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The Ethnography of Government-Industry Relations:
The Federal Agency and its Environment

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These remarks do not necessarily represent the views of the
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The dislike of government regulations and agencies among the business community has risen to the intensity of a major political campaign issue. This is true despite overwhelming evidence that historically government regulations have benefitted powerful members of the business community, 1/ and that much of the most recent wave of regulation promises to do likewise. 2/

How then does one explain the hostility? Much can be explained by the desire of corporate enterprises simply to be left alone by the government to rule their own affairs. Much can also be explained by examination of the impact of government intervention on the position of particular companies or even particular managers within companies. However, the striking bitterness in much of the business attack on government indicates that other factors are at work as well.

It is the thesis of this paper that cultural differences between government officials and business leaders have greatly exacerbated the tension in business-government relations. Although we may speak the same language, for example about the desirability of fair competition, government and industry officials differ profoundly in the world views, belief systems, and institutional considerations they bring to bear on such matters. Secondly, this paper will suggest that the intermediaries who present themselves to reduce the cultural misunderstandings, trade associations,

politicians, and (of course) lawyers may well complicate the cultural confusion by inserting their own parochial interests into the agency-industry relationship.

This paper is written from the perspective of an official of the Federal Trade Commission staff, and my observations will tend to reflect my personal experiences. However, I am only speaking for myself and not for the Commission or FTC staff. Given the significant practical benefits I see in recognizing and addressing cultural issues in government-business relations, I very much hope the subject arouses further attention among professional anthropologists.

Let me start with an example of how members of an industry may disagree with government officials in the very perception of the existence of a problem deserving government attention. In real estate, brokers compete intensively: for sellers, buyers, and even for each others' agents. As a real estate broker, you have to hustle, because there are 700,000 other brokers out there waiting to take away your business. On the other hand, as a government official, you may be concerned about a quite different conception of competition: competition on the basis of price. Your economists report that in one market area after another the price charged by brokers may be a standard seven percent commission over perhaps ninety percent of the houses sold. They point out the substantial losses in consumer welfare that result. Your lawyers point out the unfairness in the broker formally being a subagent of the seller of the home, but posturing as the buyer's representative as well, despite

implicit conflicts of interest. Being lawyers, they may even tend to propose law suits or regulation to address the problem. The government official, fortified by legal and economic reports, and the broker, struggling vigorously against an array of hungry competitors, simply can't agree whether there is a problem with competition in the industry.

The same kind of disagreement can be seen in any of a number of safety related areas. Government officials, backed by statistics on the overall incidence and cost of automobile accidents, for example, run into industry officials who curtly observe that safety simply doesn't sell. The academic observation (in this case made by the MIT Center for Policy Alternatives) that, "people tend to underestimate the costs of the consequences of a hazard until they have actually been affected by it," helps explain the inconsistency between the two positions. However, it does little to reassure the industry official who has become accustomed to the often ruthless discipline of the marketplace as the criterion dictating how to improve the latest model car or other vehicle.

Such differences in perception are related to significant structural differences between government officials and corporate managers. In my experience, government officials tend to be much younger than the corporate managers with whom they deal. Moreover, the manager has been at the

company for a fairly long time; by contrast government officials (especially attorneys) may fear becoming stale after about three years unless they move on. A high turnover rate means that government officials may leave just as they become seasoned in their perceptions about the nature of a problem in the industry.

The corporate manager may have completed graduate work at a school of business administration. By contrast, the agency official may have more years of education, possibly at a more prestigious university, and at the Federal Trade Commission generally including a law degree. This difference in professional background, which compounds the difference in personal characteristics that led to the different educational paths, is very important in the gulf between corporate manager and government official. I have personally found FTC staff and company officials both to be very intelligent people. But the company managers may be a little less accustomed to verbal expression. Government lawyers, especially young ones, tend to disdain people who aren't quick in verbal arguments. By contrast, there is a saying in the corporate world to beware the articulate fool, who has little substance to contribute, but who does it well. I suspect that many problems arise simply from the mutual disregard between the clever young lawyer and the wise older corporate leader. This is then exacerbated by the tendency

of the trained lawyer to see differences in confrontational or adversarial terms. The businessman may first try to work things out, so he can go back to what he sees as the real problems in the day-to-day market place, but may also reach for his lawyer for a similarly adversarial response.

