REGULATION OF BUSINESS: MUTUAL PARTNERSHIP OR CONFRONTATION?

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Government regulation of business is a common phenomena both in government and business circles. Neither the government nor the business community can ignore this reality. And there are justifiable reasons for this strange state business relationship. Indeed, state (state is preferred to government which has a more limited usage) regulation of business must be considered in a wider perspective, as one of the many aspects of state business relationships. No business manager, let alone a financial manager can afford to ignore this relationship.

The success or failure of any enterprise, from its inception to its maturity, hinges on this relationship. Peter F. Drucker, an eminent scholar in the field of management had this to say about state business relationships:

> A crucial social responsibilityfor the manager, and especially for the business manager, is the relationship of business and government. Few relationships are as critical to the business enterprise itself as the relationship to government. The manager has responsibility for this relationship as part of his responsibility to the enterpriseitself. [1]

State enterprise relationship is not the domain of any particular form of government. It exists both in capitalist countries of the west to socialist states in the east. Nor are third world, or the so called developing countries excluded. It is therefore essential that financial managers be conversant with the form and nature of state business relationship lest they fail their enterprises. This is crucial in order to re- emphasize that state business relationships be seen not as confrontational but rather as one of partnership. Indeed, to some extent, governments themselves are entrepreneurs, while other private entities operate as public realities. This reality has been observed by Drucker who declares that:

> There are institutions that, while incorporated as private companies, are publicly owned and discharge public functions. There are also institutions which while government owned operate in fairly competitive markets and discharge "private sector" functions. [2]

A Financial Manager must also realize that, both public and private enterprises must deal with the state in one form or the other. They must not only cooperate as business partners, but both their survival as managers and the survival of their enterprises depends on how they cooperate with the state. Moreover, to some extent, the survival of the government depends also on how business thrives, both public and private. Business survival means an improved ability of the state to deliver goods andservices to its population. Inability to deliver, puts the legitimacy of the state into question, and hence its survival.

Both economic, political and social stability therefore depends on how business and state can join hands in a new partnership that can improve the social and material well being of the society that sustains them. This essentially means that this partnership must be able to guarantee the most basic needs of the community i.e. good living conditions in the form of adequate calorie intake in nutritious food, reasonable housing and shelter, basic education and health for all citizens. Included in the basket of basic needs is also state guarantee of human justice, and equality in the form of free speech, freedom of association, free press as well as protection of the environment that sustains the community. Now, this cannot be sustained either through private or public effort alone, Only joint efforts can sustain this endeavor.

The success of this endeavor is the only way to guarantee the success of business. This is essentially the case because business can only thrive in a relatively, stable society. Stability can only be guaranteed when the community perceives the state and enterprise to be supporting better living conditions for them. And this can be done when both civil and political rights are available. When economic justice prevails. In discussing the US economy and the need to forge new economic arrangements in favor of economic justice for all, the US Bishops declared that,

> The first step in such an effort is the development of a new cultural consensus that the basic economic conditions of human welfare are essential to human dignity and are due persons by right. Second, the securing of these rights will make demands on all members of society, on all private sector institutions, and on government... Indeed political democracy and a commitment to secure economic rights are mutually reinforcing.[3]

While Bishops in the USA are calling for joint efforts between the state and business entities in the USA such efforts are said to have been the story of economic miracles achieved in Brazil, as well as the newly industrialized nations of Asia. Unfortunately, however, industrial development in those countries, has not been able to guarantee political democracy and a commitment to secure economic rights for the majority of the population in these countries. State rules and regulations cater for the rich few and suppresses the majority poor who are condemned to perpetual poverty.

Peter Evans, in an analysis of the Alliance ofmultinational, state and Local Capital in Brazil, concludes that:

> The industrializing elite alliance that currently holds sway in Brazilis inherently incapable of serving the needs of the mass of the population yet the pressure of their unsatisfied needs remains the constant backdrop

> for the elite's strategies of industrialization... but the redistribution of economic rewards and political power can only be postponed for a certain period. The workers who burned the buses will not remain indefinitely a passive audience.[4]

Evans argues that unless the state and private business alliance redistributes the wealth generated, both stands to loose. For as soon as the pauperized majority

perceives betrayal, they will pursue their rights through sporadic protests demanding economic and political justice. when protests become nasty and out of hand, business suffers while the state looses its legitimacy.

