

The dangers of deregulation

3 December 2019, by Steve Cohen



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From unsafe Boeing 737 Max jets to exploding chemical plants in Houston, we are seeing some visible and dramatic impacts of decades of deregulation. This trend did not start under President Donald Trump but has [picked up momentum](#) and increased legitimacy since his inauguration. Regulation is simply another word for policing. Cops inspect behavior for illegality and when they find it, turn it over to courts for adjudication. Rules and their enforcement are a requirement of civilization. Without it, we must all protect ourselves in a war of all against all. Only anarchists oppose all rules and it is difficult to find any pure anarchists. The issue of deregulation is not one of freedom versus tyranny, but simply how many rules we need and what behaviors we need protection from. A secondary issue relates to the method and style of regulation. Opponents of New York City's police practice of stop, question and frisk did not favor deregulation of the rules of weapon possession, they objected to the method the NYPD used to enforce those rules.

In a world of growing technological complexity, the average person is in no position to understand, evaluate and prevent the potential dangers they might face. About 1 percent of us work on farms

and all of us eat food produced by people we don't know working for companies that are organized to achieve financial profit. We don't really know much about the food we are eating. The capitalist form of organization provides great incentives for efficiency and creativity as companies seek financial gain. A food company that poisons its customers will find little market advantage in that behavior, and so you might argue that [self-regulation](#) is all that is needed, and government policing is unneeded. But we have a Food and Drug Administration and rules on [food safety](#) because we worry that the drive for short-term profit might encourage a company to seek short-cuts around food safety requirements. We believe that defining poisoning customers as criminal behavior provides an additional disincentive to take food safety short-cuts beyond the long-term self-interest of a food company. Remove the rule and threat of punishment and the probability of more poisoned consumers increases.

The idea that all regulation inhibits capitalism and that the freer the market the better is part of the ideological perversion of the idea of regulation. The opposite view that all regulation is good and only the state is capable of protecting us from harm is an equally ideological perversion of the idea of regulation. We need rules to ensure that the game is fair and that the players and bystanders are protected from the negative impacts of competition. But it is possible to over-regulate and under-regulate. Regulation can stifle production and creativity, but deregulation can harm us and kill us. Regulation, like policing, is necessary but not self-justifying. I accept the idea that risk is necessary for reward. But I want to calculate the risk and quantify the reward. In the case of highly complex technologies like jet planes and chemical plants, an analysis of risk and reward requires scientific observation, analysis, projection and debate. That can't be done when anti-regulatory ideologues are blindly moving to dismantle science, rules and enforcement.

Deregulation by definition leads to increased danger. In place of deregulation, I would like to see

more effective and scientifically sophisticated rules, enforced with humility and greater government-industry communication. I'd like to reduce the role of lobbyists and ensure that when self-policing is permitted, it always be subject to random and unannounced inspection.

What we have instead in Washington is actually worse than pure deregulation, but an effort to delegitimize the idea of government regulation of business. The danger of this approach is the same as taking the New York Police Department off the streets of New York City. It's an invitation to lawlessness and dangerous behavior. Most of us don't live on acres of land in the wild west, but in cities, whereas Paul Simon once wrote, "one man's ceiling is another man's floor." Our actions almost inevitably impact others, and the behavior of others affects us.

Of course, rules, crime and punishment are not the only methods for encouraging socially responsible behavior. Positive role models, economic incentives, moral suasion, education and technical assistance can have equally positive results. But they require a foundation of law and correct behavior. Socially responsible behavior needs to be defined by law. Reducing greenhouse gases is difficult to achieve if these emissions are not defined as pollutants. Once they are defined as pollutants, reductions can be achieved through tax incentives, technical assistance, or direct grants-in-aid. They can also be achieved through command-and-control regulation. The issue for policymakers should be: What would be more effective, incentives or disincentives? Or should there be a mix of both? Regulated parties are too often defined as criminals that have not yet been caught. That approach makes little sense if we want to achieve the benefits of production while minimizing the costs.

Two recent examples of under-regulation illustrate the danger of deregulation: The regulation of the Boeing 737 Max jet plane and the explosion of chemical plants in Texas. There are sadly many other examples we could examine.

The regulatory failure of the U.S. [federal government](#) and Boeing over the 737 Max is

obvious. Due in part to budget cuts and in part to anti-regulatory ideology, the Federal Aviation Administration (FAA) delegated some of the [regulatory process](#) to Boeing which was in a hurry to bring its new plane to market. David Gelles and Natalie Kitroeff summarized the findings of a federal task force probing this regulatory process in the [New York Times](#) this past October. According to their piece:

"The Federal Aviation Administration relied heavily on [Boeing](#) employees to vouch for the safety of the Max and lacked the ability to effectively analyze much of what Boeing did share about the new plane, according to the report by a multiagency task force. The system of delegation is now being scrutinized by lawmakers in the wake of the tragedies. Boeing employees who worked on behalf of the F.A.A. faced "undue pressures" at times during the plane's development because of "conflicting priorities," according to the report."

To Boeing senior management, regulation was just a little check-off process on the way to the market. The FAA has been hollowed out of technical capacity by decades of anti-regulatory ideology which was ineffectively countered by eight years of the Obama presidency. Once the Tea Party took over the budget process, the Obama White House was never able to restore capacity to regulatory agencies. The Environmental Protection Agency lost over 2,000 staff during the Obama years. The FAA did not have the ability to understand and assess the safety of the jet's technology. Instead of preventing death and destruction, it took two tragic crashes to ground the plane and begin the assessment that should have taken place before the plane was allowed to fly.

And then we have last week's massive fire and explosion at a chemical plant in Port Neches, Texas. The danger of additional explosions and toxic emissions forced the temporary evacuation of thousands of nearby residents and was not an isolated or rare occurrence. According to Merrit Kennedy of [NPR](#):

"The explosion is the latest in a string of industrial incidents in the region. The Houston area saw three fires at chemical facilities in a month-long span in

March and April—including an explosion at the KMCO plant in Crosby that killed a worker, as Houston Public Media's [Florian Martin reported](#). In July, more than 30 people were treated for minor injuries after a fire at an Exxon Mobil refinery in Baytown... A [search](#) of Texas Commission on Environmental Quality records shows that this year, TPC Group [owner of the plant] has been ordered to pay more than \$378,000 in fines over multiple environmental violations at two facilities, in Port Neches and in Houston."

Texas prides itself on its free market-focused, lightly policed approach to business policy, and so along with jobs and growth, they get blown out windows and toxic fumes. A well-managed factory controls its emissions and has enough safety protocols in place to avoid blowing up. But the people who work at the plant that might want to spend a little more time and money to make the place safer and cleaner are delegitimized by the absence of effective government oversight. The only good news is that the first explosion was at 1 AM and not 1 PM or the impact on workers and residents could well have been greater.

The danger of deregulation is that without adequate policing of complex technical processes, the public is left to the mercy of the market. Most businesses are well run and pay attention to safety and emissions. But clearly, some are poorly run and place short-run profits over health and safety. Regulation reinforces correct behavior and justifies investment in safety. Deregulation reinforces a Wild West mindset that is inappropriate for the crowded planet that we all live on.

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