

Weiler also addresses, and dismisses, other alternative “remedies” for the malpractice problem. If the gap between negligence and responsibility in the insurance market is the root of the problem, then further tort reform is unlikely to advance the goals of compensation and deterrence. The tort reforms of the last two decades have been aimed at restricting access to the courts, narrowing the scope of liability, and reducing the size of malpractice awards. These reforms only exacerbate the gap between negligent behavior and liability for harm.

Similarly, the contract proposals of Richard Epstein and others, in which the malpractice adjudication and compensation are determined by contract at the outset of treatment, are also seen by Weiler as likely to fail both compensation and deterrence. Contracts are unlikely to be negotiated with each patient because of the time involved and the lack of patient bargaining power. In this setting, contracts are likely to be little more than liability releases for physicians. Patients receive no compensation, and physicians have no incentive to avoid injuries.

Weiler proposes a system that resolves the experience rating problem by making hospitals responsible for injuries caused by their physicians, in much the same way that firms are responsible for workplace injuries. Similar to workers’ compensation, such organizational liability is thought to provide the hospital with an incentive to monitor physicians more closely and institute loss-control measures. All treatment-caused injuries are compensable, with causation, but not fault, being determined by an administrative proceeding. Similar to other no-fault proposals, the actual negligence of the physician is not an issue. To prevent the no-fault system from becoming overwhelmed with small claims, Weiler proposes strict limits on the type and extent of compensation paid. For example, medical expenses, which are often covered by private insurance, are not payable. Lost wages are paid only when they are not covered by other sources, and then a portion of the loss is reimbursed, similar to workers’ compensation. Pain and suffering and other noneconomic damages would be drastically reduced or eliminated altogether.

Weiler has put forth a thoughtful plan that meets the goals he proposes at the outset. I hope his plan receives the attention it deserves from legislators and policymakers. However, as the author notes, the political obstacles in enacting such a proposal are great. Given the history of previous reform efforts in medical malpractice and the current problems of auto insurance and workers’ compensation in many states, I am not at all confident that this plan could emerge from a state legislature in a form its author would recognize.

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Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy, by Thomas O. McGarity. New York: Cambridge University Press, 1992, 384 pp. Price: NPA cloth.

Risky Business: Genetic Testing and Exclusionary Practices in the Hazardous Workplace, by Elaine Draper. New York: Cambridge University Press, 1991, 315 pp. Price: \$49.50 cloth, \$15.95 paper.

The recent resurgence of government activity in the regulatory area has resulted in George Bush being designated the “reregulation President.” The return of government regulation to prominence has been accompanied by a renewed interest in regulatory policy among academics. Two recent examples are Thomas McGarity’s *Reinventing Rationality* and Elaine Draper’s *Risky Business*. These books differ in character; McGarity provides a broad overview of the regulatory oversight process and a series of case studies, whereas Draper’s book is more narrowly focused on genetic testing and related workplace hazards.

Each of the authors has an orientation that is critical of the usual economic approach to regulation. McGarity writes about “the skeptical, young regulatory analysts and the role they have played and continue to play in modern regulatory agencies” (p. xv). The target of his book is the “cadre of young economists and recent graduates of public policy schools, like the Kennedy School at Harvard and the L. B. J. School at the University of Texas. . . .” Although I do not share McGarity’s orientation or his criticism of the role of policy analysis, the nature of his approach does not distort his portrayal of the regulatory events he discusses. As a result, his book will be useful for a broad audience.

The primary focus of McGarity’s effort is on a series of case studies drawn from the period 1981–1983. As a result, the book is primarily of historical interest in indicating how the regulatory oversight process functioned at the start of the Reagan administration. Since that time there has been almost a decade of development of the regulatory oversight process, as well as substantial shifts in the power relationships among the Office of Management and Budget, which administers the regulatory oversight process, the affected regulatory agencies, and the U.S. Congress.

In many respects the focus of the book is on the heyday of the regulatory oversight process. OMB was never more powerful in influencing regulation than it was during the early 1980s. Indeed, the waning of the influence of OMB is reflected in the disbanding of the Vice President’s Task Force on Regulatory Relief in 1983. Moreover, during the second Reagan term a dramatic shift took place as regulatory agencies became increasingly able to override the objections of OMB. Many of the seeds of the decline of OMB’s power are apparent in the case studies that McGarity presents.

