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The Case Against Cronies: Libertarians Must Stand Up to Corporate Greed

By: Timothy P. Carney – April 30, 2013

The Republican attack on President Obama's economic policy has changed subtly, but significantly, in the last three years. In 2009, he was allegedly a "socialist" and a "Marxist" who lusted for government control of the entire economy. But lately, that has given way to more nuanced charges of "crony capitalism" -- of giving special, friendly treatment to certain companies and industries, or allowing powerful corporations to essentially write the laws, themselves.

Republicans shouted about Obama's green energy handouts and industry bailouts. Mitt Romney assailed him for picking winners and losers. "Free enterprise works," Romney said in early 2012. "Crony capitalism does not." The anti-cronies expanded their focus beyond the White House, voting out government officials seen as cozying up to businesses, like Sen. Bob Bennett of Utah and Rep. Bob Ingliss (a.k.a.: "Bailout Bob").

Voters despise government officials who get in bed with corporations. But what about corporations who cozy up to government? Are companies who use cronyism to grow their profit acting unethically?

The question makes some free-marketeers uneasy. After all, we not only tolerate the fierce pursuit of profit, but also we defend it against taxes and heavy-handed regulation. Milton Friedman famously said, "The social responsibility of business is to increase its profits."

But in the age of crony capitalism, libertarians must declare that some means of pursuing profit are immoral and call on executives to reject them. This would create a positive case for capitalism -- arguing that the pursuit of profit, in the context of fair and open competition, helps the whole society. The new corporate social responsibility, redefined for libertarians, must stand athwart crony corporatism yelling "stop."

How Cozy Are Big Business and Big Government?

Naturally, all economic policies will help some interests and hurt others. Just because a company profits from a policy doesn't make it "crony capitalism." But when lawmakers go along with lobbyists' requests, they are often subordinating the public interest to private interests -- or at least showing more concern about the fate of the well-connected than the fate of the masses.

If you regularly read *Reason* magazine or receive Club for Growth emails, you're pretty familiar with the litany of corporate welfare and crony capitalism. In case you don't, here's a quick primer of corporate-government collusion since George W. Bush's second term.

The 2005 and 2007 energy bills required drivers to buy ethanol, created a government loan-guarantee program for private sector green-energy projects, and effectively outlawed the traditional incandescent light bulb. Ethanol and the green-energy finance programs are pretty naked corporate welfare. General Electric and the light-bulb industry lobby supported the light-bulb law, which forces consumers to buy higher-profit-margin high-tech bulbs.

Then, 2008 saw an avalanche of corporate bailouts: Bear Stearns, AIG, Fannie Mae and Freddie Mac. Then the TARP bailed out all of Wall Street, and later General Motors and Chrysler.

Obama came to power in 2009 and signed an $800 billion stimulus bill supported by the Chamber of Commerce and loaded with goodies for the likes of Google and Solyndra. Obama pushed cap-and-trade with the support of the U.S. Climate Action Partnership, a corporate coalition led by GE, which had set up a business to create and trade greenhouse-gas credits.

In June 2009, Obama signed the Family Smoking Prevention and Tobacco Control Act, a regulatory measure that Philip Morris supported and reportedly helped write -- smaller competitors called it the "Marlboro Monopoly Act." That same month, Wal-Mart, the country's largest private-sector employer,publicly endorsed the employer mandate in health insurance that became part of Obamacare. The drug lobby wrote significant parts of Obamacare, and the hospital lobby liked the bill enough to file an amicus curiae brief with the Court defending the law from its challenge by states and the small business lobby.

Boeing and the Chamber of Commerce launched a full-court lobbying push in 2011 to save and expand the Export-Import Bank, the government agency Obama loves using to subsidize U.S. Exports -- including lots of Boeing jets. In a lesser-known case of regulatory profiteering, Obama hired H&R Block's CEO to a top position at the IRS, where he crafted new regulations on tax preparers -- rules which H&R Block supported and small tax preparers sued to overturn.

There are dozens of examples in recent years that fit a pattern worrisome to free-marketeers: big business pursuing profit by lobbying for more spending and stricter regulations. So what should a defender of capitalism do about it?

Name and Shame

Tom Borelli spent much of last decade trying to steer companies away from big government. He co-founded the Free Enterprise Action Fund, a mutual fund that bought stocks in companies for the sake of filing shareholder motions. The fund has typically targeted corporate execs who embraced big government policies that would reduce profits, such as members of the U.S. Climate Action Partnership supporting federal climate legislation that would raise taxes on energy companies.

But lately, Borelli has targeted companies who are cozying up to government to increase their profits -- such as Boeing designing export legislation that improves their lot and tax laws that squeeze out competition for H&R Block.

When the Obama administration issued new IRS rules in early 2010, analysts at UBS said the regulations would "help Block by ... add[ing] barriers to entry (or continuation) for small preparers, [and] provid[ing] revenue as Block may sell their continuing education and competency tests to others."

It is these arrangements -- in which the industry loses, but one company wins, or a few big companies win -- that free-marketeers should pay more attention to.

