

The marriage of high-flown values and narrow interests continues to thrive

Bootleggers and Baptists in Retrospect

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BOOTLEGGERS AND BAPTISTS: THE EDUCATION OF A Regulatory Economist” appeared in the Viewpoint column of *Regulation* in 1983. The piece, written when I was executive director of the Federal Trade

Commission, reflected my brief experience as a government economist and offered a perhaps novel but crude theory of the demand for and supply of social regulation. Economists and legal scholars have called on the theory to explain things as diverse as antitrust and NAFTA. One economist went so far as restate the theory as a mathematical model, giving it some stature in the eyes of those who otherwise might have thought less of it. Now, some 16 years later, what can we say about the theory of bootleggers and Baptists?

THE THEORY AND ITS NAME

HERE IS THE ESSENCE OF THE THEORY: DURABLE SOCIAL regulation evolves when it is demanded by both of two distinctly different groups. “Baptists” point to the moral high ground and give vital and vocal endorsement of laudable public benefits promised by a desired regulation. Baptists flourish when their moral message forms a visible foundation for political action. “Bootleggers” are much less visible but no less vital. Bootleggers, who expect to profit from the very regulatory restrictions desired by Baptists, grease the political machinery with some of their expected proceeds. They are simply in it for the money.

The theory’s name draws on colorful tales of states’ efforts to regulate alcoholic beverages by banning Sunday sales at legal outlets. Baptists fervently endorsed such actions

on moral grounds. Bootleggers tolerated the actions gleefully because their effect was to limit competition.

It is worth noting that it is the details of a regulation that usually win the endorsement of bootleggers, not just the broader principle that may matter most to Baptists. Thus, for instance, bootleggers would not support restrictions on the Sunday *consumption* of alcoholic beverages, although Baptists might. Bootleggers want to limit competition, not intake. Important to the theory is the notion that bootleggers can rely on Baptists to monitor enforcement of the restrictions that benefit bootleggers.

BOOTLEGGERS, BAPTISTS, AND THE ENVIRONMENT

THE “DEVIL IS IN THE DETAILS” ASPECT OF B&B THEORY IS SEEN vividly in the federal environmental regulations that replaced common law with command-and-control enforcement of technology or specification standards, rather than call for performance standards or use emissions taxes and other economic incentives to reduce environmental harm. Specification standards generally set stricter limits for new and

expanding plants than for existing ones, giving a cartel-like advantage to existing producers. Bootleggers who already use a particular technology—or, better yet, hold a patent on it—are not likely to support performance standards, which are advantageous to diligent, innovative, and competitive firms seeking the most profitable (lowest cost) route to environmental control. As for emissions taxes and similar economic incentives, can anyone think of a firm or individual that has lobbied for more taxes? Only economists do that, and they do it only if someone else will pay the taxes.

Just why would bootleggers and Baptists favor statute-based federal regulations to common law? Common law is tough. At common law, somewhat unpredictable judges actually shut down polluters. More to the point, industries with national markets cannot create cartels around common law. Federal command-and-control regulation leads to uniform, entry-inhibiting standards that are advantageous to old sources. Environmentalists like federal statutes because it is easier to lobby for all-encompassing federal laws than to work the halls of 50 state capitols. And it is easier to bring suit over technical violations of statutes—and, incidentally, to serve the cartel's interests—than to prove damages at common law.

The infamous scrubber regulations in the 1977 Clean Air Act, which should win the bootlegger-Baptist award for the 1970s, offer the best illustration of bootleggers benefiting from Baptist-supported, technology-based standards. The statute required costly scrubbers to be installed at *all* newly constructed coal-fired electric plants, whether or not a particular plant burned dirty coal. Interest groups tied to high-sulfur coal production in the eastern United States celebrated the statute, as did most environmental groups. Miners of western low-sulfur coal, consumers of electricity, and (in some cases) lovers of clean air had no cause for celebration.

