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Over-regulated America

The home of laissez-faire is being suffocated by excessive and badly written regulation

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AMERICANS love to laugh at ridiculous regulations. A Florida law requires vending-machine labels to urge the public to file a report if the label is not there. The Federal Railroad Administration insists that all trains must be painted with an "F" at the front, so you can tell which end is which. Bureaucratic busybodies in Bethesda, Maryland, have shut down children's lemonade stands because the enterprising young moppets did not have trading licences. The list goes hilariously on.

But red tape in America is no laughing matter. The problem is not the

rules that are self-evidently absurd. It is the ones that sound reasonable on their own but impose a huge burden collectively. America is meant to be the home of laissez-faire. Unlike Europeans, whose lives have long been circumscribed by meddling governments and diktats from Brussels, Americans are supposed to be free to choose, for better or for worse. Yet for some time America has been straying from this ideal.

Consider the Dodd-Frank law of 2010. Its aim was noble: to prevent another financial crisis. Its strategy was sensible, too: improve transparency, stop banks from taking excessive risks, prevent abusive financial practices and end "too big to fail" by authorising regulators to seize any big, tottering financial firm and wind it down. This newspaper supported these goals at the time, and we still do. But Dodd-Frank is far too complex, and becoming more so. At 848 pages, it is 23 times longer than Glass-Steagall, the reform that followed the Wall Street crash of 1929. Worse, every other page demands that regulators fill in further detail. Some of these clarifications are hundreds of pages long. Just one bit, the "Volcker rule", which aims to curb risky proprietary trading by banks, includes 383 questions that break down into 1,420 subquestions.

Hardly anyone has actually read Dodd-Frank, besides the Chinese government and our correspondent in New York (see [article \(http://www.economist.com/node/21547784\)](http://www.economist.com/node/21547784)). Those who have struggle to make sense of it, not least because so much detail has yet to be filled in: of the 400 rules it mandates, only 93 have been finalised. So financial firms in America must prepare to comply with a law that is partly unintelligible and partly unknowable.

Flaming water-skis

Dodd-Frank is part of a wider trend. Governments of both parties keep adding stacks of rules, few of which are ever rescinded. Republicans write rules to thwart terrorists, which make flying in America an ordeal and prompt legions of brainy migrants to move to Canada instead. Democrats write rules to expand the welfare state. Barack Obama's health-care reform of 2010 had many virtues, especially its attempt to make health insurance universal. But it does little to reduce the

system's staggering and increasing complexity. Every hour spent treating a patient in America creates at least 30 minutes of paperwork, and often a whole hour. Next year the number of federally mandated categories of illness and injury for which hospitals may claim reimbursement will rise from 18,000 to 140,000. There are nine codes relating to injuries caused by parrots, and three relating to burns from flaming water-skis.

Two forces make American laws too complex. One is hubris. Many lawmakers seem to believe that they can lay down rules to govern every eventuality. Examples range from the merely annoying (eg, a proposed code for nurseries in Colorado that specifies how many crayons each box must contain) to the delusional (eg, the conceit of Dodd-Frank that you can anticipate and ban every nasty trick financiers will dream up in the future). Far from preventing abuses, complexity creates loopholes that the shrewd can abuse with impunity.

The other force that makes American laws complex is lobbying. The government's drive to micromanage so many activities creates a huge incentive for interest groups to push for special favours. When a bill is hundreds of pages long, it is not hard for congressmen to slip in clauses that benefit their chums and campaign donors. The health-care bill included tons of favours for the pushy. Congress's last, failed attempt to regulate greenhouse gases was even worse.

Complexity costs money. Sarbanes-Oxley, a law aimed at preventing Enron-style frauds, has made it so difficult to list shares on an American stockmarket that firms increasingly look elsewhere or stay private. America's share of initial public offerings fell from 67% in 2002 (when Sarbox passed) to 16% last year, despite some benign tweaks to the law. A study for the Small Business Administration, a government body, found that regulations in general add \$10,585 in costs per employee. It's a wonder the jobless rate isn't even higher than it is.

A plea for simplicity

Democrats pay lip service to the need to slim the rulebook—Mr Obama's regulations tsar is supposed to ensure that new rules are cost-effective. But the administration has a bias towards overstating benefits and underestimating costs (see [article](#)

(<http://www.economist.com/node/21547772>)). Republicans bluster that they will repeal Obamacare and Dodd-Frank and abolish whole government agencies, but give only a sketchy idea of what should replace them.

America needs a smarter approach to regulation. First, all important rules should be subjected to cost-benefit analysis by an independent watchdog. The results should be made public before the rule is enacted. All big regulations should also come with sunset clauses, so that they expire after, say, ten years unless Congress explicitly re-authorises them.

More important, rules need to be much simpler. When regulators try to write an all-purpose instruction manual, the truly important dos and don'ts are lost in an ocean of verbiage. Far better to lay down broad goals and prescribe only what is strictly necessary to achieve them. Legislators should pass simple rules, and leave regulators to enforce them.

Would this hand too much power to unelected bureaucrats? Not if they are made more accountable. Unreasonable judgments should be subject to swift appeal. Regulators who make bad decisions should be easily sackable. None of this will resolve the inevitable difficulties of regulating a complex modern society. But it would mitigate a real danger: that regulation may crush the life out of America's economy.

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