



PART FOUR

Institutional and Noninstitutional Actors

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Institutional and Noninstitutional Actors in the Policy Process

Matthew A. Cahn

As discussed earlier, public policy has been defined in different ways by different observers. Peters defines policy as “the sum of government activities... (that have) an influence on the lives of citizens.”¹ Lasswell² pointed out that public policy determines “who gets what, when, and how.” Contemporary policy analysts might also include “why?” Ripley and Franklin define policy and the policy process more specifically:

Policy is what the government says and does about perceived problems. Policy making is how the government decides what will be done about perceived problems. Policy making is a process of interaction among governmental and nongovernmental actors; policy is the outcome of that interaction.³

In a real world context, public policy can be understood as the public solutions which are implemented in an effort to solve public problems.

Policy actors are those individuals and groups, both formal and informal, which seek to influence the creation and implementation of these public solutions.

This chapter explores the function and influence that policy actors exert in the policy process. It begins with an overview of the policy process and then moves on to explore each actor within the process, including the institutional actors—Congress, the president, executive agencies, and the courts—and the noninstitutional actors—parties, interest groups, political consultants, and the media.

The policy process is significantly more subtle than many realize. While the Constitution provides for a legislature that makes laws, an executive that enforces laws, and a judiciary that interprets laws, the policy process has evolved into a confusing web of state and federal departments, agencies, and committees that make up the institutional policy



bureaucracy. In addition, the vast network of organized citizen groups (parties, interest groups, and PACs), as well as the rise of the electronic media, political consultants, and other image making professionals, further complicates the process. The role each actor plays, and the relationship between actors, is what determines policy outcomes.

INSTITUTIONAL ACTORS

Congress

Congress is a central institution in the policy process because of its legislative authority. Article I, section 8 of the Constitution defines the various powers of Congress, including the power to

- tax
- borrow money on the credit of the United States
- regulate interstate commerce
- regulate commerce with other nations
- produce currency and determine its value
- fix and regulate weights and measures
- establish a postal system
- establish a network of roads
- issue patents and copyrights
- declare war
- make any law that is “necessary and proper” in the implementation of the other powers

While congressional power is diffused among the 435 voting members of the House and 100 voting members of the Senate, there are specific points where power is focused. It is these points that are points of access for those seeking policy influence.

The vast majority of legislative decisions are made in committees. Between standing committees, special committees, joint committees, conference committees, and all of their associated sub-committees, there are several hundred committees in a typical congressional session. As Fenno⁴ describes, committees and sub-committees are responsible for the initial review of draft legislation. Committees can report positively or negatively on any bill, or they can report amended bills. Rather than report negatively on bills, however, committees typically ignore bills that lack favor. This precludes

the necessity of debating and voting on the bill on the full floor, since bills that are not acted upon die at the close of the congressional session.⁵

Committee chairs have disproportionate influence over policy as a consequence of their power to determine committee agendas. Similarly, certain committees have more policy influence than others. The House Rules Committee, for example, is responsible for determining which bills will be heard and in what order. The Appropriation Committees in both the House and Senate are responsible for reviewing any legislation that requires funding. The power that members of such committees hold and the powers of committee chairs make them key players in the policy process.

Congressional staffers are another source of influence that is often overlooked. In *The Power Game*⁶ Hedrick Smith describes staffers as “policy entrepreneurs.” Staffers are important in two areas. First, as Fiorina⁷ points out, the increasing use of staff in district offices to service constituents strengthens the Congress member’s position among local voters, perhaps explaining in part the strength of incumbency. Second, staffers are the real expertise behind the legislator. With over six thousand bills introduced in an average session, legislators rely more and more on staff to analyze legislation, negotiate compromises, research issues, and meet with lobbyists.⁸ In their roles as legislative analyst and policy negotiators, as well as their role as political confidant and counselor, senior staffers have significant policy influence.

There are several explanations of congressional behavior. What appears to be consistent between analyses is the observation that members of Congress are primarily concerned with achieving reelection. Mayhew⁹ argues that the organization of Congress itself evolved to maximize the re-electability of members. Since congressional power is tied to seniority, this is not surprising. But, it does have negative policy implications. If members are acting to maximize their individual political futures, their ability to govern in the national interest is severely limited. The need to satisfy constituent interests over national interests has led to dangerously high levels of pork in legislative outcomes. The election connection has other impacts which are similarly troubling. In 2008, the average cost to run a successful congressional

campaign was over \$1 million for a House seat and over \$6.5 million for a Senate seat.¹⁰ As a consequence, members of Congress are in a constant state of fundraising. Those interests with greater financial resources may thus achieve greater access. With limited time to meet with members of the public, legislators have a built-in incentive to meet with those individuals who can best benefit their reelection efforts.

Committee decisions, compromises between committees and executive agencies, the influence of staffers, and the cozy relationships between legislators and deep pocket lobbyists have even greater policy importance because they all take place outside of the public eye. Although, as a consequence of political reform in the 1970s, committee meetings are open, staff reports are available for public review, lobbyists are required to register with the government, and all financial contributions are public record, few people have the time to closely follow the intricacies of the policy process. As a consequence, members of Congress and those whose business it is to influence them—and thus have the time—are generally free to act without concern of public attention.

The President and The Executive Bureaucracy

Like Congress, the president is mandated by the Constitution as a partner in the policy process. But, unlike Congress, the president can only approve or disapprove legislation, he or she has no power to amend. Thus, the policy priorities of the president cannot be directly legislated. Rather, presidents must rely on legislative partners in both houses, and on, what Neustadt¹¹ called, the power to persuade.

In *The Presidential Policy Stream*, Paul Light suggests that presidential policy is a result of the “stream of people and ideas that flow through the White House.”¹² If public policy is a process of identifying problems, identifying solutions, and implementing those solutions, the identification of problems and solutions, Light argues, is tied to the assumptions held by players in that stream. The policy stream must accommodate the issues that percolate up through the systemic agenda, as well as those issues that may be on the presidential agenda.

In addition to balancing the demands of the systemic agenda with presidential policy objectives, the president also must balance domestic policy concerns with foreign policy concerns. Wildavsky¹³ suggests that there are in fact two presidencies: the domestic presidency and the foreign policy presidency. Each has different responsibilities and different policy objectives. The foreign policy president has much more power, Wildavsky argues, than the domestic president. As Richard Neustadt suggests, the domestic president may have to rely more on his or her ability to persuade Congress and members of the executive bureaucracy to implement presidential policy objectives than on any specific domestic power. The foreign policy president, on the other hand, has the power to move troops into combat, negotiate executive agreements and treaties, and controls a vast international intelligence network.

The implementation of presidential policy objectives involves a different set of problems than those of Congress. While Congress makes laws, the president can only recommend laws. Yet, the president, as chief executive, may do whatever is necessary to enforce legislation. That enforcement, typically, involves discretionary policy decisions. Article II, sections 2 and 3 define the powers of the president:

- to recommend policy proposals to Congress
- of Commander-in-Chief of the Armed Services (the power to move and control troops, but not to declare war)
- to grant pardons and reprieves for federal offenses except in cases of impeachment
- to make treaties with advice and consent of Senate
- to appoint federal judges, ambassadors, and consuls, and the heads of cabinet-level departments and regulatory agencies with the advice and consent of the Senate
- to “faithfully” enforce all laws

While the president is often looked upon to set the national policy agenda, he or she can only do so as long as he or she holds an ability to persuade. With the expressed powers of the president limited to specific areas, effective presidents must rely on their power to persuade members of Congress, the bureaucracy, the media, and the public.

When expressed powers are insufficient, presidents can rely on executive prerogative. Executive orders have the power of law but have no statutory basis. Roosevelt's 1942 executive order #9066 authorized the incarceration of 110,000 Japanese Americans without warrants, indictments, or hearings. Submitting to anti-Asian hysteria following the bombing of Pearl Harbor, Roosevelt lifted the constitutional protections of a specific class of American citizens.

Reagan's 1981 executive order #12291 required a benefit–cost calculation be performed prior to implementing any policy. If the costs outweighed the benefits, the policy would not be implemented. Aside from the obvious problem in quantifying benefits—what is the value of clean air, for example?—EO 12291 redefines the policy relationship between the executive and the legislature. Rather than fulfilling the constitutional imperative to “faithfully execute all laws,” EO 12291 claims for the executive the right to evaluate whether laws should be enforced, and how extensively.

Effective presidents use the powers and perks of their office to maximize their policy agendas. Appointments are a major source of policy influence. By appointing individuals who share his or her political perspective and agenda, a president is able to extend influence throughout the executive and judicial bureaucracies. Cabinet officers and heads of regulatory agencies establish policy priorities within their agencies. And, since most legislation allows for a significant measure of discretion among implementing and enforcement agencies, the Cabinet officers and agency heads have wide latitude in defining, implementing, and enforcing policy. This was well illustrated by Reagan's appointment of Anne Burford as EPA administrator. Burford, a corporate attorney who often represented clients in suits against the government over environmental regulations, sought to bring Reagan's anti-regulatory philosophy into the EPA. In order to sidestep the legislative mandate that defined EPA's mission, Burford instituted a variety of mechanisms intended to reduce environmental enforcement. She held unannounced meetings with regulated industries, effectively precluding public participation.¹⁴ Further, she centralized all decision making in her office, effectively

paralyzing staff activities.¹⁵ Ultimately, discretionary policy enforcement fell to an all-time low.¹⁶

The ability to control the executive bureaucracy is critical for the development and maintenance of presidential power. The tendency to organize bureaucratically is best described by Max Weber, who suggests that “modern officialdom” seeks the efficiency of specificity and hierarchy.¹⁷ Bureaucratic government incorporates a vast network of interrelated offices, each of which has a specific jurisdiction and a specific task (task differentiation); there is a set hierarchy; and authority is subservient to the rule of law. In “The Rise of the Bureaucratic State,” Wilson explores the evolution of the American bureaucracy.¹⁸ While bureaucratic organization is necessary to administer a society of 300 million people, the size of the bureaucracy itself represents certain hazards. Weber warned that bureaucracies inevitably become insensitive to individual concerns. With the executive bureaucracy employing over 4.5 million people, it may often appear sluggish and unresponsive. Still, specialization is critical for effective government; the Department of Defense clearly has different needs and concerns than the Department of Agriculture. There may, as a result, be little alternative to bureaucratic organization.

The policy influence of regulatory agencies within the executive bureaucracy is substantial. Kenneth Meier and Sheila Jasonoff¹⁹ identify key influences of administrative agencies. Meier describes the regulatory process as a combination of regulatory bureaucracies (values, expertise, agency subculture, bureaucratic entrepreneurs) and public interaction (interest groups, economic issues, legislative committees and sub-committees). Jasonoff observes that regulatory outcomes often reflect the key influence of nonelected and nonappointed science advisors. Regulatory outcomes are a consequence of subsystem interaction between all of these influences. Those who are best able to influence these subsystems are best able to maximize their interests. As a result, policy subsystems are major points of access for policy influence.

The Courts

The influence of judges in interpreting laws has an equally significant impact on policy. The

Brown v. Topeka Board of Education decision in 1955, for example, initiated antisegregation policies and acted as a catalyst for the voting rights acts of the 1960s and civil rights policies through the 1980s. Similarly, the 1973 *Roe v. Wade* decision virtually defined abortion policy thereafter. But, judicial policy influence is not restricted to Supreme Court decisions. Lawrence Baum and Gerald Rosenberg have different views of this.²⁰ Baum points out that appellate courts are significant, if often ignored, partners in policy making. Appellate courts have had critical policy influence in several areas, including abortion and civil rights policy. Rosenberg observes that in spite of the heavy influence of *Brown* or *Roe*, in many areas court decisions have actually had very little policy influence.

The policy role of the judiciary is not universally appreciated. The current debate over judicial activism and judicial restraint is only the most recent in a long discourse. In “Towards an Imperial Judiciary?”²¹ Nathan Glazer argues that judicial activism infringes on democratic policy institutions, and that an activist court erodes the respect and trust people hold for the judiciary. Still, whether a court is active or passive, there are significant policy implications. While the *Brown* decision may be considered “activist,” for example, had the court chosen to remain passive, civil rights policy might have remained nonexistent for many more years. Nonaction is in itself a policy decision with substantial policy implications.

NONINSTITUTIONAL ACTORS

Public policy is not merely the result of independent policy-making institutions. Noninstitutional actors also play a significant role: the public elects legislators and executives; the media influences policy through its inherent agenda setting function; parties, in their role in drafting and electing candidates, influence policy through influencing the composition of legislative and executive bodies; and, organized interest groups lobby elected officials and nonelected policy makers (e.g., agency staff). Policy, then, is a result of institutional processes influenced by non-institutional actors.

Media

The media are influential to policy outcomes because they help define social reality.²² The work of McCombs and Shaw²³ supports the assertion that the media influence the salience of issues. As Lippmann²⁴ observed in 1922, perceptions of reality are based on a tiny sampling of the world around us. No one can be everywhere, no one can experience everything. Thus, to a greater or lesser extent, all of us rely on media portrayals of reality.

Graber²⁵ argues that the way people process information makes them especially vulnerable to media influence. First, people tend to pare down the scope of information they confront. Second, people tend to think schematically. When confronted with information, individuals will fit that information into pre-existing schema. And, since news stories tend to lack background and context, schemata allow the individual to give the information meaning. In such a way, individuals recreate reality in their minds.

The data collected by Iyengar and Kinder²⁶ show that television news, to a great extent, defines which problems the public considers most serious. Iyengar and Kinder refine the agenda-setting dynamic to include what they call “priming.” Priming refers to the selective coverage of only certain events and the selective way in which those events are covered. Since there is no way to cover all events, or cover any event completely, selective decisions must be made. But, there are consequences.

By priming certain aspects of national life while ignoring others, television news sets the terms by which political judgments are rendered and political choices made (Iyengar and Kinder 1987:4). The implications for public policy are serious. If policy is a result of the problem recognition model that Theodoulou²⁷ summarized earlier, then the problems that gain media recognition are much more likely to be addressed.

Parties

Political parties are distinct from other citizen organizations. Rather than attempting to influence existing policy makers, parties seek to get their own members elected to policy-making positions.

While interest groups seek influence on specific policy issues, parties seek influence on a wide spectrum of policy issues. Parties develop issue platforms, draft candidates, campaign on behalf of candidates, and work to get out the vote. In short, parties work to bring together citizens under a common banner.

While most people may think of parties only during election cycles, their policy influence extends beyond campaigns. While the rise of the media over the last thirty years has de-emphasized the power of parties in electoral politics, Eldersveld²⁸ accurately points out that parties continue to play a dominant role in policy outcomes. First and foremost, the party that emerges dominant determines the direction policy will take.

The president is responsible to the party that got him or her elected and therefore must pursue at least some of the policy objectives articulated at the party convention. Congress continues to distribute committee membership and chairmanships according to party affiliation. While negotiation and compromise is typically necessary, the general direction of congressional policy is directly tied to the ideology of the larger party. The strength of political parties has waned over the past three decades, but parties maintain policy influence in critical areas. Elections, patronage appointments, legislative committees, and national policy discourses all reflect the influence of parties.

Interest Groups

Interest groups are a fundamental partner in policy making. Citizens participate in the policy process through communication with policy makers. Such communication takes place individually (e.g., letters to elected representatives) and collectively. Interest groups facilitate collective communication. James Madison recognized the propensity for individuals to factionalize in an effort to maximize political influence.²⁹ Robert Dahl further refined the analysis of Madisonian democracy, arguing that in an open society all persons have the right to press their interests. To the extent others share these interests, collective pressure may allow greater policy influence. Indeed, Dahl argued, those issues that

have greater salience have greater interest group representation.³⁰

The interest group dynamic, however, is not so simple. While it may be true that many salient issues have interest group representation, the strength of that representation is not tied to the strength of the issue's salience. Further, the salience itself may be a consequence of interest group action. When studying policy outcomes, it is necessary to identify the policy actors and the political resources they use. Maximizing policy requires specific political resources. The most common resources include bureaucratic knowledge, a network of contacts, citizen backing (size of constituency), an ability to make political contributions, and an ability to mount a public relations (media) campaign. Clearly, no group utilizes all of these resources. But, the ability of an organized group to utilize one or more of these resources is critical for policy influence.

The pluralist model of counterbalancing elites mediating interests is inadequate. The theoretical work done by Mills and empirical work done by Schattschneider, Domhoff, and Presthus, among others, suggest that rather than competing, the interests of economic elites tend to cohere in key policy areas.³¹ Lowi's *The End of Liberalism*³² argues that this interest group influence threatens the democratic basis of government. If interest groups provide the framework for government-citizen interaction, and these groups are based on individual self-interest, there is little opportunity for pursuing a meaningful national interest.

Not only are corporate interest groups and PACs at an all-time high, but the structure of the policy-making establishment has come to accept private think tanks as democratic institutions. The Brookings Institute, RAND Corporation, Council for Economic Development (CED), Council on Foreign Relations (CFR), and others form a bridge between corporate interests and government. The think tanks are considered by many policy makers to be neutral policy consultants and are thus extended great access to the policy-making arena. Yet, virtually all of them have strong foundations in the corporate community. The RAND Corporation was created as a joint venture between the U.S. Airforce and the aerospace industry as a think tank devoted

to the theory and technology of deterrence. The CED was founded in the early 1940s by a consortium of corporate leaders to influence specific policy formation. The CFR was founded in 1921 by corporate executives and financiers to help shape foreign policy. As a result, economic elites are able to influence policy through what are essentially interest group think tanks.³³

Political Consultants

Increasingly, political expertise is purchased by those with the need and the resources. In reviewing the rise and structure of the political consulting industry, Sabato³⁴ exposes the fragile relationship between articulating ideas in a political marketplace and manipulating public opinion. It is virtually impossible to win at the policy game without the marketing skills held by consultants and strategists. Like many other policy resources, political consultants are costly. As a consequence, those with greater economic resources enjoy a policy advantage.

CONCLUSION

This chapter has explored the role and influence of actors in the policy process—both institutional (Congress, the president and executive bureaucracy, and the Courts) and noninstitutional (media, parties, interest groups, and political consultants). From the discussion it can be seen that policy outcomes are typically a result of institutional processes *and* noninstitutional influence.

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Congress: Keystone of the Washington Establishment

Morris Fiorina

In this chapter... I will set out a theory of the Washington establishment(s). The theory is quite plausible from a commonsense standpoint, and it is consistent with the specialized literature of academic political science. Nevertheless, it is still a theory, not proven fact. Before plunging in let me bring out in the open the basic axiom on which the theory rests: the self-interest axiom.

I assume that most people most of the time act in their own self-interest. This is not to say that human beings seek only to amass tangible wealth but rather to say that human beings seek to achieve their own ends—tangible and intangible—rather than the ends of their fellow men. I do not condemn such behavior nor do I condone it (although I rather sympathize with Thoreau's comment that "if I knew for a certainty that a man was coming to my house with the conscious design of doing me good. I should run for my life."¹ I only claim that political and economic theories which presume self-interested behavior will prove to be more widely applicable than those which build on more altruistic assumptions.

What does the axiom imply when used in the specific context ... a context peopled by congressmen, bureaucrats, and voters? I assume that the primary goal of the typical congressman is reelection. Over and above the \$45,000 salary plus "perks" and outside money, the office

of congressman carries with it prestige, excitement, and power. It is a seat in the cockpit of government. But in order to retain the status, excitement, and power (not to mention more tangible things) of office, the congressman must win reelection every two years. Even those congressmen genuinely concerned with good public policy must achieve reelection in order to continue their work. Whether narrowly self-serving or more publicly oriented, the individual congressman finds reelection to be at least a necessary condition for the achievement of his goals.²

Moreover, there is a kind of natural selection process at work in the electoral arena. On average, those congressmen who are not primarily interested in reelection will not achieve reelection as often as those who are interested. We, the people, help to weed out congressmen whose primary motivation is not reelection. We admire politicians who courageously adopt the aloof role of the disinterested statesman, but we vote for those politicians who follow our wishes and do us favors.

What about the bureaucrats? A specification of their goals is somewhat more controversial—those who speak of appointed officials as public servants obviously take a more benign view than those who speak of them as bureaucrats. The literature provides ample justification for asserting

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that most bureaucrats wish to protect and nurture their agencies. The typical bureaucrat can be expected to seek to expand his agency in terms of personnel, budget, and mission. One's status in Washington (again, not to mention more tangible things) is roughly proportional to the importance of the operation one oversees. And the sheer size of the operation is taken to be a measure of importance. As with congressmen, the specified goals apply even to those bureaucrats who genuinely believe in their agency's mission. If they believe in the efficacy of their programs, they naturally wish to expand them and add new ones. All of this requires more money and more people. The genuinely committed bureaucrat is just as likely to seek to expand his agency as the proverbial empire-builder.³

And what of the third element in the equation, us? What do we, the voters who support the Washington system, strive for? Each of us wishes to receive a maximum of benefits from government for the minimum cost. This goal suggests maximum government efficiency, on the one hand, but it also suggests mutual exploitation on the other. Each of us favors an arrangement in which our fellow citizens pay for our benefits.

With these brief descriptions of the cast of characters in hand, let us proceed.

TAMMANY HALL GOES TO WASHINGTON

What should we expect from a legislative body composed of individuals whose first priority is their continued tenure in office? We should expect, first, that the normal activities of its members are those calculated to enhance their chances of reelection. And we should expect, second, that the members would devise and maintain institutional arrangements which facilitate their electoral activities....

For most of the twentieth century, congressmen have engaged in a mix of three kinds of activities: lawmaking, pork barreling, and casework. Congress is first and foremost a lawmaking body, at least according to constitutional theory. In every postwar session Congress "considers" thousands of bills and resolutions, many hundreds of which are brought to a record vote (over 500 in

each chamber in the 93rd Congress). Naturally the critical consideration in taking a position for the record is the maximization of approval in the home district. If the district is unaffected by and unconcerned with the matter at hand, the congressman may then take into account the general welfare of the country. (This sounds cynical, but remember that "profiles in courage" are sufficiently rare that their occurrence inspires books and articles.) Abetted by political scientists of the pluralist school, politicians have propounded an ideology which maintains that the good of the country on any given issue is simply what is best for a majority of congressional districts. This ideology provides a philosophical justification for what congressmen do while acting in their own self-interest.

A second activity favored by congressmen consists of efforts to bring home the bacon to their districts. Many popular articles have been written about the pork barrel, a term originally applied to rivers and harbors legislation but now generalized to cover all manner of federal largesse.⁴ Congressmen consider new dams, federal buildings, sewage treatment plants, urban renewal projects, etc. as sweet plums to be plucked. Federal projects are highly visible, their economic impact is easily detected by constituents, and sometimes they even produce something of value to the district. The average constituent may have some trouble translating his congressman's vote on some civil rights issue into a change in his personal welfare. But the workers hired and supplies purchased in connection with a big federal project provide benefits that are widely appreciated. The historical importance congressmen attach to the pork barrel is reflected in the rules of the House. That body accords certain classes of legislation "privileged" status: they may come directly to the floor without passing through the Rules Committee, a traditional graveyard for legislation. What kinds of legislation are privileged? Taxing and spending bills, for one: the government's power to raise and spend money must be kept relatively unfettered. But in addition, the omnibus rivers and harbors bills of the Public Works Committee and public lands bills from the Interior Committee share privileged status. The House will allow a civil rights or defense

procurement or environmental bill to languish in the Rules Committee, but it takes special precautions to insure that nothing slows down the approval of dams and irrigation projects.

A third major activity takes up perhaps as much time as the other two combined. Traditionally, constituents appeal to their congressman for myriad favors and services. Sometimes only information is needed, but often constituents request that their congressman intervene in the internal workings of federal agencies to affect a decision in a favorable way, to reverse an adverse decision, or simply to speed up the glacial bureaucratic process. On the basis of extensive personal interviews with congressmen, Charles Clapp writes:

Denied a favorable ruling by the bureaucracy on a matter of direct concern to him, puzzled or irked by delays in obtaining a decision, confused by the administrative maze through which he is directed to proceed, or ignorant of whom to write, a constituent may turn to his congressman for help. These letters offer great potential for political benefit to the congressman since they affect the constituent personally. If the legislator can be of assistance, he may gain a firm ally; if he is indifferent, he may even lose votes.⁵

Actually congressmen are in an almost unique position in our system, a position shared only with high-level members of the executive branch. Congressmen possess the power to expedite and influence bureaucratic decisions. This capability flows directly from congressional control over what bureaucrats value most: higher budgets and new program authorizations. In a very real sense each congressman is a monopoly supplier of bureaucratic unsticking services for his district.

Every year the federal budget passes through the appropriations committees of Congress. Generally these committees make perfunctory cuts. But on occasion they vent displeasure on an agency and leave it bleeding all over the Capitol. The most extreme case of which I am aware came when the House committee took away the entire budget of the Division of Labor Standards in 1947 (some of the budget was restored elsewhere

in the appropriations process). Deep and serious cuts are made occasionally, and the threat of such cuts keeps most agencies attentive to congressional wishes. Professors Richard Fenno and Aaron Wildavsky have provided extensive documentary and interview evidence of the great respect (and even terror) federal bureaucrats show for the House Appropriations Committee.⁶ Moreover, the bureaucracy must keep coming back to Congress to have its old programs reauthorized and new ones added. Again, most such decisions are perfunctory, but exceptions are sufficiently frequent that bureaucrats do not forget the basis of their agencies' existence. For example, the Law Enforcement Assistance Administration (LEAA) and the Food Stamps Program had no easy time of it this last Congress (94th). The bureaucracy needs congressional approval in order to survive, let alone expand. Thus, when a congressman calls about some minor bureaucratic decision or regulation, the bureaucracy considers his accommodation a small price to pay for the goodwill its cooperation will produce, particularly if he has any connection to the substantive committee or the appropriations subcommittee to which it reports.

From the standpoint of capturing voters, the congressman's lawmaking activities differ in two important respects from his porkbarrel and casework activities. First, programmatic actions are inherently controversial. Unless his district is homogeneous, a congressman will find his district divided on many major issues. Thus when he casts a vote, introduces a piece of nontrivial legislation, or makes a speech with policy content he will displease some elements of his district. Some constituents may applaud the congressman's civil rights record, but others believe integration is going too fast. Some support foreign aid, while others believe it's money poured down a rathole. Some advocate economic equality, others stew over welfare cheaters. On such policy matters the congressman can expect to make friends as well as enemies. Presumably he will behave so as to maximize the excess of the former over the latter, but nevertheless a policy stand will generally make some enemies.

In contrast, the pork barrel and casework are relatively less controversial. New federal projects bring jobs, shiny new facilities, and

general economic prosperity, or so people believe. Snipping ribbons at the dedication of a new post office or dam is a much more pleasant pursuit than disposing of a constitutional amendment on abortion. Republicans and Democrats, conservatives and liberals, all generally prefer a richer district to a poorer one. Of course, in recent years the river damming and stream-bed straightening activities of the Army Corps of Engineers have aroused some opposition among environmentalists. Congressmen happily reacted by absorbing the opposition and adding environmentalism to the pork barrel: water treatment plants are currently a hot congressional item.

Casework is even less controversial. Some poor, aggrieved constituent becomes enmeshed in the tentacles of an evil bureaucracy and calls upon Congressman St. George to do battle with the dragon. Again Clapp writes;

A person who has a reasonable complaint or query is regarded as providing an opportunity rather than as adding an extra burden to an already busy office. The party affiliation of the individual even when known to be different from that of the congressman does not normally act as a deterrent to action. Some legislators have built their reputations and their majorities on a program of service to all constituents irrespective of party. Regularly, voters affiliated with the opposition in other contests lend strong support to the lawmaker whose intervention has helped them in their struggle with the bureaucracy.⁷

Even following the revelation of sexual improprieties, Wayne Hays won his Ohio Democratic primary by a two-to-one margin. According to a *Los Angeles Times* feature story, Hays's constituency base was built on a foundation of personal service to constituents:

They receive help in speeding up bureaucratic action on various kinds of federal assistance—black lung benefits to disabled miners and their families, Social Security payments, veterans' benefits and passports.

Some constituents still tell with pleasure of how Hays stormed clear to the

seventh floor of the State Department and into Secretary of State Dean Rusk's office to demand, successfully, the quick issuance of a passport to an Ohioan.⁸

Practicing politicians will tell you that word of mouth is still the most effective mode of communication. News of favors to constituents gets around and no doubt is embellished in the process.