Things such as technology or specification standards, differential requirements for new and old sources, grandfather clauses, and procedures for new-source performance review are clues that bootleggers and Baptists are at work. Sometimes, though, a simple output restriction marks a B&B success story.

The celebrated effort to protect the northern spotted owl that began in the early 1990s offers an excellent example. Following a series of court decisions and regulatory actions, millions of acres of federal forest land and owl habitat in the Pacific Northwest were placed off limits to the woodsman's axe. *The Wall Street Journal* (June 14, 1992) explained how Weyerhaeuser Corporation employed wildlife biologists to search for owl habitat, but not on Weyerhaeuser's timberland: "Weyerhaeuser says it has restricted logging on 320,000 acres to comply with federal and state rules protecting the birds. On the other hand, logging restrictions to protect the owl have put more than five million acres of federal timberland in the Pacific Northwest out of loggers' reach—and driven lumber prices through the roof." The story noted that Weyerhaeuser's "owl-driven profits enabled the company to earn \$86.6 million in the first quarter, up

81% from a year earlier." Environmentalists celebrated the expanded protection of owl habitat while the owners of Weyerhaeuser and other timber products companies celebrated unusually high returns.

SHARING THE GLOW OF GLOBAL WARMING

BOOTLEGGERS-BAPTIST STRATEGIZING ABOUT OWLS AND scrubbers yields some interesting stories, but none more colorful than those that followed from the December 1997 Kyoto protocol. Unlike previous B&B episodes, in the new stories the bootleggers show up in Baptist costumes. To global-warming believers and nonbelievers alike, the Kyoto protocol has little to do with climate change or long-term reductions in carbon emissions. The crude forecasts of global emissions tell us that greater emissions from the developing world will largely offset the emissions reductions promised by the industrialized world. Instead of reducing total emissions, the protocol seems to promise their redistribution.

Upon closer examination through the B&B lens, it can be seen that the Kyoto protocol rearranges more than carbon emissions. When the pending protocol was the news story of the day, congressional forces from the nation's oil patch were seriously challenging the 5.4 cents-per-gallon taxpayer subsidy for corn-based ethanol production. In their view, the subsidy would transfer far too much money from taxpayers to corn processors for the purpose of pumping out high-cost ethanol in a world loaded with low-cost gasoline. The National Corn Growers Association, desperate to deflect the challenge to the ethanol subsidy, seized on global warming as the cause of the day. Joining forces with the Renewable Fuels Association, the corn-grower bootleggers celebrated Earth Day 1998 by calling attention to ethanol's beneficial effects on global warming.

On hearing the siren call of environmentalism, Secretary of Agriculture Dan Glickman donned Baptist clothing and indicated his strong support for extending the ethanol subsidy, exclaiming that "renewable fuels provide an important opportunity ... to lower greenhouse gas emissions." Proving that more than one government official can sing a Baptist song, Mary Nichols, EPA assistant administrator for air and radiation, told the National Ethanol Conference that "we can do more together in the area of climate change and global warming." With the appeal to fears of global warming, the ethanol subsidy was saved. But no one mentioned the literal bootlegger-Baptist connection: the taxpayer subsidy benefits the producers of beverage alcohol as well as industrial alcohol.

Regardless of Kyoto's ultimate effect on total carbon emissions, it is unambiguously clear that adherence to the protocol will change the relative cost of carbon-based fuels. Every economic study of the protocol's effects says as much. In a post-Kyoto world, coal, the leading source of carbon emissions when burned, takes it on the chin. Cleaner-burning natural gas should gain market share. And petroleum, which lies somewhere between coal and natural gas in its potential for carbon emissions, could lose or gain market share, depending on the shifts in the use of the other two

fuels. Other, less-conventional fuels that are not otherwise economical may enjoy a Kyoto boost. For example, Tom White, CEO of Enron Renewable Energy, a producer of solar and other nontraditional energy products, indicates that his division is “preparing to take advantage of the growing interest in environmentally sound alternatives for power.” Not surprisingly, Mr. White endorsed President Clinton’s plan to fight global warming, which includes \$3.6 billion in tax credits to spur production of renewable energy.

