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What is This?
When Laws Backfire

Unintended Consequences of Public Policy

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Why is it that so many laws perpetually fall short of their intended goals? Why haven’t humanity’s greatest minds managed to solve basic social ills? This article amasses considerable evidence suggesting that (a) law is inherently incapable of producing major social change because legal restrictions unsettle social equilibria and generate counteractions and (b) the subconscious purpose behind many laws is the promotion of social solidarity for its own sake. The author concludes that laws and the politics that forge them are essentially religious practices that have little basis in rational analysis. Thus can be explained both the perpetual failure of many laws and their irreconcilable popularity.

Keywords: government; bureaucracy; taxation; public policy; welfare

Professor Rudolph J. Rummel (1997) of the University of Hawaii calculated that approximately 170 million human beings were killed by their own governments during the first nine decades of the 20th century. Rummel’s findings highlight the fact that governments and not criminals, corporations, or terrorists are the primary danger faced by most people in the modern world. Moreover, it is generally one’s own government and not any foreign government or governments that is the primary threat to one’s life. Indeed, governments massacred in cold blood almost four times as many of their own citizens as the number of enemy combatants they killed on battlefields in all the wars of the 20th century and several times more people than died in the 400 years of African slave trade to the Western Hemisphere (Rummel, 1997). Government—that necessary evil—is surely the greatest evil of the modern age.

Yet the allure of big government solutions has not loosened its grip on the policy makers of the contemporary period. As Hoppe (2002) observed, modern democracies have produced larger and more intrusive governments than were ever known under the monarchies and feudal systems of previous centuries. Per

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capita taxation and spending, percentages of workers employed in the public sector, and percentages of GDP dedicated to government operations have all grown steadily (Hoppe, 2002; Lott & Kenny, 1999; Roots, 2000a). Lasch (1995) observed that elites of both left and right have increasingly looked to the powers of government to achieve their ends. For decades, political debates have emphasized formal social control and communitarian solutions to social problems (Lasch, 1995). Indeed, the allure of government solutions increased as the 20th century wore on (Lott & Kenny, 1999) and shows no signs of waning as the 21st century begins (Cavanaugh, 2003; Hood, 2003).

The United States is popularly thought of as a bastion of freedom in an unfree world; yet its shift toward formal legal solutions has been particularly acute (Hood, 2003). As Hoppe (2002) wrote,

As a typical example, the 1994 edition of the Code of Federal Regulations (CFR), the annual compendium of all U.S. federal government regulations currently in effect, consists of a total of 201 books, occupying about 26 feet of library shelf space. The Code’s index alone is 754 pages. The Code contains regulations concerning the production and distribution of almost everything imaginable: from celery, mushrooms, watermelons, watchbands, the labeling of incandescent light bulbs, hosiery, parachute jumping, iron and steel manufacturing, sexual offenses on college campuses to the cooking of onion rings made out of diced onions, revealing the almost totalitarian power of a democratic government. (p. 62)

Sowell (1995) described the growing culture of legal intervention in individual affairs as an imposition of the “vision of the anointed”—“the prevailing vision of our time” (p. 7). Under this vision, family, race, gender, work, recreation, and education have all been subjected to increasing control by the state. “Often, those with the vision of the anointed more or less automatically collectivize decisions and then take on the role of deciders themselves” (Sowell, 1995, p. 136). The enlightened elites of academia, journalism, and government have sought to undo the effects of the free market (Lasch, 1995). Laws regulating industry, commerce, and all manner of social behavior have become one of America’s primary products. The United States now has a legal profession of approximately 1 million members (Clark, 2000) and produces so many laws and formal court decisions that a large multistory building is generally needed to house a complete American law library.

Despite America’s apparent trust in law as its problem solver, the vision of the anointed has shown “an extraordinary ability to defy the evidence” (Sowell, 1995, p. 7). More than occasionally, laws backfire. Some of the most popular laws have been proven to be the most dysfunctional or ineffective when measured by their failure to achieve their given objectives. The U.S. Social Security program for example is an immensely popular federal entitlement, yet it taxes most heavily on persons with low incomes, does not provide a fair return, and involves a transfer from the less well off to the better off (Friedman & Friedman, 1981). As Milton and Rose Friedman (1979) wrote, “the poor tend to pay...
[Social Security] taxes for more years and receive benefits for fewer years than the rich—all in the name of helping the poor!” (p. 97). According to Schiff (1984), if the same program were implemented by a business in the private sector, it would be considered a criminal offense.

