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978-1-107-03608-6 - Preventing Regulatory Capture: Special Interest Influence and How to Limit it

Edited by Daniel Carpenter and David A. Moss

Excerpt

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Introduction

Daniel Carpenter and David A. Moss

When markets or regulations fall short of our expectations, observers often point to regulatory capture as a culprit. Critics maintain that regulatory capture stunts competition and innovation, as firms able to capture their regulators effectively wield the regulatory power of the state and can use it as a weapon to block the entry or success of other firms. Some critics even blame regulatory capture for the outbreak of financial crises and other manmade disasters. Recent years provide no exception. In the wake of the global financial crisis of 2007–2009, and following catastrophes ranging from massive oil spills to mine explosions, observers seemed to find capture everywhere.

In explaining the financial crisis, for example, both left and right pounced on the reputed capture of state and federal regulatory agencies. *Forbes* columnist Daniel Kauffman maintained that “There are multiple causes of the financial crisis. But we cannot ignore the element of ‘capture’ in the systemic failures of oversight, regulation and disclosure in the financial sector.” Chicago economist Gary Becker pointed to an “economically disastrous example of the capture theory,” one “provided by the disgraceful regulation of the two mortgage housing behemoths, Fannie Mae and Freddie Mac, before and leading up to the financial crisis.” After the *Deepwater Horizon* explosion and Gulf Oil spill of spring 2010, conservative columnist Gerald P. O’Driscoll wrote in the *Wall Street Journal* that, “Obviously, regulation failed. By all accounts, MMS operated as a rubber stamp for BP. It is a striking example of regulatory capture: Agencies tasked with protecting the public interest come to identify with the regulated industry and protect its interests against that of the public. The result: Government fails to protect the public.”¹

¹ Kauffman, “Corruption and the Global Financial Crisis,” *Forbes* (January 27, 2009); Gary S. Becker, “‘Capture’ of Regulators by Fannie Mae and Freddie Mac-Becker,”

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Capture has thus been alleged – perhaps quite plausibly – to figure significantly in the major human and environmental crises of our time. In the aftermath of these crises, capture has also been blamed for severely undercutting efforts at reform. The widespread belief that special interests capture regulation, and that neither the government nor the public can prevent this, understandably weakens public trust in government and contributes to a sense that our political system is not capable of meeting the challenges it faces.

Surely, no system will be able to meet every challenge it encounters, and even effective political solutions will often – perhaps always – appear imperfect, as they address multiple and conflicting goals. Just as surely, however, political and regulatory solutions have overcome significant challenges in the past, from increasing the safety of our food supply and the security of our bank accounts to cleaning our air and water and reducing hazards on the road.² Regulatory capture is not always and everywhere the devastating problem it is often made out to be. In some cases, good regulation does prevail, in spite of the special interests. But what exactly does this imply? If we know that capture doesn't affect all regulation equally, is it possible to translate this truism into a deeper understanding of capture – of how to prevent it before it occurs and how to detect and eliminate (or at least mitigate) it where it is found?

This volume represents a first step toward answering these questions. It brings together a set of authors from a range of disciplines who carefully examine contemporary regulation to gain a clearer grasp of what regulatory capture is, where and to what extent it occurs, what prevents it from occurring more fully and pervasively, and, finally, to distill lessons for policymakers and the public for how capture can be mitigated and the public

<http://www.becker-posner-blog.com/2011/06/capture-of-regulators-by-fannie-mae-and-freddie-mac-becker.html> (accessed July 21, 2011); Gerald P. O'Driscoll, Jr., "The Gulf Spill, the Financial Crisis and Government Failure," *Wall Street Journal* (June 12, 2010). See also James Surowiecki, "The Regulation Crisis," *New Yorker* (June 14, 2010).

² In fact, recent polling indicates strong support among Americans for regulation (and even for stricter regulation) in key areas. According to a 2011 Harris poll, "The strongest support for stricter regulation relates to food safety (73%), executive pay and bonuses (70%), the safety of pharmaceuticals (70%), banks and financial services (69%), air and water pollution (68%), consumer product safety (67%), and environmental safety (66%). Majorities also support more strict regulation of advertising claims (65%), big business (64%), and health and safety in the workplace (54%)." See "Do We Want More or Less Regulation of Business? It All Depends on What Is Being Regulated," The Harris Poll #76, June 10, 2010, accessed July 23, 2011, www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/ctl/ReadCustom%20Default/mid/1508/ArticleId/407/Default.aspx.

