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PUBLIC CHOICE IMPACT ASSESSMENT: DIAGNOSING INCENTIVE DISTORTIONS IN REGULATORY POLICY

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Something important is missing in the regulatory process. Modern governance increasingly relies on policy analysis to discipline regulatory decision-making, yet regulatory systems frequently expand, persist, and become distorted. Over the past several decades, governments have invested heavily in analytical procedures designed to ensure that regulatory decisions are informed by systematic evaluation rather than by intuition or political expediency. Cost-benefit analysis, regulatory impact assessment, environmental impact assessment, and related analytical requirements are now central components of regulatory governance. These tools are designed to improve policy by structuring problem definition, evaluating alternatives, and estimating anticipated consequences under public scrutiny. The underlying premise is straightforward: Scrutiny and judicial review create incentives for rigorous analysis, producing welfare-enhancing policy. Yet none of these analytical frameworks directly examines a central threat to regulatory performance—the behavioral, institutional, and political mechanisms identified by public choice theory.

The omission of public choice behavior analysis is notable because extensive scholarship shows incentive structures shape regulatory outcomes.[1] Beginning as early as 1948, research in public choice and political economy has demonstrated that policymaking occurs within institutional environments characterized by strategic behavior among political actors, organized interests, and administrative institutions.[2] Electoral incentives, organized

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[1] *See* Charles K. Rowley, *Duncan Black (1908–1991)*, in READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY 77, 81 (2008).

[2] JAMES M. BUCHANAN & GORDON TULLOCK, THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY 60–61 (1962).

interests, and bureaucratic objectives shape regulatory outcomes. These dynamics expand the incentive set beyond conventional analysis, often reducing achievable social welfare.

A substantial body of scholarship demonstrates that public choice dynamics are central to understanding regulatory behavior. Mancur Olson's analysis of collective action explained why concentrated interests often organize more effectively than diffuse constituencies, creating persistent pressures for policies that benefit relatively small groups while imposing broader social costs on the public.[3] George Stigler and Sam Peltzman subsequently demonstrated how these asymmetries may foster regulatory capture and influence regulatory outcomes.[4] James M. Buchanan and Gordon Tullock further showed that political outcomes are shaped by institutional decision rules rather than by any automatic tendency toward welfare maximization.[5] William Niskanen extended this analysis to administrative agencies, arguing that bureaucratic institutions possess incentives toward budget growth, mission expansion, and organizational influence.[6]

Taken together, these contributions suggest that regulatory decisions are shaped not only by policy analysis and public welfare objectives, but also by incentives embedded within political and administrative institutions.

A primary implication of this literature is that important forces operate prior to and independently of formal policy analysis. As a result, policies may appear socially beneficial when evaluated in terms of projected impacts. Those same policies may simultaneously incorporate institutional features that create opportunities for strategic behavior, regulatory expansion, and policy persistence that limit or reduce public welfare. Regulatory outcomes may therefore diverge from the public welfare objectives that originally justified regulatory intervention.

Furthermore, regulatory policies are rarely static. They evolve through implementation, adaptation, judicial interpretation, and institutional learning. As policies evolve, the incentives facing policymakers, agencies, and stakeholders may influence how regulations are interpreted, expanded, or maintained. Without systematic analysis of these incentive structures, regulatory assessments may overlook dynamics that shape policy outcomes in ways that diverge from initial expectations and diminish long-term social welfare.

This essay proposes public choice impact assessment (PCIA) as a complementary regulatory analysis tool. PCIA supplements existing forms of policy analysis by systematically evaluating incentive structures, including concentrated benefits, strategic behavior, bureaucratic incentives, and

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[3] MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS 53–54 (2d ed. 1971).

[4] George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 3–6 (1971); Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & ECON. 211, 211–14 (1976).

[5] Buchanan & Tullock, *supra* note 2, at 61–62.

[6] WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT 68–69 (1971).

persistence mechanisms. By identifying potential distortions early in the policymaking process and highlighting available countermeasures, PCIA seeks to improve institutional resilience while simultaneously creating incentives for regulators to receive credit for addressing identifiable governance risks.

I. PUBLIC CHOICE AND SYSTEMIC REGULATORY DISTORTION

Confidence is everywhere the parent of despotism—free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power.

—Thomas Jefferson, Kentucky Resolutions of 1798[7]

This man of fiction, who is motivated solely by individual self-interest in all aspects of his behavior, has always represented a caricature.