In sum, when considering the benefits of his programmatic activities, the congressman must tote up gains and losses to arrive at a net profit. Pork barreling and casework, however, are basically pure profit.

A second way in which programmatic activities differ from casework and the pork barrel is the difficulty of assigning responsibility to the former as compared with the latter. No congressman can seriously claim that he is responsible for the 1964 Civil Rights Act, the ABM, or the 1972 Revenue Sharing Act. Most constituents do have some vague notion that their congressman is only one of hundreds and their senator one of an even hundred. Even committee chairmen may have a difficult time claiming credit for a piece of major legislation, let alone a rank-and-file congressman. Ah, but casework, and the pork barrel. In dealing with the bureaucracy, the congressman is not merely one vote of 435. Rather, he is a nonpartisan power, someone whose phone calls snap an office to attention. He is not kept on hold. The constituent who receives aid believes that his congressman and his congressman alone got results. Similarly, congressmen find it easy to claim credit for federal projects awarded their districts. The congressman may have instigated the proposal for the project in the first place, issued regular progress reports, and ultimately announced the award through his office. Maybe he can't claim credit for the 1965 Voting Rights Act, but he can take credit for Littletown's spanking new sewage treatment plant.

Overall then, programmatic activities are dangerous (controversial), on the one hand, and programmatic accomplishments are difficult to claim credit for, on the other. While less exciting, casework and pork barreling are both safe and profitable. For a reelection-oriented congressman the choice is obvious.

The key to the rise of the Washington establishment (and the vanishing marginals) is the following observation: *the growth of an activist federal government has stimulated a change in the mix of congressional activities*. Specifically, a lesser proportion of congressional effort is now going into programmatic activities and a greater proportion into pork-barrel and casework activities. As a result, today's congressmen make relatively fewer enemies and relatively more friends among the people of their districts.

To elaborate, a basic fact of life in twentieth-century America is the growth of the federal role and its attendant bureaucracy. Bureaucracy is the characteristic mode of delivering public goods and services. *Ceteris paribus*, the more the government attempts to do for people, the more extensive a bureaucracy it creates. As the scope of government expands, more and more citizens find themselves in direct contact with the federal government. Consider the rise in such contacts upon passage of the Social Security Act, work relief projects and other New Deal programs. Consider the millions of additional citizens touched by the veterans' programs of the post-war period. Consider the untold numbers whom the Great Society and its aftermath brought face to face with the federal government. In 1930 the federal bureaucracy was small and rather distant from the everyday concerns of Americans. By 1975 it was neither small nor distant.

As the years have passed, more and more citizens and groups have found themselves dealing with the federal bureaucracy. They may be seeking positive actions—eligibility for various benefits and awards of government grants. Or they may be seeking relief from the costs imposed by bureaucratic regulations—on working conditions, racial and sexual quotas, market restrictions, and numerous other subjects. While not malevolent, bureaucracies make mistakes, both of commission and omission, and normal attempts at redress often meet with unresponsiveness and inflexibility and sometimes seeming incorrigibility. Whatever the problem, the citizen's congressman is a source of succor. The greater the scope of government activity, the greater the demand for his services.

Private monopolists can regulate the demand for their product by raising or lowering the price.

Congressmen have no such (legal) option. When the demand for their services rises, they have no real choice except to meet that demand—to supply more bureaucratic unsticking services—so long as they would rather be elected than unelected. This vulnerability to escalating constituency demands is largely academic, though. I seriously doubt that congressmen resist their gradual transformation from national legislators to errand boy-ombudsmen. As we have noted, casework is all profit. Congressmen have buried proposals to relieve the casework burden by establishing a national ombudsman or Congressman Reuss's proposed Administrative Counsel of the Congress. One of the congressmen interviewed by Clapp stated:

Before I came to Washington I used to think that it might be nice if the individual states had administrative arms here that would take care of necessary liaison between citizens and the national government. But a congressman running for reelection is interested in building fences by providing personal services. The system is set to reelect incumbents regardless of party, and incumbents wouldn't dream of giving any of this service function away to any subagency. As an elected member I feel the same way.⁹

In fact, it is probable that at least some congressmen deliberately stimulate the demand for their bureaucratic fixit services. (See the exhibit at the end of this chapter.) Recall that the new Republican in district A travels about his district saying:

I'm your man in Washington. What are your problems? How can I help you?

And in district B, did the demand for the congressman's services rise so much between 1962 and 1964 that a "regiment" of constituency staff became necessary? Or, having access to the regiment, did the new Democrat stimulate the demand to which he would apply his regiment?

In addition to greatly increased casework, let us not forget that the growth of the federal role has also greatly expanded the federal pork barrel. The creative pork barreler need not limit


himself to dams and post offices—rather old-fashioned interests. Today, creative congressmen can cadge LEAA money for the local police, urban renewal and housing money for local politicians, educational program grants for the local education bureaucracy. And there are sewage treatment plants, worker training and retraining programs, health services, and programs for the elderly. The pork barrel is full to overflowing. The conscientious congressman can stimulate applications for federal assistance (the sheer number of programs makes it difficult for local officials to stay current with the possibilities), put in a good word during consideration, and announce favorable decisions amid great fanfare.

In sum, everyday decisions by a large and growing federal bureaucracy bestow significant tangible benefits and impose significant tangible costs. Congressmen can affect these decisions. Ergo, the more decisions the bureaucracy has the opportunity to make, the more opportunities there are for the congressman to build up credits.

The nature of the Washington system is now quite clear. Congressmen (typically the majority Democrats) earn electoral credits by establishing various federal programs (the minority Republicans

typically earn credits by fighting the good fight). The legislation is drafted in very general terms, so some agency, existing or newly established, must translate a vague policy mandate into a functioning program, a process that necessitates the promulgation of numerous rules and regulations and, incidentally, the trampling of numerous toes. At the next stage, aggrieved and/or hopeful constituents petition their congressman to intervene in the complex (or at least obscure) decision processes of the bureaucracy. The cycle closes when the congressman lends a sympathetic ear, piously denounces the evils of bureaucracy, intervenes in the latter's decisions, and rides a grateful electorate to ever more impressive electoral showings. Congressmen take credit coming and going. They are the alpha and the omega.

The popular frustration with the permanent government in Washington is partly justified, but to a considerable degree it is misplaced resentment. *Congress is the linchpin of the Washington establishment.* The bureaucracy serves as a convenient lightning rod for public frustration and a convenient whipping boy for congressmen. But so long as the bureaucracy accommodates congressmen, the latter will oblige with ever larger




NEED HELP WITH A FEDERAL PROBLEM?

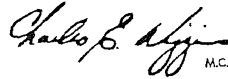
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CONGRESSMAN CHARLES E. WIGGINS
 Breshears Center, Suite 103
 1400 N. Harbor Boulevard
 Fullerton, Ca. 92635 (714) 870-7266

My Washington address is
 Room 1445 Rayburn Building, Washington, D.C.
 20515. Telephone (202) 225-4111

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EXHIBIT: How the Congressman-as-Ombudsman Drums up Business

budgets and grants of authority. Congress does not just react to big government—it creates it. All of Washington prospers. More and more bureaucrats promulgate more and more regulations and dispense more and more money. Fewer and fewer congressmen suffer electoral defeat. Elements of the electorate benefit from government programs, and all of the electorate is eligible for ombudsman services. But the general, long-term welfare of the United States is no more than an incidental by-product of the system.

End Notes

1. Henry David Thoreau, *Walden* (London: Walter Scott Publishing Co., no date) p. 72.
2. For a more extended discussion of the electoral motivation see Fiorina, *Representatives, Roll Calls, and Constituencies*, chap. 2; David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).
3. For a discussion of the goals of bureaucrats see William Niskanen, *Bureaucracy and Representative Government* (Chicago: Aldine-Atherton, 1971).
4. The traditional pork barrel is the subject of an excellent treatment by John Ferejohn. See his *Pork Barrel Politics: Rivers and Harbors Legislation 1947–1968*, (Stanford: Stanford University Press, 1974).
5. Charles Clapp, *The Congressman: His Job As He Sees It* (Washington: Brookings Institution, 1963), p. 84.
6. Richard Fenno, *The Power of the Purse* (Boston: Little, Brown, 1966); Aaron Wildavsky, *The*

Politics of the Budgetary Process, 2d ed. (Boston: Little, Brown, 1974).

7. Clapp, *The Congressman: His Job As He Sees It*, p. 84.
8. “Hays Improves Rapidly from Overdose,” *Los Angeles Times*, June 12, 1976, part I, p. 19. Similarly, Congressman Robert Leggett (D., Calif.) won reelection in 1976 even amid revelations of a thirteen-year bigamous relationship and rumors of other affairs and improprieties. The *Los Angeles Times* wrote:

Because of federal spending, times are good here in California’s 4th Congressional District, and that is a major reason why local political leaders in both parties, as well as the man on the street, believe that Leggett will still be their congressman next year....

Leggett has concentrated on bringing federal dollars to his district and on acting as an ombudsman for constituents having problems with their military pay or Social Security or GI benefit checks. He sends out form letters to parents of newborn children congratulating them.

Traditionally, personal misbehavior has been one of the few shoals on which incumbent congressmen could founder. But today’s incumbents have so entrenched themselves by personal service to constituents that even scandal does not harm them mortally. See David Johnson, “Rep. Leggett Expected to Survive Sex Scandal,” *Los Angeles Times*, July 26, 1976, part I, p. 1.

9. Clapp, *The Congressman: His Job As He Sees It*, p. 94.

Congress: The Electoral Connection

David Mayhew

How to study legislative behavior is a question that does not yield a consensual answer among political scientists. An ethic of conceptual pluralism prevails in the field, and no doubt it should. If there is any consensus, it is on the point that scholarly treatments should offer explanations—that they should go beyond descriptive accounts of legislators and legislatures to supply general statements about why both of them do what they do. What constitutes a persuasive explanation? In their contemporary quest to find out, legislative students have ranged far and wide, sometimes borrowing or plundering explanatory styles from the neighboring social sciences.

The most important borrowing has been from sociology. In fact it is fair to say that legislative research in the 1950s and 1960s had a dominant sociological tone to it. The literature abounded in terms like *role*, *norm*, *system*, and *socialitation*. We learned that some United States senators adopt an “outsider” role;¹ that the House Appropriations Committee can usefully be viewed as a self-maintaining system;² that legislators can be categorized as “trustees,” “politicos,” or “delegates”;³ that the United States Senate has “followways.”⁴ These findings and others like them grew out of research based for the first time on systematic elite interviewing.

From no other social science has borrowing been so direct or so important. But it is possible to point to writings that have shared—or

partly shared—a root assumption of economics. The difference between economic and sociological explanation is sharp. As Niskanen puts it, “the ‘compositive’ method of economics, which develops hypotheses about social behavior from models of purposive behavior by individuals, contrasts with the ‘collectivist’ method of sociology, which develops hypotheses about social behavior from models of role behavior by aggregative ideal types.”⁵ To my knowledge no political scientist has explicitly anchored his legislative research in economics, but a number have in one way or another invoked “purposive behavior” as a guide to explanation. Thus there are three articles by Scher in which he posits the conditions under which congressmen will find it in their interest to engage in legislative oversight.⁶ Other examples are Wildavsky’s work on bargaining in the budgetary process⁷ and Riker’s general work on coalition building with its legislative applications.⁸ More recently Manley and Fenno have given a clear purposive thrust to their important committee studies.⁹ Fenno’s thinking has evolved to the point where he now places a strong emphasis on detecting why congressmen join specific committees and what they get out of being members of them.

There is probably a disciplinary drift toward the purposive, a drift, so to speak, from the sociological toward the economic. If so, it occurs at a time when some economists are themselves edging over into the legislative field. There is

Congress: The Electoral Connection, by David Mayhew. Copyright © 1974 by Yale University Press. Reprinted with permission.

Lindblom's writing on the politics of partisan mutual adjustment, with its legislative ramifications.¹⁰ More generally there are recent writings of economists in the public finance tradition.¹¹ Public finance has its normative and empirical sides, the former best exemplified here in the discussion of legislative decision making offered by Buchanan and Tullock.¹² Niskanen develops the empirical side in his work positing bureaus as budget maximizers—an effort that leads him to hypothesize about the relations between bureaus and legislative committees.¹³ Public finance scholars seem to have become interested in legislative studies as a result of their abandoning the old idea of the Benthamite legislator; that is, they have come to display a concern for what public officials actually do rather than an assumption that officials will automatically translate good policy into law once somebody finds out what it is.¹⁴ With political scientists exploring the purposive and economists the legislative, there are at least three forms that future relations between writers in the two disciplines could take. First, scholars in both could continue to disregard each other's writings. Second, they could engage in an unseemly struggle over turf. Third, they could use each other's insights to develop collectively a more vigorous legislative scholarship in the style of political economy.

All this is an introduction to a statement of what I intend to do in the following essay. Mostly through personal experience on Capitol Hill, I have become convinced that scrutiny of purposive behavior offers the best route to an understanding of legislatures—or at least of the United States Congress. In the fashion of economics, I shall make a simple abstract assumption about human motivation and then speculate about the consequences of behavior based on that motivation. Specifically, I shall conjure up a vision of United States congressmen as single-minded seekers of reelection, see what kinds of activity that goal implies, and then speculate about how congressmen so motivated are likely to go about building and sustaining legislative institutions and making policy. At all points I shall try to match the abstract with the factual.

I find an emphasis on the reelection goal attractive for a number of reasons. First, I think

it fits political reality rather well. Second, it puts the spotlight directly on men rather than on parties and pressure groups, which in the past have often entered discussions of American politics as analytic phantoms. Third, I think politics is best studied as a struggle among men to gain and maintain power and the consequences of that struggle. Fourth—and perhaps most important—the reelection quest establishes an accountability relationship with an electorate, and any serious thinking about democratic theory has to give a central place to the question of accountability. The abstract assumption notwithstanding, I regard this venture as an exercise in political science rather than economics. Leaving aside the fact that I have no economics expertise to display, I find that economists who study legislatures bring to bear interests different from those of political scientists. Not surprisingly the public finance scholars tend to look upon government as a device for spending money. I shall give some attention to spending, but also to other governmental activities such as the production of binding rules. And I shall touch upon such traditional subjects of political science as elections, parties, governmental structure, and regime stability. Another distinction here is that economics research tends to be infused with the normative assumption that policy decisions should be judged by how well they meet the standard of Pareto optimality. This is an assumption that I do not share and that I do not think most political scientists share. There will be no need here to set forth any alternative assumption. I may say, for the record, that I find the model of proper legislative activity offered by Rawls a good deal more edifying than any that could be built on a foundation of Pareto optimality.¹⁵

My subject of concern here is a single legislative institution, the United States Congress. In many ways, of course, the Congress is a unique or unusual body. It is probably the most highly “professionalized” of legislatures, in the sense that it promotes careerism among its members and gives them the salaries, staff, and other resources to sustain careers.¹⁶ Its parties are exceptionally diffuse. It is widely thought to be especially “strong” among legislatures as a checker of executive power. Like most Latin American legislatures but unlike most European ones, it labors in

the shadow of a separately elected executive. My decision to focus on the Congress flows from a belief that there is something to be gained in an intensive analysis of a particular and important institution. But there is something general to be gained as well, for the exceptionalist argument should not be carried too far. In a good many ways the Congress is just one in a large family of legislative bodies. I shall find it useful at various points in the analysis to invoke comparisons with European parliaments and with American state legislatures and city councils. I shall ponder the question of what “functions” the Congress performs or is capable of performing—a question that can be answered only with the records of other legislatures in mind. Functions to be given special attention are those of legislating, overseeing the executive, expressing public opinion, and servicing constituents. No functional capabilities can be automatically assumed.¹⁷ Indeed the very term *legislature* is an unfortunate one because it confuses structure and function. Accordingly I shall from here on use the more awkward but more neutral term *representative assembly* to refer to members of the class of entities inhabited by the United States House and Senate. Whatever the noun, the identifying characteristics of institutions in the class have been well stated by Loewenberg: it is true of all such entities that (1) “their members are formally equal to each other in status, distinguishing parliaments from hierarchically ordered organizations,” and (2) “the authority of their members depends on their claim to representing the rest of the community, in some sense of that protean concept, representation.”¹⁸...

End Notes

1. Ralph K. Huitt, “The Outsider in the Senate: An Alternative Role,” ch. 4 in Huitt and Robert L. Peabody (eds.), *Congress: Two Decades of Analysis* (New York: Harper and Row, 1969).
2. Richard F. Fenno, Jr., *The Power of the Purse* (Boston: Little, Brown and Co., 1966), ch. 5.
3. John C. Wahlke et al., *The Legislative System* (New York: Wiley, 1962), ch. 12; Roger H. Davidson, *The Role of the Congressman* (New York: Pegasus, 1969), ch. 4.
4. Donald R. Matthews, *U.S. Senators and Their World* (Chapel Hill: University of North Carolina Press, 1960), ch. 5.
5. William A. Niskanen, *Bureaucracy and Representative Government* (New York: Aldine-Atherton, 1971), p. 5.
6. Seymour Scher, “Congressional Committee Members as Independent Agency Overseers: A Case Study,” *54 American Political Science Review* 911–20 (1960); “The Politics of Agency Organization,” *15 Western Political Quarterly* 328–44 (1962); “Conditions for Legislative Control,” *25 Journal of Politics* 526–51 (1963).
7. Aaron Wildavsky, *The Politics of the Budgetary Process* (Boston: Little, Brown and Co., 1964).
8. William H. Riker, *The Theory of Political Coalitions* (New Haven: Yale University Press, 1962), with ch. 7 specifically on Congress; also William H. Riker and Donald Niemi, “The Stability of Coalitions in the House of Representatives,” *56 American Political Science Review* 58–65 (1962).
9. John F. Manley, *The Politics of Finance: The House Committee on Ways and Means* (Boston: Little, Brown and Co., 1970); Richard F. Fenno, Jr., *Congressmen in Committees* (Boston: Little, Brown and Co., 1973).
10. Charles E. Lindblom, *The Intelligence of Democracy* (New York: Free Press, 1965).
11. A suitable characterization of this tradition: “The theory of public finance has addressed itself to the questions of how much money should be spent on public expenditures, how these expenditures should be distributed among different public wants, and how the costs should be distributed between present and future, and among the members of the society.” James S. Coleman, “Individual Interests and Collective Action,” in Gordon Tullock (ed.), *Papers on Non-Market Decision-Making* (Charlottesville; Thomas Jefferson Center for Political Economy, University of Virginia, 1966).
12. James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1967), part III.
13. Niskanen, *Bureaucracy and Representative Government*.
14. There is a discussion of this point in Nathan Rosenberg, “Efficiency in the Government Sector: Discussion,” *54 American Economic Review* 251–52 (May 1954); and in James M.

- Buchanan, *Public Finance in Democratic Process* (Chapel Hill: University of North Carolina Press, 1967), p. 173.
15. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), chs. 4 and 5, and especially pp. 274–84.
 16. The term is from H. Douglas Price, “Computer Simulation and Legislative ‘Professionalism’: Some Quantitative Approaches to Legislative Evolution,” paper presented to the annual convention of the American Political Science Association, 1970.
 17. “But it is equally true, though only of late and slowly beginning to be acknowledged, that a numerous assembly is as little fitted for the direct business of legislation as for that of administration.” John Stuart Mill, *Considerations on Representative Government* (Chicago: Regency, 1962), p. 104.
 18. Gerhard Loewenberg, “The Role of Parliaments in Modern Political Systems,” in Loewenberg (ed.), *Modern Parliaments: Change or Decline?* (Chicago: Aldine-Atherton, 1971), p. 3.

33

Presidential Power

Richard Neustadt

1

In the United States we like to “rate” a President. We measure him as “weak” or “strong” and call what we are measuring his “leadership.” We do not wait until a man is dead; we rate him from the moment he takes office. We are quite right to do so. His office has become the focal point of politics and policy in our political system. Our commentators and our politicians make a specialty of taking the man’s measurements. The rest of us join in when we feel “government” impinging on our private lives. In the third quarter of the twentieth century millions of us have that feeling often.

... Although we all make judgments about presidential leadership, we often base our judgments upon images of office that are far removed

from the reality. We also use those images when we tell one another whom to choose as President. But it is risky to appraise a man in office or to choose a man for office on false premises about the nature of his job. When the job is the Presidency of the United States the risk becomes excessive. ...

We deal here with the President himself and with his influence on governmental action. In institutional terms the Presidency now includes 2000 men and women. The President is only one of them. But *his* performance scarcely can be measured without focusing on *him*. In terms of party, or of country, or the West, so-called, his leadership involves far more than governmental action. But the sharpening of spirit and of values and of purposes is not done in a vacuum. Although governmental

From Richard E. Neustadt, *Presidential Power: The Politics of Leadership from FDR to Carter*. Copyright © 1986 by Macmillan Publishing Company, Inc. Reprinted with permission.

action may not be the whole of leadership, all else is nurtured by it and gains meaning from it. Yet if we treat the Presidency as the President, we cannot measure him as though he were the government. Not action as an outcome but his impact on the outcome is the measure of the man. His strength or weakness, then, turns on his personal capacity to influence the conduct of the men who make up government. His influence becomes the mark of leadership. To rate a President according to these rules, one looks into the man's own capabilities as seeker and as wielder of effective influence upon the other men involved in governing the country...

"Presidential" on the title page means nothing but the President. "Power" means *his* influence. It helps to have these meanings settled at the start.

There are two ways to study "presidential power." One way is to focus on the tactics, so to speak, of influencing certain men in given situations: how to get a bill through Congress, how to settle strikes, how to quiet Cabinet feuds, or how to stop a Suez. The other way is to step back from tactics on those "givens" and to deal with influence in more strategic terms: what is its nature and what are its sources? What can *this* man accomplish to improve the prospect that he will have influence when he wants it? Strategically, the question is not how he masters Congress in a peculiar instance, but what he does to boost his chance for mastery in any instance, looking toward tomorrow from today...

2

To look into the strategy of presidential influence one must decide at whom to look. Power problems vary with the scope and scale of government, the state of politics, the progress of technology, the pace of world relationships. Power in the Nineteen-sixties cannot be acquired or employed on the same terms as those befitting Calvin Coolidge, or Theodore Roosevelt, or Grover Cleveland, or James K. Polk. But there is a real likelihood that in the next decade a President will have to reach for influence and use it under much the same conditions we have known since the Second World War. If so, the men whose problems shed most light on the White House

prospects are Dwight David Eisenhower and Harry S. Truman. It is at them, primarily, that we shall look. To do so is to see the shadow of another, Franklin D. Roosevelt. They worked amidst the remnants of his voter coalition, and they filled an office that his practice had enlarged.

Our two most recent Presidents have had in common something that is likely to endure into our future: the setting for a great deal of their work. They worked in an environment of policy and politics marked by a high degree of continuity. To sense the continuity from Truman's time through Eisenhower's one need only place the newspapers of 1959 alongside those of 1949. Save for the issue of domestic communists, the subject matter of our policy and politics remains almost unchanged. We deal as we have done in terms of cold war, of an arms race, of a competition overseas, of danger from inflation, and of damage from recession. We skirmish on the frontiers of the Welfare State and in the borderlands of race relations. Aspects change, but labels stay the same. So do dilemmas. Everything remains unfinished business. Not in this century has there been comparable continuity from a decade's beginning to its end; count back from 1949 and this grows plain. There even has been continuity in the behavior of our national electorate; what Samuel Lubell nine years ago called "stalemate" in our partisan alignments has not broken yet.

The similarities in Truman's setting and in Eisenhower's give their years a unity distinct from the War Years, or the Depression Era, or the Twenties, or before. In governmental terms, at least, the fifteen years since V-J Day deserve a designation all their own. "Mid-century" will serve for present purposes. And what distinguishes mid-century can be put very briefly: emergencies in policy with politics as usual.

"Emergency" describes mid-century conditions only by the standards of the past. By present standards what would once have been emergency is commonplace. Policy dilemmas through the postwar period resemble past emergencies in one respect, their difficulty and complexity for government. Technological innovation, social and political change abroad, population growth at home impose enormous strains not only on the managerial equipment of

our policy-makers but also on their intellectual resources. The groupings of mature men at mid-century remind one of the intellectual confusions stemming from depression, thirty years ago, when men were also pushed past comprehension by the novelty of their condition. In our time innovation keeps us *constantly* confused; no sooner do we start to comprehend than something new is added, and we grope again. But unlike the Great Difficulties of the past, our policy dilemmas rarely produce what the country feels as “crisis.” Not even the Korean War brought anything approaching sustained national “consensus.” Since 1945 innumerable situations have been felt as crises inside government; there rarely has been comparable feeling outside government. In the era of the Cold War we have practiced “peacetime” politics. What else could we have done? Cold War is not a “crisis”; it becomes a way of life.

Our politics has been “as usual,” but only by the standard of past *crises*. In comparison with what was once normality, our politics has been *unusual*. The weakening of party ties, the emphasis on personality, the close approach of world events, the changeability of public moods, and above all the ticket-splitting, none of this was “usual” before the Second World War. The symbol of mid-century political conditions is the White House in one party’s hands with Congress in the other’s—a symbol plainly visible in eight of the past fifteen years and all but visible in four of the remaining seven. Nothing really comparable has been seen in this country since the Eighteen-eighties. And the Eighties were not troubled by emergencies in policy.

As for politics and policy combined, we have seen some precursors of our setting at mid-century. Franklin Roosevelt had a reasonably comparable setting in his middle years as President, though not in his first years and not after Pearl Harbor. Indeed, if one excepts the war, mid-century could properly be said to start with Roosevelt’s second term. Our recent situation is to be compared, as well, with aspects of the Civil War. Abraham Lincoln is much closer to us in condition than in time, the Lincoln plagued by Radicals and shunned by Democrats amidst the managerial and intellectual confusions of twentieth-century warfare in the nineteenth century.

And in 1919 Woodrow Wilson faced and was defeated by conditions something like our own. But save for these men one can say of Truman and of Eisenhower that they were the first who had to fashion presidential influence out of mid-century materials. Presumably they will not be the last.

3

We tend to measure Truman’s predecessors as though “leadership” consisted of initiatives in economics, or diplomacy, or legislation, or in mass communication. If we measured him and his successors so, they would be leaders automatically. A striking feature of our recent past has been the transformation into routine practice of the actions we once treated as exceptional. A President may retain liberty, in Woodrow Wilson’s phrase, “to be as big a man as he can.” But nowadays he cannot be as small as he might like.

Our two most recent Presidents have gone through all the motions we traditionally associate with strength in office. So will the man who takes the oath on January 20, 1961. In instance after instance the exceptional behavior of our earlier “strong” Presidents has now been set by statute as a regular requirement. Theodore Roosevelt once assumed the “steward’s” role in the emergency created by the great coal strike of 1902; the Railway Labor Act and the Taft-Hartley Act now make such interventions mandatory upon Presidents. The other Roosevelt once asserted personal responsibility for gauging and for guiding the American economy; the Employment Act binds his successors to that task. Wilson and F.D.R. became chief spokesmen, leading actors, on a world stage at the height of war; now UN membership, far-flung alliances, prescribe that role continuously in times termed “peace.” Through both world wars our Presidents grappled experimentally with an emergency-created need to “integrate” foreign and military policies; the National Security Act now takes that need for granted as a constant of our times. F.D.R. and Truman made themselves responsible for the development and first use of atomic weapons; the Atomic Energy Act now puts a comparable burden on the back of every President. And what has escaped statutory recognition has mostly been accreted into

presidential common law, confirmed by custom, no less binding: the “fireside chat” and the press conference, for example, or the personally presented legislative program, or personal campaigning in congressional elections.

In form all Presidents are leaders, nowadays. In fact this guarantees no more than that they will be clerks. Everybody now expects the man inside the White House to do something about everything. Laws and customs now reflect acceptance of him as the Great Initiator, an acceptance quite as widespread at the Capitol as at his end of Pennsylvania Avenue. But such acceptance does not signify that all the rest of government is at his feet. It merely signifies that other men have found it practically impossible to do *their* jobs without assurance of initiatives from him. Service for themselves, not power for the President, has brought them to accept his leadership in form. They find his actions useful in their business. The transformation of his routine obligations testifies to their dependence on an active White House. A President, these days, is an invaluable clerk. His services are in demand all over Washington. His influence, however, is a very different matter. Laws and customs tell us little about leadership in fact.

