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## **Submission on the proposal to introduce a Regulatory Standards Bill**

*A spectre is haunting Aotearoa New Zealand*— the spectre of libertarian anti-democracy. It may seem somewhat Alice in Wonderland to paraphrase Marx in relation to the Regulatory Standards Bill but given the proposed nature of this Bill and its avowedly anti-democratic stance, it's not too far-fetched. As other submitters<sup>i</sup> have noted, this eternal recurrence of the same, this back-to-the-future bill is on its fourth outing. This attempt to get the Regulatory Standards Bill across the line has failed 3 times to make it into law having been roundly rejected by inter alia: select committee processes, the legal profession, academics, submitters, and the Treasury.

Trust Democracy believes this Bill should never see the light of day again given the objectionable anti-democratic nature of its principles. It is no secret that David Seymour and the ACT party hold fast to the anti-diluvian libertarian and classical liberal principles as to what they consider the proper role of government to be: a negative conception of liberty, minimal state intervention, free markets, and the primacy of individual liberties over the democratic rights of collectives. In other words, democratically elected governments are to be constrained by rules and laws that prevent them as far as possible from distributive justice, either in the form of equal opportunities or equality of outcomes. For example, if a government wanted to raise taxes to support climate change initiatives or redistribute income, its proposals would have to be assessed against the 7 principles proposed in the Bill, one being the protection of property rights.

As property rights in the libertarian creed define income tax as theft, and the ability to use one's property in ways one thinks fit as sacrosanct, this could severely constrain future governments. Such constraints could include regulations governing tobacco and alcohol taxes and sales, the introduction of capital gains or wealth taxes, and new regulations on mining and construction. The protection of property rights principle could well set up a situation like that with the Investor State Dispute rules embedded in international trade treaties where companies or individuals could seek compensation in tribunals if they considered that their private property investment had been negatively impacted.

There is no doubt that the Regulation Standards Bill is designed to constrain the power of government regulatory and law-making powers. This would represent a fundamental shift in where sovereign power resides. Seymour has suggested that the legislation would be comparable to the Public Finance Act. This analogy misses the mark in that Parliament is ultimately responsible for public finance and to ensure accurate and transparent public accounts. This attempt to fetter the ability of Parliament to make law is very much in keeping with the underlying small state ideology of the Bill.

There is an ugly irony at the centre of the Regulatory Standards Bill, and this is the reference in the discussion document to "every person is equal before the law". But of course, this cannot be true

as holders of private property rights take precedence over those who have little or no property. Being equal before the law here means those with the largest share of resources and property: businesses, wealthy individuals etc will always be more equal before the law. Another reason why this bill is anti-democratic.

Ultimately the Regulatory Standards Bill has an emaciated concept of democracy. There are no citizens, just atomistic and autonomous individuals whose pursuit of their self-interest is prioritised over the provision of collective goods where this falls foul of individual wants. This bill is retrogressive in its politics and reductionist in its philosophical anthropology and hence anti-democratic at its centre. The Bill fails functionally to support democracy as there is no scope in this bill for people coming together collectively to form collective agendas and wills, and to exercise capacities to make collective decisions<sup>ii</sup> because such a possibility runs counter to the Bill's individualist narrative. The spectre of hollow men stalks this bill, and it should be rejected in toto.

### **About Trust Democracy**

Trust Democracy (TD) was established as a non-profit incorporated society in 2019. TD's purpose is to foster democratic innovation for a fair, just and inclusive society.

This submission is submitted by the Trust Democracy committee, which is elected to represent Trust Democracy's members.

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<sup>i</sup> <https://melanielson.substack.com/p/jane-kelsey-submission-on-the-proposed>

<sup>ii</sup> Warren M.E. (2017) A Problem-Based Approach to Democratic Theory. *American Political Science Review*. 2017;111(1):39-53. doi:10.1017/S0003055416000605