

## Uncertainty Management and Government Regulation

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### Abstract

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American businesses are facing increasingly burdensome government regulations. The U. S. Constitution was designed to *limit* government's influence over business and individuals, yet we see government's continued reach for the private property of businesses. This trend has become a tyranny over capital in America. In the present paper, a Model of Pernicious Regulation is provided which illustrates a managerial view of the regulatory process. Excessive regulation is seen to increase managerial uncertainty leading to higher prices and weakened businesses. Inconsistent with the U. S. Constitution, excessive regulation is driven by the political activities of external stakeholder groups. Regulation has reached so far beyond its limits that it violates the rule of law. It becomes a form of law outside the constitution. A Model of Regulatory Stewardship is proposed that shows how Christian stewardship in government reduces managerial uncertainty and consumer prices leading to stronger businesses. The implication of the model is a greater presence of Christians in key government decision-making positions.

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### *The Tyranny of Excessive Regulations*

We hear about new government "rules" (i.e., regulations) often. Most hear these pronouncements so often that we do not give them a second thought. What is of concern is that these new regulations are increasingly intrusive, even dangerous, to a free society that values private property ownership. For example, government has recently issued a regulation on the size of holes in a Swiss Cheese loaf ("Less Hole, More Cheese"; Clarion-Ledger, 1-25-01). How often do we contemplate the meaning and implications of increased regulation of business? The common theme of these announcements is that more government regulation of business is good because "big business" is implicitly bad. We hear about "big (i.e., bad) oil" and "big (i.e., bad) tobacco." Another current example is the regulation of utilities in California ("California's Dim Bulbs"; Wall Street Journal Interactive, 1-16-01). California suddenly does not have enough energy for its residents and utility bills are believed to be too high. The state of California has experienced repeated brownouts and blackouts. This condition is typically attributed to scarce energy, high energy bills, and deregulation of the industry. But the true cause that goes unpublished is that government has usurped free market capitalism in that industry in California by forcing a price cap on energy retail sales, while allowing wholesalers to charge unregulated market prices. Now, the retail utilities have been forced by regulation to sell energy to the public, *below* cost, presumably so everyone can have affordable energy. Energy retailers in California are, therefore, under coercive government control. It is called regulation. But where is the incentive, now, to produce **any** energy in California when the retail utilities cannot sell at market value? Two utilities will go bankrupt if not bailed out by the very government that forced them into this dependency. What does that suggest?

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The true story, which is rarely told, is that over the years radical environmentalists have agitated the federal government, literally co-opted the government, to support their agenda. A part of the agenda is to eliminate all nuclear energy production because it is said to be dangerous to the environment. As a result, an environmentalist government has quietly banned the building of any new energy plants over the years. Is it any wonder, now, why there is an energy shortage in California? Government regulation itself has **created** the shortage. It is not a literal shortage. It is an artificially created shortage.

### ***A Model of Pernicious Regulation***

Figure 1 illustrates the problem that excessive regulation poses for business management. In the Model of Pernicious Regulation aggressive government regulation creates an uncertain environment for management. Management is uncertain because regulation reduces alternatives, therefore flexibility. If there is only one choice, what is the firm to do when that is a bad choice? This increased uncertainty naturally lends itself to decreased operational efficiency. Efficiency is

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 Insert Figure 1 About Here.  
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decreased because economies of scale cannot be anticipated. Economies of scale cannot be anticipated because business is forced to cope with increased regulation which diverts resources to attorneys and government. Inefficiency then leads to fewer resources because of the waste inherent in inefficiency. Scarce resources lead to higher consumer prices because demand outstrips supplies. Free market capitalism is weakened which then leads to more government regulation because consumers do not want to, or cannot, pay the higher prices. Let me ask you this: When was the last time you heard any mainstream national media outlet praise a big business for its positive contributions to society? Business must be competitive, because this produces good quality products. Management must be free to compete, based on market principles, so the efficient firms can succeed and benefit consumers. Porter (1980) recommends that government regulation be viewed as working “*through five competitive forces*” (i.e., indirectly, p. 29), but the position of this paper is that because regulation is so pronounced, it should be considered an independent, direct force. If the most efficient firms are

frustrated, there will be less incentive for business growth. Regulation kills business competitiveness because uncertainty becomes too great and a flexible response becomes impossible. Do big businesses make positive contributions to our society? Of course, where would we be without them?

