, and restoration funds; and government initiatives short of direct industry regulation, in such areas as procurement and public information.

While there is a remedy under common law for "virtually all" environmental risks, he says, most of them are "beset by problems." The costs of litigation may be high, and it may be difficult to establish proof of the wrong done. Also, the remedies may not provide sufficient incentives to prevent the injuries they are designed to combat. Still, agencies can often use their own resources to strengthen the process of private litigation. The Environmental Protection Agency, for example, could adopt a manifest system to track hazardous wastes through their life cycle, so that in cases of misconduct private litigants could identify the particular handler responsible. In the field of safety regulations, the National Highway Traffic Safety Administration could provide standards, testing, and research that would make it easier for insurance firms to charge differential rates for different auto models. If the government prescribed standards for high-voltage electric transmission lines, the author suggests, those who suffer injuries caused by the lines might recover damages in a negligence suit without having to hire expert scientific witnesses to testify in their behalf.

Baram argues for giving agencies wider legal discretion to experiment with alternatives as a formal part of the rulemaking process, or perhaps even requiring them to choose nonregulatory alternatives where feasible.

The use of nonregulatory alternatives, however, now usually faces legal obstacles. Some "agency-forcing" laws require agencies to regulate. Even where there is no such law, an agency's deliberate decision to rely on an alternative may be construed by a court as the functional equivalent of a rulemaking, and thus may be subject to the requirements of the Administrative Procedure Act. If the agency compiles a detailed record in the course of deciding not to resort to a regulation, a court may rely on that record to force it to regulate willy-nilly. Agencies that rely on public information policies may run afoul of the Trade Secrets Act and the Privacy Act of 1974. Baram says that "Congressional action, judicial tolerance, executive guidance, and responsible agency initiatives" are all needed to clear the path, where appropriate, for agency innovation.

• *Instead of Regulation: Alternatives to Federal Regulatory Agencies,* edited by Robert W. Poole, Jr. (Lexington, Mass.: D.C. Heath and Company, 1982), 404 pp.

Robert W. Poole, Jr., of the Reason Foundation brings together in this volume eleven essays that explore, area by area, ways in which particular regulatory agencies might be abolished. The general theme of the essays, Poole notes in his introduction, is "the return to individuals of substantial decision-making power" through the removal of prior restraints on the actions of both producers and consumers.

Poole's volume considers the impact of deregulation in airlines, air safety, ground transportation, energy, communications, consumer protection, investor protection, drugs, product safety, worker health and safety, and pollution control. Ida Walters of the First National Bank of Chicago calls for opening up telecommunications markets completely to competition,

right down to local telephone exchanges, and allowing broadcast frequencies to be privately owned. David Leo Weimer of the University of Rochester argues that it would ensure the safety and improve the availability of prescription drugs to end most Food and Drug Administration regulation, while retaining certain existing protective mechanisms—for example, laws against labeling and advertising fraud and institutional review boards to ensure drug safety. Roger Meiners of Emory University proposes to replace the Consumer Product Safety Commission with a rule of strict producer liability in personal injury lawsuits. He also calls for changing antitrust law to allow voluntary agreements among manufacturers to set product-quality standards. Peter Aranson, also of Emory University, advocates decentralizing pollution control to the smallest possible units, arguing that there are "no truly national pollution problems" and that competition among cities and states would best balance the competing interests involved.

Poole says that it may be easier to implement alternatives for the most recently created agencies than for the older ones such as the FDA and Federal Aviation Administration. It is not that the inherent problems are necessarily greater in the older areas; rather, he says, the "legal and marketplace mechanisms that exist in other fields have atrophied in these protected domains."

How Polluters Pay in Other Countries

Compensation for Pollution Damage (Paris, France: Organization for Economic Cooperation and Development, 1981), 208 pp.

The theory of charging fees for pollution and using the money to compensate victims has become familiar in the past several years. The seven papers in this volume trace actual efforts to apply such compensation methods, ranging from relatively traditional liability procedures to innovative compensation funds, in some of the twenty-four industrialized countries that are members of the Organization for Economic Cooperation and Development.

