From the *Democracy Owners Manual*
By Jim Shultz
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Chapter Four

Making Public Rules For Business and the Marketplace

"The art of economics consists in looking not merely at the immediate but at the longer effects of any act or policy; it consists in tracing the consequences of that policy not merely for one group but for all groups."

- Henry Hazlitt, *Economics in One Lesson*[i]

For the past two decades, in the United States and elsewhere, a powerful political voice has been raised against "big government." Corporate leaders and conservatives in particular have demanded increased economic freedom in the form of reduced government interference in the private marketplace. In response, many public rules and regulations governing business have been weakened or eliminated altogether.

However, as we look at our own lives and at the outside influences that affect us, what we see is that it is not government but the marketplace itself that determines much of our economic freedom. It is the marketplace, not government, that largely decides the jobs we have, what kind of health care we receive, what advertising and entertainment will be aimed at our children, the ingredients in the food we eat, and the quality of the air we breathe. All this and much more is determined by decisions made by private enterprise, outside the boundaries of our democracy, and often subjecting us to great danger and abuse.

It is also a fact that private enterprise could not function without public rules to govern it. Who would manufacture widgets if there was not a law to keep those widgets from being stolen? Who would invest in widget factories without assurances that our investment will be used as promised? We make public rules for private enterprise for many reasons, to protect producers and investors and also to protect all of us from being cheated as consumers or abused as workers and to safeguard our personal safety and the environment. Clearly, we do not need rules for everything business does, but we do need rules for some things. Here again are a set of issues which we need to understand and be able to influence.

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The Theory Of The Free Market

Every day all over the world millions of businesses and billions of consumers enter into voluntary exchange with one another, all without any centralized coordination or plan. The invisible force that pulls all this activity together is known as the "free market." The modern champion of free market economics, Nobel Laureate Milton Friedman, uses a story to illustrate how the "invisible hand" of market economics makes the system work, a tale titled, "I, Pencil: My Family Tree". [ii] The story begins, "Not a single person knows how to make me," and it explains the long process by which the wood, metal, rubber and other ingredients come together through thousands of hands from disparate parts of the world to become a student's #2 pencil.

"No one sitting in a central office gave orders to these thousands of people," writes Friedman. The multitude of commands and actions involved in making the pencil was the product of prices and incentives. The wood for the pencil was cut because loggers could sell it at a profit to those who would turn it into pencils. The same is true for those who mined the metal and manufactured the rubber. Prices and incentives, according to Friedman, are the universal language that drives the whole marketplace. They tell consumers which products cost less and tell producers how much they can charge for a product before consumers will switch to a competitor. Prices and incentives tell companies how many workers they can hire and at what salary and they tell workers at which company they can earn the highest wages. This is the theoretical magic of the market, millions of businesses and consumers all cooperating voluntarily to each one's mutual advantage.

According to Friedman and other free market boosters, this magic of prices and incentives not only stimulates efficient production but, through competition, also works to keep prices low and to keep products safe and of a high quality, making all of us all better off. When government tampers with prices and markets, the theory goes, the magic of the market falls apart.

Friedman writes that the U.S. oil crisis in the 1970s is a clear example of the market falling apart because of government interference. Gasoline prices were spiraling upward. Consumers voiced their anger. The federal government then set limits on how much oil companies could charge for their product. Rather than produce more gasoline to meet consumer demand the oil companies limited production, which resulted in shortages and long lines at the pumps. The price limits, "did not permit the price system to function," he writes, taking away from U.S. oil producers the profit incentives they needed to boost production and make those gas lines disappear.[iii]

In many parts of the economy the free market theory does work as advertised. Where competition works well (the recent market for personal computers is an example) consumers benefit both in terms of better products and lower prices. There are, however, clear cases where the market does not work as claimed. In these cases competition alone does not keep prices low or products safe. The economically mighty are allowed to cheat the economically weak. Millions are denied access to the basics, such as health care. Manufacturers dump pollutants into our water and air. In economic jargon instances such as these are called "market failures", clear examples of where market theory doesn't fit real economic life.

