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Regulated to Death

**Anarchist Arguments Against Government
Intervention in Our Lives**

Jim Baker and Joe Peacott

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Section 8 Program: Crazy Rules

Art Kalotkin (Letter to *Boston Herald*, August 30, 1991)

...The housing subsidy program created by the government is the fantasy of the middle class on low-income people and has done little to foster self-assurance and economic independence among them. The costs of the program are inflated by its many rules and regulations.

The rules of the Section 8 program say that every child of a different sex must have a separate bedroom and the living room cannot be used for sleeping. Thus, a person with one child must rent a two-bedroom; one with a boy and a girl, a three-bedroom. When I was a child, my parents rented a one-bedroom apartment, and my sister and I slept in the bedroom; my parents used a sofa bed in the living room!

A typical Section 8 apartment gets four inspections yearly to qualify for continuation in the program: Health Department or Code Enforcement (Certificate of Fitness), Building Department, Lead Paint Certificate, and the Housing Authority inspector. Of Course, each inspector finds something entirely different wrong with the apartment.

...[T]he time it takes to follow the rules can cost the equivalent of one month's rent per year...

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Section Eight don't work. It is time to look for other ways to solve the problems people encounter in their search for housing. Getting government out of the housing business, with all of its rules, regulations, subsidies, and programs would result in a free market which could provide housing to people of all economic levels. While directly providing housing for the poor helps prevent and relieve homelessness, building housing for the wealthy opens up units for the less wealthy, which opens up units for the middle class, which opens up units for the lower middle class, and so on, down through the economic strata, eventually providing even more housing for those currently homeless.

Freeing up the market will obviously not solve all of our problems, but even in our current statist society, there are a number of voluntary organizations which help people deal with their housing problems. From the Mad Housers in Atlanta, to the housing trust negotiated with the hotel owners of Boston by Local 26, which provides funds for housing construction and rent subsidies to union members, to the various squatter groups throughout the country, people are acting for themselves, providing housing for themselves and others, without relying on the state. Such initiatives are important, not only because they help people live better here and now, but because they also serve as a guide to how we might provide for ourselves and our neighbors in a future anarchist society.

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Introduction

Jim Baker and Joe Peacott

The idea for this pamphlet came out of our discussions concerning the role government rules and regulations, such as housing codes, medical licensure, rent control, and federal food and drug laws play in helping or hindering our lives. The purpose of such intervention in our lives by all levels of government is ostensibly to protect the weaker, poorer, or less calculating among us from the predations of those who are stronger, richer, or shrewder. As anarchists, we certainly wish to change society in such a way that those who are taken advantage of, exploited, and harmed by others are better able to escape from or avoid such situations. However, as we argue in the following articles, government rule-making has not only failed to prevent abuse, but has, in fact, worked to further disadvantage those it was intended to help.

We are being regulated to death, both literally and figuratively. People die of cancer or AIDS because they are denied access to life-extending drugs by the FDA. People die on the streets during winter, while city governments strangle the housing supply with their housing codes, zoning regulations, and rent control. People die of complications related to HIV, which they acquired from sharing needles because some state governments prevent them from obtaining sterile ones. And this is all because government intervention kills what is most important to us as sovereign individuals: our freedom to choose how we live our lives.

We see widespread support for such government regulation among people of all political persuasions, but are most troubled by the attitude of those who, claiming to favor a free, non-hierarchical world, either endorse such government activity, or are unwilling to criticize it. While capitalist anarchists and libertarians have been very vocal in their rejection of governmental "solutions" to our day-to-day problems, little criticism of such intervention by the state is heard among anarchists who embrace other economic

models. Because of this we felt there was a need for a non-capitalist anarchist critique of government rules and regulatory bodies. We do not feel that getting rid of zoning laws or the FDA is all that is necessary to make for a free society. We are anarchists; we wish to see the total abolition of government and the monopolies and privilege it upholds. However, the only way people will ever learn to live free lives is by living as freely as they possibly can right now, in the present, even in small ways, even in the context of an otherwise unfree world. Tolerating, or, worse, encouraging further government intervention in our lives, even when well-intended, simply breeds further dependence on the state and less reliance on ourselves and our friends, our only hope for a freer world. It is our hope that this pamphlet will encourage anarchists to move away from such tolerance of statist "solutions," and toward more emphasis on individual freedom and initiative.

Question Regulation

Jim Baker

Our society seems addicted to rules. Every interest group feels that if it could only get the laws and regulations it wants instituted, or those of its rivals repealed, that life would be so much the better. But it doesn't work that way. All of these binding rules (and more of them are on the way every day) simply confound our lives. Hippolyte Havel caustically observed, "If you wish an appliance that will shorten the freedom of a neighbor, go to the legislature and have it made, — that is, if there are none already in stock."¹ Legislators at every level of the state seem to believe that they have been elected to add as much legal dross as possible to the already massive and contradictory body of statutory law. There are so many invasive, impertinent and repressive laws on the books now that

¹ Havel, Hippolyte. *What is Anarchism?* Chicago: The International Anarchist Relation Committee of America, 1932, p. 11.

apartments out of the hands of poorer people, precisely the people rent control was intended to help.

While doing away with rent control would cause sudden increases in what some renters pay, if accompanied by deregulation in other areas of the housing market, it would soon normalize the housing market. Those who have been unwilling to leave rent-controlled apartments will move on once they don't have as good a deal as they once did, more housing will be built, and abandoned housing may be rehabbed. This will create more housing units, which, in turn, will drive housing costs back down again. While the former dwellers in rent-controlled units will now pay more (which many, if not most, of them can easily afford) most people will end up paying less for rent. And lower rents and more housing mean less homelessness.

Conclusion

In housing, as in all other areas, government intervention in people's lives causes more problems than it solves. Its building codes and zoning ordinances exacerbate the housing shortage, and even some government officials can see that regulations can be destructive of efforts to provide more housing. For instance, Constance Curry of the Citizen's and Community Affairs Department of Atlanta, while acknowledging that the makeshift huts provided to homeless people by the Mad Housers, a voluntary group, were not "up-to-code," stated that, "There is no official position on the Mad Housers. But they're better than a kudzu patch or freezing on the street. Unofficially, we're glad they're using that sort of ingenious approach." If the bureaucrats themselves can (unofficially) see that non-governmental methods can help solve the problems of housing and homelessness, why can't those outside the government?

