Service industry deregulation: corporate crime and tougher disciplines on the poor

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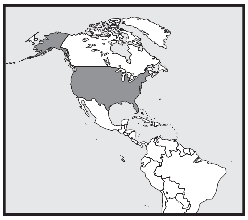

Although criminal activity within the private service industries has been an important factor in the current recession, the service industry continues to form the basis for the U.S. negotiating position on the General Agreement on Trade in Services. These industries continue to target public service assets for takeover and to globalize their practices, even as new details of scandal emerge daily. President Bush's plan for assisting the poorest in the U.S. imposes a range of tough new regulations that require welfare assistance beneficiaries to work more in exchange for fewer benefits.

Corporate deregulation and crime

Since the last Social Watch report, there have been almost daily reports in the U.S. press about the criminal indictment of, or civil penalties or administrative law rulings against one or more of the corporate advisors to GATS. The market share captured by lawbreakers and rule violators in financial services, energy services, telecommunications, etc, is huge. Even larger were their «mis-stated» profits during the 1990s, brought to light by the collapse of Enron and other firms.

«Over the past six years, *Business Week* reports, investors have lost USD 200 billion as a result of 783 audit failures at firms that overstated profits, and such incidents doubled from 1997 to 2000.»[1] The guilty pleas, alleged crimes, the bankruptcies and federal rule violations run such a wide gamut that no less a services liberalization proponent than the Brookings Institution has tried to calculate the cost to stock market wealth of the crisis in corporate governance. Still to be calculated are the costs to employees, customers, taxpayers, retirees, governments and those who have lost their jobs in the United States due to corporate malfeasance. And this is to say nothing of the transnational impacts of misreporting the alleged benefits of corporate deregulation in fueling World Bank privatizations in the 1990s.

No governance crisis here

Despite the dubious provenance of much corporate advice to U.S. trade negotiators on GATS, there has been no public discussion about the «trade policy governance crisis» among those who promote service liberalization and corporate self-regulation. The summary of the U.S. proposal for GATS still advocates global «commercial presence» that restricts government regulation with «least burdensome» to trade criteria. Many of the major firms advocating such disciplines have had service creation and delivery practices which, abetted by government deregulation, did much to bring about the current U.S. economic recession. For example, of the financial service industry, William Greider has written, «[t]he merger of commercial banks and Wall Street investment houses, ratified by Congress in 1999 and legalizing the new financial conglomerates like Citigroup and J.P. Morgan Chase, has already produced the very scandals of self-dealing and swindled investors that lead to the legal separation of these two realms seventy years ago in the Glass-Steagall Act.»[2]

Yet there are no legislative proposals that would prevent the kind of business practices certified by banks, accounting firms and lawyers in their dealings with Enron, Global Crossing, WorldCom and others as «legal» and «normal.» Beyond supporting new laws and initiating investigations to prosecute the crime that is most difficult to prove—fraud—the Bush Administration has not yet been able to overcome its antipathy to enforcing government regulation on corporations. The U.S. administration even attempted to weaken non-binding language on corporate accountability in the Political Declaration of the World Summit on Sustainable Development. Resistance to reform is particularly fierce in the financial services industry, where non-compliance with federal conflict-of-interest rules has been facilitated by chronic under-funding by Congress of the Securities and Exchange Commission (SEC) and other regulatory authorities, in response to industry pressure. Firms are desperately seeking to strike deals with the SEC to avoid a fundamental restructuring of the financial services industry.

Instead of reforming services liberalization disciplines and objectives, trade negotiators are seeking to «lock in» advantages for their services industry clients. At the same time, they are ignoring the negotiators' equivalent of corporate due diligence, contained in the GATS requirement in Article XIX.3, for an «assessment of trade in services in overall terms and on a sectoral basis.»[3] Apparently, the negotiating strategy is to «lock in» new GATS disciplines irreversibly before the extent and causes of the financial rot becomes a matter of public record in lawsuit filings.

Inflexibility towards the poor

Not all service industry deregulation, of course, has had criminal consequences. Indeed, proponents of government deregulation continue to see regulation as a threat to prosperity: «The only significant current threat to continued deregulation is a consequence of the Enron collapse—the threat of increasing regulation of accounting, corporate governance, and securities.»[4] This ideology maintains a strong grip on the U.S. government. This is not in itself criminal, but it has deepened the economic hardship facing millions of Americans. For example, Federal Reserve Chairman Alan Greenspan's refusal to discipline stock market volatility and speculation by toughening investor borrowing requirements, was deeply harmful to the economy.

