

In and Out of the Revolving Door: Making Sense of Regulatory Capture*

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ABSTRACT

The concept of regulatory capture is multidimensional according to data from Australian nursing home inspectors. There are three empirically distinct forms of capture: identification with the industry, sympathy with the particular problems that regulated firms confront in meeting standards, and absence of toughness. Inspectors who have prior senior management experience in the industry tend to be less tough in their attitudes to regulatory enforcement. For the other two types of capture, it is not coming in the revolving door (from an industry job), but aspirations to go out of the revolving door (to an industry job) that predicts capture. Captured regulatory attitudes and revolving door variables have little power, however, in explaining the toughness of actual enforcement practices. We do find that over time tougher inspectors are more likely to leave the regulatory agency than softer inspectors. These data are used to inform a policy analysis of capture and corruption. It is concluded that there is limited analytical merit in a conception of capture as an enduring unitary character trait that is structurally determined by a history of interest group affiliations. Capture, we attempt to show, is instead a situational problem that requires situational solutions. Constraining the free movement of the revolving door by restricting regulatory appointments from or to the regulated industry is an example of a flawed policy grounded in an overdrawn structural determinism.

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Capture is an influential concept in debates about why regulatory agencies persistently fail to enforce the law against business offenders. It has a long pedigree in American political science, in particular dating from Marver Bernstein's (1955) notion that regulatory agencies go through a 'life cycle' that sees the public interest progressively subordinated to the interests of the regulated industry.¹ In the 1970s Ralph Nader popularised the idea that regulatory agencies become captives of industry because former business executives take influential positions in government agencies whose job it is to regulate business, but perhaps more fundamentally because regulators are seduced by prospects of moving to more lucrative employment in the industries they were regulating. This phenomenon was called the revolving door.

The empirical fact of the revolving door is beyond dispute (Clinard and Yeager, 1980: 106–9). Lawyers in the antitrust division of the U.S. Justice Department or the Federal Trade Commission are essentially trainees getting the experience that will enable them to grab the jobs that bring in big bucks working for business. For 31 of the 96 Australian business regulatory agencies studied by Grabosky and Braithwaite (1986), a majority of inspectors, investigators or complaints officers were recruited from industry.

The interesting question is whether the fact of the revolving door leads to capture. Systematic work on voting by US federal communications' commissioners has produced mixed and ultimately fairly weak support for the revolving door effects on pro-industry decisions (Gormley, 1979; Cohen, 1986). Similarly, Quirk's (1981) empirical work on the US FTC, CAB, FDA and NHTSA finds limited support for the revolving door on capture. More fundamentally, we must ask: What does capture mean in the context of the revolving door? Is capture an analytically useful concept for understanding the failure of regulatory enforcement?

We will seek to answer these questions using unique data on nursing home regulation in Australia. True to the fact of the revolving door, 48 per cent of the regulators in our study had worked in the nursing home industry prior to becoming a nursing home inspector and 23 per cent had aspirations of a future job in the industry. In this paper we will test the separate effects on capture of going into and coming out of the revolving door of nursing home regulation.

Using data from 173 Australian nursing home inspectors² and from inspections of 410 nursing homes, we will: (1) explore the structure of regulatory attitudes that might be described as captured through a factor analysis of questionnaire items; (2) test the effect of coming from a nursing home industry background on capture; (3) test the effect of plans to move in future to a nursing home industry job on capture; (4) test the effect of coming into and planning to go out of the revolving door

and the effect of capture on how tough inspection teams are in ratings of compliance with the law; (5) combine these findings with the understanding derived from our fieldwork observing nursing home inspections in the U.S. and Australia to inform a policy analysis of capture.

The Capture Domain

Questionnaires were posted to persons who worked as inspectors between 1987 and 1990 on an Australian government programme to ensure the compliance of nursing homes with mandatory national standards. The job of these inspectors (called standards monitors) is to visit nursing homes in teams of two or three and rate their compliance with 31 standards. When nursing homes fail to comply with the standards, the inspectors negotiate an agreed action plan to be implemented within an agreed time frame. Inspectors return to check that the action plan is implemented. If it is not, the inspection team may recommend enforcement actions including financial penalties and closure.

The 31 national standards were introduced in 1987 after a series of scandals rocked the industry. Consumer groups took up the cause of residents found lying for hours in urine-soaked sheets, suffering from pressure sores the size of a fist, under-nourished, and denied a variety of basic human rights. The new standards cover health care; the social independence, freedom of choice, privacy and dignity enjoyed by residents; the environment of the nursing home; the variety of experience available to residents; and safety (including risks from fire, violence, infection, and the use of restraints).