Rent control hasn't worked. Government-funded housing projects haven't worked. Government housing subsidies like

ing housing generally have been hesitant to criticize rent control, it has hurt many more people than it has helped.

Rent control makes owning rental property much less profitable. As a result, owners are much more likely to abandon property, allow it to deteriorate, or even burn it down for insurance. Additionally, builders are hesitant to build new units in rent-controlled cities because the return on their investment is lower than they would like. The result is a shortage of both new and established housing units.

Tenants who are lucky enough to have rent-controlled apartments are very hesitant to leave. This lack of movement among a large segment of the renting population (in New York City, as large as 30-40%) exacerbates the existing housing shortage, driving up rents in the remaining “market” apartments to prices well above market rates. Rent control in New York has led to a vacancy rate of 2%, with most apartments outrageously overpriced. This is a perfect setup for homelessness among poor people.

Besides increasing the number of homeless people, rent control often benefits the people least in need. Many wealthy New Yorkers live in rent controlled apartments, one person paying (in 1988) \$1,250 a month for a ten room apartment overlooking Central Park. In Cambridge, MA, where rent control has done much less damage, there are posters on lampposts offering cash rewards for rent-controlled apartments. Why, if someone can afford to pay a reward for a cheap apartment, can't they afford to pay for an uncontrolled apartment? Obviously they could, and by taking a rent-controlled apartment, they deny it to someone less able to pay for housing. People who are homeless or stuck in undesirable housing are often unable to get new housing simply because they are unable to get together a large enough lump sum to cover first and last months' rent and a security deposit. Such people obviously would be unable to afford the additional cost of offering a reward for a cheap apartment, and are therefore unable to compete for apartments with those who can. This competition effectively keeps rent-controlled

almost every facet of our existence is constricted by regulations which, in any given situation, demand this or forbid that or simply complicate matters. All of this plays into the hands of that elite corps of troublemakers, the lawyer/legislators who make, interpret and impose the arbitrary and lucrative rules of the legal game.

At one time, “Common Law,” that is, the ostensibly fixed but actually flexible body of social custom, acted as a partial restraint on the capricious rule of kings and statute-mongers. It is this which was meant when the phrase, “the rule of law rather than the rule of men,” was invoked. Juries were not restricted to following the letter of some obnoxious law or precedent if it conflicted with the greater equity of the Common Law. Judicial review didn't rest only with a Supreme Court, but with any judge or jury, who could deliver a verdict that rejected the iniquitous demands of some unfair bit of legal nonsense. Since the 19th century, however (and despite the arguments of Lysander Spooner), we have surrendered our sovereignty to the state to the extent that any whim of the legislature, no matter how inane in its conception or invidious in its effect, becomes authoritarian law. Equity, in all senses, be damned!

The fiction of democratic representation can't cover up the oppressive nature of this legal game, especially for individualists who reject any species of tyranny, majoritarian or not. Nevertheless, the legislative process itself does provide some faint chance that the worst proposals, whether falsely idealistic or downright venal, will be exposed, debated and disposed of. Public debate may upset the progress of some would-be laws, or allow for the mitigation of their excesses. Anarchists are, of course, dismissive of this small mercy, yet it exists. But there is an area of governmental rule-imposing that lacks even this ameliorating factor, and which is often overlooked in debates about the repressive nature of the state. This is the work of the regulatory agencies, whose increasing domination over our lives is as ominous as of any other arm of the state.

“A law nine pages long and an agency of thirty-two civil servants becomes, over the course of more than two hundred amendments, a law four hundred pages long and a bureaucracy of more than twelve hundred. And finally there emerge many large, expert agencies that in an economic sense are industrial planners and that in a political sense are a distinct branch of government.”²

There are many tasks that regulatory agencies attempt to perform, as Thomas McCraw observes,³ but we will only be concerned here with two; disclosure of information and promotion of health and safety. These areas of regulation are as old as society itself. They were once represented through councils that saw that community standards were met in specific circumstances, or that specialized opinion was available to the people in areas where common knowledge was inadequate. People have had to rely on specialist knowledge since the time when it was the province of elders and shamans. One needed to learn how to perform difficult or dangerous activities through the help of others who had the requisite expertise. Regulations that assured the content and price of bread, for example, were a matter of community control before the Middle Ages.

In a complex world, there need to be safeguards against objects and actions that can hurt us unawares, such as products or practices which are known to be inherently dangerous; well-intentioned things that experience proves to be harmful, such as asbestos; or those that unscrupulous people have made dangerous through deceitful activities. Individualist anarchists, despite gibes to the contrary, aren't necessarily naively optimistic about the natural goodness of all people. Even in an ideal social situation

² Kohlmeier, Louis M. *The Regulators*. New York: Harper & Row, 1969, p. 8.

³ McCraw, Thomas K. *Prophets of Regulation*. Cambridge: Harvard University Press, 1984, p. 301.

Many argue that without building codes and zoning laws people would have substandard housing and unpleasant neighborhoods spoiled by undesirable businesses. However a free market in housing would provide adequate safeguards against such problems. An unregulated market would produce more housing, and competition among both builders and owners would lead to cheaper and better housing. If housing were abundant enough that one could move out of an unpleasant apartment easily and cheaply, or choose from many different affordable homes, builders and owners would be forced to provide better products than they do today. Additionally, consumer groups or individual entrepreneurs would be able to provide information and advice to those looking for housing, in order to aid them in choosing the best deal available.

A free housing market would also provide a way to deal with some of the problems that zoning laws were intended to solve. It is unlikely, for instance that a factory would be built on a residential street, simply because property in such an area would be too expensive to buy or rent for industrial use. Alternatively, unwelcome businesses could be persuaded to relocate elsewhere by boycott, protest, or other non-coercive means, as they sometimes are today. These are just some of the many ways to solve the problems of housing without resorting to inefficient and harmful rules and regulations.

The Failure of Rent Control

One of the most damaging, though well-intentioned, government interventions in housing has been rent control. Designed to protect poorer people from rent-gouging property owners, it has caused some of the most serious housing shortages in the country in cities where it has been implemented. While people who are concerned about providing housing for the homeless and improv-

to build or renovate buildings to provide SRO dwellings. One developer in Boston had to spend seven months negotiating with six city agencies to obtain a lodging house license. As he said at the time, “You would not believe what I had to go through to get this license. I can smile now, but this process has cost me a lot of money. An awful lot of money was paid to the City of Boston, lawyers, consultants and management agents.” Not only does this tortuous process inhibit developments of lodging houses, but the expense involved makes the housing units that are developed more pricey for the eventual tenants.