—James Buchanan & Gordon Tullock, The Calculus of Consent[8]

Much like Jefferson's 1798 reflections, Buchanan's central contribution to public choice theory rests on the recognition that at the heart of it all, the regulatory process ultimately consists of individual participants, each possessing distinct preferences, values, and motivations. Buchanan's insight was not that public servants are necessarily greedy, corrupt, or ill-intentioned. Rather, he merely rejected the romantic assumption that individuals somehow become fundamentally different moral actors once they enter government service.

In that sense, Buchanan largely sidesteps the metaphysical question whether governmental employees are "really" altruistic. For Buchanan, the point is simpler and more powerful: Individuals possess preference orderings, or utility functions, and institutional behavior emerges from the interaction of those preferences under particular rules and incentive structures. Whether utility derives from money, prestige, ideological satisfaction, moral fulfillment, bureaucratic influence, public praise, or genuine compassion is secondary to the structural analysis of the system under which individuals operate.

Traditional public administration often assumed that regulators function as neutral experts pursuing the common good. Buchanan instead argued that government actors face many of the same incentive problems as actors in private markets.[9] It is this tension between bureaucratic self-interest and public-regarding responsibilities that conventional analytical methodologies largely fail to examine. This essay is intended to help fill that analytical gap

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[7] Thomas Jefferson, *Kentucky Resolutions* (1798), reprinted in 1 THE FOUNDERS' CONSTITUTION ch. 8, doc. 41 (Philip B. Kurland & Ralph Lerner eds., 1987).

[8] Buchanan & Tullock, *supra* note 2, at 16.

[9] *See generally* Buchanan & Tullock, *supra* note 2 (exploring individual incentives in public decision-making).

by identifying incentive structures embedded within regulatory institutions, identifying appropriate countermeasures, and establishing a basis for a new form of regulatory analysis, PCIA.

A. Bureaucratic Incentives and Institutional Dynamics

Institutional analyses of political decision-making identify the role that governance structures play in shaping policy outcomes. Buchanan and Tullock argued that political decisions emerge from the institutional rules governing collective choice rather than from any direct pursuit of social welfare by policymakers.[10] The design of decision-making institutions—including voting rules, committee structures, procedural constraints, and delegation arrangements—affects how policy preferences are aggregated and how competing interests are represented within the political system. These institutional arrangements can influence the types of policies that are likely to emerge from the political process and may create systematic biases favoring certain types of regulatory interventions. These governance structures can be embedded in the regulatory agencies and processes as well.

Within administrative institutions, incentive structures shape bureaucratic behavior. Niskanen's influential model of bureaucracy suggested that agencies may possess institutional motivations associated with budget size, organizational influence, mission expansion, and bureaucratic autonomy.[11] Because agencies frequently possess specialized expertise and informational advantages unavailable to legislators or the public, they may exert substantial influence over the scope and content of regulatory policy. These incentives do not imply that bureaucrats routinely act contrary to the public interest. Rather, they suggest that regulatory decisions may reflect organizational priorities in addition to broader policy objectives.

Taken together, these strands of public choice scholarship demonstrate how regulatory outcomes may be influenced by interactions among political actors, organized interests, and administrative institutions. Policies that provide concentrated benefits often attract organized political support, and agencies responsible for implementing those policies may develop institutional incentives to preserve or expand regulatory programs over time. At the same time, the diffuse nature of many regulatory costs reduces the likelihood that affected constituencies mobilize to challenge existing policies. The resulting dynamic may produce regulatory systems that expand or persist even when the social benefits of particular policies become uncertain or contested.

B. Behavioral Reinforcement and Policy Persistence

Behavioral factors further complicate the regulatory process. Research in psychology, behavioral economics, and behavioral political economy demonstrates that individuals frequently rely upon cognitive heuristics when

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[10] Buchanan & Tullock, *supra* note 2, at 77–78.

[11] Niskanen, *supra* note 6, at 68–69.

making decisions under conditions of uncertainty.[12] As a consequence, highly salient events may exert disproportionate influence on political agendas and public perceptions of risk. Regulatory responses can therefore emerge from perceptions of urgency that are only weakly related to underlying risk distributions.

