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Regulatory oppression

By Richard W. Rahn
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Do you think there is too little or too much regulation? Though the appropriate amount of regulation may be in the eye of the beholder, we do have objective evidence of the growth of federal regulation.

The Annual Regulators' Budget Report by Susan Dudley of George Mason University's Mercatus Center and Melinda Warren of Washington University's Weidenbaum Center has just been released.

Their study shows both the cost and number of regulators continues growing far faster than inflation and population, which means in real terms we are becoming an increasingly regulated people. In inflation-adjusted dollars, the cost of federal regulation has gone from $2.3 billion in 1960 to $38.9 billion expected in this next fiscal year. This is a greater than fourteenfold increase. The number of regulators has grown from 57,000 in 1960 to more than 240,000.

Regulation has grown much more rapidly than government taxing and spending. There are now literally scores of government agencies that regulate health and safety, transportation, the workplace, environment, energy, finance and banking and many other specific businesses and activities.

Governments divert resources from the private sector through taxes, and subsequent spending, but also through regulation. According to Misses Dudley and Warren, "The Code of Federal Regulations now takes up more than 20 feet of shelf space."

Federal taxes and spending as a share of GDP have grown very slowly over the last 40 years. However, this is not true of regulation. Government officials have learned to prefer regulation to taxation because often their goals can be reached and power gained as effectively through regulation, which is more opaque and stirs less voter outrage than increased taxation and spending.

The degree of tax enslavement can be measured by looking at taxes as a percentage of income, which is how Americans for Tax Reform (ATR) calculates "Tax Freedom Day."

Regulations are different. The amount of one's time and the cost of complying with regulations -- let alone loss of individual liberty -- do not lend themselves to the same type of shorthand as Tax Freedom Day. Hence, we are left with proxy measures, like growth in regulatory budgets and personnel.

The problem with the proxy measures is that personnel and out-of-pocket costs of creating a regulation are often a tiny fraction of the total cost to the economy.

The Dudley and Warren study, though very valuable, looked only at federal regulation, and not that of states and localities or global institutions (like the United Nations, Organization for Economic Cooperation and Development, International Monetary Fund, etc.), all engaged in an orgy of regulation.

Unlike taxes, the regulations' issued each year are cumulative, and most never expire. No human can possibly know all the millions of regulations to which one is subject (many defy common sense). Hence, everyone, even with an absence of ill intent, is at risk of prosecution.

There are many problems with regulatory excess. It stifles innovation and eventually kills economic growth. The capitalistic system, the only system that can provide sustained economic growth and continuous improvement in most standards of living, depends on innovation and nonconformity to create the "new" that is necessary for the system to continue.

The over-regulated state can kill capitalism and, hence, human progress. The stagnation in much of the European Union is due, in part, to it having evolved into a bureaucratic regulatory state rather than a free market democratic capitalistic one.

However, the greatest danger of the regulatory state is it destroys personal liberty. Totalitarian communist and fascist societies depended on the state to regulate almost all aspects of human behavior to maintain control. We and other democracies are unintentionally drifting in that direction.

What is to be done? Some good ideas have been proposed, but neither the administration nor Congress has acted.

Each year, a "regulatory budget" should be enacted to help control the growth in regulatory activity. Though cost-benefit studies are required for many new regulations, neither Congress nor this or past administrations have been serious enough about enforcement. Congress needs to require that any regulation take effect only after a full, professional, objective and serious cost-benefit analysis and a determination that benefits clearly outweigh the costs (including loss of freedom).

To enforce this, courts should be able to impose sanctions -- including dismissal and fines -- on government executives who fail to comply. And Congress should allow private parties to bring suit if they believe the cost-benefit analysis was either done improperly or not at all.

If Congress does not act soon, we will increasingly resemble stagnant, oppressive and bureaucratic "old Europe."

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