

## Episode 45: One Nation Ungovernable

- Speaker 1: Welcome to The Bill Walton Show featuring conversations with leaders, entrepreneurs, artists, and thinkers. Fresh perspectives on money, culture, politics, and human flourishing. Interesting people, interesting things.
- Bill Walton: What is it about the word regulation that sets people off? The right hates it. The left thinks we can't get enough, but is this true? The debate about regulation seems to be mostly at the 35,000 foot level. Very few of us have the time or temperament to dig into this massive issue. So what are the trade offs?
- Bill Walton: On the one hand, do we really need federal agencies telling us how to design our products, keep our books, set our prices, withhold crops from the market, or manage our trash? But on the other hand we ask, don't we want clean water, safe foods, and FDA approved drugs? The answer is of course, but up to a point.
- Bill Walton: Our massive federal regulatory regime imposes trillions of dollars of cost every year and operates as a kind of a hidden tax. Unlike on-budget spending, regulatory costs are largely out of site from public view. This means the cost of government extends far beyond what Washington collects in taxes, and what it spends. At what point do the benefits of a regulation begin to exceed its cost?
- Bill Walton: For example, how clean should our water be? EPA regulations have massively improved the waters in the United States, yet the EPA continues to regulate and spend money like the Cuyahoga River is still on fire.
- Bill Walton: With me to help sort out these issues is Wayne Crews. Wayne is vice president for policy and a senior fellow at the Competitive Enterprise Institute. Importantly, he's the author of Ten Thousand Commandments, an annual snapshot of the federal regulatory state. Welcome, Wayne.
- Wayne Crews: Thanks.
- Bill Walton: We've known each other for years. I'm thrilled to be talking with you.
- Wayne Crews: I'm really happy to be here. Thank you so much for having me.
- Bill Walton: Let's kick off with the dichotomies or the polarities or whatever the big word is. What's an example of a good regulation, a bad regulation, and maybe a good regulation gone bad?
- Wayne Crews: Well, you mentioned clean water. Early in the environmental movement, there was a good reason to recognize that we had problems with dirty air. We needed something to do about it. There needed to do something about it. There are roots of those problems. You know, a lot of air sheds and water sheds and so

forth are all government controlled, so we did have pollution there. We had companies polluting them very badly.

Wayne Crews: I think a great example of a bad regulation these days, if you've bought a gas can lately from EPA ... It's an EPA gas can is what we call it. You need three hands to operate it, because it's got these contraptions on there where you have to pull strings and fill the gas can up, and then try to pour it into your car. You end up losing and leaking more gas and more fumes than you save.

Wayne Crews: Another bad one. Guess what? The Consumer Product Safety Commission is regulating our kid's fidget spinners. They just put out new guidance saying that the little kids can't play with these fidget spinners.

Bill Walton: What's a fidget spinner?

Wayne Crews: A fidget spinner's a toy that little kids are now using, playing with in school, and the Consumer Product Safety Commission, without a law from Congress, just decided that they're going to regulate these. That's silly stuff, but it's a serious, serious issue.

Wayne Crews: Other particularly bad and worrisome regulations include, say for example, the FCC under the Obama administration regulating so-called net neutrality. The last thing we would want to do is have the federal government come in and regulate the internet and regulating speech and how content should be handled and things like that. It's a big issue.

Wayne Crews: Put it this way about regulation. We know how much the government spends, and we know, unfortunately we're back up to trillion dollar level deficits, and we've got \$22 trillion debt. Federal regulations ... I use a place holder of about \$2 trillion for those costs. The Mercatus Center calls it double that. They say if you'd stop regulating-

Bill Walton: \$2 trillion.

Wayne Crews: \$2 trillion.

Bill Walton: How do you measure \$2 trillion?

Wayne Crews: What I have done is ... The Mercatus Center put, for starters, had looked at what would have happened to investment if we'd stopped regulations at 1980 levels, and what would the effect of that be? We'd have a \$4 trillion larger economy today if we had stopped regulations then.

Bill Walton: Well how did they do that math? I mean that's-

Wayne Crews: Those are regression models.

Bill Walton: Okay.

Wayne Crews: I stay away from those. I prefer to take what ... And here's one of the problems with the regulatory state. I take the federal government's data that it puts out every year on regulations and their cost. They measure very, very few of them, which is something we can talk about later. But using that data and a few private studies from consultancies and from other entities, I use a placeholder of two trillion, which is less than other entities use.

Wayne Crews: I'm comfortable using that because I think the costs are far more. In fact, we've got some new research coming out on this. But it helps to just put it in perspective.

Bill Walton: Well that's about half the federal budget.

Wayne Crews: Well that's the point, because it helps us to put it in perspective, because if we think, "Okay, we know the federal budget is four trillion, and regulations are at least two trillion. What does that tell us?" Well it tells us that regulations cost more than the individual income tax, which is about 1.2 trillion, and the corporate income tax which is between 300 and 400 billion. Regulations cost more than those combined.