4

Why have our Presidents been honored with this clerkship? The answer is that no one else’s services suffice. Our Constitution, our traditions, and our politics provide no better source for the initiatives a President can take. Executive officials need decisions, and political protection, and a referee for fights. Where are these to come from but the White House? Congressmen need an agenda from outside, something with high status to respond to or react against. What provides it better than the program of the President? Party politicians need a record to defend in the next national campaign. How can it be made except by “their” Administration? Private persons with a public axe to grind may need a helping hand or they may need a grinding stone. In either case who gives more satisfaction than a President? And outside the United States, in every country where our policies and postures influence home

politics, there will be people needing just the “right” thing said and done or just the “wrong” thing stopped *in Washington*. What symbolizes Washington more nearly than the White House?

A modern President is bound to face demands for aid and service from five more or less distinguishable sources: from Executive officialdom, from Congress, from his partisans, from citizens at large, and from abroad. The Presidency’s clerkship is expressive of these pressures. In effect they are constituency pressures and each President has five sets of constituents. The five are not distinguished by their membership; membership is obviously an overlapping matter. And taken one by one they do not match the man’s electorate; one of them, indeed, is outside his electorate. They are distinguished, rather, by their different claims upon him. Initiatives are what they want, for five distinctive reasons. Since government and politics have offered no alternative, our laws and customs turn those wants into his obligations.

Why, then, is the President not guaranteed an influence commensurate with services performed? Constituent relations are relations of dependence. Everyone with any share in governing this country will belong to one (or two, or three) of his “constituencies.” Since everyone depends on him why is he not assured of everyone’s support? The answer is that no one else sits where he sits, or sees quite as he sees; no one else feels the full weight of his obligations. Those obligations are a tribute to his unique place in our political system. But just because it is unique they fall on him alone. *The same conditions that promote his leadership in form preclude a guarantee of leadership in fact.* No man or group at either end of Pennsylvania Avenue shares his peculiar status in our government and politics. That is why his services are in demand. By the same token, though, the obligations of all other men are different from his own. His Cabinet officers have departmental duties and constituents. His legislative leaders head *congressional* parties, one in either House. His national party organization stands apart from his official family. His political allies in the States need not face Washington, or one another. The private groups that seek him out are not compelled to govern. And friends abroad

are not compelled to run in our elections. Lacking his position and prerogatives, these men cannot regard his obligations as their own. They have their jobs to do; none is the same as his. As they

perceive their duty they may find it right to follow him, in fact, or they may not. Whether they will feel obliged *on their responsibility* to do what he wants done remains an open question....

34

The Presidential Policy Stream

Paul Light

Presidential policy is the product of a stream of people and ideas that flows through the White House. At the start of the term, the stream is often swollen with campaign promises and competing issues. The president's major task is to narrow the stream into a manageable policy agenda. By the end of the term, the stream is reduced to a trickle and the president's major task is to pass the initial programs and get re-elected.

The stream itself is composed of four currents that come together in the White House. The first current carries the *problems* that confront an administration during its term: budget deficits, energy shortages, international crises. The second current carries the different *solutions* that emerge as answers to the problems: tax and spending cuts, solar energy research, summit diplomacy. The third current carries the *assumptions* that define the problems and solutions: economic forecasts, missile tests, guesses about Soviet intentions. The fourth current carries the *players* who participate in the presidential policy debate: presidents, their staffs, cabinet members, commissions.

Although these four currents carry the essential ingredients of presidential policy, they

are narrowed into final decisions by two filters: *resources* and *opportunities*. Resources are needed to make and market the president's agenda; they include time and energy to make decisions, information and expertise to evaluate choices, public approval and party seats in Congress to win passage, and money and bureaucrats to implement final legislation. Opportunities are needed to present the national agenda to Congress and the public; these depend upon the ebb and flow of the major policy calendars and upon presidential cycles of increasing effectiveness and decreasing influence.

The four currents—problems, solutions, assumptions, and players—often flow together before they reach the presidency: problems find players; solutions find assumptions, problems find solutions, and so on. In theory, all potential problems, solutions, players, and assumptions exist somewhere in the presidential policy stream. In reality, presidents see only a fraction of the problems and solutions that merit attention. Most presidents deliberately structure the policy stream to limit the flow of problems and solutions to a manageable level, leaving the filtering decisions to the White House staff. Presidents who will not

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delegate (Jimmy Carter) or do not watch the evolving process (Ronald Reagan) are sometimes overwhelmed. The key to narrowing the policy stream to a final agenda of presidential priorities—and to winning reelection or a place in history—is to combine the “right” problems with the “right” solutions, assumptions, and players. Presidents differ, of course, in their ability to make these matches.

Before looking at each policy current separately, it is important to recognize that, like a stream, the policy process is extremely fluid. A change of problems—from economics to defense, from foreign affairs to domestic programs—has a rippling effect on the rest of the stream. A change of players—from Alexander Haig to George Shultz, from Edwin Meese to James Baker—significantly affects the kinds of problems and solutions that emerge from the filtering process. A change of assumptions—from optimistic to pessimistic, from best-case to worst-case—has a major influence on players who control the winnowing decisions. And a change of solutions—from supply-side to tax-side, from MX race-track to MX dense-pack—affects assumptions and problems.

Moreover, because the process is so fluid, few fixed rules apply. There is no required sequence for channeling the four currents into a policy agenda; no rule on where to start. Although the filtering process generally begins with the selection of a problem and continues with a search for a solution, some decisions start with a solution and only then move to the problem. Still other decisions start with a pessimistic forecast or an ambitious staff player. The presidential policy stream often transcends constitutional and legal boundaries, taking on a life of its own. The very notion that there is a presidential policy stream suggests a dynamic, often unpredictable process that is much less mechanical and orderly than our civics books have led us to believe.

CURRENTS OF PRESIDENTIAL POLICY

Problems

Over time, the current of problems changes, and different issues merit presidential attention. The current includes old problems that have been discussed for decades and new problems that have just been noticed, large problems that appear to

be virtually unsolvable and small problems that border on the routine. Although some problems seem to demand presidential action because of their seriousness, presidents retain considerable discretion over the choice of issues for their policy agendas. In 1969, Richard Nixon concentrated on foreign problems—détente with the Soviet Union, the Vietnam War, a new China policy—while largely ignoring domestic policy. In 1977, Jimmy Carter concentrated on domestic problems—energy, hospital cost containment, electoral reform, welfare reform—at the expense of foreign policy. In 1981, Ronald Reagan concentrated on economic problems—inflation, budget deficits, tax rates—while largely avoiding foreign and domestic policy.

Although presidents have wide leeway, some problems move through the presidential policy stream with more visibility than others. Medical care for the aged was a prominent problem long before President John F. Kennedy selected it for his domestic agenda in 1961; welfare reform was a problem on at least two presidential agendas before Carter tackled it in 1977. The rise and fall of problems within the presidential policy stream involves the combined interests of Congress, lobbyists, bureaucrats, and presidents, all looking for problems that match their political and policy goals.

Once a problem is “discovered,” it may produce intense activity for several years. But hot issues usually cool off quickly. During the past decade, civil rights and education virtually disappeared from the domestic problem list, only to return as campaign issues for 1984. They were replaced by energy, welfare reform, social security deficits, and deregulation—issues that were not in the current 20 years ago.

The movement of problems within the presidential policy stream involves two simple patterns.¹ First, some problems surface so quickly and involve such controversy that all other issues are submerged. In 1981, Reagan’s tax and spending cuts dominated the presidential agenda; little room was left for competing issues, including school prayer and abortion, until 1982. Other issues may dominate the problem current, not because of their controversial nature, but because of their appeal as easy targets for presidential success. In the

late 1970s and early 1980s, economic deregulation greatly interested presidents: first railroad, then airline and trucking, now telecommunications. Second, some problems exhaust themselves over time, dropping from the policy currents. Often a problem proves so difficult that presidents and other policy makers finally let it drop. Richard Nixon, Gerald Ford, and Jimmy Carter all tried to tackle welfare reform and all eventually gave up.

On the other hand, some problems disappear from the presidential agenda because they appear to be resolved. One reason education dropped from the problem current is that Kennedy and Lyndon B. Johnson were remarkably successful in winning passage of their legislative agenda. Between 1961 and 1968, Congress passed a long string of education programs: aid to primary and secondary education, aid to higher education, Headstart, the Teacher Corps, library and school construction, school lunches, teacher education. For a decade after Johnson, many policy makers believed that the problems were solved. When education returned to the agenda in 1977, the problem was to build an executive department to house the programs as well as to find the money in a tight budget to pay for them. When education returned once more in 1983, however, the problem was defined as a decline in school quality, an implicit criticism of the Kennedy and Johnson programs. Perhaps some problems can never be completely resolved, returning at uncertain intervals in the policy stream.

Although individual problems come and go within the current, presidents generally think in terms of problem clusters: domestic, economic, defense and foreign affairs. Domestic and economic issues concern what happens *inside* the nation—even if the causes are international—while defense and foreign problems are about what happens *outside* the nation—even if the results are felt within the United States. These problem clusters are treated differently in the institutional presidency. Domestic problems usually move through the Office of Policy Development (known as the Domestic Council under Nixon and Ford, then as the Domestic Policy Staff under Carter); economic problems through the Council of Economic Advisers and the Office of Management and Budget; and foreign and defense problems through the National Security

Council. The players in each cluster are generally separate (domestic policy aides rarely interact with national security staff), and the lines of communication radiate to different corners of the executive branch. Yet even if presidents think in terms of these “subpresidencies,”² the distinctions frequently are blurred in reality. Foreign crises may cause severe economic problems at home; defense problems outside the United States may cause domestic problems, particularly if the solutions call for deep domestic spending cuts (Reagan) or draft registration (Carter).

Once the problem current enters the White House policy stream, the critical question is why some problems are selected and others ignored. Why did Carter pick energy shortages and welfare reform but neglect national health insurance? Why did Kennedy choose education and medical care for the aged but delay civil rights? Why did Reagan mention school prayer and tuition tax credits in his 1983 State of the Union address but not abortion? All problems carry some level of benefits that make them attractive to presidents. Although the levels vary from problem to problem, president to president, and year to year, they exist nonetheless. Theoretically, presidents could assign specific values to every problem in the policy stream, then choose the problems with the highest returns. Realistically, they can estimate only the rough rewards of one problem over another, either through public opinion or their own political instincts.

Ultimately, then, benefits are in the eye of the beholder. School prayer was an inviting problem for Ronald Reagan but of no interest to liberal Democrats; equal rights for women was an attractive problem for Gerald Ford but not for more conservative Republicans. The reason why one president will see value in a problem when another does not is goals. Presidents want to be reelected, because they care about their place in history, or because they truly believe the problems are important...

Solutions

Solutions to problems take the form of legislation, executive orders, regulations, symbolic maneuvers, vetoes, or commissions. Even doing nothing is a possible solution in the presidential policy stream...

The solution current has two basic features. First, each problem can have a number of potential solutions. As one Carter domestic policy aide told me: “There’s never any shortage of people telling you what to do. They come out from under every rock with their own answer to the problems. Energy is a great example. We got ideas ranging from solar to geothermal to coal gasification to offshore drilling to conservation. It was more an exercise in picking the right ones.”

Second, and more important, most solutions are designed to answer more than one problem. Indeed, when solutions are designed to solve multiple problems, the chances for legislative passage increase. Carter’s hospital cost containment plan was advertised as a solution to four different problems: inflation, by holding down medical costs; deficits, by holding down Medicare and Medicaid spending; social security bankruptcy, by freeing up room for higher payroll taxes; and urban health shortages, by providing more doctors for inner cities. That the program did not pass is a tribute to the combined efforts of the American Medical Association and the hospital lobbies, who did not agree that hospital cost containment was the proper solution to the various problems....

Solutions are actually the product of a string of decisions. First, presidents must decide whether to act. A president may understand the importance of a problem but still be unable or unwilling to propose a solution. A president may want the acclaim that comes from finding the problem but not the costs of winning a solution. Second, presidents then must decide just what to put into the solution. The choices are many. Should it involve legislation or executive action; include a specific proposal to Congress or an effort to veto a bill already passed; be new and innovative or a simple modification of past legislation; center on a large, complicated package or a small, modest bill; rely on spending or regulation to accomplish its ends; be short-term or leave more time for full implementation; be sent to Congress as a “take-it-or-leave-it” omnibus package or as a series of smaller, self-contained proposals? Although the list of questions is rarely so straightforward, each choice must be made at some point in the current of solutions.

Once the president decides to act, costs determine why some solutions are adopted and others ignored. Just as presidents weigh benefits in selecting problems, they measure costs in adopting solutions. First, presidents are very aware of *budget costs*. In an era of tight budgets and high deficits, new programs must pass the budget test before presidents will adopt them. Second, presidents assess *political costs*. Although presidents are interested in public reactions, they are concerned most directly with the question “Will it fly on Capitol Hill?” Presidents try to reduce their political costs in Congress by bargaining over pet projects, trading votes on other bills, assigning credit or blame, timing their requests to avoid overloading in important committees, lobbying to direct congressional attention to their priorities, and using the power of the presidency to stimulate public pressure. Certainly, trips to Camp David and invitations to White House dinners do not sway votes on major bills, but they do make it easier for members of Congress to stay in the habit of supporting the president longer.

Third, presidents are aware—sometimes only dimly—of *technical costs*. Unfortunately, the question “Will it work?” is asked only occasionally. Presidents appear much less concerned with workability than with budget and political costs. According to Martin Anderson, a domestic policy aide under Nixon and director of the Office of Policy Development under Reagan, Nixon’s 1969 welfare reform plan never passed the technical hurdle: “No one seemed to clearly comprehend that there was, in fact, no way out of the dilemma presented by the conflicting goals of reasonably high welfare payments, low tax rates, and low cost. To some it seemed that the plan was ‘such a good thing’ that the possibility of it not being possible was never seriously considered.”³

Presidents view costs, like benefits, differently. Among recent presidents, Reagan may be the most preoccupied with budget costs, while Johnson may have been overconcerned with politics. Since 1970, however, budget costs have become the dominant influence in the search for solutions. This major change in presidential policy making was evident in the Ford, Carter, and Reagan administrations: if a solution could not pass the budget hurdle, it was dropped. Concern with budgetary

effects is, of course, a product of staggering deficits since the early 1970s. Yet, as the budget has grown in importance, the attention to technical issues has declined. Reagan's supply-side economic program and defense expansion surmounted both the budget and political hurdles, but as Office of Management and Budget Director David Stockman acknowledged in an interview in *The Atlantic*, they never passed the test of workability.⁴ The critical issue is whether the three costs can ever be compatible. Do budget questions rule out potentially workable solutions? Do political costs conflict with budget considerations? And, if they are incompatible, which cost should come first?

Assumptions

Assumptions tell presidents what the world is like. They help presidents to understand the causes of problems and the effects of solutions. Some assumptions are based on complicated models of how the economy behaves; others are simple guesses about what the Soviets believe. Because there is always some uncertainty about how the world works, presidents often must make choices among competing assumptions. The president must decide, for example, whether the Soviets are basically evil (Reagan's assumption in a 1983 speech to evangelical Christians) or somewhat more humane (Carter's assumption until the invasion of Afghanistan).

As presidents make choices among competing problems and solutions, they must rely on the best available assumptions, which are themselves the results of subjective and sometimes conflicting estimates: How bad is the problem? Can it be solved? What are the benefits? How much will it cost? Will it work? What will the public think? When will the economy improve? Most of these questions cannot be answered in any objective sense. Presidents are no more gifted at fortunetelling than other human beings; they must rely on the best assumptions available. In early 1983, for example, Reagan was forced to choose between an optimistic economic forecast backed by supply-siders and a pessimistic forecast supported by more traditional advisers.

Assumptions may be the most important but least understood current in the presidential policy

stream. Assumptions help presidents to predict the future, understand the present, and analyze the past. They help players recognize problems and work out solutions. Because assumptions are not always based on a complete knowledge of objective reality, conflict in the White House over which assumptions should be made can be intense. Indeed, assumptions are sometimes designed after the fact to build support or undermine opposition. Presidents may select a problem and adopt a solution for political, philosophical, or personal reasons, and only then prepare the evidence of need. Moreover, because presidents often see the world as they want it to be, not as it actually is, assumptions can become the critical flaw in a presidential program. For example, Reagan's overly optimistic assumption of economic recovery early in his term made change more difficult later on.

The role of assumptions in the presidential policy stream has become increasingly important during the last decade. In the 1970s, spending on federal programs, including Social Security, was increased automatically with rises in the Consumer Price Index (CPI). Thus, assumptions about future inflation became crucial for forecasting budget deficits. Much of what government now does is "uncontrollable" in the normal legislative process; thus assumptions have become the central element in telling policy makers when and where to act.

Players

Several thousand people actively engage in presidential policy making: White House staffers, cabinet secretaries, OMB analysts, bureaucrats, old friends, pollsters, the first lady, the vice president, and a host of lesser lights. Certainly the most important player is the president. As Abraham Lincoln once said to his cabinet after a heated debate: "One Aye, Seven Nays. The Ayes have it." Yet the mix of players can have an important bearing on the president's final decisions. When Shultz replaced Haig as Reagan's secretary of state, the constellation of advice changed immediately. As a former director of OMB and secretary of the Treasury, Shultz brought a much stronger economic background to his foreign policy views. Suddenly international trade was elevated as a

problem in the Reagan White House. Shultz also began to participate in White House debates on the economy. He was widely seen as a powerful force in persuading Reagan of the need for a pessimistic budget forecast in 1983, as well as deeper defense cuts. There is no question that Shultz changed the direction of the Reagan agenda. Nor is there any doubt that Shultz had to compete with and against other players for the president's support.

At least four major offices fight to influence the president's policy agenda. The largest is the *Office of Management and Budget*, which has primary control over the president's annual budget and the legislative clearance process. Each year federal departments are required to submit detailed budgets and legislative priorities to OMB, which reviews all of the requests, makes "final" budget decisions, and assigns priorities to each piece of legislation. Budget and clearance responsibilities give OMB considerable leverage in dealing with the president and the executive branch, and in Stockman's first months as Reagan's budget director they were skillfully manipulated.

The second major policy office is the *Council of Economic Advisers*, which is responsible for preparing the president's annual economic report and thereby has an important role in developing the most important set of forecasts and projections. However, unlike OMB, CEA has no formal power over the budget or legislation. The OMB director is guaranteed access to the White House, but the CEA chairman must battle for a chance to speak. Reagan's first CEA chairman, Murray Weidenbaum, was unable to crack Stockman's control of economic advice; his replacement, Martin Feldstein, was initially more successful.

The third major policy agency is the *Office of Policy Development*, which originally was named the Domestic Council in 1970. OPD is primarily responsible for the review of domestic policy issues for possible elevation to the president's agenda. Unlike OMB, which reviews all executive branch requests, OPD can be more selective, performing an important role in bringing major problems and solutions to the president's attention. OPD is the domestic counterpart of the fourth major policy office, the *National Security Council*. The NSC staff acts as a much smaller version of the

departments of State and Defense and has evolved into a powerful alternative source of advice.⁵

Perhaps the most important feature of these four offices is their competition *against* the executive branch for White House influence. CEA competes with the Treasury Department; OPD competes with Health and Human Service, Housing and Urban Development, and Transportation, among others; NSC competes with State and Defense; OMB competes with almost all of the departments. Although departments sometimes gain a measure of influence through a skillful secretary, the White House policy offices have an important advantage in their proximity to the president. In the "us-versus-them" mentality that often dominates the White House, presidents frequently conclude that the executive branch simply cannot be trusted to follow the presidential point of view faithfully.

Within the White House, however, the four policy offices are not the only competitors. The Congressional Relations Office, Public Liaison Office, Vice President's Office, Office of the Trade Representative, Counsel's Office, and Press Office participate in the policy debate, usually through the device of a "paper loop" that circulates proposals within the White House. At the very top, the president's chief of staff exercises the ultimate control over the movement of ideas in and out of the Oval Office. H. R. Haldeman (Nixon), Donald Rumsfeld (Ford), Hamilton Jordan (Carter), and Edwin Meese, James Baker, and Michael Deaver (Reagan) all became powerful "gate keepers" in the presidential policy stream. . . .

THE FILTERING PROCESS

As the policy stream flows through the White House, presidents must choose among the competing problems, solutions, assumptions, and players that make up the policy agenda. Because presidents cannot do everything, they must narrow the stream to a rather short list of priorities.

This presidential filtering process must serve two often competing demands in the policy stream. First, the filtering process must *merge* problems, solutions, assumptions, and players into final decisions. When the process fails, presidential proposals may face immediate defeat.

Reagan's 1981 Social Security package, rejected by the Senate 96 to 0, is an example of a decision that moved through the filtering process without being matched with the political players. Second, the filtering process must *regulate* the flow of problems and solutions into the Oval Office. If too few items reach the president, important problems, solutions, assumptions, and players may be neglected. If too many items come to his attention, serious overloading may result....

In the search for the best match of problems, solutions, assumptions, and players, the policy stream expands to include a wider current of ideas. In regulating the flow into the president, however, the stream must narrow. Here the important question is "How much is enough?" How many problems should a president tackle? How many solutions should be reviewed? How many players should be involved? While Carter spread himself over too many problems, perhaps Reagan limited himself to too few. While Kennedy opened the stream to too many players, perhaps Nixon did not listen to enough ...

As presidents try to both merge and regulate the policy stream, they rely on two filters: resources and opportunities. As problems, solutions, assumptions, and players pass through these two filters, final decisions are set.

Resources

Resources "pay" for the final decisions presidents make. Some resources pay the costs of arriving at the decisions; others pay the costs of winning congressional passage; still others pay the costs of implementing the policies. Three basic kinds of resources are used for decision making, political marketing, and program implementation. These resources finance the presidential agenda.

DECISION-MAKING RESOURCES. The most basic decision-making resource is *time*. Players need time to digest new ideas, form coalitions to influence the president, and review solutions. Similarly, problems need time to find sponsors, build public support, and locate solutions. In theory, each presidential term starts with 1,461 days. In reality, the start of the reelection campaign early in the third year limits the available policy time to

approximately 700 days. For particular policies, time can be much shorter. According to Stockman, there were only 20 to 25 days to build the Reagan economic program at the start of 1981.

Energy is a second decision-making resource. One only has to look at the "before" and "after" pictures of presidents to notice the wearing effect of the office on the individual. Similarly, some problems, solutions, and assumptions consume more energy than others. Few Carter staff members would equate the stress of the Iranian hostage crisis with the lesser demands of routine domestic policy.

A third decision-making resource is *information*. Knowledge about problems, solutions, and assumptions often varies significantly. Presidents can predict the accuracy of an MX missile within 200 yards on a normal East-to-West flight range but do not know the accuracy on the North-South arctic path to the Soviet Union. What would the magnetic fields at the North Pole do to the complex MX-guidance system? Presidents still have few proven theories on how the Social Security program affects the economy. As one economist warned the National Commission on Social Security Reform, "relatively little good evidence" is available to policy makers on the subject. Using the "best that economic theory and statistical techniques have to offer," economists "have produced a series of studies that can be selectively cited by the true believers of conflicting hunches or by people with political agendas that they seek to advance."⁶

A final decision-making resource is *expertise*. This resource applies specifically to the players, who must know how to bring problems, solutions, and assumptions together into final decisions. Policy expertise is more than the sum of an individual's experience in government. It is the skill that comes from learning.

POLITICAL RESOURCES. The policy stream also absorbs political resources. As Vice President Mondale noted on leaving office, "a president ... starts out with a bank full of good will and slowly checks are drawn on that, and it's very rare that it's replenished. It's a one-time deposit."⁷ This political capital is composed of public approval and seats in Congress. For several reasons, among

them the simple decay of support and presidential mistakes, capital is depleted during the term. At least since 1960, all presidents have experienced a loss in public support over time; since 1934, all presidents have lost party seats in Congress in every midterm election. Like Mondale, many White House players see political capital as a finite resource that is spent with each choice of a problem, solution, or assumption. Clearly, some problems, solutions, and assumptions are more “expensive” politically than others.

PROGRAM RESOURCES. Just as presidents need resources to make and sell final decisions, they need them for implementation, that is, for converting legislation into actual government activity. The most basic program resources are federal dollars and employees. However, program resources also can include supplies, land, computer time, and new equipment. Carter’s MX missile “racetrack” plan had a staggering list of resource needs. Designed as an elaborate shell game in the Nevada-Utah desert, the program required 200 MX missiles, numerous decoy missiles, 4,600 hardened concrete shelters, 8,500 miles of heavy-duty roadbed, huge new trucks to carry the missiles, new launchers, new computers, and 40,000 square miles of land. Each of the 200 missiles cost \$50 million in the Carter budget, but construction and maintenance expenses of the entire program would have boosted the final price tag to \$500 million per missile. Moreover, construction required 50,000 workers, 190 billion gallons of water, and 100 million tons of concrete—all to be transported somehow to the desert. Critics argued that construction alone would have caused a decade-long concrete shortage....

Opportunities

Once the filtering process has merged a problem with a solution, a set of assumptions, and a collection of players, and has found the decision-making, political, and program resources to pay for the combination, the White House must decide when to present the idea to Congress and the public. With the steady increase in its workload, in particular more committee and subcommittee meetings and greater constituency demands,

Congress offers fewer opportunities for presidential influence. Indeed, one of Carter’s critical mistakes in filtering his legislative agenda was to flood the congressional tax-writing committees with proposals. Most of Carter’s program had to move through the Senate Finance Committee and House Ways and Means Committee. His economic stimulus package (January 1977), hospital cost containment plan (April 1977), Social Security financing proposal (May 1977), welfare reform bill (August 1977), urban assistance plan (January 1978), and tax reform measure (January 1978) all moved through Congress with little thought of the opportunities for legislative review.

POLICY CALENDAR. The timing of the president’s requests to Congress is critical to their success. According to John Kessel, there is a presidential policy cycle that begins sometime “after Labor Day when programs to be proposed to Congress are readied. Fall is probably the time of the heaviest work load for the policy-staffer in the White House, because work is still progressing on Capitol Hill on the present year’s program at the same time preparations for the next year are being made.”⁸ The calendar continues with basic choices on the budget in December, major messages to Congress in January and February (including the State of the Union address, the budget message, and the economic report), congressional decision making in the spring and summer, vacations in August, and a return to planning in September and October....

CYCLES OF INFLUENCE. Although presidents are guaranteed a certain number of opportunities to introduce policy when they enter office—four State of the Unions, four budgets, etc.—they can create additional opportunities through the *cycle of increasing effectiveness*. Whatever the initial level of information and expertise, presidents and their staffs learn over time, becoming more effective in managing their scarce opportunities. Carter, for example, became more adept at handling Congress as his term wore on and he learned how to use his limited policy opportunities. Presidents can create opportunities for new ideas through carefully staged public events or through skillful manipulation of the press. A president’s effectiveness in using these informal

opportunities always grows over time, as a simple byproduct of learning the ropes.

Just as presidents can create opportunities through the cycle of increasing effectiveness, they can lose opportunities through the *cycle of decreasing influence*. As public approval and party seats drop during the term—one month-to-month, the other at the midterm election—presidents lose opportunities for influence. Even though they become more effective at finding opportunities for ideas, Congress and the public become less interested. Moreover, even the formal opportunities lose effectiveness later in the term. Major messages, televised addresses, and press conferences carry less weight.

Filtering and Policy

Why are resources and opportunities so important as policy filters? The reason is that presidents enter office with different amounts of each. Ford had only two years in his brief term, Johnson had five. Ford had fewer than 150 party faithful in the House, Johnson once had more than 290. Carter and Reagan had little expertise in national policy making, Nixon had little in domestic affairs. Carter's Georgia staff had little background in national policy, too, which left considerable room for learning, while Reagan's legislative staff had considerable expertise in legislative lobbying. These kinds of differences tell a great deal about the policy stream as it flows through an administration. The resources and opportunities at the start of a term determine both the quantity and quality of the president's policy agenda.

CONCLUSION

If presidential policy is the product of a highly dynamic stream, the final issue is whether the stream has changed its course during the past decades. The problems have changed, but have they become more difficult? Is cutting government spending more difficult than increasing it? Kennedy and Johnson selected problems that seemed to demand expanded government, while Carter and Reagan picked problems that seemed to require contracted government. Nor did Kennedy and Johnson have to tackle any of the

new "single issues" such as abortion and school prayer. Perhaps the most important change in the past 20 years has been the rise of a new class of "constituentless" issues—problems, such as energy conservation, which have few supporters but many potential enemies.

