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Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy

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REGULATING AMERICA, REGULATING SWEDEN: A COMPARATIVE STUDY OF OCCUPATIONAL SAFETY AND HEALTH POLICY. By *Steven Kelman*. Cambridge, Mass.: MIT Press. 1981. Pp. x, 270. \$19.95.

In *Regulating America, Regulating Sweden*, Steven Kelman attempts "a study of public policy and of what public policy formation . . . reveals about two advanced industrial societies" (p. 5). What begins as an empirical examination of policy-making and implementation by agencies charged with improving industrial hygiene in the United States and Sweden quickly becomes a rather speculative inquiry into the effects of a society's values, traditions, and institutions on its administrative practices. The range of differences between the two countries makes them fit subjects for such an inquiry. American values and institutions, which Kelman describes as "self-assertive" and "adversarial," contrast sharply with those of Sweden, which he terms "deferent" and "accommodationist" (p. 221). Nevertheless, readers may find Kelman's inquiry somewhat frustrating because he carefully avoids suggesting ways to improve the agencies that seek to protect employees against workplace hazards. Although Kelman concludes with a vague criticism of the adversarial approach (pp. 236-37), he provides no clear assessment of the relative merits and demerits of the two approaches and no suggestions for how American administrators might profitably draw on the Swedish experience.

Kelman's methodology is not complex, but his conclusions may surprise many readers. He studied the rulemaking and compliance procedures used by the United States Occupational Safety and Health Administration (OSHA) and Sweden's *Arbetskyddsverket* (ASV or Worker Protection Board) between 1970 and 1976. In a series of case studies, Kelman compares the two agencies' treatment of several hazards, including noise (pp. 19-39), construction hazards (pp. 39-54), chemicals (pp. 54-70), and vinyl chloride (pp. 70-76). In view of the divergent political leadership of the two countries,¹ one might expect that they would regulate these hazards quite differently. Kelman's study shows, however, that the OSHA and the ASV promulgate surprisingly similar substantive regulations (p. 81). Both agencies have tended to be very protective of workers' safety.

After noting these substantive similarities, Kelman attempts to explain them. Students of the bureaucratic process should find his conclusions provocative. He contends that neither expertise (pp. 85-88) nor the political influence of special interest groups or other governmental officials (pp. 94-109) adequately explains the similarities between the agencies' regulations. He instead attributes them to the

1. During the time studied, Sweden was governed by the Social Democrats, while the Republicans controlled the executive branch of the American government. P. 82.

similar values held by the agency decision-makers (p. 82). Both agencies were staffed largely by professionals in the field of industrial safety and hygiene (p. 89). Not surprisingly, these professionals generally believe that workers should be protected from the hazards of the workplace (p. 89), and the promulgated regulations reflect their values.

Kelman's argument is well constructed, if somewhat simplified. In particular, his conclusion that the OSHA's experience rebuts "scholars who argue that regulatory agencies become captured by the industry being regulated" (p. 82) may be premature. Kelman studied the OSHA during its first six years,² a time when the agency's youthful exuberance and crusading spirit were probably at their peak. The ASV, in contrast, was created in 1949, and displayed much greater concern for the interests of employers. Kelman does not consider the possibility that co-option may occur over time as the agency ages and its zeal for strict enforcement wanes.

Although the two agencies promulgate similar regulations, their operating procedures differ substantially. The ASV generally forms a committee to consider problems. Typically, representatives of the ASV are joined on the committees by safety experts of the *Landsorganisationen* (LO or Confederation of Labor) — the Swedish equivalent of the AFL-CIO — and the *Svenska arbetsgivareföreningen* (SAF or Swedish Employers' Confederation) — the employers' bargaining unit. The committees discuss methods of reducing risks to workers in congenial closed meetings. From such committees emanate proposals for regulations on which all interested parties have agreed. The OSHA's rulemaking process, in contrast, is dominated by adversarial hearings and procedural safeguards that encourage labor and management to advocate staunchly their respective interests rather than to compromise on regulations. Rules are issued by an "impartial" decision-maker whose ruling inevitably fails to satisfy at least one party to the controversy (pp. 113-75).

Kelman attributes these differences to the societies' values and traditions. The "accommodationist" approach of the ASV originates in the "deferent" values of Swedish society (p. 118). This contrasts with the "self-assertive" values that underlie the OSHA's "adversarial" approach to rulemaking. Kelman devotes considerable attention to the ramifications of these cultural differences for the legislative and administrative structures and procedures of each country.

When Kelman turns to the methods that the agencies use to gain compliance with their regulations, he comes closest to providing practical insight into the problems that the OSHA in particular en-

2. The OSHA was created in 1970.

counters (pp. 195-214). Not only does the OSHA's rulemaking process fail to persuade employers of the need for occupational safety, but the tactics used by OSHA inspectors cause considerable resentment (pp. 205-10). Because inspectors are often cast in the roles of prosecutor, judge, and jury (p. 181), employers feel that the inspection process is unfair. Inspectors, moreover, must fine employers for every violation, regardless of how quickly the condition is remedied (p. 181). Most inspectors feel that employers would ignore the standards if not for the stringent penalties (p. 197), and execute their duties zealously out of a sense of personal mission. In addition, the OSHA has a well-developed program of field control to ensure that inspectors perform adequately (pp. 188-94). In short, the "self-assertive" and "adversarial" American compliance measures virtually ensure the alienation of employers.

In Sweden, on the other hand, inspectors encourage and assist employers to meet the standards to which the employers' representatives have acquiesced. The ASV assigns inspectors to particular plants to facilitate a friendly working relationship between employer and inspector (p. 203). This friendship, in theory, induces employers to improve safety out of a desire to obey the law and to gain the inspectors' approval (pp. 203-04).

At times, Kelman seems to favor the conciliatory approach, but he stops short of recommending that the Swedish model be adopted in the United States. Because he is concerned primarily with the procedures followed by the OSHA and the ASV and with the social context from which those procedures emerged, Kelman presents no data regarding which country is more successful in reducing workplace hazards (pp. 6-7). He recognizes the weaknesses of "normative inducements" as an enforcement device, particularly in a society where "self-assertive" values predominate (pp. 214-15). But conclusions regarding the efficacy of the two approaches are left for the reader to draw. For this reason, Kelman's work, though scholarly and interesting, leaves one anxiously awaiting future studies suggesting how to resolve the dilemmas faced by agencies charged with protecting workers.³

3. Kelman's book is also reviewed in Corn, *How the Swedes Do It*, NEW LEADER, July 27, 1981, at 18.