### ***Regulation and the U.S. Constitution***

What is regulation? According to Webster's dictionary (Neufeldt and Guralnik, 1991, p. 1131), to regulate is "to control, direct, or govern according to a rule, principle, or system." It is "prescribed" meaning that it is the rule of law and this law can be known objectively in advance. A regulator is, again according to Webster's, "a mechanism for controlling or governing the movement of machinery, the flow of liquids, gases, electricity, steam, etc." This definition states unambiguously that government regulation is control. Bovard (1999) purports a stronger definition. He argues that the fundamental nature of government regulation is coercion, or force. He argues that all functions of government, not just regulation, are inherently coercive, seeking unbridled control. Implicit in these definitions is public control of private property, but private control is a necessary component of Capitalism. The regulation this paper points to is excessive regulation. It is destructive not only of the targets of regulation, but of the regulator himself, for the regulator needs the profitability of its target (business) from which to draw taxes. If the regulated die, so does the regulator.

Another important definition of regulation is found in the U. S. Constitution (1787). The Constitution gives Congress the power to regulate domestic and international business. The most straightforward statement of this is found in Article 1, Section 8 which states that: "The Congress shall have the power...to *regulate* commerce with foreign nations, and among the several states, and with the Indian tribes." This statement might be interpreted to suggest a broad power to regulate business. But, further reading of the specifics of Section 8, however, implies a limited role for government regulation. For example, the Congress has the power "To coin money, *regulate* the value thereof, and of foreign coin, and fix the standard of weights and measures; ...To dispose of and make all *needful* rules and *regulations* respecting the territory or other property *belonging to the United States*;..." (Lossing, 1848). Do businesses and their

property belong to the United States? Of course not, but the mindset of recent regulation implies this view. This is unfair to business.

The Constitution provides that any regulation should be fair. For example, it provides that "No *preference* shall be given by any regulation of commerce or revenue to the ports of one state over those of another." Yet, Seidenberg (2001) reports, for example, that phone companies are much more heavily regulated than cable companies. Thus, while the federal government is granted limited power to regulate business, the limited regulations in the Constitution are impartial. Nowhere does the Constitution suggest the federal government is to have the power to unfairly regulate any business. For that matter, the Fifth Amendment specifically provides that "nor (should any private U.S. citizen) be deprived of life, *liberty or property* without due process of law; nor shall *private property* be taken for *public* use, without just compensation." Doesn't excessive regulation in effect take private property for public use without due process? Further, the doctrine of just compensation is also found lacking in government regulation of business because firms are not compensated for the losses incurred due to excessive regulations.

Complaints about excessive regulation are seated in some of the deepest values of American culture. For example, the Declaration of Independence (1776) cited the source of early attempts to regulate the affairs of men in America when it was written: "He (i.e., King George III -) has erected a multitude of new offices (i.e., regulatory agencies) and sent hither a *swarm of offices*, (i.e., regulators) to harass our people and eat out their substance." Thus in the larger context of both the Constitution and Declaration of Independence, it can be reasonably concluded that it was not the intent of the signers to use federal government regulation to limit the use of one's property (business) nor confiscate property in any way directly or indirectly, nor burden property owners with excessive regulation. The goal was small government that would maximize individual freedom. The constitution was meant to *prevent* such coercive government regulation to which the signers had been subjected to in the United Kingdom. The signers were focused specifically on the limited areas of money supply and control, fair taxation, naturalization, national defense, tariffs, and bankruptcy, not absolute control of business through excessive regulation.

This becomes clearer when we consider what the signers did *not* intend. They did not, for example, intend to create governmental agencies that would in effect (1) confiscate personal property through excessive environmental regulations (EPA), (2) force employers to hire potentially unqualified personnel through affirmative employment hiring regulations (EEOC), (3) overburden business with excessive safety regulations (OSHA), (4) artificially limit the size and influence of a corporation (monopolies) or (5) excessively tax and fine businesses (IRS). These are but five of the more obvious examples.

Some say, what is the problem? All these regulations are meant for the protection of the public, they say. This seems reasonable on the surface. Regulations may seem to be progressing toward a more egalitarian, fair society where all rights are respected and protected, not just those of big business. But does the evidence support that conclusion? The problem is that the constitutional rights of big business have been violated and the proper role of government regulation has become perverted. Business is not autonomous, but then neither is big government. The proper role of government is to follow the constitution. Let us now take a look now at what management theory has to say about the uncertainty that excessive regulation brings about.