Some of democracy's most heated and longest debates are about how to address these excesses and abuses in the free market system and at the heart of these debates are two essential questions: First, when is it appropriate for the public or government to intervene and make rules for the private marketplace? Second, when such rules are needed, what kind should they be?

Battlegrounds - When Is Intervention Warranted?

This debate about the marketplace - whether it is a place of magic to be left alone or a place of exploitation to be controlled - comes down not so much to dueling facts as to two very different world views. Conservatives, writes linguist George Lakoff, view government intervention in the marketplace as, "interference with the pursuit of self-interest by people trying to make a living, people using their self-discipline to become self-reliant." Advocates of intervention, on the other hand, see government regulation, "as the protection of citizens, workers, honest businessmen, and the environment against possible harm by unscrupulous or negligent businesses and individuals."[iv]

These two dueling perspectives about public rules in the marketplace get played out in a number of important policy battles, each with its own distinct flavor:

Protecting Our Access to the Basics

The theory of the free market suggests that everyone is free to go out and purchase the products and services they need and want, restricted only by what they can afford and by what producers are willing to offer. While that arrangement delivers to most of us much of what we need, the market left to its own devices also denies millions of people some of their most basic needs. One of the most heated examples is the crisis in consumer access to health care. Most producers of products or providers of services maximize their profits (the free market's cardinal rule) by selling to as many consumers as possible. Health insurers and HMOs, however, are a different case. They maximize their profits, not by covering as many people as possible, but by covering as many healthy people as they can and by excluding the rest.

This incentive to increase profits by excluding the sick has pushed health insurers and HMOs into a well-established record of excluding patients with pre-existing medical conditions, canceling the coverage of patients with serious illnesses, and putting dangerous limits on the care their patients can receive. Rose Hughes, a founder of the group Parents of Kids With Cancer, recalled that when the parents first came together for emotional support in dealing with their children's illnesses they discovered that "we were just as traumatized by our insurance companies as we were by the cancer."[v] Consumer groups have fought for more than a decade to win public rules dictating what insurers and HMOs can and can't do to their patients, including prohibitions against discrimination and exclusion of those who need care the most. When the marketplace breaks down and denies millions of people access to basic services or goods, such as health care, there is clearly a case for government intervention and public rules.

Protecting Our Wallets

The theory of the free market also suggests that competition between producers will automatically force prices down, to the lowest point where it is still possible to make a profit. In many cases the theory works, but both history and the modern economy are full of examples where industries have eliminated or reduced competition to the point where consumers have been left wide open to abuse. In the late 1800s U.S. railroads used monopoly controls over transport to charge farmers wildly inflated rates to move their crops to market. Modern fears about economic concentration range from bank mergers to high airline prices to Bill Gates' power over computer operating systems.

Utility monopolies are the textbook example of where only government price controls are needed to protect consumers. In many towns and cities there is usually only one company from which we can buy our home electricity or gas. Without public regulation of utility prices they could charge us almost any amount they wanted. In 2001 Californians learned a hard lesson about abandoning price regulation in favor of the greener pastures of the open market. Soon after state lawmakers approved legislation deregulating the wholesale electricity market consumers and businesses found themselves living a nightmare of skyrocketing energy rates and energy shortages as producers withheld power to boost prices even higher.

A similar market failure that gouges consumers is common in many big city rental housing markets. In San Francisco, for example, a city enclosed on three sides by water, there isn't a lot of room to build more rental housing so supply is largely fixed. Heavy demand for rentals, matched with limited supply, allows landlords to charge exorbitant rents. Cities such as New York, Boston, Chicago, Los Angeles and others face similar situations. A common political response is rent control, city ordinances that limit annual rent increases, usually to the local inflation rate.

Free market purists argue that prices must be set by the market alone, allowed to rise to whatever level consumers are willing to pay in order to give suppliers the incentives necessary to increase production to meet demand. Just as Friedman argues that government limits on gasoline prices caused gas shortages in the 1970s, opponents of rent control argue that limits on what landlords can charge discourages new development, keeping the supply of housing low, rents high, and giving a windfall to the lucky few who manage to move into rent-controlled apartments and houses. Energy producers argue that as prices rise energy production will eventually increase and prices will come down. All this may be true in theory, but when the normal rules of supply, demand and competition don't work to keep prices down government limits are the only protection we have against enormous abuse.

