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Special Valentines Issue: Conflicting Objectives

This column's Lincoln/Darwin issue pointed out two Presidential Procedural Policy conflicts that might be avoided by merely manipulating the language of describing the acts or actors. For Valentines Day, a discussion of essential conflicts in policy objectives is appropriate.

H. R. 1, the American Recovery and Reinvestment Act of 2009, "ARRA", authorizes the disbursement of mountains of money to increase economic activity. The purposes of this disbursement are nebulously, and variously, stated, *inter alia*, as "getting the economy going again", "creating jobs", and "rebuilding infrastructure". During the consideration of this measure, a provision was inserted to require that actual physical construction projects be required to use materials and components produced within the United States.

Arguments were raised against the "Buy American" requirement, that using American-made materials and components would be more expensive than using non-American-made stuff. "Well, DUH!" That's how we got here in the first place. Most taxpayer-funded projects are required to be bid, and awarded to the low bidder. In most instances, bids using materials or components not made in the United States would be lower than bids using materials or components made in the United States. Absent a "Buy American" requirement, ARRA merely funds a greater foreign trade imbalance. If the goal were to build sewer lines cheaply, best to bring in lots of foreign laborers too, like when the railroads were built 130 years ago. Oh wait, we already do that.

Keep focused, folks. The only justification for the taxpayers handing out this much money is to create jobs within the United States, so that fewer families within the United States will lose their homes and lose their self-respect, and more households within the United States will be productive and pay taxes and contribute to the general welfare of the community.

A more sophisticated argument against the "Buy American" provision, is that it is "Protectionism" and is likely to provoke similar acts in other countries to discourage purchases in those countries of American products. It ain't so. The kind of Protectionism which is limited by the World Trade Organization agreements, is imposing legal barriers to Free Trade. Specifically the WTO prohibits tariffs which add cost to foreign-made goods upon entering the United States, and prohibits quotas which limit how much of a particular foreign-made good is permitted to enter the United States. We note that the removal of the last quotas on import of clothing, in January 2005, resulted in China ruthlessly flooding the United States, through its agent Wal-Mart, with product, so as to cause the last American garment manufacturers to close by April, 2005.

The decision of a national government to not buy the cheapest goods is NOT prohibited by the WTO; only artificially making the cheapest goods less cheap or less available is prohibited. While many American taxpayers have demonstrated that, individually, we will go to Wal-Mart and buy cheap foreign goods rather than goods made in the United States that cost more, so that American manufacturers go out of business and American workers lose their jobs, the taxpayers In Congress Assembled are not required to be so short-sighted.

We know it's more expensive to buy American-made goods. We also know that buying American-made goods is necessary if the American economy is to recover. Individual taxpayers may put their short-term interest first and buy cheap. Congress may not. Congress has the obligation to act in the long-term interest of the people of the United States, and require that the projects funded by the taxpayers Buy American. Wal-Mart and China have Globalized the American consumer manufacturing industry out of existence. Congress may NOT Globalize the "recovery" expenditures.

Another essential policy conflict being discussed but not yet resolved, is the necessity of getting financial institutions to resume providing credit, particularly to small businesses, in conflict with the requirement that financial institutions exercise some care in determining creditworthiness of borrowers, so that the financial institutions might get paid back so they can pay back the taxpayers for their TARP bailouts. This conundrum is made more acute in that the economic conditions make it more difficult for small businesses to convince lenders that they are likely to be able to repay loans, wherefore credit is denied, wherefore another one bites the dust and the economic conditions for that business's suppliers deteriorate and make it more difficult for those suppliers to get credit. Makes a writer want to mix metaphors, the snowballing effect of the snowball in Hell chance of getting credit.

The critical event in this cycle is demonstrating creditworthiness of the borrower, so the financial institution can justify the loan. Just over a half century ago, the Small Business Administration was created to do exactly this. The United States Treasury should direct a significant portion of the \$300+ billion of TARP funds remaining, to expand SBA's review capacity and fund SBA's loan guarantee authority. If SBA capacity is expanded so that it can review the volume of small business credit applications that are currently not being approved by the nominally "private" financial sector, and if SBA's loan guarantee authority is funded so that SBA can guarantee the extension of credit in such instances as are determined to be economically or socially or politically necessary to facilitate economic stabilization, the nominally "private" financial institutions will have no excuse to not make the credit available.

This approach has several advantages. First, SBA is established and the folks who work at SBA know what they are supposed to be doing, as distinct from any new agency that might be created to manipulate TARP funds for TARP's goal *du jour*. Second, this puts the taxpayers' money where Congress intended it to be, extending credit to small business to retain, and possibly create, jobs. Third, by guaranteeing actual lines of credit to actual small businesses, there is some likelihood that those small businesses will survive, be able to repay their own loans, continue to pay for materials from their own suppliers so that those supplier businesses survive and repay their own lines of credit, and perhaps minimize the number of taxpayer dollars that are actually expended to pay guarantees on SBA loan defaults. This is a much more productive use of TARP funds than financing bank acquisitions so big banks can make little banks more efficient by reducing the number of bank employees..

Finally, with another nod and a wink, we look forward to the American Recovery and Reinvestment Act of 2009, "ARRA" being quickly passed, signed by the President, and put

into operation, so that we may shortly begin seeing American Recovery and Reinvestment Government Handouts, "ARRGH".

- Christopher J. Mallin, Old Country Lawyer