While I leave to professional anthropologists questions about family background and ethnic origins, I do suspect that women and minorities appear in significantly larger numbers in government agencies than in companies. This is important at least in the way it reduces the probability that government officials and corporate managers can find common experiences in their backgrounds.

These structural differences in age, job tenure, verbal proclivities, professional training, and possibly sex and ethnicity, provide considerable opportunity for miscommunication when the government official and corporate manager sit down to discuss why the agency considers the company's conduct somehow to be improper. Matters are further complicated by the values that the actors absorb from their institutional setting in corporation and government respectively.

The corporate manager is evaluated on the basis of his quantifiable contribution to the "bottom line" of the corporate enterprise. While the bottom line gives strength to the corporation by relating individual activities to

overall corporate welfare, it is also somewhat confining. The quarterly financial report tends to impose a short time horizon onto managers, who can not acceptably reduce short run earnings in return for long term gains to the company. Of course it is long settled that a corporate manager by law may not squander company profits for social purposes. This combination of short term concern about the bottom line and systematic neglect of greater social issues can lead to conflict between the company and the government.

The Reserve Mining Company, for example, was charged in 1969 with polluting Lake Superior with some 24 million tons of metal tailings annually in the course of its mining operations. In 1973, the Environmental Protection Agency released a report that high concentrations of potentially carcinogenic asbestos fibers, alleged to be from Reserve Mining's operations, were present in the drinking water supply of four Minnesota communities near Lake Superior. The company systematically lobbied and litigated to prevent imposition of a requirement that mining operations be altered to minimize the pollution. Although the company was incurring daily legal costs of between five and ten thousand dollars, the bottom line calculation revealed that reserve was earning daily profits of approximately \$60,000, thereby making the investment in lawyers and politicians economically worthwhile.

The case of the Firestone Tire and Rubber company is similar. That company stonewalled the National Highway Traffic Safety Administration (NHTSA) after the government alleged serious safety defects. Among the company's tactics were denial of information to NHTSA, recourse to the courts to attempt to restrain publication of a NHTSA survey of tire owners, and an attack on the motivations of the agency. As Fortune magazine pointed out in 1978, if the National Highway Traffic Safety Administration were to obtain a broad recall order, the potential bill to Firestone could easily exceed \$300 million, a substantial impact on the bottom line.

If excessive attention to the corporate bottom line, to the exclusion of broader national concerns, can motivate some corporate officials to inappropriate actions, the institutional context of government agencies has also sometimes been questioned. First, federal agencies can undergo wide variations in mission, according to the personal and political inclinations of their leaders. Moreover, these leaders tend to rotate in and out of agencies even more frequently than would be indicated by mere changes in political parties occupying the White House. The change in agency mission resulting from such changes at the top means that agencies may be uncomfortably unpredictable for businesses subject to government oversight.

Moreover, agencies headed by lawyers may tend to measure output in terms of litigation instituted or lawsuits won. In this regard the comments of Walter McClure, a well known health policy commentator are significant. He has urged that the Federal Trade Commission adopt a new standard of accomplishment in its antitrust activities relating to health care:

using legal actions as the measure of progress undercuts all [my recommendations]; it fails to reward more persuasive action, encourages legal staff into an adversarial posture to which they are by training already too inclined, and diverts the Commission from the real objective--stimulating competition--to legal action for its own sake.3/

McClure relates this issue directly to some of the staff characteristics noted above:

Present staff are predominantly young attorneys and a few economists, technically quite capable, but who by their training tend to see problems and solutions in overly legalistic and adversarial terms. They tend to measure progress in terms of successful legal actions taken rather than number of effective markets created. The addition of some senior staff experienced in working with people might give Commission staff more balance and effectiveness in diplomacy and negotiation without detriment to its legal strength....4/