Protecting Our Safety

Another presumption of market theory is that, as consumers, we know everything we need to know about the products we buy. The theory assumes that we can make solid, well-informed choices without the need for government protection. But as economist Robert Kuttner counters, this is not always the case, "The consumer can't be expected to know with precision if her hamburger is poisoned, if the lawnmower will cut his foot off, if the water is safe to drink."[vi] The debate over government rules to protect our health and safety began in earnest in 1906 when Upton Sinclair shocked the public with his account of squalid conditions in meat packing plants in his book The Jungle. The resulting uproar led to creation of the U.S. Food and Drug Administration (FDA) and federal testing and regulation of food and drug products.[vii] Similar public safety regulations have been established over the years for products ranging from autos to amusement park rides.

Free market fundamentalists argue that such rulemaking does consumers far more harm than good. They say that public rules stifle product innovation, especially in the development of new pharmaceuticals which could save lives. Victims of such birth-defect causing drugs as Thalidomide and DES might differ.[viii] In fact, according to former U.S. Federal Trade Commission Chair, Michael Pertschuk, Thalidomide, which caused an outbreak of birth defects in Europe in the 1950s, was actually kept off the market in the United States through the efforts of an alert government regulator.[ix]

Instead of public rules to protect consumer safety, the fundamentalists argue that, here as well, we should let competition do its job. Businesses, they say, will enforce their own safety standards in order to protect their public good name. "It is in the self-interest of General Electric, or General Motors or Westinghouse or Rolls Royce," writes Friedman, "to get a reputation for producing dependable, reliable products."[x]

In too many instances, however, protecting one's public good name has taken a back seat to protecting profit, at deadly expense. In 1999 a California jury found that very same General Motors guilty of ignoring a known manufacturing flaw that turned one of its cars into an exploding bomb when hit from behind. An internal GM memo reported that while deaths from potential fires would only cost the car makers $2.40 per car (in potential legal claims), fixing the flawed gas tanks would cost as much as $4 to $12 per vehicle. Ranking profits first, GM chose to remain silent, putting thousands at risk, including the six people nearly burned alive who filed the anti-GM lawsuit.[xi] Cases like this one make it clear that the market alone does not protect the public from hazardous products and that some form of public protection is critical.

Protecting The Environment

As Friedman argues, accurate prices are the key to market magic. Prices need to reflect all the costs involved in making a product so that we, as consumers, can make rational choices between different alternatives. But some products don't reflect all the costs involved in making them. The most clear example is the failure of companies to reflect the cost of environmental damage in their production costs and pricing. The costs of producing gasoline at a Shell oil refinery, for example, don't just include what the company pays for crude, for equipment, and for the salaries of its workers. The costs of that production also include the environmental damage caused by the tons of pollutants that the plant spews every year into the surrounding air and water.

Much of these environmental costs are simply passed on by Shell and other companies to those who live near that water and who breathe that air. Economists call these passed-on costs "externalities" and the result is that polluters have little incentive to stop degrading the environment. In addition, because those costs are also not reflected in the price at the pumps, consumers are given a false sense of what that gasoline (or other products) really cost. If gas prices, for example, reflected the full cost of the damage that gasoline production and use causes to the environment more of us would likely switch to more fuel-efficient cars.

Critics of environmental protection warn that too many rules reduce needed production and chase away jobs to other communities or countries that do not have such rules. Nevertheless, even free market hard-liners agree that this is an area where leaving the market to its own devices does not protect our vital interests. Writes Friedman, "The preservation of the environment and the avoidance of undue pollution are real problems and they are problems concerning which the government has an important role to play."[xii]

Protecting Workers

Public rules in the marketplace are also important to protect us as workers. The major battleground over worker rights is usually about salaries. The marketplace for labor is changing radically in the United States, leaving more and more low wage workers farther behind relative to the cost of living. From 1973 to 1993, the number of work hours necessary for an average U.S. worker to earn an average household's expenses almost doubled.[xiii] At the same time the gap between the wealthy and the poor has also grown dramatically. From 1979 to 1993 the wealthiest fifth of the United States saw their real incomes grow by 18 percent, while the poorest fifth saw theirs drop by 15 percent.[xiv]

Just a generation ago many families were able to live well on the income of just one parent. Today most families depend on two. Left to itself, the market is making it harder and harder for many workers to earn what a family needs to make ends meet.

