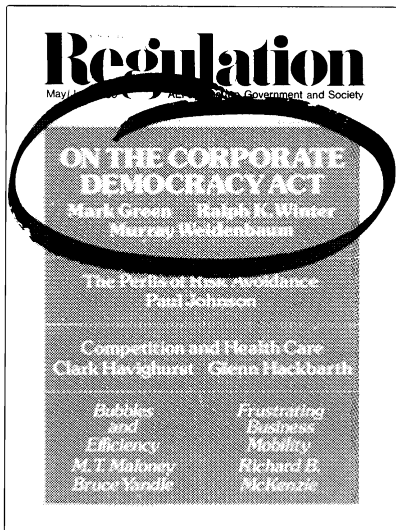
Letters

We welcome letters from readers, particularly commentaries that reflect upon or take issue with material we have published. The writer's name, affiliation, address, and telephone number should be included. Because of space limitations, letters are subject to abridgment.


Regulation

ON THE CORPORATE DEMOCRACY ACT
Mark Green Ralph K. Winter
Murray Weidenbaum

The Perils of Risk Avoidance
Paul Johnson

Competition and Health Care
Clark Havighurst Glenn Hackbarth

Bubbles and Efficiency
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Corporate Democracy

[*The May/June issue of* Regulation *carried three articles on the proposed Corporate Democracy Act—Mark Green's "The Case for Corporate Democracy," Ralph K. Winter's "What's* Not *in a Name," and Murray L. Weidenbaum's "What Is True Corporate Responsibility?" The following letters are responses to these articles.*]

TO THE EDITOR:

If we ever rid ourselves of the government-imposed shackles that have left us with the lowest productivity rates, savings rates, and investment rates of the industrialized world, it will be because we have managed to avoid the kind of thing represented by H.R. 7010, the proposed Corporate Democracy Act. Mark Green's defense of the proposal is naive at best ("The Case for Corporate Democracy").

Green argues that federal control is necessary to make corporations accountable. Accountable to whom, I ask? Take the Chrysler case. The consumers "fired" Chrysler because it was not doing what they wanted. What did the federal government do? In effect, through the bailout, government told Chrysler that it was accountable not to the masses but only to government. Ironically, people like Green and those in the labor movement who *profess* consumer concern were the ones who weighed heavily in making Chrysler accountable to government. If this is the kind of protection that we can expect from H.R. 7010, throw me to the bear.

Green also talks about the evils of price fixing by corporations. But I ask him, is price fixing less evil when done by government, often at the request of various interest groups? For example, the Interstate Commerce Commission long required that truckers get together and fix *minimum* price. The Agriculture Department requires milk producers to sell their milk products at fixed *minimum* prices. The Labor Department, through the Davis-Bacon Act, fixes *minimum* prices for labor on federally funded construction projects. And, of course, there is the minimum wage law which sets the *minimum* price for labor. In each of these cases, if the seller *lowered* his price, he would be carted off to jail or lose his right to do business. How are consumers benefited by this kind of price fixing?

I agree with Green that price fixing is an anticompetitive, collusive activity. But virtually all of the price fixing and other kinds of collusive activity done by businesses and union is done with the active support of federal, state, and local governments. In this respect, business is just like labor: it uses the coercive powers of government to collude against competition. It would seem that Green's proper target is the federal government itself.

Finally, Green's discussion of H.R. 7010's provision for prenotification by firms of plans to relocate and for evaluation of those plans by the Labor Department reflects a general lack of awareness that it is possible to kill the goose that lays the golden egg. For years labor unions have been heaping abuse on business in the form of high wage and benefit claims. Cities have done their share in the form of high business taxes and wage taxes. Now many firms are choosing to leave these climates for more fertile grounds (often in other countries). Green and others would like to eliminate this option and make the firms captive to a particular location. I say this fully cognizant of Green's comment that "the proposal is not to require government approval for a move but. . . ." Of course, we were assured, years ago, that the Civil Rights Act would not require racial quotas to be used in employment. I am certain that down the road, if H.R. 7010 were passed, some Supreme Court Justice similarly would not be governed by the words of the act, but by its "legislative intent."

As for Professor Winter's analysis of the Corporate Democracy Act, I found it crisp and sharp. That H.R. 7010 did not cover the broadcast media should not have been as puzzling as it was to him, however. A legal scholar should understand that the same Supreme Court that avoids substantive interpretation of the Fifth Amendment does not quail from substantive interpretations of the First Amendment. A court challenge by the broadcast media would almost certainly lead to a finding that the Corporate Democracy Act is unconstitutional. The backers of H.R. 7010 are not unintelligent people.