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interest protected. Such a comprehensive approach is badly needed. Cries of regulatory capture, from all quarters, have been met with little more than murmurs from the academy for some time now.³ A surfeit of claims has been neither demonstrated nor disproved. Although early models and stylized case studies greatly advanced our understanding of the danger, there has been relatively little follow-up in recent decades. Our conception of how capture works in practice, and what limits it, remains very far from complete. Indeed, no general volume on regulatory capture has been produced in more than three decades, since the 1981 publication of political scientist Paul Quirk's *Industry Influence in Regulatory Agencies*.⁴

The chapters in this volume suggest that regulatory capture is very commonly misdiagnosed and mistreated. *Misdiagnosed* because the study of regulatory capture, in both academic and policy circles, has grown stale and ever more detached from practice. All too often, observers are quick to see capture as the explanation for almost any regulatory problem, making large-scale inferences about agencies and their cultures without a careful look at the evidence. At the same time, there appears to be a great deal of fatalism – some of it strategic, no doubt – about the impossibility of ameliorating or preventing capture, virtually ensuring that the ailment is *mistreated* in many cases. Some or even much of this may be the product of

³ As Rhode Island Senator Sheldon Whitehouse remarked on the Senate floor in June 2011, “regulatory capture isn’t getting the attention it deserves.” “Congressional Record – Senate, S4453” (July 7, 2011).

⁴ There have, of course, been numerous synthetic publications and new treatments on regulation, most notably Ian Ayres and John Braithwaite's *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992); Cass R. Sunstein, *After the Rights Revolution: Reconceiving the Regulatory State* (Chicago: University of Chicago Press, 1990). More recent treatments include David Moss, *When All Else Fails: Government as the Ultimate Risk Manager* (Cambridge, MA: Harvard University Press, 2005); W. Kip Viscusi, John M. Vernon, and Joseph E. Harrington, Jr., *Economics of Regulation and Antitrust* (Cambridge, MA: MIT Press, 2005); Edward Balleisen and David Moss, eds., *Government and Markets: Toward a New Theory of Regulation* (New York: Cambridge University Press, 2012); Steven Croley, *Regulation and Public Interests: The Possibility of Good Regulatory Government* (Princeton: Princeton University Press, 2008); Marc Eisner, *Regulatory Politics in Transition* (Baltimore, MD: Johns Hopkins University Press, 2000); and Cary Coglianese, ed., *Regulatory Breakdown: The Crisis of Confidence in U.S. Regulation* (Philadelphia, PA: University of Pennsylvania Press, 2012).

The closest theoretical accounts in mathematical modeling occur in sections of Jean-Jacques Laffont and Jean Tirole's *A Theory of Incentives in Procurement and Regulation* (Cambridge, MA: MIT Press, 1992) and in Gene Grossman and Elhanan Helpman's *Special Interest Politics* (Cambridge, MA: MIT Press, 2003). Yet these books do not offer specific or general empirical tests of the theory, and the models have limited applicability to the kinds of regulatory capture that are most important for public policy discussions. We offer further critiques later.

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highly simplified models – models in which the complete capture of regulators by incumbent firms is all but inevitable. Once such simplified models permeated policy discourse, it is perhaps not surprising that capture came to be seen as lurking nearly everywhere and that the range of options for treating capture became unduly narrowed (sometimes with deregulation being seen as the only viable option).

Consider a few recent “scandals” in the news: financial regulators missing investment fraud and toxic loans at the very time their staff was shuttling back and forth between Washington and Wall Street; energy regulators ignoring the risk of a catastrophic oil spill just as their inspectors and officials were cavorting with industry managers; a telecommunications regulator making a series of industry-friendly decisions, and just over a year later a prominent commissioner who was a pivotal vote in these decisions departing the agency to take a high-status vice-presidential position with a regulated company.⁵ In all of these cases, capture certainly seems plausible.

