



Red Tape Corrodes Democracy

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The more government regulates its people, the more it fails them, writes David Kemp.

Understanding regulation – its sources and its consequences – lies at the very heart of the debate about the desirable role of government, for it is the basic tool of government. Governments exist to regulate the social world. Without regulation governments can neither tax nor spend. There is no activity of government with respect to which it is more important to take long range views, and to persuade people of their value, than regulation, including law-making.

AS GOVERNMENT EXPANDS THE USE OF CENTRAL AUTHORITY, THE ACCOUNTABILITY PROBLEM BECOMES MASSIVE, AND THE RESENTMENT OF CITIZENS IN THE FACE OF POLICY FAILURE GROWS.

Government rule-making is a blunt tool that can affect the functioning of the social order in profound ways. Successful regulation achieves its objectives and, hopefully, helps people towards



better lives. Regulatory failure creates disorder and damages lives. It can undermine respect for the law, for political parties and even democracy itself. Government leaders need to know this and be able to explain it.

There are sound practical and theoretical reasons for thinking that much of the measured decline in recent times in people's satisfaction with democracy, and in trust in government, has been a response to the policy failures and unintended consequences of unwise regulation, which disrupts the working of markets and communities and distorts the incentives on which individuals take decisions. One of the biggest dangers to democracy today is the overreach of its governments and the absence of a satisfactory framework within which this overreach may be analysed.

As the ambitions of those who control government grow, the capacity of our elected politicians to understand, or even see, what government is doing, and to hold government servants and agencies accountable, or to be adequately accountable themselves, is necessarily eroded. As government expands the use of central authority, the accountability problem becomes massive, and the resentment of citizens in the face of policy failure grows.

The debate about regulation is – at its core, and rightly – about freedom and control. It's a debate that has raged since the Enlightenment: the extent to which the good society and the pursuit of happiness are better achieved when people are generally free to pursue their own missions in life or whether the good society can be brought forward by extending the government regulation of behavior.

Ensuring that the option of freedom is weighed adequately in the balance depends largely on an understanding of the benefits for individual people and for society as a whole that arise from the empowerment of individual purposes under the rule of law, based on the recognition that these generally (but not always) lead to more positive outcomes. The case for freedom also relies on an understanding of the risks of social control, and indeed of the individual and social damage that arise from inappropriate regulation.

The broadest possible argument for freedom is that it is the foundation for a good society, and as former Prime Minister Robert Menzies argued in the Australian context, of civilisation itself. We can define a good society as that in which people have the greatest chance of achieving happiness or fulfillment for themselves. Equal rights to pursue happiness can be considered the only truly egalitarian goal, for regulation in practice and in theory very often ends up empowering the few over the many.

Underpinning this reasoning is the recognition that a society in which people have the capacity to live peacefully and in freedom is an orderly society governed by custom, and habit, and based on trusting social relationships of affection, reciprocity and peaceful exchange. It is a world of mutual adjustment dominated by the process of people making decisions influenced by their desire for validation from their fellows.

Perhaps one of the best examples of how such a spontaneous social order has come into existence and functioned in historical times is the emergence of the moral and peaceful society of



Australia in the mid-nineteenth century as the children of convicts and immigrants from depressed Britain, in conditions of unequalled economic, social and political freedom, set out to build decent lives for themselves.

THE LIMITS OF AUTHORITY AND RULES

The principal mechanism of social co-ordination that allows complex economies to achieve order is freedom of exchange through markets and prices that reflect the preferences of individuals. The optimal role of regulation here is to provide a framework of just rules, not to replace this mechanism. Two hundred years of economic theorising and failed policy experiments have helped policy-makers understand why every attempt to engineer society by regulation has the potential to be undermined by side-effects, outweighing any benefits.

The theoretical frameworks developed over that period in economics and political science help us address the appropriate role of government by considering:

- the nature of authority as a mechanism of social control;
- the inherent characteristics of rules as exercises of authority, and
- the nature of political and democratic processes as they impact on policy-making and seek to guide government in the exercise of its authority.

There are severe limitations to the capacity of government authority – to such an extent that the American political economist Charles Lindblom in the 1970s summed up the problem of government policy making in today's complex world as 'small brain, big problems', describing government as 'all thumbs, no fingers'. It could pass laws and move big quanta of money around and hand out money with ease. It could build pyramids and space rockets (not cheaply) but could not effectively regulate to achieve the detailed outcomes which might satisfy the needs and values of individual citizens or indeed the society as a whole.

