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*Antony Davies and James R. Harrigan*

As President Trump talks about rolling back the regulatory state, it's worth pointing out something that politicians would rather us not know: There is no such thing as an unregulated industry. When it comes to doling out special favors to special interests, perhaps the only thing that benefits politicians more than a complex tax code is a complex regulatory code. People love to be "protected" from self-interested businesses, and don't pay much mind to ever-increasing government regulation. But the opposite of a government regulated industry is not an unregulated industry. The opposite is a consumer regulated industry. And when it comes to regulations, businesses fear regulation by consumer far more than they fear regulation by government, and with good reason.

People who wring their hands over the evils of profit-seeking businesses forget that profit is only one side of the coin. The other side is loss. The more driven a business is to pursue profit, the more driven it will be to avoid losses. And when it comes to awarding profit and inflicting losses, consumers hold almost all the cards.

Last April, United Airlines violently [expelled](#) a paid passenger, Dr. David Dao, from his seat because United had overbooked the flight. Other passengers made video recordings of the altercation and posted them to social media. Within twenty-four hours, United's stock had plummeted by a quarter of a billion dollars as investors dumped the stock in anticipation of consumers boycotting United. Within days, [other airlines](#) announced that they would end their practice of overbooking flights. Why? Not only did they seek to avoid a similar debacle and possible consumer boycott, they hoped to pick up former United customers. Within days, major industry players were cowed by the consumers' might. This is regulation by consumer. Meanwhile, back in Washington, it took [Congress](#) a month to schedule hearings for the purpose of looking into the problem. By the time government got around to thinking about possibly regulating the industry, consumers had already meted out punishment and doled out rewards.

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In 2012, Rush Limbaugh called Sandra Fluke a "slut" on his radio program. Within a matter of days, advertisers had pulled their financial support for Limbaugh's program. Why? In their pursuit of profit, advertisers feared that consumers would associate their products with Limbaugh and punish the advertisers by boycotting their products. Businesses were so afraid of consumers that they pulled their advertising. They did this not because consumers were withholding their money, not even because consumers had *threatened* to withhold their money,

but because businesses feared that consumers *might* withhold their money. This is regulation by consumer.

In 1982, prior to tamper-proof seals, [someone](#) poisoned Tylenol on store shelves in Chicago. The Tylenol company immediately recalled all Tylenol everywhere, destroyed the product, and re-issued new product. The cost of the recall was (in today's dollars) over one-quarter of a billion dollars. Tylenol didn't do this because of liability - Tylenol had violated no laws. Tylenol didn't do this because it feared the government. Tylenol did it because it feared consumers. Within a [couple of months](#), Tylenol re-introduced its product with special tamper-evident seals. Although the FDA consulted with Tylenol in creating rules for tamper-evident packaging for drugs, it took Congress an additional [seven years](#) to pass legislation requiring tamper-evident seals.

Time and again, regulation by consumer has moved faster and been far more devastating than regulation by government. Yet, politicians keep pushing for more regulation by government. For evidence, look at the amount of government regulation the average American faces on a daily basis. Government regulation has become so commonplace that almost nothing we do remains untouched. We wake up in our government regulated beds, shower in our government regulated bathrooms, eat government regulated food in our government regulated kitchens, drive to work in our government regulated cars to government regulated workplaces. Government regulates the air we breathe, the water we drink, and the food we eat. And every level of government gets in on the act, from Washington all the way down to local zoning boards and animal control.

One need look no further than the [Code of Federal Regulations](#) (CFR) for evidence of how pervasive regulation has become. The CFR contains all of the final regulations specified by the federal government. The first compilation of federal regulations, published in 1936, contained about [2,600 pages](#). By 2014, the CFR had grown to over [175,000 pages](#), covering everything from space exploration to how people must control their pets in San Francisco's public parks.

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Many voters prefer government regulation because they simply do not appreciate the power they hold in the market. And in underestimating the power they wield as consumers, people ascribe near magical powers to legislative fiat. While regulation by consumer always works in favor of consumers, regulation by government often, perversely, works in favor of entrenched businesses. This is a result of a phenomenon known as "regulatory capture." In [Pennsylvania](#), for example, people who want to braid hair for money must take a 300 hour course and pass a series of tests. This is required despite the fact that hair braiders don't cut hair, don't work with chemicals, and literally can't cause any real harm to customers that can't be fixed by combing out the hair and starting over. So who benefits from this government regulation? Established hair salons. The more hoops individual stylists must jump through to remain in business, the less competition established hair salons will have to endure. [Chicago](#) regulations make it very difficult for food trucks to co-exist alongside brick-and-mortar restaurants. This is to the benefit

of brick-and-mortar restaurants, which would otherwise have to compete with businesses with lower overhead.

This is not to say that there is no place for government regulation. Regulation by consumer works well when property rights are clear and when harm can be remedied through civil action. Where property rights are unclear - for example, in the case of air and water rights - government regulation can help to ensure that resources aren't overused. And where damage to a consumer cannot be remedied - for example, in the case of drunk drivers killing people - government regulation can alter people's and business' behaviors before any harm occurs.

Our collective reaction to any problem is to look first to government regulation. That is the less powerful form of regulation. We should look first to consumers to regulate, and only rely on government regulation in those far fewer cases wherein consumer regulation isn't possible.

As for President Trump's apparent push to roll back the regulatory state, bring it on. Less regulation by government doesn't mean less regulation. It means more regulation by consumer.

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