Another body of regulations that similarly restrict construction to the detriment of the housing market are zoning ordinances. These rules dictate such things as what kind of housing, i.e., commercial, industrial, or residential, can be constructed where, what the minimum square footage of land or building is to be allowed per unit, and how many units are allowed in each building. These laws were intended to prevent industrial buildings from being built on quiet residential street and similar situations, but have only served to exacerbate the problems in the housing market. Like the building codes, zoning laws force up prices and restrict the supply of housing, especially for poor people, and, additionally, fail to provide the benefits they claim to provide, since it is often easy for influential persons to buy zoning variances from officials.

Zoning restrictions make housing in some areas, such as the suburbs, much more expensive than in other areas, for example, by requiring large amounts of land around a dwelling. The increased cost of buying a home caused by this requirement, prevents many people from moving out of poorer neighborhoods, causing a housing logjam in these areas. Additionally, restrictions on the number of units that can be constructed in a specific building prevents building or renovation that could create more apartments or even SRO dwellings. Such effects of zoning laws contribute to the growth of homelessness in the cities.

free of the distorting influences of class and capital, human weakness would still lead to difficulties, although far less so than now.⁴ Cheating and adulteration would presumably always be temptations, while natural dangers would, of course, be the same as ever. It is incumbent on a community to help people with these problems, but not by simply forbidding things. A revealed cheat is no longer invasive, no longer a cheat. Nor is the simple fact of potential danger a reason for prohibition. In fact, the truly effective product or pleasurable activity is often dangerous. It is up to the consumer to weigh the dangers and take suitable precautions, not for the government to protect a herd of dunces from everything beyond the safest possible pabulum of life.

Now the question of regulation, which at first glance reeks of an authority repugnant to anarchists, isn't as simple as it might first appear. There are innumerable situations in this world of ours where the individual is put at hazard through ignorance, or error, or the duplicity of others, No person, no matter how well educated or informed she or he is, can rely solely on personal knowledge or common sense to make the right choice in every situation. People need reliable safeguards from the effects of fraudulence, zealotry and ignorance in society, as well as sources of dependable information through which they can make intelligent choices. For example, regulations that require producers to thoroughly label their products so that consumers can see whether they contain any harmful ingredients, or insist that manufacturers honestly reveal the limitations or dangers inherent in their merchandise, have an obvious value.

⁴ Certainly, even the most orthodox anarchist individuals betray weakness and inconsistency (if not outright hypocrisy) today — and they are the socially conscious minority. If everyone lived in an anarchist society by chance of birth rather than choice, it would be as inevitable that some would backslide from the ideal as it was with the Half-way Covenant crisis in second-generation Puritan New England.

These sort of revelatory mechanisms are quite consistent with anarchism, for they needn't restrict the freedom of the producer while making it possible for people to make informed decisions whether they will avail themselves of the product or service. We should note here that the aim should not be to prevent people from making silly or even irresponsible choices, for if that is what they truly wish to do, they should do so. It should be to make it possible for such choices to be conscious and deliberate, by insuring that all information necessary to make a knowledgeable choice is available. It is irrelevant from an anarchist viewpoint whether someone is considering the use of illegal pleasure drugs or going scuba diving among sharks, as long it remains their free choice. However, it is preferable that they are able to make informed choices, fully aware of the dangers or drawbacks as well as the possible satisfactions of the experience. An anarchist desires that no one is imposed upon or coerced in making an honest personal decision. Available data should be accurate (and understandable), the pros and cons honestly weighed, and the possible results explained. Other people's moral biases and practical opinions should not have any weight, except insofar as their knowledge about a product or experience is more extensive than one's own. Such opinions, which need to be as objective as possible, are what we rely on from experts.

Should we then accept some sort of regulations? Bakunin struggled with the role of expert advice and authority in his "Authority and Science": "Does it follow that I reject all authority? Perish the thought. In the matter of boots, I defer to the authority of the book-maker; concerning houses, canals or railroads, I consult the architect or the engineer. For such special knowledge I apply to such a 'savant.' But I allow neither the architect nor the 'savant' to impose his authority on me. I listen to them freely and with all the respect merited by their intelligence, their knowledge, reserving always my incontestable right of criticism and censure.... I recognize no

The very process of obtaining the various approvals and permits necessary to build or renovate housing can also inhibit construction. In an article in *Libertarian Review*, Bruce Cooley told the story of Patrick Hazel of California: "After buying a lot, Hazel went to the local authorities to get a permit to construct his own home. There he was told that he would have to fill out an application, pay various fees, and submit 12 copies of the lot plan, several copies of the deed of trust, and several copies of the survey map, before he could submit his house plans for approval. 'I told him, "Forget it, Charlie. I'm not going to submit myself to 12 different agencies,"' Hazel says, and he proceeded to build his house without any permits—whereupon he was slapped with civil and criminal actions by Santa Clara County. Hazel insists that he is not only meeting but exceeding all health, safety, and construction standards that are required. All he is doing is bypassing a lengthy, expensive, and 'unconstitutional process that is no "protection" at all.'" By stifling do-it-yourself homebuilding and renovation, building codes force people to rely on experienced and expensive contractors, again raising the costs construction, which, of course leads to less, and more costly, housing.

One area where building codes have been most destructive is that of lodging houses or single room occupancy (SRO) housing. Traditionally, SROs, whatever their drawbacks, have been what has kept poor people from becoming homeless. In cities across the united states, as urban "renewal" destroyed central city neighborhoods where SROs usually were located, homelessness increased dramatically. For instance, in Chicago, the number of SROs declined 80% from 1960 to 1980, contributing to an increase in the number of homeless people there to 2,722 by 1985. In Boston, another city with a growing homeless population, the number of lodging houses dropped from 9,500 in 1970 to 2,000 in 1991.

While many housing advocates have recognized the role SROs can play in remedying homelessness, building codes place sometimes insurmountable obstacles in the way of people who attempt

protection of absentee ownership lays the basis for all the problems they experience in trying to put a roof over their heads, continue to turn to the government for help. However, the effect of state intervention in housing has simply been to make matters worse.