The return of stock indexes to 1998 price levels seriously eroded many retirement savings, and has contributed to an increase in unemployment, estimated in August 2002 at 5.7% of the work force. This understates the extent of the problem, however, because government unemployment data are based primarily on those who file with the government for unemployment benefits. Due to cutbacks in unemployment insurance, the number of workers who exhaust their benefits before they can find work has doubled in the last

1 David Moberg, «Enronomics 101: Business as Usual in the Disinformation Economy,» *In These Times*, 4 March 2002, p. 15.

2 William Greider, «The Enron Nine: Wall Street's Most Prestigious Firms May Have Been Involved in a Ponzi Scheme,» *The Nation*, 13 May 2002.

3 Chakravarthi Raghavan, «GATS talks without mandatory assessment?» *Third World Economics*, No. 282; 1-15 June 2002, p. 2-4.

4 William Niskanen, «Regulatory Change over the past Quarter Century,» *Regulation* (Summer 2002), Cato Institute at http://www.cato.org/pubs/regulation/regv25n2/regv25n2.html#features

two years.[5] The increase in unemployment and consequent decrease in consumption has had severe consequences for state governments that responded to corporate lobbyists by cutting taxes by USD 35 billion from 1993-1999. The 50 U.S. state governments now find themselves without sufficient reserves to supply basic public services during a recession.

Not since the tax cuts of the Reagan Administration have state governments been in such bad financial shape. «State fiscal conditions, already in decline prior to the September 11 attacks, are rapidly approaching a state of crisis. According to the National Conference of State Legislatures, revenues in 43 states are below estimates and 36 states have already planned or implemented cuts in public services.»[6] Yet these programs—providing food, cash, health care and child care programs to low-income people—are among the most efficient means to ensure consumption, to foster state economic activity and to reduce economic volatility. On the other hand, «trickle down» approaches, such as cutting taxes to high-income people and corporations, are very inefficient at generating economic activity, especially among low-income people.

The states' budget crisis will be exacerbated by the massive Bush Administration tax cut, passed in June 2001 legislation, that will start to cut federal revenue distributions to states this year and accelerate thereafter—unless repealed. Successful service industry lobbying against taxes on most services has also hurt state revenue, since the average state depends on sales taxes for about 40% of their revenue.

On 26 February 2002, the Bush Administration revealed its plans for reauthorizing the 1996 Personal Responsibility and Work Opportunity Reconciliation Act. The 1996 welfare law required parents to work in order to receive welfare benefits from state programs, but the reduction in state welfare caseloads decreased the number of beneficiaries under «workfare» programs to 6.5% of total welfare recipients. The Bush plan will require 70% of state beneficiaries, largely single mothers with children, to work 40 hours a week for wages that are unlikely to cover the increased cost of childcare. The Bush plan will continue to enforce tough welfare compliance rules, cutting off benefits to families if a parent misses an appointment with a welfare caseload worker. While the Bush Administration demands «flexibility» in corporate regulation and the ability of government managers to hire and fire, it is quite inflexible when dealing with the poorest U.S. citizens, residents and immigrants.

The «tough love» approach to poverty in the 1996 welfare law dropped the overall welfare caseload by 50% between 1996 and March 2001.[7] However, a government report submitted to Congress on 3 June 2002 showed that only a third of the drop was due to families earning enough to rise above the (very low) federal poverty thresholds.[8] Other reasons for the caseload decrease included the disqualification of recipients because of rule violations and caseworkers failing to inform the poor of available benefits. According to a 1999 study, a further 20% of the caseload had simply «disappeared.»[9] For those who remained on welfare programs, by January 2000, cash and food assistance benefits «for a typical family of three [i.e. a mother and two children] had fallen to less than half the poverty guideline in all but six states.»[10] These benefits are likely to fall further as a result of state budget crises and the tighter Bush Administration restrictions on benefits.

