H4 Consulting Brief

Rehabilitating Regulation

In recent decades there has been a trend toward reducing 'red tape' and regulation, with increased reliance on tools like market-based incentives, subsidies, and services to pursue policy goals. Policy makers are reluctant to impose new regulation and enthusiastic about removing existing regulation, limiting the options available to policy workers to solve problems. Regulation is not always the right answer, but it is a legitimate tool of public policy.

Philosophies of individualism and free market capitalism are often positioned in opposition to regulation. Government regulation is perceived as unreasonably and unnecessarily curtailing the freedom of individuals to act as they please, and of markets to match buyers and sellers on mutually agreed terms.

In free and fair markets, sellers offer their wares at various prices and quality standards to customers who choose the products that suit them. Market forces influence conduct via low demand for poor offerings, without the need for regulation to shape behaviour.

Poor regulation and legacy regulation that is no longer relevant impose compliance costs with limited benefit. They also encourage lobbyists to advocate for deregulation or new rules that favour their interests.

The gradual corporatisation, or even privatisation, of many markets has reduced controls on how goods and services are provided to customers. This has made the regulation of markets, particularly those operating with public funds or serving vulnerable customers, both more difficult and more important.

Free markets offer greater choice, but few customers can accurately price risk in unregulated markets. Suppliers may cut corners that impose hidden costs on customers and society. Builders may construct homes that collapse in a few years. Financial advisers may push customers towards products that pay broker kickbacks. Governments are often expected to restore these private losses, socialising the costs. Yet the benefits of lower regulation—lower costs, higher profit, and cheaper prices—remain private hands.

Despite the recent fashion for preferring automatic market forces to deliberate intervention, regulation remains a legitimate policy tool with strengths and weaknesses compared with alternatives. Regulatory options to policy problems should be considered and their relative costs *and* benefits analysed, rather than being dismissed by competing ideologies or interests.

A regulatory impact assessment should weigh the pros and cons of proposed (or continuing) regulation. This means showing both sides of the ledger, not just the costs of regulation. This will help decision makers and the public to find the right balance of regulatory and non-regulatory tools to solve policy problems like safety, fairness, affordability, accessibility, and dealing with market failures such as cost externalities.

Regulation can be an appropriate response to a range of policy problems and market failures. The costs to society of having no (or poorly enforced) regulation can be much higher than the costs of good regulation.

An individualist philosophy does not, or should not, legitimise imposing unfair costs on other individuals or society. When well-crafted regulation targets the root causes of policy problems and market failures, is tailored to its objectives, and is enforced impartially, it can improve overall public value despite imposing some regulatory costs.

When considering how best to address a policy problem, governments and those who advise them should not be afraid to propose regulation when it is the most appropriate tool for the job.

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