

## Obama and ‘Regulatory Capture’

*It’s time to take the quality of our watchdogs seriously.*

Thomas Frank, Wall Street Journal | JUN 24, 2009

The reason why those who see economic regulations as akin to tyranny often win policy debates is because they have a fiery argument with visceral appeal. Those who try to sell the virtues of the supervisory state tend to favor the passive voice. They don’t do fire. They do law review.

The situation ought to be the reverse today. We have just come through the most wrenching financial disaster in decades, brought about in no small part by either the absence of federal regulation or the amazing indifference of the regulators.

This is the moment for a ringing reclamation of the regulatory project. President Barack Obama is clearly the sort of man who could do it. But in a white paper his administration released on the subject last week, the bureaucratic mindset prevails.

The report uses bland, impersonal explanations for the current crisis. Regulatory agencies were ill-designed, we are told. Their jurisdictions overlapped. They had blind spots. They had been obsolete for years.

All of which is true enough.

What the report leaves largely unaddressed, however, is the political problem.

It was not merely structural problems that led certain regulators to nap through the crisis. **The people who filled regulatory jobs in the past administration were asleep at the switch because they were supposed to be.** It was as though they had been hired for their extraordinary powers of drowsiness.

**The reason for that is simple: There are powerful institutions that don’t like being regulated. Regulation sometimes cuts into their profits and interferes with their business. So they have used the political process to sabotage, redirect, defund, undo or hijack the regulatory state since the regulatory state was first invented.**

The first federal regulatory agency, the Interstate Commerce Commission, was set up to regulate railroad freight rates in the 1880s. Soon thereafter, Richard Olney, a prominent railroad lawyer, came to Washington to serve as Grover Cleveland’s attorney general. Olney’s former boss asked him if he would help kill off the hated ICC. Olney’s reply, handed down at the very dawn of Big Government, should be regarded as an urtext of the regulatory state:

*“The Commission . . . is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, at the same time that that supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things. . . . **The part of wisdom is not to destroy the Commission, but to utilize it.**”*

The George W. Bush administration elevated this strategy to a snickering, sarcastic art form. It gave us a Food and Drug Administration that sometimes looked as though it was taking orders from Big Pharma, an Environmental Protection Agency that could never rouse itself from the recliner, an energy policy that might well have been dictated by Enron, and a Consumer Product Safety Commission that moved like a rusty wind-up toy.

And it created a situation where banking regulators posed for pictures with banking lobbyists while putting a chainsaw to a pile of regulations. Smiles all around. Let the fellows at IndyMac do whatever they want.

Misgovernment of this kind is not a partisan phenomenon, of course. Democrats have been guilty of it as well as Republicans. Conservatives have written about it as well as liberals. The most famous essay on industry's power over the regulatory state was penned by George Stigler, a Nobel Prize-winning, Chicago-school economist.

Yet today we talk around this problem, with its nose-on-your-face obviousness, as though it didn't exist. It's not until page 29 of the Obama administration's densely worded white paper that you find a reference to "regulatory capture," and then it is buried in a list of items to be considered by a future Treasury working group.

Maybe the administration downplays bad or bought regulators because it believes organizational tweaking can solve the problem. If the new missions of the regulatory agencies are defined clearly and their operations made transparent, it will limit the ability of some future regulator to mess things up.

But the administration must go further. Calling this infernal species of misgovernment by its true name would allow the president both to vindicate the regulatory state and address the problems of recent years. After all, the Bush team was only able to install the dreadful regulators it did because the governance of federal agencies was rarely a topic of public debate in those days.

Mr. Obama should make it an unavoidable subject, something that future politicians will be required to address. The issue cries out for it. And the nation, for once, is listening.

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(Highlights, footnotes and minor edits may have been added, but only to add analysis & clarification)