How Building Codes and Zoning Laws Affect Housing

Among the ways government regulates housing is by formulating building codes supposedly to protect renters and buyers from living in unsafe or otherwise inadequate housing. Such rules dictate what building materials are to be used, how large windows should be, whether and what kinds of additions can be added to buildings, etc. Despite the good intentions of such laws, their effect has been to constrict the housing supply and contribute to homelessness.

Building codes suppress innovation in housing design and construction and make building and remodeling much more expensive than they otherwise would be. For instance, at least one building code has required the use of copper wasteline, and only a certain kind of copper wasteline, instead of plastic, even though the plastic works as well as copper and is cheaper to buy and ship. Building codes also restrict construction that doesn't meet the approval of landmarks commissions, which must approve many building changes, interior and exterior in some neighborhoods. For instance, in Boston last year, in response to complaints from neighbors, the Haley House, which serves homeless people, built an enclosure to block some stairs leading to an alley where homeless people hung out, much to the dismay of some area residents. However, Haley House was forced to remove the structure, which not only solved the problem which upset its neighbors, but also provided additional storage space for the facility, because they had not obtained a building permit and the local landmarks commission had not approved it beforehand.

infallible authority, even in special questions....”⁵ He also observed that we are all subject to natural laws, but not necessarily human science, which is always an imperfect and contingent assessment of those laws. The natural laws will have their way, no matter what we choose to believe, and the advice of experts may help us avoid the inevitable consequences of error. The point is that the ultimate decision rests with the inquiring individual, not the experts. Once we become subject to the authority of the expert, we fall into the abyss of servility. It is in that abyss that the regulatory agencies labor to immure us. By making us dependent on the rule of experts and authorities, they enslave us all. It becomes a case of the rule of men, not law, in the worse sense of the old saw.

The current role of the regulatory agencies is both advisory and coercive—they not only tell us what the experts believe are acceptable standards of procedure, but also force everyone willy-nilly to follow them. This may appear salutary when it is a gargantuan and rapacious capitalist industry that is being bitted and bridled (although too often the agency is co-opted by the industry it is specially concerned with). Certainly, the example of the lumber industry's treatment of the U.S. old-growth forests makes us all anxious that something “regulate,” i.e., stop, this irreversible destruction. But it is just as liable to be the case that some farmer on the economic edge is put out of business because the same bureaucratic ruling says that they cannot remove a stand of 70-year old scrub growth from their land. To a bureaucrat or an ecological absolutist a tree is a tree is a tree, and that's all of it. However, most people would prefer that while the rich and unconscionable be put to considerable trouble and, especially, expense to deter them, that the little guys be treated in a more considerate and equitable manner, and the case thoroughly examined in its real, not its hypothetical, ramifications before they are prevented from doing what is to their

⁵ Dolgoff, Sam, ed. Bakunin on Anarchism. Montreal: Black Rose Books, 1980, p. 229.

benefit. There is a real difference in scope, intent and effect between the two cases, although it may be exactly the same regulation that deters each. This is often referred to as “equality before the law.” The simplest solution, to regulate neither, creates other difficulties, as the examples of the lumber, oil, and innumerable other industries demonstrate.

In real life, the biggie with the motivation of greed and the resources to play the lawyer game has a good chance of circumventing the most strictly specific regulation, while the little guys, even when there is a legal opportunity, are thwarted by the expensive legal defense (or simple regulatory obfuscation) the regulators can throw into their path. In the end, the process is a reflection of the larger inequities of our society, and thus more oppressive than helpful to the individual. Even if the regulatory agencies were otherwise effective, this class/income inequality would insure that their influence was pernicious. However, it is widely recognized that not only are state and federal regulations ineffectual in attaining their own stated objectives, but they have also become such bureaucratic jungles as to actively subvert the very solutions that they were instituted to implement.

One of the primary reasons for this failure is the inherent inflexibility in the application of all regulations. It is the usual downfall of authority. State officials make a fetish out of their arbitrary rules and a necessity out of mindless consistency, so that the means become more important than the ends. Once a rule has been promulgated, it is adhered to even when the ostensible goals can be observed to be completely perverted. If an agency approached each case with the intention of arriving at an equitable and effective result through whatever reasonable means are necessary, rather than as an opportunity to submit the situation to the Procrustean demands of their regulations, then just possibly some good might

erty or their neighbors can be evicted from their homes simply because someone new buys the property and wishes to close it down or change it in such a way that it is more convenient for this new owner if the current tenants are forced out. Some people have challenged trespassing laws by squatting or homesteading unused buildings in cities all over the united states, trying to rehabilitate them into pleasant living quarters. However, they are usually run out by cops, often after they have invested a substantial amount of time and energy making these buildings livable. The buildings are then sealed off and left empty and unused again. By this means the government protects the interests of absentee landowners and actively prevents people from housing themselves.

Absentee ownership also frequently leads to poor quality housing for people of meager economic means who live in buildings owned by people who live elsewhere. Traditional slumlords, who do not have to experience the conditions under which their tenants live, or face their tenants daily, have little motivation to maintain the properties they own above a minimal standard. The tenants, on the other hand, who have no long-term economic interest in their living quarters which they are not allowed to own, are hesitant to take up the slack for the legal owner to whom they pay their rent. These two factors combine to produce a gradual decay in much absentee-owned property, leading eventually to abandonment of buildings and the loss of more housing. And then, as noted above, after the owner abandons a building, the government prevents homesteaders from rehabbing and living in it.

While eliminating the right to own property one does not live in or use would lay the basis for a solution to the housing problems people are experiencing, such a change in property rights will not occur until many other changes take place, especially the abolition of all governments, which maintain this and other inequitable economic arrangements. Given that, we have to come up with ways to improve the situation within the constraints of a statist society. In looking for solutions, many people, despite the fact that the state's

market, resulting in a dramatic increase in the numbers of homeless people, wretched housing for many of the poor who do have somewhere to live, and outrageously high rents for many who can afford better housing. While many argue that more and better government oversight and financing of housing is the solution to the problem of inadequate housing, I intend to show in this article that government intervention in the housing market has only created more problems for people who have difficulty finding places to live, and that ridding ourselves of government interference in our lives is the best way to enable people to solve the problems of homelessness and lousy housing.

Property Rights and Homelessness

Over the last ten years the number of homeless people in the united states has increased greatly, even though the 1990 census estimated that there are 10.3 million vacant housing units across the country, 500,000 of which are government-owned. At the same time, the quality of the housing utilized by many poor people who still have places to stay has been steadily deteriorating, with public housing projects, many of which are dirty, poorly maintained, and very unsafe, at the bottom of the barrel. Those who are able to afford decent housing, on the other hand, may have nice places to live, but are often forced to pay exorbitant rents. What has led to this problem?

