By-Products of Regulation: The Law of Unintended Consequences
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You can’t always get what you want...

Who is in the Audience?
Select the group to which you belong:
A: Staff member at a regulatory body
B: Board / Council member of a reg. body
C: Government employee (non-Board)
D: Service provider to a regulatory body
E: Other
# Regulation’s Noble Intent

- Serve and protect the public interest
- Safeguard the public welfare
- Promote consumer/patient protection
- Risk management / risk mitigation

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# Right Touch Regulation

“Right touch regulation is based on a proper evaluation of risk, is proportionate and outcome focused; it creates a framework in which professionalism can flourish and organizations can be excellent.”

- Harry Cayton, PSA(UK)

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# The Right Touch Process

- Identify the problem first
- Assess and quantify the risks
- Focus on outcomes
- Use regulation only when necessary
- Keep it simple
- Be mindful of unintended consequences
- Review and be responsive to change
The Law of Unintended Consequences

- Any intervention in a complex, dynamic system will have unanticipated, and often undesirable, outcomes
- In socio-economic terms, purposeful actions often result in adverse effects
- Popularized by Robert K. Merton in 1936

Possible Causes

- Ignorance
- Errors in analysis
- Immediate interests overriding long-term interests
- Basic values
- Self-defeating prophecy (anticipation of problems results in non-occurrence)

Critique by Economists

- Regulation is ineffective at mitigating risk
- Regulation creates adverse economic impacts to society
  - Higher costs to consumers
  - Higher unemployment
  - Protectionism by practitioners
  - Scope creep
### Your Perspectives

Professional and occupational regulation is contrary to the economic interests of society.

A: Agree  
B: Disagree  
C: Unsure  

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### Critiquing the Critique

- The public interest extends beyond economic interests  
- The economic perspective is not illegitimate, it’s just too narrow  
- Misses the “socio-” portion of socio-economics  
- Critiques the outcome, not the process  

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### Problems with the Process

- Noble intent can be derailed by other interests  
  - Labour / union interests  
  - Practitioner interests  
  - Regulator interests  
  - Political interests  
- End result is often a compromise...
Your Perspectives

“Frankenregulation” exists primarily because of:
A: Poorly understood societal problem
B: Inadequate risk assessment
C: Influence of contrary interests
D: Failure to consider unintended conseq.
E: Other

The “Balance” Problem

- Many suggest there is a need to “balance” the public interest against the interests of practitioners (or against the practitioner’s right to earn a living)
- Implies a trade-off
Your Perspectives

To what extent are the public interest and practitioner interests negatively correlated?
A: Completely
B: Strongly
C: Somewhat
D: Slightly
E: Not at all

The “Balance” Fallacy

• It’s not a trade-off
• The public interest is not the opposite of the practitioner’s interest
• They are orthogonal - they operate on different axes
• The public interest itself is a multi-faceted, multi-dimensional concept

The “Balance” Fallacy

• The real need: Public interest protection with FAIRNESS to the practitioner
• Both can be achieved without one sacrificing the other
The “What” vs the “How”

- The “what” is the desired outcome, the noble intent: Public interest protection etc. - easily said
- The “how” is a messier proposition
- How good is your risk assessment?
- Can you keep your process free from contaminating influences?

“How”

- Keep coming back to the problem statement
- Every element of the solution should map back to the problem through the analyses that have been done - risk analyses and other analyses
- If it doesn’t - rethink the solution!

Consequences are Inevitable

- The best laid plans...
- Not necessary to predict in advance
- RTR says “Be mindful...”
Consequences are Acceptable

- Not every unintended consequence is a bad thing
- Some may be good, others may be neutral
- Neutral ones may look bad when viewed from a narrow perspective

Why believe me?

William Shakespeare
*Much Ado About Nothing* Act II, Scene III

“I should think this a gull, but that the white-bearded fellow speaks it; knavery cannot, sure, hide himself in such reverence.”

Thank you!

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