The solutions also have changed. Spending and regulation are no longer the popular response to national problems, but it is not yet clear what kinds of solutions will replace them. The players have changed, too. The rise of the National Security Council staff and the Office of Policy Development has shaped a new pool of players who compete for the president's attention and support. Moreover, most White House aides argue that interest groups are penetrating further into the policy process in recent years. As presidents reach out to interest groups to help pass their programs, interest groups reach further in to draft legislation and influence decisions.

Perhaps the most important area of change—or lack of change—is in assumptions. Despite new methods of forecasting and computer analysis, presidents do not seem much closer to being able to predict problems or solutions accurately. Much of the policy process still rests on best guesses about what will or will not happen. Even in the very short-term, players have difficulty predicting what will happen. Stockman was willing to admit in early 1983 that we cannot predict even the next year, let alone five years out. That may be the most serious obstacle to presidents as they continue to search for problems and solutions. If problems are more controversial in this era of single-issue politics, if solutions are more constrained by tight budgets and personnel shortages, if players are more competitive for presidential influence, there is even greater need for accurate assumptions. Unfortunately, presidents still look into their crystal balls and see pretty much what they want to see.

End Notes

1. See Jack L. Walker, "Setting the Agenda in the U.S. Senate: A Theory of Problem Selection," *British Journal of Political Science* (1977): 438.
2. Thomas E. Cronin, *The State of the Presidency* (Boston: Little, Brown & Co., 1980), 143–186.

3. Martin Anderson, *Welfare: The Political Economy of Welfare Reform in the United States* (Stanford, Cal.: Hoover Institution Press, 1978), 143–144.
4. William Greider, “The Education of David Stockman,” *The Atlantic*, 248 (December 1981): 38, 44–47.
5. I. M. Destler, “National Security II: The Rise of the Assistant (1961–1981),” in *The Illusion of Presidential Government*, ed. Hugh Heclo and Lester M. Salamon (Boulder, Colo.: Westview Press, 1982.)
6. Henry Aaron, *Economic Effects of Social Security* (Washington: The Brookings Institution, 1983), 51, 82.
7. *Washington Post*, January 21, 1981, A-24.
8. John Kessel, *The Domestic Presidency* (Boston: Duxbury Press, 1975), 9.

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The Rise of the Bureaucratic State

James Q. Wilson

During its first 150 years, the American republic was not thought to have a “bureaucracy,” and thus it would have been meaningless to refer to the “problems” of a “bureaucratic state.” There were, of course, appointed civilian officials: Though only about 3,000 at the end of the Federalist period, there were about 95,000 by the time Grover Cleveland assumed office in 1881, and nearly half a million by 1925. Some aspects of these numerous officials were regarded as problems—notably, the standards by which they were appointed and the political loyalties to which they were held—but these were thought to be matters of proper character and good management. The great political and constitutional struggles were not over the power of the administrative apparatus, but over the power of the President, of Congress, and of the states.

The Founding Fathers had little to say about the nature or function of the executive branch of the new government. The Constitution is

virtually silent on the subject and the debates in the Constitutional Convention are almost devoid of reference to an administrative apparatus. This reflected no lack of concern about the matter, however. Indeed, it was in part because of the Founders’ depressing experience with chaotic and inefficient management under the Continental Congress and the Articles of Confederation that they had assembled in Philadelphia. Management by committees composed of part-time amateurs had cost the colonies dearly in the War of Independence and few, if any, of the Founders wished to return to that system. The argument was only over how the heads of the necessary departments of government were to be selected, and whether these heads should be wholly subordinate to the President or whether instead they should form some sort of council that would advise the President and perhaps share in his authority. In the end, the Founders left it up to Congress to decide the matter.

From James Q. Wilson, “The Rise of the Bureaucratic State,” *The Public Interest*, No. 41 (Fall 1975). Reprinted by permission.

There was no dispute in Congress that there should be executive departments, headed by single appointed officials, and, of course, the Constitution specified that these would be appointed by the President with the advice and consent of the Senate. The only issue was how such officials might be removed. After prolonged debate and by the narrowest of majorities, Congress agreed that the President should have the sole right of removal, thus confirming that the infant administrative system would be wholly subordinate—in law at least—to the President. Had not Vice President John Adams, presiding over a Senate equally divided on the issue, cast the deciding vote in favor of Presidential removal, the administrative departments might conceivably have become legal dependencies of the legislature, with incalculable consequences for the development of the embryonic government.

THE “BUREAUCRACY PROBLEM”

The original departments were small and had limited duties. The State Department, the first to be created, had but nine employees in addition to the Secretary. The War Department did not reach 80 civilian employees until 1801; it commanded only a few thousand soldiers. Only the Treasury Department had substantial powers—it collected taxes, managed the public debt, ran the national bank, conducted land surveys, and purchased military supplies. Because of this, Congress gave the closest scrutiny to its structure and its activities.

The number of administrative agencies and employees grew slowly but steadily during the 19th and early 20th centuries and then increased explosively on the occasion of World War I, the Depression, and World War II. It is difficult to say at what point in this process the administrative system became a distinct locus of power or an independent source of political initiatives and problems. What is clear is that the emphasis on the sheer *size* of the administrative establishment—conventional in many treatments of the subject—is misleading.

The government can spend vast sums of money—wisely or unwisely—without creating that set of conditions we ordinarily associate with the bureaucratic state. For example,

there could be massive transfer payments made under government auspices from person to person or from state to state, all managed by a comparatively small staff of officials and a few large computers. In 1971, the federal government paid out \$54 billion under various social insurance programs, yet the Social Security Administration employs only 73,000 persons, many of whom perform purely routine tasks.

And though it may be harder to believe, the government could in principle employ an army of civilian personnel without giving rise to those organizational patterns that we call bureaucratic. Suppose, for instance, that we as a nation should decide to have in the public schools at least one teacher for every two students. This would require a vast increase in the number of teachers and school rooms, but almost all of the persons added would be performing more or less identical tasks, and they could be organized into very small units (e.g., neighborhood schools). Though there would be significant overhead costs, most citizens would not be aware of any increase in the “bureaucratic” aspects of education—indeed, owing to the much greater time each teacher would have to devote to each pupil and his or her parents, the citizen might well conclude that there actually had been a substantial reduction in the amount of “bureaucracy.”

To the reader predisposed to believe that we have a “bureaucracy problem,” these hypothetical cases may seem farfetched. Max Weber, after all, warned us that in capitalist and socialist societies alike, bureaucracy was likely to acquire an “overtowering” power position. Conservatives have always feared bureaucracy, save perhaps the police. Humane socialists have frequently been embarrassed by their inability to reconcile a desire for public control of the economy with the suspicion that a public bureaucracy may be as immune to democratic control as a private one. Liberals have equivocated, either dismissing any concern for bureaucracy as reactionary quibbling about social progress, or embracing that concern when obviously nonreactionary persons (welfare recipients, for example) express a view toward the Department of Health, Education, and Welfare indistinguishable from the view businessmen take of the Internal Revenue Service.

POLITICAL AUTHORITY

There are at least three ways in which political power may be gathered undesirably into bureaucratic hands: by the growth of an administrative apparatus so large as to be immune from popular control, by placing power over a governmental bureaucracy of any size in private rather than public hands, or by vesting discretionary authority in the hands of a public agency so that the exercise of that power is not responsive to the public good. These are not the only problems that arise because of bureaucratic organization. From the point of view of their members, bureaucracies are sometimes uncaring, ponderous, or unfair; from the point of view of their political superiors, they are sometimes unimaginative or inefficient; from the point of view of their clients, they are sometimes slow or unjust. No single account can possibly treat of all that is problematic in bureaucracy; even the part I discuss here—the extent to which political authority has been transferred undesirably to an unaccountable administrative realm—is itself too large for a single essay. But it is, if not the most important problem, then surely the one that would most have troubled our Revolutionary leaders, especially those that went on to produce the Constitution. It was, after all, the question of power that chiefly concerned them, both in redefining our relationship with England and in finding a new basis for political authority in the Colonies.

To some, following in the tradition of Weber, bureaucracy is the inevitable consequence and perhaps necessary concomitant of modernity. A money economy, the division of labor, and the evolution of legal-rational norms to justify organizational authority require the efficient adaptation of means to ends and a high degree of predictability in the behavior of rulers. To this, Georg Simmel added the view that organizations tend to acquire the characteristics of those institutions with which they are in conflict, so that as government becomes more bureaucratic, private organizations—political parties, trade unions, voluntary associations—will have an additional reason to become bureaucratic as well.

By viewing bureaucracy as an inevitable (or, as some would put it, “functional”) aspect

of society, we find ourselves attracted to theories that explain the growth of bureaucracy in terms of some inner dynamic to which all agencies respond and which makes all barely governable and scarcely tolerable. Bureaucracies grow, we are told, because of Parkinson’s Law: Work and personnel expand to consume the available resources. Bureaucracies behave, we believe, in accord with various other maxims, such as the Peter Principle: In hierarchical organizations, personnel are promoted up to that point at which their incompetence becomes manifest—hence, all important positions are held by incompetents. More elegant, if not essentially different, theories have been propounded by scholars. The tendency of all bureaus to expand is explained by William A. Niskanen by the assumption, derived from the theory of the firm, that “bureaucrats maximize the total budget of their bureau during their tenure”—hence, “all bureaus are too large.” What keeps them from being not merely too large but all-consuming is the fact that a bureau must deliver to some degree on its promised output, and if it consistently underdelivers, its budget will be cut by unhappy legislators. But since measuring the output of a bureau is often difficult—indeed, even *conceptualizing* the output of the State Department is mind-boggling—the bureau has a great deal of freedom within which to seek the largest possible budget.

Such theories, both the popular and the scholarly, assign little importance to the nature of the tasks an agency performs, the constitutional framework in which it is embedded, or the preferences and attitudes of citizens and legislators. Our approach will be quite different: Different agencies will be examined in historical perspective to discover the kinds of problems, if any, to which their operation gave rise, and how those problems were affected—perhaps determined—by the tasks which they were assigned, the political system in which they operated, and the preferences they were required to consult. What follows will be far from a systematic treatment of such matters, and even farther from a rigorous testing of any theory of bureaucratization: Our knowledge of agency history and behavior is too sketchy to permit that...

BUREAUCRACY AND CLIENTELISM

After 1861, the growth in the federal administrative system could no longer be explained primarily by an expansion of the postal service and other traditional bureaus. Though these continued to expand, new departments were added that reflected a new (or at least greater) emphasis on the enlargement of the scope of government. Between 1861 and 1901, over 200,000 civilian employees were added to the federal service, only 52 per cent of whom were postal workers. Some of these, of course, staffed a larger military and naval establishment stimulated by the Civil War and the Spanish-American War. By 1901 there were over 44,000 civilian defense employees, mostly workers in government-owned arsenals and shipyards. But even these could account for less than one fourth of the increase in employment during the preceding 40 years.

What was striking about the period after 1861 was that the government began to give formal, bureaucratic recognition to the emergence of distinctive interests in a diversifying economy. As Richard L. Schott has written, “whereas earlier federal departments had been formed around specialized governmental functions (foreign affairs, war, finance, and the like), the new departments of this period—Agriculture, Labor, and Commerce—were devoted to the interests and aspirations of particular economic groups.”

The original purpose behind these clientele-oriented departments was neither to subsidize nor to regulate, but to promote, chiefly by gathering and publishing statistics and (especially in the case of agriculture) by research. The formation of the Department of Agriculture in 1862 was to become a model, for better or worse, for later political campaigns for government recognition. A private association representing an interest—in this case the United States Agricultural Society—was formed. It made every President from Fillmore to Lincoln an honorary member, it enrolled key Congressmen, and it began to lobby for a new department. The precedent was followed by labor groups, especially the Knights of Labor, to secure creation in 1888 of a Department of Labor. It was broadened in 1903 to be a Department of Commerce and Labor, but 10 years later, at the insistence of the American Federation of Labor,

the parts were separated and the two departments we now know were formed.

There was an early 9th-century precedent for the creation of these client-serving departments: the Pension Office, then in the Department of the Interior. Begun in 1833 and regularized in 1849, the Office became one of the largest bureaus of the government in the aftermath of the Civil War, as hundreds of thousands of Union Army veterans were made eligible for pensions if they had incurred a permanent disability or injury while on military duty; dependent widows were also eligible if their husbands had died in service or of service-connected injuries. The Grand Army of the Republic (GAR), the leading veterans’ organization, was quick to exert pressure for more generous pension laws and for more liberal administration of such laws as already existed. In 1879 Congressmen, noting the number of ex-servicemen living (and voting) in their states, made veterans eligible for pensions retroactively to the date of their discharge from the service, thus enabling thousands who had been late in filing applications to be rewarded for their dilatoriness. In 1890 the law was changed again to make it unnecessary to have been injured in the service—all that was necessary was to have served and then to have acquired a permanent disability by any means other than through “their own vicious habits.” And whenever cases not qualifying under existing law came to the attention of Congress, it promptly passed a special act making those persons eligible by name.

So far as is known, the Pension Office was remarkably free of corruption in the administration of this windfall—and why not, since anything an administrator might deny, a legislator was only too pleased to grant. By 1891 the Commissioner of Pensions observed that his was “the largest executive bureau in the world.” There were over 6,000 officials supplemented by thousands of local physicians paid on a fee basis. In 1900 alone, the Office had to process 477,000 cases. Fraud was rampant as thousands of persons brought false or exaggerated claims; as Leonard D. White was later to write, “pensioners and their attorneys seemed to have been engaged in a gigantic conspiracy to defraud their own government.” Though the Office struggled

to be honest, Congress was indifferent—or more accurately, complaisant: The GAR was a powerful electoral force and it was ably and lucratively assisted by thousands of private pension attorneys. The pattern of bureaucratic clientelism was set in a way later to become a familiar feature of the governmental landscape—a subsidy was initially provided, because it was either popular or unnoticed, to a group that was powerfully benefited and had few or disorganized opponents; the beneficiaries were organized to supervise the administration and ensure the funding of the program; the law authorizing the program, first passed because it seemed the right thing to do, was left intact or even expanded because politically it became the only thing to do. A benefit once bestowed cannot easily be withdrawn.

PUBLIC POWER AND PRIVATE INTERESTS

It was at the state level, however, that client-oriented bureaucracies proliferated in the 19th century. Chief among these were the occupational licensing agencies. At the time of Independence, professions and occupations either could be freely entered (in which case the consumer had to judge the quality of service for himself) or entry was informally controlled by the existing members of the profession or occupation by personal tutelage and the management of reputations. The latter part of the 19th century, however, witnessed the increased use of law and bureaucracy to control entry into a line of work. The state courts generally allowed this on the grounds that it was a proper exercise of the “police power” of the state, but as Morton Keller has observed, “when state courts approved the licensing of barbers and blacksmiths, but not of horse-shoers, it was evident that the principles governing certification were—to put it charitably—elusive ones.” By 1952, there were more than 75 different occupations in the United States for which one needed a license to practice, and the awarding of these licenses was typically in the hands of persons already in the occupation, who could act under color of law. These licensing boards—for plumbers, dry cleaners, beauticians, attorneys, undertakers, and the like—frequently have been criticized

as particularly flagrant examples of the excesses of a bureaucratic state. But the problems they create—of restricted entry, higher prices, and lengthy and complex initiation procedures—are not primarily the result of some bureaucratic pathology but of the possession of public power by persons who use it for private purposes. Or more accurately, they are the result of using public power in ways that benefited those in the profession in the sincere but unsubstantiated conviction that doing so would benefit the public generally.

The New Deal was perhaps the high water mark of at least the theory of bureaucratic clientelism. Not only did various sectors of society, notably agriculture, begin receiving massive subsidies, but the government proposed, through the National Industrial Recovery Act (NRA), to cloak with public power a vast number of industrial groupings and trade associations so that they might control production and prices in ways that would end the depression. The NRA’s Blue Eagle fell before the Supreme Court—the wholesale delegation of public power to private interests was declared unconstitutional. But the piecemeal delegation was not, as the continued growth of specialized promotional agencies attests. The Civil Aeronautics Board, for example, erroneously thought to be exclusively a regulatory agency, was formed in 1938 “to promote” as well as to regulate civil aviation and it has done so by restricting entry and maintaining above-market rate fares.

Agriculture, of course, provides the leading case of clientelism. Theodore J. Lowi finds “at least 10 separate, autonomous, local self-governing systems” located in or closely associated with the Department of Agriculture that control to some significant degree the flow of billions of dollars in expenditures and loans. Local committees of farmers, private farm organizations, agency heads, and committee chairmen in Congress dominate policy-making in this area—not, perhaps, to the exclusion of the concerns of other publics, but certainly in ways not powerfully constrained by them...

SELF-PERPETUATING AGENCIES

If the Founding Fathers were to return to examine bureaucratic clientelism, they would, I suspect, be deeply discouraged. James Madison clearly

foresaw that American society would be “broken into many parts, interests and classes of citizens” and that this “multiplicity of interests” would help ensure against “the tyranny of the majority,” especially in a federal regime with separate branches of government. Positive action would require a “coalition of a majority”; in the process of forming this coalition, the rights of all would be protected, not merely by self-interested bargains, but because in a free society such a coalition “could seldom take place on any other principles than those of justice and the general good.” To those who wrongly believed that Madison thought of men as acting only out of base motives, the phrase is instructive: Persuading men who disagree to compromise their differences can rarely be achieved solely by the parceling out of relative advantage; the belief is also required that what is being agreed to is right, proper, and defensible before public opinion.

Most of the major new social programs of the United States, whether for the good of the few or the many, were initially adopted by broad coalitions appealing to general standards of justice or to conceptions of the public weal. This is certainly the case with most of the New Deal legislation—notably such programs as Social Security—and with most Great Society legislation—notably Medicare and aid to education; it was also conspicuously the case with respect to post-Great Society legislation pertaining to consumer and environmental concerns. State occupational licensing laws were supported by majorities interested in, among other things, the contribution of these statutes to public safety and health.

But when a program supplies particular benefits to an existing or newly created interest, public or private, it creates a set of political relationships that make exceptionally difficult further alteration of that program by coalitions of the majority. What was created in the name of the common good is sustained in the name of the particular interest. Bureaucratic clientelism becomes self-perpetuating, in the absence of some crisis or scandal, because a single interest group to which the program matters greatly is highly motivated and well-situated to ward off the criticisms of other groups that have a broad but weak interest in the policy.

In short, a regime of separated powers makes it difficult to overcome objections and contrary interests sufficiently to permit the enactment of a new program or the creation of a new agency. Unless the legislation can be made to pass either with little notice or at a time of crisis or extraordinary majorities—and sometimes even then—the initiation of new programs requires public interest arguments. But the same regime works to protect agencies, once created, from unwelcome change because a major change is, in effect, new legislation that must overcome the same hurdles as the original law, but this time with one of the hurdles—the wishes of the agency and its client—raised much higher. As a result, the Madisonian system makes it relatively easy for the delegation of public power to private groups to go unchallenged and, therefore, for factional interests that have acquired a supportive public bureaucracy to rule without submitting their interests to the effective scrutiny and modification of other interests....

Regulation: Politics, Bureaucracy, and Economics

Kenneth J. Meier

The study of regulatory policymaking is dominated by two perspectives (Weingast and Moran, 1983).¹ One view holds that regulatory agencies are vested with vast discretion and are the major force in regulatory policy. Among the agency characteristics that affect policy outputs are professional values, policy expertise, bureaucratic entrepreneurs, and agency structure (e.g., see Wilson, 1980; Katzman, 1980).² A second view suggests that regulatory agencies are dominated by their environment. Interest groups, legislative committees, economic forces, and technological change are among the determinants of policy (e.g., see Stigler, 1971; Lowi, 1969; Mazmanian and Sabatier, 1980).³ Both views are essentially incomplete. Regulatory policy is a product of both regulatory bureaucracies and environmental forces. This chapter develops an outline of the regulatory process that integrates both these explanations. Although the conceptual framework developed is moderately complex, so is regulatory policy. Little is gained by introducing simple views of regulation that are not linked to the real world.

REGULATORY POLICY OUTPUTS

The study of regulation is important because it is part of the policy process that allocates values among members of society. It is, as Lasswell⁴

(1936) described politics, a determination of “Who gets what, when and how.” In short, what is important about regulatory policy from a political perspective is, Who benefits from regulation?

Although much regulation literature has focused on who benefits from regulation, this focus has been muddled by relying on the concept of the public interest. Bernstein’s (1955)⁵ theory that regulatory agencies in the long run were captured by the regulated industries contrasted reality with an ideal standard of regulation in the public interest (see also Stigler, 1971; Peltzman, 1976).⁶ Unfortunately, defining the public interest in regulatory policy has been as elusive as it has been in other areas of politics (see Schubert, 1960).⁷ Even the most self-serving appeal by a regulated group is now phrased as a quest for the public interest.

In a perceptive essay, Paul Sabatier (1977)⁸ proposed an alternative to the public interest theory of regulation; regulatory policy can be arrayed on a continuum from self-regulation (regulation in the interests of the regulated) to aggressive regulation (regulation of one individual in the interests of another).⁹ Sabatier’s thesis can be divided into two separate dimensions—the degree to which regulation benefits the regulated industry and the degree to which it benefits non-regulated individuals such as consumers. These

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are two separate dimensions rather than poles on a single continuum.

As figure 36.1 reveals, the two dimensions of beneficiaries produce four extreme types of regulation. Cell 1 contains policies designed to benefit the regulated but not the nonregulated, the traditional “captured” regulation. Regulation by state occupational regulators is a classic example of cell 1 regulation. Cell 3 contains those policies whereby an industry is regulated for the benefit of another party. Occupational safety and health regulation, for example, restricts industry behavior in an attempt to benefit workers. Cell 4 contains those policies that benefit both the regulated and some portion of the nonregulated. Bank regulation and deposit insurance following the Great Depression benefited both depositors by guaranteeing the safety of their funds and the banks by encouraging the use of banks. Finally, cell 2 includes policies that benefit no one. Current antitrust policy concerning price discrimination appears to harm both businesses that wish to compete and consumers.

Although who benefits from regulatory policy is not always easy to discover, the question provides a focal point for comparing unlike regulatory policies. This text will examine two aspects of regulatory policy—what is the current set of regulatory policies, and who benefits from them? The conceptual framework in this chapter permits us to explain why regulatory agencies act as they do and why regulatory policies benefit whom they do.

SUBSYSTEM POLITICS

Although regulatory policies can be produced directly by legislatures, the chief executive, or the courts, in general, regulatory policy is implemented via bureaucracy. Typically, broad areas of regulatory discretion are granted to a regulatory agency by these political institutions of government. The Interstate Commerce Commission, for example, is charged with regulating interstate commerce with only a vague goal (the “public interest”) as a guide. The policymaking activities

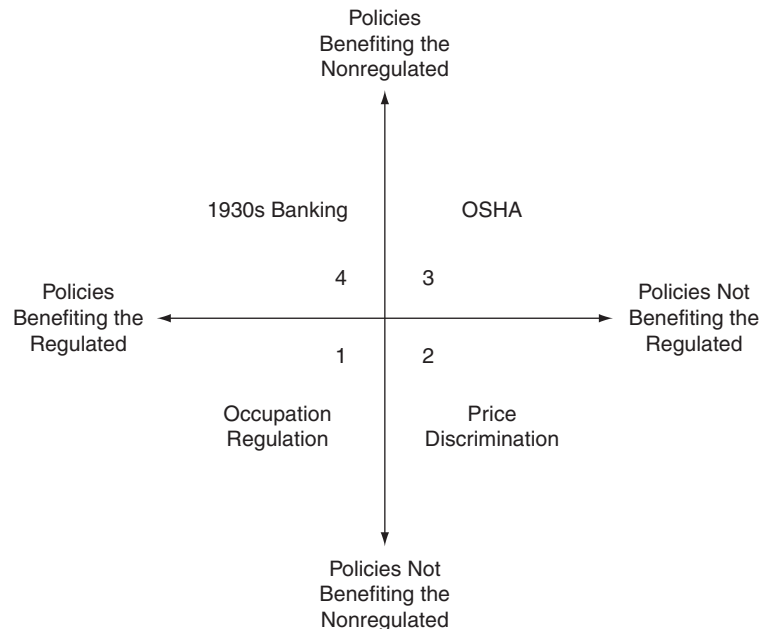


FIGURE 36.1 Dimensions of Regulatory Policy

of bureaucratic agencies can best be understood by examining the subsystem in which these agencies operate.

That public policy is made in semiautonomous subsystems composed of government bureaus, congressional committees, and interest groups has been a basic tenet of political analysis since the 1950s (see Freeman, 1965; McConnell, 1966).¹⁰ Subsystems exist because the American political system fragments political power (Long, 1962).¹¹ With its division of federal authority into three branches—executive, legislative, and judicial—each operating with constraints on the other two, political power at the national level is fragmented among numerous political actors. Power is further divided by the federal system and informally kept that way by broker political parties that seek electoral success rather than unified political government. As a result, political power is not concentrated enough to dominate the policy process.

The fragmentation is exacerbated by the numerous policy issues that compete for attention on the policy agenda. Major political institutions must constantly jump from crisis to crisis—social security today, gasoline user fees tomorrow, MX missiles next week. Power in a given issue area flows to those who retain a continuing interest in it. In American politics a continuing interest usually means the permanent bureaucracy, specialized congressional committees, and the interest groups affected by the issue.

Policy subsystems can operate in a relatively independent fashion from the major political institutions *if* the members of the policy subsystem can satisfy each others' needs. The bureaucracy makes policy. It issues the permits, exceptions, and punishments; but to do so it needs resources and legislative authority. Congressional committees can provide the funds and authority needed by the bureau to operate, but the committee members need to be reelected. Reelection requires political support and campaign contributions. The interest groups affiliated with the regulated industry need the outputs that the bureaucracy is creating, especially if the outputs are favorable; and they have the political resources to commit to members of congressional committees. In combination, the members of the subsystem can often supply the needs of the other members.

If all the needs of the subsystem members are satisfied, then subsystem members make no major demands on the macropolitical system. In turn, the subsystem is given autonomy.

Although subsystems have been fruitfully applied to numerous areas of political research (see Ripley and Franklin, 1980),¹² recent work suggests that subsystems are not the homogeneous “iron triangles” that they are portrayed to be (see Hecl, 1978; Sabatier, 1983).¹³ First, interest groups, even industry groups, rarely agree completely about regulatory policy. Dissension among airline companies permitted deregulation of airline fares in the 1970s (Behrman, 1980);¹⁴ broadcasting interests are fragmented into several groups with vastly different goals, including groups representing networks, independent stations, religious broadcasters, ultrahigh frequency (UHF) stations, frequency modulation (FM) stations, and countless others (Krasnow, Longley, and Terry, 1982).¹⁵ Second, interest groups other than industry groups actively participate in the regulatory subsystem. Consumer groups are active in the auto safety, drug regulation, and consumer products subsystems; labor unions are active in safety regulation and sometimes in environmental regulation. Rarely do industry groups have the opportunity to operate without opposition.

Third, subsystems are often divided among several different subcommittees each with different policy objectives. Environmental protection programs, for example, are under the jurisdiction of seven committees in the House and five in the Senate (Kenski and Kenski, 1984: 111).¹⁶ Even with only a single committee involved in a subsystem, policy conflict occurs. Conflicting positions by the Commerce Committees at different times during the 1970s resulted in a series of policy changes by the Federal Trade Commission (Weingast and Moran, 1982).¹⁷ Fourth, a variety of other actors penetrate the subsystem to urge policy actions, including journalists and scholars who generate important information on policy options. Such issues as acid rain, pesticide regulation, drug safety, and others were placed on the agenda by such actors.

Fifth, one subsystem will sometimes overlap one or more other subsystems, thus adding additional actors to the political battles and creating

greater conflict. Environmental protection subsystems collided with energy subsystems following the Arab oil embargo; insurance subsystems and automobile regulation subsystems came into conflict following the Reagan administration's relaxation of automobile safety regulations.

