Peter Schuck's Rx for Big Government's Ills

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According to the dominant narrative—advanced by President Obama, embraced by the Democratic Party, and disseminated by their many advocates in the prestige media—the federal government isn't working as well as it should. One reason for the inauspicious launch of the Affordable Care Act, this narrative holds, is that Republicans have done everything in their power to sabotage it. And government is sharply polarized, the narrative asserts, because radical Republicans—concentrated in the House of Representatives but prominently including senators such as Ted Cruz, Mike Lee, and Rand Paul—stubbornly refuse to see the wisdom of progressive ways.

In a weighty new book, "Why Government Fails So Often, And How It Can Do Better," author Peter Schuck exposes the flaws in this narrative. To be sure, the belief—which public polls show is shared by a majority of Americans—that the federal government wastes great quantities of taxpayer money and frequently fails to fulfill its promises is confirmed by reams of social science research. And polarization, particularly among political elites, is real and impedes effective governance. But Schuck, professor emeritus of law at Yale University, demonstrates that the problem goes to the core of big government. He shows that in the field of domestic public policy (to which his book is restricted), our unwieldy federal government is plagued by "deeply embedded defects."

Combining an exhaustive review of the scholarly literature in political science and law with detailed case studies, Schuck concludes that government's failures "are not just random, occasional, or partisan; they are large, recurrent, and systemic."

They derive from what Schuck—following the writings of political scientists John DiIulio and the late James Q. Wilson—characterizes as the replacement of the Old System of American governance by the New System. The Old System recognized that proposals to expand government's agenda needed to fall within the limits of legitimate government power. The New System abandoned questions of constitutional limits and legitimacy in favor of the assumption that government possesses unlimited power to do what representatives deem beneficial to society.

The New System was brought into being in the late 19th century and early 20th century by progressivism, which criticized the Constitution as mechanical and hidebound and asserted that above and beyond protecting liberty, government was responsible for improving the quality of citizens' lives.

The modern Democratic Party embraced this approach in the Great Depression with the New Deal, which gave the New System institutional expression in a variety of domestic government programs aimed at restoring the economy and creating a basic social safety net. In the last third of the 20th century, Great Society programs extended such ambitions by dramatically enlarging government's responsibility for combating poverty, overcoming racial injustice, providing health care, promoting education, and generally establishing greater economic and social equality.

The New System has not gone unchallenged. A defining goal of post-World War II conservatism has been restoring the idea of limited government, a founding principle shared by both those who sought the Constitution's ratification and those who opposed it. A measure of the New System's entrenchment is that most conservatives today accept the legitimacy of New Deal and Great Society programs; instead of seeking to roll government back to pre-20th century size and scope, they concentrate on limiting its growth.

Nevertheless, Schuck shows that the structural sources of our sprawling federal government's endemic policy failures are numerous—and explainable. He provides six major reasons.

First, the incentives faced by officeholders—and the citizens who vote them into office—are often at odds with the public interest well understood. To win elections, politicians offer voters, who are often disengaged and ignorant of policy intricacies, short-term benefits while concealing long-term costs. In addition, small, determined, highly organized interest groups can win passage of legislation that benefits them but whose costs are borne but poorly perceived by the larger electorate.

Second, government suffers from inadequate information, rigidity, weak cooperation, and mismanagement. Information is expensive and time-consuming to obtain, understand, and keep current. Rigidity stems from politicians' restricted ability to sway public opinion, and the constitutional system of checks and balances, which creates hurdles both for the enactment of new policy and the repeal or reform of enacted programs. Cooperation is difficult to secure because private sector actors know that the next Congress can change the rules of the game. And mismanagement is the result of the massive fraud, waste, and abuse that inevitably afflict massive government programs.

Third, officeholders routinely underestimate the impact of markets and overestimate the power of government to control them.

Fourth, the implementation of social engineering schemes is always cumbersome—and frequently self-defeating. Government programs must pass through multiple levels of government agencies and actors with conflicting perspectives. At each level, decision makers push programs in different directions. The protracted process of rule-making and frequently fierce opposition from the private sector causes extended delays. And policymakers lack the training to grasp the variety of complex markets in which all major policies are embedded.

Fifth, government has steadily expanded the domain to which federal law applies and asked it to regulate ever more minute details of everyday life despite the inherent limits of law—its generality, indeterminacy, ambiguity, reliance on elaborate formal procedures, and often disguised dependence on discretion. The result is to simultaneously extend law's reach and undermine its legitimacy.

Sixth, the federal bureaucracy, whose power has grown enormously, suffers from a variety of pathologies. Prominent among these are the fragmentation and conflicting imperatives arising from the contest between the Congress and the president over control of the bureaucracy; the multiplication of formal legal rules; the dearth of quality leadership; the proliferation of layers of political appointees; relatively poor compensation for high-level civil service employees; severe restrictions on the ability to fire, demote, or suspend employees; the difficulty of securing compliance of lower-level employees with the bureaucracy's mission; and the increasing propensity to contract out tasks, which reduces transparency and accountability.

Despite these built-in reasons for policy failure, Schuck also highlights government successes, and the list is impressive: In the New System era, these include Social Security; the GI Bill; the interstate highway system; food stamps; the Voting Rights Act of 1965; the Immigration and Nationality Act of 1965; the earned income tax credit of 1975; the Airline Deregulation Act of 1978; and the National Institutes of Health.

Moreover, Schuck appreciates that the overall achievements of American constitutional government are nothing short of remarkable. Over the course of 226 years, the United States has steadily extended the promise of freedom, equality, and opportunity to all citizens. Our toleration and pluralism are second to none. We have integrated huge numbers of immigrants. We have the highest standard of living in the world. We saved the free world in the 20th century and are looked to for leadership in the 21st.

Much remains to be done; Schuck argues for a "cautious incremental approach" to accomplish it. Consonant with America's overarching political principles and underlying political culture that favor individual freedom, his approach appeals to interests, concentrates on incentives, and seeks to alter circumstances rather than change character. "Policy environments," he writes, "are more tractable than the people who inhabit them."

What he is suggesting could almost be called a conservative approach even to progressive policy goals. For instance, his approach emphasizes the use of vouchers—insofar as possible and with appropriate safeguards—where the federal government seeks to fund services, including education and health care.

It would require government agencies to publish reports establishing that they can provide a service more effectively and more cheaply than the private sector. It would, to the extent feasible, deregulate regulated activities, or subject them to competitive bidding, or privatize

them or, if they produce harmful effects, tax them (either in a revenue-neutral or revenue-raising way). It would eliminate most tariffs and trade restrictions. It would expand requirements for Congress and the president to produce cost-benefit and cost-effectiveness analysis. And it would restrict Congress's ability to pass omnibus legislation, which circumvents deliberation.

With pride and for good reason, Schuck declares himself a "militant moderate" and a "melioristic realist." He knows "that policymakers can have at best a severely limited knowledge of the opaque, complex social world that they seek to change, and meager tools for changing it." Although Schuck notes that except for a "protest vote" in 1968 he has voted for Democrats for president, his compelling book will probably be more congenial to conservatives than progressives.

Both will be discomfited by aspects of his argument. Both stand to profit handsomely from studying it.

Conservatives can acquire a heightened appreciation of the necessity and means of reform; progressives can attain a better grasp of just why government policy should be "tailored to its institutional means and capacities," which are necessarily limited and crude.

And both conservatives and progressive should salute Peter Schuck, one of our master teachers of, in his words, the "facts of public life."

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