A list of names of all inspectors and managers who worked on the standards monitoring programme between 1987 and 1990 was supplied by the Federal government and self-completion questionnaires were mailed out in May 1990. Two follow-ups by letter were sent in August 1990. Those who had not responded by this time were contacted by telephone and asked to complete the schedule. No further attempts were made to contact those who had refused to participate or whose questionnaire was 'return to sender'. The original list consisted of 258 inspectors. Of these, 14 refused to participate, 32 were return to sender, 21 failed to return the questionnaire and 191 returned usable schedules. Eighteen of these have been excluded from the analyses that follow as they were managers who had had no prior experience as inspectors in the monitoring programme.

Included in this questionnaire were a series of attitude items designed to measure capture. These items were taken from two sources: (1) a previous Australian study designed to assess capture among business

regulators across 96 agencies (Grabosky and Braithwaite, 1986: 192–3); and (2) additional items designed specifically to measure capture in the context of Australian nursing home inspection. The latter items were informed by extensive fieldwork (Braithwaite *et al.*, 1990) observing Australian nursing home inspections and interviewing regulatory officials. The results suggest that nursing home inspectors are more ‘captured’³ than top managers (generally heads or second-in-command) of 87 other Australian business regulatory agencies (Grabosky and Braithwaite, 1986: 192–3). For example, 73 per cent of the nursing home inspectors compared to 49 per cent of top managers of other Australian regulatory agencies agreed with the statement: ‘It is better to seek to persuade companies [nursing homes] to comply with regulations voluntarily even at the risk of being considered “soft”.’ If Australian business regulators are, as Grabosky and Braithwaite say, ‘of manners gentle’, nursing home inspectors are even gentler.

Capture – An Unidimensional or Multidimensional Concept?

The first question we must ask is whether capture is a unidimensional construct. It is conceptually meaningful to speak of capture as a coherent and enduring character trait of regulators? When capture is spoken about in the regulatory context it is assumed that it is unidimensional – either you are captured or you are not. In this study, Australian nursing homes inspectors were asked the extent of their agreement with nineteen attitude items which had been *a priori* defined as measuring capture.

To explore the dimensionality of capture, a principle component analysis followed by a varimax rotation was undertaken. Simple structure was best approximated through extracting and rotating three factors based on the inter-correlations between the items. Factor loadings appear in Table 1. This exploratory analysis of the capture items shows that capture may be a more complex notion than has been suggested to date. The first factor was dominated by attitudes that are sympathetic to the problems the home confronts in coming into compliance with the standards. It taps the notions of ‘responsiveness’ (Ayers and Braithwaite, 1992) or ‘regulatory reasonableness’ (Bardach and Kagan, 1982) in the conduct of inspections. Capture does not sit comfortably as a description of this dimension since it is arguable that these are positive rather than negative attributes for regulators. The second factor is composed of seven items that indicate identification with the industry. There is a distinction between the second factor and the first. We have found that it is possible to strongly identify as a part of the nursing home industry (the second factor) without being especially sensitive to the

TABLE 1: *Principle component analysis of capture items^a*

	Factor 1	Factor 2	Factor 3
Sympathetic to the home's problems in meeting the standards			
Standards Monitoring Teams should try to get agreement on the best action plans that are practicable in terms of cost	.69	.05	-.00
You can't just demand that certain things be done without first understanding the problems the nursing home is confronting	.64	.17	.03
Where I can, I try to help the nursing home to come up with less costly ways of meeting the standards	.51	.12	.09
Part of being an effective Standards Monitor is being able to sympathize with the point of view of the nursing home	.55	.03	.05
As a general rule, I like to give the nursing home the benefit of the doubt	.57	-.17	-.34
A good Standards Monitor takes account of the difficulties nursing homes must overcome to meet the standards	.44	.15	.03
It is better to seek to persuade nursing homes to comply with standards voluntarily even at the risk of being considered 'soft'	.36	.03	-.22
Identify with the industry			
As a Standard Monitor I feel I am an important part of the nursing home industry rather than an adversary to it	.10	.66	.28
Mostly I have great respect for the people I work with in the nursing home industry	.27	.64	-.12
Standards Monitoring Teams are more interested in catching nursing homes for doing the wrong thing than in helping them	.16	-.64	.28
The relationship of my Team to the nursing homes which we oversee may best be described as adversarial	.16	-.62	.13
I see my work as making a contribution to improving the reputation of the nursing home industry in the community	.20	.55	.15
The last thing I want to do is something that will harm the nursing home industry	.31	.51	-.09
The relationship of my Team to nursing homes is based on negotiation, mutual accommodation, and compromise	.35	.46	-.00
Tough			
It is better to be a tough enforcer of standards, even at the risk of being considered punitive	-.18	.04	.65
I don't care how much it costs to comply with a standard; my job is to get compliance whatever the costs	-.16	-.01	.65
If you want to be judged a success in this job, you are best to err on the side of demanding that the nursing home do more than is really required to meet the standards	.17	-.13	.60
A large number of enforcement actions is a sign that a regulatory agency is doing its job	.01	-.22	.35
The Department of Community Services and Health can't do much if a nursing home decides to defy it	-.16	-.18	-.30
Percent of variance explained	17.4	10.2	9.4

