

Regulatory Capture: What the Experts Have Found

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by [Adam Thierer](#) on December 19, 2010 · [6 Comments](#)

“Regulatory capture” occurs when special interests co-opt policymakers or political bodies — regulatory agencies, in particular — to further their own ends. Capture theory is closely related to the “rent-seeking” and “political failure” theories developed by the public choice school of economics. Another term for regulatory capture is “client politics,” which according to James Q. Wilson, “occurs when most or all of the benefits of a program go to some single, reasonably small interest (and industry, profession, or locality) but most or all of the costs will be borne by a large number of people (for example, all taxpayers).” (James Q. Wilson, *Bureaucracy*, 1989, at 76).

While capture theory cannot explain all regulatory policies or developments, it does provide an explanation for the actions of political actors with dismaying regularity. Because regulatory capture theory conflicts mightily with romanticized notions of “independent” regulatory agencies or “scientific” bureaucracy, it often evokes a visceral reaction and a fair bit of denialism. (See, for example, [the reaction](#) of *New Republic*’s Jonathan Chait to Will Wilkinson’s recent *Economist* column about the prevalence of corporatism in our modern political system.) Yet, countless studies have shown that regulatory capture has been at work in various arenas: transportation and telecommunications; energy and environmental policy; farming and financial services; and many others.

I thought it might be useful to build a compendium of quotes from various economists and political scientists who have studied the regulatory process throughout history and identified regulatory capture or client politics as a major problem. I would greatly appreciate having others suggest additional quotes and studies to add to this list since I plan to update it frequently and eventually work all of this into a future paper or book. [Note: I have updated this compendium over a dozen times since the original post, so please check back for updates.]

The following list is chronological and begins, surprisingly, with the thoughts of progressive hero Woodrow Wilson...

Woodrow Wilson, *The New Freedom: A Call For the Emancipation of the Generous Energies of a People* (1913) at 201-202:

“If the government is to tell big business men how to run their business, then don’t you see that big business men have to get closer to the government even than they are now? Don’t you see that they must capture the government, in order not to be restrained too much by it? Must capture the government? They have already captured it. Are you going to invite those inside to stay? They don’t have to get there. They are there.”

A. C. Pigou, [*Economics of Welfare*](#), (1920), Ch. 20, Para. #4

“It is not sufficient to contrast the imperfect adjustments of unfettered private enterprise with the best adjustment that economists in their studies can imagine. For we cannot expect that any public authority will attain, or will even whole-heartedly seek, that ideal. Such authorities are liable alike to ignorance, to sectional pressure and to personal corruption by private interest. A loud-voiced part of their constituents, if organised for votes, may easily outweigh the whole.”

Anthony Downs, “An Economic Theory of Political Action in a Democracy,” 65 *Journal of Political Economy* 2 (1957), 135-150, at 136:

“...even if social welfare could be defined, and methods of maximizing it could be agreed upon, what reason is there to believe that the men who run the government would be motivated to maximize it? To state that “they should do so does not mean that they will.”

Ronald Coase, “[The Federal Communications Commission](#)” 2 *Journal of Law and Economics* (1959), 1-40, at 37. In commenting on the fact that many lawmakers bemoaned “the extent to which pressure is brought to bear on the [FCC] by politicians and businessmen,” Coase said “that this should be happening is hardly surprising.” He continued on:

“When rights, worth millions of dollars, are awarded to one businessman and denied to others, it is no wonder if some applicants become overanxious and attempt to use whatever influence they have (political and otherwise), particularly as they can never be sure what pressure the other applicants may be exerting.”

Milton Friedman, [*Capitalism & Freedom*](#) (1962) at 140:

“the pressure on the legislature to license an occupation rarely comes from the members of the public On the contrary, the pressure invariably comes from the occupation itself.”

Harold Demsetz, “[Why Regulate Utilities?](#),” 11(1) *Journal of Law and Economics* (Apr., 1968), at 61.

“...in utility industries, regulation has often been sought because of the inconvenience of competition.”