Finally, the subsystems concept ignores the vital role of state and local government officials in the regulatory process. In many areas, federal regulatory programs are implemented by state governments; environmental protection and workplace health and safety are prominent examples. In a variety of other areas such as consumer protection, antitrust, and equal employment opportunity policies, both the federal government and state governments operate programs. Often the policy goals of state regulators can differ significantly from those of federal regulators (see Rowland and Marz, 1982),¹⁸ resulting in policy outputs different from those intended by the federal government. This conflict can result in either more vigorous regulation or

less vigorous regulation depending on state objectives. California's aggressive mobile source air pollution regulation in the 1960s and 1970s, for example, often preceded federal efforts, but state-run workplace safety programs lag behind federal-run programs.

In figure 36.2 an expanded version of the subsystem is shown that includes other (i.e., non-industry) interest groups, significant others (e.g., researchers, journalists), and state governments in addition to the "iron" triangle. Paul Sabatier (1983) argues that policy subsystems can best be viewed as opposing advocacy coalitions; a coalition of industry and its allies (members of Congress, other groups, and so on) is opposed by other interest groups and their allies. Under such a conceptualization, the traditional iron triangle becomes a special case of a policy subsystem with only one advocacy coalition.

Among the most important aspects of policy subsystems is how open the subsystems are to outside influences via the chief executive,

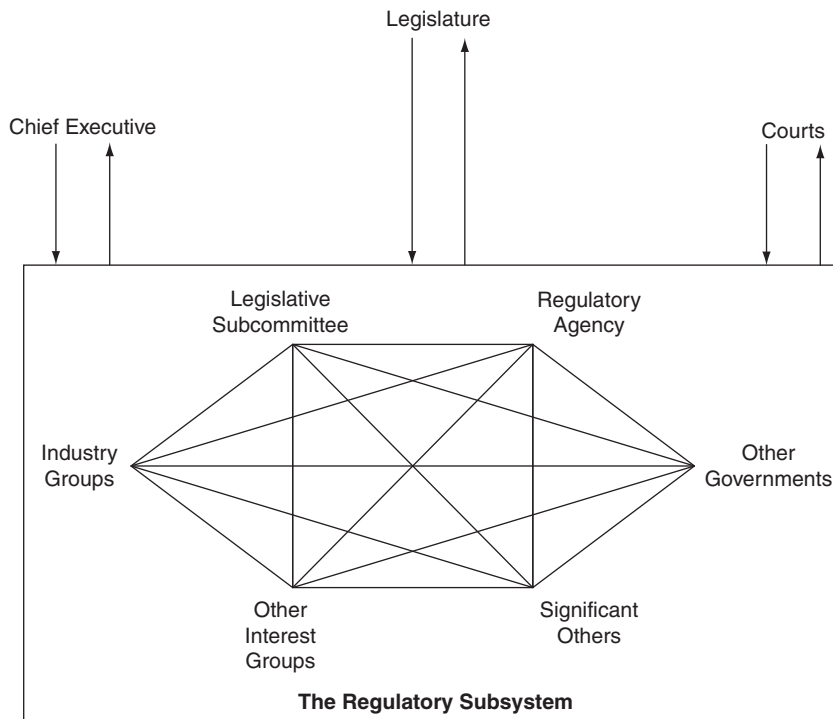


FIGURE 36.2 The Regulatory Policy System

the legislature, and other nonsubsystem actors. Policy subsystems are perceived as fairly consensual, and in areas of distributive politics—health care research, agricultural policy, and educational aid—they are (Ripley and Franklin, 1980). The distribution of tangible benefits paid for by general tax revenues ties the members of the subsystems closely together. Consensual subsystems resolve policy issues internally and present a unified front to the larger political system. As a result, consensual subsystems are usually allowed to operate without outside interference.

Regulatory subsystems are not as consensual as those in distributive policy and, therefore, are more likely to be affected by outside influences for several reasons. First, regulatory policy restricts choice so that an industry is likely to see regulation as a mixed blessing. Regulated industries may defend their regulator when it is attacked by other political actors (e.g., the airlines and the Civil Aeronautics Board (CAB) circa 1976); but they are slower to come to the defense and less committed when they do so. Second, members of Congress are likely to be less committed to a regulatory subsystem than to a distributive subsystem. Unlike other policies, regulation often imposes direct costs. A member of Congress from a rural district will receive far more credit from constituents if he or she is on the soil conservation subcommittee distributing benefits than if he or she is on the environmental committee limiting pesticide use. Third, regulatory subsystems are likely to have more nonindustry groups that want to participate in the subsystem. The Federal Communications Commission (FCC), for example, cannot operate in a consensual, autonomous subsystem because numerous interests other than the television industry are also interested in regulating television. Politicians, the movie industry, cable operators, the phone company, and many others see television as important to their interests; accordingly, they will seek to participate in FCC decisions.

REGULATORY AGENCIES: INSIDE THE BLACK BOX

Government agencies are not passive actors pushed along at the whim of other subsystem members. They shape as well as respond to

pressures from the subsystem (Rourke, 1984).¹⁹ The U.S. Department of Agriculture (USDA), for example, played a role in creating and developing the American Farm Bureau; Farm Bureau members, in turn, assisted the USDA in crop regulation. The Environmental Protection Agency funds academic research on pollution; such research is then used in debates over environmental protection. In a sense, both agencies helped create a portion of the subsystem. If bureaus can take an active role in structuring their environments, they need not passively respond to subsystem pressures. They can actively seek to influence the forces impinging on regulatory policy. To understand the policy actions of regulatory agencies, two variables—goals and resources—must be discussed.

Agency Goals

Every regulatory agency has goals including policy goals that agency employees wish to attain. Environmental Protection Agency employees seek cleaner air and water; FDA personnel pursue safe and effective drugs. Although this contention may seem trivial, many treatments of bureaucracy either assume an organization's sole goal is to survive or that the bureaucrats' goal is to maximize their income (e.g., see Niskanen, 1971).²⁰ Both approaches provide a misleading view of regulatory agencies.

This distinction merits some discussion. If we assume, as Niskanen does, that bureaucrats are rational utility maximizers, regulators clearly seek goals other than income maximization. Because incomes are higher in the regulated industry, an income maximizer would choose to work for the regulated industry rather than the regulatory agency. The choice to enter the public sector is not dictated by inferior skills because studies show that public sector employees in jobs similar to private sector ones have greater skills and better training (Guyot, 1979).²¹ A public sector bureaucrat, therefore, must be maximizing something other than income; the most logical thing to maximize is policy goals.

Ascribing regulatory policy goals to bureaucrats is consistent with motivation theory (e.g., Maslow, 1970)²² and empirical evidence. Employees work for the Office of Civil Rights

because they believe in racial equality (Romzek and Hendricks, 1982).²³ Individuals work for OSHA because they desire to improve workplace safety (Kelman, 1980).²⁴ In the long run, most agency employees become advocates of the agency and its goals (Downs, 1967).²⁵ Those interested in higher incomes or in the goals of the regulated industry will probably leave the agency.

Having policy goals does not mean that bureaucrats would not like to see their organization survive, all things being equal. Survival, after all, is necessary to obtain most policy goals. In some cases, the present Civil Aeronautics Board bureaucrats, for example, are content to accomplish policy objectives that will eventually eliminate the agency. In sum then, regulators regulate because they wish to attain policy goals; without understanding that regulators are goal-seeking and without determining what those goals are, regulatory behavior will appear random to the outside observer.

Also important in terms of regulatory goals is the potential for goal conflict within an agency. Such lack of consensus might result from several different conflicts within the organization: central staff versus field personnel, professionals versus administrators, one profession versus another profession, career staff versus political appointees. The last source of conflict is especially important. Career staff are more likely to identify with the agency and be strongly committed to its programs (Hecl, 1977).²⁶ Political appointees are more likely to see themselves as the president's representative (Welborn, 1977)²⁷ and, therefore, hold different views.

Resources

In pursuit of policy goals, regulatory agencies have access to five resources—expertise, cohesion, legislative authority, policy salience, and leadership.²⁸ Access to such resources determines the value of the agency's participation to other subsystem members. The greater a regulatory agency's resources, the more likely the agency will be able to resist industry pressures for regulation solely in the interests of the industry.

EXPERTISE. Bureaucratic organizations are designed to develop and store knowledge. To a degree

greater than legislatures or courts, bureaucracies can divide tasks and gain knowledge via specialization (Rourke, 1984: 16). An EPA employee, for example, could spend an entire career dealing with the intricacies of regulating the pesticide mirex. As part of specialization, American government bureaucracies recruit skilled technocrats as employees, and the agencies become professionalized. A professionalized agency often adopts the values of the predominant profession; the values of safety and health professionals in the Occupational Safety and Health Administration, for example, are the reason why OSHA relies on engineering standards (Kelman, 1980).

Professionalization and specialization permit an agency to develop independent sources of knowledge so that the agency need not rely on the industry (or others) for its information. Although the levels of professionalism and specialization in regulatory agencies cannot rival those of such agencies as the National Institutes of Health, they are a factor. The Nobel laureate Glenn Seaborg's appointment to head the Atomic Energy Commission (AEC; now the Nuclear Regulatory Commission) increased the AEC's reputation for expertise. Similarly, the creation of a separate research arm for the Environmental Protection Agency provided the EPA with expertise it could use in its political battles (Davies and Davies, 1975).²⁹

Professionalism does not mean that an agency is dominated by a single profession. At times one or more professions may be struggling for control of the agency. In the Federal Trade Commission (FTC), for example, economists and lawyers have long fought over control of the FTC's antitrust functions. The professional conflict, in fact, has major policy implications. Lawyers prefer cases that can be quickly brought to trial like Robinson-Patman cases. Economists favor either major structural monopoly cases that will significantly increase competition or cases against collusion.

COHESION. A second resource permitting the agency to affect public policy is the cohesiveness of the bureau's personnel. If agency personnel are united in pursuit of their goals, coalitions opposed to agency actions will need to develop their

own sources of information to challenge agency decisions. A cohesive agency is far more difficult to resist than an agency that engages in public disputes over policy direction. Cohesion, in turn, is a function of an agency's goals and its ability to socialize members to accept these goals. Some public agencies such as the Marine Corps or the Forest Service even go so far as to create an organizational ideology for their members. Although no regulatory agency engages in the same degree of socialization that the Marine Corps does, they do seek consciously or unconsciously to influence the values of employees. Bureaucrats in the Environmental Protection Agency, for example, show much greater concern for environmental protection than for compliance costs. The Office of Education in the 1960s was a zealous advocate of school desegregation.

LEGISLATIVE AUTHORITY. All regulatory agencies must have legislative authority to operate, but all grants of legislative authority are not equal (see Sabatier, 1977: 424–431). Five important differences in legislative authority exist and contribute to agency resources. First, policy goals as expressed in legislation can be specific or vague. Before 1973, Congress specified agricultural price support levels exactly, leaving little discretion for Agriculture Department regulators. In contrast, the Interstate Commerce Commission regulates interstate commerce with the general goal that regulation should be in the public interest. The more vague the legislative expression of goals, the greater the agency's ability to set regulatory policy. Specific policy goals should be correlated with regulation in the interests of whichever group has the best access to Congress. Consequently, specific goals are associated both with the regulation in the interests of the regulated (e.g., agriculture) and with regulation for the benefit of the nonregulated (e.g., environmental protection; see Marcus, 1980).³⁰

Second, legislative delegations vary in the scope of authority they grant. Some agencies have jurisdiction over every firm in the industry (e.g., EPA). Other agencies might be denied jurisdiction over portions of their industry; OSHA's law, for example, exempts small farms. An agency with limited authority cannot affect the behavior of

those outside its jurisdiction. The greater the limitations and restrictions on a regulatory agency, the more likely such an agency will regulate in the interest of the regulated industry.

Third, legislative delegations vary in the sanctions permitted to an agency. Bank regulators possess a wide variety of sanctions that can greatly influence the profits and viability of financial institutions. In contrast, the Equal Employment Opportunity Commission (EEOC) has no sanctions and must rely on court action to extract compliance. The greater the range of sanctions available to a regulatory agency, the more likely the agency will regulate in the interests of the nonregulated.

Fourth, regulatory agencies differ in their organizational structure. The two most common structural forms are the department regulatory agency (an agency headed by one person within a larger executive department) and the independent regulatory commission (a multimember board that reports directly to the legislature). Although the different structures do not appear related to performance (see Meier, 1980; Welborn, 1977),³¹ often independent regulatory commissions are subjected to other restraints. At the state level, regulatory commissions are often by law composed of members of the regulated industry. When selection restrictions such as this occur, regulation in the interests of the regulated is a given.

Fifth, legislative grants of authority often specify agency procedures. The FTC must follow the lengthy *formal* rule-making process to issue rules, and the Consumer Product Safety Commission was handicapped until recently with a cumbersome "offeror" procedure. Other agencies such as the EEOC and the antitrust regulators are limited further because they must use the courts to set policy and resolve disputes. The more restrictive an agency's procedures are, the less likely the agency will be able to regulate the industry closely.

POLITICAL SALIENCE. The salience of a regulatory issue (i.e., its perceived importance by the public) can be used as a resource in the agency's regulatory battles. Regulatory issues vary greatly in salience. Nuclear plant regulation after the Three Mile Island accident was a highly salient issue to political elites and the general public.

State regulation of barbers, on the other hand, is rarely salient. Not only does salience vary across issue areas, it also varies across time within an issue area. Banking regulation was highly salient in 1933 but not so in 1973.

According to William Gormley (1983),³² salience determines the willingness of political elites to intervene in the regulatory process. When issues become salient, the rewards for successful intervention are greater for elected officials. In salient issue areas, therefore, regulators will find their actions closely watched by political elites whereas in nonsalient areas regulatory discretion is likely to go unchecked. A lack of salience should be to the advantage of the regulated industry because it will have little opposition to its demands.

LEADERSHIP. The final regulatory resource is the agency's leadership. Unlike the career bureaucracy, which is fairly stable, leadership positions turn over frequently. Two elements of leadership are important—quality and the leader's goals. Quality of leadership is a nebulous resource that, though difficult to define, is clearly a factor. The leadership abilities of Alfred Kahn as Civil Aeronautics Board chairperson were instrumental in deregulating airlines; the absence of strong leadership in Federal Trade Commission chairman Paul Rand Dixon was often cited as a reason for poor performance by the pre-1969 FTC.

Essential to understanding the impact of leadership are the policy goals of regulatory agency heads. Through the leadership of Caspar Weinberger, Miles Kirkpatrick, and Michael Pertschuk, the Federal Trade Commission became less tied to the interests of the regulated industry and more interested in consumer issues. The appointment of Reese Taylor to head the Interstate Commerce Commission in 1981 signaled an end to the rapid movement toward deregulation of the trucking industry.

Leadership is especially important because the agency head is the focal point for interaction with the subsystem. In such interactions, the agency head is constrained by the expertise, cohesion, legislative authority, issue salience, and policy goals of the agency. An agency head who acts in opposition to the values and normal policy activities of the

career staff risks political opposition from within the agency. Anne Burford's effort to alter environmental policy in the 1980s and the response of the EPA career staff is a classic example of this.

Agency Discretion: A Recapitulation

Regulatory agencies, therefore, exercise some discretion in regulatory policy. This discretion is not limitless, however. The amount of discretion accorded an agency is a function of its resources (expertise, cohesion, legislative authority, policy salience, and leadership) and the tolerances of other actors in the political system. Each actor has a zone of acceptance (see Simon, 1957); and if agency decisions fall within that zone, no action will be taken. Because regulatory policy is more important to subsystem actors, the zone of acceptance for subsystem actors is probably narrower than that for macropolitical system actors (e.g., the president). Consequently, subsystem actors will be more active.

As long as the regulatory subsystem produces policies within the zone of acceptance of Congress, the president, and the courts, then these actors will permit the subsystem some autonomy. Actions outside the zone of acceptance will bring attempts to intervene. The size of the zones of acceptance should vary with both salience and complexity (see Gormley, 1983). Salience increases the benefits of successful intervention to a political actor, and complexity increases the costs of intervention. All things being equal, therefore, political actors will be more likely to intervene in policies that are salient but not complex (Gormley, 1983).

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37

Appellate Courts as Policy Makers

Lawrence Baum

Appellate courts differ from trial courts in their roles as policy makers. The primary task of trial courts is to apply existing legal rules to specific cases. In contrast, appellate courts have more opportunities to establish new rules, to make decisions whose implications extend far beyond individual cases. In this chapter, I will examine what appellate courts do with these opportunities, what kinds of parts they play in the making of government policy.

The chapter's primary concern is the significance of appellate courts as policy makers. As many commentators have noted, appellate courts in the United States are very active as policy makers. Over the past few decades their decisions have transformed government policy on such issues as abortion, civil rights, and compensation for personal injuries. Yet the roles of appellate courts in policy making are limited by judges' own restraint. And when courts do intervene in the making of public policy, the impact of their decisions frequently is narrowed by the reactions of other government institutions and of people outside government.

A secondary concern is the content of the policies made by appellate courts, particularly their ideological direction. At any given time, the decisions of appellate courts are mixed, ranging from some that we would characterize as quite liberal to others that appear to be quite conservative. But the federal and state appellate courts seemed to be predominantly conservative institutions until at least the 1930s; today, in contrast, many appellate courts show strong liberal tendencies.

These concerns and other characteristics of appellate courts as policy makers will be examined in two parts. The first section of the chapter will look at appellate court decisions as government policies. The second will discuss the actual impact of the policies made by appellate courts.

APPELLATE COURT DECISIONS AS POLICIES

We can think of appellate court decisions as having two components, which correspond to the functions of these courts.... The first is a review

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of the way that the lower court treated the parties to the case. The second is the appellate court's judgment about the principles of law that are applicable to the case, a judgment that is expressed in the opinion accompanying the decision. I will consider the policy outputs of appellate courts in terms of these two components of the decision, giving primary attention to the second.

Appellate Review of Lower Court Decisions

In each case that an appellate court hears, its most specific task is to review the treatment of the parties by the court below it. The two levels of appellate courts take somewhat different approaches to this task.

REVIEW BY FIRST-LEVEL COURTS. First-level appellate courts—which are intermediate courts in the federal system and in most states—review trial court decisions. They review a fairly high percentage of decisions by major state trial courts and federal district courts because of the general right to appeal adverse trial decisions and the growing tendency to exercise this right.

Most often, they ratify trial decisions by affirming them. It appears that every first-level court approves well over half the trial decisions it reviews. A California court of appeal in the mid-1970s affirmed lower-court decisions 84 percent of the time, and the affirmance rate for the federal courts of appeals in 1987 was also 84 percent.¹ Furthermore, many decisions that are not affirmances (which I will call disturbances of trial decisions) are actually relatively minor modifications of decisions rather than general overturnings. For instance, an appellate court will sometimes eliminate one of several sentences given to a criminal defendant, but in doing so it may not affect that defendant's actual prison time at all.²

These high affirmance rates can be explained in three ways.³ The first is in terms of generally accepted legal doctrines. One of these is the rule that a trial court's interpretation of the facts in a case will not be questioned if there is any *substantial evidence* for that interpretation. On the basis of this rule, appellate courts generally do not take a fresh look at the evidence as a

whole in order to weigh it independently; rather, they seek out a basis in the evidence for upholding the trial court's ruling. Another important doctrine is the *harmless error* rule, which holds that even if a trial judge has erred in applying legal rules, an appellate court can still affirm the decision if it concludes the error was harmless, that it probably did not affect the trial court judgment.

High affirmance rates can also be explained in terms of the institutional interests of appellate courts. Frequent reversals of trial court decisions would increase conflict between the two levels of courts, because many trial judges resent reversals as negative reviews of their work. And, more important, to proceed with full and thorough reviews of trial decisions, with no preconceptions, would consume the time and energy of appellate judges at an unacceptable rate, particularly when their work loads have grown in recent years. Moreover, high reversal rates might encourage more litigants to appeal, increasing the burdens of appellate judges even more.

Finally, the past experience of appellate judges also helps to account for their tendency to affirm. Because most appeals in the past have seemed suitable for affirmance, judges expect that this will continue to be true. In combination with the substantial evidence and harmless error rules and with the institutional interests of appellate courts, a judge's past experience tends to create a strong presumption in favor of affirmance. That presumption is reflected in a 1988 opinion by a judge on the federal court of appeals in Chicago; in his view, a decision should not be overturned when it is "just maybe or probably wrong" but only when it is "wrong with the force of a five-week-old, unrefrigerated dead fish."⁴

Affirmance rates are especially high in criminal cases. Thomas Davies' study of a California court of appeal in the 1970s found that only 14 percent of the appeals from criminal convictions resulted in any disturbance of the trial decision, and only 5 percent involved a full reversal. In contrast, 31 percent of the trial decisions in civil cases were disturbed. Similarly, in the federal courts of appeals in 1987, the reversal rate was 8 percent in criminal cases and 18 percent in civil cases.⁵

One reason for this difference lies in patterns of appeals. Civil appeals carry significant

monetary costs for most litigants, and civil litigants are ordinarily advised by attorneys. As a result, most appellants probably have fairly strong grounds on which to challenge trial decisions. In contrast, criminal defendants have considerable incentive to appeal when they have received substantial prison sentences, a high proportion of defendants do appeal, and a good many such appeals have little legal basis.

Nevertheless, as Davies has argued, it misses the point simply to assume that most criminal appeals are frivolous, because frivolousness is a subjective concept. Indeed, Davies found in his California study that the court of appeal cited trial court errors in about a quarter of the decisions in which it affirmed convictions.⁶ Hence the concept of the frivolous criminal appeal may be as much a justification for affirmance—and for limited judicial scrutiny of trials—as it is an explanation of high affirmance rates.

Of course, the inclination to affirm is linked with the growing use of abbreviated procedures in first-level appellate courts. The establishment of such procedures has been encouraged by the belief that a high proportion of appeals are easy affirmances that staff attorneys can identify and handle. At the same time, when certain cases are labeled as requiring only abbreviated consideration, court personnel are encouraged to treat them as easy affirmances. Thus the use of abbreviated procedures may raise an affirmance rate that already is high.

REVIEW BY SECOND-LEVEL COURTS. Unlike first-level appellate courts, those at the second level disturb lower court decisions in a high proportion of the cases they decide. In its 1987–88 term, for instance, the U.S. Supreme Court affirmed the lower court in only 42 percent of the decisions for which it provided full opinions.⁷

Such a high disturbance rate suggests that second-level appellate courts are quite willing to substitute their own judgments for those of the courts below them. But in this sense, it is quite deceptive. As we have seen, judges on second-level courts are inclined to accept cases for hearings when they think that the lower court has erred in its decision. This means that they approach many of the cases they have accepted with a

presumption of reversal, rather than the presumption of affirmance that prevails in first-level courts, and a high reversal rate is virtually guaranteed.

Yet if we take into account all the cases that are brought to the second-level courts, and not just those that are accepted for review, the disturbance of lower-court decisions is in fact quite limited. Of the cases that the Supreme Court receives, for example, it disturbs decisions only in about 5 percent.⁸ Thus appellate courts at both levels allow most decisions that they review to remain standing.

OVERVIEW. Because appellate courts uphold most decisions that are brought to them and because some decisions are not appealed, the overwhelming majority of decisions by trial courts and intermediate appellate courts become final. One study indicated that in the late 1960s the federal courts of appeals disturbed only about 4 percent of all the decisions made by the district courts; in turn, the Supreme Court disturbed about 1 percent of all court of appeals decisions.⁹ Almost surely, the rates are lower today. Furthermore, if disturbance rates were calculated for the decisions of state trial courts, they would be even lower than those for the federal courts because a relatively small proportion of decisions by minor trial courts are appealed.¹⁰ In this respect, then, appellate courts intervene rather little into the work of the courts below them.

Of course, this is only one aspect of the relationship between higher and lower courts. Even though appellate courts overturn relatively few decisions, the opinions they write influence what the courts below them do in a much larger number of cases. For example, one state supreme court decision on liability rules in auto accident cases can shape hundreds of trial court decisions. For this reason, we must examine the activity of the appellate courts as makers of legal rules and analyze the responses to their decisions in order to get a fuller sense of their roles within the judiciary.

Appellate Court Agendas

Through their opinions, appellate courts lay down interpretations of law that are generally regarded as binding on both lower courts and

administrative bodies under their jurisdiction. These interpretations can alter existing legal rules, and they can reshape or even overturn policies made by the legislature and the executive branch. It is primarily through their legal interpretations, rather than through their treatment of individual litigants, that appellate courts exert influence as policy makers.

We can begin to sketch out this role by examining the sets of cases that appellate courts hear and decide with opinions—what I will call their agendas. The more that a court concentrates on cases in a particular field, the greater its potential to shape public policy in that field. ...[T]he agendas of appellate courts are the products of rules of jurisdiction, patterns of litigation and appeals, and the judges' choices of cases in which to write opinions. The 1987 agendas of three appellate courts at different levels are summarized in Table 37.1.

The agendas of state supreme courts reflect the work of state courts generally.¹¹ Thus, because state court litigation is quite diverse, so too is state supreme court business. In recent

years, several areas have been frequent subjects of supreme court opinions: torts, particularly cases arising from accidents; criminal law and procedure; contract disputes, most often between debtors and creditors; government economic regulation; and family and estate issues, primarily concerning divorce and inheritance. As a result, state supreme courts make legal rulings in a broad range of policy areas.

The agendas of the federal courts of appeals show both similarities and differences with those of the state supreme courts.¹² Their opinions, of course, are primarily on issues of federal law, but they also deal with a good many state law issues in cases brought under the diversity jurisdiction. The two policy areas that stand out on their agendas are government economic regulation and criminal law and procedure, with regulation cases considerably more numerous than they are in state appellate courts. Also common are torts, tax cases, and contract cases.

The agenda of the U.S. Supreme Court is rather distinctive.¹³ Broadly speaking, the Court

TABLE 37.1 Subject Matter of Cases Decided with Published Opinions in 1987, Selected Appellate Courts, in Percentages

Category of Cases ^a	Pennsylvania Supreme Court	Federal Court of Appeals, Sixth Circuit ^b	U.S. Supreme Court ^c
Debt and contract	10.5	11.1	4.1
Real property	4.4	0.4	1.4
Business organization	0.5	3.2	2.1
Torts	18.2	7.9	5.5
Family and estates	7.7	0.0	0.0
Public Law:			
Criminal	34.8	19.8	21.4
Governmental regulation of economic activity	7.7	22.1	19.3
Other	16.0	35.6	46.2

^aMany cases could have fit into multiple categories; different coding rules would have produced substantially different results. For this reason, the percentages shown should be viewed as illustrations of differences in the agendas of the three courts rather than as exact depictions of each court's agenda.

^bThe time period from which cases were drawn was January–June 1987.

^cThe time period from which cases were drawn was the 1987 term of the Court.

devotes itself overwhelmingly to public law issues; as the table shows, all other cases account for only a small minority of its opinions. Within this category, the Court is primarily a civil liberties specialist; indeed, in recent years about half its opinions have involved civil liberties issues. The largest number of these cases concern criminal procedure, but the Court also writes a great many opinions on the right to equal treatment under the law and such personal rights as freedom of expression and freedom of religion. Another significant part of the Court's agenda concerns economic regulation by federal and state governments. A third major area, which overlaps the first two, is federalism—that is, the constitutional relationship between national and state governments.

Even this brief discussion suggests two conclusions about the potential roles of appellate courts as policy makers. The first concerns the agendas of appellate courts taken as a whole. While the various state and federal courts cover a broad range of issues, there are some important areas of public policy in which appellate courts are largely inactive. The outstanding example is foreign policy, which state courts barely touch and in which federal courts make relatively few decisions. Even in fields where they are active, the courts may not deal with the most fundamental issues. In economic regulation, for instance, courts focus primarily on the details of regulatory policy rather than on the general form and scope of regulation.

The second conclusion concerns differences among courts. Some issue areas, such as criminal procedure, are important to appellate courts at all levels, but others are concentrated in certain courts. Property disputes and divorce are primarily the domain of state courts, while the Supreme Court gives civil liberties much greater emphasis than does any set of lower appellate courts. Thus different appellate courts have different domains in which to make policy.

Ideological Patterns in Appellate Court Policy

The discussion of agendas indicates the areas to which appellate courts devote the most attention. To get a sense of what they do in these areas, we

need to examine the ideological direction and activism of appellate policies.

Ideologically, the policies of the appellate courts at any given time are certain to be quite diverse. But diversity is not the same as randomness. During particular periods in American history, liberal or conservative policies have been dominant. In the broadest terms, appellate courts traditionally were fairly conservative in their policies, by the current definition of that term, whereas a strong element of liberalism has developed in the past half century.