The first two papers argue respectively for and against the view that liability procedures are a reasonable way to compensate the victims of pollution damage. In the first, Emmanuel du Pontavice of the University of Paris and Patricia Cordier note that pollution liability has grown more comprehensive. While Western legal systems traditionally do not hold persons liable for the damages *indirectly* caused by their acts, the authors say, in pollution cases the courts of most developed nations have made an exception. Thus, in the case of coastal oil spills, French, international, and U.S. case law, as well as international agreements like the 1969 Brussels Convention and the 1976 London Convention, have recognized that some parties that do not suffer direct property losses may be entitled to compensation. French hotelkeepers and shopkeepers near polluted areas, whose property suffered no actual damage, have successfully sued for loss of tourist trade.

Gilles Martin of Nice University argues that liability suits are inherently unfit vehicles for setting pollution damages, and that as a result French courts have distorted liability law inefficiently in pursuit of equity. The courts, he says, have partially abandoned "fault"—as established by the illegality of the polluting act—as the criterion for liability. But because they recognize society's need to allow some polluting activities, even some that are technically illegal, they rarely award full compensation to the victims. This makes for unequal and unpredictable compensation, Martin says. He argues that if society is going to permit people to pollute so long as they pay a fee, it ought to adopt legal tools explicitly designed for such a purpose.

The next two papers, by Martine Remond-Gouilloud of the University of Paris and Patrick Renyers of the OECD Nuclear Energy Agency, give detailed surveys of the specialized legal institutions that industrial countries have applied in two special cases of pollution damage: pollution at sea and damage from nuclear facilities. In both cases international conventions impose strict or nearly strict liability on operators, coupled with ceilings on their overall potential liability. Oil tankers are subject to stricter pollution insurance rules than fixed offshore facilities, since "the ease with which a ship can escape pursuit [helps make] it the very archetype of the potential bad debtor."

Jean Bigot of the University of Paris examines the reasons why insurance taken on by the polluter is not now a widespread means of pollution compensation. Pollution damage is

rarely covered by insurance unless it is accidental, sudden, and unforeseeable. (An exception is that in the countries surveyed there has been an increase in insurance coverage of "residual" pollution damage—that is, unforeseen or abnormally severe damage from conscious and lawful pollution.) Insurers, moreover, are disposed to insure only those cases that the polluter can most easily defend—those where the plaintiff must prove liability.

Thus a voluntary insurance system will not by itself compensate most victims of polluting activities. Even if polluters are not insured, of course, some victims will be able to recover damages in court. Bigot suggests insurance be made compulsory for high-pollution industries, but also suggests that potential victims should buy their own insurance, just as they now insure themselves against fire and ill health.

Volker Thiem of the Max Planck Institute analyzes environmental damage funds in Holland, France, Japan, Canada, and in this country (in Maine). "In certain respects such a fund resembles a form of compulsory insurance," Thiem says. "It is in the improved enforcement of claims that the compensation fund is of decisive value." And while liability procedures for compensation have been highly complicated by considerations of equity, compensation funds are at the other end of the scale of simplicity.

Japan's Fund for Pollution-Related Health Damage is intended to compensate for the Japanese government's conscious policy of encouraging economic growth and industrial development. The fund pays claims on the basis of standardized epidemiological evidence: people who live or work within a zone in which pollution has been shown to be a frequent cause of certain health problems can win free medical treatment simply by showing that they suffer from one of those problems. Extensive epidemiological research was done before the zones were created in 1969. The fund is financed by a tax on pollution emitted in the various zones and by a portion of the motor vehicle tax. For some pollutants, firms are assessed according to the volume of their emissions.

Unlike Japan's Thiem says, most environmental funds do not deal with damages to health. (Japan, he notes, is the only one of the countries without an extensive compulsory or near-compulsory health insurance system.) The Dutch air pollution fund, raised by a levy on fuels, covers only cases where it is impossible to identify and fine specific polluters, and where there are no other sources to compensate victims. Most successful claims have been for crop and animal damage. France has a fund financed by airlines to compensate Paris homeowners for airport noise and a fund financed by hunters to compensate farmers for crop damage caused by big game.

The funds do not always achieve a proper deterrent effect, Thiem says, because their tax structure does not reflect the actual extent of the pollution damage. The Japanese motor vehicle tax relies solely on the weight of the vehicle, not its emissions. Likewise, the French airport noise levy is tied to the number of passengers and destination of a flight, so that "environmentally preferable types of aircraft [such as the 300-passenger Airbus] are often more heavily taxed than environmentally undesirable aircraft," such as the 120-passenger Concorde.