Behavioral dynamics become especially important when combined with political and bureaucratic incentives. Salient events may trigger demands for immediate governmental action. Once regulatory interventions are adopted, however, institutional inertia and organized beneficiary groups often impede retrenchment. Regulatory beneficiaries possess incentives to defend existing programs, whereas the broader public may remain unaware of the costs associated with their continuation.

The interaction of political, bureaucratic, and behavioral forces can therefore generate patterns of regulatory evolution that diverge significantly from the assumptions underlying conventional regulatory analysis. Public choice scholarship suggests that the institutional environment within which regulation operates influences not only policy design but also policy evolution. Policies that initially appear welfare-enhancing, when evaluated in terms of projected impacts, may contain institutional features that encourage regulatory expansion, strategic behavior, or policy persistence beyond their original purpose. Over time, these dynamics may generate institutional growth and confer benefits on regulatory participants that are unrelated to the policies' original public-regarding justifications.

C. Implications for Regulatory Analysis

Self-serving incentives do not imply that regulatory policy is inevitably inefficient or that policymakers routinely disregard analytical evidence when designing regulatory interventions. The public choice perspective instead highlights the importance of recognizing that regulatory systems operate within institutional environments characterized by competing incentives and strategic interaction. Understanding these dynamics is essential if analytical frameworks are to capture the full range of factors affecting regulatory governance and identify mechanisms, or countermeasures, capable of mitigating predictable distortions.

This essay treats public choice distortions in regulation somewhat as welfare economics treats externalities in markets: as recurring divergences between private incentives and social welfare that can be identified, diagnosed, and at least partially corrected. The countermeasures discussed below therefore fall into two broad categories. Some seek to modify incentives within existing institutional frameworks by encouraging regulatory actors to behave more consistently with public-regarding objectives. Others

[12] BRYAN CAPLAN, THE MYTH OF THE RATIONAL VOTER: WHY DEMOCRACIES CHOOSE BAD POLICIES 24 (2007); DANIEL KAHNEMAN, THINKING, FAST AND SLOW 129–30 (2011); Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty*: *Heuristics and Biases*, 185 SCI. 1124, 1124 (1974).

seek more fundamental institutional reforms by altering the procedural and structural rules—in public choice vernacular, the "institutional constitution"—within which regulatory actors operate.

In this essay, the term "constitutional" is used in the Buchananite sense to refer not to constitutional law but to the institutional rules that structure collective decision-making.[13] These institutional constraints may include procedural requirements, transparency obligations, accountability mechanisms, decisional rules, and limitations on administrative discretion. The objective is not to explain how societies arrive at agreement on such reforms, but rather to identify reforms that may reduce predictable public choice distortions.

Analysis of public choice behavior begins with the recognition that the American regulatory state is governed not only by the Constitution itself but also by statutory mandates, delegations of authority, procedural requirements, and judicially enforceable standards of review. These legal frameworks often identify broad public-regarding objectives—clean air, safe drinking water, workplace safety, consumer protection, species preservation, or financial stability—while leaving substantial discretion regarding how those objectives are interpreted, prioritized, measured, and implemented.

The public interest is therefore not self-executing. Public policies are made operational through administrative judgment, and that judgment remains vulnerable to the incentive and information problems identified by public choice theory. This observation does not imply that bureaucratic judgment is illegitimate. Regulatory implementation often requires technical expertise, prudential judgment, and value-sensitive tradeoffs under conditions of uncertainty. The concern addressed here is narrower. PCIA focuses on circumstances in which administrative discretion is predictably influenced by incentives or biases that cause regulatory action to depart from the public-regarding purposes that justified delegation in the first instance.

The relevant problem is not merely that officials possess individual values. Rather, it is that those values, together with career incentives, budgetary interests, institutional loyalties, ideological commitments, reputational concerns, and blame-avoidance strategies, may encourage decision-makers to impose organizational or personal preferences at the expense of objectively defensible improvements in public welfare. The analytical framework developed below seeks to identify and address these institutional externalities.

II. PUBLIC CHOICE IMPACT ASSESSMENT

A. Analytical Architecture

PCIA is designed as a complementary analytical framework for evaluating regulatory proposals. The underlying premise is straightforward. Regulatory

[13] *See* Buchanan & Tullock, *supra* note 2, at xiv.

outcomes are not determined solely by policy objectives or analytical findings. They also reflect the incentives confronting policymakers, organized interests, administrative agencies, and affected constituencies. Public choice scholarship demonstrates that these incentive structures can systematically influence regulatory behavior, often in ways that are not captured by conventional policy analysis.[14] PCIA is therefore designed to identify potential sources of institutional distortion before they become embedded within regulatory programs. Rather than asking whether a proposed rule is likely to produce desirable consequences, PCIA examines whether the institutional environment surrounding the rule creates incentives that may encourage strategic behavior, regulatory expansion, policy persistence, or departures from public-regarding objectives.