The main government intervention to boost low salaries is minimum wage laws. Free market purists argue that minimum wages hurt low-income people because when employers are forced to pay higher wages they hire fewer workers. [xv] However, these same theorists also claim that any costs imposed on businesses are just passed on to consumers. In that case, if McDonalds, Jack in the Box and Burger King are all required to raise their minimum salaries by 25 cents an hour, the companies are far more likely to raise the price of their hamburgers, not hire less people to flip those burgers. It is also a fact that the money earned from those higher minimum wages is not just put in a charcoal broiler and burned. The increased spending power of those workers circulates back into the economy and often into many of the same businesses required to pay the higher wage.

Nevertheless, even minimum wages lag far behind what workers actually need to live. According to one study, three fourths of the jobs with the most growth in the U.S. economy now pay less than what workers need to survive.[xvi] As a result, dozens of cities across the United States have either enacted or are considering enactment of "living wage" ordinances. These mandate wages, for city workers and those in nonprofit organizations and businesses with city contracts, that reflect the actual cost of living in an area (often double the minimum wage).

As with the minimum wage, opponents argue that the result will be higher wages for a few, but fewer jobs overall. This could be true if wages are raised too high too quickly. However, living wage laws allow the poorest of workers to rise to a level of self-sufficiency, making them less dependent on government support (and therefore less of a burden to taxpayers). Those higher wages also get circulated back into the local economy, benefiting everyone. The debate over government's role in setting wage floors is an important one and one thing that is clear is that, left alone, the market is creating a whole class of workers who can't make it unless there is some form of public intervention.

Placing Limits on What Should be a Market and What Shouldn't

Finally there is the question of what should be a market and what shouldn't. The marketplace is like a heat-seeking missile, always looking for new areas of our lives and our culture that can be converted into an arena for profit-making. Centuries ago the Catholic Church made a market out of entry into heaven, through its sale of papal "indulgences". Today the market encroaches further and further into other areas of our lives once considered off-limits. Our kids are not only pummeled with manipulative advertising during their Saturday morning cartoons. In many school districts that advertising has also invaded the classroom, as schools sign a Faustian bargain with the enterprise, Channel One. The company offers classes a free TV and "educational" programming in exchange for forcing students to watch paid advertisements. Public broadcasting, once a safe haven from corporate messages, now runs lengthy corporate promotional clips and claim they aren't ads.

Every year more parts of our culture are being converted into vehicles for advertising and commercialization - sporting events, movies, even the time we spend on hold while making phone calls. Left to its own devices, the market imposes no limits on what it will convert into an opportunity for profit-making. If we believe that there ought to be such limits (such as restrictions on advertising aimed at children) we can only have them by establishing public rules.

Public Rules For Business - Which Path To Take?

Where market failures, excesses and abuses do warrant some form of public rules and protections, what kind of rule is the most appropriate given the circumstances? There are a wide variety of actions possible and the challenge is to find the most effective and fair, yet least costly way to change the production habits of thousands of businesses or the consumption habits of millions of individuals.

Regulation

The most traditional form of public rulemaking in the marketplace is "command and control" regulation, specific rules that businesses must follow under threat of public penalties. On the one hand, this is the most direct way to command an action in the marketplace - be it banning dangerous products, setting caps on energy prices, forcing polluters to clean up the damage they cause, or prohibiting health insurers from canceling coverage for the seriously ill. In many cases, unless there is a rule governing all of the potential businesses involved in a certain problem, those businesses that might act voluntarily (to clean up their pollution, for example) could easily decide not to do so because it would put them at a disadvantage against competitors who don't adopt those same practices.