Plausibility, however, lies quite a distance from proof. If residents of an apartment complex witnessed a bitter argument between a father and son just days before the father was murdered, investigators might reasonably be interested in the son as a potential suspect. Yet evidence of the argument, by itself, would hardly be grounds for conviction. Unfortunately, students of regulation are not always as disciplined about distinguishing plausibility from proof, and claims of capture proliferate so broadly that they are rarely tested or examined closely. Even when they are well supported, such claims

⁵ See “Madoff Bragged about Profits to SEC while Advising on Oversight,” *Huffington Post Business* (December 16, 2008), accessed October 20, 2012, http://www.huffingtonpost.com/2008/12/16/madoff-bragged-about-prof_n_151332.html; Eric Dash, “Post-Mortems Reveal Obvious Risk at Banks,” *The New York Times* (November 18, 2009), accessed October 20, 2012, http://www.nytimes.com/2009/11/19/business/19risk.html?pagewanted=all&_r=0; Edward Wyatt, “Promises Made, and Remade, by Firms in S.E.C. Fraud Cases,” *The New York Times* (November 7, 2011), accessed October 20, 2012, http://www.nytimes.com/2011/11/08/business/in-sec-fraud-cases-banks-make-and-break-promises.html?pagewanted=all&_r=0; Noelle Straub, “Interior Probe Finds Fraternalizing, Porn and Drugs at MMS Office in La.,” *The New York Times* (May 25, 2010), accessed October 20, 2012, <http://www.nytimes.com/gwire/2010/05/25/25greenwire-interior-probe-finds-fraternalizing-porn-and-dru-45260.html?pagewanted=all>; Eric Lipton and John M. Broder, “Regulator Deferred to Oil Industry on Rig Safety,” *The New York Times* (May 7, 2010), accessed October 20, 2012, <http://www.nytimes.com/2010/05/08/us/08agency.html>; David Hatch, “Baker Stuns with Abrupt Move from FCC to Comcast,” *National Journal* (May 12, 2011), accessed October 20, 2012, <http://www.nationaljournal.com/tech/baker-stuns-with-abrupt-move-from-fcc-to-comcast-20110511>; Edward Wyatt, “F.C.C. Commissioner Leaving to Join Comcast,” *The New York Times Media Decoder Blog* (May 11, 2011), accessed October 20, 2012, <http://mediadecoder.blogs.nytimes.com/2011/05/11/f-c-c-commissioner-to-join-comcast/>.

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are often extended far beyond the available evidence. All too frequently, moreover, casual claims of capture are associated with demands that the regulatory policy or agency in question be not merely reformed but abandoned. Observers of regulation are often quicker to yelp about the evils of capture than to think hard about how it might be prevented or mitigated, short of wholesale deregulation.

This fatalism is seen in the center, the left, and the right of political discourse. As recent polling suggests, “This fatalism has over time deeply influenced not just scholars and inside-the-beltway cynics, but the broad mass of the American electorate. Public trust in the Federal government has slid ever lower over the last forty years and as of this writing, stands at under 20%.”⁶ To the extent that assumptions about regulatory capture contribute to such fatalism, it is incumbent on us to move beyond simplified theories and carefully explore special interest influence with a closer eye on practice.

In this volume, we aspire to improve our understanding of capture, making it more rigorous, more thorough, and more practically useful to those who want to prevent capture. Capture is real and a genuine threat to regulation, we recognize, but regulation is also a fact of modern life and undoubtedly necessary in some circumstances to protect the public and stave off catastrophe. The critical question is whether capture, where it exists, can be mitigated or prevented. We believe the evidence strongly suggests that the answer is yes, and that better study of regulation and special interest influence can show us how to limit capture and make regulatory governance a more useful tool for accomplishing public ends.

CAPTURE AND THE ACADEMY

The principal problems with contemporary capture scholarship boil down to the link between theory and evidence. As the financial crisis of 2007–2009 unfolded, we began to notice some common features of the dozens (if not hundreds) of claims being made about captured regulatory agencies. The claims had the benefit of seeming to resonate with the unfolding story, yet a disturbing commonality among them was a lack of solid or thorough evidence. Unfortunately, much the same can be said about a large proportion of capture scholarship – that good stories, rooted in elegant models, too often take the place of rigorous evidence.

⁶ “Public Trust in Government,” Pew Research Center, April 18, 2012, accessed October 21, 2012, <http://people-press.org/2010/04/18/public-trust-in-government-1958–2010/>.