Walter E. Williams,
Visiting Professor,
George Mason University

TO THE EDITOR:

The general goal of the Corporate Democracy Act must be achieved, if political democracy is to be established in this country. Huge conglomerates dominate our lives today, and manage, through the use of delaying tactics, to reduce the effectiveness of the worker-consumer protection efforts of OSHA, FTC, CPSC, and FDA. To the extent that the Corporate Democracy Act focuses attention on such corporate

abuses, it serves a purpose. Its corporate disclosure provisions will indicate where further corrective action is needed; I would also like to see full disclosure of consumer injury and fraud claims and settlements. Local communities have a right to reasonable notice before plants are closed, so that appropriate adjustments can be made; employee groups should also be helped to purchase and operate such plants, where this is a reasonable option. Businesses should not be free to fire employees for political opinion or for reporting corporate action dangerous to consumers or workers. And certainly corporate executives should be held responsible for knowing acquiescence in decisions injuring workers, consumers, or the community at large.

But I doubt that H.R. 7010 would improve shareholder control over corporate policies or boost participation in the election of directors. Corporate shareholders, too widely dispersed and too busy to participate in a meaningful way, will continue to be sitting ducks for well-heeled proxy campaigns. But there is an answer, as illustrated by agricultural cooperatives, owned either by farmers directly or by local cooperatives that are in turn owned by farmers. Some of these cooperatives are even to be found in the ranks of the "Fortune 500." Here, being a "shareholder" means considerably more than it does with Exxon or General Motors, because ownership is tied to use of the corporation's services. Further, in most such cooperatives, each shareholder has only one vote and proxies are prohibited—wisely, in my opinion.

To implement this "user-ownership," most larger cooperatives employ some form of "representative democracy," with regional election of delegates. The better cooperatives also have year-round member education programs to help farmers understand the business they own and use. Finally, these larger cooperatives complete the cycle of user-ownership by returning most of their earnings to those who use their services—not to absentee owners. These "patronage refunds" or "savings returns" are paid out in cash and (sometimes) partly in credits to individual share investment accounts, thus helping provide capital without having to offer unearned profits to absentee owners.

But there is something missing in all this: none of these "Fortune 500" cooperatives are consumer-owned, and so they are related to *consumers* in much the same way as any other corporation. And that points up the most significant ingredient missing from our economy today: ownership and control of corporations by those whose needs —as Adam Smith and scores of others tell us—the economic system is supposed to serve.

Certainly most U.S. business will never be consumer-owned. Indeed, even in Sweden, only about 20 percent of the nation's retail business is handled by consumer-owned cooperatives. But once a significant consumer-owned sector is developed, we can expect it to have major influence in setting standards and determining policies. And, as it becomes stronger, its example will reduce the effectiveness of big business anti-consumer lobbies.

What will it take to build such a consumer-owned sector? Certainly the new National Consumer Cooperative Bank, given ten or fifteen years of experience and growth, will be important. In most states, we also need better enabling legislation, requiring democratic consumer control structures, one vote per member with limited dividends on shares, a prohibition on proxies, and development of representative assemblies. There is also a need for improved member education and management development, as well as the establishment of a consumer cooperative development corporation.

Given all this—and it will require nothing less—we can develop in this country a responsible corporate democracy far beyond what is likely to result from enactment of the Corporate Democracy Act.

Art Danforth,
Consultant,
Consumer Cooperative
Development and Organization

TO THE EDITOR:

American business should be seeking two things today: competence in corporate leadership and capital. But the Corporate Democracy Act would not bring us closer to either goal.

For instance, even a generous interpretation of the act's criteria for selecting new directors gives no assurance that the persons selected would have a capacity for directing enterprises greater than that of today's directors; in fact, there is a powerful presumption against it.

The likelihood of reduction in the average competence of the directors, along with the new requirements and the "anti-business" spirit of the act, would add to the risks of investment. Such a rise in risk would make it harder for large corporations to get new capital.

The concept of democracy is properly applied in a realm quite different from that of the business corporation, because production, conceived broadly to include efficiency now and innovative progress over the years, is different in essence from government, the agency for coercion.

The U. S. business system has served us very well indeed; living standards have risen substantially. Has the political system performed equally well? I think not, and all proposals to enlarge the role of politics in business should be considered in light of this contrast in performance.

C. Lowell Harriss,
Columbia University

TO THE EDITOR:

I shall limit my response to Murray Weidenbaum's article—"What Is True Corporate Responsibility?"—and further target my remarks to one critical sentence in that article. He writes: "Let me repeat the thesis of this article. . . . As an economic unit, if the business firm has any fundamental obligation to the society of which it is a part—aside from or even in contrast to its commitments to its shareholders—it is to produce those goods and services that consumers desire in order to enhance their welfare as they see it." This calls for two comments.