However, the command approach to regulation can also have serious weaknesses. First, such regulations may suffer from a "one size fits all" problem. In many cases it is virtually impossible for one national or state rule to be the best approach in every single case. One factory might do a more efficient job of pollution cleanup with one type of technology, while a different plant might do better with another. Opponents of business regulation also criticize its high cost, which some antagonists argue add as much as $100 billion per year in extra charges to businesses and consumers.[xvii]

In response, government regulation is moving away from "command and control" and more toward an approach called "performance standards". Government agencies mandate specific outcomes rather than the specific steps businesses must take to achieve them. A factory might be required to reduce its pollution output by 30 percent, but then left to decide for itself whether it is more efficient to do that by buying a new smokestack scrubber or by financing car pools for its commuting employees.

In either case, it is important to keep in mind that cost estimates for regulation are sometimes inflated by regulation opponents for political purposes and these estimates also often ignore the economic value created by regulation. Auto emission controls, for example, in addition to producing cleaner air, are also a $7 billion per year industry which contributes mightily to the overall economy. U.S. environmental protection technology, developed in direct response to government rule making, is becoming a lucrative export as other nations begin to address the same kinds of environmental problems.

One other weakness with regulation is the potential for industries to use their political might to win influence or outright control of the government agencies assigned to regulate them (what economists call "industry capture"). A century ago the railroads won political control over the agencies created to oversee them. Today doctors use state medical licensing laws to keep nurses and other medical professionals from carving into their practices. Consumer activists in California thought they had won a permanent victory over insurance companies when state voters converted the office of insurance commissioner into an elected post in 1988. Within just six years, however, the insurance industry used its campaign contribution clout to elect a brazen champion of the industry's interests.

Regulation is the use of the government's coercive power to force the marketplace to act in certain ways. In some cases it is the best approach and often the only one that can truly protect us. In other cases, however, it can be overused, creating whole new industries dedicated to escaping those rules. Regulation is best treated as a scarce resource, to be used on important matters and only when other, less costly, less intrusive methods won't work.

Financial Incentives

An alternative to regulation which is gaining increasing popularity is the use of government financial incentives, such as tax breaks, to encourage businesses to take actions deemed to be in the public interest. These include tax credits for reducing pollution, subsidies to insurers who agree to cover people with long term illnesses, and tax breaks for businesses that locate and employ people in economically depressed neighborhoods. Brookings Institute economist and former Carter administration economics advisor Charles L. Schultze calls the incentive approach, "harnessing the 'base' motive of material self-interest to promote the common good."[xviii]

There are many instances in which incentives may be more effective and less costly than regulation. Incentives avoid the assumption that government regulators know the best solution to every problem. They can encourage innovation and they force us to put a clear price on what we are willing to pay in order to get certain results. However, the incentives involved are not free. They usually come directly from tax dollars needed for schools, libraries, public clinics, and other priorities. They are often given away with no clear accountability to assure that what they cost is really matched by the actual public benefits produced (for a more detailed discussion on the pros and cons of tax incentives see chapter three). Many also argue that we shouldn't be paying businesses to be doing things they ought to be doing anyway, such as paying Shell Oil to clean up its refinery pollution.

In those cases where we do use paid incentives in the marketplace, we must be careful to calculate what the public is getting in return. One important model is the "responsible corporation" legislation proposed in Congress. The law would give a very specific package of tax breaks and regulatory relief to businesses that in turn deliver a very specific package of employee protection, training, labor rights, and health and retirement benefits. [xix]

Disclosure and Empowering Consumers

Another approach is the development of vigilant, active consumers, equipped with strong public disclosure laws, who can monitor the claims and practices of businesses and force them to be accountable. Sometimes this vigilance takes place at an individual level, as consumers make use of independent information, such as Consumer Reports magazine's highly-regarded product testing. That access to independent information must also be matched with organized consumer action, such as the consumer education campaigns, boycotts and other tactics that have forced industries into granting labor rights to farm workers, stopping fishing practices that killed dolphins, lowering meat prices, and other victories.

Consumer advocate Ralph Nader proposes the creation of new institutions designed to ensure corporate accountability to consumers. One proposal is to create a universe of "consumer utility boards" linked to specific utilities, banks, HMOs and insurance companies. Consumers of those companies would elect people to represent them and would fund advocacy on their behalf through ballots and contribution forms enclosed in their monthly bills and statements. This would give consumers the same sort of collective bargaining and advocacy rights with companies that workers have through labor unions.