The root cause of housing problems is absentee ownership of land and buildings. People in this country are allowed title to land and buildings which they neither occupy nor use, and are allowed to charge rent to those who should be the owners, the people who do live or work on or in them. This right of absentee property ownership is protected by the government, which respects such unjust titles to property, and uses its police and courts to enforce them by means of trespassing laws. For instance, tenants who are up-to-date with their rent and are not causing problems to the prop-

result. A group of arbiters, such as Kropotkin describes,⁶ who intended to resolve, rather than create, problems might work, but the dead hand of state bureaucracy makes this impossible. As it is, the whole thing becomes another soulless game like the lawyer one, where results are sacrificed to the intricacies of the play. The complete lack of considered judgment results in the arbitrary and punitive enforcement of ill-advised rules, resulting in lowest common denominator outcomes arrived at through unnecessary but considerable effort and expense.

Thus, the regulatory process, as it is managed by the state, is not only invasive, coercive and inequitable, but also ineffective.⁷ It often actively aggravates the very situation which it was created to ameliorate. We must therefore come to the opinion that (Governmental or otherwise) regulation simply can't work. But what then? The simple libertarian answer is: "Deregulate!" Simply cease the whole process and let things settle out by themselves. Philosophic anarchists might agree, as it is consistent with the ideals of anarchism in principle, but those who are interested in a feasibly revolutionized, rather than impossibly utopian, society might demur. Although regulation doesn't work, the problems it was invoked to solve remain real enough. We must reject not only regulation as such, but also a laissez-faire approach which would continue to allow the unscrupulous and the deluded to obstruct the needs and rights of others.

The individualist anarchist rejection of any coercive and invasive action against persons (if not corporations, although these may be made up of freely associated individuals) implicitly disavows the old system of community controls that regulated things before the rise of the modern state. In fact, the current evocations of "community" and "consensus" by various reformers, far from heralding

⁶ Kropotkin, Petr. *Mutual Aid: A Factor of Evolution*. Boston: Porter Sargent Publishers, n.d, p. 131.

⁷ This conclusion is well supported by Kohlmeier, cited above (although he personally favors reform).

the liberty of the individual, call for the reassertion of the local repression and narrow-minded intolerance that generations of anarchists and other rebels fought as “small town opinion” and oppressive Victorian morality. As is so often the case, these “radicals” become indistinguishable from downright reactionaries, as with the Dworkin/Comstock monster. Bigoted coercion and invasion, especially when cloaked with good intentions, must be carefully avoided. Instead, the answer might come from a division of the two parts of the regulatory system. The revelatory process should be taken over by voluntary groups who could test, investigate and analyze products and activities and publish as objective reports as possible for the public. The inevitable skewing of such reports by the particular outlook of the investigatory group might be moderated by an honest statement of the position of the group, and by the existence of several parallel, yet neither “official” nor competitive, testing organizations. The practice of regulation and coercive enforcement as a result of investigations, however, would simply be dropped. It would be up to the individual to utilize the reports from one or more revelatory groups to insure informed consent. No one has the right to censor or interfere with the free interaction of individuals.

On the other hand, whenever clear and present dangers arise through the intentions or actions of either individuals or groups (corporations), other individuals and groups need to reserve the responsibility to defend themselves against invasion, to the extent of being ready to take preemptive action as necessity dictates. Now this may at first appear to sharply diverge from the principles of individualistic anarchism and the doctrine of non-interference. It does not. The answer is not a pre-determined set of “laws” or regulations, but rather an individual or group’s honest and immediate response to the imminent or actual commission of unequivocally grievous and/or irretrievable offences against an individual or an area (including, for example, arson, or the ecological destruction of a people’s environment). When such a situation arises (and it

ers” pay for these shots (at \$20 to \$35 a pop), but also to pay for and put up with registration for all cats, with the fees, tags and sacred paperwork so lusted after by officials of all stripes.

The crowning consideration, also mentioned in the newspaper article, is that this rabies epidemic carries essentially no threat to humans. “No human deaths have resulted from rabies in the outbreak. Except for a 1983 case in which the rabies virus was contracted in Nigeria, the last human case of rabies in Massachusetts was reported in 1934.” Yet the fool Department of Public Health has filed this invasive and burdensome bill, where simply publicizing the danger to cats and encouraging their owners to take advantage of inoculations at their veterinarians would more than suffice.

The article quotes officials that “enforcing such a law would be difficult.” But this is just what officials want. A “difficult” regulation can be enforced selectively and arbitrarily on some people for the greatest possible nuisance value, while other cases are ignored with the excuse for unequal enforcement being the very difficulty that is built into any absurd and unnecessary law. This is just one of the more blatant efforts of the State to force us to do something, ostensibly “for our own good,” which really just contributes to the oppression by regulation that is increasing all the time in this country.

Fewer Laws, More Housing

Joe Peacott

Introduction

As Jim Baker notes in his article, another area where state regulation has harmed those it purportedly was designed to help is that of housing. From building codes to landmark commissions to zoning laws to rent control, rules and regulations mandated by governments from federal to local levels have distorted the housing

The Story that TIME Couldn't Tell. USA(?): Church of Scientology International, 1991. Report on dangerous drug, Prozac, approved by FDA.”

Transsexuals Protest Silicone Implant Ban.” *IN*, March 3, 1992. Report of demonstration in favor of keeping silicone breast implants available for cosmetic surgery.

The Regulatory Mindset at Work: Rabies and Feline Bureaucratization

Jim Baker

A graphic illustration of regulatory overkill recently appeared in an article (and supporting editorial) in the Quincy, MA, *Patriot Ledger*. The issue is the spread of rabies from wild animals to house cats, and the Governmental response to the problem. The apparent situation is that there is an “epidemic” of various strains of wildlife rabies that has spread from the Mid-Atlantic region northward since the 1970’s. The article stated that this is a periodic rabies outbreak, which occurs in six-year cycles and affects foxes, raccoons and bats. Such an outbreak, as the article goes on, might affect “2,000 to 5,000” animals in Massachusetts, although it is not clear whether this is an estimate of the total effect on the animal population, wild and tame, or just the number of observed cases.

