

Regulation in Retrospect

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On any occasion like this more than two years ago, I would probably have conserved the audience's time by stating right off that regulatory systems tend to become closed and inbred, overly restrictive and inherently out-of-date. My comments would have been direct in condemnation of government and would only have hinted with the nicest delicacy that regulated business brought most of its troubles on itself.

An evaluation of the present system thus quickly out of the way, I would perhaps have launched into one or another program to clean things up, a program which had to look relatively attractive to an audience which had just looked down at the muck of its present situation.

Today, having neither a program nor a regulatory office to render seemingly much candor about regulation, and fearing to offend the countless government officials who aspire to regulate, restrict, restructure, employ, replace or merely swear at insurers and banks, I shall be more circumspect. Today, instead, trusting in our tacit, shared understanding of the nature of the regulatory predicament, I should like to talk about how, in all likelihood, we got there, about why so many regulatory problems seem intractable, and about how, given an honest appreciation of how deep the problems are, we ought to approach their solution.

Historically in this country, regulatory agencies are created when private business power is seen to have gotten out of hand—when monopolists and cartel managers are holding the citizen to ransom; when jungle business, in a blood-frenzy of what is called competition, seems bent upon cannibalizing itself; when a market seems to invite cheats and overreachers to set upon victims besides one another.

When government, with substantial public support, becomes convinced that something of this sort is going on, government is apt to create some agency to stop it. At the time, the public will commonly remember or imagine an earlier day before things went wrong. So the new agency, while born of fury against specific private abuse, is apt also to be mindful of the value of private enterprise. Its mission will seem clear and simple, but will often be accompanied by a becoming respect for complexity. Fighting may be fierce, but the opposing lines will be rather clear and the field of combat will not be total.

Soon, however, the fighting dies down and, though it seems contradictory, the field of combat—or, rather, of involvement—spreads wider and wider. The former combatants are not so much fraternizing personally as they are occupying each other's territory.

Considered purely as a political or governmental entity, the mature regulatory agency at this moment may look like an appendage of the regulated business, showing its political heritage mainly by its obsession with jurisdictional balkanisms and by an

occasional binge of press agency, but otherwise serving as protector of what is dull and inefficient in the business, as confessor of industry's peccadillos and resolver of its spats. When the public sees this sort of carrying on, it feels sold out—for the last time it looked there was a good fight going on instead of all this familial bickering—and the public and its leaders and vigilantes set out for vengeance upon those who presumably bought and sold the public trust.

But the mistake was not so much one of misplaced faith as of limited vision—on the part of all of us, as citizens, observers, businessmen and government people. We think we set up purely government agencies to deal with purely business problems, but for the long haul what we really do is found regulatory systems—complex and living—which we have to think of as systems if we would understand and predict, let alone influence, their behavior.

What begins as a simple contest of the people against the pirates or the producers against the bureaucrats, depending on your point of view, changes over the years in response to one very basic human need—the need to reduce uncertainty. It is the same need which makes us willing to pay in freedom and money to reduce risk and to stabilize our surroundings in other ways, whether it be through feudalism or etiquette or monopoly or, in extremis, even commitment fees and insurance premiums.

The human desire to reduce uncertainty works upon regulator and regulated from the start. Winner-take-all contests, definitively disposed of in close fact situations, are seen as the ultimate in uncertainty, and so both government and business move instinctively toward consultation, compromise, consent and confidentiality—toward a system where everything is cleared in advance, where there are no surprises, where no one dares and no one really gets hurt or is ever left with no one else to blame. In the witchery of business survival, government becomes a familiar for the magical transfer of responsibility from management.

For government, the need to reduce uncertainty tends toward the increase of power. It leads to a constantly expanding regulatory jurisdiction, to tame the unpredictable barbarians just over the next border. It also leads to a bureaucratic interpenetration so thorough and an aggregate regulatory leverage so great that government—given sufficient awareness of its own power, willingness to use that power for collateral purposes and promised length of memory—can get almost any subject business to do almost anything at least for a while merely by asking. In time, regulated industry thus becomes perhaps the most favorable of all terrains upon which to employ the weapon first used by Samson upon the Philistines.

Finally, the need to reduce uncertainty works upon regulator and regulated to atrophy their ability to deal with each other on fundamentals. The men of business and of government see each other as reflected in the increasingly aimless, manipulative and trivialized regulatory relationship, and they tend to lose understanding and respect for each other, not personally but in the sense of appreciating the other's values and his vocation. Fully occupied by the subtleties of his own immediate culture, each reduces the uncertainty of his total world by drastically simplifying the rest of it. Oversimplifying the

outside world helps one feel superior to it and competent to deal with it, and oversimplifying one's view of another institution based on what one sees through the regulatory relationship can produce delightful caricatures. But it can also lead, in times of stress, to reciprocal bafflement and frustration, and to the impossibility of holding the meaning of basic words still long enough to learn what the other fellow is really after and to explore together whether fundamental objectives can be reconciled. Regulated business, almost by definition, pre-empts the attention of the agencies, and government regulation does, as a practical matter, occupy much of the mind of regulated businessmen but, as in other areas where quantity and quality can get confused, preoccupation with a subject is not the same as understanding it.

All of this is to say that as regulatory systems mature they expand and entrench themselves in both business and government and that they tend to assimilate business and government to each other mechanically but to estrange them intellectually. Each party may be comfortable but gradually he may also be debilitated, becoming less able to function alone or to think clearly about the relationship. At some point, the regulatory system becomes indeed a single, integrated system.

From then on, the regulatory system responds to specific and limited changes in complex and resonant ways. Change does not then become impossible, but change which is intelligent and enduring seems so often to elude us. The reason is that touching one part of such a mature regulatory system affects other parts, so that our efforts at reform often produce side effects and unintended results of greater magnitude, and sometimes overbalancing wickedness, than the good we set out to achieve. Similarly, the other parts of such a system act upon the one we seek to change, and their sure tendency is to reject what is new and to restore the old equilibrium.

Lasting change in a mature regulatory system must, then, either be total or at least be based on a total understanding of how the system works and of the effects throughout it of a shift in any part. That is why lasting change in regulatory systems so often comes about through scandal and public outrage, through external audit and, most often, through the collapse of the regulated business or the entire regulatory apparatus. For only then is it thought of as a whole. Short of that—and usually the public, government and business are well served to stop short of that—lasting change must nonetheless be based on equally comprehensive thinking about the regulatory system. For in the maturity of the regulatory worlds in which we live, we have to engineer change and can no longer simply command it. What we would now change partly we must now first fully understand, and only the radical mind can guide the hand in moderation.