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Regulation: What is there not to like?

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Regulation: what is there not to like?

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At the heart of current debate in forensic science delivery in England and Wales is the roll-out of regulation, under the auspices of the Home Office Forensic Science Regulator, and a further anticipated move to make compliance a statutory expectation.

These developments are the most recent in evolving policies that arose a quarter of a century ago or earlier, reflected in the reports of a series of governmental and judicial inquiries (1-6). The Runciman Report (2), delivered following the miscarriages of justice surrounding the IRA bombings of the 1970s, recommended the establishment of a council to report on the performance and efficiency of forensic laboratories. The House of Commons Science and Technology Select Committee Report (3) of 2004-05, 'Forensic Science on Trial'—conducted during a government move to privatize forensic science delivery—called for a council to act as regulator of the forensic services market and provide an overview of the use of forensic science in the justice system. The 2010-12 Science and Technology Committee report (4) noted that police laboratories were not accredited to the same standards as other providers and that the Forensic Science Regulator—now established within the Home Office and supported by a Forensic Science Advisory Council—should be provided with statutory powers. These recommendations were pursued in two further Science and Technology Committee reports (4,5) and Sir Brian Leveson's *Review of Efficiency in Criminal Proceedings* (6), which also called for statutory powers for the regulator to ensure compliance with quality standards.

Following the timely introduction of a series of codes and an appropriately ambitious schedule for compliance (7), the Forensic Science Regulator (FSR) and staff are doing exactly what they should—and probably all they can, until the anticipated move to statute can be rolled into a particularly pressing parliamentary schedule.

So, what's the catch—if, indeed, there is one?

One of the more interesting and resilient prophecies regarding forensic science privatisation policy during this period has been Paul Roberts' 1996 (8) assertion that market instability and regulation would in combination lead to a market collapse. This hasn't happened—yet, but market stability remains a major concern and regulation does impose a further financial burden in already economically challenging times. Larger organisations tend to like regulation, however, as they can afford to hire the staff—and, if necessary, the lawyers—and absorb the outlay. Smaller organisations struggle and the large ones can 'gobble them up' in a process referred to in Public Choice (9) economics as 'regulatory capture'. That might be a good thing for market stability in the short term, but it is doubtful whether it would be a good thing for the justice system if small groups of independent experts were to disappear. English law is adversarial, and the role of the independent expert in scrutinising the evidence adduced by the prosecution is fundamental to a fair trial. There is also an element of risk in that once positions of market domination are achieved, the large provider may seek to resist or revise the rules of compliance for their own benefit (9). The fewer and larger the provider organisations, the more damaging the consequences would be if one of them were to fail or withdraw from the market. Nevertheless, an imperfect market may be a better than imperfect government control (9), as the collapse of the Forensic Science Service (FSS) implies. Similarly, a return to the police sector will reintroduce risks that the establishment of the FSS was intended to circumvent.

Even in highly financed organisations, the implementation of quality standards has substantial implications for both expenditure and staff time and, if done poorly, will interfere with the ability of the organisation to meet its primary objectives. After 30 years in Higher Education, I am willing to assert that Universities with the highest quality of research and scholarship—performed by both staff and students—have validation and verification processes that are rigorous, but 'light touch'.

Lower quality Universities have obstructive quality assurance systems. Bureaucrats like regulation—from it flow resources and power (9). Where the organisation is the bureaucracy, a mechanistic culture based on servicing production schedules measured against key performance indicators may result, which certainly has standards—but does not necessarily offer quality.

If demands of regulatory compliance and workplace productivity are in conflict, this will lead to compromise. If these advantage production, it will be at the expense of standards and quality.

The risk of bureaucratic non-experts defining and controlling the expert's work represents a further threat to quality, and may actually generate demotivation and resistance—only leading to further difficulties.

Bureaucracy led organisations may encourage knowing what to do, but offer nothing regarding knowing how to think. They are likely only likely to stifle creativity and innovation.

Although quality standards can improve good practice in organisations, they can be something of a stick and sadly there is little available at present in the form of a carrot.

Finally, it is worth remembering practically all the major scandals involving forensic science and forensic scientists have involved reputable mainstream organisations operating to the recognised standards of the day. Those who like to complain about 'charlatans' conveniently ignore this and may be pointing the finger too much in the wrong direction. Regulation and statute are no defence against flaws in organisational cultures and the odd individual. When encountered, these are far more likely to be inside the system not outside it.

It is difficult to argue against standards and regulation in scientific work that underpins the justice system, but implementation of standards has limited meaning in the absence of a mature quality culture (10)—and a quality culture is just one component of a healthy culture overall.

It may particularly timely, therefore, to recall the view held by the founders of the Forensic Science Society nearly 60 years ago and expressed in the Chartered Society's current Royal Charter:

"The objects of the Society are to advance the study, application and standing of forensic science and to facilitate co-operation amongst persons interested in forensic science throughout the world" (11)

These aims show a foresight as prescient today as it was then. They offer the vision of a culture able to advance quality and standards, whether conceived of in a formal or informal sense, and to foster a community that is diverse and outward looking, and which contributes to and engages with the advancement of all knowledge relevant to the field.

In my view, these aspirations must remain central to the development of our discipline if it is to navigate challenges in practice and policy, and flourish as a mature science of fundamental social value.

*The views expressed in this commentary are the author's own and do not necessarily represent those of the Chartered Society of Forensic Sciences.*

- (1) House of Commons Home Affairs Committee, 'The Forensic Science Service', HC 26 (London, HMSO, 1989).
- (2) Viscount Runciman of Doxford, The Royal Commission on Criminal Justice—Report, Cm 2263 (London, HMSO, 1993).

- (3) House of Commons Science and Technology Committee, 'Forensic Science on Trial', *HC 96-I* (London, TSO, 2005), 17.
- (4) House of Commons Science and Technology Committee, 'Forensic science', *HC 610* (London, TSO, 2013).
- (5) House of Commons Science and Technology Committee, 'The Forensic Science Service', *HC 555* (London, TSO, 2011).
- (6) B. Leveson, *Review of Efficiency in Criminal Proceedings* (London, Judiciary of England and Wales, 2015).
- (7) Forensic Science Regulator, *Forensic science providers: codes of practice and conduct*, (London: Home Office Forensic Science Regulator, 2014).
- (8) P. Roberts, 'What price a free market in forensic science services', *British Journal of Criminology*, 36:1 (1996), 37-60.
- (9) E. Butler, *Public Choice—A Primer*, (London, Institute of Economic Affairs, 2012).
- (10) G. Tully, *Forensic Science Regulator Annual Report November 2016 – November 2017* (Birmingham, UK, Forensic Science Regulator, 2017), p. 24.
- (11) Chartered Society of Forensic Sciences, *Charter of the Chartered Society of Forensic Sciences*, (London, Buckingham Palace, 2013), clause 3.

Highlights

- Commentary on regulation
- Introduces policy trajectory
- Discusses critical issues introducing Public Choice economics

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