While Borelli's first trigger for a complaint was an executive selling out his shareholders, Borelli's second trigger is far loftier. It is, in his own words: "Is this ultimately good for the free market? Is this ultimately good for liberty?"

Borelli has given up the shareholder suits -- executives have too much power to quash them -- but he's still trying to pry corporations away from government. His new tactic: "Shaming." This can move businesses, because they care about their "billion-dollar brands being tarnished," Borelli argues.

Liberal groups try to impose a reputation cost on companies that don't protect the environment, hire enough women, or pay high enough wages. Conservatives can create a reputation cost for companies that embrace big government.

To some extent, Borelli argues, it's working: "If I go to a Tea Party rally, all I have to do is mention General Electric, and there are audible boos."

The Rickety Big-Government Bandwagon

Another way for free-marketeers to talk businessmen out of seeking profit (besides name and shame) might be to persuade them that getting into bed with Washington often ends messily.

John Allison, former president of BB&T Bank and now head of the libertarian Cato Institute, says businesses that "seek favors from the government ... very seldom do well in the long term." He points to the 1998 tobacco settlement where the five big cigarette companies cut deals with the state governments. In exchange for massive fines, the big guys bought themselves some protection, as state governments fought to keep out new entrants. "The industry's just in the process of self-liquidating," Allison says. "They didn't win. They committed Hari Kari."

The Affordable Care Act is another example how working with Washington to protect your interests can backfire. When America's Health Insurance Plans, the top lobby group for the industry, made the opening bid for Obamacare weeks after the 2008 election, it called for regulations on insurers (insurers must take all applicants and limit price discrimination) paired with the individual mandate. This became the core of the final law.

Early on, AHIP bankrolled ads rallying the public behind health-care "reform." But then the drug industry came to the table, bringing more lobbyists and more ad spending. Also, White House polls found it was advantageous to campaign against the insurance companies. So while the core (the regulations and the mandate) remained in tact, lawmakers inserted provisions that were poisonous to the industry--for example, potentially draconian limits on industry profits through something called the Medical Loss Ratio provision.

On the whole, the bill became a gift basket for the drug industry and could become a dagger for the insurance industry. Maybe AHIP shouldn't have gotten on the big-government bandwagon at the beginning.

The Customer Rebellion

Perhaps the only way to persuade big companies to reject cronyism is for spirited free-marketeers to somehow make up the majority of their shareholders -- or their customers. If the latter sounds impossibly quixotic, consider the case of Allison and BB&T.

In 2005, the U.S. Supreme Court ruled, in *Kelo v. New London*, that local governments could use the power of eminent domain to take land from owners and transfer it to private companies. The ruling infuriated believers in property rights and critics of cronyism. Amid the public outcry, Allison announced that his bank, BB&T, would not finance commercial real estate deals that involved eminent domain takings.

This would seem to violate Milton Friedman's rules for corporations. "I wonder whether this stance would be found compatible with management's fiduciary duties to shareholders," wrote McGill political theory professor Jacob T. Levy at the time, "if it meant that potentially profitable loans were being ruled out because their objects, while legal, were 'just plain wrong.' "

Allison says he didn't know how the decision would affect the bank's bottom line. "The pleasant surprise is, we had thousands of individuals move their checking accounts to BB&T.... They said, look, I want to do business with a bank that acts on principle."

By sacrificing for principle, Allison ironically made a profit, because his customers were willing to take principled stands with their money, as well. Was it a profit-maximizing move for those individual foes of corporate welfare, devotees of property rights, or straight-up libertarians to switch to BB&T? More likely, this was about voting with their dollars -- supporting businesses that share your values.

Even libertarians can be conscientious consumers.

The Ethical Question
Conservatives are good at criticizing the government for picking winners and losers - and they're right to do so. Politicians and bureaucrats cannot allocate resources as efficiently as the market. The free market is the greatest welfare program ever invented.

But if the free market is worth protecting, conservatives must do a better job calling out corporations that participate in cronyism, as well. Doing so will raise tricky questions for conservatives. To what standard must we hold companies? What is ethically acceptable and what is not?

For example, lobbying itself is not morally problematic. But there's an ethical difference between lobbying to be left alone, and lobbying for government help. Similarly, there's nothing evil about taking subsidies that already exist. Asking a company to forgo profits that its competitors are taking is asking too much. But lobbying to create new subsidies or protective regulations? That is a line that free marketeers should patrol more carefully.

When the ethanol industry writes an ethanol mandate, or H&R Block hatches a policy that crushes its small competitors, it's legal. But it's also a naked attempt to extract money from unwilling payers, restrict the freedom of competitors, and deny options to customers. This is the sort of behavior conservatives and libertarians need to denounce.

There is plenty of ground in between these two extremes. What if a company has made capital investments thanks to an existing subsidy, and that subsidy comes up for renewal? Is the company culpable for trying to maintain the current ground rules? This vast middle ground raises plenty of tough questions, but these are questions free-market folks need to start discussing.

Yes, even if it means using the language of corporate social responsibility.