COUNTYFAIR

The Economist Botches the Economics of Regulation By Recycling Discredited Proposals

February 24, 2012 4:18 pm ET by David Lyle

The Economist's recent series on "Over-regulated America" (which it admits "draws on the ideas of Philip Howard," a top Washington DC corporate lawyer) gets regulation wrong by proposing "solutions" that won't work and would jeopardize the safety, health and prosperity of all Americans. It also recycles a gravely flawed study that has been thoroughly debunked by experts, but nevertheless continues to provide aid and comfort to the enemies of effective regulation.

For decades, critics of regulation - many of them funded by regulated industries who would prefer to have the option to pollute the environment, sell unsafe products and unclean food, or take advantage of consumers - have put forth a variety of justifications for sweeping deregulation. That a world economic crisis brought on by massive corporate misconduct in a deregulated industry continues to ruin lives across the globe deters them not at all.

In fact, good regulations are essential to the functioning of a complex, modern economy, and there are no simple-as-pie solutions to the difficult problems regulations address. Moreover, the arguments *The Economist* puts forth in support of deregulation frequently conflict with reality, and often even with themselves. *The Economist* gets three big things wrong: a misplaced and dangerous confidence in "simplicity;" reliance on a wildly inaccurate study of the costs of regulation; and a series of proposed solutions that would make regulation worse, not better

The Siren Song of Simplicity

The Economist argues that "rules need to be much simpler," citing the Dodd-Frank financial reform act as a prime example of an overly complex regulation.

> Consider the Dodd-Frank law of 2010. Its aim was noble: to prevent another financial crisis. Its strategy was sensible, too: improve transparency, stop banks from taking excessive risks, prevent abusive financial practices and end "too big to fail" by authorising regulators to seize any big, tottering financial firm and wind it down. This newspaper supported these goals. But Dodd-Frank is far too complex, and becoming more so. At 848 pages, it is 23 times longer than Glass-Steagall, the reform that followed the Wall Street crash of 1929. Worse, every other page demands that regulators fill in further detail.

In a complex economy, "simple" laws and regulations don't provide clear rules that forbid misconduct. Regulations can't (and don't) try to anticipate every possible situation, but "simple" rules would amount to a tiny scrap of law surrounded by giant loopholes for corporations to drive their trucks through. Professor Rena Steinzor of the University of Maryland School of Law, an expert on regulation, argues:

> This call for stripping laws or regulations of clear mandates, championed for decades by Philip Howard, is a prescription for giving up our existing public protections for some future, nebulous protection system with no clear teeth. And it would lead to, among other things, a storm of action in the courts, which would have to spend years interpreting what the broad rules meant. That should be troubling for The Economist, which says it's worried about courts interpreting rules: "The courts, in fact, are the source of the worst uncertainty surrounding environmental regulation."

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Doocy: Obama "Continues

Corporations themselves (and their armies of lobbyists and lawyers) are often the biggest opponents of short, simple rules with real teeth. Demos Senior Fellow James Lardner writes in an email to Media Matters:

> *The Economist* lays all the complexity at the door of legislators and regulators. But much of the verbiage in laws like Dodd-Frank is supplied by the regulated; the problem begins with their ability to block the kind of bright-line rules that distinguish Glass-Steagall (37 pages, 1933) from Dodd-Frank (848 pages, 2010). If the banks were not so powerful, we might have gotten a single federal watchdog agency, a cap on bank size, and a reinstatement of the barrier between commercial and investment banking. Health-care reform is a parallel story: it was the insurance industry and its hirelings that ruled out a simpler approach.

A Flawed Study

In addition to promoting simple, but fatally defective, regulations, *The Economist* relies heavily on a flawed estimate of the cost of regulation:

> A study for the Small Business Administration, a government body, found that regulations in general add $10,585 in costs per employee. It's a wonder the jobless rate isn't even higher than it is.

Experts have thoroughly debunked the cost figure from the SBA study. Professor Sidney Shapiro of the Wake Forest University School of Law has written that the figure relied on "an unreliable methodology and a presentation calculated to mislead."

> The report, authored by Nicole Crain and Mark Crain, claims that regulation cost the U.S. economy $1.75 trillion dollars in 2008. Upon examination, it turns out that the estimate is the result of secret calculations, an unreliable methodology and a presentation calculated to mislead.
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> ...
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> But the bigger issue, and it's a real howler, is that the Crain and Crain report completely ignores the other side of the ledger - the economic benefits of regulation. According to that OMB report from 2009, in 2008 the total benefits of regulation ranged from $153 billion to $806 billion, as compared to total regulatory costs of $62 billion to $73 billion (all figures were converted from 2001 to 2009 dollars.)
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> ...
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> [T]he fact is that regulation is a net plus for the economy that helps protect Americans from a variety of environmental, health, safety, workplace, economic and other hazards. The opponents of regulation would love nothing more than to re-litigate all the battles they've lost over the years on health, safety, the environment, worker safety, economic safeguards, and more, with the simple goal of rolling back progress on multiple fronts with one swoop. They're free to try, but at the very least, they owe the American public an honest accounting.
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> The SBA's report isn't it.