Of course, the steps taken in the 1970's to reduce the "revolving door" between government and industry have tended to inhibit retention of the experienced senior staff recommended by McClure. While these conflict of interest provisions are essential to protect the public against capture of agencies by the nominally regulated industries, the cultural costs have been significant. No longer do agencies have the large

number of people hired from the affected industry to provide insight as to the industry perspective. To a significant extent the number of people in the agency anticipating positions in industry, and with a consequent personal incentive to learn industry mores, seem also to have declined. 5/

The problems caused by cultural differences are intensified because they are so rarely recognized. The reduction in informal interactions, such as the often decried industry-government outings, cocktail parties, or other social gatherings, has come at a time when procedural formality has increased. Besides simply denying the government agency significant information about the affected industries, these changes also expand the cultural gap. To an increasing extent government officials and corporate managers lack the knowledge essential to predict each others' behavior. Distrust is a natural consequence, and antagonism may not be far behind.

This is especially true where an agency is invoking principles alien to the sense of fairness of the affected firm or individual. The real estate and auto safety examples were mentioned earlier. In health care, McClure maintains that a similar situation exists:

The absence of [medical service] provider competition arises more from structural shortcomings that impede competition than from deliberate anticompetitive behavior by providers... Most providers do not know or believe that market economics has much application or legitimacy in medical care. Much education is necessary and a clear, publicized policy would be of great help. 6/

In this context, it is not surprising that the parties, especially the affected companies, turn to intermediaries for help. Trade associations, politicians, and -- above all -- lawyers hold themselves out as able to resolve the disputed issues. Given their own separate interests, they may in fact exacerbate rather than solve problems.

Trade associations must paper over differences among their members and defend virtually the least responsible member firms if they are to retain their membership. 7/ This means the trade association is in a difficult position when interpreting either to the government or the member company about the legitimate interests of the other.

Politicians frequently represent themselves as intermediaries between constituent firms and government agencies. Yet their clear interest in self advancement as a result of solving the problem in the constituent's terms, leads to disapprobation among those who are concerned that application of the law should not be varied in favor of especially wealthy or influential parties. 8/

Finally, since the language of most regulatory disputes is the language of the law, lawyers come forward as intermediaries. Again, they bring their own cultural predispositions and institutional interests that may complicate relations between the parties. First, lawyers tend to like the adversary process. While the better among them seek to negotiate an

arrangement that can maximize benefits for both the public welfare and their clients, others make their reputations on obstructionist and hostile conduct. Fights over procedure replace discussion of the merits. Technicalities prevail as government and company struggle for procedural leverage.

Too often, the final results are a three sided loss, for agency, company, and national interest. One can think of the dilatory tactics of the Firestone Tire Company resulting in loss of prestige for the corporation while consumers were kept uninformed about possibly lethal tire defects. As Fortune magazine concluded in 1978,

"Firestone, in its attempt to ward off disagreeable consequences and defend its honor, has often been its own worst enemy. At times, it has almost gone out of its way to provoke suspicion and doubt. One would expect a company convinced of its rectitude to cooperate fully with the government. But Firestone has repeatedly tried to thwart investigation of its tire, and has publicly impugned the motives of the investigators as well. In the process it has simply prolonged and intensified its ordeal.... It has vividly demonstrated the wrong way of dealing with the government and the public." 9/

Similarly, the Harvard Business School teaches the Reserve Mining case to warn corporate managers away from short-sighted attention to the bottom line. 10/

Thus, although intermediaries are available, it is my opinion that only the responsible trade associations, politicians, or attorneys do much good in bridging the cultural gap between government agencies and affected companies to achieve a positive result.

It is up to the two parties themselves to achieve understanding and a constructive resolution of their substantive differences. As a government official, I am most comfortable addressing what the government can do to deal with cultural differences to achieve constructive results. This is especially because the corporate world does appear to understand agencies better than we understand them. They still hire many senior agency officials. They also subscribe to various insider newsletters such as "FTC Watch" and "Inside DOE" to get early reports of agency activities as presented in the agency's own terms.

