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**A NEW APPROACH TO
BUSINESS-GOVERNMENT
RELATIONS**

by

MURRAY L. WEIDENBAUM

**CENTER FOR THE STUDY
OF AMERICAN BUSINESS
WASHINGTON UNIVERSITY/ST. LOUIS**

A NEW APPROACH TO BUSINESS-GOVERNMENT RELATIONS

By MURRAY L. WEIDENBAUM

Just pick up any daily newspaper and you will read allegations of corporate "slush" funds, "imperialistic" multinational corporations, companies "polluting" the environment, forcing their employees to work under "cancer-inducing" conditions, "constantly" raising their prices—and earning "obscene" profits to boot.

What should the business community do about this situation? In my work, I have identified 3 different approaches. The 1st is the simplest. Ralph Nader and his associates say that you should confess your sins and mend your ways.

The 2d approach is advocated by various business associations as well as individual business executives—launch a campaign to sell the free enterprise system. This can include hiring advertising firms to sell free enterprise in the same way that you sell corn flakes.

I do not say that either of these 2 approaches is wrong. A certain amount of positive and factual speech-making on the benefits of the private enterprise system can be very useful. But sole reliance on that approach is insufficient. It puts you on the defensive, literally defending every goof on the part of every business executive. Also, some of the allegations of the critics may at times be valid. They should be answered with substantive change instead of with belabored explanations. But let us not concede too much too soon.

Dr. Weidenbaum is the director of the Center for the Study of American Business at Washington University, St. Louis.

Business has been taking it on the chin as revelations of so-called political slush funds have been uncovered. It is altogether fitting that lawbreaking be exposed and punished. Corporate contributions to federal election campaigns are illegal.

Yet there is another aspect of these illegal business contributions to political causes which has been ignored. When we turn to more traditional types of crime, we find that the progressive thinking is not limited to punishment, but it extends to uncovering the causes. By identifying the conditions that breed crime, it is hoped that public policy can be modified so as to reduce or eliminate those conditions—a preventive approach to lawbreaking.

A parallel can be drawn to the Watergate-related cases of unlawful corporate political contributions and their attempted coverup. What was the underlying motive for these illegal acts? The dominant motive was not usually a desire to enrich the individual corporate executives who were involved, or even to enhance their positions in the company. Neither was the typical motive the desire to get the Federal government to grant a particular favor to the firm ("favors" in the form of government contracts were the object of many of the payments to citizens of other nations).

Rather, the illegal contributions were usually a response, often reluctant, to the demands from the representatives of a powerful government which was in the position to do great harm to the company. Whether the government would abuse its vast power in the absence of an adequate payment was a risk that many managements decided not to take.

But it is not surprising that so many of the executives who were im-

plicated held positions in corporations that are dependent upon government in important ways — firms that hold large defense contracts, airlines that have government-approved route structures, and companies that are recipients of special subsidies or are subject to stringent Federal regulation.

It may not be too wide of the mark to consider many of those illegal corporate payments as a form of "protection" money given to prevent action harmful to the company. Viewed in this light, the underlying cause of this particular type of white collar crime does not arise in the company itself. Rather, the fundamental reason for the lawbreaking is the tremendous and arbitrary power that the society has given the Federal government over the private sector.

Thus the eradication of this particular form of white collar crime involves more than tighter auditing standards and improved laws on political financing. It also requires abstaining from the further expansion of governmental power over the private sector. Rather we need to reduce the arbitrary decision-making authority that many Federal agencies now possess in their dealings with business firms.

My basic point should not be misunderstood. Lawbreaking, whether by business executives or others, should not be condoned. It should be ferreted out and punished according to law. Simultaneously, it is naive — and ineffective as well — to ignore the basic forces that give rise to the lawbreaking. In the area of business contributions to the political process, much of the basic thrust comes from the awesome power that — through the political process — government has been given over business, power that ranges from awarding contracts and subsidies to withholding approval of new products and facilities.