^aRespondents were asked to indicate the extent of their agreement with the items. Responses could range from strongly agree, agree, neither agree nor disagree, disagree to strongly disagree.

difficulties faced by those whom one regulates (the first factor); and it is possible to feel no identification with the industry yet be sympathetic to the practical difficulties nursing homes face in coming into compliance with the law. The third factor is composed of 5 items that refer to being tough with the industry over compliance with the standards.

The goal of the principle component analysis is to maximise the common variance of the items within factors, while minimising the variance across the factors. The first component extracts the maximum amount of variance. In this analysis, sympathy with the industry accounts for 17 per cent of the variance in the total analysis, while identifying with the industry and toughness account for 10 per cent and 9 per cent respectively.

Scales were developed from these factors by summing across the items. When summing the items, each individual item was scored so that a high score consistently indicated strong agreement with the attitudinal direction of the scale.⁴ In order to gauge the effectiveness of the analysis in separating the item set into three distinct components alpha reliability coefficients were calculated for each scale together with the correlations between scales. Table 2 shows the correlations between the scales, the alpha reliability coefficients for each scale in the diagonal of the matrix, and the means.

TABLE 2: *Inter-correlations and alpha reliability coefficients for capture scales*

	<i>Sympathise</i>	<i>Identify</i>	<i>Tough</i>	<i>Mean</i>
Sympathise with the home's problems	.65			6.18
Identify with the industry	.24**	.69		6.18
Tough	-.13*	-.10	.55	4.42

Statistically significant at * $p < .05$; ** $p < .01$

As would be expected, identification with the industry and sympathy with the home's problems are positively correlated, while toughness negatively correlates with both these dimensions. The correlations, although significant in two of the three cases, are not high, suggesting that these constructs are related but not to such an extent that they could reasonably be construed as one dimension. The alpha reliabilities also indicate that the items within the scales form reasonably cohesive constructs. The rotated factor solution and the lack of strong correlations between the scales indicates that capture is indeed a multidimensional concept.

Does the Revolving Door Explain Capture?

Three common explanations for why capture can occur are explored here. The first is that regulators who come from the industry find their first loyalty is to the industry rather than to the goals of the regulatory organisation. The second involves time as the important factor in the life cycle of a regulatory regime. Recalling Bernstein's theme of a regulatory life cycle, a number of inspectors and regulatory managers expressed the view that 'New surveyors go in like gangbusters, but they mellow eventually' (American state government manager). Hence, we hypothesise that the longer an inspector has been in the regulatory game, the more likely they are to become captured. Over time they increasingly sympathise and identify with the industry. A final explanation is that inspectors who look to the industry as a future career option are less tough and more understanding in regulating that industry. These inspectors are more concerned with their future career options; they often view their time in the regulatory organisation as a training ground for a more lucrative future involvement in the industry. In Table 3 we test the extent to which moving in and out of the revolving door affects their levels of capture.⁵

TABLE 3: *Predicting capture for standards monitors^a*

	<i>Identify with industry</i>		<i>Sympathise with home's problems</i>		<i>Tough on home</i>	
	<i>b</i>	<i>(beta)</i>	<i>b</i>	<i>(beta)</i>	<i>b</i>	<i>(beta)</i>
Control variables						
Age	.03**	(.20**)	.01	(.03)	.03	(.11)
Gender	-.14	(-.04)	.16	(.04)	-.70	(-.16)
Length of time as inspector						
Number of standards monitoring visits	.01	(.14)	-.01	(-.06)	(-.00)	(-.03)
Months worked as a standards monitor	.01	(.09)	.02	(.12)	-.03*	(-.16)*
In the revolving door						
Prior nursing home experience	.28	(.10)	-.01	(-.00)	.36	(-.09)
Prior director or deputy director of nursing home	-.10	(-.03)	.20	(.05)	-1.20**	(-.22**)
Out of the revolving door						
Like to work in nursing homes in the future	.21**	(.17**)	.28*	(.20*)	-.15	(-.09)
Constant	4.35		4.85		4.65	
Adj R-square	.09		.01		.05	

^aThere were 15 directors of nursing who were co-opted from the industry to participate actively in some inspections.