Another example of popular legislation that has backfired is minimum wage legislation. Such laws tend to increase unemployment and affect the least-skilled segments of the population most adversely (H. Browne, 1995; Orazem & Mattila, 2002). Dozens of studies over many decades show that each time the minimum wage is increased, a percentage of jobs is eliminated (Dodson, 2002; Orazem & Mattila, 2002). Minimum wage laws have done nothing to limit poverty in any sector and have actually increased poverty in some areas—especially the most poor communities (Dodson, 2002; Vedder & Gallaway, 2002). The unemployment generated by such laws is linked with increased rates of mental illness, suicide, homicide, divorce, and deaths from heart disease, stroke, and cirrhosis of the liver (Brenner, 1976).

Impacts of minimum wage laws also differ along racial, ethnic, and gender lines. As Sowell (1994) wrote, in 1950, the rate of teenage unemployment was not appreciably higher than that of older workers, and the unemployment rates of Black and White teenagers were very similar.

Beginning in 1950, however, Congress passed a series of minimum wage increases over the years, while also spreading the coverage of the law to new low-wage sectors that had been exempt previously. Over the next three decades, teenage unemployment rose relative to the unemployment of older workers and black teenage unemployment rose far above white teenage unemployment. By the 1970s, black teenage unemployment had risen to several times what it had been in 1950. At no time during the three decades after 1950, not even in the most prosperous years, was black teenage unemployment as low as it had been in 1949—a recession year. (Sowell, 1994, pp. 94-95)

This cruel self-correction has been demonstrated so repeatedly that by now it should be entirely predictable to lawmakers. As Herbert Spencer (1850/1995) pointed out in 1850, the British Minimum Wage Act of 1773—passed due to pressure from English weavers to provide them with greater comfort and job security—decimated the British weaving industry only 20 years later. By 1793, “some four thousand looms would be brought to a stand in consequence of the trade going elsewhere” (p. 11). It is likely that few if any of the unemployed weavers paused to consider that the minimum wage legislation they so enthusiastically advocated 20 years earlier was the cause of their own impoverishment.

The unintended consequences of public policy haunt virtually every legal enactment. For example, gas mileage standards that force automakers to produce fuel-efficient vehicles kill thousands of people annually by forcing automakers to sacrifice sturdiness in favor of lightweight designs (Kazman, 2003). Pharmaceutical regulations withhold potentially life-saving medicines from the market and cause the premature deaths of thousands of people annually.
Federal meat inspection laws do little to ensure meat safety and increase the likelihood of meat going bad on the way to market (Roots, 2001b). Narcotics laws have been shown to actually increase drug abuse in many communities and to cause a host of other social problems (Gray, 2001; Silberman, 1978). Policing often increases the risk of rioting, social disorder, and violence in the streets (Roots, 2001a). Laws requiring owners of slum apartment buildings to renovate them cause the owners to abandon the buildings completely or to expel their tenants and convert their buildings to other uses, resulting in an even greater dearth of housing for the poor (Giddens & Duneier, 2000). Student loan programs aimed at providing educational opportunities for the poor raise tuition costs (Roots, 2000b) and have actually decreased the participation of the poor and minorities. Government-mandated auto airbags and safety-seat restraints have killed dozens of children since 1990 (Bedard, 1999; Carey, 2003). Antitrust laws generally harm businesses that sell goods and services of high quality at low cost while benefiting competitors whose products are more expensive and of lower quality (Kopel, 2001).

Despite $1.7 trillion in U.S. foreign aid distributed to the Third World since World War II, many recipient nations have actually grown poorer even as the developing world in general has prospered (Bandow, 1999; Dichter, 2003; Norberg, 2003). “Gun-free” zones around schools, day care centers, hospitals, and other public places have actually increased the dangers of violence at such institutions because criminals go where they anticipate little resistance (Lott, 2003). Public housing and urban renewal programs—often created to ameliorate housing conditions among the poor—have actually subtracted from the housing available and forced the less fortunate to pay more for housing (Sowell, 1994).

**SUCCESSES**

This is not to say that all laws and all government programs have failed totally. On the contrary, many examples can be cited of laws that appear on the surface to be successful. Congress’s creation of the U.S. interstate highway system has contributed greatly to American economic superiority by providing efficient transportation routes across the nation. Public health measures have drastically reduced the incidence of deaths due to diseases such as smallpox, cholera, yellow fever, typhus, tuberculosis, polio, and measles. Occupational safety laws have helped lower accident rates in mines and factories (Caplow, Hicks, & Wattenberg, 2001). The U.S. Endangered Species Act has brought back a number of threatened wildlife species from the brink of extinction (Breining, 1994).

