

# **Regulatory compliance - exploring its limitations**

**Virginia Jackson**

## **ABSTRACT**

The literature on regulatory compliance is extensive although virtually no academic attention has been paid to compliance in urban animal management. This paper explores the role of regulation and enforcement in solving a range of different social problems, paying particular attention to counterproductive regulations that either do more harm than good or inflict adverse side effects.

## **INTRODUCTION**

The literature on regulatory compliance is extensive although very little academic work has been done in the area of urban animal management. I am presently examining the field to address this gap. The work is in its early stages so I can't offer new findings. What I can do is highlight areas of potential interest to urban animal management.

I've taken as my topic the limitations of regulatory compliance - situations in which regulation proves ineffectual or counterproductive. My intention is not to undermine the need for regulation in urban animal management. Indeed its place in public policy is assumed. However, there is need for more critical thought and debate about its appropriateness in various contexts including the way it is designed and enforced. For urban animal management this mostly means local laws but the literature is relevant to all rules that have the force of law and are backed by sanctions.

In this paper I have intentionally avoided urban animal management examples because of the early stage I'm at in the research. However with the different examples provided you should be able to recognise where the theory might apply to situations encountered in your own work. Over the next year or so I will be testing some of this theory in specific urban animal management contexts.

In the first section of this paper I draw on a range of regulatory contexts to examine briefly some of the ways regulations can produce null or negative outcomes. The second section starts to draw these threads together in order to promote discussion of preliminary principles for urban animal management.

## **INEFFECTUAL AND COUNTERPRODUCTIVE REGULATION**

### **Solving complex problems**

A regulatory approach is suited to problems that are well understood, guided by clear objective standards and which lend themselves to empirical testing. Many problems are not so straightforward. Because of their relative rigidity and permanence, heavy reliance on regulations to solve complex problems needs to be questioned.

### **Problems that are not well understood**

Complex problems are endemic to modern society. Pollution, poverty, public safety and so on are problems of vast proportion. They have more than one cause, many of which interact with one another and vary in different contexts. At the other end of the spectrum, seemingly simple problems such as street litter are themselves complex. They involve a great many individuals acting independently and in different contexts (ie the community, manufacturers, retailers and public authorities). The community is not a uniform group - the littering behaviour of teenagers for example is probably quite different from that of their parents (McGregor Marketing 1994).

Detailed analysis of complex problems is often precluded by political pressures for a 'quick fix'. A regulatory approach is always tempting because it smacks of conclusive action - the problem will be 'solved' if we enforce a new regulation. That may be appropriate if the problem has a known solution but many problems do not.

In these situations policy makers must choose, whether implicitly or explicitly, some causal theory about what variables are most important (Bardach and Kagan 1982). They may get it wrong (because of simplistic or outmoded premises) or target for attention the least significant variables in the causal network. The real danger however is that we become limited in our ability to apply new policy or depart from it at a later date (West 1985). It might be wiser in these instances to make smaller advances with policy instruments that embody flexibility for a change in direction as our knowledge about the problem expands and, indeed, as the causal forces themselves change. Flexibility is not an inherent feature of the regulatory approach.

### **Opinions vary about what to do about complex problems**

Because of their complexity, the community rarely agrees on what to do about complex problems or fully appreciates the tradeoffs involved. And, to make matters more complex, the balance of opinion tends to shift over time as arguments move in and out of favour and new issues arise. In Bardach and Kagan's view :

Society's version of responsible behaviour typically is inchoate and complex reflecting a mix of values and concerns. Commonly sentiments favour simultaneously safety and risk, freedom and control, equity and efficiency, uniformity and diversity and different segments of the population differ in their weighting of these values. (Bardach and Kagan 1982: 319).

The challenge for rule makers is formidable and what often happens is that a proposed regulation becomes so watered down to accommodate the diversity of viewpoints that it ceases to have any practical effect. It might be more effective to concentrate instead on properly structured non regulatory options that are less contentious, eg education etc.