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Some of the earliest claims of capture within the academy came from scholars who were reviewing the early history of government regulation, and even then there was a tendency to rely heavily on especially juicy tidbits from the historical record. In 1892, Richard Olney, a prominent corporate attorney and soon-to-be attorney general, advised Charles E. Perkins, a railroad president, against seeking the repeal of the Interstate Commerce Act, noting that:

The [Interstate Commerce] Commission, as its functions have now been limited by the courts, is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of 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. It thus becomes a sort of barrier between the railroad corporations and the people and a sort of protection against hasty and crude legislation hostile to railroad interests. . . . The part of wisdom is not to destroy the Commission, but to utilize it.

Olney's remark has been repeatedly quoted and cited as evidence that even the earliest national regulatory agencies in the United States were captured. Its language inspired the work of Bernstein and Huntington, and it was rehearsed on the floor of the United States Senate.⁷ It is critical to understand, however, that Olney's letter, although certainly powerful, provides no direct evidence that the Commission did in fact "take the business and railroad view of things." Rather, it reveals only that one potentially interested observer predicted that the Interstate Commerce Commission (ICC) would take such a view and that it could ultimately be harnessed by the railroads. Similarly, well before Stigler penned his famous essay, "The Theory of Economic Regulation," another economist later identified with the Chicago school, Ronald Coase, surveyed the early history of federal broadcast regulation and suggested it had been poorly designed and conceived. Although Coase's seminal paper on the Federal Communications Commission (FCC) did not claim that broadcast regulation had been captured, his analysis appears to have set the stage for many of his followers to diagnose

⁷ Richard Olney to Charles E. Perkins, December 28, 1892, quoted in Marver Bernstein, *Regulating Business by Independent Commission* (Princeton: Princeton University Press, 1955), 265. For an early citation to this remark, consult Matthew Josephson, *The Politicos* (New York: Harcourt Brace, 1938), 526. For a review of the intellectual history of the uses to which Olney's letter has been put, among other claims, see Eduardo Federico Canedo, "The Rise of the Deregulation Movement in Modern America, 1957–1980" (PhD dissertation, Columbia University, 2008). Olney's letter constituted a core reference and piece of evidence for some of the founding scholars of capture theory, including Bernstein and Huntington.

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capture rather too easily, in some cases after only a cursory look at the historical evidence.⁸

These older claims about capture have been succeeded by scholarly arguments that make vast inferences from statistical correlations. Having claimed to show by statistical association that the relative wage and profit effects of labor safety and environmental regulation fell more heavily on small firms and industries in Southern states, economists Ann Bartel and Lacy Glenn Thomas declared this to be a case of “predation by regulation”: “We have shown that regulation has become a predatory device that indeed is utilized to enhance the wealth of predators and to reduce the wealth of rivals.”⁹ Thomas later claimed to show a similar impact for food and drug regulation.¹⁰ Similarly, in examining the stability of the cotton dust standards implemented by the Occupational Safety and Health Administration (OSHA), economist W. Kip Viscusi wrote in 1992:

now that the large firms in the industry are in compliance, they no longer advocate changes in the regulation. Presumably, the reason is that the capital costs of achieving compliance represent a barrier to the entry of newcomers into the industry. This is simply one more illustration of the familiar point that surviving firms often have a strong vested interest in the continuation of a regulatory system.

⁸ Ronald Coase, “The Federal Communications Commission,” *Journal of Law and Economics* 2 (October 1959): 1–40. On later claims that broadcast regulation was captured from the beginning, see especially Thomas W. Hazlett, “The Rationality of U.S. Regulation of the Broadcast Spectrum,” *Journal of Law and Economics* 33 (1990): 133–75, and Hazlett, “Assigning Property Rights to Radio Spectrum Users: Why Did FCC License Auctions Take 67 Years?” *Journal of Law and Economics* 41 (2) (October 1998): 529–76. For an evaluation of the evidence relating to the alleged capture of early broadcast regulation, see Chapter 8, “Capturing History,” by Moss and Decker in this volume.

⁹ In a revealing rhetorical defense of these conclusions, Bartel and Thomas argued that their statistical associations were due directly to congressional calculations of the time. “We recognize that public interest theorists will object to our characterization of OSHA and EPA as predatory. From the viewpoint of these scholars, regulations inevitably have heterogeneous effects, and indirect effects are entirely innocent by-products of the public pursuit of work-place safety and environmental quality. We explicitly reject any such defense of OSHA and EPA behavior. . . . [W]e . . . find ample evidence of OSHA and EPA actions that unnecessarily exacerbate or even artificially create indirect effects for political purposes (what we call enforcement asymmetries). Furthermore, despite mounting evidence of the inefficiency of OSHA and EPA, Congress has continued to be uninterested in adequate monitoring of regulatory effect, much less in regulatory reform. All this suggests that indirect effects are far more than innocent by-products – indeed, they may well be the primary political concern.” Ann P. Bartel and Lacy Glenn Thomas, “Predation through Regulation: The Wage and Profit Effects of the Occupational Safety and Health Administration and the Environmental Protection Agency,” *Journal of Law and Economics* 30 (2) (October 1987): 239–64.

