

Towards Non-Destructive Government (IP-3-1998)

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Issue Paper

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At bottom, there are only two models of government. One gives the State the presumptive power to manage an individual's life. The other gives it to the individual. Throughout history State management has been by far the most common model. In times past it was called "the divine right of kings," in modern times it is called "socialism." The founders of the United States broke with this tradition when they created a republic with a strictly limited government. In the American model, government was designed to serve individuals, not master them.

America's unprecedented success in promoting the general welfare and individual well-being is a matter of historical record. Left to manage their own lives, individual Americans created a civilized society with unprecedented standards of living.

In contrast, the socialist model has been a dismal failure. As practiced in the Soviet Union, Eastern Europe, Cambodia, Iraq, Iran, China, North Korea, Chile, Syria, Nazi Germany, and Vietnam, Socialist rule produced an estimated 100 million corpses and unparalleled collapses in living standards in this century alone. The softer variant now in use in Western Europe makes national governments responsible for providing housing, food, income, succoring for the sick, and rearing children. Amid rising crime rates and a fraying social fabric, Western Europe's people are finding increases in the individual standard of living harder and harder to achieve.

Which brings us to one of the more puzzling aspects of U.S. public policy. Despite all of the evidence showing that people are worse off when government usurps individual responsibility, during the last 50 years government has gained unprecedented control over the lives of individual Americans. And despite all of the rhetoric to the contrary, the programs promoted by those in public life have generally shared one common result--they take responsibility from the individual and give it to the State.

Officials who profess to prize individual responsibility have voted to support government medical care, government ratings for television programs, child abuse laws assuming guilt, asset seizures for government profit, retroactive laws, and group preferences. Socialists have authored a government pension system so unsound it would land a private promoter in jail, proposed government to control all of the medical decisions in America, and think justice is best served by prosecuting criminals for their thoughts while committing a crime. At a time when 12 years of government schooling routinely produces illiterates, neither side sees anything wrong with jailing citizens who make minor mistakes on virtually incomprehensible government forms.

To an extent incomprehensible just a few decades ago, government now seeks to control harmless, completely legal behavior between fully informed, consenting, adults. In Boulder, Colorado, a dinner theater production included a scene in which actors were contractually

required to puff on a cigarette. The theater gave customers advance warning that a cigarette would be smoked on stage. It also installed a special ventilation system. Responsible adults bought tickets. This was too much for the anti-smoking Boulder government. It shut the production down and suggested that the theater substitute an herbal cigarette with, it should be noted, unknown carcinogenic properties.

Things are no better at the state level. Colorado State Senator Dorothy Rupert, apparently finding parents insufficiently protective of their children, has introduced legislation requiring police to ticket and fine adults caught smoking in cars containing children. No word as yet on whether her bill would allow herbal cigarettes. Or on the extent to which it would make a mockery both of individual responsibility and the impartial application of the rule of law.

Each of these initiatives puts the State in charge of determining how adults may use a legal substance. People presumed competent to choose medical care, evaluate the risk of dangerous sports, run businesses, raise children, and manage careers are judged unable to evaluate the risks of second-hand smoke. Passing laws to forcibly protect people from risks shifts responsibility from the individual to the State. Over time, people deprived of responsibility stop acting responsibly. Government responds with more rules and regulations to control irresponsible behavior. Bit by bit people lose their liberty, and those in power replace the American model of government with the socialist one.

I. Why Do Public Officials Consistently Vote for the Failed Policy of State Control?

Why do public officials consistently vote to diminish individual responsibility even when they campaign to increase it? Some people argue that the outcomes are always the same because all politicians, indeed anyone interested in politics, are crooks. It doesn't matter who you vote for, the argument goes, politicians are out to get the little guy, the fix is always in, and things will continue to get worse.

This hypothesis does not explain why some officials do act to increase individual responsibility despite damage to their careers. And it counsels despair: if the fix is always in, internal reform is impossible.

Another hypothesis is that although some officials mean well, they lack a fundamental understanding of the nature of government. They err through ignorance. With the utter collapse of civics education and floods of emotion increasingly taking the place of reason in public debate, fewer and fewer people understand government in the dispassionate, rational sense that animates *The Federalist Papers*.

The assisted suicide controversy illustrates the danger of replacing emotion with reason in public policy debates. People who want doctors to participate in mercy killings argue that humane government should not require that people who want to die go on living. They claim that whether such people are incapacitated or just want a painless suicide, the government has an obligation to allow access to expert help and advice. Arguing that doctors already give their tacit

approval to some "mercy" killings, they claim that making it legal will do no more than simply recognize what is already going on.