The more recent decline of OMB’s power has been great. Former president Bush has, for example, been unable to appoint a new head of the Office of Information and Regulatory Affairs, the branch of OMB responsible for regulatory oversight, for several years, because of the difficulty in obtaining Senate confirmation for these nominees.

The early 1980s were also a period of regulatory reform excess. Agency heads such as Anne Gorsuch of EPA equated regulatory reform with no regulation whatsoever. The result was a misguided attempt at reform that had little lasting impact.

The main strength of McGarity’s book is that it provides a unique series of case studies of the interaction between OMB and regulatory agencies. For example, chapter 7 provides a blow-by-blow description of the debate between OSHA and OMB over the hazard communication standard. Initially rejected by OMB, OSHA’s regulatory analysis was ultimately issued after a lengthy interagency battle. Based on my active participation in that policy

debate, I believe that McGarity provides a balanced and accurate assessment of the nature of the issues involved.

Similarly detailed chapter-length case studies are provided for a wide variety of other regulations. In some cases, such as the analysis of the 1982 lead phase-down for gasoline, the analysis is somewhat outdated since the regulations have since been superseded by other regulatory policies. In the case of lead, for example, it is noteworthy that OMB now points to a more recent lead standard than that analyzed by McGarity, based on an exemplary regulatory analysis that provides for a sensible balancing of benefits and costs. In contrast, the 1982 standard McGarity discusses was based on more informal considerations. Thus, the book is less successful in capturing the nature of contemporary policy than in portraying the performance in particular instances during the initial regulatory oversight era at OMB.

The more narrow book by Elaine Draper, *Risky Business*, deals only with genetic testing and related workplace hazard issues. Draper's book was written before the recent U.S. Supreme Court decision on genetic testing, but is nevertheless pertinent to the debate over the degree to which individuals with different riskiness should be permitted access to jobs.

Draper's methodological background is in sociology, and she relies on interviews as the main source of evidence for her discussion. Throughout the book she positions herself as an advocate of access to jobs irrespective of personal differences in riskiness. One wonders whether she would also support suppression of the differences in risk if we departed from genetic risks to other differences in riskiness, such as the greater risk of assault to short policemen, or the inability of weaker individuals to undertake factory jobs that require heavy lifting.

The major strength of the book is that it provides a good summary of the variety of hazards faced in the workplace, particularly by women and blacks. Draper discusses the nature of the screening processes in detail, as well as the potential errors in the screening process. Although there are obvious errors in judging individual differences in riskiness, what is less clear-cut is the extent of the bias in our judgments. This bias is never quantified in her discussion, so the reader does not know whether it is small or large.

Given the imperfections in the screening process, one wonders why companies would undertake it. Presumably, this screening has some informational content. Draper knows that companies wish to reassign the high-risk workers, but she spends little time discussing the economic impact of genetic risks. Somewhat surprisingly, she devotes only five pages of the book to a discussion of product liability. In all likelihood, companies have learned from the asbestos experience that long-term hazards such as those linked to genetic risks may produce a mass of claims that could ultimately bankrupt the firm. Also, what is at stake here is not simply money. For there to be a rash of claims, there must also be an epidemic of illnesses resulting from the exposures. Firms' decisions to exercise caution in exposing workers to risk may not be misplaced.

The fundamental issues from a policy standpoint involve what types of access we should permit, and when we should allow firms to discriminate on the basis of differences in riskiness. To make these judgments we have to assess the losses and the gains associated with genetic screening. What is the value of the lost employment opportunities that those exposed to genetic risks suffer because of decreased access? How many workers are unable to get new

jobs at a firm because of these restrictions? Alternatively, how many workers are forced to leave their jobs or are unable to transfer to other jobs within a firm because of these restrictions? As a society, we should feel quite differently about substantial income losses as well as substantial losses in training investments, as compared with switching workers to alternative jobs that they view as roughly equivalent.

It is also important to gain a sense of the costs associated with reducing the risks of the job so that increased access will not lead to individuals being exposed to greater risk. Labor market allocations are founded on a principle of comparative advantage. The market attempts to match workers to the jobs in which they are relatively more productive. An important aspect of one's productivity is one's safety. For companies not to exploit these individual differences in riskiness involves some loss in efficiency. Matching workers to jobs that pose less risk is not an absolute economic mandate, but we should examine the trade-offs that are present to ascertain whether the benefits of increased access offset the additional costs we are imposing on firms. The societal judgment to be made is whether, on balance, the gains to society of insuring equally low risk for all justifies the added cost that will be expended.

