

## **Regulation Nation: is a surplus of rules strangling US business?**

The case against bureaucratic overreach is a strong one — whether lawyers will heed it is a different matter

GILLIAN TETT - The FT

When I was a financial reporter in Tokyo two decades ago, American bankers and officials would sometimes jest — albeit seriously — that there were three different regulatory systems in the world, at least when it came to finance. In some countries, most notably the US, everything that was not explicitly banned by specific laws was permitted. In others, such as Japan, everything that was not explicitly permitted was considered banned. Then there was a third category of countries (including the UK) that had “principles”-based systems: instead of relying on the letter of the law, these regimes preferred to outline general principles and apply them using precedent.

This was never quite the same in practice as it was in theory: the UK system wasn’t as neatly principles-based, say, as politicians such as Gordon Brown claimed back when London was touting the supposed benefits of light-touch regulation during the early years of this century. Still, the US officials’ three stereotypes contained plenty of truth. The interesting question is how far this view of US law holds true today. Is it still a “land of the free” that tries to avoid excessively prescriptive rules and encourage innovation? Or is it becoming more “Japanese” in its regulatory climate by imposing a new thicket of controlling laws?

Philip K Howard, a lawyer and writer who has previously advised President Donald Trump’s team, believes the answer to the second question is a resounding yes. In recent years, he has campaigned tirelessly for a “common sense” approach to government that eschews partisan politics and returns the country to a system based on personal responsibility, freedom and minimal government interference. Recently, he laid out his appeal in a thunderous little book called *Try Common Sense*, which laments that an ever-expanding regime of rules is strangling the American spirit and the country’s business community — not just because of what the rulemakers try to forbid, but because they are now trying to prescribe behaviour too.

“American government is suffering from a failure of philosophy, not merely bad management,” Howard writes, listing examples of prescriptive legalistic overreach. These include orchards that must comply with 5,000 rules from 17 agencies — one rule even stipulates that farmers check daily for mouse droppings. There are rules that ban firefighters from transporting injured people in their vehicles to hospital, and prevent immigration officials from giving distressed children a hug; planning laws that impose delays of several years on simple bridge projects; there are states that require multiple licences for basic jobs. And so on. “Governing requires human judgment, not rote compliance,” Howard concludes. “America needs a governing philosophy that gives responsibility, and meaning, back to each citizen and each official.”

Many Democrats will roll their eyes at this advice, which chimes with the traditional “small government” view favoured by Republicans. Deregulation has been blamed for some of the behaviours that led to the financial crisis, the impact of which is still being felt. Meanwhile, Trump swept to power promising a deregulation drive to help “drain the swamp” of

Washington lobbyists — a process that has often seemed to reinforce rather than reduce the role of cronyism, since the laws that are being removed appear mostly to be ones that hinder big business. Indeed, the most visible — and controversial — part of the deregulation drive so far has been the defanging of environmental rules.

Howard insists his argument is bipartisan — and he is distinctly critical of the Trump administration in the book. Many of his arguments align with those being advanced by some anti-establishment leftwing groups too. Take the work of David Graeber, a US anthropologist who played a leading role in the leftist Occupy Wall Street movement almost a decade ago. In recent years, he has written two books — *The Utopia of Rules: On Technology, Stupidity and the Secret Joys of Bureaucracy* and *Bullshit Jobs* — that lambast the excessive power of modern bureaucratic rules, using language not dissimilar to Howard's.

But even if Howard's arguments are mostly just "common sense", it's dispiriting that there seem to be few easy — or effective — solutions on hand. After all, the surplus of modern rules and bureaucracy has not emerged by accident: on the contrary, it reflects a mixture of powerful vested interests and (sometimes) well-meaning efforts to protect consumers and workers from exploitation. Howard blames this situation on "bureaucrats" and politicians. However, the other culprit is America's vast legal profession, which is more powerful than almost any other in the world (including, ironically, supposedly prescriptive Japan). These lawyers earn their living by interpreting the laws. And since legal turkeys do not vote for Christmas, it is hard to imagine any revolution in political culture taking place while this legal behemoth is in place, unchallenged and unchecked.

So, yes, after reading Howard's book it is easy to shake your head in horror about petty — sometimes stupid — rules. But just as voters get the politicians they deserve, they get the bureaucracy their lawyers tolerate. Both need to change.

Comment:-

... Ms. Tett ... seems to miss a more fundamental point. Our economy today is more interconnected and interdependent than ever before-- so of course it's going to be more regulated, because I don't need someone I don't even know, much less exert any influence over, making a decision that brings me harm.

Did we have far fewer regulations 100 years ago? Sure-- because we all lived in far more economically self-contained units. Most of us still just worked on farms, every day of our lives. We're never going back to those days, and when you consider the harsh facts of disease, poverty, shorter life spans, and greater privations, nobody would want to. So of course we highly regulate a sector like banking, or a general corporate activity such as financial reporting. I depend not on \*stellar\* results from those things, but \*regular\* results from those things, so I can plan the rest of my life around those facts. One financial crisis or one corporate restatement could ruin my retirement, or yours, or who knows what other consequence.

If you want to promise me a strong social safety net during unemployment or old age; or easy right of recourse for defective products or poisoned air or accidental injury, I'll ease up on expecting regularity in business activity. But you're not giving me certainty there, and we all know it. So I'm going to seek that certainty elsewhere, which is otherwise known as 'regulation.' So will everyone else, and we all know that too, when we think about it.