Government-required disclosure rules are an essential part of this consumer empowerment. At the local, state and national level government rules require manufacturers to make public the ingredients in their products, require polluters to disclose what chemicals they've used and where, and require lenders to report what communities they have cut off from access to credit. With the marketplace wielding so much power and influence over our health and well-being, the public has a right to get a clear look at what corporations are up to so we can take appropriate action. These disclosure rules must be protected and additional ones must be added.

To be clear, however, simply educating consumers and organizing them is not a substitute for government rules. The world's corporate giants have amassed such power that government and only government has the clout to provide the counterbalance needed. Even organizations such as Consumers Union which actively work to educate consumers also aggressively advocate government regulation (of car safety, health plans, bank practices, etc.) when such public rule making is needed.

Civil Liability

Where inadequate government rules have left the public unprotected (such as with the sale of dangerous products) one of the other main recourses left is to take businesses to court. Business groups bitterly oppose the use of consumer lawsuits to police them, complaining that such litigation drives up the cost of doing business. Yet, in many cases it is the lobbying efforts of these same corporations that have left the public unprotected and left us with no other choice but to sue. As economist Robert Kuttner writes, "The exploding Ford Pinto gas tank and the Dalkon Shield intrauterine device, which rendered many of its users infertile, slipped through the regulatory net because conservative administrations had weakened enforcement. It turned out in both cases, that manufacturers had known of the risks but had marketed these products anyway. These facts came to light only through litigation."[xx]

Certainly, both consumers and businesses would be better off if these hazards were averted through safety regulation before any deaths and injuries occurred. However, in the absence of adequate safety rules lawsuits provide justice to those harmed and communicate a financial threat to offending corporations. Unfortunately, for some companies the threat of a lawsuit is the only language they are able to hear. In cases where corporate negligence is especially severe, many juries also impose "punitive damages," penalties as high as hundreds of millions of dollars, sending a powerful warning signal to other companies that might contemplate such abuses.

Criminal Liability

In other cases, even the threat of expensive civil suits is not enough to make some corporations protect consumers or other public interests. Potential penalties or jury awards are treated as one more cost item to add to the ledger. Most of us, on approaching a red light, do not make an economic calculation in our heads about the benefits of running the light vs. the costs of getting caught. Yet, according to University of Illinois

Law Professor Cynthia Williams, some legal experts argue that corporations should do exactly that. In the words of one conservative legal doctrine, "Managers have no general obligation to avoid violating regulatory laws, when violations are profitable to the firm…"[xxi] It was exactly this cost/benefit approach to consumer safety that led General Motors to ignore the exploding gas tank problems that left six plaintiffs badly burned.

In response, a number of lawmakers and consumer groups are pushing for personal criminal liability for corporate managers who knowingly expose the public to such risks. Dubbed, "be a manager, go to jail" by its critics, the criminal liability approach is important because by the time civil suits or government penalties ever catch up with offending corporations, the managers responsible have left the company.[xxii] Criminal convictions face a stiffer burden of proof than civil suits and therefore these cases are often hard to win. Nevertheless, somewhere in the complicated web of the modern corporation responsibility needs to be placed firmly onto someone who makes the decisions, giving them a solid reason to err on the side of the public interest rather than pure profit.

Private Enterprises vs. Public Ones

Finally, there is the debate over whether or not certain services are better provided by private corporations or as public services financed through tax dollars and made available to all. In the United States primary and secondary education for our children has long been considered a public responsibility. It is also how we move the mail, build our highways and provide health care to our aged. The inequities of the marketplace may be acceptable as a way to buy cars, clothes, and furniture, but for the basics that we need to survive, the natural inequities of the marketplace are often too much.