A human rights budgetary perspective

As the official number of poor increases, states have been given greater responsibility, but fewer resources to supply basic services to the poor. Attempts to privatize public services targeted to help the poor have been limited by lack of interest from the private sector: the services are not lucrative enough. The last two decades have seen an erosion of public sector employment as federal, state and municipal governments grant private contractors the more profitable service investment opportunities, such as transportation to and from wealthy suburbs, while leaving less lucrative markets to be serviced by the public sector. Even firms with multiple federal rule violations, poor performance records and criminal convictions are allowed to bid to take over public assets!

Privatization has been sold to government managers as a way to reduce costs associated with better wages, health benefits and pensions for public sector workers, particularly for those without college degrees, when compared to private sector workers in the same categories. One study has shown that «for women without college degrees, occupations «at risk» for privatization constitute 63.9% of their public sector jobs, such as health care and child care workers, food service employees, and clerical and administrative staff.»[11] Privatizing these modestly paid public sector jobs and withdrawing their health and pension benefits might save money short term in service delivery, but push workers closer to the poverty line in private sector jobs without benefits. According to 1998 government figures, about 69% of public sector jobs had health insurance, compared to 47% in the private sector.[12] Just one health emergency could push such newly privatized workers into poverty. The U.S. Census Bureau reported on 30 September 2002 that «an estimated 14.6% of Americans—41.2 million—went [health] uninsured in 2001, up from an upwardly revised 14.2% or 39.8 million in 2000.»

In contrast to the twenty-year old drive to privatize the delivery of potentially lucrative public services, there is a new and small movement to analyze the delivery of public services from a human rights perspective. In an August 2002 report, the United Nations High Commissioner for Human Rights warned that the liberalization of trade in services proposed in GATS could make it impossible for governments to fulfill their human rights obligations in the delivery of public services. High Commissioner Mary Robinson urged the WTO Secretariat and members to honor the GATS commitment in Article XIX.3 for an assessment of liberalization impacts in services and to «allow the maximum flexibility to developing countries to withdraw liberalization commitments.»[13]

There is no indication that major WTO trading powers intend to honor the GATS rule for assessment prior to demanding commitments. However, there are other human rights initiatives on public service delivery that may have better prospects of success, at least at the state and municipal level of government. One approach has been to analyze government budgets in terms of the governments' obligations to comply with human rights commitments. The advocates of bringing a human rights framework to budget formulation and analysis are well aware of opposition to their project, particularly that of «U.S. exceptionalism,» i.e. the doctrine that laws applying to all other governments do not apply to the United States. Nonetheless, it is hoped that if a human rights framework can be adopted in budgets of those countries that have ratified the United Nations Covenant on Economic, Social and Cultural Rights, such adoption might have a civilizing effect on the U.S. government. ■

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5 Wendel Primus and Jessica Goldberg, «The August Unemployment Rate Masks The Severity of the Downturn and the Problems of Those Exhausting Their Unemployment Benefits.» Center on Budget Policy Priorities, 16 September 2002 at http://www.cbppp.org/9-13-02ui.htm

6 Kevin Carey and Iris J. Lay, «States Are Cutting Low-Income Programs in Response to Fiscal Crisis: Less Counter-Productive Options Are Available,» Center on Budget Policy and Priorities, 17 January 2002 at http://www.cbppp.org

7 «Welfare Reform: After Five Years, Is It Working?» National Organization of Women Legal Defense and Education Fund, 2002 at http://www.nowldef.org/html/issues/wel/welfareworking.shtml

8 «Government Data Show Welfare Reform Failure,» National Organization of Women Legal Defense and Education Fund, 17 July 2002 at http://www.nowldef.org/html/news/pr07-17-02.shtml. Poverty thresholds, which define poverty assistance benefits, were established by a 1964 poverty formula that Congress has refused to revise to reflect current costs of living. Concerning U.S. poverty calculation methodology, see Steve Suppan, «United States,» Social Watch, No. 3, 1999, p. 204-207.

9 «Welfare Reform: After Five Years, Is It Working?» *Op. cit.*

10 *Ibid.*

11 Annette Bernhardt and Laura Dresser, «Why Privatizing Government Services Would Hurt Women Workers,» Institute for Women's Policy Research, 2002, at http://www.iwpr.org

12 *Ibid.*

13 Cited in Charkravarthi Raghavan, «GATS liberalization may conflict with human rights obligations,» *Third World Economics*, 16-31 August 2002, p. 2.