Statistically significant at * $p < .05$; ** $p < .01$; one-tailed test.

A variety of background control variables were included in the initial model. These variables were the age and sex of the respondent, the number of qualifications held by the respondent, whether the respondent was a registered nurse, and whether the respondent had ceased work as an inspector. Most of these were deleted from the final model presented in Table 3 as neither their inclusion or exclusion affected the variables of theoretical interest. In the robust model only two control variables were included – age and gender. Moving into the revolving door is measured by prior experience working in a nursing home and prior experience in a senior management position in the industry (as a director of nursing or a deputy director running a nursing home). Plans to move out of the revolving door are measured by the item ‘I would like to work in nursing homes at some time in the future’.

Only one of the six ‘in the revolving door’ effects is statistically significant.⁶ Prior nursing home industry experience effects none of the capture dimensions and previous experience as a senior executive in the industry effects toughness but not the other two dimensions. Even the significant effect on toughness can be called into question, since it ceases to be significant when the 15 current directors of nursing who were co-opted from the industry to serve on the teams are excluded from the analysis. The significant effect of industry background on toughness may be notably about the *current* industry appointments of these co-opted inspectors rather than their *prior* industry background.

While the capture effect, thus qualified, of coming in the revolving door is on toughness alone, aspirations to go out the revolving door into an industry job have no effect on toughness, but have significant effects on the other two capture dimensions – identification with the nursing home industry and sympathy with the home’s problems in meeting the standards. These effects remain after excluding the inspectors co-opted from current industry appointments from the analysis. Months worked as an inspector, like industry background at a management level, is significantly associated with toughness, but not the other two dimensions of capture.

Toughness eroding with time supports the prediction derived from Bernstein’s life-cycle hypothesis. However, the predicted life-cycle effect does not hold up when number of inspections rather than number of months in the job is used as the predictor. While only four of the predicted 15 relationships are statistically significant, these findings lend glimmers of support for the hypothesis that moving in and out of the revolving door is associated with aspects of capture. However, the effects are modest as is evidenced by the amount of variance explained by the models. It is only toughness that is effected by moving into the revolving door an effect that disappears with the deletion of the inspectors who are

currently employed in the industry, while it is the other two dimensions of capture that are affected by a desire to move out of the revolving door.

Does Capture Explain Regulatory Behaviour?

This paper so far has shown that capture is a more complex notion than has been developed to date. The analysis has also shown that there are modest revolving door and life cycle effects explaining capture. However, the ultimate utility of the capture dimensions depends on their explaining actual regulatory behaviour rather than just regulatory attitudes. If the level of capture does not significantly affect the toughness of the behaviour of regulators in their dealings with the industry then capture theory has no practical explanatory utility.

Four hundred and ten nursing homes were inspected in regions surrounding four large metropolitan centres – Sydney, Melbourne, Brisbane and Adelaide. Selection of homes occurred in two ways. Sixty per cent of them represent a proportionate stratified random sample within each sampling region, while the remainder are a supplementary sample of all other nursing homes inspected in the Sydney, Brisbane and Adelaide sampling regions during the period of the study. Analyses elsewhere have shown that there are no significant differences between the samples on a range of important variables. For this reason the samples have been combined.⁷

Each of these homes was visited by a standards monitoring team and their compliance with 31 Commonwealth Outcome Standards assessed. The name of each member of the standards monitoring team that visited the home was recorded. Teams ranged from a minimum of 2 people to a maximum of 8. Using this information, it was possible to match the inspectors' questionnaires to each home that an inspector visited. Across the 410 inspections, 249 different combinations of team members occurred with the largest number of homes visited by a particular team being 15.

To determine whether capture affects compliance, the level of analysis moves from the individual inspectors to the inspection teams that visited the 410 nursing homes. The matching process resulted in 397 homes or inspections for which we had information for at least one member of the team. These homes can in turn be broken down into those where we had returned questionnaires for all team members ($n = 187$) and those where we had returned questionnaires on 50 per cent or more of the team members ($n = 169$).