But for every government success story, there are trade-offs that are either unexpected or underappreciated at the time of enactment. The benefits from laws often end up overshadowed by unforeseen unintended consequences
(Sowell, 1995). Congress’s creation of the federal highway system has eaten up precious soil and undermined urban rail transportation (S. Browne, 2002; Fellmeth, 1973), public health successes have enabled some diseases to reemerge in strains immune from known human vaccines (Fisher, 1994), and occupational safety standards have driven mining and industrial operations overseas, leaving the U.S. and other Western democracies without significant ship-building, textile, and other hard industries (Fingleton, 1999). Even the Endangered Species Act has been shown to endanger some wildlife species by exposing them to predators they would not otherwise encounter in the wild (Shaw, 1995).

In the words of Harry Browne (1995), “Each government program carries within it the seeds of future programs that will be ‘needed’ to clean up the mess the first program creates” (p. 17). Herbert Spencer (1850/1995) remarked in 1850 that there was scarcely a bill introduced in the British Parliament that was not titled “An Act to Amend an Act,” the “Whereas’s” of which always heralded “an account of the miscarriage of previous legislation” (p. 12).

The history of one scheme is the history of all. First comes enactment, then proba-
tion, then failure; next an amendment and another failure; and, after many alternate tinkerings and abortive trials, arrives at length repeal, followed by substitution of some fresh plan, doomed to run the same course and share the same fate. (Spencer, 1995, p. 12)

Especially difficult to resolve are a small set of the most enduring social prob-
lems—poverty, crime, class inequality, and others—that have plagued every society for millennia. “To mitigate distress [of the poor],” wrote Spencer (1850/ 1995) in 1850, “the English people have sanctioned upward of one hundred acts in Parliament . . . each of them arising out of the failure or incompleteness of previous legislation. . . . What is the statute book but a record of such unhappy guesses?” (p. 11).

THE FAILURE OF GOVERNMENT

Weaving through this discourse is the reality that governments really do perform horribly in most circumstances. When individuals give decision-making power over their own lives to governments, they submit their lives to entities that have failed to regulate even the simplest of human affairs with sound results. Decisions about individual affairs made by group consensus are often less rational than decisions made by individuals alone (Roots, 2003). “Third-party decision-making by surrogates for ‘society’ offers no a priori reason to expect a closer approximation to omniscience” (Sowell, 1995, p. 196). The persistent failure of government seems to pose no obstacle to the will of instrumentalist elites, who hold free markets in disdain no matter how often they work (Sowell, 1995).
Written in the 1860s, Karl Marx’s *Capital* is filled with descriptions of laws established in Europe purporting to aid workers that either backfired or were circumscribed by the industrialists of the late 19th century. For example, England’s Factory Act of 1850, which mandated a 10-hour workday with an hour for lunch for the average British worker, was subverted by factory operators and their “werewolf-like hunger for surplus labour” (1990, p. 353) who pilfered minutes from workers during mealtimes and break periods. Government regulators who inspected the factories, according to Marx, either looked the other way or imposed such meager fines and penalties that the capitalists simply calculated them into their costs. Marx blamed the failure of such laws on the vicious greed and eternal craftiness of the capitalists—a phenomenon warranting further laws to remedy. Although Marx and his later disciples talked about “freeing” people from the state and often described the state as a product of capitalist manipulation, their call was for the establishment of legal restraints by the state on their employers—a call that has been heeded by policy makers around the world for more than a century. Yet the original inequities remain (Greider, 1997; Wolff, 2002). 

### THE ETERNAL QUEST FOR EQUALITY

Marx’s ideas inspired revolutions and reforms around the globe (Rius, 1976). A century after his death, one third of humanity practiced some form of state-sponsored Marxism while the other two thirds lived under at least some of his proposed reforms, making him the most widely implemented social theorist of all time (Rius, 1976). Labor legislation, progressive taxation, public education, and wealth redistribution laws have become the order of the day. Yet despite the application of every conceivable mechanism to create human equality by use of government programs, “social inequality is a universal reality of human existence” (Edgerton, 1992, p. 79). Moreover, overall social inequality, at least according to some scholars, has actually grown (e.g., Greider, 1997; Wolff, 2002). 

### TRANSFERS BY THE STATE

“Mitigating the distress of the poor” has captivated the interest of political scientists, sociologists, and economists for half a century (Sowell, 1995, p. 66). Many critics have pointed out that the administrative costs of welfare transfers often eat up most of the money budgeted for the programs themselves. In some cases, only 1 dollar in every 10 actually makes its way to the welfare recipient (Funiciello, 1994).