The first concerns the word *obligation*. An obligation is a moral undertaking—a commitment entered into for reasons other than those of self-interest. When we speak of the obligation of business firms we speak of undertakings other than those that self-interest alone suffices to bring about. An "obligation" to satisfy the needs of consumers is like an obligation to do oneself a favor. It robs the idea of corporate responsibility of all substance. What that substance should be is another question, but surely it is not to follow the calculus of profit. That may be expedient, useful, rational, or many other things, but an "obligation" it is not.

Second, there is the matter of the welfare of consumers as they see it. That would be unexceptionable enough did not business spend billions to persuade consumers to define their welfare in ways that are

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profitable, not necessarily in ways that are conducive to other constructions of "welfare." Perhaps each individual is the best court of appeal for the definition of welfare, but only if that individual is exposed to arguments from all sides. Business establishes its own criteria for welfare, which it then satisfies when these criteria become translated into consumer demand. This may be good business, but is it also any part of corporate responsibility, defined in moral, not mercenary, terms?

Robert L. Heilbroner,
New School of Social Research

TO THE EDITOR:

The trouble with the current debate on "corporate democracy"—aside from the misleading label—is that the adherents of positions on both extremes have fallen into fundamental errors. The conservatives are fundamentally wrong about the condition of the patient, and the activists are hopelessly mistaken about the appropriate therapy.

Ralph Winter, Murray Weidenbaum, and other conservative analysts jump from the obvious truth that economic activity is the *primary* purpose of the business corporation to the obvious error that economic products are its sole output and economic performance the sole criterion for appraising its social impact. Weidenbaum's fable of "SR Inc. and PM Inc." criticizes advocates of greater corporate social responsibility for ignoring the basic role of the corporation. But this criticism is misplaced. All serious analysts (a group in which I include myself) assume that the firm cannot stay in business unless it is engaged in viable economic endeavors and that there may be significant trade-offs between economic and other social performance dimensions (environmental impact, for example). Weidenbaum and Winter, however, insist on an all-or-nothing approach, closing their eyes to the multi-dimensional social impacts of the large business firm and thus denying themselves the broad perspective necessary for serious appraisal of its social purposes and roles.

On the other hand, Mark Green and other supporters of "corporate democracy" proposals apparently believe that more explicit regulation and additional public reporting requirements will produce socially desirable changes in corporate decision processes and business behavior. Unfortunately, long experience suggests that increasingly detailed regulatory burdens will only prove to be counterproductive. Indeed, if more rigorous public control is desired, outright public ownership might be preferable to any substantial increase in external regulation of internal corporate operations. Public ownership might reduce personnel requirements (no need for both a corporate employee *and* a government overseer in every job), and the loss of a managerial responsibility would at least be clarified rather than increasingly confused. The near-universal distaste for increased public ownership should suggest an appropriate wariness with respect to its regulatory prototypes as well.

It seems to me that most of the contributors to the corporate democracy debate share an underlying basic objective—improving the ability of the private market economy to meet the needs of the society that is both its host and clientele. This objective is also widely acknowledged within the corporate community, and substantial efforts to broaden the base of corporate decision making to include multiple social considerations (always, of course, within a context of economic efficiency) are already under way. This process should be strongly encouraged by outside analysts of all persuasions. Green and his colleagues should stop trying to persuade Congress to force firms into new formalities of dubious merit, and should start trying to show how any one of their proposed reforms might actually work in practice and what its potential effects might be on the various constituencies of the firm. Weidenbaum should show us how a merged "PM & SR Inc." could analyze and balance multiple objectives in pursuit of long-term economic and social viability. And Winter should recognize that the large business firm is a complex social and political institution and use that recognition to "address real problems sensibly."

Lee E. Preston,
Center for Business
and Public Policy,
University of Maryland

MURRAY WEIDENBAUM responds:

I plead guilty to Robert Heilbroner's contention that an obligation to satisfy the need of consumers is like an obligation to do oneself a favor. Of course, Adam Smith said it much better when he counseled, in his famous statement, that we should depend for our dinner not on the benevolence of the butcher, the brewer, or the baker, but on their regard for their own interest.