Such arguments naively assume that human beings are saints, that they always have all the facts, and that they never make mistakes. People who make these arguments sometimes refuse to face the fact that people may go through periods of depression that make suicide seem like a reasonable alternative or that family members may wish to hasten death to preserve their inheritance. The arguments gloss over the fact that a doctor who hardly knows a patient and who may have an HMO threatening his salary because he is over his quarterly treatment quota may not be in a position to best represent his patients interests. Above all, the arguments ignore the experience in the Netherlands, where public policy has been sliding down a slippery slope of legalized assisted suicide for two decades. At present, roughly 20% of Netherlands euthanasia cases are involuntary. People have been murdered because a physician wanted their hospital bed, pressured into death by cost conscious relatives, and consigned to oblivion simply because no one has the responsibility to talk them out of dying.

Rather than being needlessly cruel, classifying assisted suicide with murder protects inconvenient people from being deliberately killed by their physicians or the members of their families. The law acts as a bulwark against family and third party insurer pressure and makes it easier for a physician to say "no." As a result, current public policy greatly increases the odds of an individuals survival. As a bonus, desperately ill people need not wonder about their doctors motives. Good public policy is made for sinners, not saints. It assumes that everyone has some larceny in his heart, that third parties are inherently unreliable, and that people often err.

When emotion swamps intellect, wishful thinking replaces reason, and hubris becomes the order of the day. Even those who favor individual responsibility begin to believe that if they were in control, government would behave differently. They think they can make government change its nature, bend it to their will, and use it to achieve their purposes.

II. Five Rules for Safe Public Policy

Although concerted effort may change a particular governments aims, it will not change its nature. The best available evidence suggests that governments of all stripes generally follow a few predictable rules. No matter how pure ones motives, how earnest ones efforts, or how lofty ones goals, government always behaves like government. Neither a business nor a church, it is a complex, dangerous tool. Like any tool, it can improve life when strictly controlled and properly used. Its safe operation requires a thorough understanding of its limits, and an unwavering determination to operate within them. Ignoring its limits, or using it improperly, produces chaos and destruction.

The remainder of this paper sets forth five simple rules for citizens, legislators, bureaucrats to use in evaluating public policy initiatives.

Rule 1: You never get more than you pay for. When government is involved you usually get less.

Corollary 1: People spend other peoples money with far less care then they spend their own.

Government officials spend other peoples money. Government dependents spend other peoples money. Armed only with individual votes, taxpayers have little control over either group. Government spends its money differently then the private sector and, as a general rule, gets less for it because it is less efficient.

Corollary 2: Government is less efficient because it does not maximize profits.

Nor should it. Past attempts to operate governments on a profit-maximizing basis have generally ended badly.

Modern governments are less efficient than the private sector because they are not profit maximizing enterprises. As is well known, non-profit enterprises do not deploy resources efficiently. This is why government solutions should always be used as a last resort.

People who argue that governments should operate on a for-profit basis forget that in most societies governments can use force against citizens who do not pay up. If a business demands a price that customers do not wish to pay, they can refuse to buy its products. When a government makes the same demand, people must pay the price or have their lives ruined. Furthermore, profit-maximizing governments are invariably run to maximize the profits of those that control them. This eventually leads to corruption and a rapid decay in the rule of law. A case could be made that the loss from the destruction of the rule of law is worse than the loss from mere governmental inefficiency.

Perhaps because general corruption and destruction of the rule of law create such disorder, governments that have been run on a for-profit basis have generally benefited the governors and harmed the governed. While recent economic difficulties in Korea, Japan, Thailand, and Indonesia provide modern examples of this, history contains many more. In Egypt, the Ptolemies sought to make a profit from government by tax farming. According to Charles Adams:

Tax farmers entered into a contract with the king to guarantee the full collection of a certain amount of tax. In case of deficiency the tax-farmer would personally make up the loss...if all went well, and there was a surplus, it went to the tax farmer. In addition, tax farmers received a 10 percent basic commission out of their bid--even if there was no surplus.

Egypt had had a moderately oppressive tax system for 2,500 years. Tax farming crossed government ruthlessness with private efficiency to create true oppression. These reforms were followed by civil war.

The French ancien rgime raised the operation of a for-profit government to a high art. Tax-farming was big business. The government created innumerable official positions that collected a fee for performing required inspections or issuing permits and auctioned them off. Modern economists call this "rent-seeking," the use of political or institutional power to extract unavoidable payments from the rest of the economy. Once the office had been purchased, French officials could also buy rights to increase their fees.

Thus, the savage behavior of angry French peasants during the French Revolution was to be

expected. Given a less rapacious government, Louis XVI might have kept his head. People who advocate asset forfeitures, budgetary incentives for successful prosecutions, and other abuses of power should be wary of undermining support for the U.S. government way the French government undermined support for itself.

Corollary 3: Claims that new or expanded government programs will save money are usually wrong at best, outright lies at worst.

In 1997 the Colorado legislature passed HB1304, the Colorado Basic Health Plan for Children. Among other things, the bills supporters claimed that "health insurance for 40,000 additional children would be provided at no extra cost to the state." Common sense suggests that health insurance is not free and that adding 40,000 to the state rolls is going to cost something. Similar legislation in two other states had already cost plenty. The bill passed. Senator Sally Hopper was one of the sponsors.