In short, whereas, the partnership between state and business can result in some sort of development or to be precise, some sort of economic growth, such growth may be short-lived. It may be short-lived because no development takes place. For development must take into consideration a whole package of social, political and economic justice for all. Otherwise, business as well as the state will end up as losers. Losers because the disenfranchised and marginalized poor will rise up against the alliance. They will revolt, and in the cause of rebellion tear down the semblance of growth. Business will suffer both material and moral losses. The criteria of business success is profit maximization. And profits cannot be maximized when business property is torn and burnt down. Morally business will have failed to improve the well being of those who produce the mega profits, the exploited. The state is not exonerated either. When mass rebellion ensues because of unfulfilled basic demands, the prerequisites to development, the state is further alienated from the masses. An alienated and withdrawn state will not be sustained except through dictatorial use of coercive instruments of the state, the police and the army. Martial law rules supreme. This further undermines its ability to rule and puts into question its legitimacy. An illegitimate state cannot survive because it cannot guarantee property rights, the production and exchange of goods and services, the very heart and soul of business. In analyzing the swift economic growth of the newly industrialized countries of South East Asia, Frederic Deyo states that:

> State led strategies in capitalist economics entail continuing. Selective intervention by state agencies in private sector decision making and market transactions to achieve strategic goals... suggests the importance of consistent, developmentalist, state-led, strategy for economic growth and restructuring in South Korea, Taiwan, and Singapore.[5]

The suggestion here is that business boom in South Korea, Taiwan, and Singapore was mainly due to state interventionist policies in business. Unfortunately for the masses, the state in those instances was dictatorial. Economic growth was not followed by development, in the form of guarantees to minimum basic needs both material, political and social justice and protection of the environment. Business prospered because the state used both the carrot and the stick to deal with business and only the stick to deal with the masses of the working people in these nation states. The state guaranteed business massive profits by denying workers the right to exercise their fundamental right. The right to strike. Low wages was a business present to the bourgeoisie. So were loans, subsidies and protection from foreign competition. These were given in exchange for investing in state priority sectors.

Since the legitimacy of the state was questionable foreign capital and troops were a vital element both to the survival of the state and the success of business. Thus, state business alliance is critical for both. However, when the workers and peasants, the bulk of the population is alienated, no one can enjoy the fruits of this success.

Riots are frequently reported in Seoul, South Korea and in Taipei Taiwan. Most often business suffers. Business therefore has a moral responsibility to make sure that their cooperation with the state ensures sustainable development for the benefit of all.

Africa is also a scene of fertile state business relationships. Given the high illiteracy rates of the African masses and their preoccupation with basic survival, they are rarely involved in deciding their own fate. The state in this respect takes advantage of this phenomena, and make policies that partially reflects the "interests of the national elites and those of the population at large"[6]

In the absence of legally organized opposition, and true mass representation, the state intervenes in business decisions, most often in favor of the dominant business elite. The African elite constitutes the state bourgeoisie as well as private capital in the nation state. This infact forms the basis of state business relationship. Beno Ndulu, has explained this phenomena as simply another dominant characteristic of African regimes, stating that:

> Another dominant characteristic of African regimes is the close link between the state bureaucracy and the private sector, both foreign and indigenous. Elites use state power either independently or in conjunction with private entrepreneurs to enter into the business sphere, tending to create a strong symmetry of interests between the private sector and the state bureaucracy.[7]

State business cooperation in this context is obvious. Given the low living standards of the African masses which is not guaranteed its supply of a full basket of basic needs, it means that, at least, in the short run, this business alliance between the public and private bourgeoisie is beneficial to commercial interests, but detrimental to sustained development in the long run. Yet, most reformers unwittingly clamor for more doses of the very policies that have hampered African development. As Paul Okojie succinctly put it, "It is quite remarkable that the World Bank is urging African Countries to pursue the very economic path which has been the source of their poverty and misery".[8]

The economic path mentioned is unfortunately the very one also propounded by IMF, i.e. open the African, economy more and more to the mercy of international finance capital. Of course, the very alliance between state and private bourgeoisie in the African nation states is viewed as a healthy situation. So long as international capital dominates, and free reign of market forces sustain business. Mass poverty and misery do not count so long as maximum profits are generated for the consumption of the local bourgeoisie and repatriated by global capitalists through their transnational corporations.

