Regulatory Capture

A Problem of Institutional Structure, Not Individual Ethics

Kevin Carson

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Regulatory capture — the tendency of the regulatory state to serve the interests of regulated industries — is a well known phenomenon. It's more widespread than most liberals care to acknowledge.

Even the showcase regulatory legislation of the Progressive Era, according to New Left historian Gabriel Kolko (The Triumph of Conservatism), was passed mainly under pressure from big business. It served the primary purpose of restricting competition in the regulated industries and making possible stable oligopoly markets.

Liberals typically respond by arguing that regulatory capture is not inevitable. If only some "good government" reform were passed, like campaign finance reform, the regulatory state would actually be the instrument of pure popular will it pretends to be, and would not be sullied by greed and corruption.

But collusion between regulators and regulated is inevitable by the nature of things. It doesn't require any conscious corruption at all.

Even without deliberate collusion, "objectively collusive" relationships are inevitable not only because of the shared culture of regulators and regulated, but because regulated industries are—of necessity—the primary source of data for the regulatory state.

For example Mac McClelland, a reporter covering the Gulf oil spill cleanup efforts for NPR, contacted the Navy's ad hoc command for clarification regarding the official numbers (i.e., 24,000 workers involved in the cleanup effort) it had issued. The lieutenant commander she emailed responded that he didn't know, because "they're not actually our numbers. Those are BP's numbers…." ("Reporters Covering Oil Spill Stymied," June 24).

But there's no realistic way of avoiding this. Short of creating a state-appointed shadow management of regulators who've been sent to business college and trained in the industry, to constitute a parallel chain of command within the corporate bureaucracy and generate its own independent data, the regulatory state cannot avoid relying on largely unverifiable self-reporting by industry as the source for most of its statistics. And even if the state did create its own massive, parallel hierarchy of numbers-crunchers inside the corporate bureaucracies, in order to function effectively and understand the businesses they were regulating they'd have to have degrees in business administration and absorb a great deal of the culture of the regulated industries—which, presumably, would just take us back to the original problem.

That problem is not so much consciously corrupt motivation on the part of individuals, as it's a shared culture. It's the questions that never even occur to the regulators, because of the unexamined assumptions they share with the regulated. It's the basic structural presuppositions of the regulated industries, which the regulators take for granted as much as the CEOs. The problem is, the regulators see the basic organizational form and institutional culture of the regulated industry, and an economy built on such institutions, as normal. To the extent that they pursue "reforms," they are reforms that enable institutions organized on that pattern to function on as even a keel as possible. And the stable, effective functioning of existing institutions often means the suppression of smaller, more efficient, decentralized alternatives that might otherwise supplant them — albeit somewhat messily in the short term.

All attempts at "reform," no matter how sincere, will be the sort of things that can be carried out by the kinds of people running the present system.

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