I have ten practical proposals for my fellow government officials that follow from the discussion thus far:

- (1) Officials should recognize the cultural gap. Before officials can explain the legitimacy of their position to corporate respondents, they must understand them in their own terms. Many government requirements are based on economic or other technical analyses rather than on the fact that the respondent is a malefactor.
- (2) Officials should use informal channels of communications, if this doesn't cause impoverishment. Because of the very necessary government conflict of interest rules, it is not appropriate for an official to be wined and dined by a potential respondent or trade association. On the other hand, a convivial meal may be a very good way to begin understanding an industry or respondent in its own terms. Some creative thinking can provide officials the needed informal communications without impoverishing them paying for expensive lunches.
- (3) Officials should be diplomatic. As negotiator Herb Cohen urges, officials must learn how to seek a collaborative outcome with a favorably inclined respondent while not losing their shirts to someone who is being devious. Indeed, the Federal Trade Commission is now teaching diplomacy and negotiation skills to its staff.

- (4) Officials should recognize that sometimes the respondent won't be open to collaborate for a constructive outcome. Either the respondent may be a malefactor or may simply not be open to constructive relations with the government. As a meddling government official, one may simply have an unfavorable place in the respondent's pantheon regardless of what one does. If an official needs to succeed in such a case, it is time to reach for the law books and play to win. Again both the Firestone-500 case and Reserve Mining provide good examples.
- (5) Agencies should use time in their favor. Given procedural requirements, it takes about three and a half years to obtain a conclusive order in a litigated FTC consumer protection case. For most lawyers such delay is extremely frustrating. On the other hand, the intervening time can be valuably used to work with the affected industry to assure that they understand the legitimacy of government objectives in the case. As a seventy-five million dollar federal agency acting in a two and a half trillion dollar economy, the Federal Trade Commission must work to have a constructive impact on firms we don't happen to be suing in a particular litigation. Other agencies face the same situation.
- (6) Agencies should hire people that are familiar with the industry. Given the constraints of the government salary structure, an agency may want to hire these people as consultants or contractors. The Federal Trade Commission has had remarkably positive experiences hiring experts in advertising, marketing, and retailing. These people bring a real world background invaluable as an addition to the skills-mix of agency staff.
- (7) Officials should attempt to build a constituency among the most progressive members of the affected industry. While these people may not openly applaud agency efforts, they may be valuable teachers about the industry and respondents and the respondents' likely reactions to government approaches. It is a question of judgment how much an official lets such industry friends persuade a change in approach, but I have found such advice to be essential to the success of my personal work. Trade associations and the trade press are also valuable in understanding the limits of agency activities and what you can expect to accomplish.

- (8) Officials should go around the lawyers to get insights whenever possible. It is especially good to talk directly with corporate managers. Lawyers are trained to present facts on behalf of clients. The omissions they make (because it is better to be conservative in such presentations to a potentially hostile government agency) contain insights crucial for the successful conclusion of agency efforts.
- (9) Based upon this flow of useful information, officials should learn the respondent's reaction pattern; learn where they can afford to make concessions and where they feel obliged to fight. At this point the official may face a cultural problem in reverse: How to persuade one's own agency staff and leadership to accept one's judgment. If the official has neglected to bring colleagues along on the cultural trip, he or she may have a surprising amount of difficulty explaining the basis for their judgment. A related problem at the Federal Trade Commission was the difficulty some economists had explaining cost-benefit assessments to staff attorneys without appearing as if they had sold out to the other side, so to speak. Only after yeoman efforts by attorneys and economists alike have the agency been able to overcome this problem, but the process took almost three years.
- (10) Finally, I would suggest that market intervention by government agencies be "culturally compatible" with the affected industry group. There may be some exceptions to this just as there may be some valuable exceptions to the drive to make all government regulations "market compatible" in an economic sense. However, the cost of a culturally incompatible government initiative may be unnecessarily prolonged conflict, if only because respondents don't know what the agency is trying to do. Moreover, they may end up doing something quite different from what the agency intends even if the agency does prevail, because they lack the agency's framework to understand the underlying logic.

These are not recommendations for traditional cooptation. Rather, they are intended to address the cultural issues in government-industry relations so that unnecessary frictions can be reduced and mutual respect between both government and business can be reestablished.