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Double standards for officialdom

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A major reason for the growing distrust of government is the double standard whereby government officials and employees often suffer no consequences from incompetence, misbehavior and even criminal violations of the law. In the common law, there is a general principle that if a person is damaged by the actions of others through negligence or illegal behavior, he or she has a right to redress.

Private companies and their officers and employees are subject to criminal prosecution and civil suits for dissemination of false information about their company and products, or for selling unsafe products. One sees the endless hawking by ambulance-chasing lawyers trying to obtain private plaintiffs to sue drug companies and those involved in accidents. Many of the actions of these lawyers may be unseemly but they do tend to help protect the public.

The actions of government officials and employees are often far more damaging than those in the private sector, but they are protected by “sovereign immunity” and civil service protections. Sovereign immunity is a “legal doctrine by which the sovereign or state cannot commit a legal wrong and is immune from civil suit or criminal prosecution.” It comes from the ancient concept that the “king can do no wrong.” Governments can consent to being sued, and there are many exceptions to “sovereign immunity.” Typically, if a government employee driving a government vehicle on official business is at fault in a traffic accident, the government or its insurance company will pay damages, and the employee would not be protected from a manslaughter conviction in the case of a fatality.

However, all too often governments use sovereign immunity or civil service protections to shield those in government from the consequences of their own actions, which have done real harm to others, even for political reasons.

My Cato colleague, Chris Edwards, who is an expert on government personnel practices, reported: “Recent data show that just 0.5 percent of federal workers a year get fired for any reason, including poor performance or misconduct. That rate is just one-sixth of the private sector firing rate.” Those of you who have ever managed a work force know that if you cannot get rid of poor performers, they tend to undermine both the effectiveness of the organization and morale.

Currently, there is the example of overwhelming incompetence, negligence and perhaps worse by local, state and federal officials in the case of the citizens of Flint, Mich., being sold water with dangerous levels of lead by the government-owned water company. As of this writing, no class-action lawsuits have been filed because a number of law firms have stated they are not sure they can overcome the sovereign immunity provisions. Fortunately, Michigan law provides the ability to sue the sovereign in certain cases and, thus, other lawyers are hopeful that the courts will allow suits. If the water company were private, as in many places, there would have already been suits in which the company and its officials would be held at least civilly, if not criminally, liable. If governments are going to run activities that can be owned and operated by private companies, there is no justification for giving a pass to misbehavior by the government managers and employees when private managers and employees would be prosecuted for doing the same thing.

Remember last August when the Environmental Protection Agency (EPA) caused a major spill of contaminated water into a river in Colorado that flows through Navajo Indian lands and where many Navajo are dependent on the river? Betsy Woodruff of the Daily Beast reported on a huge spike in suicides at Navajo Nation in recent months that many believe were caused by the damage, stress and incompetent actions of the EPA. If a private company had done such a thing, you can bet the company and its officers would have paid major fines and perhaps some of its officers would be facing jail time. Who has been fired from the EPA because of the river spill and Flint water disaster?

The double standard is most evident in the Obama “Justice” Department. Laws were clearly violated in both the “Fast and Furious” gun scandal and in the Internal Revenue Service’s targeting of conservative groups scandal. Yet no one has been prosecuted, sent to jail or even fired. Hillary Clinton purportedly violated at least some laws and regulations regarding what we now know to be top secret information (as revealed this past week by the State Department) on her server. If the FBI and Justice Department give her a pass, as they did with others in the IRS and “Fast and Furious” cases, it will be apparent to all that officials in these agencies are corrupt to the core.

Corruption in government destroys both civil society and economic growth. Part of the longer-term solution is for the legislative bodies to greatly limit the availability of sovereign immunity protections of government officials, and to privatize all of those operations now done by government that could be done by the private sector — e.g., Veterans Affairs hospitals and medical services. Governments can do an effective job in holding private parties to account and allowing private redress for wrongs. Several thousand years of experience show that those in government rarely do a good job in holding themselves accountable.

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