



Who Rules You?

by Richard W. Rahn

All of us are subject to many thousands of federal, state, and local laws and regulations, many of which are needlessly oppressive. Who makes these rules, and who enforces them? And at what point are there so many rules that we are no longer free?

James Madison, the principal author of the U.S. Constitution, wrote in Federalist No. 62: "It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be the rule of action; but how can that be a rule, which is little known, and less fixed?"

Americans have long been subject to exactly what Madison warned of. The IRS code is but one example. It is so long and contradictory that no one fully understands it, so we are all subject to being prosecuted under it, even though no wrongdoing was intended.

Kings of old often issued decrees or rules that were unjust or made no sense, and the rules could be changed by whim. The

solution was to attempt to design systems where people were ruled by law rather than by individuals or small groups operating with little constraint. It was, and still is, argued by many that democracy solves much of the problem if laws and other rules need to be voted on by the people or their elected representatives.

The problem with that argument is that unrestrained democracies often lead to majoritarianism, where minority rights and individual liberties are voted away and quashed. This distrust of pure democracy is what caused the Founders to create a constitutional republic where minority rights and liberties are protected by a difficult to amend constitution.

The Founders devised a system of checks and balances that they hoped would constrain unbridled government. The legislative branch (a two-house Congress) was established to make law. The executive branch was established to administer the law, and the courts were established to interpret the law and constrain the other two branches of government from encroaching on the rights, duties, and prerogatives of the others.

What the Founders failed to fully anticipate was the rise of the administrative agencies, where Congress delegated much of its authority to make law and rules to agencies nominally within the executive branch, but often with little direct accountability to the legislative, executive, and even judicial branches.

Congress has every incentive to create administrative agencies with the power to make law because it makes it easier for members of Congress to claim they have done something about a problem that may or may not exist. So, when an agency does something dumb, destructive, or tyrannical, members of Congress can claim they had no direct responsibility.

If the courts had done their job by prohibiting, or greatly limiting, the ability of Congress to delegate its law and rule-making powers to unelected bureaucrats, much of the present mess would not exist. Peter Wallison, former General Counsel of the U.S. Treasury, a noted law and economics scholar and an expert in financial regulation,

has just published an important new book "Judicial Fortitude: The Last Chance to Rein in the Administrative State." Mr. Wallison provides a concise history of how the rule of law was eroded by irresponsible congresses and by courts that acquiesced to a legislative branch that clearly exceeded its right to delegate its power as defined by the Founders and the Constitution.

Mr. Wallison is a sunny optimist, who argues not all is lost, in that the American courts still have time to take corrective action. He notes that those in the new majority of Justices on the Supreme Court have evidenced concern about the problem and are likely to rein in some of the excesses in the delegation of power by Congress. The book is a good read and adds an important but little understood chapter to American history.

As bad as the administrative state is in the United States, it is even worse in many other countries. A major reason for the Brexit vote in the U.K. was that after a thousand years of being in charge of their own destiny, Englishmen were finding, among other things, the shape and size of the cucumbers they were being allowed to sell was being dictated by unelected E.U. bureaucrats in Brussels.

Globally, people are fed up with being micro-managed by far-away government bureaucrats, who are more concerned about their own powers and perks than the people who have to suffer from rules in which they had no say. People throughout Europe, India, and even China are demanding more local control.

Devolution of power from international bureaucracies like the U.N., IMF, OECD, etc. to national governments, to regional governments, to local governments, and finally to neighborhoods will result in greater happiness and economic growth as people reacquire more control over their own lives and destinies.

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