Richard Posner, “[Natural Monopoly and Its Regulation](#),” 21(3) *Stanford Law Review* 548 (Feb., 1969):

“Because regulatory commissions are of necessity intimately involved in the affairs of a particular industry, the regulators and their staffs are exposed to strong interest group pressures. Their susceptibility to pressures that may distort economically sound judgments is enhanced by the tradition of regarding regulatory commissions as ‘arms of the legislature,’ where interest-group pressures naturally play a vitally important role.”

George Stigler, “The Theory of Economic Regulation,” 2(1) *Bell Journal of Economics and Management Science*, (1971), 3-21 at 3:

“...as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefits.”

George Stigler, “Can Regulatory Agencies Protect the Consumer?” in *The Citizen and the State: Essays on Regulation* (1975), at 183:

“Regulation and competition are rhetorical friends and deadly enemies: over the doorway of every regulatory agency save two should be carved: ‘Competition Not Admitted.’ The Federal Trade Commission’s doorway should announce, ‘Competition Admitted in Rear,’ and that of the Antitrust Division, ‘Monopoly Only by Appointment.’”

Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States* (2nd Ed., 1969, 1979) at 280:

“a considerable proportion of federal regulation, regardless of its own claim to consumer protection, has the systematic effect of constituting and maintaining a sector of the economy or the society. These are the policies of receivership by regulation.”

Alfred Kahn, *The Economics of Regulation: Principles and Institutions* (1971):

“When a commission is responsible for the performance of an industry, it is under never completely escapable pressure to protect the health of the companies it regulates, to assure a desirable performance by relying on those monopolistic chosen instruments and its own controls rather than on the unplanned and unplannable forces of competition.” (p. 12)

“Responsible for the continued provision and improvement of service, [the regulatory commission] comes increasingly and understandably to identify the interest of the public with that of the existing companies on whom it must rely to deliver goods.” (p. 46)

Mark Green and Ralph Nader, “Economic Regulation vs. Competition: Uncle Sam the Monopoly Man,” *Yale Law Journal* 82, no. 5 (April 1973), 876

“a kind of regular personnel interchange between agency and industry blurs what should be a sharp line between regulator and regulatee, and can compromise independent regulatory judgment. In short, the regulated industries are often in clear control of the regulatory process.”

Richard B. McKenzie and Gordon Tullock, *Modern Political Economy: An Introduction to Economics* (1978) at 220:

“although regulation is begun with the good intentions of those who promote and pass the laws, somewhere along the line regulators may become pawns of the regulated firms.”

Milton and Rose Friedman, *Free to Choose* (1980) at 193:

“Every act of intervention establishes positions of power. How that power will be used and for what purposes depends far more on the people who are in the best position to get control of that power and what their purposes are than on the aims and objectives of the initial sponsors of the intervention.”

Barry M. Mitnick, *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms* (New York: Columbia University Press, 1980), at 38:

“Much relatively recent research has argued that regulation was often *sought* by industries for their own protection, rather than being imposed in some ‘public interest.’ Although the distinction is not always made clear in this recent literature, we may add that regulation which is not directly sought at the outset is generally ‘captured’ later on so it behaves with consistency to the industry’s major interests, or at least has been observed to behave in this manner.”

Barry Weingast, [“Regulation, Reregulation and Deregulation: The Foundation of Agency-Clientele Relationships,”](#) *44 Law and Contemporary Problems*, (1981) pp. 147-77, at 151:

“Often, agencies are the vehicle for this endeavor. Agency heads and commission members, anxious to further their careers and goals (including large budgets) as well as completing their own of power and prestige pet projects and policy initiatives, depend upon service to interest their success groups and key committee members for their success.”

George Gilder, *Wealth & Poverty* (New York: Bantam Books, 1981), pp. 283:

“One reason for government resistance to change is that the process of creative destruction can attack not only an existing industry, but also the regulatory apparatus that subsists on it; and it is much more difficult to retrench a bureaucracy than it is to bankrupt a company. A regulatory apparatus is a parasite that can grow larger than its host industry and become in turn a host itself, with the industry reduced to parasitism, dependent on the subsidies and protections of the very government body that initially sapped its strength.”

