



#9 Regulatory capture: The Achilles' heel of professional self-regulation

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The Achilles' heel of professional self-regulation is regulatory capture.

The basic idea is that practicing professionals are in the best position to make judgments about the conduct and practice of other members of the profession. Professional regulation requires this intimate knowledge and understanding of the profession in many places. Direct regulation by government requires that the government develop and maintain this knowledge and understanding in order to be effective at regulating the profession. Self-regulation as a regulatory scheme is predicated on the assumption that professionals have the maturity and the public service mindedness to support a professional regulatory body both financially and morally.

The Wikipedia entry for regulatory capture is as follows:

“Regulatory capture is a form of government failure that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or political concerns of special interest groups that dominate the industry or sector it is charged with regulating.”

Although professional self-regulating organizations are not agents of the government in a technical sense of the term, they are created to act in the public interest. The duty to act in the public interest is a defining characteristic of professional regulatory bodies. When a professional regulatory body begins to

advance the commercial or political interests of the professionals they regulate, the professional regulatory body has been ‘captured.’

The danger, of course, is that when this happens, the whole logic of professional self-regulation breaks down.

Now the public is unlikely to use terms such as ‘regulatory capture,’ but it is intuitively aware of the problem. The media are also increasingly skeptical of the willingness or ability of professional regulatory bodies to truly act in the public interest. The belief is that even professionals and their professional regulatory bodies have become unable to rise above their parochial interests. Even governments who created the professional regulatory bodies by statute do not appear as trusting of the professional regulatory bodies as they may once have been. Indeed, in most jurisdictions, professional self-regulation has disappeared as an approach to professional regulation.

The problem for professional regulatory bodies is that it is not only regulatory capture that is the challenge but also the appearance of regulatory capture. The public, the media, and government are predisposed to believe that professional regulatory bodies are at risk to succumb to the internal pressures to act in the commercial and political interests of the professionals they regulate. What doesn’t help, of course, is that on occasion some professional regulatory bodies have failed to live up to their public protection mandate and have shown an inability or unwillingness to effectively regulate their members in the public interest.

Claims made by the professional regulatory body that it is acting in the public interest are themselves met with skepticism. An amazing example of this is a lengthy report published by the Institute of Chartered Accountants of England and Wales (ICAEW) entitled *Acting in the public interest: A framework for analysis*¹. The main idea behind this report is that the claim of acting in the public interest has been so abused over time either intentionally or unintentionally that an analysis framework was needed to tell when the claim is legitimate or not.

Developing a fix for the ‘regulatory capture’ problem is well beyond what can be squeezed into a LinkedIn post. Nonetheless, it is important that professionals understand the issues that face their professional regulatory body. In the end, members, staff, volunteers, Board and Councils will all have a role to play in making self-regulation work by managing the risks of regulatory capture.

¹ Institute of Chartered Accountants of England and Wales (ICAEW), 2012. *Acting in the public interest: A framework for analysis*. London, UK.