For Tanzania, following this economic path has meant the reinforcement of state business cooperation in favor of private capital. This has translated into an all out effort to create favorable conditions for private capital which meant passing laws guaranteeing non-appropriation, tariff protection, duty relief on imported raw materials and component parts of machinery, tax holidays, export profits etc.[9] This view is shared by Hardley Smith, who emphasizes state support of private business by providing, "all reasonable guarantees for carrying out its business in conditions sufficiently attractive to induce the reinvestments of profits in Tanganyika and an inflow of new investments from abroad."[10] Such conditions included the incentive package mentioned above. It is an open secret that, where as the state has provided the requested favor, no real development has taken place in Tanzania. The masses are still reeling in poverty and deprivation.

The justification for state intervention in Business: There are both political and economic justifications for nurturing state business relations. Politically, the state is seen as an instrument of political sovereignty and therefore in a position to maintain the moral integrity of society. Given that business, in particular transnational business entities have no boundaries, the state is theoretically viewed as a standard bearer of what is good and wrong in society. This can be conceptualized only under the assumptions that freedom and liberty is available to all and a monopoly of all society, not a privileged few. That, the state is duly constituted by the good will of all society with all the guarantees of civil, and economic justice for all the citizens. That is, the community can elect in or vote out a government is a precondition for basic democracy. In the absence of such a common will, the state ceases to be representative. It cannot sustain as the standard bearer and provider of all basic needs. Hence it ceases to be a major instrument of development.

Business, by its very nature, represents the interests of its owners and not that of a whole society. Even state enterprises, when they are used for private gain do not belong to its owners, but that of its usurpers. This brings about a legitimation crisis of the bourgeois state. Such crisis is close to Jurgen Habermas Legitimation crisis caused by a break from "pre capitalist to capitalist state". According to Habermas, "this dismantling of the old order by the new order has produced both a profound split between the political system and the capacity to legitimate it for social and moral acceptance, as well as a search for new legitimative strategies".[11]

Thus, when state control means the use of public property for private gain, it removes all sense of accountability to the community, and the state ceases to be an instrument of societal development. Both the state and private business are alienated from those they are supposed to serve. But this does not automatically disconnect state business links although it weakens them. This has a negative effect on business.

The erosion of legitimacy brings into question one important justification for state intervention in a market economy. That of defining and enforcing property rights efficiently and effectively. Under normal circumstances, a market activity i.e. production and exchange of goods and services necessary for the realization of business profits, is only possible where there are no conflicts arising from property ownership. This determines what type of owner ship is allowed by law. Experts are of the opinion that "in terms of efficiency, government may be able to resolve the conflicts of interest more economically than would private attempts to settle disputes on a case by case basis"[12]. This efficiency is made possible because, the state can back ownership claims with threats to unleash the coercive instruments of the state i.e. police, jails etc. for violators. Moreover, economies of scale can be realized, hence efficiency in resources use. Such sanctions are basically a public good, since "the resource expended to protect one claim could also serve to protect any other government backed claim"[13]. It is common knowledge that the market is inefficient in dealing with public goods due to free rider problems, hence the need and justification state intervention.

However the erosion of state legitimacy, may ultimately rob its power to enforce sanctions. This ability comes from the body politic. The good will of the masses of the population, the final arbiter of legitimate power in free democracies. If this good will is alienated, due to withdrawal of support by the disenchanted public, business suffers. Business suffers because as Pogue and Sgontz correctly argues:

In the absence of such government sanctioned rights, more resources would likely be devoted to both thievery and the protection of property, with fewer resources being allocated to the production of goods and services. Moreover, there would be less incentive to engage in production and exchange because of the fear that one's product might be stolen or an exchange agreement might be violated...[14]

Entrepreneurs do not want to invest where more of their resources will be needed to protect their properties than to generate maximum profits for their sharehold ers. Peace and tranquillity are essential pre-conditions for a conducive business climate.