Wayne Crews: We wouldn't think of not measuring the federal budget or publishing the budget every year or publishing the historical tables, but we're completely in the dark with respect to regulations. So that's why I think it's important for us to look at it.

Wayne Crews: You asked about good and bad regulations. What we have to do, I think, is go after this and take the big bites. We need to look at economic regulations and see what we can reduce there. Health and safety, much tougher issue because you started with the clean water issue, for example. Environmental regulations, tougher issue, but not when they regulate goofy things like a gas can.

Wayne Crews: But you can break the regulatory state up into chunks and think, "What is it that the federal government should do? What is it that the state governments should do, and the local governments? And what should be left up to ordinary people?"

Bill Walton: Well who's asking those questions, though. I mean, you are, and I think it's a cost we should all care about, but how does the REINS Act work?

Wayne Crews: Well, here's the-

Bill Walton: R-E-I-N.

Wayne Crews: R-E-I-N-S. It stands for-

Bill Walton: Stands for-

Wayne Crews: Regulations from the Executive in Need of Scrutiny.

Bill Walton: Okay.

Wayne Crews: And what it gets at is the point that Congress has delegated most of its lawmaking power to federal agencies. Our founder jokes that the Constitution isn't perfect, but it's better than what we have now. And that's kind of right because Congress has delegated-

Bill Walton: Your founder Fred Smith?

Wayne Crews: That's Fred Smith. It's a long history. I mean, even in the founding era you had Alexander Hamilton and the push for a big, powerful federal government. That goes through Henry Clay. It goes through the Progressive Era, through the New Deal and so forth. But there's certain things the government should do, and certain things that it ought not do.

Wayne Crews: Too much power has been delegated to government where its making all of these decisions in all of these critical areas when those decisions can be left up to individuals. So we have to figure out what's the right thing? What is it the government's capable of doing, and is the things it does ... Should they even qualify as regulation? Because a lot of times regulation makes us worse off, not better off when we get it down.

Bill Walton: Well let's boil it down. You've got the Congress, legislative branch. You've got the judiciary. You've got the President, the administration and its agencies, but then what we're talking about now is what people have come to view as the fourth branch of government. Because what's happening is Congress passes these laws, which really are not laws. They're sort of good intentions. And they write something called Dodd-Frank or they Affordable Care Act filled with good intentions, and then they toss it over to the agency, and they say, "You guys work out the details."

Bill Walton: And so consequently, we don't have any oversight. We, meaning the voters, don't have oversight. So what's happening there? I mean, is Congress actually getting engaged with the REINS Act to do their job?

Wayne Crews: No. Not at all. Here's the problem. What the REINS Act would effectively do is any major regulation that agencies put out, the REINS Act would require Congress to vote on that rule before it's effective.

Bill Walton: Right.

Wayne Crews: And each of the last three Congresses has passed the REINS Act, however the Senate has not. It's not been able to get through the Senate. Now in the new

116th Congress, there's no way that the REINS Act will go through Congress. So that's not our option right now, and later we can talk about what some of the other options are. That's one of the key problems, and you mentioned the number of rules.

Wayne Crews: Congress every year passes about a few dozen rules. This past year was over 200, which actually we didn't have gridlock last year. We had a lot of laws coming out of the Congress, but we had over 200. But meanwhile, even under Trump, you have over 3,000 regulations, which gets at your point of they pass a law, and then later on the agencies are implementing those, but these are unelected bureaucrats that we don't have any control over.

Wayne Crews: So we effectively have one nation ungovernable. We don't have control. We don't have any voting power over those bureaucrats, and it needs to be reigned in. Unfortunately, the REINS Act that would reign them in isn't something we can do right now. The Trump administration has tried a few things that we can talk about, but we'll have to, in the short term, we're going to have to try some unique approaches.

Bill Walton: Well, let's talk about how this came to be. Progressives, Woodrow Wilson, Teddy Roosevelt, basically didn't believe that the Constitution was relevant. That we've outgrown the need for a Constitution, and instead we needed a government run by experts. And the arrogance, really ... I think people ought to be aware of how much arrogance lies behind where we are is that they didn't think members of Congress could be really expert enough to make decisions about air quality or workplace safety or things like that, which means the ordinary person just basically's been cut out of the process.

Bill Walton: Yet Congress, though, sort of enjoying being cut out of the process. Because then they can pass these laws which have really lovely intentions, and then kick it over to an agency, and if the agency does things that people don't like, the Congressman can say, "Well, I didn't vote for that."

Wayne Crews: Right. Right. Right. They get to blame the agency. You can say, "Well, I voted for the Clean Air Act Amendments," and take credit in front of the Sierra Club if you're a member, but when people complain about the cost you say, "Oh, the EPA is out of control." So it's an over-delegation issue that will need to be addressed.