To match the individual team members to the homes, an average score across the individuals that form a team was computed and then matched to the home that the team visited. We could choose to restrict

our analysis to those homes where we had information on all team members (full teams), those where we had information on fifty per cent or more of the team (partial teams) or on those for which we had information on at least one team member. A series of analyses were undertaken to determine whether there was any significant difference between full and partial teams.⁸ These analyses indicated that the most significant difference between teams occurred across the sampling regions. Full teams were more likely to have come from the Melbourne sample and less likely to have come from the Adelaide sample. If the sample was restricted to full teams then there would be the serious possibility that the inspections would reflect the Melbourne sampling region rather than all the sampling regions. On this basis, we chose to use all available information (that is, to take the 397 homes for which we had information on at least one inspector for the team who visited the home) and enter a variable indicating whether a full or partial team was involved in the inspection process. Hence, we can examine the effect of the independent variables controlling for the proportion of the team for which we had questionnaire data.

Table 4 shows the direct effect of capture and our in and out revolving door measures on compliance ratings given by the 410 inspections. As we have already noted there are 31 government standards with which Australian nursing homes have to comply. Each standard has three levels of compliance – met, met in part, or not met. These ratings have been summed: a high score (31) indicates that the team assesses the nursing home as perfectly in compliance and a low score (0) total non-compliance.⁹

There are only two significant predictors of the toughness of compliance ratings – teams for which we had questionnaire data for all inspectors and identification with the industry. The data show that as the average level of inspectors' identity with the industry increases, then higher compliance ratings are given. This is the only significant affect predicted by capture theory.

None of the in and out of the revolving door measures significantly impact on the level of nursing home compliance nor do the length of time measures derived from Bernstein's lifecycle and capture theory. However, full data on teams is a significant predictor of compliance, net of a variety of possible confounding influences, including sampling region. Clearly there is something different about teams for which we have questionnaire data on all inspectors who made up the team. This suggests an inherent selection bias with the inspectors we located. Although the sample was designed to include both prior and current inspectors, success with former inspectors was limited to the extent that names and addresses could be provided by the regulatory agency.

TABLE 4: *How important is capture in explaining compliance^a*

	Compliance- government ratings	
	<i>b</i>	(<i>beta</i>)
Length of time in regulation		
Number of standards monitoring visits	-.00	(-.01)
Months worked as a standards monitor	-.06	(-.10)
In the revolving door		
Prior nursing home experience	-.00	(-.00)
Prior director or deputy director of nursing experience	.01	(.04)
Out the revolving door		
Like to work in nursing homes in the future	-.09	(-.02)
Full data on teams		
Full team ^b	-.84*	(-.11*)
Capture scales		
Identify with the industry	.39*	(.11*)
Sympathise with the home's problems	-.06	(-.02)
Tough on the home	.07	(.03)
Constant	16.06	
Adj R-square	.32	

^a This model controls for a variety of factors; ownership type, size of home, age of home, percent of residents female, percent of residents married, mean disability level of residents, number of inspectors on team, geographic location of home, director of nursing's level of control in the home. As the average age of the team and percent of females on the team did not significantly contribute to the model they have been excluded from the analysis for reasons of parsimony.

^b Full team is defined as those teams for whom we have data on all members of the team.

Although there were only 14 outright refusals, if the return to senders and losses are included, the total 'non-response' group amounts to 26 per cent. Most of our losses were therefore not refusals but people who had left the programme who we could not find.

The implication is that those who left the programme were tougher than their peers who remained in the programme. There is support for this interpretation from our qualitative fieldwork. Inspectors who left the agency did complain of lack of agency support to take tough action against recalcitrant nursing homes. If our hypothesis is that inspectors who are tough leave the programme earlier, then we would expect that length of time on the programme and a scale measuring toughness would correlate. The correlation would be weak because we have already lost long-term tough inspectors, yet we still have tough short term inspectors. The correlation should also be negative. The correlation between length of time in the regulatory programme and toughness

is both weak and negative: $-.10$. We would argue that this measure is a proxy for a lifecycle effect – tough inspectors have a shorter lifespan in the regulatory programme and for those inspectors who stay in the programme, the longer they stay the less tough they are; this is indeed what our data in Table 3 show. There is a significant negative effect for length of time on the team and toughness lending some support for Bernstein's lifecycle effects on the regulatory practice of inspectors.