Pogue and Sgontzs' above scenario is an extreme condition where the erosion of legitimacy has led to lawlessness. No business can thrive under such conditions. South Africa is a good example. Although international sanctions have been eased, new investments are not forthcoming due to township violence. But lack of popular support do not lead to inability to enforce property rights and exchange alone. A chaotic situation where the state cannot use its coercive instruments may lead to inequality in the distribution of the national wealth.

If the sate cannot ensure equitable distribution of goods and services, the poorest of the poor will continue to be suppressed by the rich, further alienating the public.

Violent riots and protests will ensue. Demonstrations and civil disobedience will disrupt the normal conduct of business. Intervention in favor of equity is therefore essential to safeguard both business and state interests. It must also be emphasized, that the market does not only fail in defining and enforcing property rights and rules of exchange, but the market is also inefficient when dealing with externalities. The market fails to deal with externalities because most of the time this may mean extra costs to the business entity. Since the primary goal of a producer is to decrease the costs of production any extra cost of production and exchange is not a welcome endeavor. Moreover, controls of such costs of pollution by industry is a protection to the environment. However, because business is geared towards the satisfaction of private goods, only the state can intervene on behalf of the community. As far as society is concerned, protecting the environment is part of the basic needs package, a prerequisite to any real societal development.

The state realizes that as part of its legitimation campaign, just as critical as the definition and protection of property rights, is the effort to protect the environment by assigning the burden of producing business externalities i.e. pollution or limiting such costs to those who generate them. The state can successfully deal with such costs, by either imposing taxes or placing limits through standards and regulating on the extent of maximum pollution that can be released to the environment. In this way, economic pundits would conclude that the state would have fulfilled one of its basic function. That of allocating resources where market mechanisms have failed.

The state can also deal with business by introducing standards and regulations in the conduct of business. Accordingly, such enforcement of business exchange would involve costs. However, "the cost of complying with the standards would be borne by the producers or their customers or by both".[15] The problem of such an exercise is to decide what level of business conduct would be considered as "the standard" i.e. what would be the yard stick of such conduct. In addition to deciding on the standard measure, is the problem of enforcement. Setting and enforcing business standard conduct, depends once again to the capacity of the state in question to effectively intervene in economics and society. Such capacity is predetermined by the legitimacy of the state. If legitimacy is not doubtful, the capacity to intervene is not an issue.

Apart from intervention by setting acceptable norms of business conduct, the state can also impose taxes whose net result is again to influence or to regulate business. Normally, the decision of where to invest and in what type of business can be influenced by the type of taxes improved. The types of taxes improved and the type of tax incentives such as tax holidays, tax concessions such as exemptions can promote or deter business. Taxes can be used to deal with externalities, in the same manner as standards and regulations.

The costs of regulating business can be borne by either the producers alone, or they can be shifted to the consumers, or they can be shared by both producers and consumers. This is often the case where taxes are imposed to control pollution. The state can also relate with business by way of incomes and prices policies. Accordingly, most states have a tendency to set minimum wage policies and rates of annual increments.

In this way both the entrepreneur and the consumer are protected. At least theoretically. In practice however, workers end up to be the losers. Their wages are fixed while business has a way with manipulation of prices. Suffice it to say that:

The manipulation of prices to facilitate allocations of resources has been a common practice of many sub-Saharan African governments. In general, such practices have generated price distortions that result in inefficient use of resources.[16]

In a mixed economy such as that of Tanzania, price controls have always been maximized by private business to generate windfall profits. Most often they would hoard goods and solicit price rises on the excuse that the costs of production have gone up. Consumers are losers. On the other hand the parastatal sector has on certain cases been undersold by private business selling second

class cheap imports. There are also possibilities of misallocation of resources as suggested above, while price fixing may have also been used to buy political influence. To enhance business production and exchange, care has to be taken to set price levels that would protect the consumer, where it is absolutely necessary and politically expedient, otherwise, price fixing that creates biases against normal business exchange has to be discarded.