### **Measuring performance**

Complex problems are not always measureable. Consider for example the standard of hygiene in a food handling business. A regulatory approach must resort to a range of proxies that may or may not be sound indicators of the overall standard sought, eg number of sinks, size of kitchen, type of ventilation etc. The danger is that the controls become so detailed to cover all variance that they sound senseless and may miss their objective altogether. At best operators resent the intrusion and doubts about their professionalism. A more worrying outcome is to turn a disposition to co-operate into a disposition to resist (Bardach and Kagan 1984). These basic failings are one reason why health authorities are shifting to performance standards in preference to the prescriptive criteria associated with the regulatory approach. To be sure, basic minima remain, it is just that other strategies such as research, market mechanisms, public education and moral suasion are being used to supplement regulations in the hope of achieving voluntary rather than coercive compliance. If it can be achieved, voluntary compliance is likely to produce more meaningful and long lasting results.

### **Unintended consequences**

Regulations usually have unintended consequences. Examples are not hard to find. Town planning ordinances have, for many years, required extensive car parking to be provided in commercial developments to relieve the demand for parking in the street. This statutory requirement has resulted in the vast tracts of parking you see in all urban centres today. Whatever you think about the merits of these requirements, there is no doubt that they have contributed to traffic congestion and air pollution by encouraging greater car use and discouraging use of public transport. These unintended outcomes were not anticipated by early rule makers.

By their very nature, unintended consequences are hard to predict. However that doesn't absolve us from carefully examining the seriousness of possible consequences of new regulations. While this seems perfectly obvious you would be surprised how often they receive only cursory attention and how hard it is to abandon regulations once adverse side effects begin to outweigh gains. Not only do they have statutory backing but as a policy tool, they seem to develop a momentum of their own which, once established, is extremely difficult to subvert.

## **Unenforceable and symbolic regulation**

Making rules tends to be easier than implementing them and rule makers usually underestimate the many practical difficulties involved. It is sobering to realise that many regulations are by and large unenforceable either because they are so vague as to be meaningless or because they set standards that are unattainable. A cynic might say that rules are often just lip service to appease powerful interests - politicians can be seen to be 'doing something about the problem' without posing any real threat to the activities of those affected by the controls (West 1985).

Just about everyone can list a few unenforceable and symbolic regulations. They offer a short term solution but can cause more harm than good in the longer term by creating conflicting community expectations that deepen social divisions. They also encourage flouting of a law's intent since compliance is closely related to the extent to which people think it will be enforced.

## **Unreasonable regulations**

Individuals are more likely to comply with laws they think are reasonable. At the same time, however unjust or unreasonable regulations have been shown to breed resentment and resistance, even with the threat of enforcement (Bardach and Kagan 1982). This is problem enough but it has the potential to make matters worse by escalating into a vicious cycle of resentment and non compliance, enhanced mistrust and legalism followed by further non co-operation and resistance.

Education is now the routine answer to regulatory failure. I agree its role is crucial. However no amount of education will achieve universal compliance with laws that are basically unreasonable or unjust.

## **Over regulation produces under regulation**

That over regulation produces under regulation has been noted in many regulatory contexts. Sunstein calls this one of the paradoxes of the regulatory state which he believes has been fuelled by the notion that a safe workplace, or clean air and water are a right to be vindicated rather than a risk to be managed (Sunstein 1990). Whether or not you agree with this statement, it is clear that extremely stringent standards can be ineffectual, even counterproductive.

Extremely stringent standards are a powerful incentive for inaction. First, inaction may reflect enforcement officers' quite plausible belief that the regulation requires them to control an activity to an absurd point (Sunstein 1990). Second, inaction may reflect the political backlash that may result from enforcing very stringent standards. Finally, inaction may reflect the need for a great deal of information to support a review of their enforcement action (whether judicial or in-house).

The net result may actually be less control over an activity than would result from a more flexible approach to the problem.

Stringent controls also impose heavily on an agency's resources leaving other activities free from regulatory control or attention. In their examination of environmental regulation in the United States, Warren and Marchant (1993) note that by defending overly stringent regulations that provide limited extra benefits at high marginal costs, busy agencies expend both resources and precious political capital. Doing so limits their capability to address other, more significant problems. They conclude that the net result is less, not more environmental protection.

## **Displacement**

Finally, a new regulation may displace rather than eliminate a social problem because it has not attacked its root cause. Displacement can be spatial, temporal or substantive and may have greater impact than the original problem.

Spatial displacement means the problem shifts to another area or municipality, eg from one shopping centre to another or one park to another.