THE TRADITIONAL CONSERVATISM OF APPELLATE COURTS. For most of American history, the policies of appellate courts were primarily conservative. Federal and state courts addressed a wide range of legal issues involving the interests of economically powerful groups, and the dominant theme in their decisions was support for those interests.

This theme is fairly clear in the work of the U.S. Supreme Court. In the nineteenth and early twentieth centuries the Court worked to protect property rights and the freedom of business enterprises from restrictions by state and federal governments. As legislation to regulate and restrict business practices proliferated, the Court became increasingly hostile to this legislation, frequently ruling that state and federal laws violated the Constitution. These attacks culminated in the Court's decisions of the 1930s which struck down much of President Franklin Roosevelt's New Deal economic program. Meanwhile, the Court gave little support to the civil liberties of black citizens, unpopular political groups, or criminal defendants. Viewing the Court's record, Attorney General Robert Jackson, who was shortly to join the Court himself, wrote in 1941 that "never in its entire history can the Supreme Court be said to have for a single hour been representative of anything except the relatively conservative forces of its day."¹⁴

Scholars have disagreed about the historical record of state courts, and this disagreement reflects the diversity in their decisions.¹⁵ But the most important elements in their policies through most of our history were primarily conservative. As the industrial economy developed, state courts

did much to protect the business sector from threats to its economic well-being. In the nineteenth century, they devised rules in contract and property law that supported industrial and commercial growth. In their building of tort law in the nineteenth century, state courts created rules that “favored defendants over plaintiffs, businesses over individuals.”¹⁶ One example was the contributory negligence rule, which prevented the recovery of money for injuries if the person bringing suit was even slightly negligent. Another was the fellow-servant rule, under which a worker could not sue an employer for injuries caused by another employee. The courts also held that a family could not recover for the death of the person who was their support, because the right to sue had died with the person who was killed.

Of course, there were numerous exceptions to the conservative thrust of judicial policy. Liberal policies and even liberal courts existed throughout the long period when conservatism was predominant. The U.S. Supreme Court, for instance, varied in its hostility to government economic regulation, and some state supreme courts rejected in part or altogether the doctrines that protected businesses against lawsuits. But until fairly recently the general conservatism of appellate courts was pronounced.

This conservatism is not difficult to understand. Judges came primarily from economically advantaged segments of society and were imbued with the values of the elite. Trained in a legal profession in which conservative values predominated, they often embarked on legal careers that involved service to business enterprises. Furthermore, the most skilled advocates who came before their courts generally represented businesses and other institutions with conservative goals. Because of all these factors, it may have been almost inevitable that conservatism became the dominant theme in judicial policy.

A GROWTH IN LIBERALISM. In the past half century, the dominant conservatism of the past has been replaced by an ideologically mixed pattern of policy in which the liberal element often has been more prominent. Across a range of issues, the courts have given more support to the interests of relatively weak groups in society, groups

that possess far fewer social and economic resources and far less conventional political power than the business interests that courts tended to favor in the past.

The most visible change has been in the Supreme Court. Beginning in 1937 the Court quickly abandoned its earlier support for business interests that sought protection from government regulation. It also began to provide support for the civil liberties of relatively powerless groups in American society, support that peaked in the 1960s. It applied the constitutional rights of criminal defendants to state proceedings and established new controls on police investigations and trial procedures. It required the desegregation of Southern public schools and protected the rights of racial minority groups in other areas of life. It strengthened freedom of expression both for the mass media and for people who express their views through vehicles such as pamphlets and marches.

In the 1970s and 1980s the Supreme Court supported civil liberties with less consistency. It narrowed the rights of criminal defendants, and it became more reluctant to establish new rights in any area. But, compared with most of its past history, the Court of the past twenty years has remained relatively liberal in its support for civil liberties and its acceptance of government regulation of business.

In the past few decades the federal courts of appeals have differed a good deal in their ideological positions, but in general they too have moved away from their traditional conservatism. The court of appeals for the District of Columbia stood out for its strong liberalism from the 1960s through the mid-1980s, as evidenced in its support for the rights of criminal defendants and the mentally ill, for the interests of consumers, and for protection of the environment. Standing out in another way was the Fifth Circuit Court of Appeals in the Deep South, which gave strong support to black civil rights on school desegregation and other issues in the 1950s and 1960s despite the anti-civil rights pressures in that region.

Early in this century, state supreme courts began to reduce their long standing support for business in tort law, expanding the ability of people who suffer injuries to recover compensation.¹⁷ This trend gradually gained momentum, as courts

increasingly eliminated old rules that had favored defendants. Most dramatically, supreme courts in the 1960s and 1970s largely eliminated the requirement that those who are injured by defective products must prove that the manufacturer was negligent. Some other examples of changes in tort law since the 1950s are shown in Table 37.2.

State courts were slower to take liberal positions in civil liberties; indeed, in the 1950s and 1960s some supreme courts resisted the Supreme Court's expansions of liberties, interpreting the Court's decisions narrowly. Since the 1970s, however, state courts increasingly have undertaken their own expansions through their interpretations of state constitutions, finding broader rights in those constitutions than the Supreme Court has found in the U.S. Constitution.¹⁸ The largest part of this activity has focused on criminal justice, but it has extended to areas such as freedom of expression and sex discrimination. Not all states have participated in this development, which is concentrated heavily in the West and Northeast, but it has become increasingly widespread.

The relative liberalism of appellate courts in recent years is more difficult to explain than was their traditional conservatism. Undoubtedly the recent liberalism is at least partially rooted in a changing pattern of social values. In this century,

support by the general public and political leaders for the autonomy of business enterprises has declined. Meanwhile, some civil liberties—especially those related to equality—have gained more support. This change in values is reflected in judges' own attitudes as well as in the kinds of litigation and arguments that come to the appellate courts.

Another source of this ideological change is the kinds of people who become judges. Like judges in the past, members of the current judiciary tend to come from families with high status. But there are more exceptions to this tendency today; as a result, the attitudes of judges on economic and social issues are less likely to be conservative. Furthermore, at the federal level liberal Democratic presidents have sought out appellate judges who shared their liberalism. Franklin Roosevelt's appointments turned the Supreme Court away from its traditional conservatism. Similarly, Roosevelt, Johnson, and Carter all used their appointments to move the lower federal courts in a liberal direction. At the state level, the growing strength of the Democratic party in the North from the 1930s on brought more liberal governors into office; in turn, these governors influenced the direction of state appellate courts with their own appointments.

TABLE 37.2 Some Changes in Tort Law Doctrine Initiated by State Supreme Courts Since the 1950s

Doctrinal Change	Innovating State	How Many States?
Abolishing the general immunity of municipalities from lawsuits.	Florida, 1957	Many
Allowing parents and children to sue each other for torts.	Wisconsin, 1963	Most
Allowing a person to sue for emotional distress without accompanying physical injury.	Hawaii, 1970	Several
Allowing a person injured by a drug product whose manufacturer is unknown to sue all the manufacturers of that product on the basis of their market shares.	California, 1980	A few

Note: The identity of the state that first adopted a legal doctrine and the number of states that have adopted it are ambiguous for some doctrines.

Sources: Some information obtained from W. Page Keeton, Dan B. Dobbs, Robert E. Keeton, and David G. Owen, *Prosser and Keeton on Torts*, 5th ed. (St. Paul: West Publishing, 1984).

To some extent, this shift to greater liberalism has been self-reinforcing. The courts' support for civil liberties encouraged interest groups to bring new cases, seeking further expansions of liberties. When the Supreme Court in the 1960s played a strong role in expanding civil liberties, many lawyers gained an appreciation for that role, and those who reached the bench themselves sought to follow it. As I suggested for torts in the state courts, a trend in judicial policy tends to gain a certain momentum of its own.

But this is not to say that the liberal trend is irreversible; unquestionably, it could be reversed, particularly with major changes in the kinds of people who are selected as judges. Indeed, this process is well under way in the federal courts. The appointments by Richard Nixon and Ronald Reagan have turned a strongly liberal Supreme Court into one that could be characterized as moderately conservative by current standards, and appointments by George Bush almost surely would move the Court further to the right. Reagan's numerous appointments to the courts of appeals made some of those courts considerably more conservative, and here too that process is likely to continue. This prospect is a reminder that the ideological stance of the courts, no matter how strong the forces behind it, is always subject to change. ...

End Notes

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2. Davies, "Affirmed," p. 576.
3. Sources of information for this discussion include Davies, "Affirmed."
4. *Parts and Electric Motors v. Sterling Electric*, No. 88-1609 (7th Circuit 1988), p. 10.
5. Administrative Office of the United States Courts, *Annual Report 1987*, p. 155. The data for civil cases were calculated by the author.
6. Davies, "Affirmed," pp. 582-83.
7. "The Supreme Court, 1987 Term," *Harvard Law Review*, 102 (November 1988), 354.
8. This figure is estimated from the Court's rates of acceptance of cases and of disturbances in the cases it accepts. See "Statistical Recap of Supreme Court's Workload during Last Three Terms," *United States Law Week*, 57 (July 26, 1988), 3074; and J. Woodford Howard, Jr., *Courts of Appeals in the Federal Judicial System: A Study of the Second, Fifth, and District of Columbia Circuits* (Princeton, N.J.: Princeton University Press, 1981), p. 59.
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10. See, for instance, Judicial Council of California, *1984 Annual Report* (San Francisco: Judicial Council of California, 1984), pp. 211, 216.
11. Sources of information for this discussion include Robert A. Kagan, Bliss Cartwright, Lawrence M. Friedman, and Stanton Wheeler, "The Business of State Supreme Courts, 1870-1970," *Stanford Law Review*, 30 (November 1977), 132-51; and Burton M. Atkins and Henry R. Glick, "Environmental and Structural Variables as Determinants of Issues in State Courts of Last Resort," *American Journal of Political Science*, 20 (February 1976), 98-101.
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13. Sources of information for this discussion include Richard Pacelle, "The Supreme Court Agenda across Time: Dynamics and Determinants of Change" (Ph.D. diss., Ohio State University, 1985), ch. 3.
14. Robert M. Jackson, *The Struggle for Judicial Supremacy* (New York: Alfred A. Knopf, 1941), p. 187.
15. See Lawrence M. Friedman, *A History of American Law*, rev. ed. (New York: Simon & Schuster, 1985); Stanton Wheeler, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman, "Do the 'Haves' Come Out Ahead? Winning and Losing in State Supreme Courts,

- 1870–1970,” *Law & Society Review*, 21 (1987), 403–45; Melvin I. Urofsky, “State Courts and Progressive Legislation during the Progressive Era: A Reevaluation,” *Journal of American Law*, 72 (June 1985), 63–91; and Gary T. Schwartz, “Tort Law and the Economy in Nineteenth-Century America: A Reinterpretation,” *Yale Law Journal*, 90 (July 1981), 1717–75.
16. Lawrence M. Friedman, *Total Justice* (New York: Russell Sage Foundation, 1985), p. 54.
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38

The Hollow Hope: Can Courts Bring About Social Change?

Gerald Rosenberg

THE PROBLEM

JUSTICE JACKSON: “I suppose that realistically the reason this case is here was that action couldn’t be obtained from Congress. Certainly it would be here much stronger from your point of view if Congress did act, wouldn’t it?”

MR. RANKIN: “That is true, but ... if the Court would delegate back to Congress from time to time the question of deciding what should be done about rights ... the parties [before the Court] would be deprived by that procedure

from getting their constitutional rights because of the present membership or approach of Congress to that particular question.” (Oral argument in *Briggs v. Elliott*, quoted in Friedman 1969, 244)

When Justice Jackson and Assistant U.S. Attorney General J. Lee Rankin exchanged these thoughts during oral argument in a companion case to *Brown*, they acknowledged that the Supreme Court is part of a larger political system. As their colloquy overtly demonstrates, American courts are political institutions. Though unique in their organization and operation, they are a

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crucial cog in the machinery of government. But this exchange rests on a more interesting premise that is all the more influential because it is implicit and unexamined: court decisions produce change. Specifically, both Jackson and Rankin assumed that it mattered a great deal how the Court decided the issue of school segregation. If their assumption is correct, then one may ask sensibly to what extent and in what ways courts can be consequential in effecting political and social change. To what degree, and under what conditions, can judicial processes be used to produce political and social change? What are the constraints that operate on them? What factors are important and why?

These descriptive or empirical questions are important for understanding the role of any political institution, yet they are seldom asked of courts. Traditionally, most lawyers and legal scholars have focused on a related normative issue: whether courts *ought* to act. From the perspective of democratic theory, that is an important and useful question. Yet since much of politics is about who gets what, when, and how, and how that distribution is maintained, or changed, understanding to what extent, and under what conditions, courts can produce political and social change is of key importance.

The answer to the questions raised above might appear obvious if it rests on Rankin's and Jackson's implied premise that courts produce a great deal of social change. In the last several decades movements and groups advocating what I will shortly define as significant social reform have turned increasingly to the courts. Starting with the famous cases brought by the civil rights movement and spreading to issues raised by women's groups, environmental groups, political reformers, and others, American courts seemingly have become important producers of political and social change. Cases such as *Brown* (school desegregation) and *Roe* (abortion) are heralded as having produced major change. Further, such litigation has often occurred, and appears to have been most successful, when the other branches of government have failed to act. While officious government officials and rigid, unchanging institutions represent a real social force which may frustrate popular opinion, this litigation activity

suggests that courts can produce significant social reform even when the other branches of government are inactive or opposed. Indeed, for many, part of what makes American democracy exceptional is that it includes the world's most powerful court system, protecting minorities and defending liberty, in the face of opposition from the democratically elected branches. Americans look to activist courts, then, as fulfilling an important role in the American scheme.¹ This view of the courts, although informed by recent historical experience, is essentially functional. It sees courts as powerful, vigorous, and potent proponents of change. I refer to this view of the role of the courts as the "Dynamic Court" view.

As attractive as the Dynamic Court view may be, one must guard against uncritical acceptance. Indeed, in a political system that gives sovereignty to the popular will and makes economic decisions through the market, it is not obvious why courts should have the effects it asserts. Maybe its attractiveness is based on something more than effects? Could it be that the self-understanding of the judiciary and legal profession leads to an overstatement of the role of the courts, a "mystification" of the judiciary? If judges see themselves as powerful; if the Bar views itself as influential, and insulated; if professional training in law schools inculcates students with such beliefs, might these factors inflate the self-importance of the judiciary? The Dynamic Court view may be supported, then, because it offers psychological payoffs to key actors by confirming self-images, not because it is correct.² And when this "mystification" is added to a normative belief in the courts as the guardian of fundamental rights and liberties—what Scheingold (1974) calls the "myth of rights"—the allure of the Dynamic Court view may grow.

Further, for all its "obviousness," the Dynamic Court view has a well-established functional and historical competitor. In fact, there is a long tradition of legal scholarship that views the federal judiciary, in Alexander Hamilton's famous language, as the "least dangerous" branch of government. Here, too, there is something of a truism about this claim. Courts, we know, lack both budgetary and physical powers. Because, in Hamilton's words, they lack power over either the

“sword or the purse,” their ability to produce political and social change is limited. In contrast to the first view, the “least dangerous” branch can do little more than point out how actions have fallen short of constitutional or legislative requirements and hope that appropriate action is taken. The strength of this view, of course, is that it leaves Americans free to govern themselves without interference from non-elected officials. I refer to this view of the courts as weak, ineffective, and powerless as the “Constrained Court” view.

The Constrained Court view fully acknowledges the role of popular preferences and social and economic resources in shaping outcomes. Yet it seems to rely excessively on a formal-process understanding of how change occurs in American politics. But the formal process doesn’t always work, for social and political forces may be overly responsive to unevenly distributed resources. Bureaucratic inertia, too, can derail orderly, processional change. There is room, then, for courts to effectively correct the pathologies of the political process. Perhaps accurate at the founding of the political system, the Constrained Court view may miss growth and change in the American political system.

Clearly, these two views, and the aspirations they represent, are in conflict on a number of different dimensions. They differ not only on both the desirability and the effectiveness of court action, but also on the nature of American democracy. The Dynamic Court view gives courts an important place in the American political system while the older view sees courts as much less powerful than other more “political” branches and activities. The conflict is more than one of mere definition, for each view captures a very different part of American democracy. We Americans want courts to protect minorities and defend liberties, *and* to defer to elected officials. We want a robust political life *and* one that is just. Most of the time, these two visions do not clash. American legislatures do not habitually threaten liberties, and courts do not regularly invalidate the acts of elected officials or require certain actions to be taken. But the most interesting and relevant cases, such as *Brown* and *Roe*, occur when activist courts overrule and invalidate the actions of elected officials, or order actions beyond what elected officials are willing

to do. What happens then? Are courts effective producers of change, as the Dynamic Court view suggests, or do their decisions do little more than point the way to a brighter, but perhaps unobtainable future? Once again, this conflict between two deeply held views about the role of the courts in the American political system has an obvious normative dimension that is worth debating.... Relying heavily on empirical data, I ask under what conditions can courts produce political and social change? When does it make sense for individuals and groups pressing for such change to litigate? What do the answers mean about the nature of the American regime?

Political and social change are broad terms. Specifically, conflict between the two views is more sharply focused when courts become involved in social reform, the broadening and equalizing of the possession and enjoyment of what are commonly perceived as basic goods in American society. What are these basic goods? Rawls (1971, 42) provides a succinct definition: “Rights and liberties, powers and opportunities, income and wealth.” Later he adds self-respect (Rawls 1971, 440). Fleshed out, these include political goods such as participation in the political process and freedom of speech and association; legal goods such as equal and non-discriminatory treatment of all people; material goods; and self-respect, the opportunity for every individual to lead a satisfying and worthy life. Contributions to political and social change bring these benefits to people formerly deprived of them.

Yet, so defined, social reform is still too broad a term to capture the essence of the difference between the two views. At the core of the debate lies those specific social reforms that affect large groups of people such as blacks, or workers, or women, or partisans of a particular political persuasion; in other words, *policy change with nationwide impact*. Litigation aimed at changing the way a single bureaucracy functions would not fit this definition, for example, while litigation attempting to change the functioning of a whole set of bureaucracies or institutions nationwide would. Change affecting groups of this size, as well as altering bureaucratic and institutional practice nationwide can be called *significant* social reform. So, for example, in the

Brown litigation, when civil rights litigators sued to end school segregation nationwide, not just in the school systems in which the complaints arose, they were attempting to use the courts to produce significant social reform. Similarly, when abortion activists mounted a constitutional challenge to restrictive abortion laws, aimed at affecting all women, they were attempting to use the courts to produce significant social reform. Although the relevant boundary line cannot be drawn precisely, there is no doubt that the aim of modern litigation in the areas of civil rights, women's rights, and the like, is to produce significant social reform.³

This definition of significant social reform does not take much note of the role of the courts in individual cases. Due process and court procedures offer at least some protection to the individual from arbitrary action. Interposing courts and set procedures between government officials and citizens has been a hard fought-for and great stride forward in human decency.⁴ However, the protection of individuals, in individual cases, tells us little about the effectiveness of courts in producing nationwide policy change. In addition, there is no clash between the two views in dealing with individuals.

There is good reason to focus solely on the effectiveness of courts in producing significant social reform. Other possibilities, such as courts acting as obstacles to significant social reform, can be excluded because adequate work has been done on them. Studies of the role of the courts in the late nineteenth and early twentieth centuries, for example, show that courts can effectively block significant social reform.⁵ Further, since the mid-twentieth century litigants have petitioned American courts with increasing frequency to produce significant social reform. Reform-minded groups have brought cases and adopted strategies that assumed courts could be consequential in furthering their goals. To narrow the focus is to concentrate on an important aspect of recent political activity.

The attentive reader will have noticed that I have written of courts being consequential in effecting significant social reform, of courts producing significant social reform, or of courts being of help to reformers. All of these formulations

suggest that courts can sometimes make a difference. The question, then, is whether, and under what conditions, this occurs. When does it make sense to litigate to help bring about significant social reform? If the judiciary lacks power, as the Constrained Court view suggests, then courts cannot make much difference. Perhaps only when political, social, and economic forces have already pushed society far along the road to reform will courts have any independent effect. And even then their decisions may be more a reflection of significant social reform already occurring than an independent, important contribution to it. But if the Dynamic Court view is the more accurate, if courts are effective producers of significant social reform, then they will be able to produce change. And if each view is partly right, if courts are effective under some conditions and not others, then I want to know when and where those conditions exist.

There is a danger that I have set up a straw man. Given the incremental nature of change in American politics, one might wonder if there is ever significant social reform in the U.S. In fact, if there is not, then asking whether and under what conditions courts produce it won't tell me anything about courts and change. I run the danger of "finding" that courts don't produce significant social reform because it doesn't exist! Fortunately, there are numerous examples of significant social reform in the U.S.: the introduction of social security, medicaid and medicare; increased minority participation in the electoral process; the increasing racial integration of American institutions and society; the increasing breakdown of gender barriers and discrimination against women; enhanced protection of the environment and reduction of pollution; protection for working men and women who organize to improve their lot; and so on. Clearly, then, there is significant social reform in the U.S. And, of course, proponents of the Dynamic Court view claim that both *Brown* and *Roe* produced significant social reform.

In order to determine whether and under what conditions courts can produce significant social reform ... on two key areas of significant social reform litigation, civil rights and women's rights. These two movements and their leading, symbolic cases (*Brown* and *Roe*) are generally

considered the prime examples of the successful use of a court-based strategy to produce significant social reform. Proponents of the Dynamic Court view generally credit *Brown* with having revolutionized American race relations while *Roe* is understood as having guaranteed legal abortions for all. Defenders of the Constrained Court view, however, might suggest that neither interpretation is correct. Rather, they would point to changes in the broader political system to explain such major social and political changes. Clearly, the two views are in conflict.

It should be emphasized that an examination of civil rights, abortion, and women's rights avoids the pitfalls of simple case studies. Each movement spans a sufficient length of time to allow for variance. Covering decades, the debate over these issues has been affected by political, social, and economic variables. Besides the importance of these cases for politics (and for law and social science), they are cases in which claims about court effectiveness should be most clearly highlighted, cases which should most likely falsify one of the two views. If the constraints and conditions developed ... hold in these studies, they should illuminate the broader question under what conditions courts are capable of producing significant social reform. And, for those readers who are uncomfortable with only three case studies ... I expand the coverage to examine briefly three other modern uses of the courts to produce significant social reform.

In order to proceed, while not ignoring state and lower federal courts, I will concentrate on the U.S. Supreme Court. Like the Congress and the presidency, the Supreme Court, while not the only institution of its kind in the American political system, is the most visible and important one. It sits atop a hierarchical structure, and decisions of lower courts involving significant social reform seldom escape its scrutiny. Also, because it is the most authoritative U.S. court, it is the most concerned with public policy. Hypotheses that concern the courts and social reform must first deal with the Supreme Court and then turn to the ramifications of its decisions elsewhere in the judiciary.

There remains the question of how to deal with complicated issues of causation. Because

it is difficult to isolate the effects of court decisions from other events in producing significant social reform, special care is needed in specifying how courts can be effective. On a general level, one can distinguish two types of influence courts could exercise. Court decisions might produce significant social reform through a *judicial* path that relies on the authority of the court. Alternatively, court influence could follow an *extra-judicial* path that invokes court powers of persuasion, legitimacy, and the ability to give salience to issues. Each of these possible paths of influence is different and requires separate analysis.

The *judicial* path of causal influence is straight-forward. It focuses on the direct outcome of judicial decisions and examines whether the change required by the courts was made. In civil rights, for example, if a Supreme Court decision ordering an end to public segregation was the cause of segregation ending, then one should see lower courts ordering local officials to end segregation, those officials acting to end it, the community at large supporting it, and, most important, segregation actually ending. Similarly, with abortion, if the Court's invalidation of state laws restricting or prohibiting abortion produced direct change, it should be seen in the removal of barriers to abortion and the provision of abortion services where requested. Proponents of the Dynamic Court view believe that the courts have powerful direct effects, while partisans of the Constrained Court view deny this.

End Notes

1. Not everyone, however, thinks such liberal judicial activism is a good thing. It has spawned a wave of attacks on the judiciary ranging from Nathan Glazer's warning of the rise of an "imperial judiciary" to a spate of legislative proposals to remove court jurisdiction over a number of issues. See Glazer (1975); *An Imperial Judiciary* (1979). And, of course, Presidents Nixon and Reagan pledged to end judicial activism by appointing "strict constructionists" to the federal courts.
2. As McCann (1986, 114) suggests, in the public-interest movement, lawyers are "quite

naturally the most ardent spokespersons” for the use of courts to produce change.

3. A major study of public-interest law takes a similar “focus on policy-oriented cases, where a decision will affect large numbers of people or advance a major law reform objective” (Council for Public Interest Law 1976, 7).
4. See, for example, Thompson (1975), particularly chapter 10, and Hay et al. (1975). Though the focus of both works is on the role of the criminal law in the eighteenth century in sustaining the hegemony of the English ruling class, both view law as affording some protection to individuals.
5. A simple example is child labor, where the Supreme Court twice overturned congressional legislation prohibiting it, delaying its eventual outlawing for several decades. For a careful study of the ability of courts to effectively block significant social reform, see Paul (1960). However, it should be noted that given the appointment power, and the general dependence of courts on political elites, such blocking cannot continue indefinitely. On this point, see Dahl (1957).

39

Parties, the Government, and the Policy Process

Samuel J. Eldersveld

The influence of parties on the policy decisions of governmental leaders is one of the most important questions for democratic societies. It is the “governing function” which affects us all. Does it make any difference how well parties organize, how carefully they recruit candidates, how well they are led, how effectively they campaign, how persuasively they mobilize voters and win elections—for policy outcomes? This is not the only process parties are involved in or the only basic function they perform. Parties engage in a variety of other functions—leadership selection, socialization, communication, agenda setting, government monitoring, and consensus building. But certainly their role in determining policy is a central concern. If they have no policy

function, they may still meet other needs of the system, but they could then share, or yield, center stage in the governmental arena to other groups which are important in governmental action. As V. O. Key said, “There are two radically different kinds of politics: the politics of getting into office and the politics of governing.”¹

OBSTACLES TO PARTY INFLUENCE IN THE UNITED STATES

The traditional view is that American parties are too fragmented, dispersed, and undisciplined to have much influence over policy determination. This view argues that if one wants to explain the

From Samuel J. Eldersveld, *Political Parties in American Society* (New York: Basic Books, 1982), Chapter 16. Reprinted by permission.

basis for the legislative decisions of members of Congress, United States senators, state legislators, or local policy makers one cannot explain them primarily on the basis of party influence. Even when strong mayors, governors, or presidents dominate the policy process, it is not their party roles so much as their personal appeals, personal bases of electoral support, and personal attractiveness and expertise which is important in explaining their success in getting new laws adopted. In this traditional view parties are not considered as policy leadership structures which can mobilize support to determine or significantly influence, legislative, executive, judicial, and bureaucratic decisions.

One of the major reasons for this alleged policy impotence of parties, it is argued, is the structural character of the American governmental system. The principles of our constitutional system theoretically do not facilitate a role for parties; indeed, they were designed originally to make it difficult for parties to have such a role. In *The Federalist* James Madison argued that the proposed constitution would make majority control by a party group virtually impossible. The key principles he had in mind, of course, were separation of powers, federalism, and bicameralism. The dispersion of governmental power under these principles constitutes a major challenge to parties seeking to control government for the purposes of policy initiation and innovation. Obstruction is more likely under such principles than the translation of new ideas into new laws. Structural principles, thus, can be critical for the policy process. Our peculiar principles pose a challenge to party leadership seeking to bridge and coordinate the different arenas of governmental authority.

