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Limiting Government Through Regulatory Limits

by Amy K. Frantz

"Failure to limit the regulatory powers of government can be as pernicious as that of allowing uncontrolled spending authority," writes Dr. Eugenia Toma in her chapter on regulatory limits from *Limiting Leviathan*. "Regulation is a more subtle means of transferring wealth and removing power from the people."

Dr. Toma illustrates the relationship between the regulatory power of government and the government's power to tax and spend, using our education system as an example. Elementary and secondary education is provided by the taxpayers, who pay for the schools whether or not they have children attending the schools. Voters may think that placing limitations on the tax revenue and expenditures directed toward education would provide more families with the financial means to send their children to schools other than those operated by the government. But if the government's regulatory power over education is not constrained along with its taxing and spending powers, the government can use regulations to transfer power from the people to the government. "Schools can be operated directly by the government or operated by the private sector and regulated to the point that the output of the two systems is virtually equivalent."

When government regulation of private-sector activities is proposed, the benevolent-government model of the world is invoked. Government regulation is necessary to enhance the welfare of all citizens. Government regulation will prevent consumer abuse by natural monopolies (such as water or electricity). Because consumers are unable to judge the quality of certain services, we need government regulators to set minimal quality standards. However, "the regulatory powers of real-world democratic governments cannot mirror those of the benevolent government."

Regulations provide benefits to certain individuals and groups, and those individuals and groups therefore demand regulation. For example, regulations can provide barriers to entry in a certain industry, benefiting firms already established in that industry. Support for this type of regulation would come from the industry itself, rather than from consumers of the product. The industry finds it much easier and more cost-effective to organize for the purpose of influencing legislators to create regulations that benefit the industry than it would be for consumers to organize to fight the regulation.

Legislation is but one way the government regulates citizens. Legislators often establish agencies to regulate a particular industry. The structure of the regulatory agencies can have a great influence on the degree to which the agencies transfer wealth and power from citizens to the regulated industry.

Government mandates are another type of regulation that have gained more use in the last decade. Mandates are defined as "any responsibility, action, procedure, or anything else that is imposed by constitutional, legislative, administrative, executive, or judicial action as a condition of aid." Through mandates, the federal government imposes actions or restrictions on state or

local government, but provides no additional source of funds to carry out those actions or restrictions. In turn, state governments can also impose mandates on local governments.

The benevolent-government model argues that mandates may be necessary because a central government is able to “propose actions that the jurisdictions could take jointly that would be preferred by the entire population.” A central government may also be able to produce a good or service at a lower cost than the individual jurisdictions due to economies of scale. If so, the citizens may prefer some intervention by the central government. However, Dr. Toma argues that many mandates do not fall within these arguments. “Mandates, like regulation of private firms, are legislated in response to political demands.”

“The regulation of private firms and the mandating of activities of state and local government are indirect, sometimes hidden, means by which wealth can be transferred” from citizens to special-interest groups. Reform of the regulatory process is needed, but may be difficult because of resistance by groups that benefit from current regulations. “A licensed professional group, for example, prefers that stringent rules for entry into the profession be maintained for perpetuity.” Those individuals incurred the cost of obtaining a license and build that cost into their price. If the industry were deregulated, competition would lower the price of the services. “Real-wealth loss would accrue to those who incurred the previous costs of entry into the profession.”

However, deregulation has occurred in some industries, such as the airlines. Dr. Toma writes that “theories of deregulation are sparse. Conceptually, there is a point at which regulations and mandates become so costly to the populace that politicians can gain by favoring deregulation.”

The Unfunded Mandates Act of 1995 is one example of change. The Act requires Congress to consider the financial impact of mandates estimated to exceed $50 million in cost. However, this Act does not change existing mandates.

Similar limitations need to be imposed on all regulatory behavior. “Legislators often view regulation of private firms’ activities as a politically viable alternative to raising taxes or introducing new government programs directly.” It is not enough to place limits on taxes and spending to limit government. Limits must also be placed on the government’s power of regulation.

This Institute Brief is one in a series on the chapters of an upcoming book, Limiting Leviathan*, edited by Dr. Don Racheter, Executive Director of Public Interest Institute, and Dr. Richard Wagner, Economics Professor at George Mason University and Chairman of PII’s Academic Advisory Board.* Limiting Leviathan *makes a case for limited government and discusses the types of limitations on government that are appropriate and necessary.*

The author of this chapter in Limiting Leviathan *is Dr. Eugenia F. Toma of the University of Kentucky.*

This summary of Dr. Toma's chapter was written by Amy K. Frantz, a Research Analyst with Public Interest Institute.

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