Ironically, the number of people below the poverty line declined for more than a decade before the “War on Poverty” began in the 1960s (Sowell, 1995).
Welfare laws actually reversed this long trend (Sowell, 1995). The percentage of people dependent on the federal government to remain out of poverty increased substantially (Sowell, 1995). States that were most generous with welfare experienced the greatest increases in child poverty, whereas states that were the least generous saw major reductions in childhood poverty (Goodman, 1987).

The unintended costs of welfare spending have rarely been compiled by academics (Murray, 1994). But research has shown that a substantial number of welfare recipients simply lived in poverty by choice because of the attractiveness of welfare programs. During the mid-1980s, at least 5.7 million people—roughly one sixth of the population in poverty—were living in poverty by choice due to welfare (Goodman, 1987). Each additional $1 million in welfare spending increased the poverty population by 250,000 (Goodman, 1987). Controlled experiments by the U.S. Department of Health and Human Services found that compared with similarly situated families not on welfare, families drawing welfare payments changed their behavior substantially.

The number of hours worked by husbands dropped 9 percent; by wives, 20 percent; by young male adults, an incredible 43 percent. The length of unemployment among husbands increased 27 percent; among wives it increased 42 percent, and for single female household heads it increased 60 percent. Divorce increased 36 percent among whites and 42 percent among blacks. (Goodman, 1987, p. 37)

Another study found that increasing welfare spending by 10% led to an average reduction of $27 in private contributions from taxpayers. Each additional dollar of welfare spending by the U.S. government led to a 30% reduction in private contributions (Goodman, 1987).

One of the least known facts about welfare spending is the miserable job it does in attaining its stated goals. Studies show that the vast majority of people eligible for welfare payments do not partake of them at all, whereas about half of those who receive the benefits are not actually below the poverty level (Goodman, 1987). In essence, such transfers of wealth are given to manipulators of the system rather than those who really need assistance, and the greatest beneficiaries are the bureaucracies themselves and those most adept at navigating through paperwork. More than a third of the federal emergency grant money intended to help Lower Manhattan’s small businesses survive after the September 11 terrorist attacks went to lawyers, investment firms, and financial traders rather than small restaurants and retailers (Wyatt & Fried, 2003).

In the United States, approximately $5.4 trillion was spent by U.S. taxpayers on government welfare programs between 1965 and 1994 (Rector & Lauber, 1995), roughly equivalent to the net value of all private businesses in America and considerably greater than the cost to U.S. taxpayers of fighting World War II, adjusted for inflation (Munro, 1996). But welfare is only a small part of an immense wealth redistribution system. Laband and McClintock (2001) reported that more than $3 trillion annually are transferred by federal and state govern-
ments in the United States, and an estimated $550 billion is spent to affect or prevent these transfers. All told, more than $2,000 for every man, woman, and child are spent on obtaining or preventing transfers by the government.

As Higgs (1994) pointed out, income redistribution laws aimed at equalizing wealth generate an array of negative consequences that are rarely foreseen by their creators but that inevitably undermine, retard, and backfire against the progress of redistribution. Such laws (a) discourage taxpayers from earning greater income and producing more goods and services; (b) discourage recipients from educating and investing in themselves; (c) undermine the work of unions, churches, lodges, and voluntary associations that assist the needy; (d) create entrenched bureaucracies that ferociously battle against future reforms and distort awareness of the outcomes of their programs; and (e) generate compliance costs that consume more than one fourth of the resources raised. “In the transfer society, the general public is not only poorer but less contented, less autonomous, more rancorous . . . and take part less often in voluntary community activities” (Higgs, 1994, p. 6). Laband and McClintock (2001) pointed out that when property is transferred involuntarily to equalize social groups, value is, on balance, destroyed. The immense administrative costs ensure that any system of legally mandated transfers is welfare reducing; resources that could have been put to productive use are wasted (Laband & McClintock, 2001).