Lee Preston's criticism is more disconcerting. I cannot find any basis for his contention that I close my eyes to the social impact of the business firm and view its economic performance as the sole criterion for appraising its social impacts. Fundamentally, my article is a plea for altering the balance between economic and social factors that is usually found in the literature on social responsibility. As I wrote, "Surely, the social impacts of business merit attention. . . . The contributions of business to meeting other [noneconomic] concerns of society are surely not trivial." Perhaps Professor Preston will be reassured when he recalls this statement: "My concern is not with the notion of paying some attention to the social dimensions of the business firm but with our growing habit of treating these noneconomic factors as paramount, sometimes I suspect unwittingly." In any event, I hope our readers are reassured.

The Regulatory Budget

TO THE EDITOR:

Christopher DeMuth's two-part article on "Constraining Regulatory Costs" (January/February and March/April) was exceptionally thoughtful and stimulating, but strikingly inconclusive about the direction regulatory policy should take. This omission is understandable. Designing procedures that will help officials act wisely in making *political* decisions is inherently difficult and often reduces even keen, sophisticated critics to wishful naivete.

DeMuth's statement of the problem is, I think, roughly right. Administration proposals to bolster regulatory analyses—requiring agencies to count costs, predict effects, and explore alternatives—cannot, by themselves, force regulators to *decide* differently. Only the threat of presidential (or judicial or congressional) intervention against undesirable regulations can do that. Yet presidents have solid reasons for not intervening. Jumping into the middle of a regulatory dispute is seldom wise. The concept of a regulatory budget is attractive pre-

cisely because it forces the president and Congress to set regulatory cost totals and allocate allowable costs among agencies, and then allows them to step aside, leaving the development of specific regulations to the agencies.

While a regulatory budget would provide agencies with an incentive to reduce regulatory costs, it would also generate perverse incentives. For example, counting only actual expenditures as costs could induce the Environmental Protection Agency to seek cleaner air by forbidding new pollution sources rather than by requiring pollution controls. The bias toward new-source controls could mean, ironically, that a regulatory budget could actually foster an extension of government controls.

While DeMuth is worried about such potentially perverse effects, I believe he underestimates them. In order to be able to assess the scheme more fully, we need several careful studies on how agencies might behave under a regulatory budget with a sample of regulatory issues. I do not think our current situation is so desperate that we should plunge into a regulatory budget before we have such studies.

I also think that DeMuth underestimates the efficacy of the current regulatory review program and the potentially favorable effects of expanding that review capability. In discussing OSHA's cotton dust standard, for example, he argues that pressure from CWPS played no role in OSHA's decision to substitute a more cost-effective standard for its original uniform rule. But, in fact, OSHA was under serious attack at the time by several top administration officials for not following the more cost-effective approaches that CWPS had been recommending. Without the CWPS analyses and the top-level pressure, I doubt OSHA would have changed its original proposal. Surely a major increase in the number of regulatory analysts could be justified in the light of the important role regulation has come to play.

As for White House review, I cannot envision any formal mechanism that would satisfactorily resolve the conflict between developing an intervention technique that is tough enough to restrain agency discretion in writing regulations but still allows needed flexibility. However, I think that small, useful improvements could emerge from strengthening regulatory oversight in the executive branch. (And this, incidentally, is the most likely place for such improvement. Quite aside from doubts about the competence and appropriateness of judicial oversight, the Supreme Court's recent decision on OSHA's benzene standard suggests that the courts are not going to create any consistent guidelines for regulation. And, while Congress will continue to exercise some oversight, time constraints on its members make it a poor forum for a larger regulatory review role.)

One small, but useful step for giving the White House influence over "the broad picture," while keeping it out of the day-to-day struggle over particulars, would be an annual presidential address to Congress. Such an address would discuss the major regulatory proposals contemplated for the coming year, review the major regulatory initiatives undertaken in the past year, and present rough estimates of total regulatory costs by agency. This is not to suggest that the address would constitute the president's regulatory program in the same sense that his proposed fiscal budget sets spending priorities. Presidential approval would not be a prerequisite for promulgating regulations. There is, of course, both a danger and a hope in the likelihood that inclusion of a proposal in the address would be tantamount to the president's endorsement. The danger is that this could block later attempts at review; the hope is that the president would obtain sharper analysis before including a proposal in this message.

The presidential message would not have to quantify all regulatory costs and impacts. Some flexibility is needed for what remains largely an educational process (not least of all for the White House). Both my proposal and a regulatory budget would be subject to problems of timing, but these do not seem insurmountable. A greater qualm is whether the additional work to generate the information needed to make regulatory decisions is really worthwhile, especially if the information is not going to be used in the context of a regulatory budget. I think the answer is yes, especially since the Regulatory Council's calendar already provides a piece of the infrastructure. Nothing as elaborate or detailed as a Regulatory Cost Accounting Act is required at this time; more analysis, not more information, is currently our most glaring need.

John Mendeloff,
University of California,
San Diego

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