To facilitate this inquiry, PCIA is organized around a multi-layer analytical framework. Each layer represents a distinct category of mechanisms that may influence regulatory outcomes. Although analytically separable, these mechanisms frequently interact and reinforce one another over time. Table 1 lists the five layers of failure and the 38 associated risk drivers, describing the risk mechanism, the core distortion, the primary transmission channel, and the regulatory pathology. This PCIA architecture draws the layers and their risk drivers from a rich academic base.

B. Layer One: Cognitive and Behavioral Biases

Regulatory agendas are frequently shaped by the manner in which policymakers and citizens perceive policy problems. Research in behavioral economics and political psychology demonstrates that individuals rely upon cognitive shortcuts when evaluating uncertain or complex information.[15] Layer one can be broken down into four "core" distortions, each with associated drivers. The distortions are as follows:

(i) *Rational ignorance* leading to systematic public disengagement, weak accountability, and regulatory capture.[16] These failures enable additional risks, or associated drivers, including groupthink, regulatory inertia, ambiguity aversion, extremeness aversion, overconfidence, subject-matter myopia, confirmation bias, anchoring, and status quo bias.[17]

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[14] *See* PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 28–31 (Daniel Carpenter & David A. Moss eds., 2014); *see also* PATRICK DUNLEAVY, DEMOCRACY, BUREAUCRACY AND PUBLIC CHOICE: ECONOMIC EXPLANATIONS IN POLITICAL SCIENCE (1991) (examining institutional incentives in political and bureaucratic behavior).

[15] Tversky & Kahneman, *supra* note 12, at 1124.

[16] *See* ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 8 (1957) (public disengagement); Niskanen, *supra* note 6, at 29 (weak accountability); Stigler, *supra* note 4, at 3 (regulatory capture).

[17] *See* IRVING L. JANIS, GROUPTHINK: PSYCHOLOGICAL STUDIES OF POLICY DECISIONS AND FIASCOES 174–75 (2d ed. 1982) (groupthink); MANCUR OLSON, THE RISE AND DECLINE OF NATIONS: ECONOMIC GROWTH, STAGFLATION, AND SOCIAL RIGIDITIES 69–70 (1982) (regulatory inertia); Daniel Ellsberg, *Risk, Ambiguity, and the Savage Axioms*, 75 Q.J. ECON. 643, 650–51 (1961) (ambiguity aversion); Itamar Simonson & Amos

(ii) *Rational irrationality* enabling loss aversion, groupthink, regulatory inertia, ambiguity aversion, extremeness aversion, overconfidence, subject-matter myopia, confirmation bias, anchoring, status quo bias, and hindsight bias.[18]

(iii) *Availability heuristics and policy cascades* that enable extremeness aversion, overconfidence, subject-matter myopia, and groupthink.[19]

(iv) *Salience bias and representativeness heuristics* that focus disproportionately on the most salient, vivid, or emotionally resonant features of a problem, while neglecting diffuse, indirect, long-term, or abstract consequences, and which enables subject-matter myopia, groupthink, anchoring, and status quo bias.[20]

These cognitive tendencies will generate what Kuran and Sunstein describe as "availability cascades," in which highly visible events receive disproportionate attention and thereby alter political priorities.[21] For example, the governmental response to the COVID-19 suffered greatly from the policy cascade that followed from the initial fright of early cases that led to deaths in the elderly. Regulatory responses may consequently reflect public perceptions of risk rather than underlying actual risk distributions.

C. Layer Two: Political Incentive Mechanisms

The second layer focuses on political incentives arising from electoral competition, organized interest-group activity, and legislative decision-making, together consisting of three core drivers.