On October 23, 1997, Senator Hopper wrote a letter to the editor of *the Rocky Mountain News*. She said that the Colorado Basic Health Plan for Children would result in "increased access to regular health care for nearly 20,000 Colorado children." And that another "\$21,000,000 in matching funds" would be needed to get the job done.

Willfully choosing to indulge in the wishful thinking of a measures supporters when fact and theory suggest a poor outcome is endemic to legislative bodies. Health care delivery systems have been extensively studied. The results suggest that government run systems consistently have higher overhead, lower quality, lower rates of innovation, and unequal treatment. Nevertheless, U.S. legislators at all levels continue to increase the government role in health care.

Pretending that government can be run like a business, when it is not like a business and never will be, is irresponsible foolishness. Government runs like government. Because government gets less for its money than private businesses, it is an expensive way to do things. Sensible people would use it sparingly.

Fortunately, other alternatives usually exist. For every regulatory proposal, a market solution that will better promote the general welfare almost always exists. In health care, for example, medical savings accounts, essentially medical 401(k)s, offer great promise. Market solutions may take more time and effort to uncover, understand, and explain, but they generally deliver much greater benefits in both general standard of living and individual freedom.

Rule 2: There are no solutions in public policy, only tradeoffs.

Government is a zero sum game. Before it can "give," it must first take. For every policy that is proposed as a "solution," something will be lost. No policy should even be considered until those losses are honestly tallied.

The most obvious loss is financial. The money to fund a government program must always be taken from individuals. Government either takes it overtly, in the form of tax payments, or covertly in the form of regulatory requirements that people must spend money and time and

energy to satisfy. Money represents an individuals labor, talent, time, and energy. It is time away from home, time spent on the job instead of with ones family, time spent solving other peoples problems instead of ones own. It measures fractions of lives spent. When government requisitions money from its citizens it forces them to put the governments concerns ahead of their own.

Often there is an excellent reason why individual interactions have not voluntarily produced the result that some misguided activist wishes to force upon them with the rule of law. Overlooking these reasons in a mad rush to gain the mythic moral high ground invariably results in unintended consequences that range in severity from distressing to disastrous.

Example 1: Tradeoffs and the V-chip.

For an example of how public policy tradeoffs are routinely ignored, consider the V-chip. After an impassioned campaign by activists claiming that the content of television programs was bad for children, Congress came up with the V-chip. The V-chip is a device designed to block television programs based on a system of ratings. The legislation requires that it be installed in any "apparatus designed to receive television signals...[having] a picture screen 13 inches or greater in size." The Federal Communications Commission has issued proposed regulations that interpret this to mean that the chips should be installed in any television receiver that meets the screen size regardless of the distribution system. Under these rules, all computer monitors made after July 1, 1999 will have V-chips installed. A central authority of some sort will award the ratings.

This program trades individual parental responsibility for the illusion of child-safe television. It absolves parents of the responsibility to monitor what their children watch, and when children watch things that they shouldnt, it is no longer clear whether it is the parents responsibility to turn the set off, or the central authoritys fault for applying inappropriate standards. Given human nature, some parents will shift their attention from monitoring their childrens viewing to criticizing the central authority. The legislation shifts the focus from turning a program off to influencing the political process and makes it harder for responsible parents who disagree with the ratings to control their childrens viewing. Without ratings, only their children disagreed with them. Now their children disagree and have the backing of the central authority.

The regulations proposed by the Federal Communications Commission leave no doubt that this measure will inflict collateral damage on free speech. Since the Federal Communications Commission intends to interpret the legislation in the broadest possible manner, the government will now require that devices to control content be inserted in all monitors capable of receiving television signals by any means. This means computer screens and it is the camels nose under the tent for government regulation of content on the Internet. Anyone who values individual rights must wonder whether the tradeoff is worth it.

This tradeoff seems especially poor given the grim example of the movie ratings system. The level of vulgarity currently available to the average child swamps what was available before the ratings were instituted. That supporters of this measure believe otherwise is a tribute to the ease with which hope triumphs over experience in the public policy arena. They have relieved parents of yet another duty while creating a centralized rating authority that is one step away from a

ensor. They have mandated the installation of content monitors in all household video monitors. Regardless of their stated political convictions, proponents of the V-chip have given the State another chunk of responsibility for managing individual lives and moved the United States government one step closer to the socialist model.

Example 2: Tradeoffs and childrens health insurance.

Because the public policy tradeoffs of government involvement in medical care are not well understood by the lay public, government controlled childrens health insurance has been a particularly fruitful avenue for those who wish to advance the socialist model of government. They have done an excellent job of equating health insurance with medical care. By blurring this distinction it becomes easy to imply that children without health insurance lack access to medical care, fail to receive proper preventative care, fall ill, and cost taxpayers more in the long run. Supporters claim that government health insurance programs will save money by preventing illness in the first place.