Wayne Crews: It's tough. The Trump administration had tried, and it's key effort was to try to rollback two regulations for every one that came in. But you talked about rule of experts under the Progressive Era. I think it's important. If people have, and it's interesting to go back and look at some of the books that the progressives actually wrote. Look at some of the quotes from Woodrow Wilson and others.

Wayne Crews: They really did believe in a rule of experts type of regime. They really did think you could separate politics from the management and what could be done. And

they ended up carrying the day, of course. I mean, we got all of these New Deal agencies, and in a way Republicans too are complicit in this because they ... "I'll see your New Deal, and I'll raise you an EPA." [crosstalk 00:11:56]

Bill Walton: This is a bipartisan problem.

Wayne Crews: It's definitely a bipartisan issue.

Bill Walton: I mean, Richard Nixon brought us a lot of the agencies.

Wayne Crews: He brought us those, and so we have a real tough issue there. Part of it is believing in that expertise. We're working on a new report called Rule of Flaw instead of Rule of Law, kind of getting at this.

Bill Walton: And flaw means? What's that mean?

Wayne Crews: F-L-A-W instead of law. Because basically, we have this impression that the agencies are expert, but I think if you step back and look at what they're doing, they're not expert because they may be expert in ... You know, you talked about regulating the next little level in clean water or clean air or something like that, but real expertise requires other things.

Wayne Crews: For example, we've got drones coming on board now at a time when the federal government controls air space. Driverless cars are coming on board at a time when the governments control the roads. A big part of what free markets require is property rights, and a big thing that is required in agency expertise is to come up with ways of giving themselves less to do.

Wayne Crews: In other words, I put it this way. I said for every report that comes out on regulatory review, there ought to be another report from so-called, quote, office of no. In other words, in addition to the expert analysis saying, "Here's what the regulation is," kind of like these Trump task forces looking at regulations that are supposed to be taking a look. There needs to be someone if we have the administrative state as we do, and we have that right now, that's the reality of it right now. There's got to be a counter in there.

Wayne Crews: Right now everything is ratcheting upward. There's got to be a force within those agencies, and they can come up and testify every year, to say why every regulation, net neutrality, what have you, is a bad thing to do, and we need to be taking steps to do further movement into the private sector.

Bill Walton: Well, yeah. In theory there's an office in the White House called OIRA, Office of Information and Regulatory Affairs. And they're supposed to be a watchdog of sorts, yet I think they have what, 20 people and there're 2 million people in the agencies.

Wayne Crews: It's tough. If Congress needs to take back this legislative power, and it does, I'm happy with them having larger staffs if it means we can reduce some of the agencies.

Bill Walton: Right.

Wayne Crews: OIRA was set up back during the Paperwork Reduction Act, and President Reagan strengthened it with his Executive Order 12291. But bottom line, cost benefit analysis for rules. Fortunately, although it's changed a little bit, that same executive order is still in effect today with modifications to it from Clinton and others. So OIRA, which stands for Office of Information and Regulatory Affairs as you say, within the Office of Management and Budget, just like we review spending, OIRA is supposed to review regulations to make sure that they're effective, that they make sense.

Wayne Crews: But here's the problem, Bill. There are 3,000 regulations, but OIRA just looks at the so-called significant. And the agencies get to decide what's significant, right?

Bill Walton: Sure. They do get to decide?

Wayne Crews: The agencies decide that. Not you or me or not Congress, so they leave out things that we would consider significant. So they whittle it down that way, then they review the costs of-

Bill Walton: You're depressing me.

Wayne Crews: Don't get depressed, because when we get to the end, and we talk about ...

Bill Walton: Okay.

Wayne Crews: But they review the cost of about 60.

Bill Walton: Yeah.

Wayne Crews: Then for cost benefit analysis both ... You know how many there were year before last? I didn't do my tally for 2018. 14. 3,000 regulations. Cost benefit analysis for 14. So if you ever needed an example-

Bill Walton: You're not doing any better in terms of improving my mood.

Wayne Crews: If you needed an example of how out of control it is ... When I said one nation ungovernable, I mean that. It's not workable. Just so you don't get too depressed, part of the solution is walling off the future, and we can get to that because I always say, I say it too much, but most of the world's wealth is not yet created.

Wayne Crews: Most of the world's jobs are not yet created, and we do not have to regulate new sectors in the future in the way we're doing now. That involves a lot of things that has to be done with Congress, and my general council Josie says, "Yeah, Wayne. But most of the world's regulations aren't written yet either."

Bill Walton: Well, they're right behind you. I often say we've got 21st century technology being chased by 19th century regulations.

Wayne Crews: Right. Exactly. That's right.

Bill Walton: And that's the same [crosstalk 00:16:36] that you're talking about.