¹⁰ Lacy Glenn Thomas, “Regulation and Firm Size: FDA Impacts on Innovation,” *The RAND Journal of Economics* 21 (4) (Winter, 1990): 497–515.

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The stability of any law or regulation, and the lack of opposition to these policies, could be due to capture, but also potentially to inertia, to the institutions in American politics (filibuster, bicameralism, presidential veto, the Administrative Procedures Act) that make policy change difficult, or to broad public support for the regulations. Yet Viscusi is quick to highlight a well-established capture argument – incentives for creating or preserving entry barriers to competitors – as the explanation. We believe that far more evidence is needed to make an accurate diagnosis of capture.¹¹

In thinking this way, economists, legal scholars, and political scientists have been following the lead of George Stigler, who argued that empirical analyses of the operation and effect of regulation should be used to make inferences about the original purposes of its design:

The theory [of economic regulation] tells us to look, as precisely and carefully as we can, at who gains and who loses, and how much, when we seek to explain a regulatory policy. . . . It is of course true that the theory would be contradicted if, for a given regulatory policy, we found the group with larger benefits and lower costs of political action being dominated by another group with lesser benefits and higher cost of political action. . . . The first purpose of the empirical studies is to identify the purpose of the legislation! The announced goals of a policy are sometimes unrelated or perversely related to its actual effects, and *the truly intended effects should be deduced from the actual effects*.¹²

As Carpenter suggests in Chapter 3 (Detecting and Measuring Capture), Stigler's rather casual standard of causal inference has been uncritically embraced by a subsequent generation of economists. With little circumspection on the limits of drawing broad theoretical conclusions from observational data analysis, scholars have repeatedly proclaimed empirical triumphs for capture theory after data analysis of select cases or highly aggregated cross-national datasets. Roger Noll correctly wrote of "the lurking danger of tautology, i.e., of attributing causality to an inevitable consequence of any public policy action. It is impossible to imagine that regulation could be imposed without redistributing income. Hence, a look for winners in the process – and organizations that represent them – is virtually certain to succeed."¹³

¹¹ W. Kip Viscusi, *Fatal Tradeoffs* (New York: Oxford University Press, 1992), 177.

¹² George Stigler, "Supplementary Note on Economic Theories of Regulation," in *The Citizen and the State* (Chicago: University of Chicago Press, 1975), 140, emphasis in original.

¹³ Roger G. Noll, "Economic Perspectives on the Politics of Regulation," in *Handbook of Industrial Organization*, vol. II, eds. Richard Schmalensee and Robert D. Willig (Amsterdam: North Holland, 1989), 1276–77. For a mathematical demonstration of the invalidity of Stigler's principle of inference, consult Daniel Carpenter, "Protection without Capture:

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Perhaps the deepest problem with much of the research on regulatory capture is not merely its tendency to overstate the evidence for capture, but its lack of nuance in describing how and to what degree capture works in particular settings. As scholars in law, political science, economics, and other areas of policy have noted, sometimes almost in passing, capture often prevails in a matter of degrees, in some agencies or regulations more visibly and robustly, in others less so.¹⁴ The regulatory world is one of shades of gray. Yet capture scholarship does not typically discriminate among these shades in ways that enable informed advice on the marginal value of regulatory (or deregulatory) policy options. Existing treatments of regulatory capture give us too little sense of the sources or patterns of variation in capture, and they fail to instruct readers as to how, given this variation, capture ought to be prevented or minimized.

All of this is not to say that capture scholarship has failed to progress beyond the seminal contribution of George Stigler in 1971.¹⁵ Path-breaking work on capture preceded Stigler, and outstanding work has followed him as well.¹⁶ In fact, economic models of interest group politics have evolved considerably since 1971, allowing for the interplay of multiple groups exerting influence on policymakers and multiple motivations on the part of policymakers themselves. However, the essential idea that policymakers are for sale, and that regulatory policy is largely purchased by those most interested and able to buy it, remains central to the literature.¹⁷ And far too much of

Product Approval by a Politically Responsive, Learning Regulator,” *American Political Science Review* 98 (4) (November 2004): 613–31.