(i) *Concentrated benefits and dispersed costs* arise when small interest groups dominate policy because benefits are large and concentrated while

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Tversky, *Choice in Context: Tradeoff Contrast and Extremeness Aversion*, 29 J. MKTG. RSCH. 281, 282 (1992) (extremeness aversion); Don A. Moore & Paul J. Healy, *The Trouble with Overconfidence*, 115 PSYCHOL. REV. 502, 502–03 (2008) (overconfidence); Erik Dane, *Reconsidering the Trade-off Between Expertise and Flexibility: A Cognitive Entrenchment Perspective*, 35 ACAD. MGMT. REV. 579, 581 (2010) (subject-matter myopia); Tversky & Kahneman, *supra* note 12, at 1128–29 (anchoring); Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175, 178 (1998) (confirmation bias); William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 J. RISK & UNCERTAINTY 7, 8 (1988) (status quo bias).

[18] *See* BRYAN CAPLAN, THE MYTH OF THE RATIONAL VOTER: WHY DEMOCRACIES CHOOSE BAD POLICIES 123 (2007) (rational irrationality); Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263, 279 (1979) (loss aversion); Baruch Fischhoff, *Hindsight ≠ Foresight: The Effect of Outcome Knowledge on Judgment Under Uncertainty*, 1 J. EXPERIMENTAL PSYCHOL.: HUM. PERCEPTION & PERFORMANCE 288, 288–89 (1975) (hindsight bias). For discussions of groupthink, regulatory inertia, ambiguity aversion, extremeness aversion, overconfidence, subject-matter myopia, confirmation bias, anchoring, and status quo bias, see *supra* note 17.

[19] For discussions of extremeness aversion, overconfidence, subject-matter myopia, and groupthink, see *supra* note 17.

[20] For subject-matter myopia, groupthink, anchoring, and status quo bias, see *supra* note 17.

[21] Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 685–86 (1999).

costs are thinly spread across many stakeholders.[22] This enables rent extraction, pork-barrel politics, and fiscal illusion.[23]

(ii) *Political entrepreneurship and agenda manipulation* constitute a public choice risk whereby politically motivated actors strategically invest in issue creation, framing, and amplification to manipulate political attention, mobilize selective constituencies, and induce regulatory responses that generate private or institutional benefits.[24] This enables rent extraction, rational ignorance (voters), expressive voting, median voter dynamics, logrolling, pork-barrel politics, fiscal illusion, and free riding.[25]

(iii) *Rent-seeking with concentrated benefits* is observed during lobbying, litigation, political pressure, strategic participation in rulemaking, capture of advisory committees, and information manipulation. This enables rent extraction, median voter dynamics, logrolling, and pork-barrel politics.[26]

The result is that regulatory policy may reflect political incentives that diverge from social welfare objectives. Regulatory proposals therefore warrant examination not only for their anticipated consequences but also for the political incentives that contributed to their adoption.

D. Layer Three: Bureaucratic Incentives

The third layer focuses on incentive structures operating within administrative agencies themselves, as reflected in two core drivers. Administrative institutions possess organizational interests and operate under incentive structures that may influence regulatory behavior.[27] Two core drives reflect these incentive structures.

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[22] Olson, *supra* note 3, at 48–54.

[23] *See* FRED S. MCCHESNEY, MONEY FOR NOTHING: POLITICIANS, RENT EXTRACTION, AND POLITICAL EXTORTION (1997) (rent extraction); Barry R. Weingast, Kenneth A. Shepsle & Christopher Johnsen, *The Political Economy of Benefits and Costs: A Neoclassical Approach to Distributive Politics*, 89 J. POL. ECON. 642, 642–43 (1981) (pork-barrel politics); JAMES M. BUCHANAN, PUBLIC FINANCE IN DEMOCRATIC PROCESS: FISCAL INSTITUTIONS AND INDIVIDUAL CHOICE 125–27 (1967) (fiscal illusion). Notably, Amilcare Puviani originated the theory of fiscal illusion, arguing that governments have incentives to obscure the true costs of public spending and taxation, thereby increasing public acceptance of larger government. However, Puviani's work is difficult to obtain and is written in Italian. *See generally* AMILCARE PUVIANI, TEORIA DELLA ILLUSIONE FINANZIARIA (1903).

[24] For political entrepreneurship, see generally JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES (2d ed. 2003); for agenda manipulation, *see generally* WILLIAM H. RIKER, THE ART OF POLITICAL MANIPULATION (1986).

[25] *See* GEOFFREY BRENNAN & LOREN E. LOMASKY, DEMOCRACY AND DECISION: THE PURE THEORY OF ELECTORAL PREFERENCE 32–53 (1993) (expressive voting); Buchanan & Tullock, *supra* note 2, at 138 (logrolling); Olson, *supra* note 3, at 60–61 (free riding). For rent extraction, pork-barrel politics, and fiscal illusion, see *supra* note 23. For rational ignorance and median voter dynamics, see Downs, *supra* note 16.