Wayne Crews: Because that's the origin.

Bill Walton: They can only regulate what exists.

Wayne Crews: Right.

Bill Walton: And there's a school of thought that a lot of this doesn't matter that much because companies are innovating faster than the regulators can regulate, and so a lot of good things are happening outside the regulatory work.

Wayne Crews: Right. You know, there's a problem with that, right? What happens is ... who was the ... It was Peter Thiel or someone who said, "We were supposed to be going to Mars now. Instead we're typing 128 characters."

Bill Walton: Yeah, I think he said that. Yeah.

Wayne Crews: With the point being, anything that involved the world of atoms, the real world, is heavily regulated. Construction, hospitality, energy. But things were made of bits, like creating a software program, remain relatively unregulated. So the tech sector in creating new apps and all of those things could boom, but it was those other sectors that were cut out.

Wayne Crews: I'm just worried about the tech sector in the sense that given the proclivities of the Federal Trade Commission or the FCC, those industries can be so-called born captive. I've heard Adam Thierer use that term, and I think that is one of the problems. Are driverless cars going to be born free, or they're going to be born captive? Is that going to be the case with drones? What about artificial intelligence? Born free or born captive?

Bill Walton: So you've been working at this for what, 30 years?

Wayne Crews: Wow. Y'all are getting old.

Bill Walton: We both are. I met you a long time ago. I remember when I first got to Washington. It was in the 90s.



Wayne Crews: Yeah. I came ... I worked on the Hill. I started out with a group Citizens for Sound Economy. I worked a short time in the Food and Drug Administration, and I worked on the Hill, and then CATO and CEI. But I just noticed kind of a gap, you know, [crosstalk 00:18:20] interesting-

Bill Walton: And you've also written a book called Who Rules the Net?: Internet Governance and Jurisdiction.

Wayne Crews: Well, I get interested in different regulatory issues, and for a while privacy was a big issue. We'd take an interest in that, but when too many people are working on an issue, I think it's important to go find another one. Because kind of the regulators are always moving around, and we have to be creative too and look for ways to look for alternatives.

Bill Walton: Well I started this maybe with a false dichotomy that shows the right hates regulation. The left loves it. I think that's sort of true, but it doesn't really capture what's going on because there's also an idea out there of regulatory capture. And you find a lot of these industries which are already entrenched love the regulation.

Bill Walton: Case in point, Dodd-Frank. I think I've told this story maybe too many times, but Jamie Frank and Lloyd Blankfein who was then CEO of JP Morgan and Goldman Sachs respectively were at an investor conference and told everybody there, "Look. You've got to invest in us because Dodd-Frank is keeping everybody else out of the finance industry. It's built a regulatory mode, a financial mode, a capital requirement mode around our businesses that upstarts aren't going to be able to break down."

Bill Walton: Now, that's hyperbole because we've also got the FinTech. There is a lot of innovation going on in financial technology, but still, when you think about constituents to roll back regulation, who are the people out there who really want to do that? I mean, I ask you the question 30 years ... Who are your allies in this cause?

Wayne Crews: It tough. Okay. Okay. What you find, and Fred who had mentioned before had done an interview with Bill Moyers, and he asked, "Well what about ... Are y'all corporate funded?" And he said, "Well, we dance with corporations. We don't get married." The point being was every single company-

Bill Walton: So is Bill Moyers.

Wayne Crews: He's corporate funded too. And believe me, PBS gets way more corporate money than any think tank.

Bill Walton: Very corporate funded. Okay.

Wayne Crews: The left gets way more. But the point is, there's no question that companies have their self interests and rent-seek. A big part of that is the fact that the rents are available because of the regulatory state. They're available ... If someone is concerned with Facebook's market power or something like that, other companies have the anti-trust agencies there to appeal to and so forth and get the regulation they want.

Wayne Crews: You mentioned financial regulation. It's a key issue there, and what counts as financial stability? Is Dodd-Frank the best way to do it? Are there other ways it could have been approached?

Bill Walton: Dodd-Frank's not the best way to do it.

Wayne Crews: Exactly. There are other ways to do these things. Oh, that actually brings up a good point. When we say the federal government maybe shouldn't regulate, that doesn't mean that we don't have regulation. You can't equate an agency's issuance with regulation.

Wayne Crews: Free market, laissez faire does not mean companies get to run wild and do whatever they want to do. You have a normal, functioning, rule-of-law system. Every company has upstream business suppliers, downstream business customers, customers, consumers, Wall Street, advertisers, the media. There are a lot of forces arrayed against companies that misbehave in a rule-of-law framework. You cannot sweep all that away, and then just expect- [crosstalk 00:21:44]

Bill Walton: Well, and industries self-regulate.

Wayne Crews: They do. In a sense, they do. That's what-

Bill Walton: Because they don't want bad actors out there selling stuff that hurts people because it hurts their business.

