



In My Opinion

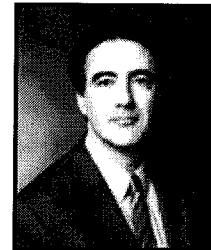
## Enron's Off-The-Book Casualty: Freedom

Gary Hull, 03.06.02, 2:45 PM ET

Suppose the U.S. government treated minorities as it has businessmen since the **Enron** bankruptcy. A minority is caught robbing a store; to prevent this from happening in the future, politicians propose the creation of a new government bureaucracy: the Federal Minorities Agency. The FMA will control when, where and with whom minorities can shop--and will demand that they pass a battery of psychological tests to ensure that they are not potential shoplifters. The new regulations are necessary, claims the government, on the grounds that since one minority committed a crime, all minorities should be treated as potential criminals.

Yes, this is patently unjust, yet it is routine treatment for businessmen. Consider the plethora of Enron-inspired proposals to expand the scope of current government regulations and to create new ones.

There are calls to regulate employee retirement accounts, including a cap on the amount of company stock that an employee can have in a 401(k) account. Some politicians want to expand the Securities and Exchange Commission so that it can more comprehensively review corporate financial reports. Others want the Commodity Future Trading Commission to regulate the trading of electricity derivatives. There are calls for a new federal agency to control all accountants and demands that accounting firms separate completely their accounting and consulting divisions.



Gary Hull is the director of Duke University's Program on Values and Ethics in the Marketplace.

At this point, it seems apparent that certain executives used sham transactions to hide massive debt and to inflate the value of the company's stock. According to knowledgeable securities attorneys, someone at Enron committed fraud, with the complicity of particular accountants at **Arthur Andersen**, and profited dishonestly by selling over 2 million shares between May and September 2001. If those individuals are convicted of fraud, then they deserve severe punishment. No supporter of the free market or of individualism could defend such dishonesty.

But what should be defended are the rights of innocent, law-abiding businessmen victimized by collective guilt and statism. The statist's technique for expanding the power of government consists of using an actual or alleged economic disaster to evaluate *all* businessmen as criminals or as potential criminals. The next step is to use this collective condemnation to expand government control over an entire industry.

Consider the demand that accounting agencies sever accounting from consulting. Enron's accountant, Arthur Andersen, purportedly had an incentive to falsify Enron's financial data because Andersen's consulting division had lucrative contracts with Enron. Suppose this is true--that particular Andersen accountants are convicted of fraud and that they rationalize it on the grounds that they feared losing Enron's consulting contracts. Where is the justice in leaping from, individual accountants at Andersen committed fraud, to, all CPAs are (potential) criminals and thereby must be regulated? How is that policy any different from the one that penalizes *all* minorities for crimes committed by others?

Statists rely on collectivism--the tribalistic notion that an individual is just a cog without rights--to punish all accountants and to push for campaign finance reform.

This legislation seeks to ban so-called soft money, i.e., money given by individuals and corporations directly to political parties. It is an obvious violation of an individual's right to free speech--which necessarily includes the right to support monetarily one's political convictions--and of a television station's right to set its advertising prices. Campaign finance reform was comatose until the Enron scandal--a scandal that, statist claim, proves that rich donors corrode the integrity of our political system.

Suppose the worst is true about Enron's soft money donations--that every penny was used to bribe politicians for special favors. This would only prove that particular individuals are crooks, but it would prove nothing about *all* soft money donors or recipients.

Imagine the howls of media protest if we applied the same collectivist-statist standards to print journalism. Suppose that a particular writer commits plagiarism. To prevent future journalistic disasters, we need a new federal agency to vet all stories, with the state now controlling every writer on the collectivist premise that a particular writer committed fraud.

Statists first cite a disaster or alleged disaster caused by some individual(s) in industry, and then couple that with a collective evaluation about *all* individuals in that industry to create a new federal agency and/or to expand the powers of existing regulations. This technique is responsible for the suffocating growth of government regulations since the late 1800s.

In the late 19th century, particular railroads were accused of overcharging farmers. This "economic" crime was used as a pretext for the government to assert control of all railroads and led, eventually, to the establishment of the Interstate Commerce Commission in 1887. In the early 20th century, various muckrakers claimed that individual meat packers sold tainted food. Every businessman in the food industry was then treated as a (potential) criminal once the Pure Food and Drug Act passed in 1906. The financial panic of 1907--supposedly caused by the "chaos" of banks issuing private money--was a major impetus for the creation of the Federal Reserve System in 1913, a system which proceeded to outlaw private currency issuance and grant a monopoly to government.

The statist's *modus operandi* was in full force during the "Progressive" era's massive expansion of government controls. Inspired by the Marxist myth that big business harms the economy, trustbusters such as Teddy Roosevelt succeeded in *criminalizing* corporate consolidations.

One of the most horrific examples concerns **Northern Securities**, a railroad trust led by J.J. Hill, E.H. Harriman and J.P. Morgan. This trust consolidated a number of the West Coast's inefficient railroads into a well-managed, profitable unit. But Roosevelt and his fellow statist objected to this consolidation on the grounds that it allegedly violated the rights of small railroads and that it would harm customers. In 1903, the U.S. Supreme Court ordered the breakup of Northern Securities and thereby expanded the government's power to regulate *all* railroad consolidations.

Statists used the Northern Securities case--along with the infamous breakups of **American Tobacco and Standard Oil**--to make the collective evaluation that every big business, in any industry and at any time in the future, might commit the "crime" of "unfair competition." Thus, any businessman who creates a large market (either through efficient production and/or through consolidation) is presumed guilty.

It is this collectivist argument that led to the creation of the Federal Trade Commission in 1914. The FTC, through its power to control mergers and acquisitions and to prosecute antitrust cases, controls the practices and size of big business. The state must regulate every individual in big business, claim statist, because particular big businessmen in the past committed "crimes."

The presumption of innocence is a hallmark of American jurisprudence. But tragically, in an age in which a businessman is presumed guilty simply because he is motivated by profit, businessmen enjoy no such presumption of innocence and are afforded no such legal protection. Unwarranted prejudice against this group--and the legislative, freedom-destroying controls caused by that prejudice--only serves to punish the innocent. That is the most egregious, and least reported, crime committed amid the Enron saga.