In fact, the data show that only prenatal care, certain immunizations, and selected tests for congenital illnesses save money. Over 90% of pregnant women in the U.S. already get prenatal care; immunizations are free at public health clinics; and tests for congenital illnesses are already law. Control, not money nor access nor medical care, is the real issue. If proponents only wanted good medical care for children, for example, they could provide vouchers good for private medical care and private insurance.

Instead, we have childrens insurance programs in which the government removes children from the private insurance market and requires recipients to contract with a provider of its choosing, usually some sort of HMO. HMO patients have relatively little control over the type of care they receive, and are locked into a situation in which their medical care provider makes money when it decides not to treat them. The HMO determines the form of medical care, the place where it will be delivered, and the amount of time they will have to wait.

Some of the tradeoffs that characterize this type of legislation are listed below. Many of them would not occur under a market oriented voucher system in which the government provided the funds, but did not contract with care providers or micromanage care delivery. Though rarely discussed, such plans do exist.

a) Removing children from the private market for insurance raises rates and weakens the private market because children are generally better risks than older adults. Higher rates mean that fewer people will buy insurance.

b) Making government responsible for health care means that bureaucrats, not patients and their physicians, determine what constitutes "adequate health care." There is a great deal of evidence that bureaucrats prefer low cost treatments to those that cost more but save time, have lower risks, produce more rapid recoveries, and more complete rehabilitation. Private individuals make the opposite choices.

c) Government insurance diminishes parental authority for a child's health and makes dissenting parents vulnerable to charges of child abuse. Some states offering childrens health insurance have made schools Medicaid providers. Requiring that privately insured students receive the

same care as publicly insured ones, the schools have then authorized mental and physical health and social services without parental consent. Some have begun requiring genital examinations of all sixth grade girls to detect "abuse." Parents who object are, by definition, objecting to adequate health care for their children.

d) People covered by government insurance have little ability to affect the care they are given. Why should they be responsible?

e) This kind of program makes it more difficult to resist activists intent on increasing coverage. Once coverage is subsidized up to X% of the poverty line, the people at X+1% face "unfair" taxes.

f) Experience around the world suggests that all known systems of government controlled medical care deliver less and cost more than private systems do. They also retard technological development and make people dependent on the State.

g) Many physicians find bureaucratized systems a less attractive working environment. Some either leave medicine altogether or refuse to accept patients with government insurance. This reduces the supply of health care for everyone.

A Checklist of Tradeoffs

Individual responsibility? Individual responsibility? Does the proposed initiative decrease individual responsibility? People relieved of individual responsibility in one area often stop exercising it in others as well. Are the social consequences of reduced individual responsibility worth the changes in behavior that this law will realistically produce? Whether the proposal decreases individual responsibility in government is also worth considering. Policies that shield venal public officials from bearing responsibility for their actions by instituting committees, complicated decision making process, or mandates virtually ensure that less responsible decisions will be made. Laws that mandate arrests, prosecutions, or other actions by officials also make poor public policy. When brute mandates replace good judgement, horrendous miscarriages of justice follow.

Will the proposed behavioral changes occur? Supporters of a law typically assume that most people will follow it. This is not necessarily the case. The Endangered Species Acts draconian regulations restricting property use have made people more inclined to "shoot, shovel, and shut-up" than to provide habitat for endangered species. If large portions of the population consider a law stupid and refuse to follow it, as has happened with the drug laws and is likely to happen with the anti-smoking regulations, passing the law erodes the governments moral capital by reducing respect for all law. (This is not to say that drugs or smoking are good, but to point out the significant costs of laws which have large opposition.) Respect for the law and equal treatment under it is one of the foundations of a civil society. Will the gains from the law under consideration be worth the erosion?

Potential for fraud, corruption, and other rent-seeking activities? When government is given the power to influence economic outcomes worth large amounts of money, then it becomes worthwhile for people to spend large amounts of money to influence the government. Increasing

governments economic power increases the return from lobbying, bribery, corruption, and the sale of favors. Does the policy under consideration increase the rewards for fraud and corruption by increasing governments power to influence economic outcomes?

Respect for the law and equality of treatment before it? If government shows no respect for the law, why should the people respect the law? When a law or regulation bestows favors on a pampered few or punishes a despised minority, government officials endanger the rule of law itself.

Incomprehensible laws or laws in direct conflict with one another make it impossible not to break the law and help make the law a laughingstock. Passing such measures inevitably leads to the widespread bitterness, hatred, and lawlessness that undermine the basis of a civilized society. Laws making parents responsible for the actions of teenagers while absurd child abuse laws take away the parental authority are pure poison.

So are employment laws that find fault with employers for not hiring a person likely to harass others, while making it impossible to fire offenders and making employers liable for any harassment that occurs. In general, laws that make person A responsible for person Bs bad behavior without also giving person A the right effectively to restrain person B make unreasonable demands.

Will an initiative disrupt long accepted principles or abrogate existing law? Government actions that disrupt long settled patterns of private intercourse or law deserve special scrutiny. There is usually a good reason why employers, private organizations, government bureaucracies, and parents do the things they do. The modern practice of enshrining broad sentiments as law and leaving the bureaucracy to work out the details imposes horrendous costs.

