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Steven Pearlstein

Columnist



Reviving Federal Regulation

By Steven Pearlstein

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For decades, it's been political and legal fashion to denigrate federal regulation of the economy. Regulatory power has been pared back or shifted to states or industry self-regulatory bodies. Staffs were slimmed, budgets cut. And although the impetus originally came from business interests, the White House, Congress, the Supreme Court -- even the regulatory agencies themselves -- all eventually encouraged the retreat.

But any number of recent events now suggests we went too far.

Take Tuesday's news that New York's crusading attorney general, Eliot Spitzer, launched another big investigation of Wall Street sleaze, this one involving cozy backroom deals between mutual funds and hedge funds.

It tells you something that the whistle-blower who decided to drop a dime on this after-hours trading dialed Spitzer's office rather than the Securities and Exchange Commission, which ought to be the frontline agency overseeing the operations of a mutual fund industry that operates on a national basis. It tells you even more that Spitzer informed the SEC of his probe of the industry only an hour before going public with it.

Or take the case of Oklahoma Attorney General Drew Edmondson's decision to indict six former WorldCom executives, including former chairman Bernard Ebbers. In charges filed in Oklahoma County District Court, Edmondson revealed no new information about WorldCom activities and pointed to no alleged activities that affected Oklahoma more than any other state. But his grandstanding runs a serious risk of screwing up a complex federal civil and criminal investigation by the SEC and the U.S. attorney's office in Manhattan, which have deep experience with securities fraud.

On the antitrust front, this week's announcement that two of the country's biggest pharmacy benefit managers were merging prompted an immediate probe from Connecticut's attorney general, Richard Blumenthal. With the Justice Department's antitrust division in a semi-comatose state, you can't blame Blumenthal for thinking his services may be needed. But he should know that federal review of this merger will go to the Federal Trade Commission, which under the skillful and aggressive leadership of Tim Muris has been way out front in defining anti-competitive practices of the health care industry.

Don't get me wrong. The mutual chicanery uncovered by Spitzer is truly outrageous, executives responsible for the WorldCom fraud deserve jail time, and the merger of Caremark and AdvancePCS runs a serious risk of pushing sky-high drug prices even higher. But do we really want 50 attorneys general running around investigating and regulating behavior of companies that operate far outside their borders -- particularly when federal officials are now ready and willing to act, if only belatedly?

To see what happens when federal regulators fail to take the lead role -- or are prevented from doing so -- consider the recent power blackout and the problems that arise when you leave it to the states and industry groups to manage the interstate power grid. But rather than back Pat Wood and the Federal Energy Regulatory Commission in their effort to secure a strong federal role in the new energy

bill, the White House has bowed to political pressure from local utilities and regulators.

And then there's the wonderful example of allowing 50 state regulatory bodies to manage the transition to competitive local telephone and broadband service, resulting in misallocation of hundreds of billions of dollars of capital and setting back the Internet revolution in the United States by several years. For Federal Communications Commission Chairman Michael Powell to continue pushing for less federal involvement is simply a bad joke.

The ratification of the Constitution, the Civil War, the Square Deal and the New Deal -- these were the great battles that established the supremacy of the federal government in regulating interstate commerce. Now, after two decades of experimentation with deregulation and devolution -- some of it successful, but some of it decidedly not -- it's time for Washington to reassert its rightful role.

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- **Transcript:** Steven Pearlstein was online recently to talk about the declining U. S. manufacturing sector.



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