### ***Are External Stakeholders Socially Responsible?***

R. E. Freeman (1984) documents the original use of "stakeholder" as only stockholders (pp. 31 and 49). Since then, the concept has been greatly expanded. Stakeholder theory discussed in this paper teaches that there are a spectrum of external pressure groups who desire to have a say in how companies are managed. There are also internal stakeholders, but the spectrum is not as broad. External stakeholders argue that they should be able to decide when big companies are too big, too powerful, too irresponsible, too unfair, too dangerous, or too greedy. In short, they believe they have a "stake" in the corporation. Stakeholder theory takes the position that big business should be "socially responsible" and it assumes that these self-appointed external pressure groups hold business accountable. Buchholz (1986, p. 23) defines social responsibility as big business's obligation to help society solve some of its social problems under the assumption that big businesses themselves caused the problems. One important

assumption is that big business has unlimited resources to use in solving the social problems. This assumption is not true. Stakeholders influence corporations in large part by pressuring for more government regulation, but whose moral standard is to be used as the basis for imposing more regulation? The answer for many is a relative standard, i.e., one that is not based on absolute truth. It is a standard that is constantly changing as particular interests change. The only correct standard, however, is based on absolute standards derived from the Bible. Without absolute truth, this peculiar form of relativistic morality justifies unlimited regulation.

Unfortunately, humanistic reasoning from a relative standard is but one more justification for government regulation that increases uncertainty for business. Stakeholder theory is indifferent to the increased uncertainty and realistic limits of company resources. This is incongruous because stakeholders claim to have a stake in organizational outcomes, but there is never a rational cost-benefit analysis performed before a regulation is imposed. Businesses are always assumed to be guilty of a social violation and they are always assumed to have unlimited resources. What is tragic for the academy is that this stakeholder theory is *promoted* in secular management textbooks, to the detriment of practicing managers and students. This begs the question, how can capitalism survive, much less prosper, in an environment where management's every move, strategic or routine, is questioned by a variety of stakeholder pressure groups, or even worse, punished by heavy government fines, imprisonment, or both? Even worse, in this relative environment, stakeholder expectations are constantly shifting which heightens uncertainty. Thus, corporations become politically correct as an adaptive response. Vazsonyi (1998) would say that this reminds him of the dictatorial rule of Marxist commissars in Hungary from which he fled to come to America in 1959.

Uncertainty management in business organizations is typically accomplished by marketing research, risk analysis, SWOT analysis, strategic management planning, and lobbying of Congress by influential CEOs. Business organizations often define government regulation as an environmental threat, i. e., a threat to their own competitiveness. Stakeholders, themselves, are often defined as a threat as well because their interests conflict. Uncertainty management is successful up to a point, but eventually, the specific environmental threat which is the focus of

this paper, government regulation, becomes an overwhelming threat and does permanent damage to corporations and to free market capitalism in general. Management often cannot assess its influence or respond sufficiently, so it becomes a chronic threat. Old regulation cannot be reduced, and new regulation cannot be prevented or managed. When uncertainty becomes an overwhelming distraction, management loses focus on its mission. This takes on even greater significance if foreign competitors are not equally regulated. The unregulated have an advantage in flexibility and the regulated are unfairly constrained. Why do you think so many products are made by U. S. companies in other countries which are then imported back into the U. S.? One solution is a smaller, more focused government. Another solution is a dramatic reduction in government regulation of business, but what if regulation cannot be reduced?

Classic management thought has much to say about environmental uncertainties of which government regulation is but one. The basic tenant of systems theory, not to be confused with ecological environmentalism, is that successful organizations must manage environmental uncertainty, i.e., uncertainty outside organizations' boundaries.<sup>2</sup> Notice that systems theory is not indifferent to stakeholders. Systems theory identifies stakeholders as potential environmental threats. To succeed in business, freedom of movement is essential to manage uncertainty. Classic management theorists (March and Simon, 1958; Katz and Kahn, 1966; Thompson, 1967; Child, 1972; Pfeffer and Salancik, 1978; Pondy and Mitroff, 1979) have known for over 40 years that as the external environment of business becomes uncertain, companies need *more* flexibility, not less. Uncertainty can be managed to a point, but is expensive. Attorneys and other specialists must be hired to cope. The organization has to restructure, look for a new CEO, layoff valuable employees, scan the environment more regularly, and so on. All this increases the cost of doing business which increases costs to consumers. But shouldn't the rule of law protect business organizations from unfair, excessive regulations?