¹⁴ See especially Stephen Breyer, *Regulation and Its Reform* (Cambridge, MA: Harvard University Press, 1982).

¹⁵ George Stigler, “The Theory of Economic Regulation,” *Bell Journal of Economics and Management Science* 2 (1) (Spring 1971): 3–21.

¹⁶ Several of the pioneering works include Samuel Huntington, “The Marasmus of the ICC: The Commission, the Railroads, and the Public Interest,” *Yale Law Journal* 614 (1952): 467–509; Marver Bernstein, *Regulating Business*; and Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History: 1900–1916* (New York: Free Press, 1963). Major contributions that built on – and extended – Stigler’s model include Sam Peltzman, “Toward a More General Theory of Regulation,” *Journal of Law and Economics* 19 (2) (August 1976): 211–40; Gary S. Becker, “A Theory of Competition among Pressure Groups for Political Influence,” *Quarterly Journal of Economics* 98 (3) (August 1983): 371–400; and Gene M. Grossman and Elhanan Helpman, “Protection for Sale,” *American Economic Review* 84 (4) (September 1994): 833–50. See also Jean-Jacques Laffont and Jean Tirole, “The Politics of Government Decision Making: A Theory of Regulatory Capture,” *Quarterly Journal of Economics* 106 (4) (1991): 1089–127.

¹⁷ See Ernesto Dal Bó and Rafael Di Tella, “Capture by Threat,” *Journal of Political Economy* 111 (5) (2003): 1123–54; David Moss and Mary Oey, “The Paranoid Style in the Study of American Politics,” in Balleisen and Moss, *Government and Markets*, 260.

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the relevant empirical work has sought to confirm this thesis (often rather casually), rather than to test it or discover its limits.

Beyond this, arguments stipulating capture often carry policy prescriptions. They move quickly from “is” to “ought,” and they are especially likely to recommend deregulation. This move – from the postulated fact of capture to strong arguments for the dismantling or avoidance of regulation – was a central stratagem of Stigler, and many specialists have since followed it. This is especially true of studies – such as the article “The Regulation of Entry” (2002) by former World Bank economist Simeon Djankov and coauthors – that posit two possible states of the world: “good” public interest regulation versus “bad” captured regulation. Notwithstanding the obvious fact that reality could fall anywhere between these two extremes, Djankov and coauthors proceeded from the premise that, if the empirical evidence on entry regulation appears consistent with the existence of the bad regulatory world, then such regulation must be bad worldwide. On the basis of aggregate-level data and the authors’ starting premise, they concluded that the regulation of entry “does not yield visible social benefits,” and that the “principal beneficiaries” of strict entry regulations “appear to be the politicians and bureaucrats themselves.” If such regulations benefit the powerful few at the expense of the broader public, then it seems only a very short leap to the conclusion that the world would be better off without such regulation. Although no *explicit* leap of this sort was made within the article, Djankov’s subsequent actions provide an especially revealing example of the move from analysis to advocacy. In the years following publication of “The Regulation of Entry,” Djankov and his World Bank colleagues established a highly structured, Bank-funded deregulatory initiative that recommended and tracked reforms worldwide with the intent of easing barriers to the creation or launch of a new business.¹⁸

As a result of these trends in the literature, we now know much more about how regulation can fail due to capture than about the conditions under which regulation sometimes succeeds, or can be made to succeed, when capture is constrained. What is needed, we believe, is a new wave of

¹⁸ Simeon Djankov, Rafael La Porta, Florencio Lopes-de-Silanes, and Andrei Shleifer, “The Regulation of Entry,” *Quarterly Journal of Economics* 117 (1) (February 2002): 1–37, quotes from p. 35. More generally, see Andrei Shleifer and Robert Vishny, *The Grabbing Hand: Government Pathologies and Their Cures* (Cambridge, MA: Harvard University Press, 1999). The World Bank’s Doing Business Project launched in 2002, the year of the Djankov et al. publication, and in addition to running deregulation seminars for policymakers in developing and industrialized countries, it also provides individualized national tracking of deregulatory reforms and even simulators for policymakers to examine the possible effects of deregulation (see <http://www.doingbusiness.org>, accessed July 28, 2011).