The authority to be effective relies heavily on the identification with the values of those who accept it. Authority ceases to be legitimate in the eyes of citizens when its exercise conflicts with their deeply held values, even in a democracy. Prohibition in the US and the collapse of the Soviet bloc in 1989-90 are two examples which show that assuming authority of limitless scope to mould behaviour and thought cannot succeed.

A related limitation of government authority is the difficulty of establishing clear objectives for policy, because the political reasons for accepting policy are diverse.

Attempts to clarify objectives in major policy areas therefore tend to result in conflict and even policy paralysis. The propensity of governments to leave policy objectives unclear is in part a response to this fundamental feature of authority. Australia has some of the most expensive housing and energy in the world because of central government's inability to align multiple conflicting objectives in social and environmental planning.

Unlike markets, which aggregate and signal vast amounts of information about values and



preferences at the margin, systems of authority are information bottlenecks. This is why attempts at comprehensive central economic planning always fail, and why tax and spend policies readily lead to misdirection and waste of resources.

THE PICTURE INCREASINGLY EMERGING ACROSS THE DEVELOPED WORLD IS ONE OF PEOPLE WHO INCREASINGLY FEEL THEY HAVE LOST CONTROL OF THEIR GOVERNMENT, AND OF ELECTED GOVERNMENTS THAT HAVE LOST CONTROL OVER POLICY OUTCOMES.

The Rudd/Gillard government imposition of school halls across the nation exemplified both ignorance of what local communities needed and an inability to centrally obtain the necessary information to underpin a rational policy. Similarly, the monopolistic NBN with its mandated technology struggles in an era of rapid technological change. Attempts to achieve flexibility by empowering subordinate agencies with discretion erode democratic accountability and feed the belief that government is unjust and a source of uncertainty.

DISCRETIONARY POWER CREATES UNCERTAINTY

Rules need interpretation, but the more governments rely on an ever-expanding set of tribunals with discretionary power to interpret rules, the greater the uncertainty for private decision-makers.

The inevitable ambiguity and unforeseen consequences of rules leads to their further proliferation by attempting to clarify or close loopholes, with yet more imposed uniformity, more discretionary power, more limitations on individual judgement and the use of individual knowledge, and more rigidity. The continuing growth of regulation over time is the inevitable consequence.

Regulations create their own incentives, and these may be quite destructive, leading individuals into perverse decisions or empowering selfish interests. This is particularly the case where the regulatory solution is a tax and spend solution. The availability of unearned money to enterprises, unions, institutions and individuals can massively distort decision-making.

It is scarcely surprising that there is increasing dissatisfaction with government as the state expands its efforts and multiplies its failures in trying to control economic and social outcomes. The democratic process can encourage or dampen these consequences, depending on the character of its leadership.

Democracy has its limits. Winston Churchill reminded us that democracy is the 'worst form of government except for all those other forms that have been tried from time to time'. The default position of democracy is that policy is made by special interests – those with the loudest voices and the greatest political clout.

Organised special interests seeking benefits for themselves from the state are more numerous in democracy than in any other system as a result of the freedoms of association, speech and the press. This is unquestionably a benefit because all are heard, while in authoritarian regimes only a few have access to power. But in the absence of public interest leadership it can lead to policy



paralysis, and the struggle to find leadership and direction in democracies is a constant one.

THE ACCOUNTABILITY PROBLEM

The reality is that much of the state is now well beyond any effective system of accountability and is not in any effective way answerable to the people. The picture increasingly emerging across the developed world is one of people who increasingly feel they have lost control of their government, and of elected governments that have lost control over policy outcomes. This is the context in which major long-established democracies and political parties are experiencing popular revolts.

Policy-makers in democracies must recapture the sense that the role of regulation is to empower citizens within a system of just rules, and be as clear as possible about the objectives of policy. We need leadership with a philosophy of government which puts the citizen above organised interests. In the short term, institutions supporting reasoned policy need to be stronger, policy reasoning needs to take into account the limitations as well as the capacities of the regulation through which it hopes to achieve a better world, and party leaders need to spend more time and energy making their public interest case. In the longer term, there needs to be a much stronger public understanding of what government can reasonably be asked to do, and what it is better to leave to the personal responsibility of citizens themselves.

*This is an edited extract from *The Big Picture*, Dr Kemp's contribution to *Australia's Red Tape Crisis: The Causes and Costs of Over-Regulation*, edited by Dr Darcy Allen and Dr Chris Berg, published by Connor Court Publishing in 2018.*