EDUCATION AND INEQUALITY

For more than a century, social engineers viewed public education as the cornerstone for reforming society along egalitarian lines. Economists once thought that educational growth would lead to a more egalitarian wage structure, and sociologists believed that increased school attendance rates would boost social mobility (Boudon, 1982). But the increasing income inequality of Western nations during the past half century has been accompanied by the most intense dispersion of public funds into education ever recorded in history (Boudon, 1982). This grand experiment has now seen investments of $750 billion annually in the United States—fully 7.5% of American GDP—and school attendance rates have greatly increased at all levels. In fact, every Western nation is approaching universal opportunity for higher education. Yet wage and income disparities have increased, not declined, over the past five decades (Wolff, 2002). Thus, although educational inequalities have certainly diminished substantially, overall socioeconomic inequalities have worsened (Boudon, 1982), making the U.S. educational experiment one of the biggest sociological flops of the 20th century. As Lester C. Thurow concluded, “Our reliance on education as the ultimate public policy for curing all problems, economic and social, is unwarranted at best and in all probability ineffective” (Boudon, 1982, p. 29).
PUBLIC EDUCATION AND RACE

Efforts to equalize education outcomes for Whites and minorities have failed despite many billions of dollars of investment. At the time of Brown v. Board of Education (1954), social scientists overwhelmingly predicted that racially integrated schools would improve the test scores of African American students vis-à-vis Whites. The Supreme Court’s decision in Brown was in part based on such academic testimony. But decades of busing programs and many tens of billion of dollars later, experts have had great difficulty identifying a single longitudinal study that demonstrates that desegregation produced significantly better learning for Blacks (Scott, 1985). Sociologist James Coleman, an initial proponent of busing, declared in the 1980s that “the assumption that integration would improve achievement of lower class black children has now been shown to be a fiction” (Scott, 1985, p. 28).

Desegregation let loose a stream of unanticipated consequences, each of which in turn had to be corrected by new laws, new policies, and ever-more strained constitutional interpretations by the courts. Busing brought about decades of White flight that cut the property tax bases of virtually every major American city by the 1980s. Annual costs for many desegregation plans required approximately $1,000 per desegregated student (Heise, 1996). Scott (1985) noted that the total costs of busing have never been calculated but must run into the billions of dollars annually.10

AFFIRMATIVE ACTION

So too, the successes of affirmative action in individual cases have been overshadowed by unintended structural costs. Research indicates that the imposition of affirmative action on the U.S. economy costs Americans approximately $236 billion annually, or more than $25,000 per year for every African American family of four (Center for the Study of American Business, as cited in Kirsanow, 1995). Affirmative action may have backfired enormously, closing the door on minority progress in many areas. A recent study by Cole and Barber (2003) suggested that gifted minority college students have been systematically kept out of university faculty careers because affirmative action programs pull them toward Ivy League institutions where they must compete against the very cream of American students. At such elite universities, mediocre grades often keep them from entry into graduate programs and out of the ranks of university faculty (Wilson, 2003). Affirmative action, not discrimination, accounts for the low percentages of minorities among America’s university faculties, an irony that has been lost on those who assert the low percentages of minority faculty as evidence of structural or institutional racism (Cole & Barber, 2003).

On an even broader scale, the gains for people of color that were brought by the Civil Rights Acts of the 1960s have been to some extent displaced by the
increasing incarceration of people of color in American correctional institutions. The same demographic sector—poor, Black, mostly male descendents of slaves—have been transferred into penitentiaries where conditions are much worse than even those faced by their own forefathers. In some Southern states, inmate chain gangs hoe and weed virtually the same ground worked by their own enslaved ancestors prior to the Civil War. The only real difference of course is that today’s slave descendants are in a worse state of bondage—often attached by links of chain, monitored more closely, and confined more strictly. Upon release from custody, this population of poor African American men often dwell in poor housing, deprived of the same basic rights of voting, jury service, ballot representation, and the right to bear arms that their ancestors were deprived of—only now on account of their convicted felon status (Uggen & Manza, 2002).

A RETURN TO STRUCTURAL FUNCTIONALISM?

The tendency of laws to backfire suggests that laws represent alien insurgents on the landscape of human nature. Not only are there no straightforward legal solutions to basic social problems, but there is perhaps no such thing as a social problem because the social world with all its suffering is as nature intended. This notion invokes the work of the structural functionalists who dominated social theory throughout the late 19th and early 20th centuries. The functionalists argued that enduring social manifestations such as racial and gender inequities, class stratification, homelessness, and poverty fulfilled vital functions, accomplished important tasks, and represented indispensable components of “a working whole” (J. H. Turner, 2000, quoting Merton). Herbert Spencer, the founder of functionalism in its earliest manifestations (J. H. Turner, 2000) suggested that the proper role of government was a very limited one—limited to defending the natural rights of man and protecting private property (Spencer, 1873/1996).

Spencer suggested that humanity was best left to its natural inclinations. His view of the appropriate role of the state excluded the state from meddling in industry and commerce, providing relief to the poor, administering education, or even taking action to improve sanitation. In The Proper Sphere of Government, Spencer (1842/1994) argued that social problems such as poverty, homelessness, and poor health arose from “the disturbance of natural laws” and from governments “foolishly endeavouring to maintain, in a condition of unstable equilibrium, things which, if let alone, would of themselves assume a condition of stable equilibrium” (p. 53). In Spencer’s view, majoritarian rule left the individual equally at the mercy of illegitimate authority and of “political superstition which has replaced the divine right of kings by the divine right of parliaments” (Spencer, 1902/1970, p. 84).