The figures from New York show a dramatic rise in observed cases of rabid animals from 1989 (54) through 1991 (1,030) but only 15 of the 1991 figure were cats. The cited estimate of one million house cats in Massachusetts would suggest there are at least that number in New York, of which only 15 were found rabid. This is surely a case for suggesting that cat owners might want to consider rabies shots, but certainly nothing more. What it most profoundly does not suggest is the solution the bureaucrats jumped at—the licensing and forced inoculation of all cats in the commonwealth! Leave it to the State to find some excuse to not only make cat “own-

would be wise to provide for some avenue of consultation to guard against “Chicken Little” panics), the response should be firm and direct. Benjamin Tucker covers the case very well: “Then liberty always, say the Anarchists. No use of force, except against the invader; and in those cases where it is difficult to tell whether the alleged offender is an invader or not, still no use of force except where the necessity of immediate solution is so imperative that we must use it to save ourselves [or, as in the case of children, certain weaker individuals who cannot protect themselves.⁸] And in the few cases where we must use it, let us do so frankly and squarely, acknowledging it as a matter of necessity, without seeking to harmonize our action with any political ideal or constructing any far-fetched theory of a State or collectivity having prerogative and rights superior to those of individuals and aggregations of individuals and exempted from the operation of the ethical principles which individuals are expected to observe.”⁹

Regulations qua regulation, such as the State imposes on us, are unacceptable. They are even more so than many laws, which at least have had the benefit of political discussion and legal recourse. They are under the arbitrary and usually capricious control of petty officials (such as social workers, health inspectors and so forth), who can inevitably find “violations” in any given situation, depending on whether they take a frivolous dislike to an individual, feel like asserting their scrap of authority, or had a fight with their spouse that morning. The multifarious nature of regulatory codes almost insures that any normal situation is unacceptable. Once a “violation” has been established, the whole overbearing power of the State comes to rest on the unfortunate person or group, where redress or even a fair hearing is far more difficult than in a straight criminal case. For one thing, it is quite likely that there is a viola-

⁸ Tucker, Benjamin. *Instead of a Book*. New York: Haskell House Publishers, 1969, p. 145-6.

⁹ *Ibid.*, p. 35-36.

tion of some code or another. Whether the specific situation is truly dangerous or wrong, or only inauspicious, is entirely immaterial; it is the rule not the reality of the thing which counts.

For example, the truly repressive building codes not only tie the hands of the adventurous, imaginative, or even tasteful builder (“but it’s not up to code!!!”), but also have created the serious low cost housing shortage that has contributed to our current “homeless” problem. Although there are many factors at work, a central one is the mindless imposition of bourgeois standards of living for all people. As James Stevens Curl noted in the problems of the Oxford housing situation, “The very designation of the term ‘slum’ reflects a middle-class attitude to terrace-housing where grand values are applied to humble situations.” That, and the shibboleth of “safety” above all other considerations (i.e., better no house at all than one that sometime, in some way, might be unsafe) have been instrumental in destroying many of the shifts that poorer people have used over the centuries to find shelter for themselves. To be subject to such a farrago of repression for the results that accrue is ridiculous. The game is definitely not worth the candle. While the social problems that regulation was created to solve are real, the cure seems worse than the disease, and we must recognize that all the good intentions in the world can’t gainsay this. If liberalism worked as was intended, I might not be an anarchist. As it is, the only answer to the question “should we regulated?” must be “no.”

Bureaucrats vs. the Saint

***Boston Herald* Editorial, September 20, 1990**

This one will break your heart.

Mother Teresa’s religious order, the Missionaries of Charity, came to New York City last fall to do what they do best: save lives. They bought two empty tenements in South Bronx, and set about rehabilitating them. Some \$100,000 was spent on repairing fire

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- Pills-a-go-go: Journal of Pills*. Information about drugs of all sorts. Available from 1202 East Pike Street, No 849, Seattle, WA 98122-3934. \$10 cash/yr, sample issue \$2 cash.
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Female Condom Info Urged.” *Boston Herald*, February 1, 1992. Report on important “medical” device prohibited by FDA, but available in other countries.

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damage. Another \$400,000 was budgeted for completing the work on the four-story buildings and turning them into shelters for 64 people.

Enter the government.

New York City bureaucrats, in their infinite wisdom, mandate accessibility for the handicapped in all new construction in the city. In this case, that means elevators—which the nuns consider an unaffordable frill. For those unable to negotiate a stairway, the nuns proposed instead to do what they so all over the world: Carry the ill in their arms.

“A homeless man probably wouldn’t have an elevator if he moved into any other four-story building,” Monsignor Henry Mancell of the New York Archdiocese told the Associated Press. “Why get him accustomed to such a luxury?”

Every nickel the Missionaries of Charity were prepared to spend on their good works in New York was privately raised—none of the money comes from government. As far as they are concerned, the \$50,000 it would take to install an elevator is money more vitally needed for other uses.

And so, Mother Teresa—the 80-year-old Nobel peace laureate—is leaving. “After praying about it,” she said, she decided not to proceed.

It is safe to say that more people will die on New York’s streets as a result. But the Almighty Rules were followed. To the government bureaucrat who speak so piously about “compassion,” that is a victory.

Deregulating Health Care

Joe Peacott

Introduction

Just as governments and their supporters feel that they are best suited to decide how and where we should live, or what recreational drugs we should use, and have passed various laws to implement their control over these areas of our lives, the state has set itself up as the guardian of our health and regulates where, how, and from whom we can receive our health care. Through various laws and their accompanying regulatory agencies, the government decides what kind of health care can be provided, who can provide this health care, where these providers may treat their customers, and where, from whom, and under what conditions we may purchase medicines. These regulations purportedly exist to protect health care consumers from receiving incompetent, careless, and/or dangerous care, and to prevent them from injuring themselves by using medicines without seeking the advice of experts.

The primary result of state regulatory control of the practice of health care, however, has not been protection of the health of health care consumers, but rather the protection of the market monopoly of state-approved health care professionals, drug manufacturers, and other providers of health care services. This government-enforced monopoly results not only in very expensive services and medicines and the attendant outrageous profits earned by providers and drug manufacturers, but also in a greatly reduced range of services and medicines available to health care consumers. Many critics think that the solution to the problems people encounter with the health care system is for government to better regulate it and socialize its costs through some sort of national health care system. I disagree.