It is not these constitutional principles alone, however, which are obstacles to party influence in the policy process. It is also the fragmentation of authority within the legislative body itself. The United States House of Representatives, up to 1910, was a body with strong leadership, with a speaker who had considerable power. But in that year there was a revolt against Speaker Joe Cannon, and in the seventy years since there has been no return to anything like the centralization of authority which Cannon had. The committee

chairmen, the floor leader, the party policy committees, the whips, the party caucus—all these agencies of House operations have divided up the party's power. In addition special groups such as the Democratic Study Group (DSG), with 200 liberal Democrats, or the Republican special group, the "Chowder and Marching Club," have contributed to the decentralization of power in the House and made leadership and policy coordination difficult. Further, as William J. Keefe points out:

Congress is an institution vulnerable to invasion by others. The three principal external forces that interact with Congress, seeking to move it along lines congenial to their interests, are the chief executive (including the bureaucracy), interest groups, and the constituencies.²

Rather than moving in harmony, these actors in the policy process are often in dissonance. There is legislative-executive conflict, a struggle among opposing lobbies, and pressures from different types of constituencies. As Keefe says, on certain issues the party often seems "to fly apart."³ *It appears* that what we have in the United States—and perhaps want, but certainly tolerate—is "a shared, multiple-leadership form of government."⁴

The traditional model, then, is one which plays down the role of parties in the policy process because constitutional principles disperse power, internal party organization in legislative bodies is not cohesive, and external pressures produce conflicts. The implicit argument is that parties cannot overcome these features of the system—parties as organizations or as leadership groups do not coordinate policy making, parties in fact are secondary to other influences on policy making, and partisan considerations and motivations do not explain policy actions.

This model, further, is usually contrasted to the parliamentary model, such as is found in Britain. It is argued that party plays a much more important role there because there is party discipline in the House of Commons, there is centralized party leadership which determines the party's position on policy questions, there is no dispersion of power as in the American constitutional system (Parliament is supreme), and

external pressures play no such negative role (indeed constituency influences facilitate the relevance of party in the policy process). The majority in the party caucus (Labour, Conservative, or Liberal) in the House of Commons selects its leadership, together they decide on policy, defections from these majority decisions are not sanctioned but punished, and thus normally the party as an organization makes policy. There is, thus, *theoretically* a sharp contrast between the United States “fragmentation of party power” model and the parliamentary (British) “party dominance” model.

EVIDENCE OF PARTY INFLUENCE ON NATIONAL POLICY DECISIONS

Despite the negative expectations about the role of American parties on policy decisions, research suggests caution in reaching that conclusion. True, parties are organizationally fragmented, power is dispersed, leadership is not centralized and party discipline of the parliamentary system doesn't exist in the United States. Nevertheless, policies do change as the strength of parties ebbs and flows.

The economic policies of the national government are one important substantive area where it may indeed make a great deal of difference which party wins the election. Edward Tufte has studied this matter and concludes that “the real force of political influence on macroeconomic performance comes in the determination of economic priorities.” He then argues, “Here the ideology and platform of the political party in power dominate ... the ideology of political leaders shapes the substance of economic policy.”⁵ Indeed, his position is that one can generalize for modern democratic societies, including the United States, as follows: Parties of the Right (including the Republicans) favor “low rates of taxation and inflation with modest and balanced government budgets; oppose income equalization; and will trade greater unemployment for less inflation most of the time.” Parties of the Left (including the Democrats) favor “income equalization and lower unemployment, larger government budgets; and will accept increased rates of inflation in order to reduce unemployment.” The platforms of the national parties reveal these

differences. Thus, in 1976 the Democratic platform pledged “a government which will be committed to a fairer distribution of wealth, income and power.” The Republican platform in 1976 pledged “less government, less spending, less inflation.” In 1980 the Democratic platform promised to fight inflation but not by increasing interest rates or unemployment. The Republicans said that “our fundamental answer to the economic problem is ... full employment without inflation through economic growth.”

The public's expectations concerning the performance of the two parties are clearly illustrated by their attitudes on the unemployment issue in 1976. When asked to assess the job which President Gerald Ford and the Republicans had done in dealing with unemployment, only 11 percent of the sampling responded that it had been a “good” performance, 57 percent a “fair” job, and 32 percent a “poor” one. Table 39.1 reveals the results of a study asking which presidential candidate and party would do the best job of reducing unemployment. The public clearly expected Carter to do more about unemployment. Similar results emerged when the sample was asked, “Do you think the problems of unemployment would be handled better by the Democrats, by Republicans, or about the same by both?” The results were: 39 percent Democrats, 10 percent by the Republicans, and 52 percent the same for both parties. The 1980 results were different, however: 19 percent Democrats, 23 percent Republicans, and 58 percent about the same for both parties.

Tufte demonstrates that the actual employment statistics over time reveal a linkage between presidential elections and unemployment and inflation rates. These data point to the following “rules”:⁶

1. Both Democrats and Republicans will reduce inflation or unemployment if there is an economic crisis and an election is approaching.
2. If there is no real crisis, the Republicans will do much better in reducing inflation than unemployment; the Democrats will do better in reducing unemployment.

Whether Carter's actions in 1980 supported these observations is an arguable matter!

TABLE 39.1 Public's Opinion on Which Party Will Best Deal with Unemployment (as a percentage)

Public View	President Ford	Candidate Carter
Candidate will reduce unemployment	31	52
Candidate will not reduce unemployment	46	24
Difference	-15	+28

Source: University of Michigan CPS/NES, 1976.

Another scholar, Douglas Hibbs, has also explored this problem. He concludes that “inter-party differences in government-induced unemployment levels is 2.36 percent”—a sizeable difference in national employment levels as a result of a Democratic or Republican administration. Thus, “the Kennedy-Johnson administration posture toward recession and unemployment stands in sharp contrast to Eisenhower’s, ... the basic economic priorities associated with the Eisenhower era were re-established during the Nixon and Ford administrations” and were “deliberately induced.” Hibbs concludes, “The real winners of elections are perhaps best determined by examining the policy consequences of partisan change rather than simply by tallying the votes.”⁷

A study of the policies of our government over the years finds that whichever party is in power for a longer or shorter period of time is crucial for the content of public policy. In an exhaustive study of laws adopted by the United States government from 1800 to 1968 (requiring analysis of 60,000 pieces of legislation) Benjamin Ginsberg was able to determine when the peak points in the adoption of new policies and new laws occurred. He concluded that the peak points were 1805, 1861, 1881, and 1933. These were years after major elections in which a shift in the power of the political parties occurred, called in some instances major “realigning elections.” His basic interpretation is that “clusters of policy change” do come as a result of partisan change in electoral choices. He summarized as follows:

Our findings suggest that voter alignments are, in effect, organized around substantive issues of policy and support the continued dominance in government of a party committed to the principal elements of the choice

made by voters during critical eras.... Partisan alignments form the constituent bases for governments committed to the translation of the choices made by the electorate.... The policy-making role of the electorate is, in effect, a continuing one.⁸

In other words, the voters’ decision on what party should govern determines the basic direction of public policy! ...

End Notes

1. V. O. Key, Jr., *Politics, Parties and Pressure Groups*, 4th ed. (New York: T. Y. Crowell, 1958), p. 702.
2. William J. Keefe, *Congress and the American People* (Englewood Cliffs, N.J.: Prentice Hall, 1980), p. 101.
3. *Ibid.*, p. 105.
4. Thomas E. Cronin, *The State of the Presidency* (Boston: Little, Brown, 1975), p. 107.
5. Edward R. Tufte, *Political Control of the Economy* (Princeton: Princeton University Press, 1980), p. 71.
6. *Ibid.*, pp. 101–102.
7. Douglas Hibbs, “Political Parties and Macroeconomic Policy,” *American Political Science Review* 71 (1977): 1486. Other scholars disagree with this position in part, at least the implication of presidential manipulation of the economy for electoral gain. See Thad A. Brown and Arthur A. Stein, “The Political Economy of National Elections,” unpublished paper, University of California at Los Angeles, November, 1980.
8. Benjamin Ginsberg, “Elections and Public Policy,” *The American Political Science Review* 70, no. 1 (1976): 49.

The Advocacy Explosion

Jeffrey M. Berry

This is not the first period of American history in which an apparent increase in the numbers and influence of interest groups has heightened anxiety.¹ Uneasiness over the power and influence of interest group politics is part of the American political tradition. Yet today's widespread concern contrasts with fairly recent American attitudes. The New Deal, for example, was known for its positive acceptance of interest groups because of the greater role trade associations came to have in the policy making of newly established regulatory agencies. As recently as the 1960s, scholars were arguing that interest group politics contributed to democratic politics.

Currently, a pervasive, popular perception is of an unprecedented and dangerous growth in the number of interest groups and that this growth continues unabated. This view is echoed constantly in the press. *Time* tells us that "at times the halls of power are so glutted with special pleaders that government itself seems to be gagging."² Bemoaning the growing lobbying industry, the *New Republic* notes, "What dominates Washington is not evil and immorality, but a parasite culture. Like Rome in decline, Washington is bloated, wasteful, pretentious, myopic, decadent, and sybaritic. It is the paradise of the overpaid hangers-on."³ The normally staid *Atlantic* thinks things have deteriorated so much that even the First Amendment right to petition the government should not stand in the way of remedial action. "Lobbyists should be denied access to the

Capitol," says an *Atlantic* writer, because they are ruining the legislative process.⁴

Journalists might be allowed a bit of literary license, but politicians ring the fire alarm too. After returning to Congress in 1987 after a twelve year absence, Representative Wayne Owens (D-Utah) lamented that "in those twelve years I was gone, basically every group you can think of has developed a Washington office or a national association aimed at presenting their case to Congress,"⁵ President Jimmy Carter, in his farewell address to the nation, blamed interest groups for many shortcomings of his administration:

... We are increasingly drawn to single-issue groups and special interest organizations to insure that whatever else happens our own personal views and our own private interests are protected. This is a disturbing factor in American political life. It tends to distort our purpose because the national interest is not always the sum of all our single or special interests.⁶

Some scholars find interest groups to be at the heart of this country's problems as well. Economist Lester Thurow states unequivocally that "our economic problems are solvable," but adds that "political paralysis" stands in the way. The source of that paralysis, in Thurow's eyes, is an expanding system of effective interest groups that makes it impossible for government to allocate

Berry, Jeffrey M., *The Interest Group Society*, 2nd Edition, © 1989. Reprinted by permission of Pearson Education, Inc., Upper Saddle River, NJ. Reprinted by permission.

the pain that comes with realistic economic solutions.⁷ Political scientist Everett Ladd blames special interest politics for our economic woes as well. “The cumulative effect of this pressure has been the relentless and extraordinary rise of government spending and inflationary deficits.”⁸

In short, the popular perception is that interest groups are a cancer, spreading unchecked throughout the body politic, making it gradually weaker, until they eventually kill it.

Political rhetoric aside, has there really been a significant expansion of interest group politics? Or are interest groups simply playing their familiar role as whipping boy for the ills of society?

The answer to both questions is yes. Surely nothing is new about interest groups being seen as the bane of our political system. The muckrakers at the turn of the century voiced many of the

same fears that show up today in *Time* or the *Atlantic*. Yet even if the problem is familiar, it is no less troubling. The growth of interest group politics in recent years should not simply be dismissed as part of a chronic condition in American politics. Of particular concern is that this growth took place during a period of party decline. The United States is not just a country with an increasing number of active interest groups, but a country whose citizens look more and more to interest groups to speak for them in the political process.

Before addressing the larger problems that arise from this trend, we must document the increasing number of interest groups. The available statistics show an unmistakable increase in interest group activity in Washington. Jack Walker’s survey of 564 lobbying organizations in Washington (Figure 40.1)⁹ shows a clear pattern

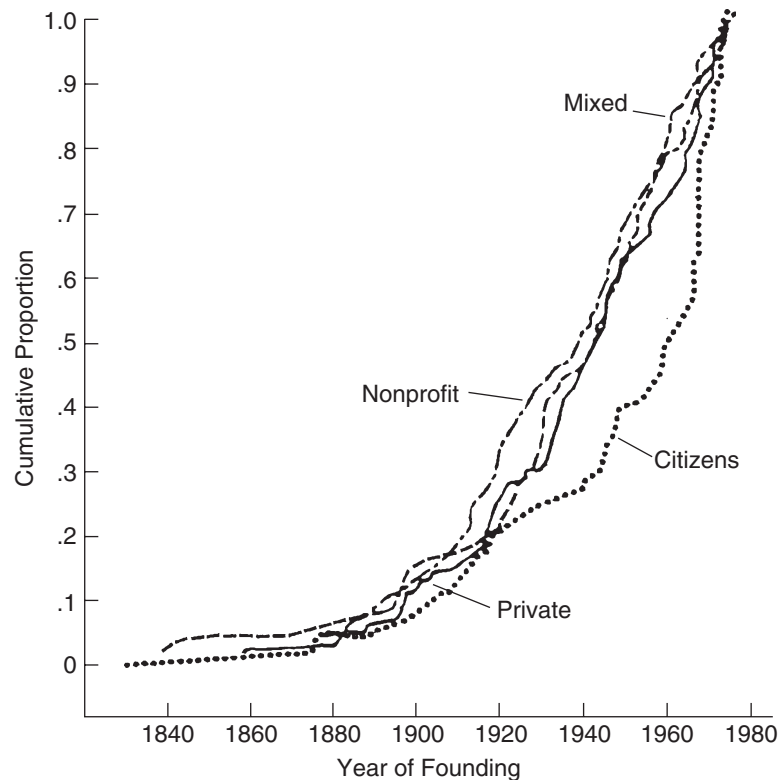


FIGURE 40.1 Interest Groups and Their Year of Origin

Source: Survey of voluntary associations by Jack L. Walker, “The Origins and Maintenance of Interest Groups in America,” *American Political Science Review* 77 (June 1983), p. 395. The “mixed” category represents groups that have members from both the public and private sectors.

of growth, with approximately 30 percent of the groups originating between 1960 and 1980.¹⁰ The figures do not, however, indicate precisely how many new groups have been started in different eras because we cannot calculate how many were started in earlier periods but have since ceased to exist. A second study, by Kay Schlozman and John Tierney, shows a similar pattern. Their examination of groups listed in a lobbying directory shows that 40 percent were founded after 1960 and 25 percent after 1970.¹¹ Both surveys show that citizen groups were the most likely to have formed recently. In short, we can be confident that the increase in lobbying organizations is real and not a function of overblown rhetoric about the dangers of contemporary interest groups.

The rate of growth of interest groups seems to be tapering off though. Given the rather sizable boom in the growth of groups during the 1960s and 1970s, this is hardly surprising. At some point the market for different types of interest groups becomes saturated, and new entrants will find it more difficult to gain a foothold. There will always be new constituencies developing and existing constituencies recognizing that they need greater representation, but rapid expansion of one sector of an interest group community reduces the amount of available resources for potential new groups....

THE RISE OF CITIZEN GROUPS

The growth of interest group advocacy in different sectors of society comes from many of the same roots. At the same time, the sharp growth in numbers of interest groups also reflects different sectors of society responding to each other. As one segment of the interest community grew and appeared to prosper, it spurred growth in other segments eager to equalize the increasing strength of their adversaries. This spiral of interest group activity began in large part in the civil rights and antiwar movements of the 1960s....

DEMISTIFYING INTEREST GROUP ADVOCACY

The advocacy explosion came from many sources. Different kinds of groups responded to particular events: the growth of adversary groups, changes

in the law, and evolutionary changes in the political environment. These stimuli were enhanced by a cumulative learning process as well.

In recent years there has been a “demystification” of interest group politics. A broader segment of the population has come to believe that interest group advocacy has great potential. More and more people have come to understand that interest groups are vital to protecting and furthering their own interests. And more and more people have come to understand how interest groups operate in practice and how new groups could be formed.

Interest group leaders (and prospective organizers) learned by watching other interest groups; lobbying organizations are inveterate copiers. The way in which citizen groups copied the successful civil rights and antiwar organizations is an illustration of this process. Not only did other minorities copy the black civil rights organizations, but new liberal citizen groups were started to appeal to middle-class interests as well.

Conservative citizen groups that arose in the 1970s responded directly to the success of liberal citizen groups. There was a sense that everyone was represented *except* the conservatives. Liberal citizen groups appeared to be enormously successful, with major victories such as establishing regulatory agencies like the Consumer Product Safety Commission and the EPA, the constant media attention given to Ralph Nader and Common Cause, and a stream of successful environmental lawsuits. Most important, liberal groups seemed to have the ear of government and thus were influencing its agenda.

Business in turn was influenced by the liberal citizen groups’ growing advocacy. Even though the most direct stimulus was increased regulation, the public interest movement was seen as the primary instigator of “excessive” government regulation. Business has made great use of all major strategies of effective lobbying. It has formed the most PACs and donates the most money, though PACs have multiplied on all fronts. No segment of the interest group population wants to be at a disadvantage in gaining access to congressional offices.

No automatic mechanism in politics exists whereby new groups cause opposing groups to form as a countervailing power; the reality is

much more complicated. In recent years, though, proliferation of groups has been facilitated by rapidly increasing knowledge about interest groups. From academic works to the omnipresent eye of the mass media, both laymen and elites have learned how these groups operate. The development of public policy and the interest groups' role in that process have been reported and analyzed in excruciating detail. Thus the costs of acquiring information about interest groups became cheaper. People found it easier to find out what they needed to know to form groups, and once they were formed, what they needed to know to operate them effectively.

More specifically, the growth of interest groups was furthered by increasing knowledge about three subjects.

ORGANIZATIONAL MAINTENANCE. Interest group leaders have become more effective at raising money and broadening their base of support. Their growing utilization of direct mail is the most obvious example; leaders of newly forming or existing groups can buy lists of likely prospects. Foundations and government became more important sources of money for interest groups during their greatest expansion period. Businesses moved quickly to use the newly acquired right to form PACs to collect money from corporate executives. For interest group leaders who feel they need help in maintaining their organization, many consultants in Washington have expertise in direct mail and how to secure government grants.

LOBBYING SKILLS. Through the years, lobbying has had an unsavory behind-the-scenes image of unctuous group representatives using their contacts in government to do the groups' bidding. Yet today's typical lobbyist will often try to gain recognition and publicity for what he or she is doing rather than hide it. Lobbying has quickly become an anyone-can-do-it activity, and little mystery is left as to what successful lobbyists do. One does not have to have close friends in high places (though it certainly doesn't hurt), but other attributes are commonly accepted as vital to effective lobbying. Chief among these is policy expertise. The ability to "network" (form coalitions), to utilize the media, and to develop lasting

professional relationships with staffers and policymakers are other well-known fundamentals of lobbying. It is much harder to raise the resources for lobbying than it is to figure out what to do with those resources.

COMMUNICATIONS. Lobbying has been furthered by a growing recognition that information is power and that the best lobbyists are the people back home. The Washington newsletter is now a staple of Washington politics. Constituents back home receive frequent mailings on the issues that are being decided by government and what they need to do to influence them. Computerized lists of constituents facilitate mailings to members in key congressional districts when a critical vote is coming. Some groups have special networks of activists, who can be instructed to contact those in government when the need arises.

The growth of interest group politics thus comes in part from learning: Successful groups set the example for others. Washington is really a town of few secrets, and what works for one group is quickly copied by others. Consultants, lawyers, and public relations specialists who work for different clients, the huge Washington media establishment, and the lobbyists who interact constantly with one another make learning about what interest groups do ever easier.

CONCLUSION

By any standard, the amount of lobbying in Washington has expanded significantly. Interests previously unrepresented are now represented before the government by recently formed organizations. Interests that were already represented in Washington tend to be even better represented today.

Although the reasons for lobbying's rise in different sectors of society vary, some common threads appear in the broad movement toward interest group politics. Pluralist theory put forward the idea that interest group involvement in policy making contributed to democratic government. Expanding governmental activity in the 1960s and 1970s, usually at the behest of interest groups, directly affected more and more constituencies and helped catalyze increased advocacy.

Finally, as new interest groups form, they stimulate other constituencies to organize because new groups increase awareness about what various interests are doing and, further, their formation threatens their natural adversaries. The success of the public interest movement, for example, resonates through this 1978 plea in the *Wall Street Journal*: “Businessmen of the World Unite.” Readers were told that “we need a businessman’s liberation movement and a businessman’s liberation day and a businessman’s liberation rally on the monument grounds of Washington, attended by thousands of businessmen shouting and carrying signs.”¹²

While the advocacy explosion created new groups and expanded resources devoted to lobbying, this heightened competition between groups did not bring about a perfect balance of interests represented in Washington. Business was by far the best represented sector of American society before this upsurge in lobbying, and it remains in that position now that the growth in the numbers of interest groups is finally slowing down. Business responded to the challenge of the public interest movement with ample resources and a fierce determination to maintain its advantages in Washington. It now faces potent competition from an array of liberal public interest groups, although its traditional rival, organized labor, is on the decline. . . . It is tempting to make interest groups the scapegoat for the ills of American society, believing that we would have politically acceptable solutions to public policy dilemmas if lobbies didn’t exist.¹³ However, differing interests will always abound. The attitudes and potential reactions of various constituencies must be considered by policymakers when decisions are made. Yet the organization of interests into an ever-increasing number of lobbying groups adds to the power of those constituencies.

The growth of interest group politics can be applauded for expanding the range of lobbying organizations represented in the political system. A related benefit of this proliferation is that it was instrumental in the replacement of many narrow subgovernments with more open, more participatory, and more conflictual issue networks. If there are to be lobbying organizations, it is best that they be as representative as

possible of all segments of American society. Yet it would be naive to assume that interest groups will ever fairly reflect the different interests of all Americans. Upper- and middle-class interests will always be better represented by lobbying organizations.

Government is realistically limited in what it can do to address this imbalance, but it must try to ensure representation for the chronically underrepresented. Financial support for advocacy groups for the poor should be expanded, not decreased, as part of the overall move to cut back government funding of welfare and social services. Such cuts actually create a greater need for this kind of surrogate representation. Citizen participation programs, which have had mixed success, ought to be continued and improved. They make government more accountable to the people it serves and create a potential channel of influence for those who may not be adequately represented by interest groups.¹⁴ The federal government can do little aside from the reforms discussed here, however, to curb the activities of interest groups. Worrisome as the spiraling growth of interest group politics may be, it is not desirable to have the government trying generally to inhibit the efforts of various constituencies to find more effective representation in the political system.

Because government’s role will always be limited, prospects for further curbing the influence of faction must come from the political parties. They are the natural counterweight to interest groups, offering citizens the basic means of pursuing the nation’s collective will. Only political parties can offer citizens broad choices about the major directions of public policy. Strengthening our parties is a widely shared goal, though there is little consensus over what actions need to be taken to accomplish this.¹⁵ Whatever the future of party renewal, though, interest groups will continue to play their traditional role of articulating this nation’s multitude of interests. Interest groups offer a direct link to government on the everyday issues that concern a particular constituency but not the nation as a whole. The role interest groups play is not ideal, but they remain a fundamental expression of democratic government.

End Notes

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3. Fred Barnes, "The Parasite Culture of Washington," *New Republic*, July 28, 1986, p. 17.
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8. Everett C. Ladd, "How to Tame the Special Interest Groups," *Fortune*, October 20, 1980, p. 66ff.
9. Jack L. Walker, "The Origins and Maintenance of Interest Groups in America," *American Political Science Review* 77 (June 1983), pp. 390–406.
10. See an earlier version of the Walker article, similarly titled, presented at the annual meeting of the American Political Science Association, New York, September 1981, p. 14.
11. Kay Lehman Schlozman and John T. Tierney, *Organized Interests and American Democracy* (New York: Harper and Row, 1986), pp. 75–76.
12. Cited in Michael Useem, *The Inner Circle* (New York: Oxford University Press, 1984), pp. 17–18.
13. See Mancur Olson, *The Rise and Decline of Nations* (New Haven: Yale University Press, 1982); and Lester C. Thurow, *The Zero-Sum Society* (New York: Penguin, 1981). See also Robert H. Salisbury, "Are Interest Groups Morbific Forces?," paper presented to the Conference Group on the Political Economy of Advanced Industrial Societies, Washington, D.C., August 1980.
14. See Benjamin Barber, *Strong Democracy* (Berkeley: University of California Press, 1984).
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41

The Consultant Corps

Larry Sabato

Controversy is raging about the role and influence of the political consultant in American elections, and properly so. There is no more significant change in the conduct of campaigns than the consultant's recent rise to prominence,

if not preeminence, during the election season. Political consultants, answerable only to their client-candidates and independent of the political parties, have inflicted severe damage upon the party system and masterminded the modern

From Larry J. Sabato, "The Consultant Corps," *The Rise of Political Consultants*. Copyright © 1981 by Larry J. Sabato. Reprinted by permission of BasicBooks, a division of HarperCollins Publishers, Inc.

triumph of personality cults over party politics in the United States. All the while they have gradually but steadily accumulated almost unchecked and unrivaled power and influence in a system that is partly their handiwork.

For a group of political elites so prominent and powerful, consultants have been remarkably little investigated and understood. Indeed, the argument about their role and influence in the electoral system has operated essentially in a vacuum.... Until now far more misinformation than fact has surfaced in the debate about politicians' use of political consultants, and there are many reasons for this. The consultants themselves make the task of separating fact from fiction and image from reality as difficult as possible. They enhance their own images and increase the fees they can command by keeping their campaign techniques as mysterious and bewildering as possible. Most consultants have been intimately involved with politics for decades, and they know better than most elected officials that, in politics, style is closely intertwined with substance. Fame and fortune—not to mention electoral success—come to those who can adjust the mirrors in just the right way and produce sufficient quantities of blue smoke in the public arena.

In using the blue smoke and mirrors of politics to cloud the view of their profession, consultants have found a valuable ally, the working press. Not only do many journalists fail to understand what it is consultants do and how they do it; those same print and television journalists are responsible in good measure for the glow of expertise and omniscience that surrounds the consultant's every pronouncement. Consultants have become prime and semipermanent sources of information and insight for political reporters, and the election professionals are rewarded with an uncritical press and frequent, beatific headlines.

No one reads these headlines more closely than the prospective candidates, and as a consequence virtually no nominee for public office at any level thinks he can survive without a consultant or two. Remarkably, though, if reporters are ignorant of the consultant trade and technology, candidates are far more so. President Gerald Ford, for instance, would admit almost total ignorance of his 1976 direct-mail operation and even

decry "junk mail" after leaving the Oval Office, despite the fact that direct mail had been one of the most successful aspects of his campaign for the Republican presidential nomination. Many other candidates have hired media and polling consultants at great cost without even a superficial comprehension of their techniques or their real worth—taking on faith what they had read and heard about these election wizards, believing all the while that consultants were essential for victory without knowing whether or why the common wisdom was true. Understandably, candidates lack the specialized training in election technology that their consultants possess and have little time to learn in a demanding, pressure-cooker campaign. This leaves the consultant a seemingly indispensable commodity, someone with immense leverage not merely during the election but also after the campaign is over. Few are the politicians who never seek office again, and their relationships with consultants are as permanent as their campaigns. Pollster Patrick Caddell's and media man Gerald Rafshoon's extraordinary alliance with President Carter is by no means exceptional any more.

If a thorough examination of the consultants' profession is in order, so too is an exhaustive study of their much-acclaimed techniques. A glance at any election-year newspaper or political trade journal tells why. In the praise being heaped upon the media masters and soothsayers and direct-mail artists, all sorts of wondrous things are being attributed to them. Upon actually meeting these political wizards, after preparatory reading of hundreds of articles by awe-struck commentators, one inevitably is reminded of Dorothy's disappointment when she unmasked the Wizard of Oz. For, despite their clever public posturings, consultants have no potions or crystal balls, and most of them will admit it forthrightly, at least in private. "If I knew the successful formula," conceded one long-time professional, "I would patent it."

It is reassuring (perhaps deceptively so) to hear one of the most widely experienced generalist consultants, Stuart Spencer, proclaim that "There are good politicians and there are bad politicians, and all the computers and all the research in the world are not going to make the

campaign situation any better when bad politicians are involved.” Spencer may well be right that consultants cannot turn a sow’s ear into a silk purse (although at least a couple of exceptions come to mind). ... [W]ill certainly provide some evidence that a less radical transformation at the consultant’s hand is possible, that a black sheep can become a white one upon application of a little dye and a corroded silver dollar can be transformed into a shiny one with a chemical and a bit of polish. Consultants and the new campaign technology have not changed the essence of politics. Politics is still persuasion, still a firm, friendly handshake. But the media of persuasion are no longer the same, and the handshake may be a projection or even an illusion.

Whatever the degree of their electoral influence, consultants—most of them—have talent and enormous experience. One hastens to add that a few well-publicized consultants do not live up even vaguely to their advance billing. As one top professional observed: “The only thing that keeps some of them alive is luck and being in the right place at the right time. They don’t really affect anything in a dramatic way because they don’t have the political instinct to do it.” By and large, however, consultants are hard-working professionals: very bright and capable, politically shrewd and calculating, and impressively articulate. They travel tens of thousands of miles every year, work on campaigns in a dozen or more states simultaneously, and eat, breathe, and live politics. They are no less political junkies than the candidates they serve. For the most part, they are even less concerned with issues, the parties, and the substance of politics than their clients. They are businessmen, not ideologues.