"Solutions" That Won't Solve Anything

The Economist argues that there are simple solutions to the problems it perceives with the regulatory system. In fact, each of these proposed "solutions" are fundamentally flawed, and experts say the proposals could make regulations worse, not better.

To Beat That Dead Solar [Energy] Horse"
FEBRUARY 24, 2012 9:25 AM ET

Unleash a watchdog. *The Economist* argues that "all important rules should be subjected to cost-benefit analysis by an independent watchdog."

James Lardner explains why this proposal is misguided:

> The independent watchdog proposal is based on a wildly false premise of imperious, all-powerful, out-of-touch regulators who don't care about costs or listen to affected industries. Regulators listen plenty, either because (a) they're interested, or (b) they're legally required to listen, or both. When businesses aren't satisfied, they get a second shot with the Office of Management and Budget's Office of Information and Regulatory Affairs, followed, quite often, by a third shot in the courts. That is to say nothing of the large influence they wield in Congress, where the basic terms of regulation are set. All another layer of review could possibly add to the regulatory process would be more delay, complexity and confusion, things The Economist claims to want to reduce.

Set a "sunset" date. *The Economist* proposes that "[a]ll big regulations should also come with sunset clauses, so that they expire after, say, ten years unless Congress explicitly re-authorises them."

As Rena Steinzor points out, this proposal to increase the role of Congress in the regulatory system is in direct conflict with another article in the series:

> The same pages contain a plea against involving Congress in rules, as they rightly criticize the REINS Act: "Passed by the House, it would involve Congress more heavily in rule-making. If there is a body worse than the executive agencies at this kind of thing, it is Congress." The magazine also seems to realize another problem: "Lastly, automatic 'sunsets' of laws have their fans, though Congress could mindlessly reauthorise laws gathered up in omnibus bills (and a bitterly divided Congress might allow good laws to lapse)." The magazine has laid out some of the important arguments against one of its key recommendations.

Make one, take one. *The Economist* also rolls out a highly mechanical approach to getting the right rules: "[o]ne [proposal], supported by the Republican candidate Mitt Romney, is to remove one regulation for each new one that is proposed."

Steinzor explains why this is a bad idea:

> Perhaps most troubling, The Economist floats the idea of requiring that an existing regulation be revoked any time a new one is instituted. This idea is not new; anti-regulatory guru Chris Demuth of AEI was pushing this idea at least as early as 1980. And it makes no more sense today than it did then. New and existing regulations should be evaluated on their merits, not an arbitrary system that says we have to get rid of the rule on peanut safety if we need to make a new one on cantaloupe safety. We need to be able to address new threats, be they toys from China or BPA in water bottles.
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> The Economist wants us to take its proposals seriously. But all it has done is repackage false claims about the problem - and about the solutions.

Tags: Courts Matter

by grmce (February 24, 2012 9:58 pm ET) 1

There are times when I feel that "The Economist" is guilty of false advertising by virtue of its masthead.

One would think that "The Economist" would take its cues from, say, an economist rather than a shyster lawyer whose bread and butter is "regulation busting".

REPLY REPORT ABUSE

by n'est-ce pas (February 24, 2012 10:53 pm ET) 1

I stopped trusting THE ECONOMIST last summer when they had that article saying that the thing CEOs most fear is regulation. Pure, unmitigated crap.

REPLY REPORT ABUSE

by bilbo_dies (5 hours and 18 minutes ago) 2

Ah but; "some" CEOs do fear regulation. Especially any regulation that might make public any slightly unethical/illegal business decision they ever made.

REPLY REPORT ABUSE

by n'est-ce pas (1 hour and 54 minutes ago)

Sure they do. But the top fear of any business owner/manager is absolutely not government regulation. It's almost certainly that the bad economy will continued to degrade demand and shutter the business. THE ECONOMIST publishes ideologically determined articles that bear little to no resemblence to the state of the world about which they nominally write.

REPLY REPORT ABUSE

by wookie (8 hours and 4 minutes ago) 2

> A study for the Small Business Administration, a government body, found that regulations in general add $10,585 in costs per employee. It's a wonder the jobless rate isn't even higher than it is.

Gee, it's a good thing that deregulation didn't lead to joblessness or high costs for everyone, huh?

REPLY REPORT ABUSE