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<sup>2</sup> Organizational systems theory does not define the concept of the environment in the same way as the ecological environmentalist so the reader should not be confused. Ecological environmentalists say they are interested in the condition of plants, air, soil, animals, and water. The intent of ecological environmentalism is not to purify the Earth, however, if that were possible, but to harness *all* free market capitalism i.e., private property for the service of absolute government. Ecological environmentalism therefore aggressively pushes for more and more regulation of business toward that end.

### ***Excessive Regulations Violate the Rule of Law***

In the author's informed opinion, excessive government regulations, not domestic or foreign competition, are the most potent source of uncertainty to American companies today. Excessive regulations are also a threat to Capitalism around the world. This is not just an American problem. De Soto (2000) asks why capitalism never achieves success in many other countries. His findings show that the rule of law is lacking in countries where capitalism does not catch on; only choking government regulations remain, most of which would be called "red tape" bureaucracy. In his study he found, for example, that there are so many regulations in third world countries that no one in their right mind would dare go into legitimate business. For example, De Soto's associates had to spend 289 6-hour days just to complete all the numerous steps to register a small garment shop in Lima, Peru (p. 18). The business they opened had only one employee and the cost of registration of the business was \$1,231.00 (p. 20). De Soto provides many other examples of roadblocks that take months or years to overcome for even the simplest venture. In these underdeveloped countries, as is increasingly true for the U. S., uncertainty is too high due to excessive government regulation and capitalism will either not expand or will expand so slowly as to fall behind less regulated countries.

Ever since the scandal in the garden recorded in Genesis, this has been an imperfect, uncertain, world. Some uncertainties will always be present, short of Christ's return. Successful managers must be able to assess current and future situations strategically to devise operating and strategic plans, which together take into account many variables, some known, many unknown. When the environment becomes too uncertain due to excessive regulation, the rule of law can be called upon as an impartial arbiter to protect the innocent and judge the wicked. But who are the innocent, and who are the wicked? Is big business always the wicked or does excessive regulation play a role? If constitutional law cannot protect business, then free market capitalism is impossible. Similarly, if the law of supply and demand is short circuited, capitalism is impossible.

As Bovard (1999) points out, the rule of law allows anyone to determine in advance the potential consequences of his actions. This makes life predictable and fair for everyone. It is

important to point out, as Bovard does, that the rule of law is successful because it is impartial and conveys this advanced warning function. This way, Bovard goes on to say, people can be aware of, and follow common, uniform rules as they plan their behavior to avoid punishment and possible failure. Sometimes, a plan does not work exactly and a backup plan is then implemented, but this can be planned in advance within the rule of law. It allows, even supports, the freedom to manage uncertainty in a fallen world. If government regulations demand political correctness based on relativism, this replaces the rule of law and society itself fails, which is well beyond the mere loss of business organizations.

Successful managers *must* be able to gauge risk and compare costs to benefits in order to make hard decisions about company size, the degree of workplace safety, who works for the company, or the company's impact on the environment. The idea of regulation discussed in this paper is a regulation that is not truly governed by the rule of law because it is beyond what the God-inspired constitution intended. More and more regulation demonstrates contempt for private property and equal protection under the law (14<sup>th</sup> Amendment to the U.S. Constitution). It may have the force of law, but it is a law foreign to a constitutional republic; it is political law. Political law is based on a relativistic concept that whoever has the greatest raw power rules. The constitution was not designed as political law, however. In contrast to constitutional law, political law is partial to some interests and neglects others. It is not predictable, so strategic planning is ineffective. It is not impartial, so it is uncertain which businesses will be constrained by increased regulation. Political law robs businesses of their God given and constitutionally protected right and obligation to manage flexibly as God's stewards.

Resources are always limited. Hard decisions have to be made—that is management. But, problems occur when good management makes good business decisions that inadvertently offend a regulation. How can American firms compete with others when one hand is tied behind their back? As figure one suggested, one result of this is an abrupt increase in the cost of doing business. The increased cost of doing business increases consumer prices, leading to fewer, not more employees, overall business contraction, and a more likely demise through bankruptcy or liquidation. Is this what the founding fathers had in mind? Is this what the Father, God, has in

mind? Let us take a closer look at what God planned for the relationship of business and government. What is the proper relationship?