Wayne Crews: Right. Yes. A good way to do it is competitive discipline. You don't get to run around and do what you want to do because you're going to suffer for it. You want to make sure that you don't replace the favorable dynamics of a market system that really do regulate with what government does.

Wayne Crews: Cyber security is a great example. I mean, the Homeland Security law indemnified security like security gas masks. If their security technologies fail, they're indemnified. So that's the opposite of what a market would do. A market would require you to make it safe. You have liability standards. There are all these certifications that would come into play that the market does self regulation and discipline in ways better than governments do.

Bill Walton: So the \$2 trillion we talked about at the outset. Is that the cost imposed on businesses and organizations to comply with rules, or is that also the cost of things that don't get done because of the rules?

Wayne Crews: It's primarily cost of rules, and then effects on the economy. Generalized effects dampening the economy. You know, I was mentioning Mercatus [crosstalk 00:22:54]-

Bill Walton: Yeah. The things that don't happen.

Wayne Crews: Things that don't happen. Things that don't happen.

Bill Walton: Well if you're a small business now, I just ... I ran a couple. I started and ran a couple small businesses, and it could be a nightmare.

Wayne Crews: Sure.

Bill Walton: I mean, you get a letter not ... Don't even talk federal government. State government, your local municipality. They've got all these things they want you to do, and you can spend 90% of your time complying with this, and big companies can absorb it. They can get a couple hundred lawyers to deal with things, but little companies can't, and so it seems like the reason people should care about this so much is the regulations that come out disproportionately fall on the little guy.

Wayne Crews: They definitely hurt. They disproportionately affect the small companies, and also the larger ones end up with employees, these compliance officers and so forth, that are almost a step removed from bureaucrats.

Bill Walton: Sure. They're built out of the same bolt of cloth.

Wayne Crews: That's right. And they ... The sad thing is, if a deregulatory measure does come about, they're prone to oppose it because they already have their system set up, and it's difficult for them. You can look at how regulations stack up as a small firm grows, and I think that's important. You know, the labor regulations that start in when you have five employees, 10, 20 ... Then everybody stops at 49, because once you go over that, every regulation applies.

Bill Walton: Well promised before we started this, and we're not close to ending, but we've come up with solutions. But you think about one of the reasons why I get pessimistic about this topic is we've got millions of people employed in the regulatory compliance industry, and big corporations ... I don't know. GE probably has, I don't know, 20, 30,000 people dealing with all the regulatory stuff they've got to deal with. And then they're spending all sorts of money in Washington lobbying to make sure they get outcomes for things they want. I mean, if you've got that many people with a stake in the existing regulatory regime, how do you change it?

Wayne Crews: How does it change? Yeah. Well, I always joke that regulatory reform only happens every two generations. You know, we had it in the late 70s before I was ever involved in any of this stuff, but we had transportation, some financial, banking, and airlines. That happened when you had kind of a general agreement that the economic regulation was doing bad things.

Wayne Crews: Same thing could be the case with health and safety regulation or environmental, but we more rarely have that kind of coming together. The last time the Republicans even proposed a major elimination of federal agencies was back in the 90s. When the Republicans first came into power in the House of Representatives in '96, that's when the REINS Act passed, for example, that you mentioned. The unfunded mandates legislation and other bills ... That was when they were going to eliminate the Commerce Department, the Department of Energy, the Department of Education, and you don't hear that kind of talk any more.

Wayne Crews: Rick Perry-

Bill Walton: Rick Perry was the last.

Wayne Crews: He tried it, right?

Bill Walton: He tried it because he couldn't remember all of them.

Wayne Crews: He tried it, but it goes right to what you were saying. Now he's the chair.

Bill Walton: He's the chairman of the directive.

Wayne Crews: So that's how that works. Republicans oppose agencies, but then they head them. Mick Mulvaney was little different, but he would see it [crosstalk 00:26:02]-

Bill Walton: Well, I was responsible for the Trump transition building plans for all the economic agencies, and I don't think the SBA really needs to exist.

Wayne Crews: Right.

Bill Walton: I think the private sector can provide all the things for small business more effectively than the SBA can.

Wayne Crews: Can I give them one plug? Not for any loans, but SBA was the only entity, you might know, that ever did any aggregate costs of the regulatory state, and they've kicked that aside and now there's nothing.

Bill Walton: Okay, they get a plug for what 20 years ago when they had some inspired administrator that wanted to think that through?

Wayne Crews: That's right. [crosstalk 00:26:36]

Bill Walton: Okay. Well, he or she's gone. I sort of thought ... Trump came in thinking we ought to get rid of agencies and things like that, and we had a one page plan for the SBA basically, which is shouldn't have it.

Wayne Crews: Right.