Similarly an enforcement blitz at the time of day when irresponsible behaviour (say parking violations) is at its worst may only displace the behaviour to another time of the day. Finally, social problems are displaced substantively if they shift to another related area of concern that is affected by the regulation (ie an unintended consequence).

## **LESSONS FOR URBAN ANIMAL MANAGEMENT**

For many of you, what I've said is nothing you don't already know. Those who work in local government will be familiar with the problems mentioned and will recognise where they apply in urban animal management. While much of it sounds like anti-government rhetoric, there's no doubt that the balance of both academic and political support is leaning away from regulation as a primary policy tool towards the selective use of a combination of regulatory and non-regulatory instruments. This isn't ideological; it is common sense and it is happening in a whole range of areas that were formerly the preserve of regulation, eg building control, dangerous goods handling and storage, control of nursing homes, residential planning standards, occupational health and safety and so on. It is about making the best use of the scarce resources available and using the right tools where they are most appropriate. It is also about improving the quality of the regulations we do draw up.

Urban animal management is the name given to a range of issues associated with animals' interface with humans and the urban environment. In most cases this means domestic pets. I would describe most of these issues as complex because there is still a lot we don't know about them and because they are prone to politicisation.

Many of these issues will always require regulation to bring the 'bad apples' into line. Rules also have a role to play in broad scale attitudinal change. However the beneficial effects should not blind us to its shortcomings. As a policy tool it is inherently inefficient because of its focus on means (eg leashed dogs, cat curfews) rather than on ends (responsible behaviour) and because it consumes vast resources in maintaining an enforcement presence for benefits that are not always assured (you can't control what happens 5 minutes after you leave). I'm not saying here that leash laws or cat curfews or any of the other animal control laws should be abandoned. What I am saying is that you should recognise the inherent failings of regulation and understand how those failings may operate in the particular policy context in which you are working - spending all your resources on enforcement of leash laws is not likely to achieve universal compliance or responsible behaviour by everyone all the time.

By contrast, voluntary compliance, if it can be achieved, will just about always provide more meaningful, lasting changes in behaviour. It depends more on overcoming ignorance, indifference and incompetence than on prescribing concrete forms of acceptable behaviour. Education is the latest buzzword and there are many programs being tried both here and overseas to encourage voluntary compliance. Some campaigns will work, others won't and we need to find ways of ensuring that it is the good ones that get copied and improved not the bad ones. Wishful thinking is no substitute for empirical learning.

We also need to look at Animal Control Officers (ACOs) working with individuals and small groups to negotiate resolution of perceived problems. Here ACOs would operate more as friendly advisers than patrolling inspectors meaning they would work with individuals and groups on specific problems, eg to suggest ways that a household's cat is best confined or kept out of a national park or to show how a dog's home environment can be enriched to relieve boredom. I know many of you do this already in your day to day work but maybe it should become a conscious strategy, a formal part of your work, even mentioned in your department's mission statement.

## **CONCLUSION**

The fundamental message of this paper is that we should not treat any one policy instrument (regulation, education, research etc) as a panacea. A combination will just about always be appropriate. The secret is to understand the strengths and weaknesses of each approach and how they operate in different regulatory contexts. It is in this direction that my research into urban animal management will head over the next year or so.

This introductory paper has focussed on the limitations of regulatory compliance - situations where rules prove ineffective or counter-productive. It has been purposely general. My intention has been to raise issues for debate and clarification, not to undermine the idea of regulation, but to promote more coherent and sophisticated approaches to the growing field of urban animal management.

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## ABOUT THE AUTHOR

Virginia Jackson B.Trp (Hons), MRAPI  
Harlock Jackson Pty Ltd  
Planning and Development Consultants  
19 Victoria Grove  
HAWTHORN EAST VIC 3123  
Ph (03) 9882 6065 Fax (03) 9882 8145

Virginia Jackson is a town planner and urban policy analyst with experience working in state and local government and, since 1987, as a consultant to government, the private sector, community groups and individuals. For the past 5 years she has been examining urban animal management issues from an urban policy perspective including a review of town planning policies and regulations for their impact on pet ownership (1991), preparation of guidelines for integrating pets into new residential development (1993) and a design and management guide for access to public open space by dogs (1995). She is presently examining the extensive literature on regulatory compliance for its potential application to urban animal management.

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