Spencer’s ideas dominated Western policy making until the early decades of the 20th century. American law reflected laissez-faire attitudes toward com-
mercial, industrial, economic, and civil affairs. Spencer’s view that legal intrusions disrupted the social equilibrium was cited by courts and elected officials throughout America’s Gilded Age. The following words of New York’s highest court in 1885 were typical: “Governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry, and cause a score of ills while attempting the removal of one” (In re Application of Jacobs, 1885).

Today, functionalism is almost universally condemned by contemporary sociologists (S. P. Turner, 1993). Academics after the 1970s made a mockery of functionalist ideas in sociology (although such ideas continue to carry weight in anthropology) (Edgerton, 1992). The faculties that took over the halls of academe during the final quarter of the 20th century espoused more hands-on social experimentation. They sought to change the balance of society, to implement, to intervene.

Now, after decades of failed laws and programs intending to eradicate social ills, social scientists should reevaluate. The fact that so many grand social experiments collapsed or proved ineffective should motivate social thinkers to reconsider their ideas and to embrace the possibility that Spencer was essentially correct.

**BY WHAT MECHANISM DO LAWS TEND TO FAIL?**

The question remains: Why do laws perpetually fail? And why do laws that have failed remain popular regardless of their perpetual failure? These questions go to the very heart of human nature. Laws, even when supported and followed wholeheartedly, stimulate their own violations by encouraging alternative courses of action, inducing rival impulses within human consciousness, and stimulating alternative avenues of self-seeking. Laws also shift incentives, realign individual interests, alter human motivations, and disrupt social equilibrium, thereby arousing corrective counterweights among even the most obedient. And then there are the problems posed by bureaucratic resistance even within government. Few lawmakers pause to consider precisely how new laws will be “hindered by ‘bureaucratic inertia, sabotaged by political opponents, or temporarily derailed by the common accidents that happen to the best of well-laid plans’” (Roots, 2003, p. 505, quoting Irving Janis). Studies show that government bureau chiefs have difficulty changing what their organizations actually do and how they do it regardless of how dynamic or enthusiastic they are (Dilulio, 1994). Thus, even the most enthusiastic social planning proves ineffective, inefficient, and incapable of responding well to unforeseen circumstances (Dilulio, 1994). Consult the literature in political science, and “you will encounter example after example of failed implementation, stunted innovation, po-
liticized administration, perverse regulation, and outright corruption” (Dilulio, 1994, pp. 159-160).

SHifting a PROBLEM FROM ONE AGENCY TO ANOTHER

Many policy changes that purport to provoke profound changes in power structures actually shift a problem from one bad solution to another and back. Treatment of the mentally ill, for example, has slowly transferred from private and state mental hospitals to private charities and agencies that deal with the homeless to the criminal justice system. “Hence, the tax burden is merely shifted from one agency to another rather than diminished” (Horowitz, 1994, p. 188).

THE UNANTICIPATED COSTS OF LAWS

One of the most significant ways that laws backfire stems from their unanticipated or hidden costs. Lawmakers are notorious for grossly underestimating the expenses involved in implementing and enforcing their enactments. Planners in government appear to have deliberately misled the public about the costs and benefits of some programs (Twight, 2002). When Medicare was set up in 1965, its proponents projected its annual cost by 1990 to reach $2 to $3 billion. In fact, the cost in 1990 was $98 billion—more than 30 times as much (H. Browne, 1995). The Savings and Loan bailout program of the late 1980s was enacted with representations that it would cost a maximum of $50 billion, an immensely controversial amount at the time. But actual costs to taxpayers were later estimated at $126 billion (Twight, 2002). More recently, Congress created a massive new agency to screen airport passengers while claiming the annual cost to taxpayers would be about $1.8 billion. Only a few months after the agency was created however, the actual cost was recalculated at more than $6 billion annually (Roots, 2003).

The unanticipated costs of laws sometimes generate stark reversals of benefits for their creators and intended beneficiaries. There are many instances of laws intended to aid the poor that have instead harmed the poor. For example, the Social Security system places substantial burdens on the poor and benefits almost no one except the bureaucracy that administers it (Schiff, 1984). Austrian-School economist Hans-Hermann Hoppe (2002) stated in a recent book that governmental support for higher education has actually backfired on its intended beneficiaries and imposed immense costs on the poor.