Living with the Revolving Door

What we have shown is that capture is not an especially coherent, unitary concept; rather, it is multidimensional in a way that might cause us to question the usefulness of the capture concept as a unitary negative evaluation of regulators. We have found that going into the revolving door effects only one of three types of capture while going out of the revolving door effects the other two. Only one of the three types of individual capture has an effect on collective regulatory behaviour. None of these effects are especially strong. The most important capture effect may be the serendipitous finding that tough inspectors are more likely to leave the regulatory agency. So we have found that the story of the revolving door and capture is not completely false. But the true story is more complicated than that advanced by capture theorists and it is a story of weak effects.

Indeed the effects are sufficiently weak that we will argue that it would be misguided public policy to put any limits on recruitment from the industry or on leaving the regulatory agency to work for the industry. These conclusions are somewhat similar to those drawn by Quirk (1981: 188–91) for certain US regulatory agencies. The only concern would be the narrowing of perspectives that would arise where almost all of the regulators were recruited from the regulated industry, a predicament that should only arise in special circumstances that require special remedies (e.g. judges hearing complaints against lawyers brought by Bar association disciplinary committees). 'Let the revolving door spin for all its worth' would be our general policy prescription. Restricting the revolving door would address only weak capture effects and might eliminate some reverse capture effects – industry employees who take the regulations seriously because at some future time they may be interested in getting a 9 to 5 job as a government regulator; regulators who take into the industry a regulator's perspective on why compliance is important.

Moreover, as has been argued elsewhere (Ayers and Braithwaite, 1992: chapter 3), not all capture is bad. It surely is bad for regulators to believe that 'what's good for General Motors is good for America'; but it

is also undesirable for regulators to believe that 'what's bad for General Motors is of no consequence to America'. In a sense, the best regulatory culture is one where regulators are tough and absolutely committed to maximising the policy objectives that lie behind the law while at the same time being flexible – open to ways of achieving those policy objectives that are less costly for business. If mutual understanding by each side of the legitimate concerns of the other is the stuff of a healthy regulatory culture, then the revolving door might have positive effects.

The most important point, however, is that inspectors who come from the industry bring with them not only some special insight into the difficulties the industry faces, but they also bring special insight into the tricks of the trade used to get out of those difficulties. Industry experience can be helpful in finding the skeletons in the corporate closet. Admittedly, inspectors take the tricks of the regulatory trade across to the industry as well. But it is clearly the government that gets the better of this particular exchange. This is because most of the regulator's job involves dealing with industry, while only a little of the business person's job will concern dealing with regulators, unless she becomes a regulatory affairs specialist in a large firm.

Does all of this mean that capture is something we should not worry about as a public policy concern? No, it simply means that generalised capture effects arising from the revolving door are a sufficiently weak problem as to be outweighed by the advantages of the revolving door for good government. We should still be concerned about more particularised revolving door effects. It is most unwise to send an inspector in to assess the compliance of her old workplace; it risks a more situationally powerful form of capture; it risks unreasonable toughness by an inspector determined to prove she will not be captured; and it risks the perception of procedural injustice by regulated actors who perceive that they 'never got on' with the inspector who is now out to 'settle the score'. This leads us into the kind of more situational analysis of capture which we think is of the greatest policy import.

Toward a Situational Analysis of Capture

In this research we have found limited analytical value in a conception of capture as an enduring unitary character trait that is structurally determined by a history of interest group affiliations. Moreover, such a conception leads to misguided policy analysis. From fieldwork in Australia, the United States and England, we have identified many situational pressures that do cause capture of a worrying sort.

First, it is worth asking if there were any forms of capture of which we did not see much evidence. One of these is corruption, the most insidious

form of capture. Corruption means capture on the basis of a bribe. Corruption is a serious problem of business regulation in Australia, more so in some types of regulatory agencies than in others (Braithwaite, Grabosky and Rickwood, 1986). We know of no case where bribery has occurred in nursing homes. This does not mean that it has not occurred, yet in the thousands of interviews in Australia, no one has expressed a suspicion that these inspectors can be bribed, though three industry respondents did raise this as a suspicion about nursing home inspectors from one state government. There has been some corruption in nursing home inspection in the United States, though our strong sense here is that this is not one of the more corrupt fields of business regulation in America. In all the fieldwork interviews with key regulatory players and observing inspections in 24 U.S. states, we learned of only one case where a state government inspector was alleged to have demanded a pay-off, and only one case where an inspector claimed to have been offered a bribe. In some states, however, there were suggestions that bribes were paid over the heads of inspectors. We also encountered repeated allegations that, at least in the past, city inspectors and Aldermen in Chicago demanded and received bribes. We even spoke with a nursing home administrator who claimed that the main reason he had moved to another state was that he was fed up with the demands for pay-offs from Chicago city officials.