Regulations written by unaccountable bureaucrats with no sense of life outside of government create intolerable uncertainty in economic and personal relationships. Laws covering everything from wetlands protection to domestic violence to child abuse are so badly written that they make the legality of everyday behavior unknowable. Employers play Russian roulette with their assets because the bureaucracy now has the power to play Monday morning quarterback with their hiring and firing decisions. Property owners never know if they will be bankrupted because a past owner abiding by past laws happened to violate current ones. Landlords can be prosecuted for putting the wrong words in their advertisements, and schools teach disobedient children to threaten their parents with legal action. In most of these cases, the losses from the side effects of the legislation greatly exceed the benefits from it.

By how much does the proposed initiative increase the administrative systems complexity?

The larger and more complex an administrative or legal system is, the less likely individuals are to master it. Complex school-finance or curriculum development processes make it harder for parents to affect school performance. Appealing to a board when one has been mistreated by ones HMO is much harder than simply switching doctors. Setting up such a board is no substitute for giving people control over how their money is spent in the first place. As a general rule, anything that results in more meetings and procedures means less public involvement and, ultimately, less oversight. Attention is scarce. The more convoluted a process is, the less oversight

there will be.

Does the initiative erode individual control? A law which creates government watchdogs to pass judgement on how parents raise their children damages family life by undermining parental authority. Someone must decide how to socialize children. As a group, individual married couples acting as they see fit have the record of success. Thirty years of experiments in having government schools, social agencies, and courts direct child rearing have produced terrible results. Successful villages concentrate on supporting parents, not their semi-socialized offspring.

Erosion of individual control also affects other types of production. Someone has to decide how a product is going to be produced. Who is likely to produce better results? Individuals who own and run a business or government bureaucrats intent on micromanaging workplace hiring, firing, wage, and working conditions for their own political ends?

Rule 3: All goods are scarce. Scarce goods must be rationed. Letting the government decide who gets what politicizes both production and consumption.

Economists define a good as anything someone wants and is willing to pay for: money, power, love, prestige, jobs, contracts, apples, oranges, housing and political appointments. In general, market economies use price to decide who gets scarce goods. The existence of profits ensures that producers concentrate their efforts on producing what people want at a price they are willing to pay. If one is unwilling to use price to decide who gets what, then goods must be rationed by an alternative method: waiting lists, political pull, lottery, force and violence, first-come-first-served, or some group of subjective criteria developed by a third party. Most of these alternatives to market prices politicize decisions about who gets what. This invariably increases the States power to bend individuals to its will.

Because government control usually cripples price rationing, extending government control to previously unregulated aspects of private life generally politicizes them. Productive efficiency decreases, bureaucratic tastes and preferences supplant private ones, decisions take forever because government processes take forever, and politically determined definitions of cost and equity override all other considerations. Conflict also increases as claimants jostle one another for a higher spot on a waiting list, compete to curry favor with the officials who allocate the resource, and game the regulatory system seeking an advantage.

Proponents of government control typically argue that letting government allocate goods by whatever means it chooses is "fairer" than allocation by price, because price rationing puts the poor at a disadvantage. There are two flaws in this argument.

The first is the failure to recognize that all other methods of allocation also put various groups at a disadvantage. Making people wait in line in a first-come-first-served system discriminates against those with scarce or expensive free time. This includes anyone who works for a living, particularly the working poor when they must forgo wages. Allocating on the basis of political pull disadvantages those who are poor at interpersonal relationships and have little of material

value to offer the politically connected.

The other problem with this argument is that it ignores the historical evidence showing that the poor fare far better in economies in which the government does not exercise a great deal of control. Government allocation rewards the politically adept. Allocation by price rewards those who produce what others want at a price they are willing to pay. Substituting government allocation for market processes reduces the quantity of goods available to society as a whole by encouraging producers to direct their efforts toward currying favor rather toward efficient production. Increasing market allocation encourages producers to produce more. This, not government decrees, reduces poverty.

Example: Subsidized housing, a case of government allocation making the problem worse.

A common complaint in the ski towns of Colorado is that housing is too expensive. People who work in the towns cannot afford to live in them because people from other parts of the world have outbid them. Employers complain about a shortage of workers and everyone complains about congestion. Some people want the government to fix things by providing "affordable housing" either by forcing developers to build units that rent for below market prices, by paying some part of the building costs, or by paying some part of the rent.

The prices in these areas are high because many people want to live there relative to the amount of available land. The high market price signals that the town is crowded and discourages others from relocating there. It also makes employers bear the cost of hiring more people and increasing the congestion. If housing is so expensive that people cannot afford it on the wages offered, employers must increase wages and economize on the number of people employed by providing housing or by simply paying more. As the increased wages raise prices in the town, it will become less attractive and people will stay away. This reduces crowding.