Draper does not consider issues such as these since she largely views economics as a hostile discipline. She claims that economists, by noting the decline in accident rates and the ability of markets to address accidents, imply that there is no problem in the genetic screening area (p. 122). What she fails to realize is that these same economists make a distinction between health risks and safety risks. Health risks tend to be more dimly understood than safety hazards, and the market is less effective in dealing with these risks. As a result, economists are sympathetic with her view and not necessarily opposed to it, as she claims.

In other instances, there is support from economists that she fails to cite. In her discussion of the role of unions, Draper observes that job hazards often form a component of the collective bargaining agreements (p. 115). The real issue is not whether the interest in job safety is formalized in contracts, but whether unions actually affect risk outcomes in a way that would not have occurred had unions not been present. A substantial literature in economics has documented the influence of unions in raising not only the relative pay that workers receive for jobs, but also the premiums that workers receive for job hazards. These financial incentives in turn will provide a greater incentive for firms in unionized industries to provide a safer workplace. Economists have also frequently supported the role of unions, suggesting that the union "voice" serves to better represent the preferences of workers than does the market. Moreover, many economists have applauded unions for providing job-risk information to workers and assisting workers in making informed decisions on these complex risk issues.

Even in the case of safety, economists have suggested that we might wish to go beyond what the market achieves by imposing an injury tax on firms to establish safety incentives. This injury tax would have the same economic effect as more vigorous OSHA inspections, but could potentially be more successful. For example, workers' compensation financial incentives reduce U.S. industries' fatality rate by over 25 percent, whereas the high estimates of the efficacy of OSHA peg the impact of that agency on safety at between 2 and 4 percent. Draper misunderstands the intent of such an injury tax and

claims that it simply enables firms to set their own penalties for risk (p. 122), which is a somewhat fanciful view of how it would operate.

As part of her extensive attack on the economic approach to job safety, Draper claims that the relationship between job hazards and worker quit rates is negative—exactly the opposite of what I have shown it to be. One wonders why Draper does not undertake a basic reality check; is it possible that the most fundamental empirical result in my dissertation—which was chaired by a Nobel laureate, awarded the David Wells Prize as the most outstanding Harvard economics dissertation, and subsequently published by Harvard University Press [Viscusi, 1979]—was backwards?¹

The main thrust of Draper's argument is that the economic approach to genetic screening is fundamentally flawed. Moreover, based on her misreading of the literature, it is also scientifically invalid. The academic standards in that alien discipline, economics, must be very lax indeed.

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Guillermina Jasso

U.S. Immigration Policy Reform in the 1980s: A Preliminary Assessment, edited by Francisco L. Rivera-Batiz, Selig L. Sechzer, and Ira N. Gang. Westport, CT: Praeger, 1991, 160 pp. Price: \$39.95 cloth.

Decision and Structure: U.S. Refugee Policy in the Mariel Crisis, by Mario Antonio Rivera. Lanham, MD: University Press of America, 1991, 278 pp. Price: \$38.50 cloth.

¹ Draper claims that workers are less likely to quit hazardous jobs, whereas I have demonstrated a strong positive relationship between job hazards and worker quitting that may account for as much as one-third of all quit rates in manufacturing industries. In *Reinventing Rationality* (p. 125), McGarity indicates that there is a negative relationship between job risks and worker quitting, as shown in the data from the Quality Employment Survey, the Bureau of Labor Statistics, the Panel Study of Income Dynamics, and the National Longitudinal Survey. In my book, *Employment Hazards* [Viscusi, 1979], using the data from the Survey of Working Conditions (the antecedent of the Quality Employment Survey), Bureau of Labor Statistics, National Longitudinal Survey, and Panel Study of Income Dynamics, I show that there is a strong, statistically significant, positive relationship between job hazards and worker quitting. The only negative job hazard–quit rate effects found in a study that Draper cites were not for all four surveys and, more importantly, were not statistically significant, as the author notes. See James Robinson [1987], especially p. 674. Since quits are a relatively rare event, for some data sets it is necessary to take more than a single year's perspective to successfully isolate the positive effects of job risks on quitting.