There is a 3d and more positive response to the attack on the American business system. As a former business planner, voluntarily retired, I recall that one of the 1st steps you take prior to launching a new product is to research the market.

To put it bluntly, the market for ideas is fundamentally different from the market for the traditional products of business. The differences include the research and development process, the distribution channels, the marketing methods, the personnel, the time horizon and the method of financing.

Just think of the major "products" that led to the tremendous expansion of governmental controls in the health and safety area. We start with the muckrakers — Ida Tarbell, Upton Sinclair, etc. several generations ago — then "100 Million Guinea Pigs" during the 1930s and, more recently, Rachel Carson's "Silent Spring" and Ralph Nader's "Unsafe At Any Speed."

None of these extremely influential products was developed, produced or marketed through the same channels that business firms are accustomed to using. For better or worse, they are products of the intellect. If the pen was mightier than the sword in an earlier day, the typewriter and the printing press are still holding their own today. But let us not concentrate entirely on the production side, on the mere design and manufacture of the document.

The channels of distribution are important. None of these items came from a company or a labor union or an advertising agency or a government agency or any other obviously self-serving institution. Each apparently was the product of an individual who wrote what he or she believed. Each was widely reviewed and reported in the newspapers and magazines which potential book buyers, and others, read.

This is the intellectual arena the proponents of the private enterprise system must enter and compete in. In the last year, I have become very optimistic about the prospects for long-run success in that arena because our Center for the Study of American Business at Washington University has succeeded in developing as a national issue the basic notion that over-regulation of business is not in the public interest because it increases the prices that consumers have to pay.

That is the heart of our positive counterattack—not a very theoretical proposition, but a very practical approach: the notion that the average citizen should be concerned about the free enterprise system because it benefits him or her directly. Likewise, the unwarranted attacks on our economic system hurt the consumer directly. Here is the way that I like to develop that theme.

The future of the private enterprise system in the U.S. for a long time is going to be determined by the outcome of the current debate that is now heating up about government regulation and deregulation. Do not get your hopes up too high. The vast regulating apparatus that has developed in Washington over many years is not suddenly going to be dismantled.

But this new national debate does give us the opportunity for the 1st time to bring to everyone's attention some basic facts, facts known to every businessman, but not to the public. The single fact that I find most important—in getting the attention of the public—is that it is the consumer who ultimately bears the burden of overregulation of business.

Most of the time, the proponents of new government controls focus all of their attention on the potential benefits—and often those benefits can be real and substantial. But they overlook the large costs which are so often involved, costs to both the taxpayer and the consumer—and that, I find, is the Achilles heel of the regulators.

Whether we like the idea or not, we must realize that a massive expansion of government controls over industry is now under way. Government officials are playing a larger role in what traditionally has been internal business decision-making.

But we also must recognize that it is difficult to criticize their basic mission. You have to possess the personality of Scrooge to quarrel with the intent of these new regulations. After all, who is opposed to safer working conditions, better products for the consumer, elimination of discrimination in employment, or reduc-

tion of environmental pollution? And in fairness we must acknowledge that the programs established to deal with these problems have yielded benefits to the nation.

But at what costs? The costs of overregulation of business are felt by our citizens in many ways: Higher taxes to pay for the regulators. Higher prices of the products we buy as a result of the regulation. Loss of productivity and jobs. A slower rate of introduction of new and better products. And less capital available for new undertakings.

Specifically, Federal regulation adversely affects the prospects for economic growth and productivity by levying a claim for a rising share of new capital formation. This is most evident in the environmental and safety areas.

Let us examine the flow of capital spending by American manufacturing companies just prior to the recent recession. In 1969, the total new investment in plant and equipment in the entire manufacturing sector of the American economy came to \$26 billion. The annual totals rose in the following years, to be sure. But when the effect of inflation is eliminated, it can be seen that 4 years later, in 1973, total capital spending by U.S. manufacturing companies was no higher. In real terms, it was approximately \$26 billion both in 1969 and 1973.