Bruce Yandle, [“Bootleggers and Baptists — The Education of a Regulatory Economist,”](#) *Regulation*, Vol. 3, No. 3, (May/June 1983) p. 13:

“what do industry and labor want from the regulators? They want protection from competition, from technological change, and from losses that threaten profits and jobs. A carefully constructed regulation can accomplish all kinds of anticompetitive goals of this sort, while giving the citizenry the impression that the only goal is to serve the public interest.”

Thomas K. McCraw, *Prophets of Regulation*, (Cambridge, MA: Harvard University Press, 1984), p. 263 [recounting the history of the Civil Aeronautics Board up until the time of Alfred Kahn ascendency to chairman and its eventual deregulation and abolition.]

“Clearly, in passing the Civil Aeronautics Act [of 1938], Congress intended to bring stability to airlines. What is not clear is whether the legislature intended to cartelize the industry. Yet this did happen. During the forty years between passage of the act of 1938 and the appointment of

[Alfred] Kahn to the CAB chairmanship, the overall effect of board policies tended to freeze the industry more or less in its configuration of 1938. One policy, for example, forbade price competition. Instead the CAB ordinarily required that all carriers flying a certain route charge the same rates for the same class of customer. [...] A second policy had to do with the CAB's stance toward the entry of new companies into the business. Charged by Congress with the duty of ascertaining whether or not 'the public interest, convenience, and necessity' mandated that new carriers should receive a certificate to operate, the board often ruled simply that no applicant met these tests. In fact, over the entire history of the CAB, no new trunkline carrier had been permitted to join the sixteen that existed in 1938. And those sixteen, later reduced to ten by a series of mergers, still dominated the industry in the 1970s. All these companies... developed into large companies under the protective wing of the CAB. None wanted deregulation."

Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (1987) p. 8:

"The government's regulatory agencies have created or sustained private monopoly power more often than they have precluded or reduced it. This result was exactly what many interested parties desired from government regulation, though they would have been impolitic to have said so in public."

Jeffrey M. Berry, *The Interest Group Society* (1989) p. 151:

"The ties between interest groups and [regulatory] agencies can become too close. A persistent criticism by political scientists is that agencies that regulate businesses are overly sympathetic to the industries they are responsible for regulating. Critics charge that regulators often come from the businesses they regulate and thus naturally see things from an industry point of view. Even if regulators weren't previously involved in the industry, they have been seen as eager to please powerful clientele groups rather than have them complain to the White House or to the agency's overseeing committees in Congress."

Jonathan Emord, "The Electronic Press and the Industry Capture Movement," Chapter 11 from: *Freedom Technology and the First Amendment* (1991), p. 146 (discussing the early history of radio licensing):

"The minutes of the First National Radio Conference in 1922 reveal that even at this early date, industry leader clamored for government limits on the number of licenses issued; they sought protection against entry by new licenses. For its part, the government desired control over the industry's structure and programming content. Certain members of Congress, joined by [Secretary of Commerce Herbert] Hoover, agreed with broadcast industry leaders that the system of broadcasting in the United States would be brought within the federal government's control. The classic rent/content control *quid pro quo* soon developed: in exchange for regulatory controls on industry structure and programming content, industry leaders would be granted restrictions on market entry that they wanted. These restrictions would ensure monopoly rents for licensees and would provide the government with assurance that the broadcast industry would not oppose regulatory controls."

David Schoenbrod, *Power Without Responsibility: How Congress Abuses the People Through Delegation* (New Haven, CT: Yale University Press, 1993), p. 13:

“Agency heads are usually not apolitical and, indeed, concentrated interests often prevail more easily in an agency than they can in Congress. Effective participation in agency lawmaking usually requires expensive legal representation as well as close connections to members of Congress who will pressure the agency on one’s behalf. The agency itself is often closely linked with the industry it regulates. Not only large corporations, but also labor unions, cause-based groups, and other cohesive minority interests sometimes can use delegation to triumph over the interests of the larger part of the general public, which lacks the organization, finances, and know-how to participate as effectively in the administrative process.”