[26] *See* McChesney, *supra* note 23 (rent extraction); Downs, *supra* note 16 (median voter dynamics); Buchanan & Tullock, *supra* note 2, at 138 (logrolling); Weingast et al., *supra* note 23, at 642–43 (pork-barrel politics).

[27] Niskanen, *supra* note 6, at 68–69; Terry M. Moe, *The New Economics of Organization*, 28 Am. J. Pol. Sci. 739 (1984); Peltzman, *supra* note 4, at 214.

(i) *Budget maximization* describes the tendency of regulatory agencies to systematically expand their budgets, staff, jurisdiction, and authority beyond socially efficient levels in pursuit of institutional power, prestige, job security, and influence, and enables career incentives, and information hoarding.[28]

(ii) *Regulatory capture* occurs where an agency acts in the interest of the industry it regulates, resulting in persistent inefficiency, market distortion, and welfare loss.[29] This may produce barriers to entry, market power enhancement, innovation suppression, dynamic inefficiency and enables career incentives, information hoarding, and enforcement bias.[30]

E. Layer Four: Institutional Design Amplifiers

Political and bureaucratic incentives operate within institutional environments that may either constrain or amplify their effects. Institutional design influences accountability, transparency, coordination, and information flow. Fragmented authority, overlapping jurisdictions, conflicting mandates, and procedural complexity may create opportunities for strategic behavior while simultaneously obscuring responsibility for policy outcomes.[31] The primary core driver is *regulatory fragmentation*, causing overlapping institutional authorities, accountability erosion, misaligned incentives, and intensified political manipulation. This enables delegation drift, procedural formalism, and adversarial legalism.[32]

F. Layer Five: Dynamic Propagation Mechanisms

The fifth layer addresses regulatory evolution over time. Whereas the preceding layers identify mechanisms that may distort policy at a particular

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[28] *See* Niskanen, *supra* note 6, at 38–42 (budget maximization); JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT (1989) (career incentives); Niskanen, *supra* note 6, at 29 (information hoarding).

[29] *See* Stigler, *supra* note 4, at 3–6 (regulatory capture); Peltzman, *supra* note 4, at 211–14 (market distortion). For countermeasures, see PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 363 (Daniel Carpenter & David A. Moss eds., 2014).

[30] *See* Stigler, *supra* note 4, at 3–5 (barriers to entry and market power enhancement); Dmitrii Trubnikov, *Analysing the Impact of Regulation on Disruptive Innovations: The Case of Wireless Technology*, 17 J. INDUS. COMPETITION & TRADE 399, 400–01 (2017) (innovation suppression); Peltzman, *supra* note 4, at 211–14 (dynamic inefficiency); Wilson, *supra* note 28 (career incentives); Niskanen, *supra* note 6, at 29 (information hoarding); Thomas Lambert, *Lobbying on Regulatory Enforcement Actions: Evidence from U.S. Commercial and Savings Banks*, 65 MGMT. SCI. 2545, 2546 (2019) (enforcement bias).

[31] Daniel C. Esty & Damien Geradin, *Regulatory Co-opetition*, 3 J. INT'L ECON. L. 235, 246–47 (2000); Daniel M. Konisky, *Regulatory Competition and Environmental Enforcement: Is There a Race to the Bottom?*, 51 AM. J. POL. SCI. 853, 853 (2007).

[32] *See* Mathew D. McCubbins, Roger G. Noll & Barry R. Weingast, *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECON. & ORG. 243, 247–48 (1987) (delegation drift); Maria Ponomarenko, *Substance and Procedure in Local Administrative Law*, 170 U. PA. L. REV. 1527, 1532–33 (2022) (procedural formalism); ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW 8 (2d ed. 2019) (adversarial legalism).

moment, the fifth layer examines how those distortions become reinforced and propagated. Regulatory programs frequently generate constituencies that benefit from their continuation. Agencies develop expertise, stakeholders adapt to regulatory environments, and political coalitions emerge to defend existing arrangements.