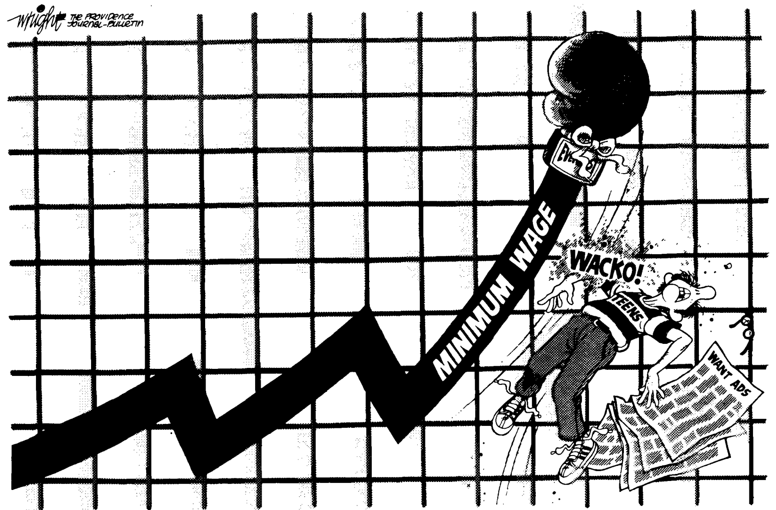
Minimum Wages and the Poor: American and British Evidence

• *Poverty and the Minimum Wage* by Donald O. Parsons (American Enterprise Institute, 1980), 62 pp.

The effects of minimum wage rates vary significantly among demographic groups. They directly affect relatively few adult men, mainly southern blacks working in agriculture. On the other hand, 50 percent of black adult women workers and over 20 percent of white adult women workers held jobs that paid the minimum wage or less as of 1967.

Donald O. Parsons of Ohio State University considers in this monograph the effect of minimum wage laws on poor women, the demographic group best situated to benefit from them. Several major studies have suggested that adult women are made relatively better off by minimum wage laws at the expense of teenagers of both sexes, Parsons says. Wage rates for adult women with fewer than twelve years of schooling in 1967 were significantly higher in the manufacturing sector, which was largely subject to the minimum wage, than in the service sector, which was not. It is plausible to assume that the minimum wage accounted for some of the difference. A 1972 study by Marvin

Kosters and Finis Welch found that increased minimum wages had reduced the business cycle instability of adult white women by a quarter, left instability unchanged for adult black women, and doubled instability for teenagers.



This finding suggests that a possible rationale for minimum wages may be income redistribution. If they transfer earnings from teenagers to adult women, and more of the latter live in poverty than the former, then they may succeed in shifting income from the better-off to the worse-off. Parsons's analysis, however, concludes that the added earnings the minimum wage secures for low-paid women are "extremely small."

From 1967 to 1974 the minimum wage was all but repealed by inflation and productivity growth, falling by 30 percent compared with average wage rates. Parsons says that relative wage rates for low-skilled women in jobs covered by the law fell about 10 percent during this period—each woman losing, on the average, somewhere between $150 and $400 a year —while uncovered workers showed no gain or loss. However, the total amount of money earned by all low-wage females remained a constant proportion of all earnings during the period Parsons studied, in part because their employment in the covered sector apparently grew fast enough to offset their relative wage decline there.

From 1974 to 1976 the minimum wage increased by 44 percent, and coverage was significantly expended in nonmanufacturing sectors of the economy. During that period the relative wage rates of women working at low wages in those sectors rose by 10 to 20 percent—more evidence that the minimum wage was altering the wage structure in the intended direction. If the amount of work available to these groups had not suffered a relative decline, the average earnings of low-wage women would have risen by $348 a year for blacks, and $210 a year for whites. In actual fact, the relative employment levels of these groups declined significantly, which reduced the above figures to $136 and $12 respectively. Parsons does not estimate how much of the relative employment decline was due to the minimum wage and how much to the general business downturn that occurred during this period.

Less than half the earnings reallocated to women by the minimum wage may have gone to poor women, Parsons claims. In 1974, 70 percent of white and 45 percent of black adult females earning the minimum wage or less belonged to families that did not live in poverty. Moreover, many women whose annual earnings were very low were not directly affected by the law: 45 percent of white and 21 percent of black women earning less than $1,000 in 1974 earned well over the minimum hourly rate.