It is instructive to contemplate both the generally low level of corruption among nursing home inspectors and particular areas where there is some serious suggestion of corruption occurring. Corruption is probably rare at the level of inspection teams because the fact that they are teams makes pay-offs situationally difficult. What is the use of bribing one inspector if there is a risk that their colleagues will mention that they have seen what the bribed inspector has been paid not to see, with this being mentioned in an exit conference attended usually by more than ten people? The only inspector who had been offered a bribe (in fact presented with a briefcase stuffed with \$50,000) was given this in relation to discretion unrelated to the inspection team's function of assessing compliance with quality of care regulations.¹⁰ The instances of Chicago bribery described above concerned individuals being bribed. When allegations of bribery above state teams were made, it was allegations of individual supervisors, heads of agencies or prosecutors. Hence, corruption is a form of capture situationally contained by team inspections where the teams are required to account for their findings in an open forum. In the United States in recent years, the open forum of the exit conference has become even more exposed by the attendance of Ombudsmen and representatives of Residents' Councils at exits.

With lesser forms of capture than corruption, however, we see in fieldwork notes persistent recurrence of specific pressures that cause situational capture. The most intense recurrent pressure in Australia, the United States and Britain is an acute shortage of beds in a locality, causing inspectors to believe that they cannot recommend the closure of a facility that continuously fails to reach minimum standards.

Another recurrent situational pressure for capture in both Australia and the United States is that if the team finds serious problems of noncompliance, it increases its workload. Finding a lot of serious deficiencies will require at least one follow-up inspection and, at worst, appeal hearings and a time-consuming and anxiety-provoking court case.

There are ways of reducing all of these situational pressures. The pressure from bed shortages can be eased by granting planning approval for more beds so that there is spare capacity in the system. Another solution is to make alternative remedies to closure easier to implement. The latter include: (a) installing a receiver to run the nursing home, (b) a government-appointed monitor to work full-time at the home, or (c) freezing new admissions as a stepping stone to closure. The pressure on teams to avoid the extra work and angst entailed in reporting serious deficiencies can be reduced by assigning specialist 'SWAT teams' (as they are lovingly known in two American states) to take over tough cases that are detected by the regular teams.

A number of the different types of situational pressures toward capture can be countered by granting participation rights to third parties during the inspection process. The state of Oklahoma has long granted nursing home Ombudsmen (some are community volunteers, others state employees) the right to be present at any time during nursing home inspections; U.S. federal law since October 1990 granted representatives of Residents' Councils the right to participate in exit conferences where regulatory negotiation occurs following an inspection. Inspectors from both the U.S. and Australia commented that one factor that keeps them on their mettle is the fear that something they miss will be the subject of a complaint that is investigated by their department's separate (and somewhat independent) complaints unit.

The contingency of pressures to capture is well illustrated by the highly variable political culture of American states on the question of political interference in nursing home regulatory enforcement decisions. In some states (e.g. Oklahoma, Georgia, Illinois, Indiana, Louisiana) political interference in nursing home regulatory enforcement has been a serious problem for a long time. Indeed this is an understatement. Once in the early 1980s a Georgia legislator prevented the regulatory agency

from entering a nursing home to take enforcement action by literally barring the door! More than one agency head in these states has been fired for failing to fix cases for influential politicians.

In other states (e.g. Colorado, Tennessee, Virginia, Massachusetts) a remarkably disparate array of inside informants said political interference was a non-problem at the time of the interviews in 1988/1989. Some differences were starkly confirmed by informant regulators who had moved from apolitical regulatory cultures to highly politicised states, and vice versa. Moreover, the fact that there are remedies to the pathology of political favours subverting regulatory enforcement is illustrated in states where the problem was rife, but where politicians shifted to a more hands-off approach after colleagues got their fingers burnt interfering in nursing home enforcement decisions. Texas and Missouri are states where whistle-blowing or tip-offs to consumer groups have caused interfering politicians grief, thereby helping to create a more apolitical nursing home regulatory culture. Cautionary tales in these states have become a resource that heads of agencies use, as one of them put it, to 'share back with politicians the liabilities they would have to assume' (e.g. pointing out that if the nursing home burns after the fire safety enforcement decision is relaxed, it won't be just me who will go down). The shock waves of such cases have also been felt in other states where capture was once much more mediated by political interference, such as North Carolina, where one senior state bureaucrat said: 'People are more cautious today because there have been political interference scandals around the country where people have been burnt.' None of this means that politicised capture has been removed in these states. The comments of a Texas regulator suggest it may have taken a more subtle, yet still less harmful, form: 'Now politicians are more careful about defending nursing homes. They'll call and ask questions rather than try to exert pressure.'