### ***A Model of Regulatory Stewardship***

This might come as a surprise, but special revelation indicates that the institution of government was created by God. For example, Romans 13:1 states "Everyone must submit himself to the governing authorities, for there is no authority except that which God has established." Further, Proverbs 8:15 states "By me kings reign and rules make laws that are just"; thus, God established the authority of government and its agents. Submission to a just, fair government is constitutional *and* biblical. The U.S. Government was originally founded on this premise. The framers assumed that a free people could remain free only if they had a *limited* government which was granted its power by God. The government was seen to work for the people, not the reverse. As long as government was limited, the people remained free. This was a desirable state for business because a benign government was predictable according to the legitimate rule of law. But a government without a vigilant Christian influence can be subverted. The Declaration of Independence indicates, for example, that the American Revolution was decided upon because of prolonged and "repeated injuries" by King George III which had the cumulative result of "an absolute tyranny over these States." Self government was being subverted.

This does not mean, however, that man should not submit to government because God created the institution of government. According to the Model of Regulatory Stewardship in Figure 2, environmental uncertainty is low and efficiency increases when Christian stewardship in government provides a stable rule of law. Increased certainty allows businesses to operate more efficiently over time. Resources (i.e., God's blessings) become plentiful and as economies of scale become probable, the cost of goods is reduced leading to lower consumer prices and stronger capital markets. A government that follows the legitimate rule of law does not increase uncertainty for businesses. It knows that businesses must have a minimum of government regulation so that they can respond to competition. Christian stewards working in government, therefore, strengthen free market capitalism.

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Insert Figure 2 About Here.  
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### ***Good Government Can Become Corrupt***

The mindset of aggressive government now is that business is somehow a threat to the health and safety of Americans. This is far from the truth. This is not to say that there is no role for government in business, however, because there is. Business needs a government that makes limited, wise law that is upheld consistently and uniformly. Legitimate law upholds the rights of big and small business to retain control of their own property. The dignity of businessmen and women (i.e., internal stakeholders) is just as important as that of external stakeholders. A government that publicly recognizes the authority of God in its decisions, and which does not overreach its legitimate authority into the realm of political coercion of business is good government. That is the proper relationship of government to business. It is all too obvious that government is not presently functioning as God intended. Government regulations, especially because of the people who construct and preside over them, have become corrupt. In other words, the structure of the original constitutional republic is not the problem. No better structure has been created short of God's own Kingdom. The problem is the individuals who work inside the government structures. They have a relativistic, secular worldview that is antagonistic to free market Capitalism as well as Christianity in general. Increased regulations stem from this fundamental worldview error.

### ***Government is a "god"***

As suggested earlier, government policy can be made according to the wrong worldviews. For example, Isaiah 10:1 states "Woe to those who make unjust laws, to those who *issue oppressive decrees,*" (i.e., government regulation). Psalm 29:2, states "Can a corrupt throne be allied with you – one that brings misery by its decrees?" So while God originally set up government as a righteous institution for the good of people it governed, the wicked can subvert that government for their own selfish ends to the people's detriment. When allowed to the extreme, government itself becomes a (i.e., false) God. Consider, for example, the story of King

Nebuchadnezzar (Dan. 3:4-23). The King, being the government, issued a regulation that all subjects had to submit to his pagan image of gold. Notice they were "subjects" not citizens. To highlight the power of regulation, all but three subjects complied. These three, Shadrach, Meshach, and Abednego, realized that God's law superceded man's law and appropriately refused. They trusted the Lord with all their heart. God was glorified, the three saints were delivered unharmed from a furnace through divine intervention, and the government regulation was discredited. As a result of their steadfast loyalty to the Lord, their government gained the right perspective, one that recognized God's authority. Look at what determined conviction it took to improve government in that case.

Today, government is forcing corporations to bow down not only to itself, but also to the creation instead of the creator (Romans 1:25). Government is behaving similarly to King Nebuchadnezzar. This is perverse. Although God put Adam in charge of creation (Genesis 1:29-30; 2:19-20), regulation now is focused on protecting the creation instead of men. It is odd that there is no government regulation to protect the unborn human child, when, at the same time, there is a regulation to protect a particular Pacific Northwestern owl and many other animals not to mention rocks, dirt, air, and water. This is the obvious trend in the U. S. today. In a sense, our government has already fallen. It has fallen into the sins of pride, arrogance and idol worship. Increasingly, U.S. Citizens look to this government as their sacred god; a god who nourishes, protects, and disciplines its dependent children.