When government subsidizes housing it gets the funds to do so by increasing taxes. A developer or some other taxpayer must pay more so that the occupant of subsidized housing can pay less. If the developer pays either by building "affordable" units as a cost of his permit or through direct taxes, he must pass along some fraction of his costs. This makes new housing even more expensive. When land is scarce, developers can restrain per unit costs by increasing population density and, ultimately, crowding and congestion. In short, subsidized housing benefits the lucky few who get subsidized units. It increases congestion, and prices, for everyone else.

Rule 4: When government performs detailed economic tasks, the responsible political authorities cannot possibly control the manner in which they are performed.

In a classic paper on information transfer, economist Frederich Hayek argued that Rule 4 must hold because a central decision maker cannot possibly be in possession of the facts required to make a reasoned decision. Among other things, the sheer number of decisions that must be made to direct even a small operation quickly overwhelms even the finest mind. In 1995-96, the State of Colorado expected to employ roughly 28,000 full-time equivalent employees. It is obviously

impossible for any group of legislators to keep track of what so many people are doing.

Another limitation is the sheer quantity of information that some decisions require. Physicians selecting the best treatment for a patient may collect information on a host of physical symptoms, ask detailed questions about past history, consider the patients ability to follow directions, and inquire about his family situation. Transmitting all of the relevant data to a third party is impossible, so a third party is unlikely to improve on the decision made by the person on the spot.

The same kind of information problem dooms centralized attempts to control child-rearing. In any given situation, a reasonable response to a childs request depends on the his personality, mood, behavioral history, native intelligence, physical condition, likes and dislikes, the physical situation, and the preferences of the person responding.

In other words, the road to hell is paved with good intentions precisely because bureaucratic outcomes are beyond legislative control. In the words of George Stigler, "at most Congress can sample and scream." And given the bureaucratic and judicial predilection for ignoring original intent entirely, even control by sampling and screaming is often denied. Rule 4 means that responsible officials must consider the harm a proposed policy will cause when, not if, it spins out of control.

One of the dirty little secrets of public policy is that the repercussions of Rule 4 have for decades allowed Congress and other legislative bodies to operate two tidy little rackets to their own advantage. The schemes operate as follows:

1. The constituent service racket. 1. The constituent service racket. Pass vague laws, wait for regulators to develop impossibly complex rules that inevitably trap constituents. Then ride to the rescue under the guise of "constituent service." Collect votes from grateful supplicants.

2. The legal extortion racket. 2. The legal extortion racket. Threaten to pass horrendous law. Collect money from people who will be maimed by it. Then kill the proposed legislation.

Both practices are reprehensible. Responsible government officials are accountable. They write clear, specific, narrowly targeted laws. They do not enact vague exhortations with the bureaucracy to fill in the details. They do not extend government control into new spheres of activity, and they do not manipulate the law to instill fear or curry favor. They read legislation before they pass it, and refuse to pass legislation they do not understand.

Example: The Americans with Disabilities Act, legislation spun out of control.

The Americans with Disabilities Act (ADA) was sold to the American public as an innocuous way to encourage employers to hire the physically disabled. The widely promoted required "accommodations" were benign measures like putting blocks under desks so that people in wheelchairs could work. After years of work by self-interested bureaucrats at the Equal Employment Opportunity Commission, entrepreneurial advocacy groups, and freelance employment lawyers, the ADA now threatens public health and safety.

In January 1997, a truck driver for Ryder Systems won a \$5.5 million jury verdict claiming that

under the ADA Ryder Systems had unfairly removed him from his job. The driver had an epileptic seizure. Ryder Systems removed him because it was concerned that his health condition was a safety hazard. While he was blocked from working at Ryder the man was hired by another firm, had a seizure behind the wheel and crashed into a tree. Thanks to the ADA he is now back driving a truck.

Because the ADA has made public health and safety secondary to the employment rights of the "disabled," employers no longer dare take action against workers they deem unsafe. The law contains language allowing employers to refuse a job to people who "pose a direct threat to the health or safety of other individuals in the workplace." Nevertheless, GTE was sued when it fired a computer programmer who had brought a loaded gun to the office and stolen thousands of dollars from his coworkers desks. He had, he said, a chemical imbalance. Northwest Airlines was required to rehire a pilot who had flown passengers while drunk. UCLA allowed a heart surgeon infected with hepatitis B to continue operating after it knew he was infected. He infected 18 patients. Lawsuits have even used the ADA to challenge a universitys right to control its curriculum, questioning whether requiring a foreign language requirement is "essential" to a liberal arts education.