These dynamics create what public choice scholars often describe as policy lock-in or ratchet effects.[33] Once established, regulatory programs may become difficult to modify or eliminate even when their original rationale weakens. The result is institutional persistence that conventional policy analysis often overlooks. The primary driver is broadly described as *jurisdictional competition* and is a growth ratchet. Competition among jurisdictions can discipline governments, but under political incentives, it often produces regulatory races, forum shopping, and strategic distortion. This ratchet is a public choice risk whereby intergovernmental competition distorts regulatory incentives, leading to strategic rule escalation, regulatory arbitrage, and fragmented accountability across political systems.[34]

Notably, salience bias (Layer One) is also a growth ratchet, while policy cascades (Layer One) and institutional entrenchment through budget maximization (Layer Three) are distortion ratchets, all amplifying the underlying risk drivers.

G. Diagnostic Structure of a Public Choice Impact Assessment

PCIA translates the foregoing architecture into a structured diagnostic process. These five domains correspond to 38 drivers and diagnostic questions applied during policy development. The objective is not to determine whether a regulatory proposal should be adopted. Rather, the objective is to identify institutional risks and encourage consideration of mechanisms capable of mitigating those risks early in the regulatory process.

In this respect, PCIA resembles other procedural assessment frameworks. The National Environmental Policy Act (NEPA), for example, requires agencies to evaluate potential environmental consequences before undertaking major federal actions. The purpose of environmental review is not to prohibit environmentally harmful actions but to ensure that relevant consequences are identified, addressed, and disclosed before decisions are made.

Using PCIA, agencies would first conduct a preliminary screening assessment designed to identify significant public choice risks. If no meaningful risks were identified, the agency could issue a finding comparable to a "finding of no significant impact" (FONSI) under NEPA. Where significant risks were detected, additional analysis would be required focusing only upon those mechanisms identified during the screening process.

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[33] *See, e.g.*, Olson, *supra* note 17, at 75–76; TIMUR KURAN, PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION 105–17 (1995).

[34] Jacob E. Gersen, *Designing Agencies*, in RESEARCH HANDBOOK ON PUBLIC CHOICE AND PUBLIC LAW 333, 352–53 (Daniel A. Farber & Anne Joseph O'Connell eds., 2010).

This tiered structure seeks to balance analytical rigor with administrative practicality. Rather than requiring exhaustive examination of every conceivable distortion, the framework directs attention toward those incentive structures most likely to influence regulatory outcomes. This staged approach aligns the intensity of analysis with the expected magnitude of risk, substantially reduces perceived burden and, notably, begins with a screening task that takes less than 10 minutes per individual to complete. PCIA methodology and related tools are presented in the *Public Choice Impact Analysis (PCIA) Technical Manual*.[35]

Because many public choice distortions are difficult to measure directly, the framework emphasizes structured inquiry rather than formal modeling. Diagnostic questions are designed to identify conditions under which particular incentive mechanisms are likely to operate. Where such conditions exist, agencies would be expected either to explain why the risk is not significant or to identify countermeasures intended to mitigate the distortion. The framework is designed to emphasize solutions rather than criticism.

H. Safe Harbor and Institutional Incentives

Successful implementation also requires attention to the incentives confronting regulators themselves. Agency officials may be reluctant to identify potential distortions if such admissions could later be used as evidence of arbitrary and capricious decision-making, institutional failure, or professional misconduct. The result would be predictable underreporting of risks and diminished analytical candor. Accordingly, implementation of PCIA incorporates safe-harbor principles analogous to those found in other compliance and auditing contexts.

The objective is to encourage honest diagnosis rather than defensive compliance. Regulators should have incentives to disclose risks and explain corrective actions rather than incentives to conceal potential vulnerabilities.

Indeed, one of PCIA's most attractive institutional features is that it transforms recognition of public choice risks into an opportunity for managerial success. Agencies that identify vulnerabilities and adopt effective countermeasures may appropriately claim credit for improving regulatory design. By aligning institutional incentives with analytical transparency, PCIA seeks to make self-correction politically and administratively rewarding.

To be clear, PCIA is not intended to replace existing analytical frameworks. Cost-benefit analysis, regulatory impact assessment, environmental impact assessment, and related methodologies remain valuable tools for evaluating policy consequences. Rather, PCIA addresses a distinct analytical question. Conventional assessments ask whether a regulation is likely to produce desirable outcomes. PCIA asks whether the institutional environment surrounding the regulation creates incentives likely to distort those outcomes.