Today this debate over public vs. private plays out the loudest on the issue of health care reform. In a health care market dominated by private coverage, more than 36 million people in the U.S. have no coverage. Among them eight out of ten are working people and their families.[xxiii] While most reform proposals focus on regulating the actions of private insurers, a strong alternative view argues that we would be better served if we reformed much of our health care system into a public service, as is the case in virtually every other wealthy nation. Supporters of public health care argue that corporate health care wastes up to 30 cents on the dollar on marketing and administration (up by 500% in just 30 years) far in excess of what government programs such as Medicare spend.[xxiv] They cite evidence from the General Accounting Office and others that a Canadian-style, publicly financed health care system (using private health providers operating under public contracts) would allow the United States to extend coverage to all of the nation's uninsured at no extra cost.[xxv]

Opponents of state-run health care contend that such a system would stifle the innovation present in U.S. health care and increase access only by giving everyone "equally bad, or "equally delayed" care. They also raise concerns about the bureaucracy, inefficiency, and political meddling that can burden government-run programs. However, private health insurers, who often cancel or deny coverage and services just when people need them most, are themselves huge bureaucracies, but without the options for recourse and public accountability we have with public agencies. When the evidence suggests that a publicly financed and governed system can deliver a better product at less cost, whether that be for health care, electricity, or a university education, it is time to look at how to move those services from private hands into public ones.

The Challenge Of Globalization

The relationship between a free market and government protection is about balance. When the market is too free, the door is open for serious abuse. When government protection is too rigid, innovation and freedom are stifled. Over the course of the last century in the United States that balance has been fought for through battles on issues from child labor to protection of the environment. The result is a market left essentially to itself but with many of its worst excesses checked by government policy and negotiated settlements with organized labor. Today however, that balance is under serious threat from economic globalization. Corporations that were once based in a single nation have been transformed into global webs. Billions of dollars in capital and thousands of jobs move easily from one country to another. The old national systems that served to check the dangerous excesses of the market have are being outgrown.

On the one hand economic globalization is inevitable. The world, both economically and culturally, is knitting itself together. To argue against globalization is like arguing that we shouldn't have earthquakes. It also important to recognize economic globalization's benefits - new products and lower prices for many consumers, new opportunities for many workers and businesses. That said, it is even more critical that we recognize the potential dangers of a global marketplace in which all the main rules are being written by the world's wealthiest, to their direct advantage at the expense of everyone else.

Workers, consumers and the environment face the same kind of abuses globally that we have fought against so hard domestically, not just in the United States but in many countries. Global corporations have a big incentive to move where they can find the cheapest labor, the weakest environmental rules and the least government interference. To compete, local, state and national governments bend over backwards to give companies what they want. Developing countries face not only these pressures but also coercion from international financial institutions like the World Bank and the International Monetary Fund, which link their financial assistance to government rollbacks of labor rights and privatization of their public enterprises. Author Jeremy Brecher has called this politics of bowing to corporate demands, "the race to the bottom".

The boosters of unrestricted economic globalization trumpet these changes. Says a former Reagan Administration Treasury Department official, "Now the challenge is to demonstrate to the world that the loss of sovereignty by governments to capital is a new paradigm that will reward governments with good policies and punish those with bad ones."[xxvi] Under this view of corporate sovereignty "good" policies mean rolling back labor, consumer, and environmental protections while "bad" policies mean trying to keep those protections in place. Warns former Mexico City Mayor Cuauhtémoc Cárdenas, "The exploitation of cheap labor [and] lax environmental protection [should not be] the premises upon which Mexico establishes links with the U.S., Canada, and the world economy."[xxvii]

The architects of economic globalization are also busy writing a whole body of international law aimed at eroding public protections against the marketplace's worst abuses. Trade agreements such as NAFTA and GATT take local, state and national laws (such as California's anti-toxics law, Proposition 65, approved by voters in 1986) and make them subject to repeal by international trade panels as "non-tariff barriers to trade."[xxviii] Ralph Nader warns that the current round of trade agreements, "formalize a world economic government dominated by giant corporations, without a correlative democratic rule of law to hold economic government accountable."[xxix]

The democratic challenge of the coming century will be to build, on a global basis, the same kinds of rules, institutions and campaigns that have been used to limit market excesses within nations during the last century. After World War II world leaders agreed to an international Declaration of Human Rights which set ground rules for how governments must treat their people. Today we need a set of international standards governing how corporations can treat consumers, workers, communities, and the environment. We also need international institutions that can enforce those limits on corporate behavior. Finally, just as it has taken organizing efforts among workers and consumers within the United States to win and protect rights here, that organizing and campaigning must be replicated an international basis.