Since the burden of proof is on the employer and no one really knows what the latest absurd application of it will be, the ADA greatly increases the costs and risks of hiring people. This reduces the number of jobs available both in total and for the disabled. It makes employers less likely to hire unknowns and increases the probability that incompetent workers will kill or injure innocent people. Here is a short list of the damage inflicted by this out of control law:

a. The incentive for malingering is huge, and by all indications fraud is rampant. a. The incentive for malingering is huge, and by all indications fraud is rampant. The percentage of the population classified as learning disabled, for example, has exploded and some parents coach children on how to behave in order to remain eligible for "crazy money." Otherwise no one really knows what, if any, benefits have been produced and whether they exceed the costs.

b. The ADA put hiring and firing, formerly a matter between employer and employee, under federal control. b. The ADA put hiring and firing, formerly a matter between employer and employee, under federal control. Concern for the safety of others, competency, and good manners have been eroded by litigation. Fair treatment is not the expected norm. People on both sides expect to be cheated.

c. No one understands the law because it favors treating every case individually rather than setting forth a readily understandable list of things that people must do to be in compliance. c. No one understands the law because it favors treating every case individually rather than setting forth a readily understandable list of things that people must do to be in compliance. Employers can be prosecuted both for hiring a "disabled person" and for not firing him. The theories of lawyers with no business experience have replaced sound employment practices.

d. The law fails to help genuinely disabled people get into the workforce. d. The law fails to help genuinely disabled people get into the workforce. The percentage of working-age disabled who were working fell from 33 percent in 1986 to 31 percent in 1994.

A Damage Control Checklist

To this end, the following questions should be considered:

Is an increasingly politicized life an improvement? If the proposed initiative puts a new segment of life under government control, it reduces productive efficiency and pits more citizens against one another in a zero-sum game. How valuable is the innovation that will be lost, the goods that will not be produced, and the civility that will be lost in cut-throat competition for government favor? Will politicizing that part of daily life affect peoples generosity?

Is there an incentive to prosecute regardless of guilt, innocence, or the magnitude of the offense? Will the proposal enrich the agencies charged with enforcement? This reprehensible practice encourages government officials to prosecute first and determine guilt or innocence later. Innocents who have their assets seized seldom have the wherewithal to seek redress. Such provisions throw justice out the window. No initiative containing pre-conviction forfeiture provisions or similar invitations to abuse should ever be approved.

By how much is economic efficiency reduced? Does the private sector already perform this task? If so, prove that the government can do it more efficiently. And keep in mind that neither centralization nor size necessarily indicate efficiency. Also prove that government entry will not retard innovation and that government competition will not reduce the incomes of the private citizens who already perform the task.

Is the law clear? Before the law is passed can a single specialist, unaided by manuals or computers, predict how it will operate in various individual cases? If not, it is too complex for adequate supervision. Vague "do-gooder" laws simply give the courts and the bureaucracy an opportunity to interpret the law in their favor.

Do the requirements of this law conflict with those of others already on the books? Laws that require people to break other laws in order to comply with them are despicable. Government officials that allow such impossible conditions to exist once they are exposed are shirking their duty.

Who bears the burden of proof? Must regulators prove guilt or must individuals prove innocence? Laws requiring the regulated to prove innocence, like the child abuse and tax laws, are far more likely to be abusive. Bureaucrats can make proof of innocence impossible with reporting requirements too complex to comply with. In extreme cases, like the Medicare regulations, law simply ceases to exist. When no one understands the regulations then the law becomes anything the regulators say it is.

What if were wrong about the costs? When looking at policy tradeoffs, advocates generally underestimate costs and overestimate benefits. If the actual costs turn out to exceed initial estimates of the benefits will the program be automatically canceled? Is there a mechanism for doing this in the original law? If the law causes such a big change that one will be unable to reverse it once it is in force, then it should be examined much, much, more critically.

Clear, measurable, criteria for determining success or failure? Does the initiative contain

clear, measurable, criteria for determining whether it has succeeded or failed? Have these criteria been subjected to public examination to determine whether they are reasonable goals for public policy? If clear criteria are not available, the proposal needs more thought. Is there a provision for rolling back the measure if the desired results are not achieved within a specified length of time? Who has an incentive to keep track? Who has an incentive to expose the monitors if they falsify data?

Rule 5. The Government never knows when to quit.

Newton's third law says that a body in motion stays in motion unless some other force acts upon it. While all kinds of forces act to restrain the actions of people and institutions in the private sector, most of the restraints cannot touch the State.

When business loses money on a product, the business shrinks its activities and stops producing that product. When a government loses money because its activities destroy its economic base, it raises taxes.

When parents think that a private school's curriculum harms their children, the school either changes its ways or goes out of business. When parents think that programs in government schools harm their children, school boards demand more money "to make them work better."

When private individuals behave like thugs, private individuals try not to associate with them. When government officials behave like thugs, private citizens get mugged.

Before World War II, the American government's sphere of activity was limited by custom and tradition. During World War II the federal government took over vast swaths of the U.S. economy, control that it only partially relinquished at the war's end. When the intellectual climate of the 1960s prescribed a greatly expanded State role in managing individual circumstances, government growth exploded.

Federal, state, and local governments combined spent just 10% of gross national product in 1929. By 1995, they controlled 32%. These figures grossly understate the increase in State control of the U.S. economy because they do not take into account the amounts that federal, state, and local regulatory programs require private citizens to spend on government-mandated activities. Inflation-adjusted federal government spending on federal regulatory programs rose from \$2 billion in 1960 to about \$15 billion in 1993.