### ***Original Intent Must Be Restored***

Is this what God had in mind when he created free markets, capitalism, and a constitutional republic? The solution to this, of course, can only rest in the spiritual. The heart and conscience of each individual working in government, as well as each private citizen must recognize that government can never make this country a utopia through excessive regulation that an absolute government demands. No amount of regulation will eliminate the imperfections of capitalism. With all of its imperfections, the capitalist system of supply and demand functions according to freely competing agents. It is the best system available. It is the only system that works to provide the greatest liberty to the most. The only improvement on this is to open more

markets, to allow more competition to drive quality, quantity, and greater availability of products and services to more people with fewer regulations. The founding fathers knew that government needed free market Capitalism. It needed business as a source of tax revenue. The government's first source of taxes were import and export tariffs. But government was meant to protect the exercise of free markets, not constrain and undermine them. How can a constitutional republic survive if the business organizations it taxes become unprofitable?

For markets to once again become freely competitive, the original intent of the constitution must be respected and invoked anew. This would mean a much more limited role of government regulation of business. The government is not a god! The original Republic must be restored. As Wolters (1996) points out "redemption is to free the prisoner from bondage, to give back the freedom he or she once enjoyed" (p. 57). If God is again welcome in government institutions, there will be fewer regulations on business because the proper perspective will be restored. The government will again be free to perform its proper role of supporting business instead of burdening business. How does God get back in to restore government? God gets back into government through his followers, the born again believers. Christians must see all levels of government, especially the administrative and judicial federal levels as platforms for His service. Congressional seats, as well as the Executive Branch, must be prayed for and entered more routinely as well.

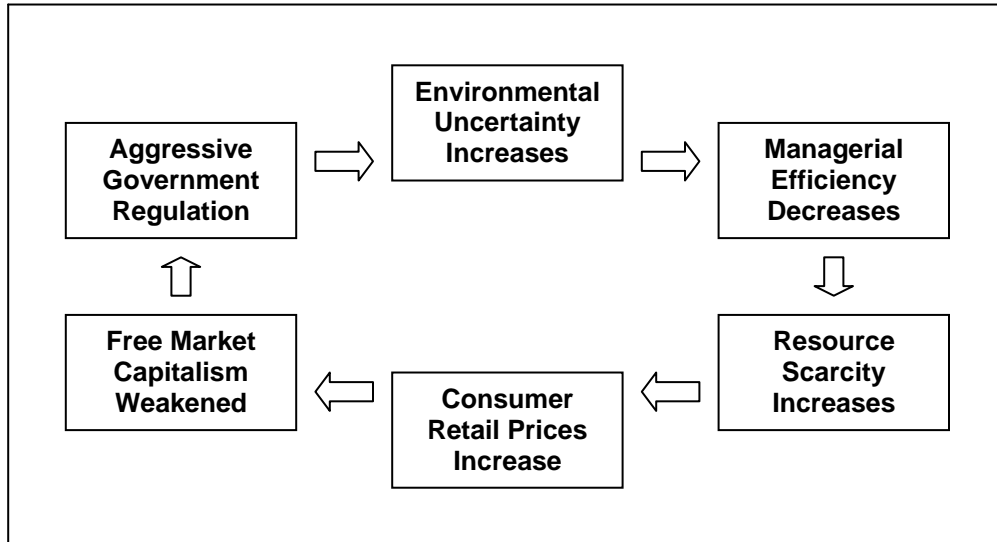
At this writing we have some encouragement in the election of President George W. Bush who knows the Lord. As Wolters (1996) suggests, government service is not a dirty endeavor or for losers. It is a Christian duty. Recall in Genesis 41:39-40 that Joseph was an influential leader in the government of his day. He was an outstanding government administrator. When Christians are employed in government, the government functions as it should. Remember, Christians are called to be salty (Luke 14:34). Christians preserve society, the same society Satan is trying to destroy. Figure 2 shows how Christian stewardship reduces environmental uncertainty since unfair regulations are removed in favor of constitutional freedom. This renewed freedom puts managers back in the business of improving operational efficiency of their company instead of managing the uncertainties of excessive regulations. With improved

managerial efficiency, companies generate extra resources and, eventually, consumer retail prices decline. Wolters (Fig. B, p. 68 in his book) reminds us that the proper Christian focus should not be on the distinction between secular and sacred but the focus should be on the competition between the Lord's Kingdom and the world who both lay claim to the same spheres (Fig. C, p. 68 in his book). An argument can be made that Christians have withdrawn from the secular to its neglect. Thus, our constitutional republic must be restored and renewed through the increased presence of God's sincere followers. Only then, as Wolters would say, can "Creation (i.e., be) Regained".

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**Figure 1.**  
**Model of Pernicious Regulation**



**Figure 2.**  
**Model of Regulatory Stewardship**