That is not the end of the story, however. In 1973, a much larger proportion of capital outlays was devoted to meeting government regulatory requirements in the pollution and safety area—\$3 billion more, to be specific. Hence, although the economy and its needs had been growing substantially in those 4 years, the real annual investment in modernization and new capital had actually been declining.

The situation was worsened by the accelerated rate at which existing manufacturing facilities were being closed down because the rapidly rising costs of meeting government regulations meant that they were no longer economically viable. Specifically, about 350 foundries in the U.S. have been closed down in the past 4 years because they could not meet requirements such as those imposed by the Environmental Protection Agency and

the Occupational Safety and Health Administration. This may help to explain why the American economy, for a substantial part of 1973, appeared to lack needed productive capacity, despite what had been large nominal annual investments in new plant and equipment in recent years.

The agencies carrying out Federal regulations are proliferating. In the past decade alone, we have seen the formation of the CPSC, the EPA, the FEA, the CASB, the NBFP, the MESA, the NHTSA, and the OSHA. That's just some of the alphabet soup.

The cost of maintaining this army of enforcers is huge. The \$3 billion a year of tax dollars is devoted to supporting a regulatory workforce in excess of 74,000 people. The costs of government regulation are rising far more rapidly than the sales of the companies being regulated. Regulation literally is becoming one of the major growth industries in the country.

But this represents only the tip of the iceberg. It is the costs imposed on the private sector that are really huge, the added expenses of business firms that must comply with government directives, and that inevitably have to pass on these costs to their customers.

One direct cost of government controls is the growing paperwork burden imposed on business: the expensive and time-consuming process of submitting reports, making applications, filling out questionnaires, and replying to orders and directives.

Here is a striking example. One large oil company is required to file approximately 1,000 reports annually to 35 different Federal agencies including the Federal Power Commission, the Federal Energy Administration, the Small Business Administration, and the Bureau of Indian Affairs. In the 1st half of 1975, the Standard Oil Company of Indiana had to add to its list of required paperwork 16 major new reports to be submitted on a regular basis.

Duplication inevitably occurs. The company must report its oil and gas reserves to the FEA, the FPC, the FTC, and the Geological Survey. Each report must take a somewhat different form. It requires 636 miles of computer tape to store the data

that Standard must supply to the FEA. In total, Indiana Standard has 100 fulltime employees whose work is centered around meeting Federal regulations, at an annual cost of about \$3 million.

Another hidden cost of Federal regulation is a reduced rate of introduction of new products. The longer that it takes for some change to be approved by a Federal agency the less likely the change will be made. For example, as a result of the more liberal policy in the U.K. toward the introduction of new drugs, Britain has been able to introduce useful new drugs, either sooner than the U.S. or exclusively.

A recent case is the new asthma drug beclomethasone dipropionate (BD). Although this drug has been used successfully by millions of asthma patients in England, it still has not received the approval of our Food and Drug Administration. BD is a safe and effective replacement for the drugs now given to chronic asthma patients, and does not have their adverse side effects. Unlike BD, the steroids now used in this country, such as prednisone, stunt growth in children, worsen diabetes, and increase weight through water retention. The delaying procedures of the FDA are not only increasing business costs but are preventing American consumers from having access to the newer and better product.

The Food and Drug Act is delaying the introduction of effective drugs by about 4 years. As a result, we are no longer the leaders in medical science. The U.S. was the 30th country to approve the anti-asthma drug metaprotorenol, the 32d country to approve the anti-cancer drug adriamycin, the 51st country to approve the anti-tuberculosis drug rifampin, the 64th country to approve the anti-allergenic drug cromolyn, and the 106th country to approve the anti-bacterial drug co-trimoxazole.

The regulators really seem to have the private sector scared. Take a recent example, the report last Summer by the National Cancer Institute that the solvent trichloroethylene,

known as TCE, may be a possible cause of cancer. TCE at the time had been used in decaffeinated coffee.