I contend, and will argue in this article, that people would have more accessible, more varied, cheaper, and better quality health care services and products in a health care market unregulated by any government. Questioning the right of the state to control

extraction, as well as dissemination of information about the use of herbal abortifacients. These are all examples of how people can take care of their bodies without the supervision of the government.

The self-help and activist movements that have developed around AIDS have also taken an anti- and extra-governmental approach in some areas. Besides forcing important, though still limited, changes in FDA rules which have led to earlier release of life-sustaining medicines, the AIDS activists have also set up buyers' clubs which import drugs from countries with looser drug regulations. Many activists have also challenge the government's regulation of medical devices by illegally distributing sterile syringes and needles to injection drug users. People who have AIDS, as well as other people needing health care, would be much better served by further efforts in such directions than by the larger governmental role in health care advocated by many AIDS activists.

Our health care, like every other area of our lives, should be ours to control, free of government supervision and intervention. With freedom, however, comes the responsibility to look out for ourselves, and rely on ourselves and our associates for the information we need to make the right choices. We may make unwise choices if we don't have government intervention in our lives, but that is the cost of being free. And it is worth the price.

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The same private activities that protect people from bad doctors and bad VCRs can protect people from bad drugs. Considering the response of other people to medicines and consulting information agencies will work as well in the drug market as in the health provider market. There are various self-help and mutual aid organizations and clearing houses in existence today that can provide information on health care problems and their treatment, and deregulation of drugs and the rest of health care would only encourage the development of more such organizations. There is also a newsletter called Pills-a-go-go that provides information on drugs for consumers. Additionally, socially active private groups, like the Citizen's Commission on Human Rights, which was instrumental in alerting people to the possible dangers of Prozac, can and will function as watchdogs in the marketplace.

For Freedom of Choice in Health Care

Besides the above regulations, the state also regulates practically every other facet of health care provision, such as hospitals, clinics, hospices, pharmacies, drug advertising, drug labeling, etc. Like with drug and licensure laws, these rules serve only to limit the options of health care consumers and force us to rely on state-approved practitioners, medicines, and institutions. While many people accept or support this state of affairs, there have been some hopeful signs of opposition to the status quo.

In the early 1970's in Chicago, when abortion was illegal, a group of people called the Jane Collective provided low-cost, safe, and effective abortions illegally, and therefore totally outside state control. Their existence was publicized privately and they provided their services without state-licensed personnel and without government funding. In addition to the Janes, the women's self-help health movement, recently revitalized by threats to legal abortion, led to the foundation of private women's health clinics where people were taught alternative abortion techniques such as menstrual

health care, and demanding that we be free to choose how, where, and with whom we wish to care for our bodies, just as we demand sexual freedom and the freedom to choose abortion, is a fundamental challenge to the idea that the state can care for us better than we can care for ourselves. Deregulating health care, even in the context of state control in other areas of our lives, would not just benefit our health and increase our freedom in this specific area. It would also provide a model for non-statist approaches to the solution of other problems we encounter, perhaps serving as a step on the road towards a completely non-statist society.

Deregulating Doctors: the Demise of Professional Licensure

One of the most important ways in which the government interferes in the health care market is through state licensing of physicians, nurses, and other health care providers. Despite the state's and the professionals' claims that licensure is necessary to protect the public, licensure in fact protects primarily the health care professionals themselves from competition. Historically, calls for licensure have not come from health consumers, but from the practitioners to be licensed.

State-mandated licensure ensures a monopoly in the health care marketplace for those who have managed to convince the state that they should be the official healers in a given society. Such licensure laws criminalize the practice of medicine (or nursing or physical therapy, etc.) by anyone not duly licensed by the state. What constitutes such practice and the requirements for licensure are defined, of course, by regulatory boards made up of the licensed professionals in question. By essentially banning other types of health care providers, and regulating the activities of those who are licensed, the various health professionals are able to restrict competition in their fields, thus increasing their status, income, and social and political power.

Conventional American doctors are all either allopathic physicians (MDs) or osteopaths (DOs). Allopathic medicine and osteopathy are not, however, the only models for health care. Such schools of thought as homeopathy, naturopathy, traditional Chinese medicine and acupuncture, and Christian Science offer different models for healing and health care maintenance, and have been and are ascribed to by large numbers of people both in the United States and around the world. Prior to the advent of medical licensure laws there were many different philosophies and practitioners of health care current in this country, but the practice of all of these “alternative” forms of health care has been severely restricted by the state-supported monopoly of the MDs and DOs, the so-called “scientific” practitioners. Licensing laws for nurses, physical therapists, and other non-physician health care professionals are similarly based on the outlook of “scientific” medicine.

The various licensed health professionals are very attentive to protecting their turf and are happy to call in the state whenever some upstart challenges their monopoly. For instance, in Massachusetts, the Board of Registration in Nursing punished a lay midwife who attended home births by suspending her license to practice nursing (she was also an RN), preventing her from working as a nurse. This was just part of an ongoing movement on the part of nurses to replace the currently unregulated practice of lay midwifery with licensed and restricted nurse-midwifery. As one might expect, such attempts to restrict the provision of health care are always justified by a supposed concern for protecting the “public health.”

What has been the real effect of these licensing laws and regulations on health care? First of all, they have severely limited the variety of health care providers available to those seeking health care. Although alternative practitioners are allowed to operate in some places, there are severe restrictions placed on their practice, such that even merely giving a customer advice can be construed

drug business is proven by the large number of generic versions of medicines which appear on the market as soon as a drug goes off patent, as well as the very profitable market for non-prescription drugs, few of which are patented.

Besides medicines, the FDA also regulates medical “devices.” Their rules about the use of such devices also work against individual choice in health care. Their recent call for a moratorium on silicone breast implants for women bars people seeking such implants from making the choice about whether they are willing to accept the small risk of complications in order to have their bodies look the way they would like them to look. As Margery Eagan wrote in the Boston Herald, “A few days ago, I interviewed Lora Brody, a Newton woman who had silicone implants after a mastectomy and is “thrilled” with the results. Who is the government, Brody asked, to tell her she is incapable of assessing the silicone risk and making her own choice?” Such disrespect for the choices individuals wish to make for themselves lies at the root of government intervention in health care.