The total gain to women living in poverty from the 1976 minimum wage structure, according to the author's estimates, was between $130 and $600 million. This sum amounts to only between 0.1 percent of total expenditures on social welfare, and must be balanced against the job losses experienced by teenagers of both sexes. "The extremely modest gains to the demographic group most likely to be favorably positioned to benefit from minimum wage laws, adult females, must raise serious questions about the economic justification of such laws."

• *Low Pay, Occupational Mobility, and Minimum-Wage Policy in Britain* by David Metcalf (American Enterprise Institute, 1981), 83 pp.

Although the United Kingdom does not have a national minimum wage law, it has used a number of other measures intended to raise the wage rates of low-paid workers and flatten out differences in earnings among workers. These

laws come under three general headings: laws providing for "wage councils" to set minimum wages in particular industries, prevailing wage laws applying to government contractors and formerly to other private employers as well, and wage-price controls ("incomes policies") that have sometimes tried to improve the relative standing of low-wage workers.

David Metcalf of the University of Kent looks at how the lowest-paid part of the British work force has fared under these policies. He concludes that the "distribution of earnings has remained pretty constant in the last decade"—perhaps even the last century—and that "egalitarian pay policies have not compressed the overall distribution."

"One in six adult full-time workers is low paid," Metcalf writes. "But the extent of the underpayment represents less than 3 percent of the wage bill." Most low-paid Britons live in households with more than one earner, and "the overlap between low pay and poverty is modest."

Since 1909 Britain has had a system of "wage councils" that set minimum wages in various low-paying industries. In 1978 there were forty-one such councils, setting pay rates for 2.75 million workers employed in 391,000 places of business. Wage councils originated in tiny, highly specialized trades like lace-making and net-finishing, and even now the scope of many of the councils is very small: the Coffin Furniture and Cerement-Making Council covers forty firms and the Pin, Hook and Eye, and Snap Fastener Council a mere nine.

Wage councils are established and dissolved by the government's employment minister. Each one includes an equal number of employer and worker representatives, along with not more than three outside members, one of whom serves as chairman. After negotiations between the two sides, in which the independent members serve as mediators, the councils arrive at minimum terms for wages, holidays, and other conditions of employment.

Apparently wage councils have not done well in their aim of raising pay for low-paid workers. Since 1950 minimum wages for unskilled workers covered by wage councils have fallen substantially relative to those of unskilled workers covered by national union contracts. A "particularly important" reason, Metcalf says, is that wage councils have been much more likely to obey government anti-inflation guidelines—possibly under the influence of their "independent" members—than have unions and firms outside the council sector. Even within the council sector, low-paid workers have not gained ground relative to their higher-paid colleagues. Overall, Metcalf finds "no evidence that wage-council workers have improved their relative position."

Britain has been setting "fair wages" for firms engaged on government contracts since 1891. At first, contractors were held to the terms of recognized union contracts in their field. The law was changed in 1946 to require that contractors pay the prevailing local wage even in the absence of a recognized union contract. In 1975, the Employment Protection Act extended the prevailing wage requirement from government contractors to the entire private sector, except in industries where there was a recognized union contract. This change, Metcalf says, "was of some minor help to low-paid individuals, although its aggregate impact was negligible." It was repealed in 1980.

Through most of the 1970s, the British government pursued an "incomes policy" using wage guidelines, some statutory and some voluntary, calculated under a succession of seven different formulas. Most of the guideline formulas were to some extent egalitarian in purpose, allowing larger percentage increases at the low end of the pay scale than at the high end. In practice, however, the distribution of earnings among high-paid and low-paid workers remained "remarkably stable" under the guidelines. According to Metcalf, the devices employers used to get around the guidelines—upgrading job descriptions, paying new workers higher wages, and so on—tended to work to the advantage of high-paid workers. Furthermore, since wage councils usually obeyed the guidelines, their low-paid employees actually lost ground during the period.

The distribution of earnings in Britain has, in fact, been stable for nearly a century. In 1886 the cutoff point for the lowest-paid tenth of manual workers stood at 68.6 percent of the median wage. In 1979, the corresponding figure stood at 68.3 percent. "It is clear," writes Metcalf, "that wage councils, fair wage policies, and incomes policy have not achieved a redistribution of earnings."