It seems that the government used a rather generous dose of the chemical on the test animals. It was the equivalent of a human being drinking 50 million cups of decaffeinated coffee every day for his entire lifetime.

What was the industry's reaction? To laugh at this example of governmental nonsense? (After all, your bladder would give out or you would drown before you had to worry about cancer). Hardly. With the cyclamate episode still firmly in mind, one major producer merely changed to another chemical. Frankly, I don't blame them, given the public atmosphere that has been created. But I do think that it is high time that we speak out on this issue.

Government regulations often have strongly adverse effect on employment. This has been demonstrated in the minimum wage area where teenagers have increasingly been priced out of labor markets. Our Center recently published a study that shows that the 1966 increase in the statutory minimum wage resulted by 1972 in teenage employment in the U.S. being 320,000 lower than it would otherwise have been or, in other words, a youth unemployment rate in 1972 3.8% higher than otherwise would have been the case.

In the construction labor area—where unemployment rates are substantially above the national average—government regulation also acts to price some segment of the work force out of competitive labor markets. Under the Davis-Bacon Act, the Secretary of Labor, promulgates "prevailing" wages to be paid on Federal and Federally-supported construction projects. A variety of studies has shown that these Federally-mandated wage rates are often above those that actually prevail in the labor market where the work is to be done.

Although only to a minor degree, perhaps, the equal employment opportunity program may tend to increase unemployment by delaying the filling of job vacancies. To the extent that employers must undergo protracted job searches prior to hiring employees, the average length of unemployment is likely to be longer. It is not uncommon for a position to remain unfilled despite the presence

prices because the governmental regulatory requirements have not been met.

It is inevitable that the proliferation of government controls should lead to conflict among controls and controllers. In some cases, the rules of a given agency work at cross purposes with each other. More serious and more frequent are the contradictions between the rulings of 2 or more government agencies where the regulated have little recourse. Obviously, you cannot build a factory if it violates the standards of the Environmental Protection Agency. You have to make sure, of course, that in cleaning up air pollution you do not generate water pollution.

For example, the desulfurization of coal to reduce air pollution requires a combination with lime. But in the process, large quantities of solid waste, calcium sulfate, are generated. Disposing of calcium sulfate creates water pollution problems.

As another example, Federal food standards require meat-packing plants to be kept clean and sanitary. Surfaces that are easiest to clean are usually tile or stainless steel. But tile and stainless steel are highly reflective of noise. They may not always meet the standards set for occupational safety and health.

Each regulatory agency seems to be exclusively preoccupied with its own narrow interest, and is oblivious to the effects of its actions on the company, a whole industry, or even to society as a whole.

The action of the Environmental Protection Agency regarding fire ants offers a good case study. EPA told the Agriculture Department that it is imposing severe restrictions on the use of the pesticides which can kill fire ants. Agriculture has had a major program underway to get rid of those ants. EPA's ruling is preventing the Department from carrying out its eradication program.

The Agriculture Department believes that fire ants may spread over a third of the U.S. The insects may not harm the environment as much as EPA thinks pesticides do, but their bite is very painful and can even

cause death. But in the traditional bureaucratic division of labor, EPA apparently is not concerned with the fact that fire ants can kill people. I suggest, facetiously, that the Agriculture Department try to breed a special strain of fire ants that only bite high-handed government regulators.

The instances of waste and foolishness on the part of government regulators pale when we compare them to the arbitrary power that they can exert. Many liberals are outraged by the arbitrary "no-knock" powers of Federal investigative agencies, yet they readily ignore the unchallenged no-knock power used by Federal agencies in their regulation of private business.

The Supreme Court has ruled that air pollution inspectors do not need search warrants to enter the property of suspected polluters as long as they do not enter areas closed to the public. The unannounced inspections, which were conducted without warrants, were held not to be in violation of constitutional protections against unreasonable search and seizure.