Supporters of government intervention argue that getting rid of regulation will lead to dangerous and ineffective drugs and devices flooding the market. They claim that without the approval process mandated by the FDA, people will have no way to know whether a medical device or drug is safe and/or effective. While, as I discuss below, there are non-governmental ways to protect oneself from dangerous or ineffective drugs, it is true that the elimination of the FDA and the regulations it enforces, as obstructionist and inadequate as they may be (the FDA has, after all approved more than its share of potentially dangerous drugs and devices, e.g., the aforementioned breast implants), may make for a riskier health care marketplace for the consumer. But, as in the case of eliminating professional licensure, those of us seeking a freer society are willing to accept this increased risk, because with it comes the correspondingly broader range of health care options available in a free market.

cian oversight of drug use, regulates who can manufacture drugs, how they must be tested, when they can be released onto the market, and what manufacturers are allowed to produce which drugs. The result of these laws is that people have a restricted choice of medicines, which are very expensive, and which they cannot obtain without a note from their physician, all of which is purportedly in their interests.

Because of Food and Drug Administration (FDA) rules, many medicines are not available in this country. People died because they were unable to obtain pentamidine to prevent AIDS-related pneumonia, and various other potentially helpful anti-AIDS drugs have been kept from the market by the FDA, as well. This agency also prevents people from obtaining THA, a drug proven to be helpful to many people who have Alzheimer's disease and is available in a number of other countries. Additionally, people who wish to have abortions in the United States are forced to have surgical abortions, because the FDA bans RU-486, an abortifacient medicine available in other countries. People in this country are allowed to suffer and die and are forced to put themselves at risk of surgical complications because the FDA is "looking out for their interests."

Once a drug is allowed onto the market by the FDA, one drug manufacturer is generally awarded a patent, and therefore a monopoly in the marketplace. This state-supported monopoly leads to artificially inflated drug prices, and, therefore, limited access for many people who cannot afford to pay for the medicine. Again people's health suffers because of the FDA.

Drug manufacturers argue that without patents and market monopolies, they will not be able to do the expensive research required to develop a drug. Much of the expense of developing medicines, however, is due to FDA rules. Abolishing the FDA will greatly diminish the cost of getting drugs onto the market. Drugmakers will continue to research new drugs because new drugs mean more money, whether there is a monopoly or not. The fact that a monopoly is not necessary to make money in the

as the illegal "practice of medicine" by a non-licensed person. Additionally, insurance companies, which seek to protect their profits by minimizing the risks they take and avoiding potential lawsuits, generally follow the recommendations of the government-approved experts and are unwilling to pay for care that is not provided by conventional practitioners. Surely, scientific medicine has helped heal many people, and antibiotics and painkillers have been important contributions to the well-being of many, but alternative forms of health care have helped many as well, and people should be free to choose whatever kind of care they seek.

Besides protecting scientific providers from the competition of outsiders, licensing laws also allow the licensed providers to restrict their own numbers. By regulating licensure requirements, physician-controlled medical boards can restrict the numbers of medical school graduates by requiring certification of medical schools, overseen, again, by the licensed physicians themselves. Similarly, medical boards put very stringent requirements on graduates of foreign medical schools to further protect themselves from competition. The artificial shortage created by restrictions on numbers of medical graduates leads to increased demands on individual practitioners, and allows physicians to charge extraordinarily high fees for their scarce services. Allowing people to demonstrate competence in their field, regardless of their educational preparation, and the elimination of the double standard used to judge foreign medical school grads, while not solving the other access problems caused by licensing laws, would at least help in increasing the supply of conventional physicians and lowering the costs of health care.

Some physicians make the case that they need to charge such high fees because of the debt they are left with after medical school. There is certainly some truth to this argument, although, judging from the lifestyle of most physicians, they clearly make enough money both to repay their loans and maintain a very comfortable standard of living. The solution to the problem of expensive ed-

ucation is not to extort the money to pay for it from either customers or third parties (primarily taxpayers). Elimination of licensure would eliminate physician-controlled accreditation of medical schools, leading to more schools, or training programs, or apprenticeships of all sorts, leading to less expensive health care education for scientific physicians and alternative practitioners alike.

Critics of elimination of licensure say that without such state regulation of health care, incompetents and quacks will take advantage of ignorant consumers. They claim that such oversight ensures adequate educational preparation, competent practice, and legal recourse for victims of incompetence and/or fraud, by regulating who can practice medicine and providing a means to discipline errant physicians. Licensure, however is not the best (or only) way to try to ensure quality health providers. Not only do licensed professionals, through their boards of registration, often protect their colleagues from punishment when they harm customers, but legal claims against physicians, especially by poorer and less well-educated people, can often be difficult to pursue and even harder to win in court.

Better ways to screen health providers would be those used by consumers in choosing other services in their lives: word of mouth and private information agencies. Bad doctors, like bad restaurants would be talked and written about by dissatisfied customers and would be forced to either improve their services or go out of business. Additionally, private individuals and businesses would take on the task of evaluating and rating physicians, not unlike the Consumers Union and their magazine, Consumer Reports. The People's Medical Society already provides state-by-state physician directories based on the recommendations they receive from their members. Other services, like Planetree Health Resource Center in San Francisco, can provide files for health care consumers containing information on illnesses/health care problems, both from scientific professional journals and alternative sources, supplying

consumers with information with which to judge the competence and honesty of their physician.

The elimination of state oversight of health care providers may entail an increase in risk to the person seeking a health care practitioner. People would no longer be able to rely on government safeguards, inadequate as they may be, to protect them from incompetent or dangerous providers. A free market in health care would require consumers to look out for themselves instead of relying on the state to take care of them. However, the new uncertainties people would face in such a market, as well as the increased need for self-responsibility, would be accompanied by an increased freedom of choice in health care options, a trade-off well worth the risks, as well as the added time and effort needed to ensure quality health care in an unregulated setting.

Deregulating Drugs

The provision of licensure statutes and regulations that, more than any other, forces so many people to utilize licensed physicians, is that which limits prescribing of many medicines to MDs and DOs (and, in a few cases, nurse practitioners and physician assistants). This inability to obtain medicines without a doctor's note prevents people from medicating themselves and increases the income of physicians by forcing people to consult them before they can obtain the treatment they wish to use. This prescription requirement is just one of many restrictions on the manufacture, sale and use of drugs in the united states. And, in order to really free up health care in this country, all of these rules and regulations restricting access to drugs must be abolished.

Similar to the arguments for professional licensure, the justification for many of these anti-drug laws is that the state is the appropriate instrument for safeguarding the public health, and a free market in drugs would expose health care consumers to an unacceptable level of risk. Therefore, the state, besides requiring physi-