The implication we draw is that even forms of capture that seem matters of deeply ingrained political culture are in fact contingent and malleable. They can be resisted wherever there are vocal advocacy groups or aggressive investigative journalists who can run with anonymous tip-offs from a single insider with a modicum of courage or spite. There is no structural inevitability about political capture, even in a state where the Governor owns a nursing home that is subjected to tough punitive action by state inspectors, e.g. Tennessee at the time of our fieldwork.

The path to a positive policy analysis of capture does not lie with conceptualising capture as a generalised predisposition that is structurally determined by interest configurations. Rather it lies with an analysis of the range of situational pressures toward capture that are

institutionally contingent within particular regulatory contexts. Specific policies then need to be designed to alleviate each of those institutional pressures. In addition, there may be some general countervailing pressures (such as consumer empowerment through advocacy groups) that can have effects across a range of the situational causes of capture. Needless to say, this view implies that what we find true of nursing home regulation may be false in other regulatory domains, and different analyses of capture can be required for different regulatory agencies (Quirk, 1981).

While coming in the revolving door from the industry has an effect on one of the capture dimensions, toughness, hopes of going out the revolving door to an industry job have no effect on this dimension of capture, but do effect the other two dimensions, identification with the industry and sympathy with the nursing home's problems. The variance explained by these revolving door effects is small. Finally, we found that of the three capture dimensions, only identification with the industry has a significant effect on the toughness of regulatory practices. The revolving door variables have no significant effects on actual regulatory behaviour.

These data indicate little support for the theory that regulatory enforcement is under the hegemony of the private interests from which so many regulators come – or to which they hope to go. The deceptively simple idea of the revolving door provides an unsatisfactory basis for analysing such hegemony. What our data do suggest is some support for a version of Bernstein's lifecycle theory. Quite simply, tougher inspectors leave the programme earlier, while less tough peers stay on as regulators.

NOTES

- 1 For commentaries on Bernstein's thesis, see Anthony Downs (1972); P. Freitag (1983); Paul J. Quirk (1981); Paul Sabatier (1975).
- 2 This also includes 15 directors of nursing who were co-opted onto the programme for short periods to participate in the inspection process.
- 3 If indeed 'capture' is the right term for the items we use. Responsiveness, as we shall discuss later, may be a better term.
- 4 To ensure that no one item dominated the scale with a large variance, each item was divided by its standard deviation prior to summation. As the resulting scales have no natural metric they have been rescored from 0 to 10.
- 5 Ordinary least squares (OLS) regression is the technique employed in the multivariate analyses. This method assumes that the relationships between the variables are reasonably linear and additive (Berry and Feldman, 1985). Two types of regression coefficients are presented in the tables – unstandardised and standardised. Unstandardised coefficients are a parameter estimate of the average amount of increase or decrease in the dependent variable for a one unit difference in the independent variable, controlling for the other independent variables in the model (Lewis-Beck, 1980). Beta or standardised coefficients represent the average standard deviation in the dependent variable for a one standard deviation change in the independent variables, *ceteris paribus*.

- 6 The t-distribution is used to test for the significance of the relationship between the dependent and independent variables. Where the hypothesis has been determined *a priori* one-tailed tests of significance are employed; in those cases where there is no theoretical rationale for determining the nature of the relationship is unclear or subject to competing interpretations that predict opposite directional effects two tailed tests are utilised.
- 7 For a more detailed discussion of the sampling regions and samples readers are referred to Braithwaite, John *et al.* (1990).
- 8 Analyses indicated that there were no significant differences between partial and minimum teams and hence the issue is not considered further. The analyses are not presented here but have been documented and are available from the authors on request.
- 9 Factor analytic work elsewhere (Braithwaite, John *et al.*, (1990)) have justified the adding of scores from all standards rather than taking clusters of standards or treating the standards individually.
- 10 It concerned transfer of a 'Certificate of Need' (government planning approval of need for the beds in the locality) following purchase of church home by a private operator which meant that the Certificate of Need no longer applied to the new owner.

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