The inspectors of the Labor Department's Occupational Safety and Health Administration (OSHA) can go further. They have no-knock power to enter the premises of virtually any business in the U.S., without a warrant or even prior announcement, to inspect for health and safety violations. Jail terms are provided in the OSHA law for anyone tipping off a "raid."

The awesome power exercised by government regulators often goes unappreciated by the public as well as by the regulators themselves. The case of the ban on spray adhesives is one that is worthy of some attention. On the surface, it appears to have been at most only a matter of excessive caution on the part of the Consumer Product Safety Commission.

On Aug. 20, 1973, the commission banned certain brands of aerosol spray adhesives as an imminent hazard. Its decision was based primarily on the preliminary findings of one academic researcher who claimed that they could cause birth defects. After more careful research failed to corroborate the initial report, the commission lifted the ban on March 1, 1974. Why do I mention this case? Depriving consumers of spray adhesives for less than 7 months does not seem to be too harsh in view of the desire to avoid serious threats to people's health.

In fact, the admission of error on the part of the commission is commendable. Its prompt rescission of the initial action would seem almost to break speed records for a government agency.

But there is more to the story. It seems that a number of pregnant women who had used the spray adhesives reacted to the news of the commission's initial decision by undergoing abortions for fear of producing babies with birth defects. The sadness of this case is hardly reduced by the fact that everyone involved was trying to promote the public health and safety.

Indeed, this case illustrates the dilemma of government regulators. Had the commission failed to ban spray adhesives and the initial research subsequently been validated, an equally sad scenario could have resulted. Clearly, the government's involvement in such areas as product safety and job health requires a careful balancing of numerous factors, both objective and subjective.

This is not a general attack on all forms of government regulation of private activity. Unless you are an anarchist, you do believe that the government should set rules for society. But to concentrate exclusively on the well-intentioned objectives of government policies and to ignore their serious side effects is unwittingly to fall into the trap of adopting the totalitarian notion that the end justifies the means.

In legislating regulatory programs, there are very important questions which need to be faced and answered: what rules to set, how detailed to make them, and how to carry them out.

Because of the very substantial and often adverse side-effects that they give rise to, society should take a new hard look at the existing array of government controls over private business. A substantial effort should be made to eliminate those controls that generate excessive costs to the society.

Rather than blithely continuing to proliferate government controls over the economy, alternative means of achieving important national objectives should be explored and developed, solutions that expand rather than reduce the role of the market.

To the enthusiasts for more Federal regulation, I urge that they stop, and listen — to the operation of existing Federal rules and regulations, and see how the bright dream turns into ugly reality. But criticism and generalities do not suffice. If we are going to improve the situation, we are going to have to develop specific proposals.

A good beginning to streamlining government regulation, oddly enough, can be based on the environmental regulations themselves. We are now required to examine the impact on the environment of the various actions that we take. Sometimes it seems that you cannot sneeze without filing an environmental impact statement. Would it not also be appropriate to require each environmental agency to assess the impacts of its action on the nation as a whole and particularly on the economy? And to show that the benefits of its actions exceed the costs imposed on the public?

Surely a cleaner environment is an important national objective. But it is not the only national objective, and certainly society has no stake in selecting the most expensive and most disruptive ways of achieving its environmental goals.

I have in mind the recent case of the developer who felt obliged to

include every type of weed in his environmental impact statement—and how to keep them. I am not advocating a green eye shade approach.

Indeed, let us mourn for all the trees that have needlessly been cut down to provide the paper for all those overblown business reports to government.

We should require the same balancing of costs and benefits for the other regulatory programs, including product safety, job health, equal employment, energy, etc. As in most things in life, the sensible questions are not matters of either/or, but rather of more or less and how.

To an economist, it seems proper that government regulation should be carried to the point where the benefits equal or exceed the costs—and no further. Overregulation — which I define as situations where the costs exceed the benefits—should be avoided. But if we ignore the costs, we are bound to operate in the zone of overregulation.