Douglass North, “Economic Performance through Time,” 84 *American Economic Review* 3, (1994), 359-363, at p. 360:

“Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least the formal rules, are created to serve the interests of those with the bargaining power to create new rules.”

P.A. McNutt, *The Economics of Public Choice* (1996), p. 105-6:

“The more successful the interest group becomes the greater the probability that it will be in a position to impact on the policy making process of successive governments. ... Aspiring monopolists will retain lobbyists to assure a favourable outcome and devote resources to the acquisition of the monopoly right. A government will more than likely grant monopoly privileges to various groups of politically influential people. Cartels and anti-competitive behaviour will be maintained and politicians will react to the demands of the more vociferous and well organised interest groups.”

Andrew Odlyzko, “[Privacy, Economics, and Price Discrimination on the Internet](#),” July 27, 2003, p. 12:

“It is now widely accepted that the passage of the Interstate Commerce Act of 1887 was not a pure triumph of the populist movement and its allies in the anti-railroad camp. The railway industry largely decided that regulation was in its best interests and acquiesced in and even encouraged government involvement. This is often portrayed as the insidious capture of the regulators by the industry they regulate. There is certainly much evidence to support this view.”

Lawrence Lessig, “[Reboot the FCC](#),” *Newsweek*, December 23, 2008

“Economic growth requires innovation. Trouble is, Washington is practically designed to resist it. Built into the DNA of the most important agencies created to protect innovation, is an almost irresistible urge to protect the most powerful instead.

The FCC is a perfect example. ... With so much in its reach, the FCC has become the target of enormous campaigns for influence. Its commissioners are meant to be “expert” and

“independent,” but they’ve never really been expert, and are now openly embracing the political role they play. Commissioners issue press releases touting their own personal policies. And lobbyists spend years getting close to members of this junior varsity Congress.”

Thomas Frank, “[Obama and Regulatory Capture](#),” *Wall Street Journal*, June 24, 2009:

“There are powerful institutions that don’t like being regulated. Regulation sometimes cuts into their profits and interferes with their business. So they have used the political process to sabotage, redirect, defund, undo or hijack the regulatory state since the regulatory state was first invented.

The first federal regulatory agency, the Interstate Commerce Commission, was set up to regulate railroad freight rates in the 1880s. Soon thereafter, Richard Olney, a prominent railroad lawyer, came to Washington to serve as Grover Cleveland’s attorney general. Olney’s former boss asked him if he would help kill off the hated ICC. Olney’s reply, handed down at the very dawn of Big Government, should be regarded as an urtext of the regulatory state: ‘The Commission... is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, at the same time that that supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things. ... The part of wisdom is not to destroy the Commission, but to utilize it.’”

Tim Wu, *The Master Switch: The Rise and Fall of Information Empires* (2010), p. 308:

“Again and again in the histories I have recounted, the state has shown itself an inferior arbiter of what is good for the information industries. The federal government’s role in radio and television from the 1920s through the 1960s, for instance, was nothing short of a disgrace.... Government’s tendency to protect large market players amounts to an illegitimate complicity ... [particularly its] sense of obligation to protect big industries irrespective of their having become uncompetitive.”

David J. Farber & Gerald R. Faulhaber, “[Net Neutrality: No One Will Be Satisfied, Everyone Will Complain](#),” *The Atlantic*, December 21, 2010:

“When the FCC asserts regulatory jurisdiction over an area of telecommunications, the dynamic of the industry changes. No longer are customer needs and desires at the forefront of firms’ competitive strategies; rather firms take their competitive battles to the FCC, hoping for a favorable ruling that will translate into a marketplace advantage. Customer needs take second place; regulatory “rent-seeking” becomes the rule of the day, and a previously innovative and vibrant industry becomes a creature of government rule-making.”