There are other ways of regulating business. One such other way is through fixed exchange rates. These are rates at which local currency can be exchanged for foreign currencies. This tremendously influences import export business. Fixing exchange rates can have a negative effect, especially when the local currency is over valued, making local exports incompetitive in the world market. "In effect, maintaining overvalued exchange rates penalized those sectors dependent on exports, such as tourism and manufacturing, and made imports more attractive."[17] With foreign exchange constraints, this becomes a disservice to the national economy.

The state can also influence business expansion or limit it through physical trade restrictions. Most developing countries use the excuse of protecting their infant industries to slap import controls. This is often done by way of foreign exchange restrictions, and the bureaucratic allocation of such foreign exchange. Another method commonly used is the imposition of import licenses along with a long list of import restrictions.

Trade restrictions have a negative result in society, especially in encouraging smuggling and bureaucratic corruption. Both business and the state loses. Resource allocation is distorted, people lose faith in the official organs of the state and official business is undermined by dubious business dealings by smugglers. And the government suffers a double jeopardy in the form of lost tax revenue while its legitimacy crisis overflows.

Interest rates when properly utilized can help to promote business. However, if improperly managed, interest rates can hamper profitable business. The state can usually use interest rates to stabilize the economy and improve business performance. This can be done by manipulating interest rates i.e. raising them to curb inflationary pressure or depress them to spur investments. When interest rates turn negative, under high inflationary conditions, as was the case in Tanzania in the mid 70's they demotivate savings. Rwegasira was able to demonstrate that this was indeed a cause of declining savings rates in Tanzania.[18]

Declining savings, means that credit facilities to business may also be restricted, thus hampering smooth operations of business. On the other hand, low interest rates may encourage excessive borrowings especially by governments that have failed to mobilize adequate tax revenues. Deficit financing is common by most governments. However, when it is allowed to become the norm it has a negative impact on business. This is especially the case where the state competes with business for limited credit facilities and accords itself priority over business. But most important is the specture of huge debt burden accrued to borrowing states. Eventually they have to be paid up, and most likely business will be forced to participate in debt repayments in the form of higher corporate taxes as well as taxes on inputs. This may have a negative and distorting influence in the allocation of scarce resources in the nation State.

High public debts are also a burden to all the citizens. They do not only risk the freedom and integrity of the nation in the eyes of foreign creditors, but create economic hardships. The state is most often forced to abdicate its social responsibilities. Most African States, Tanzania included have been forced to enter into agreements with IMF and swallowed the bitter pill of IMF conditionalities. This has forced them to withdraw subsidies and cut down their budgets on social services such as education and health. To Tanzania this has meant shelving away some of its fundamental principles of providing basic needs to all her citizenry. Business does not benefit under such a political and economic environment, at least not in the long run.

There are many other ways that the state can influence business. Apart from the control of production and distribution of scarce raw materials, the use of import and export licensing, building licensing, the state can also control the location of industry. This is most often done to make sure that industries are not concentrated only in one part of the country but are spread all over the country. The distribution of industry can also be done to fight unemployment in areas considered hard pressed.

Locating industry out of concentrated areas may not carry favor with business. Where as the state may want to distribute the benefits of growth over the whole nation state by moving new investments out of concentrated areas with low unemployment to create jobs where unemployment is high, business may be skeptical. Business is often keen to maximize on advantages of concentration of industry. Such benefits include the development of specialized industries, individual financing in single processes or commodities, evolvement of supporting firms to service major industries and the creation of highly organized markets to cater for the industrial district.

In view of these benefits individual businesses may as well "be attracted to a highly concentrated area by the prospect of low operating costs."[19] Industry would like to take advantages of economies of scale. However, given the inherent limitations of concentration such as risks of market failure and disastrous unemployment that may ensue, or security risks in times of civil strife, the state often overcomes business's short term requirements and exercises control over the location of industry.