Bill Walton: Well, and then the very next day practically, Trump appointed Linda McMahon to be SBA administrator, and we looked around at each other and we said, "Well there goes that plan." She's certainly not going to put herself out of business.

Wayne Crews: Right. Right. Well that's what happens. I would say remember after-

Bill Walton: I don't even know what kind of job she's doing now, but the agency's still there.

Wayne Crews: That it is. After the administration came in, he issued a handful of executive orders on deregulation of regulatory liberalization. There were a lot with respect to liberalization of building new infrastructure. Those kinds of things were very, very important. He also set up task forces in agencies to review their entire regulatory agenda. Since you were there as part of the economic oversight organization-

Bill Walton: We were building plans for each agency, yeah.

Wayne Crews: Mulvaney headed up ... Remember the executive branch reorganization program that Mulvaney headed up just released its report. I think now it's been ... Well not just any more. It's been about five months. They issued their final report. Unfortunately, even under the Trump administration they don't get rid of any agencies. They do a little bit of consolidation. Kind of the stuff you'd see GAO, and there's some Department of Education and Department of Labor components that are combined, and that's it.

Bill Walton: Well the problem the Trump administration have is that the people that staff these agencies are overwhelmingly progressive democrats. I mean, you look at the vote in Washington. Hillary Clinton got 97% of their vote here, and that's probably close to that in Northern Virginia and in Southern Maryland where most of the federal employees live. So you've got people who are ideological opposed to what Trump wants to do. And then we've got the work rules. You know, if you're running an agency and somebody's being obstreperous, you really can't do anything about it.

Wayne Crews: Right. They're effectively there to stay, and I think it's hard to even overstate the amount of opposition to the Trump agenda in the agencies. You can go back and find Washington Post articles and some other articles what Robert Reich had to say. Look at Robert Reich who's the former Clinton labor secretary website on what he says. Everything's a hashtag now, but even the federal agencies had

their hashtag resistance. And they were meeting and before Trump came in one of the progressive organizations was working with the Obama administration to get him to staff all of these committee positions inside agencies with people favorable to the Obama agenda.

Wayne Crews: It was just utter resistance, but that just shows you one of the reasons why the administrative state doesn't work. It's not something that's capable of governing. It doesn't work, and we have to have Article I restoration, but that's a much longer haul. We'll have to do some other more short-term things, but it just shows you. You can't govern that way. We got away from that kind of government by having our Constitution and having our Bill of Rights. We didn't set up these administrative sub-kings like we have now.

Bill Walton: Well, we want to talk about solutions. Kim Strassel, writes for the Wall Street Journal, last year had a column about an interesting issue that might have bipartisan appeal. It gets at the people who administer the regulations, and she talks about civil service reform. You know, we've got 2 million members of the federal bureaucracy, and they're really accountable to no one, and they're getting paid, if you include benefits, roughly 60, 70% more than people in the private sector, which is why I think this partial government shutdown that we're going through now isn't really resonating with a lot of the country, because they're thinking, "Well, look. If I'm a GE, or I'm a General Motors, I just had my plant shut. So why should we be more concerned about them than the politicians are about us in a General Motors plant?"

Wayne Crews: Right. I mean, that's an issue that came up, and you can kind of see-

Bill Walton: It seems to me like you could put together a coalition to do something about civil service rule.

Wayne Crews: Sure. Sure. I think we definitely have to have civil service reform, but it's going to have to take into account also the contractors. Because that's why we're so rich. These areas around here ... The five richest zip codes are all around Washington D.C., and this is contractor heaven.

Bill Walton: They're richer than Beverly Hills.

Wayne Crews: They're richer than Beverly Hills, and that's what has to be addressed. Paul Verkuil had done a book. He had headed the Administrative Conference of the U.S. government. He had done a book about kind of the contractor state. It's not just that Congress is delegating to the agencies. The agencies are then turning around and delegating to the contractors, and you have these revolving doors that take place.

Wayne Crews: So it really ... You really get removed from a Constitutional system. But we do have to have those reforms. Interestingly enough, you can go ... I guarantee you can go turn on NPR at noon today when they do the top of the hour news.

They're going to showcase a suffering federal employee, but it's always someone who's a lower wage employee. It's never the senior service who are doing just fine.

Bill Walton: Well, didn't somebody feature the terrible plight of an IRS employee who had to make chili without meat?

Wayne Crews: I had noticed that, and it was irresistible to me to use ... She had to make us chili and not use meat.

Bill Walton: Beans are actually better for you any ways. What a plight.

Wayne Crews: Chili's not supposed to have beans. It's only supposed to be only meat, which [crosstalk 00:32:15].

Bill Walton: Well, we've got to talk about that. You're from South Virginia.

Wayne Crews: Well, don't take me too seriously, because I always put beans in it too. But I'm just saying. Some of the hard-core people ... It's like the barbecue arguments down there. You can't win.