Holman Jenkins, “[Let’s Restart the Green Revolution](#),” *Wall Street Journal*, February 2, 2011, (regarding how misguided agricultural & environmental policies are hurting consumers):

“When some hear the word ‘regulation,’ they imagine government rushing to the defense of consumers. In the real world, government serves up regulation to those who ask for it, which

usually means organized interests seeking to block a competitive threat. This insight, by the way, originated with the left, with historians who went back and reconstructed how railroads in the U.S. concocted federal regulation to protect themselves from price competition. We should also notice that an astonishingly large part of the world has experienced an astonishing degree of stagnation for an astonishingly long time for exactly such reasons.”

Bruce Schneier, [*Liars & Outliers: Enabling the Trust that Society Needs to Thrive*](#) (New York: John Wiley & Sons, Inc., 2012), p. 204.

“There’s one competing interest that’s unique to enforcing institutions, and that’s the interest of the group the institution is supposed to watch over. If a government agency exists only because of the industry, then it is in its self-preservation interest to keep that industry flourishing. And unless there’s some other career path, pretty much everyone with the expertise necessary to become a regulator will be either a former or future employee of the industry with the obvious implicit and explicit conflicts. As a result, there is a tendency for institutions delegated with regulating a particular industry to start advocating the commercial and special interests of that industry. This is known as regulatory capture, and there are many examples both in the U.S. and in other countries.”

Bruce Owen, “[Communication Policy Reform, Interest Groups, and Legislative Capture](#)” (Stanford, CA: Stanford Institute for Economic Policy Research, January 19, 2012), SIEPR Discussion Paper No. 11-006, p. 2. Owen argues that it is the legislative branch, not the regulatory agencies themselves, where regulatory capture takes root:

“It is rather legislative oversight and budget committees and their chairs that are (willingly) captured by special interests in the first instance. One could equally say that legislators capture the special interests, seeking campaign funding. The behavior of regulatory agencies simply reflect the preferences of their congressional masters. Regulators generally seek to please their committees, not to defy them.”

Additional readings:

- Frédéric Boehm, “[Regulatory Capture Revisited – Lessons from Economics of Corruption](#)” (2007)
- Ernesto Dal Bo, “[Regulatory Capture: A Review](#),” *Oxford Review of Economic Policy* (2006)
- William W. Bratton and Joseph A. McCahery, “Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis,” *North Carolina Law Review* 73 (1995)
- Slavisa Tasic, “[Are Regulators Rational?](#)” Instituto Bruno Leoni (October 2010)
- Michael E. Levine and Jennifer L. Forrence, “Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis” 6 *Journal of Law, Economics, and Organization* (1990), 167-198.

- William A. Jordan, "Producer Protection, Prior Market Structure and the Effects of Government Regulation," *Journal of Law and Economics* 15, no. 1, (April 1972), 151-176.
- David Martimort, "[The Life Cycle of Regulatory Agencies: Dynamic Capture and Transaction Costs](#)," *Review of Economic Studies* 66, no. 4 (October 1999), 929-947,
- J.J. Lafont & Jean Tirole, "The Politics of Government Decision-Making: A Theory of Regulatory Capture" 106 *Quarterly Journal of Economics* 4 (Nov. 1991) 1089-1127.
- Fred S. McChesney, "Rent Extraction and Rent Creation in the Economic Theory of Regulation," *Journal of Legal Studies* 16 (1987) 101-118.
- Horace M. Gray, "The Passing of the Public Utility Concept," *Journal of Land & Public Utility Economics* 16, no. 1 (February 1940), 8-20.
- Jeffrey T. Macher, John W. Mayo, and Mirjam Schiffer, "[The Influence of Firms on Government](#)," *The B.E. Journal of Economic Analysis & Policy*, 11, no. 1 (2011).
- Gabriel Kolko, [The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916](#) (1963)
- Lawrence G. Baxter, "[Understanding Regulatory Capture: An Academic Perspective from the United States](#)," in Stefano Pagliari, ed., *The Making of Good Financial Regulation* (2012), p. 31-39.
- Finally, down below I've embedded a video featuring George Washington University professor Susan Dudley discussing regulatory capture as well as a funny Tom Toles cartoon about regulatory capture that [appeared](#) in the *Washington Post* on January 20, 2011:

