# Industry Influence in Federal Regulatory Agencies

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INDUSTRY INFLUENCE IN FEDERAL REGULATORY AGENCIES. By *Paul J. Quirk*. Princeton: Princeton University Press. 1981. Pp. xi, 260. $19.50.

A common criticism of federal regulatory agencies is that they are subject to excessive influence from regulated industries. This influence induces regulatory officials to protect and even promote corporate economic interests, while neglecting the interests of the consumer and the public.[1] Commentators have offered a variety of economic[2] and political[3] theories to explain industry influence.

In *Industry Influence in Federal Regulatory Agencies,* Paul Quirk examines and questions the view that regulatory officials have personal and career *incentives* to promote policies favorable to industry. In particular, Quirk empirically considers whether regulatory officials have "pro-industry" incentives resulting from pre-appointment policy views, budgetary concerns, and future employment aspirations in regulated industry.[4] Based on his research, Quirk concludes that the incentives hypothesis[5] "cannot be considered to provide an explanation of any overwhelming pro-industry bias often attributed to regulatory agencies. The incentives examined only irregularly support such behavior" (p. 177).

Quirk's conclusions about the incentives hypothesis are based on interviews with fifty high-level officials in four regulatory agencies.[6] This methodology differs from more traditional approaches, which have attempted to describe the decision-making process of regulatory agencies (p. 34). Such descriptions help explain "who interacts with whom" and "the gathering of facts, weighing of arguments, and so on" (p. 34), but may overlook "states of mind (values, beliefs, hopes, fears, etc.)" (p. 35) that affect regulatory decisions. Quirk's reliance on interviews with high-ranking regulatory officials is unique because it "examine[s] some of the policy incentives actually

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1. Some proponents of this view contend that regulatory agencies have been captured by industry. In its extreme form, the "capture" theory over-simplifies regulatory politics by setting up "industry" and "the public" as two diametrically opposed antagonists. As one commentator notes, the theory depicts "a Manichean struggle between a discrete and powerful 'corporate interest' and an equally well-defined, but politically feeble, consumer (or 'public') interest. Finally, that struggle, which is nothing but the interaction of those two vectors of force, leads to only one, melancholy outcome." Schuck, Book Review, 90 YALE L.J. 702, 705 (1981) (reviewing J. DELONG, THE POLITICS OF REGULATION (1980)).

2. *See* Stigler, *The Theory of Economic Regulation,* 2 BELL J. ECON. & MGMT. SCI. 1 (1971).

3. *See* T. LOWI, THE END OF LIBERALISM (1969); M. BERNSTEIN, REGULATING BUSINESS BY INDEPENDENT COMMISSION (1955).

4. Quirk's study does not test whether these incentives actually influence regulatory behavior. Rather, the study simply tests whether such incentives exist.

5. The terms "theory" and "hypothesis" are used interchangeably in this review. *See* THE AMERICAN HERITAGE DICTIONARY 1335 (rev. New College ed. 1975).

6. The four agencies are the Civil Aeronautics Board (CAB), the Federal Trade Commission (FTC), the Food and Drug Administration (FDA), and the National Highway Traffic Safety Administration (NHTSA).

facing regulatory agencies and officials, by more or less direct observation and measurement of those incentives (as perceived)" (p. 34).

Quirk's analysis first focuses on the "pro-industry appointments hypothesis." This view theorizes that officials are appointed to regulatory agencies because they are sympathetic to industry desires and consequently their views provide an incentive to support industry interests.[7] To test this theory, Quirk asked officials to describe the policy views they held on regulatory issues prior to appointment. Quirk then coded each answer into one of the following categories: "anti-industry"; "moderate"; "pro-industry"; "program supporter"; or "no attitudes." Quirk found that 44 percent of the respondents held "anti-industry" policy attitudes when appointed, compared to only 20 percent with "pro-industry" views (p. 49). Further, the majority of officials did not believe their policy views were even taken into account when they were appointed. Rather, most officials believed experience, professional skills, managerial ability, and personal traits were important factors in their appointments (pp. 75-76). Clearly, these results do not support the theory that agency officials are selected because they sympathize with industry interests.

In the second part of the interview, Quirk questions the theory that regulatory officials protect industry interests in order to maintain budgetary support from the Administration and Congress, and insure stability and growth of their agencies. The results in this section show no "general *per se* pro-business incentives — that is, perceptions that decisions favored by industry across a wide range of issues would improve budgetary prospects" (p. 133). To the contrary, in one agency, the FTC, officials "overwhelmingly reported that the agency's recent activism has had favorable effects on support for the agency's budget . . . ." (p. 108). Again, the results of this section of the study do not confirm the pro-industry incentives hypothesis.

Finally, Quirk tests the theory that agency officials protect industry interests in order to enhance future employment opportunities. Of the three incentives studied, this was "the most consistently pro-industry" (p. 176). An interesting anomaly, however, is that career incentives in the FTC "work in the opposite of the hypothesized direction" (p. 164). In the FTC, "[i]t is considered beneficial to demonstrate aggressiveness and effectiveness in enforcement, despite the fact that such behavior increases the regulatory burden on industry" (p. 164). Because the FTC is primarily staffed by lawyers, who are perceived as likely to exhibit these characteristics in any employment capacity, Quirk suggests that such characteristics will make them "attractive potential employee[s] of the private sector" (p. 172).

Following his analysis of these incentives, Quirk considers possibilities for minimizing industry influence in regulatory agencies. Quirk's data on the FTC argue against the uniform application of one commonly proposed reform — a ban that would prohibit regulatory officials from accepting employment in regulated industries for a specified period of time after leaving their agencies. Indeed, to the extent that prospective employers place a pre-

7. Quirk explains that he "refer[s] to this hypothesis as one involving incentives in the sense that one who holds a certain policy attitude has an incentive to support policies favored by that attitude." P. 23.

mium on the aggressive pursuit of agency objectives, an indiscriminate employment ban would prove counterproductive as well as fruitless (p. 190).

However, Quirk does offer suggestions for (1) "reducing the large number of appointees with no particular pre-appointment attitudes, and replacing them with strongly consumer or other general interest-oriented individuals" (p. 181), and (2) eliminating any pro-industry budgetary incentives. At the same time, he acknowledges that many proposed regulatory reforms might create even more new problems while simultaneously "contribut[ing] to the much lamented complexity, rigidity, and cumbersomeness of government" (p. 183).

Quirk's study, while creatively designed to provide fresh insights into industry influence in regulatory agencies, has some important methodological shortcomings. Initially, "capture" theory adherents, who believe that regulatory officials represent the fox guarding the chickens, might not be convinced by a study in which the foxes are asked whether they are protecting the chickens. In short, there is no guarantee that Quirk received completely candid and honest answers about pro-industry incentives from people entrusted to represent and protect the public. Further, some regulatory officials may have understated the significance of pro-industry incentives in order to reduce cognitive dissonance. For example, it would not be surprising if some officials who held views sympathetic to industry interests when appointed later denied they ever held such views.

Another problem, one inherent in a study based on "open-ended" questions, is that the interviewer inevitably injects his own biases into the process of "coding" general answers into the categories that are being studied. In this respect, the study is far less scientific than one in which the respondents answer narrow questions from a given set of responses. To his credit, Quirk recognizes and addresses this problem in the chapter "Comment on Coding" (p. 200), and acknowledges that the study is "really quite rudimentary with respect to conceptualization, data collection, and measurement" (p. 193).

Despite these methodological shortcomings, Quirk's research does provide a "rough measurement" (p. 33) of the three incentives studied. His work underscores the need for further related research and provides an experimental research method on which further studies can be based.