Bill Walton: You had an interesting ... One of the things that prompted me to get us together to talk, and I've wanted to do it for a long time, titled If the Government Shutdown Falls Short of Armageddon, We Should Rethink the Other 75% Too. What are we seeing with this partial shutdown.

Wayne Crews: Yes. Yes. What I mean by that is this partial shutdown captured what other shutdowns got. Got the national parks, and you know the free market position is those should be run by the states. You know, the state governments run those areas, and you have private entities that adopt, kind of like adopt-a-highway. All kinds of private solutions to that kind of thing. The biggest effect on the public is the TSA and the potential of the TSA. One of my colleagues, Mark [Schremner 00:33:08] is going, "They're not going to strike because they'd get fired for striking. They can't do that." But up until 9-11, security at the airport was a private sector function.

Bill Walton: True. True.

Wayne Crews: And as I wrote, back when I was working on some of the privacy and cyber security and regulatory issues back at the CATO Institute, I opposed ... Even George Bush opposed the Department of Homeland Security initially, and then he changed his mind. All of these things occurred. What you have to look at is the 25% shutdown shows you that the public need not suffer.

Wayne Crews: You can't make it about the government employees suffering. It can't be about that. Period. It has to be about what's the effect on the public? Period. And so if you look at that, and then you look at the rest of the federal government, you

realize it's well running primarily the entitlement programs, defense and so forth. It lets us see that this is a big part of the everyday function of the government.

Wayne Crews: By the way, I can't even do my updates on regulations because the data doesn't get updated at the federal registry, because the agencies aren't able to put anything out. I put out a piece saying, "Hey. That's great." But it just shows you, it's a time to regroup and to rethink because the world didn't fall off a cliff when the government shut down, and it still hasn't fallen off a cliff. And the things that do deteriorate are because of poor decisions we've made in the past about what it is that government should be doing and what it shouldn't be doing.

Bill Walton: Okay, let's-

Wayne Crews: Well, I was joking. It should pick a national bird.

Bill Walton: Do you think we should have stopped when we picked that national bird.

Wayne Crews: No, just kidding. [crosstalk 00:34:39]

Bill Walton: We have a lot of turkey on our property out in Virginia, so I'm for the turkey. They're very smart. They're very smart.

Wayne Crews: They sure are, yeah.

Bill Walton: So let's have a couple lines of action. So if somebody listening to this hears about this, there's an idea out there. They can know what it is and get behind it.

Wayne Crews: Right. Don't despair, because the trajectory of liberty, despite setbacks, the trajectory of liberty I always see as upward. We do have these big setbacks. What we have to keep in mind is that most human beings who are going to be living aren't here yet. Most jobs aren't here yet. Most of the wealth to be created isn't here yet. We don't have to do things in the future the way we've done them in the past.

Wayne Crews: In the short-term, and I can say one of the things that the agencies are doing that has gotten out of control is not just issuing their rules, but just issuing decrees, memorandum, notices, circulars, bulletins, administrator interpretations. That's really how they're regulating now. I testified in the Homeland Security and Government Affairs Committee in the Senate, and even Democrats were concerned about this problem. So I have talked ... When we meet folks on the Hill, we talk to Democrats just as we do Republicans.

Wayne Crews: There're plenty of issues that they're never going to agree on. We can't debate renewable energy with them. However, when it comes to do you want Uber regulated, over it? Well, it's already heavily. Or do you want Airbnb regulated? Do you want the drones regulated? There's a little bit of a hold out. You know,



there's more overlap in what the federal government should do. I think there's some interest in more regulatory disclosure on both sides. I think this year the biggest debate once things are opened up and running again is going to be the infrastructure bill which could be a lot of pork and shovel-ready stuff, but on the other hand, that's also a key opportunity to add on some regulatory liberalization. That's important.

Bill Walton: Who are the key members in Congress that would be getting behind this?

Wayne Crews: Well, it had been ... You know, the committees have all changed over, so it's much tougher now.

Bill Walton: I don't see Maxine Waters doing much financial services deregulation.

Wayne Crews: Right. Right. And over in House Government Affairs, Oversight and Government Affairs, we're not going to get any real traction either, but I think the dark matter issues are being looked at and will be looked at. There's certain groups on the outside who bill themselves bipartisan in nature who are looking solutions to some of these things.

Bill Walton: Real quick. You mentioned dark matter. Refresh my-

Wayne Crews: Well basically this. You know how we talked about Congress does a few dozen laws every year. The agencies issue 3,000 regulations. They don't just issue those rules and regulations. They also issue administrative interpretations and notices and bulletins and circulars. If you put, say, the IRS as a ... its entire purview into a pyramid, the top is the tax code, the little peak. Then below that you've got Treasury Department regulations. Everything else is IRS guidance and notices mailed out to the public trying to clarify, confusing a lot of things.