Frequently it will actually be the better-off who succeed in having themselves subsidized by the worse-off. Consider, for example, the almost universal practice of offering a “free” university education, whereby the working class, whose children
rarely attend universities, pay through taxation for the education of middle-class children! (p. 97)

Of course the greatest legally imposed transfer from the poor to the middle class involves Medicare, a program originally billed as part of Lyndon B. Johnson’s Great Society legislation intended to promote fairness and social equity. Medicare has caused the price of health care to go up by several hundred percent and several times the rate of inflation since the mid-1960s, effectively locking the poor out of access to reasonably priced health care (Liebowitz, 1994).

[Medicare] was created in 1965 to make it easier for the elderly to get health care. But by reducing the patient’s out-of-pocket costs, it increased the demand for doctors and hospitals. And it reduced the supply of those services by requiring doctors and other medical personnel to use their time and attention handling paperwork and complying with regulations—and looking for ways to circumvent these things. So the price of medical care rose sharply as the demand soared and the supply diminished. As a result, the elderly now pay from their own pockets over twice as much for health care (after adjusting for inflation) than they did before Medicare began. And most older people now find it harder to get adequate medical service. Naturally, the government points to the higher costs and shortages as proof that the elderly would be lost without Medicare—and that government should be even more deeply involved. (H. Browne, 1995, p. 15)

**HUMANITY’S INCLINATION TOWARD OBEDIENCE**

Lest the reader get the impression that blame for backfiring laws rests solely on those who promulgate them, there is much evidence that allegiance to irrational laws is to some extent intrinsic in the human animal. As Orwell wrote, the urge to command is not nearly as corrupting as the urge to obey, and people appear to have rashly followed irrational leaders since prehistoric times (Gold, 2003).

As Spencer (1850/1995) marveled in 1850, mankind seems to perennially “place confidence in the unaided judgment of the statesman” (p. 12). People entrust to government powers they would never entrust to a fellow citizen—even a beloved neighbor (Twight, 2002). As Twight (2002) demonstrated, the Herculean efforts of America’s constitutional framers to establish a government limited in its powers in the 1780s and 1790s have been overturned as one generation after another of elected officials have systematically escaped from, narrowed, distinguished, or disregarded the clauses—often with the tacit approval of the electorate.

“Often, those with the vision of the anointed more or less automatically collectivize decisions and then take on the role of deciders themselves” (Sowell, 1995, p. 136). “But third-party decision making by surrogates for ‘society’
offers no *a priori* reason to expect a closer approximation to omniscience” (Sowell, 1995, p. 196).

LESSONS FROM PRIMATOLOGY

Anthropologist Marvin Harris (2002) asserted that human nature to follow leaders evolved over many thousands of years as prehistoric men traveled nomadically in search of food. This period of tens of thousands of years wandering the earth’s surface behind headmen, he suggested, ultimately honed a predilection toward hierarchy seeking that remains with us today. The original headmen led by example only, however, and lacked power to compel others to obey (Harris, 2002).

It is likely that humans survived during the Pleistocene period by cooperating in hunting and gathering and that they “practiced considerable sharing and mutual aid” (Edgerton, 1992, p. 63). However, the close solidarity that typified their prehistoric existence made understanding and manipulating other people an adaptive trait. Deference to leadership may have become engrained.

The tendency of humans to seek the perceived safety offered by law and leadership may be even more primeval. The findings of primatologists suggest that the proclivity to blindly follow our leaders is to some extent intrinsic in the social behavior of all primates (Collinge, 1993). The primate world is notoriously social, and the political behavior of our closest primate relatives, the chimpanzees, is strikingly similar to our own. Generally in such ape societies, an alpha male will dictate the movements of the whole group as well as other major social arrangements. Although his rule is constantly contested by other individual males or even alliances of males (Collinge, 1993), the group nonetheless tends to blindly follow the alpha male’s dictates of locomotion and resource distribution.

The decisions made by the dominant rulers of the group—which may or may not be ridiculously irrational and may manifest no real superiority of judgment over subordinates—nonetheless prevails. At first consideration, this appears to be a maladaptive social trait. However, “given that primates have proven to be successful over evolutionary time, their social way of life must have conferred upon them a selective advantage that has allowed them to survive for approximately 55 million years” (Collinge, 1993, p. 43). Of course the advantages of group living are well known—maximization of economies of food gathering, defense, and habitat security. The biological frailty of human organisms forces their cooperation with each other in group contexts to survive, and cultural residuals that facilitate their cooperation have been retained (Mead, 1934). But everywhere are disadvantages, including social policies imposed for subconscious purposes of cementing solidarity alone and that are otherwise absurd (Merton, 1949). The evidence of modern man’s behavior shows him to be little more than a highly skilled and heavily capitalized ape with the same instincts of
obedience and structure who follows rules, laws, and ordinances even when they are not needed. In modern states, the urge to bureaucratize and generate red tape can sometimes cost lives rather than promote survival (Rosenblum, 2003).