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[35] David W. Schnare, *Public Choice Impact Analysis (PCIA) Technical Manual*, Zenodo (2026), https://doi.org/10.5281/zenodo.21072628 [https://perma.cc/9LWY-GY8L].

CONCLUSION

Modern regulatory governance rests upon the premise that better analysis produces better policy. Existing analytical frameworks have substantially improved the transparency and rigor of regulatory decision-making. Yet they largely overlook a critical determinant of regulatory outcomes: the incentives confronting the individuals and institutions responsible for creating, implementing, and sustaining regulatory policy.

Public choice scholarship has demonstrated that regulatory systems operate within environments characterized by strategic behavior, organizational interests, political incentives, informational asymmetries, and cognitive limitations. These forces do not merely influence regulatory outcomes; they help shape the evolution of regulatory systems themselves. PCIA responds to this analytical gap. By systematically examining behavioral biases, political incentives, bureaucratic dynamics, institutional design, and mechanisms of policy persistence, PCIA provides a structured framework for identifying predictable sources of regulatory distortion and corresponding institutional countermeasures.

Table 1: A PCIA Risk Taxonomy

Risk Mechanism	Core Distortion	Primary Transmission Channel	Regulatory Pathology
I. Cognitive & Behavioral Failures			
Rational ignorance	Information neglect	Poor monitoring	Inattention, drift
Rational irrationality	Expressive belief	Systematic bias	Persistent error
Availability heuristic	Media amplification	Overreaction	Crisis regulation
Salience bias and representativeness heuristic	Stereotyping	Misclassification	Misguided rules
Loss aversion	Fear dominance	Precaution bias	Overregulation
Ambiguity aversion	Worst-case framing	Precautionary escalation	Regulatory paralysis
Extremeness aversion	Option framing	Policy compression	Inefficient compromise
Overconfidence	Expert hubris	Overprecision	Regulatory overreach
Subject-matter myopia	Narrow framing	Option neglect	Incomplete analysis
Confirmation bias	Selective evidence	Narrative lock-in	Policy rigidity
Groupthink	Institutional herding	Error amplification	Systematic failure
Hindsight bias	Ex post rationalization	Learning failure	Repeat mistakes
Anchoring	First-frame dominance	Regulatory inertia	Path dependence
Status quo bias	Institutional inertia	Policy persistence	Regulatory stagnation
II. Political Incentive Failures			
Concentrated benefits, dispersed costs	Policy domination	Distorted policy attention	Regulatory under-regulation
Political entrepreneurship	Agenda manipulation	Risk amplification	Overreaction
Rent seeking	Resource diversion	Regulatory gaming	Rent creation
Rent extraction	Coercive leverage	Compliance costs	Economic drag

Risk Mechanism	Core Distortion	Primary Transmission Channel	Regulatory Pathology
Rational ignorance (voters)	Accountability loss	Policy drift	Capture
Expressive voting	Identity signaling	Moralistic policy	Inefficient regulation
Median voter dynamics	Policy flattening	Centrism bias	Inefficiency
Logrolling	Coalition distortion	Package deals	Inefficient bundling
Pork-barrel politics	Geographic bias	Fiscal distortion	Waste
Fiscal illusion	Hidden burden	Overspending	Deficit bias
Free riding	Under-provision	Policy collapse	Public good failure
III. Bureaucratic Incentive Failures			
Budget maximization	Expansion drive	Mission creep	Overregulation
Regulatory capture	Revolving door	Policy skew	Private governance
Career incentives	Risk avoidance	Excess caution	Regulatory conservatism
Information hoarding	Knowledge control	Opacity	Accountability loss
Enforcement bias	Activity inflation	Overenforcement	Compliance overload
IV. Institutional Design Failures			
Regulatory fragmentation	Venue shopping	Rule escalation	Complexity explosion
Delegation drift	Agency autonomy	Mission drift	Accountability erosion
Procedural formalism	Process dominance	Analysis substitution	Paper compliance
Adversarial legalism	Defensive regulation	Risk inflation	Overregulation
V. Systemic & Dynamic Failures			
Growth Ratchets			
Jurisdictional competition	Policy races	Escalation cycles	Overlapping mandates
Crisis opportunism	Agenda reset	Power expansion	Authority accretion
Distortion Ratchets			
Policy cascades	Policy imitation	Policy imitation	Policy imitation
Institutional entrenchment	Rule lock-in	Reform resistance	Regulatory sclerosis

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