If at times Kyoto has made bootleggers sound like Baptists, at other times the protocol seems to have inspired outright conversions. In June 1998, Shell Oil Company, previously a loyal member of the antiprotocol Global Climate Coalition, announced it was leaving the reservation. Claiming credit for Shell’s green conversion, Friends of the Earth spokesperson Anna Stanford said: “We’re delighted that our hard work has paid off, that Shell has bowed to public pressure and seen that the future lies in fighting climate change and investing green energy. Now is the time to turn our attention to Exxon to make them follow Shell’s lead.” As to Shell’s response, Mark Moody-Stuart, chairman of Shell Transport and Trading, said that Shell is “promoting the development of the gas industry particularly in countries with large coal reserves such as India and China.”

Ultimately, even Kyoto’s much vaunted credit-trading scheme for carbon emissions was caught in a B&B snare. The carbon-trading mechanism, widely described as central to the Clinton Administration’s support of the protocol, offered the prospect of reducing the cost of meeting Kyoto’s strictures. In credit-trading heaven, firms and countries that face high control costs can shop the world market for lower-cost providers of emission reductions. In such a place, a U.S. firm buying carbon credits from Russia would be as good as making the reduction itself. A lot of money could be saved for the same amount of emissions reduction.

The idea might sound good to some economists, but it did not ring true to the European Union, at least not if trading were to yield cost savings for the United States. Putting forward a new version of penance, EU’s leadership called for the United States to feel the pain of reducing the threat of global warming and the Kyoto protocol provided a new vehicle for raising rivals’ costs. Now, it seems, EU is a bootlegger.

BOOTLEGGERS AND BAPTISTS IN THE THEORY OF REGULATION

IN 1983, WHEN “BOOTLEGGERS AND BAPTISTS” FIRST PEERED from the pages of *Regulation*, positive theories of regulation were much in the making. Those theories offered a way to predict how the world would work, not merely a way to describe how we would like it to work. Long before that heyday of theorizing, the old “capture” theory of regulation had nudged aside the uplifting but less predictive public-interest theory. Capture was then eclipsed by George Stigler’s economic theory of regulation.

According to Stigler, it was not enough to predict that an interest group would capture a regulator or politician. There are many interest groups and all of them seek to cap-

ture. Stigler’s theory helped to predict which interest groups would do the capturing and which groups would fail to capture. Sam Peltzman extended and enriched Stigler’s theory of regulation, pointing out that no interest group can have full sway. Given the voting rules, regulators must balance the political demands they sense, thus serving at least some part of the public interest.

It is there that the theory of bootleggers and Baptists adds a footnote to the rich Stigler-Peltzman special-interest theory of regulation. B&B explains how it is possible for public-interest arguments to serve special interests through regulation. The footnote says that rhetoric matters a lot in the world of politics but that neither well-varnished moral prompting nor unvarnished campaign contributions can do the job alone. It takes both.

B&B theory helps to explain how leaders of consumer groups help major pharmaceutical companies—the ones with approved chemical entities—by valiantly supporting a cautious FDA approval process. The theory explains why holders of permits to produce and market EPA-approved insecticides value the efforts of environmental groups who oppose rule changes that facilitate the entry of new, and sometimes less risky, substitutes. Indeed, once the theory is explained, bootleggers and Baptists seem to come out of the woodwork. They are everywhere.

Perhaps we should we expect no less. Political action, which by definition always serves some interest groups, requires politicians to appeal to popular icons. By making a “Baptist” appeal, the canny politician enables voters to feel better by endorsing socially accepted values in the voting booth. The same politician, if he is adroit, also can enjoy the support of appreciative bootleggers in the costly struggle to hold office. Bootleggers and Baptists are part of the glue that binds the body politic.

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