

## **Public Regulation in Interest-Group Democracy**

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### **Abstract**

Orthodox public regulation theory maintains that public representatives enact regulations to control possible problems arising from cumulative transactions in the free market. The present article challenges this theory from the public choice perspective. After refining and defending self-interest models of politician, bureaucrat, and citizen behaviors, the author applies these models to the context of Japanese politics. The author argues that “interest-group democracy” today emerges in Japan paradoxically because the government has been small relative to other industrialized countries. Some existing regulation function to promote the private interests of producers rather than those of the public, either by maintaining monopoly or oligopoly, or by protecting small inefficient businesses against competition. This argument has two normative implications for public law. First, the legislative-discretion doctrine, the common ground of judicial deference to the legislature, may not be sound in many policy areas, since the arguments supporting this doctrine belong to traditional public regulation theory and are therefore vulnerable to the public choice arguments developed here. Public choice observations are also helpful for judicial scrutiny of the relationship between the declared goal of a statute and the means used to effect it. The second implication for public law concerns the manner in which orthodox theory tends to recommend regulations prior to verification of their necessity. Orthodox theory moreover tends to overlook dysfunctional aspects of regulation. To avoid these difficulties, every regulation, whether economic or social, should be closely examined using the analytical tools of policy science.