What do we do about it? I do not expect the situation to really improve until consumers learn that it is they who ultimately pay the growing costs imposed by government regulation. And remember these costs hit the public in 2 ways: higher taxes to cover the expenses of the government agencies doing the regulating and higher prices of the products produced under government regulation.

Perhaps even more fundamental is the notion that government regulation is a powerful medicine. It needs to be taken very carefully, in limited doses, and with full regard for all the adverse side-effects. We must avoid unwittingly overdosing the patient. Better yet, we must quit following the advice of well-meaning individuals who do not understand the consequences of their proposals.

Basically it is attitudes that need to be changed. A case in point relates to what on the surface should be a matter relatively free of controversy, yet one which has become one of the sorest aspects of the entire business-government relationship—improving job safety.

Surely, the society desires to reduce the accidents that occur on the job. To this end, the Congress established a new agency with thousands of employees and an operating budget of several million dollars. The agency in turn has promulgated an array of rules, regulations, and requirements which have resulted in literally billions of dollars in private sector outlays—and in more complaints from business than almost any other government program.

What have been the results? More forms are now filled out. More safety rules are posted. More inspections take place. More fines are levied. But, as shown by the available statistics, there has been no reduction in accident rates in American industry.

In the case of the job safety program, as in numerous areas of government involvement, the important original concern of the public and the Congress has been converted to the bureaucratic objective of not violating the rules and regulations. "You won't get into trouble if you don't violate the safety standards," is the bureaucratic response, even if as many accidents occur as before.

The emphasis shifts to such trivia as raising and answering these types of questions: How big is a hole? When is a roof a floor? How frequently must spittoons be cleaned? The results in terms of the safety objective are almost invariably disappointing. Yet, the reaction to this situation is virtually predictable: redouble the existing effort — more rules, more forms, more inspections, and thus higher costs to the taxpayer and higher prices to the consumer.

A more satisfying answer requires a basic change in attitude, and one that is not limited to the job safety program. If the objective of public policy is to reduce accidents, it should focus directly on the reduction of accidents. Excessively detailed regulation is often a substitute for hard policy decisions. Rather than issuing citations to employers who fail to fill out the forms correctly or who do not post the correct notices, the emphasis

ought to be placed on those employers with high and rising accident rates.

But the government should not be concerned with how a specific company achieves the objective of a safer working environment. Some may find it more efficient to change work rules, others to buy new equipment, and still others to retrain workers. But that is precisely the kind of operational business decisionmaking that government should avoid, but which now dominates so many of these regulatory programs.

Without diminishing the responsibility of the employers, the sanctions under the Federal occupational safety and health law should be extended to employees, especially those whose negligence endangers other employees. The purpose here is not to be harsh, but to set up effective incentives to achieve society's objectives.

I am not proposing to eliminate all government regulation of business. We must realistically acknowledge the important and positive benefits that have resulted from many of the government's regulatory activities — in terms of less pollution, fewer product hazards, ending job discrimination, and achieving other socially desirable objectives of our society.

We must also realize that these Federal programs were established by the Congress in response to a surge of rising public expectations about corporate performance. Although business executives rarely talk or write in terms of the costs and benefits of their actions to society as a whole, they often are aware of that basic justification for governmental intervention.

The president of Chrysler furnished a cogent example in justifying governmental automobile pollution controls:

"... large part of the public will not voluntarily spend extra money to install emission control systems which will help clean the air. Any manufacturer who installs and charges for such equipment while

his competition doesn't soon finds he is losing sales and customers. In cases like this, a Government standard requiring everyone to have such equipment is the only way to protect both the public and the manufacturer."

But that attitude does not justify government's attempt to closely regulate every facet of our society. I am urging balance and moderation, so that business can both help to achieve the nation's social goals and can still fulfill the basic economic function of more efficient production and distribution of better goods and services.

To restore common sense to government is a major challenge to economic education of the public — and thus it is a specific challenge to educators and business executives alike.