Estimates of the costs generated by regulatory spending are necessarily imprecise, but the best existing estimates put them in the \$670 billion range in 1995. The Federal government directs an additional 9% of gross domestic product by requiring regulatory compliance.

Having already regulated everything from the ingredient lists on soup to the prices of nuts, the Socialists now propose to control how people associate with one another, how they work, and what they do. The fact that government never knows when to quit means that new policies should never be introduced under the assumption that vast new powers will be used "responsibly." Ultimately the new powers will always be applied irresponsibly, plumbing the

nethermost limits of human insensitivity, culpability, and ignorance.

Examples abound. Activists claiming that women did not get to play enough sports in college decided to use government to equalize participation. Since 1979 they have used the U.S. Department of Education's Office of Civil Rights interpretation of Title IX of the 1972 Education Amendments to control university athletics. Despite the fact that men as a group have more interest in athletics than women, schools which cannot show identical body counts in male and female athletics have been prosecuted in a series of show trials.

Show trials empower bureaucrats. They do not increase the percentage of women interested in intercollegiate athletics. To meet the government quotas and avoid litigation, university administrators are now restricting the number of male bodies in intercollegiate sports. They do this by canceling mens sports. UCLA canceled an Olympic caliber mens swimming program and the second ranked mens gymnastics team in America to institute womens soccer and water polo. Princeton eliminated its 90-year-old wrestling program, turning down a \$2.3 million alumni gift to endow it, in order to meet government sports quotas. Desperate to attract women, schools have now made bowling a varsity sport.

Because government never knows when to quit, the damage will not be limited to university athletics. Complainants who win a Title IX suit can collect cash damages as well as lawyers fees. At present, high school athletic competitions in Florida are in danger of being banned because "schools haven't done well enough at equalizing sports participation." Further extending government control over private universities, the Equal Employment Opportunity Commission proposes requiring colleges to equalize advertising, media contact, and coaches pay for mens and womens teams.

Neither the Office of Civil Rights nor the Equal Employment Opportunity Commission are responsible for the losses they cause in their drive to regulate. Nor will they encounter much resistance to imposing those losses. They wield so much power over the funds flowing to higher education that the people affected are afraid to speak up. According to Walter Olson

In the whole Title IX controversy, incidentally, it appears next to impossible to find anyone willing to criticize the law in principle. Sure enforcement has gone haywire and the results are crazy, but everyone hastens to add that of course they just adore the law itself...As for the old idea that universities in a free society should be entitled to make their own decisions--well, that notion, like so many mens track teams, is on its last lap.

Regulators never know when to quit unless the law tells them so. Given enough control they can stifle dissent, set ridiculous standards, and enforce them in whatever aspect of life happens to fall within their ever-expanding purview. Absent outside influences, they will continue to expand their power. Left unchecked, their power to tell people what to do will ultimately overwhelm private action and make it impossible for people to pursue normal, everyday activities without running up against a host of bureaucratic diktats. At that point only the government itself will be able to stop them. Rule 5 says that it will have no interest in doing so.

III. Towards Nondestructive Public Policy

In the last 40 years, ill-considered public policy has consumed years of each Americans working life. It has laid waste to public education, destroyed tens of thousands of jobs, blighted entire industries, and made a mockery of the rule of law. It has fueled societal conflict, eviscerated important civic institutions, rewarded irresponsibility, and punished productivity. It has promoted racism and belittled merit, celebrated incompetence and denigrated achievement. It has systematically extended the States control over its citizens, replacing American government with a Socialist one.

Some of the people who engineered this change applaud it. They wanted to remake American government in the Socialist image and they are succeeding. Champions of virtual reality, they somehow delude themselves into believing that their socialist government will be different than every other socialist government the world has ever known. To others, simple villains intent on plunder, government power is the easiest way to personal wealth and power. As long as they get what they want they do not care about collateral damage. Finally, there were those who naively thought they were helping others by giving government new powers to bear their burdens and manage their responsibilities.

Together, these people opened Pandoras box, loosed American government from its traditional confines, and sent it forth to plague the population. As that reckless experiment plods towards its sorry dnouement, people wishing to preserve the blessings of liberty have a chance to reverse it. They can begin by understanding the nature of government as summarized in the 5 rules explained above. They can further their understanding by reading *The Federalist Papers*, Machiavellis *The Prince*, Hayeks *The Road to Serfdom*, and Milton Friedmans *Capitalism and Freedom*.

Finally, they must back understanding with resolve. Voters, legislators, regulators, and policy analysts interested in preserving the American model of government must cultivate a gimlet-eyed view of government, seeing it as it really is rather than as they wish it to be. They must carefully catalogue the harms that may flow from policy initiatives, rather than blithely assuming that government action will always do good. They must dismantle harmful programs, and work to provide alternatives to them. Above all, they must be willing to do nothing unless they can first be sure that they will do no harm. Sometimes that is the most difficult rule of all. .n

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