

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



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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

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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



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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



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Possible Causes

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



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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



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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...



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“Frankenregulation”





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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



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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





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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



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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



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The “Balance” Fallacy

- The real need: Public interest protection with FAIRNESS to the practitioner
- Both can be achieved without one sacrificing the other



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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?



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“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!



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Consequences are Inevitable

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



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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



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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.”



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Thank you!

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