CONCLUSION

If ever there were a society in which laws operated as anticipated by their makers, it is unknown to history. Instead, when common people have written freely about their rulers, they have generally described selfishness, avarice, and incompetence. Rulers on the other hand have complained about ungovernability and ungratefulness among the unruly masses (Edgerton, 1992). “It is as though our species, has been devastated by a modern Black Plague,” wrote Professor Rummel (1997). “And indeed it has, but a plague of power, not germs” (p. 9). The evidence of 6,000 years of recorded history demonstrates that laws and government have operated as humanity’s greatest enemy even if their hierarchal antecedents in human prehistory functioned as a survival mechanism. As Higgs (2002) wrote,

Can we really imagine that, absent governments to organize and goad them on, the world’s people would have been so obtuse and antisocial that they would have ended up slaughtering more than 210 million of one another in the twentieth century before coming to their senses? . . . I still have trouble imagining that without government people would have done even worse than they did with government. (pp. 310-311)

NOTES

1. Contrary to conventional wisdom, minimum wage jobs are generally entry-level positions filled by employees in need of temporary labor niches (often teenagers, students, drifters, etc.). More than half of minimum wage earners are between 16 and 24, and most work part time. About 80% percent live in nonpoor households, and about 20% actually live in households with annual incomes higher than $50,000. By pricing such workers out of the labor market, minimum wage laws can actually make them poor (Sowell, 1994).

2. Research indicates that when unemployment rises one percentage point, 4.3% more men and 2.3% more women are admitted to state mental hospitals for the first time and 4.1% more people commit suicide (Brenner, 1976).

3. Roots (2001b) stated that the USDA meat inspection process is little more than “an expensive government ritual” and that proposals for microscopic inspection of meat during processing would cause such a delay that they would likely decrease meat quality at the time of retail purchase.

4. Roots (2000b) described how the federal student loan program has “interfered with the educational marketplace by unnecessarily causing tuitions to rise” (p. 501).

5. A recent study has shown that the most underrepresented group of Americans at the nation’s top universities is low-income Americans. Only 3% of freshmen at the top 146 most selective colleges came from the bottom quarter of U.S. households by income. Only 10% come from the bottom half (Anthony Carnevale of Educational Testing Service, as cited in Savage, 2003).
6. Caplow, Hicks, and Wattenberg (2001) attributed the sharp decreases in mine and railroad deaths during the 20th century mostly to improvements in technology, expansion of tort liability, and union bargaining rather than legal regulations. However, such regulations have likely played some role in greater workplace safety.

7. Here a footnote is necessary because some recent research suggests that conventional wisdom regarding capitalism and wealth inequality is simply wrong. Norberg (2003) suggested that the world is actually growing more equal as it becomes more capitalistic and that human inequality may be declining somewhat. If true, this growing equality among the world’s citizens is owed almost wholly to free markets and not to government programs because equalization appears to be rising fastest in the most capitalistic nations of the developing world. Economist Charles Baird (2002) asserted that pure capitalism has proven to be a far more effective equalization vehicle than any governmental program yet devised. “The record is clear: The pursuit of economic equality through the political marketplace eventually results in almost everyone, except political elites, having less than they otherwise would” (p. 19).

8. But see note 7.

9. A study by James L. Payne (1994) found that each billion dollars of spending by the U.S. federal government costs 270 million dollars in private compliance expenses and IRS enforcement.

10. Consider that the City of Milwaukee alone invested 30,000 staff hours to calculate the race of students to attend the various schools in a single year (Scott, 1985).

11. Edward (2003) provided a number of other examples, such as Boston’s Big Dig project, which has already cost five times its original estimate. Edward also cited a recent GAO review that found that 38% of Department of Energy projects studied cost more than double their original projections. He cited another study of 258 government projects showing that 90% had cost overruns (averaging 28%). “Politicians use ‘salami tactics’ whereby costs are revealed to taxpayers one slice at a time in the hope that the project is too far along to turn back when true costs are revealed.”

REFERENCES

Application of Jacobs, 98 N.Y.98, 115 (N.Y. 1885).


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