This can be done by designating some areas as sights for new industrial development. Various inducements are also provided to attract business to such designated areas. These include declaring some areas as free trade zones for customs purposes, tax exemptions, and other tax benefits may be provided. In Tanzania, Dodoma, Kigoma and Zanzibar fall under this category.

The state can also promote business in ways other than planning as envisaged above by the "encouragement of joint consultation in industry and assistance in the settlement of disputes and the support of training schemes..."[20] Tanzania has introduced such facilities by the establishment of the permanent Labor Tribunal, and recognition of employers association, OTTU and various training institutes. The Tanzania Investment and Industrial Promotion Council advises potential investors. The Tanzanian Chamber of Commerce and Agriculture, SCOPO etc. influences business operations in Tanzania.

The state may also intervene in business as a regulator by imposing legal obligations and or restrictions on its conduct. This is made in order to maintain a semblance of harmony in the conduct of business. The state can impose minimum wages, it may also legislate anti-trust laws as in the USA to avert monopolistic tendencies in business that may hamper fair competition. Apart from efforts to discourage unfair business practices, the state may be obliged to set and enforce, not only minimum conditions of work, but must also ensure quality control by introducing minimum standards of both quality and quantity depending on the nature of business production and exchange. This protects both the producer as well as those who work in the factories and consumers. It also protects business from unfair competition from production and exchange of shoddy goods and services. In short state intervention is necessary to avoid questionable business deals to protect consumers as well as legal business entities.

Tanzania has established the Tanzania Bureau of Standards to regulate local production of goods. Tanzania also engages the services of international firms such as International Superintendent as well as that of Interpol to regulate foreign business transactions.

It is pertinent to point out that modern business cannot sustain without interacting or articulating with the state. According to one authority in financial management circles, business is much aware that "according to the sovereignty theory the corporation owes its legal existence to the state in which it obtains its charter".[21] This thesis acknowledges that the life span of a business from its inception to its maturity is very much dependent on rules and regulations promulgated by the state. These laws may vary from state to state but overall, they control firms from business names to laws pertaining to capitalization procedures allowed.

Business names are for example selected with the express purpose of business identity and marketing i.e. advertising a firm's products. "The state law by statutory provision protects the names of the firms in that they will disallow a name which is designed to deceive or cause confusion".[22] Most states have incorporation laws that require that the name of the main office as well as that of branches be included in the articles of incorporation. Even the constitutions of board of directors and board meetings are conducted according to state laws.

To some extent, courts, one important aspect of state authority used in arbitrating property right disputes do influence and regulate business conduct. One eminent management expert acknowledges that "increasingly, the courts are holding boards and board members to very high and demanding standards of accountability in stock holder suits."[23] This is done to the advantage of business as well as that of its customers.

It is upon business managers and financial managers in particular to carefully think through their responsibilities and discharge them properly. This can be done by recognizing and appreciating the fact that no business can succeed without carefully evaluating how it can cope up with state laws, rules and regulations. State activities ranging from price controls, credit conditions, management of property rights, quality control, minimum wages etc. can have a tremendous impact on the economic life of any business entity. Its profitability very much hinges on how a financial manager can manage such state controls and regulation. However, the state must also realize that public affairs i.e. the welfare of its citizens, and the success of its economy are "in the hands of two groups of leaders, government and business how must collaborate and that to make the system work government leadership must often differ to business leadership"[24]. Business has to be involved in policy making it cannot be leftout without negatively affecting the welfare of society. Indeed, a shrewd financial manager must take cognizance of the reality of state regulation of business and design appropriate strategies to cope up with this reality. It is also postulated that state regulation of business need not be confrontational. Rather, it is a normal state-business partnership of mutual convenience for both. This relationship must be construed as a necessity for the survival of both the state and its partner, the entrepreneur and his enterprise. Moreover, market imperfection and legitimacy issues are precursors to this partnership. Maximiz-ing profits for the shareholders hinges on this strange relationship. The final arbiter for both the state and the businessman, is the goodwill of the masses. This goodwill can be achieved through both political and economic liberalization. That is democracy, economic justice and rule of law must reign supreme.

End Notes:

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