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INTRODUCTION

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First of all, I want to commend the editors and staff of the *Washington and Lee Law Review* for presenting this Symposium on Regulation. They have assembled a comprehensive selection of articles that will provide a balanced framework for looking at this important subject.

The Symposium will address a broad range of regulation (and deregulation) issues. Some of the articles will look at regulation in the philosophical and theoretical sense. Other articles will consider regulation in specific industries.

As a public official, I can say that the Symposium comes at a particularly appropriate time. Several American industries have been largely deregulated in the past ten years. In addition, many agencies have been consciously reducing the number and scope of the regulations they do impose. This process of deregulation is now far enough along for us to begin to see both the intended and unintended results of the policy.

For example, the Airline Deregulation Act of 1978 (P.L. No. 95-504) introduced instant competition into an industry that previously had been tightly regulated. This has led to decreased air fares and increased competition. It also has led to decreased air safety and increased problems with scheduling and service.

In the trucking industry, some firms have benefited from the 1980 Motor Carrier Act (P.L. No. 96-296). However, many sections of the country, particularly rural areas, have experienced decreased competition and service. The primary beneficiaries have been those in urban areas and shippers transporting goods along high volume routes. This may conform to the classic law of supply and demand, but it raises serious public policy questions about maintenance of a national transportation system.

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In the coming 101st Congress, I believe that both the Senate and the House will revisit the subject of deregulation. There are a number of members of Congress who are willing to consider whether some parts of the transportation industry should be reregulated. In addition, there is real support in both Houses of Congress for a very hard look at further regulation of the securities and investment industries—particularly mergers and leveraged buyouts.

Further deregulation also may be considered. It is likely that the 101st Congress will examine a comprehensive package of proposals in the area of telecommunications. Legislation to rewrite our product liability laws is another likely item on the agenda of the Congress.

So, this Symposium is very timely. It can provide a framework within which the debate on regulation and deregulation will occur. From the perspective of a public official, it seems to me that such a debate should focus on four basic questions.

The first and most basic question, of course, is the theoretical one of whether there should be any regulation at all. There are those who believe that regulation is inherently evil and will concede its use in only the most limited of circumstances. They believe that the proper degree of restraint on individuals and businesses will best be achieved by the unhindered interplay of market forces. Most observers, however, believe that some degree of regulation is necessary, or at least a necessary evil.

After all, when you take an airline trip, you want to be assured that the plane will land safely—you need the Federal Aviation Administration. When you buy medicine, you want to know it is safe—you need the Food and Drug Administration. When you turn on your television, you don't want to hear interference from overlapping stations—you need the Federal Communications Commission.

This general acceptance of some regulatory role brings us to a second question. What is the purpose of regulation?

The purpose of regulation extends well beyond merely introducing some perceived notion of fairness into the marketplace. In some cases, regulation is done for safety reasons—such as airline maintenance standards, or food and drug purity laws. In other cases, it is done simply to avoid chaos—such as radio and television frequency allocations. Thus, many believe that some regulation is of positive benefit.

This raises a third question. For whose benefit is all this regulating to be done?

It is common to say that “the public” benefits from regulation. There is, however, no one, amorphous “public” out there that benefits from regulation (or more accurately the balance between regulation and deregulation). In reality, there are many “publics.” Union members benefit from the collective bargaining laws and statutes against union corruption. Farmers benefit from the regulations of the Soil Conservation Service. Parents and children benefit from product safety laws governing toys. Restaurant patrons benefit from food inspection laws. So, for all the theoretical debate, it is likely that considerable regulation will continue in our society.

A proper final question, then, might be what is the proper balance in regulation?

That is the real issue. We are not really choosing between total regulation of our society and no regulation. What we are actually debating is when and where to intervene. It is clear that Americans are committed to free enterprise. Yet, it is equally clear that they believe it is sometimes better to regulate than to rely on market forces alone. Thus, the question arises: How much regulation, and at what cost?

Yes, Americans want clean air and water; but how clean is clean enough, and how much are we willing to spend for it? Americans want clear reception on radio and television; but do they want the fairness doctrine and cross-ownership rules? Americans want safe pharmaceuticals; but do they want new drugs delayed for what some regard as excessive testing requirements?

These and other questions will be explored in this and the coming issue of the *Law Review*. Taken together, they will examine the traditional areas of regulation, as well as take a fresh look at emerging regulatory issues. In addition, the conceptual frameworks that the articles develop may suggest new mechanisms for regulation—or indeed new reasons for not regulating certain sectors at all.