Wayne Crews: The big debate we had a few years back over the transgender restrooms was guidance. It was a letter, so-called dear colleague letter, from the Department of Justice and the Department of Education that went out to all of these schools. Not a law from Congress. Not a regulation that went through notice for comment, but guidance. That's how a lot of things function now.

Wayne Crews: It's occurring with the way drones are regulated. Well, like NHTSA, National Highway Transportation Safety, said that your smart phone in your car needs to have a safe mode, but NHTSA regulates motor vehicle equipment. It never has the power to regulate phones, and yet they issued guidance like that anyway, and there's a big uproar. So that's what they do.

Wayne Crews: The Labor Department rules a couple years back on independent contractors and on franchising that had come out changing the rules of franchising ... not laws, not regulations. They were just notices that had come out from the agency. So that's, I think, our big concern.

Bill Walton: That was out of Labor. That was devastating because they decided that if you were an employee of a franchisee, you were also an employee of the franchisor.

Wayne Crews: So can you imagine? I mean, that was just done with a notice.

Bill Walton: Yeah. Now, has that been rolled back?

Wayne Crews: It had been. Those things are still being debated behind the scenes. You mentioned all the folks that are still there that are ...

Bill Walton: They're still there.

Wayne Crews: They're still there.

Bill Walton: They're still there.

Wayne Crews: Which gets at a real ... That does get you at a real problem with the administrative side. That's why I hope, and you know different groups of our including groups on the left ... We're the small L libertarian, I guess you could say. But there're groups on the left that we work with too. In tech privacy, cyber security, privacy, drones, driverless cars, we have an opportunity not to do to them what had been done to the smokestack sector side.

Wayne Crews: If we can wall off the future ... We always say, "You don't have to tell the grass to grow, you just have to take the rocks off of it." If we an wall off the future from the poor ways we've regulated in the past, we can effectively outgrow. The future economy can be much bigger than the one that's over-regulated right now, and it does come around to ... Regulations do pile up, and you talk about all these companies. But eventually, the bell tolls for you too. So even if you're someone who's in favor of regulation, eventually, things get so bad because they're effecting your suppliers and everyone else, there's a general tenor and need for regulatory reform. In the 90s it happened because governors were being [crosstalk 00:40:18]. Something like that [crosstalk 00:40:18].

Bill Walton: The big idea I'm taking away, and we need to wrap up ... I could go on for another couple hours, but, the big takeaway I have is it's rolling off the future. It's getting people mindful. Let's not regulate the new things that are happening.

Wayne Crews: Right.

Bill Walton: Let's leave it alone. Let's let the market take care of that, and let those companies or entities innovate and create the future, because that's where all the growth is going to come from.

Wayne Crews: Exactly. Exactly. That's what we need to do. We had talked about earlier that some of the old line industries are the most heavily regulated, and so you see

young people graduated from college. They want to go into the ones that are less regulated, but we need them in construction. We need them in manufacturing. We need them in all these other sectors, and it needs to be more appealing. Those need to be more appealing careers, and regulation makes them less-so than they could be. That's why you had the joke of why there's so many app, social media. We don't need another social media app. We've got that.

Bill Walton: We've got that one covered.

Wayne Crews: We've got it covered. So there's an interest, and I think other things are forcing the debate too. I mean, artificial intelligence is forcing this kind of debate too, because there's calls for saying, "Well, it's going to cause an issue with jobs. We're going to reduce the number of jobs of people doing it, and it's going to make unemployment issues even worse." But another way to deal with unemployment issues is to liberalize the economy so that companies can create more jobs, and I think that's a bipartisan issue too.

Bill Walton: I'm with you on that. Wayne Crews with the Competitive Enterprise Institute. You're doing great work, and making us freer and richer and happier. I also understand from looking at your bio ... Can you still do a handstand on a skateboard?

Wayne Crews: Actually, yeah. In fact, our dinner video this past year they had a video. They came outside and made a video of me going down the sidewalk doing a handstand, and showed it at the dinner.

Bill Walton: Anybody that can do that ... I'm really ... I'm getting behind.

Wayne Crews: You mentioned Ten Thousand Commandments, my report. I'm handing you a pack of 10,000 command-mints.

Bill Walton: Oh good, great. Yeah, I need those. I need 10,000 ...

Wayne Crews: So you're be in great shape. Thank you so much for having me. It's been a real delight. Thanks a lot.

Bill Walton: Yeah. We'll do this again, and might get you on with a couple other people in the regulatory world and do a little back and forth.

Wayne Crews: For sure. It'd be great to have a little back and forth. Terrific.

Bill Walton: Okay, Wayne. Thank you. Thanks for joining me. We'll see you in our next conversation.

Speaker 1: Thanks for listening. Want more? Be sure to subscribe at [thebillwaltonshow.com](http://thebillwaltonshow.com) or on iTunes.