If democracy is our right to determine the course of events that shape our lives, then the marketplace as well must be subject to democratic choices. While it is true that the market is largely a place of individual decisions and actions, its excesses, abuses and cruelties are also evident in abundance and we have a right to control them with public, democratic action. What we need is a marketplace that is neither overly controlled nor allowed to serve solely the interests of those with the most money and power.

In thinking about this balance between economic freedom and economic protection, we can borrow a piece of wisdom from the science fiction master, Isaac Asimov. In his writings Asimov imagined a society in the future which had created a race of robots with both the physical and intellectual power to dominate over humans. To

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prevent that domination each robot was inscribed upon creation with a descending order of rules which it could not violate. They were, essentially:

> First, do no harm to any person.
> Second, do not, by inaction, allow a human being to come to harm.
> Third, protect your own existence.

The modern corporation is the robot of our age, machines of enormous physical and intellectual power, able to control human lives but not automatically subject to human morals. To be clear, among business leaders there are certainly many fine women and men who do look for ways to keep the public's broader interests at heart. However, in case after case - decisions by auto makers to let families drive around in exploding cars, Dalkon's decision to let women become sterile from a flawed birth control device - we have seen that some corporations too often follow Asimov's rules in reverse. Profit and expansion is paramount, preventing harm to our health, environment, and livelihoods is secondary.

Public rule making in the marketplace is about reversing that order of priorities. The marketplace is a complex beast and no magic wand of regulation or public rule can automatically make it behave the way we would wish. However, by agreeing that there can and should be public rules and by making them sensibly, we can have both economic freedom and the public protections that are so important.

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[ii] Milton Friedman and Rose Friedman, "Free to Choose," Harcourt Brace Jovanovich, New York and London, 1980 (p. 11-13).
[iii] ibid. (p. 14)
[iv] George Lakoff, "Moral Politics", The University of Chicago Press, Chicago and London (p. 210-211)
[v] Advocacy Institute, "Bridging Washington and the Grassroots", Advocacy Institute, Washington, DC, 1990 (p. 24)
[vi] Robert Kuttner, "Everything For Sale", Alfred A. Knopf, New York, 1997 (p. 281)
[vii] Friedman (p. 194)
[viii] ibid. (p. 206)
[ix] From an interview with the author.
[x] ibid. (p. 223)
[xi] Sarah Tippit, "California Jury Orders GM To Pay $4.9 billion", Reuters News Service, via Internet, July 9, 1999.
[xii] Friedman (p. 214)
[xiii] Jeremy Brecher and Tim Costello, *Global Village or Global Pillage*, South End Press, Boston, 1994 (p. 23)
[xiv] Kuttner (p. 86)
[xv] Brecher & Costello (p. 237)
[xvi] "Working Hard, Earning Less", National Priorities Project, Northhampton, Mass., 1998 (p.5)
[xvii] Kuttner (p. 234)
[xviii] Charles L. Schultze, "The Public Use of Private Interest", The Brookings Institution, Washington DC, 1977 (p. 18)
[xix] Kuttner (p. 108)
[xx] Kuttner (p. 318)
[xxi] Cynthia A. Williams, "Corporate Compliance with the Law in the Era of Efficiency", North Carolina Law Review, Volume 76, April 1998 (p. 1265)
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[xxii] Kuttner (p. 313)
[xxiii] "Uninsured in America", Kaiser Family Foundation, Menlo Park, CA, 1998 (brochure)
[xxiv] Kuttner (pps. 112 & 147)
[xxv] ibid. (p. 155)
[xxvi] Tim McNamar, Deputy Secretary, U.S. Treasury Department, 1981-1985, letter to the editor, *Time* magazine, March 8, 1999 (p. 5)
[xxvii] Jonathan Schlefer, "What Price Economic Growth", *The Atlantic Monthly*, Dec. 1992, (p. 117)
[xxviii] Brecher & Costello (p. 58)
[xxix] ibid. (p. 60)