While admired for their abilities and acumen, consultants also suffer an unsavory reputation in some quarters, and certainly among the general public, whose distrust of seamy, “smoke-filled-room” political operatives is traditional and enduring. At best consultants are seen as encouraging the natural instincts of plastic politicians. (“Gripp, Grinn, Waffle, & Faykit” is the sign cartoonist Jeff MacNelly hangs outside his fictional consulting firm.) At worst, consultants are denounced as “hustlers and con men,” as Joe Napolitan put it.¹ Consultants bristle at the

slightest mention of any unfavorable press, blaming the criticism on the politicians they work for. As media consultant Michael Kaye expressed it:

People don’t like politicians. So no matter how skillfully a political consultant like me does his work, I am a bad guy. I am a packager. I am a manipulator. Now, is it because of what I do, or is it the product that I sell?

Yet widespread doubt about the work of consultants has a basis more thoughtful than Kaye’s analysis suggests. That basis is a deep concern for the health and well-being of the democratic process. What consultants seem to forget is that their work cannot be evaluated solely within the context of their profession. “Is this artful media?” or “Is this an effective piece of direct mail?” or “Did this action by a political consultant help to elect candidate X?” are legitimate questions and necessary ones for any judgment of a particular consultant’s worth. But the ultimate standard by which the *profession* of political consulting is judged cannot merely be success in electing or defeating candidates. There are much more vital considerations of ethics and democracy to ponder, because electoral politics is the foundation of any democratic society, and important actors in the political sphere must necessarily be the subject of special scrutiny.

...[T]o provide that scrutiny and to offer an informed discussion of the consequences of the consultant’s trade and his new campaign technology. While an observer can reasonably conclude ... that most politicians have been fairly well served by their election professionals, it simply does not follow that the public and the political system have been equal beneficiaries. As the influence of consultants has grown, some very disquieting questions have begun to loom large. Influence peddling, all kinds of financial misconduct, shameful acts of deception and trickery, and improprieties with former clients who are in public office are only a few of the compromising and unethical practices found in far too many consultants’ portfolios. At the root of some of the worst offenses is a profit motive unrestrained by ties to party, ideology, or ideals. Sadly, the truth is much as political columnist Jack Germond suggests: “Philosophy

and party don't motivate most of the political consultants. Money does, partially, and there is a lot of money to be made if you're any good."

As distressing as they are, the ethical concerns fade by comparison to the democratic effects wrought by consultants. Political professionals and their techniques have helped homogenize American politics, added significantly to campaign costs, lengthened campaigns, and narrowed the focus of elections. Consultants have emphasized personality and gimmickry over issues, often exploiting emotional and negative themes rather than encouraging rational discussion. They have sought candidates who fit their technologies more than the requirements of office and have given an extra boost to candidates who are more skilled at electioneering than governing. They have encouraged candidates' own worst instincts to blow with the prevailing winds of public opinion. Consultants have even consciously increased nonvoting on occasion and meddled in the politics of other countries.

These activities have not occurred in a vacuum. The rules of the political game have been altered dramatically, with consultants clearly benefiting from the changes. The decline of the political parties and the establishment of a radically different system of campaign finance are foremost among the developments that consultants have turned to their advantage. For example, as a direct consequence of the diminution of party strength, a diminution to which consultants have themselves contributed and, in some cases, cheered, consultants have replaced party leaders in key campaign roles.

Yet the power flow from party leaders to political consultants does not have to continue, nor must unethical practices remain unchecked. Consultants and their apologists quite naturally can see no system better than the current one, and they will always have a ready excuse for distasteful doings in their profession. But those who lament the recent technological changes in electioneering have only to look to one of the major parties to see the path of renewal that these same new campaign technologies have made possible. A revitalized national and state Republican party organization, fueled by the marvels consultants had previously harnessed for themselves and monopolized, has provided

the model that can tame consultant abuses and develop a healthier, party-based electoral system in the future. This auspicious development and its considerable potential for good will be the object of special examination later...

IMAGES AND ROLES OF POLITICAL CONSULTANTS

The term "political consultant" is bandied about so loosely that any discourse on the subject must begin by attempting to define it. A *political consultant* is a campaign professional who is engaged primarily in the provision of advice and services (such as polling, media creation and production, and direct-mail fund raising) to candidates, their campaigns, and other political committees. Broadly the title can adorn almost any paid staffer on even the most minor of campaigns. Here, however, we shall concentrate on the relatively small and elite corps of interstate political consultants who usually work on many campaigns simultaneously and have served hundreds of campaigns in their careers. They are the sellers, and often the creators, of advanced campaign technology and technique.

There are basically two kinds of consultants. A *generalist* consultant advises a candidate on most or all phases of his campaign and coordinates most or all aspects of the technology employed by the campaign. A *specialist* consultant concentrates on one or two aspects of the campaign and peddles expertise in one or two technological specialties. While almost all of the early consultants were generalists, most consultants today are specialists (who nevertheless often advertise themselves as generalists).

Whether generalist or specialist, the consultant's primary role is the same: to provide services to campaigns. A consultant is hired to conduct a series of public opinion surveys or create a precinct organization or orchestrate a direct-mail fund-raising effort. The secondary roles played by consultants, however, are sometimes more intriguing and just as substantive as the provision of technological services. There is, for example, the "expert" role, a position accorded the consultant by the campaign staff and the candidate because of his wide experience and masterful reputation.

(In many campaigns the consultant probably has more influence, and his every word is weighed more carefully than his actual experience or his degree of involvement with the campaign can justify.) Even though he may only visit the campaign once a month or talk with campaign officials weekly, the political professional frequently becomes the grand strategist, designing and supervising the “game plan,” orchestrating the press, and selecting the candidate’s issues.

Because of the respect he is given as “the expert,” the consultant more often than not also seems to assume the role of the candidate’s confidant. As media consultant Douglas Bailey has suggested, “Most candidates are hiring outside consultants because within the campaign and within their circle of friends, they don’t have anyone whom they feel has the experience or the savvy to satisfy their need for reassurance that they’re doing it right or that they can win.”

Another media professional, Robert Goodman (who produced advertisements for George Bush’s 1980 Republican presidential bid), emphasizes the psychological aspects of the consultant’s tour of duty:

George Bush said to me after four hours with him one day at his house, “Are you a psychiatrist or a filmmaker?” We’re really into psychiatry.... It is incumbent upon the media guy to really look at the candidate and try to lead him past those personality landmines that will destroy him if he doesn’t loosen up and do his thing.

These roles are hardly the only ones in the consultant’s repertoire. He often finds himself a trusted postelection adviser when his clients win public office. Most significantly, and regrettably, he and his technological wares are “party pinch hitters,” substituting for the weakened parties in a variety of ways.

A BRIEF HISTORY OF POLITICAL CONSULTING

There have always been political consultants in one form or another in American politics, but the campaign professionals of earlier eras were

strategists without benefit of the campaign technologies so standard today. Usually, too, consultants were tied to one or a few candidates, or perhaps to a state or local party organization. Before consulting became a full-time profession, lawyers were often assigned campaign management chores since they had a flexible work schedule as well as the personal finances and community contacts to do the job properly.² The old-time press agent, usually a newspaperman familiar with the locale,³ was also a crucial and influential figure in campaign organization. But in most cases these lawyers and press agents were only functionaries when compared to party leaders and organization bosses who wielded far greater authority in political matters.

On a separate track, one supported by the business community, the profession of public relations was developing. As Stanley Kelley, Jr. has stated, “Business was, and is still, the public relations man’s most important patron.”⁴ Businessmen saw image making as a way to counter a rising tide of business criticism. The federal government followed in close pursuit of public relations professionals, expanding their role considerably during the New Deal. State and local governments, charities, religions, and colleges in succession all saw the “P.R. promise.”

Dan Nimmo has called political consultants the “direct descendants” of the public relations professionals,⁵ and the growth of both groups is clearly related to some similar phenomena, especially the revolution in mass media communications. Yet political consulting has causes all its own. The decline of the political parties has created opportunities for consultants and the tools of their trade. New means of financing campaigns, telling the candidate’s story, and getting the candidate’s voters to the polls became necessary as the parties’ power waned. The new campaign techniques and the development of air travel, television, and the computer combined to give consultants the substitutes candidates desired. The fact that these techniques quickly became too complex for laymen to grasp easily—consultants themselves were forced to specialize to keep up with changes—and the acknowledged American need for, and trust in, experts, made professionals that much more attractive. Even if false, the

belief that consultants' tricks could somehow bring order out of the chaos of a campaign was enormously reassuring to a candidate. And rising campaign costs (and expenditure and contribution limitations) have placed a premium on the wise use of every campaign dollar. All of these alterations of the political map seemed powerful arguments for hiring political consultants, who gradually became an unquestioned essential for serious campaigns. Everyone now needs them if only because everyone else has them.

The consulting movement coalesced first in California.⁶ The state's traditionally anemic party system was weakened further in the twentieth century by the addition of new social welfare programs, a broadened civil service system, and a sprawling suburban shift from the central cities matched by the influx of hundreds of thousands of migrants from the East, Midwest, and South. The sheer growth in the size of the electorate made organizing difficult (and redistricting an even more wrenching and enveloping process). Finally, California was in the forefront of the popular initiative and referendum movement, and had an exceptionally long ballot and a multiplicity of elections.

It was during an initiative campaign, in fact, that modern political consultants first had a major effect.⁷ In 1933 the California legislature passed a bill authorizing a flood control and irrigation development in northern California (called the Central Valley Project), which the Pacific Gas and Electric Company (PG&E) believed to be a threat to private power. The utility promptly launched a ballot initiative to reverse the decision. The project's proponents hastily enlisted Clem Whitaker, a Sacramento newsman and press agent, and Leone Smith Baxter, a public relations specialist, to mastermind a campaign to defeat PG&E's initiative. On a limited budget of \$39,000, and using radio and newspaper appeals, Whitaker and Baxter managed to save the Central Valley Project.

Not only did PG&E hold no grudge, it actually put Whitaker and Baxter on annual retainer! The two consultants incorporated themselves (as Campaigns, Inc., and later as Whitaker and Baxter Campaigns) and eventually married as well.⁸ There were two decades of smooth sailing for the firm, operating out of San Francisco,

and the lack of extensive competition⁹ enabled it to post a 90 percent success rate in seventy-five major campaigns. Eventually, rival California consultants (such as Republicans Stuart Spencer and Bill Roberts and Democrats Don Bradley, Joseph Cerrell, and Sanford Weiner) came to the fore and reduced Whitaker and Baxter's edge and win-loss record.¹⁰

By the early 1950s it had become obvious that political professionals were playing an increasingly important part in electoral politics, so much so that Neil Staebler, then chairman of Michigan's Democratic party, alarmed a congressional committee with his prediction that "... elections will increasingly become contests not between candidates but between great advertising firms."¹¹

While Staebler's vision seems a bit exaggerated even today, he was surely right in suggesting a role for consultants far beyond their relatively limited involvement in some statewide and national races in 1952. Political scientist Alexander Heard's survey of state party committees in 1956–1957 showed remarkable growth in a short time. Democratic state party committees in fifteen states and GOP committees in eighteen states employed public relations firms at some point during those years, and in many cases a high proportion of the committees' funds was spent for retainers.¹² Of the 130 public relations firms he contacted, 60 percent had had some kind of political account between 1952 and 1957, and forty firms in fifteen states reported that they could assume complete responsibility for a campaign.

Two decades later political consultants had become a campaign standard across the United States, and not just for major national and statewide contests. State races for lesser offices and U.S. House seats, and elections for local posts and even judicial offices, frequently had the services of one or more consultants. For example, a 1972–1973 survey indicated that 168 of 208 candidates running for state office had hired at least one political professional: sixty-one of sixty-seven U.S. Senate candidates, thirty-eight of forty-two gubernatorial candidates, thirty of thirty-seven attorney general contenders, and even nineteen of thirty-one and twenty of thirty-two aspirants for secretary of state and state treasurer.¹³ Most politicians seeking

major office attract a small committee of consultants. A *National Journal* review of sixty-seven opposed campaigns for U.S. Senate in 1970 revealed that sixty-two had an advertising firm, twenty-four had a pollster, and twenty secured help from some sort of campaign management firm.¹⁴ Just five candidates made do with no consultants.

Consultants, moreover, rarely miss an opportunity to expand their domain. The judicial field in California is a classic illustration. In Orange County a judge seeking another term was defeated in 1940, and none ever lost again until 1978 when four county judges were beaten simultaneously. Sitting judges became understandably nervous and sought professional assistance. Joseph Cerrell and Associates, which had never done a judicial campaign until 1978, suddenly had nine at once. The agency's candidates, all incumbents up for reelection, made a clean sweep (at \$7,500 apiece). Flushed with success, Cerrell sponsored a conference on Judicial Campaigning in 1979, designed for judges of the superior and municipal courts. For a \$100 registration fee a judge would be treated to sessions on topics such as "Campaigning with Dignity: Maintaining the Judicial Image."

The number of consultants has skyrocketed along with the demand for their services. As late as 1960 there were relatively few full-time professionals in the field; twenty years later there are hundreds—thousands if local advertising agency executives specializing in politics are counted. In addition, they handle a great deal besides candidates' campaigns. Referenda, initiatives, bond issues, and political action committees (PACs) sustain many firms. Some consultants enjoy overseas work in foreign campaigns or specialize in primary and convention nomination battles as well as general elections. Today the average modern professional manages more campaigns in a year than his predecessors did in a lifetime....

End Notes

1. Napolitan, *The Election Game and How to Win It*, p. 11.
2. W. E. Barnes in *The San Francisco Examiner*, July 25, 1979.
3. Stanley Kelley, Jr., *Professional Public Relations and Political Power* (Baltimore: Johns Hopkins, 1956), pp. 26-30; see also pp. 9-25, 31-38.
4. *Ibid.*, p. 13.
5. Dan Nimmo, *The Political Persuaders: The Techniques of Modern Election Campaigns* (Englewood Cliffs, N.J.: Prentice-Hall, 1970), p. 35.
6. *Ibid.*, pp. 35-37.
7. Barnes in *The San Francisco Examiner*.
8. See Kelley, *Professional Public Relations and Political Power*, pp. 39-66, for a history of the Whitaker and Baxter firm.
9. Baus and Ross of Los Angeles, a rival consulting firm started by one of Whitaker-Baxter's former employees, provided what competition existed. Both firms primarily handled Republicans.
10. Nimmo, *The Political Persuaders*, p. 36, n. 2d. Whitaker and Baxter has now effectively withdrawn from candidate campaigns.
11. Hearings before the Special Committee to Investigate Campaign Expenditures, 1952, House of Representatives, 82nd Congress, 2nd session, p. 76: as quoted in Kelley, *Professional Public Relations and Political Power*, p. 2.
12. Alexander Heard, *The Costs of Democracy* (Chapel Hill: University of North Carolina, 1960), pp. 415-477. Heard notes that his totals were probably understated because of the limitations of his survey.
13. Robert Agranoff, (ed.) *The New Style in Election Campaigns* (2nd ed.) (Boston: Holbrook Press, 1976), p. 8. See also David Rosenbloom, *The Election Men: Professional Campaign Managers and American Democracy* (New York: Quadrangle, 1973). Rosenbloom indicates a 650 percent growth rate in consulting firms overall between 1952 and 1970, an 842 percent increase in consultant involvement in U.S. House of Representatives contests, and a 300 percent increase in their employment for local elections.
14. See *National Journal*, September 26, 1970, pp. 2084-2085.

News That Matters

*Shanto Iyengar and
Donald Kinder*

Not so very long ago, television was “nothing but a gleam in the entrepreneurial eye” (Weaver 1975, 81).¹ No longer. In just four decades, it has become a comfortable and easy habit, a settled and central institution. As television has moved to the center of American life, TV news has become Americans’ single most important source of information about political affairs. The purpose of our effort has been to provide a systematic examination of this new relationship. ... [W]e summarize our principal results and position them within the context of the broader literature on mass communication and politics. We argue that, for good or ill, television news has become a regular participant in the American political process. Finally, as a means of assessing the normative implications of our results for a democratic society, we discuss the ways in which television news conveys unusual and distinctive views of politics—views that eventually become our own.

RECAPITULATION OF RESULTS

Agenda-setting

Americans’ views of their society and nation are powerfully shaped by the stories that appear on the evening news. We found that people who were shown network broadcasts edited to draw attention to a particular problem assigned greater

importance to that problem—greater importance than they themselves did before the experiment began, and greater importance than did people assigned to control conditions that emphasized different problems. Our subjects regarded the target problem as more important for the country, cared more about it, believed that government should do more about it, reported stronger feelings about it, and were much more likely to identify it as one of the country’s most important problems. Such differences were apparent immediately after conclusion of the broadcasts one day later, and one week later. They emerged in experiments explicitly designed to test agenda-setting and in experiments designed with other purposes in mind; in sequential experiments that drew the viewer’s attention to the problem each day for a week and in assemblage experiments that lasted but one hour; and for a broad array of problems: defense, pollution, arms control, civil rights, energy, social security, drugs, and education. Moreover, these experimental results were generally corroborated by our analysis of trends in network news coverage and national public opinion. That we found essentially the same result using different methods strengthens our conclusion that television news shapes the relative importance Americans attach to various national problems.

To our surprise, the basic agenda-setting effect was not generally enhanced by vivid

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presentations. If anything, dramatic accounts of personal travails chosen to illustrate national problems appear to undermine agenda-setting, particularly when viewers blame the victims for the troubles that have befallen them. We assume that vivid presentations may enhance agenda-setting, provided viewers regard the victims as innocent. For example, intimate, poignant film of Ethiopian children dying of starvation may drive home the meaning of famine in a way that written accounts cannot. Because such children may be widely understood to be blameless victims of a cruel fate, vivid presentations may add to the viewer's conviction that the African famine is a serious problem. Our results, however, showed only that stories of personal suffering, powerfully depicted, generally did not raise the priority viewers assigned to the target problems.

Our experiments showed that the position of a story in a broadcast did affect agenda-setting. Lead stories were generally more influential than nonlead stories. Our analysis of survey data showed that lead stories exerted a much more profound agenda-setting effect than nonlead stories. We suspect that viewers may simply pay more attention to the first story than to stories that appear later on and that disruptions in viewing are especially likely to occur at home. An alternative explanation of the lead story advantage is that the public may perceive lead stories as being particularly newsworthy. Certainly the networks claim to select the lead story on these grounds.

Television news is, of course, not the only source of information people draw on when thinking about the nation's problems. Another is personal experience. Using both experimental and national survey data, we found that people who encountered problems in their everyday lives were more inclined to see these problems as important for the country as a whole than were individuals not so affected. In particular, we found that blacks attached more importance to civil rights than did whites and that the elderly attached more importance to the viability of the social security system than did the young. When people think of themselves as members of a victimized group, they appear to see their own problems as serious and legitimate ones for the country.

Our special interest in personal predicaments was in the possibility that they might serve as predisposing factors making viewers more vulnerable to a particular news agenda. For the most part, that is just what we found. News coverage of civil rights was more influential among blacks than among whites; coverage of unemployment proved more influential among the unemployed than among the employed; and coverage of the possible bankruptcy of the social security system was a more compelling message for the elderly than for the young. The general point here is that television news appears to be most powerful when it corroborates personal experience, conferring social reinforcement and political legitimacy on the problems and struggles of ordinary life.

Overall, we see our results on agenda-setting as a vindication of Lippmann's observations of more than a half-century ago. Although Lippmann was writing with newspapers in mind, his analysis is nevertheless highly relevant to the place of television news in contemporary American society. His observation that citizens must depend on others for their news about national and world affairs—a world they cannot touch themselves—is amply confirmed here. What we have done is to begin to uncover the various and specific ways that television news determines the citizen's conception of the “mystery off there.”

Priming

While our agenda-setting results contribute to a long-standing tradition inaugurated by Lippmann and sustained by others, our results in the matter of priming offer a more original perspective. Priming presumes that when evaluating complex political phenomena, people do not take into account all that they know—they cannot, even if they are motivated to do so. Instead, they consider what comes to mind, those bits and pieces of political memory that are accessible. Television news, we supposed, might be a powerful determinant of what springs to mind and what is forgotten or ignored. Through priming (drawing attention to some aspects of political life at the expense of others) television news might help to set the terms by which political judgments are reached and political choices made.

Our results support this claim handsomely. When primed by television news stories that focus on national defense, people judge the president largely by how well he has provided, as they see it, for the nation's defense; when primed by stories about inflation, people evaluate the president by how he has managed, in their view, to keep prices down; and so on. According to a variety of tests, priming is both powerful and pervasive: it emerges in a number of independent tests for arms control, civil rights, defense, inflation, unemployment, and energy; for a Democratic president (Carter) as well as for a Republican one (Reagan); in different experimental arrangements; in response to good news as well as to bad; and in analyses that estimate priming while controlling for the possibility of projection. All this suggests that television news does indeed shape the standards by which presidential performance is measured.

Because our experiments manipulated the attention paid to major national problems, we expected that viewers' judgments of overall presidential performance would be primed more effectively than would assessments of presidential character, whose determinants we assumed were more diverse, an intermixing of the political and the personal. This expectation was confirmed. We also expected that priming would be more pronounced in viewers' assessments of the president's competence than in assessments of his integrity, on the grounds that success or failure in such areas as national defense, inflation, arms control, and the like would reflect more on the president's competence than on his integrity. This expectation was supported in every detail in the case of President Carter but sharply and consistently violated in the case of President Reagan. This unanticipated result suggests that the public may be most susceptible to priming on those aspects of the president's character that are most open to debate. For President Carter, it was a question of competence—was he up to the demands of the job? For President Reagan, it was more a question of trust—did he care for the welfare of all Americans? At a more general level, the aspects of presidential character that the public takes seriously may be determined by the broader political context. Flagrant scandal may underscore trust and integrity, while runaway

inflation may feed anxieties about competence and leadership. Should this be so, it would be a case of priming on a historical scale, with potentially historical consequences.

We further found that the power of television news to shape the standards by which presidents are judged is greater when stories focus on the president, and less when stories focus attention elsewhere. When coverage implied that the president was responsible for causing a problem or for solving it, the priming effect increased. When coverage implied that forces and agents other than the president were responsible for the problem, the priming effect diminished. These effects were particularly apparent for problems relatively new to the American political agenda, for which public understanding is perhaps less solidly formed and therefore more susceptible to the way that television news frames the matter of responsibility.

Our final pair of experiments demonstrate that the networks' agenda also primes the choices voters make. First, voters who were shown local news coverage that emphasized the state of the economy, the president's economic policies, and the implications of such policies for the impending midterm elections, relied heavily on their assessments of economic conditions when deciding which congressional candidate to support. In contrast, voters who watched local broadcasts devoted to the congressional candidates themselves—their positions on policy questions, group endorsements, or personal backgrounds—assigned great importance to these qualities in their choices. These results show that television news (*local* television news in this case) can alter the grounds on which elections are contested. Depending on the interests and resources of local television stations, congressional elections can either be a referendum on the president's economic performance, or purely a local contest between two distinct candidates.

The second experiment moved to the presidential level by reconstructing the intensive coverage lavished upon the Iranian hostage crisis in the closing days of the 1980 presidential campaign. The results suggested, in line with the priming hypothesis, that such coverage encouraged viewers to cast their votes on the basis of President Carter's performance on foreign affairs.

Because Carter was widely perceived as ineffectual in his dealings with foreign countries, priming in this case may have dealt a final and fatal blow to the President's reelection chances, transforming an election that appeared breathtakingly close on Saturday into a decisive Republican victory on Tuesday.

MINIMAL EFFECTS REVISITED

Our results imply that television news has become an imposing authority, one that shapes the American public's political conceptions in pervasive ways. This conclusion seems to contradict the minimal effects verdict reached by most empirical research on the political consequences of mass media. How can this discrepancy be understood?

Serious and systematic empirical research on mass media and American politics began in the 1930s, motivated both by the spread of fascism abroad and by what many took to be the sinister proliferation of radio at home. But in a brilliant study of the 1940 presidential election described in *The People's Choice*, Lazarsfeld, Berelson, and Gaudet² (1948) concluded that media simply strengthen the predispositions that were already in place prior to the campaign. Meanwhile, an extensive and well-controlled series of experimental studies undertaken during World War II found that films designed to indoctrinate new draftees failed rather spectacularly (Hovland, Lumsdaine, and Sheffield 1949).³ The avalanche of research on political persuasion that soon followed these path-breaking and ambitious efforts drove home the same point again and again: while propaganda reinforces the public's preferences it does not, and perhaps cannot, change them.

Political persuasion is difficult to achieve, but agenda-setting and priming are apparently pervasive. According to our results, television news clearly and decisively influences the priorities that people attach to various national problems, and the considerations they take into account as they evaluate political leaders or choose between candidates for public office. Had we been interested in studying persuasion, we would have designed other experiments and would have written another book. More likely, we would have written no book at all, since we probably would have

had little new to say. That is, had our television news experiments set out to convert Democrats to Republicans, or pro-choice advocates to pro-life advocates, we strongly suspect that the results would have demonstrated yet more evidence in support of minimal effects. Our results on priming in the final days of the 1980 presidential election suggest that persuasion *is* possible, but only under very special circumstances: (1) large numbers of voters remain uncommitted in the closing days of the campaign; (2) late-breaking political events attract considerable media coverage and focus attention on a single aspect of the national condition; and (3) the political developments decisively favor one candidate over the other. But as a general matter, the power of television news—and mass communication in general—appears to rest not on persuasion but on commanding the public's attention (agenda-setting) and defining criteria underlying the public's judgments (priming).

We do not mean to suggest that television's power to set the public agenda and to prime citizens' political choices is unlimited. In fact, our studies suggest clear limits to television's power, which must be kept in mind as we try to decipher the broader significance of our findings.

One limitation is that the agenda-setting effects detected in our experiments were generally confined to the particular problem featured in the edited newscasts. Stories about energy affected beliefs about the importance of energy and energy alone, stories about defense affected beliefs about defense alone, and so on. Such specificity may reflect both the way that the networks typically package the news—in tight, self-contained bundles (Weaver 1972)⁴—and the way that most Americans think about politics, innocent of broad ideological frameworks that might link one national problem with another (Converse 1964; Kinder 1983).⁵ Whatever its cause, the specificity of agenda-setting serves to constrain and channel television's influence. Because of the specific nature of the agenda-setting effect, Americans are unlikely to be swept away by any coherent vision of the country's problems. More likely, they will be pushed and pulled in various directions as discrete problems emerge, rise to prominence, and eventually fade away.

Second, Americans are not without informational resources of their own. We found that agenda-setting is weakened among those viewers who are most deeply engaged in public life, presumably because their priorities are more firmly anchored. Because their opinions about the national condition are stronger, they are buffered less by day-to-day fluctuations in the networks' agendas. We also found that priming is weakened among those who, in effect, are not ready to be primed, by virtue of their partisanship or their tacit theories about national problems. Democrats confronted with news about "Republican" problems, like Republicans confronted with "Democratic" problems, or like viewers whose understanding of national problems is either poorly worked out or does not include links between the president and the problem are, as a consequence, less vulnerable to priming. Television news defines political reality more completely for some Americans than for others.

There is a final and perhaps most important point to make regarding limitations on the power of television news. Each of our experiments on agenda-setting manipulated attention paid to problems that could all plausibly be regarded as relevant to the national interest, each widely understood as having the potential to affect millions of Americans seriously and adversely. Our hunch—unfortunately not tested—is that our experiments could not create concern over *implausible* problems. Had we inserted news stories portraying the discrimination faced by left-handers we very much doubt that viewers would suddenly put aside their worries about unemployment, defense, and environmental degradation. Nor do we think that television news could long sustain a story that was radically at odds with other credible sources of information. In the midst of booming prosperity, could the networks convince Americans that the economy was actually in a shambles? Or, turning the question around, in the depths of a severe recession, could the networks convince the public that times were good? We don't think so, though again we have little direct evidence. We believe that the networks can neither create national problems where there are none nor conceal problems that actually exist. What television news does, instead, is alter the

priorities Americans attach to a circumscribed set of problems, all of which are plausible contenders for public concern.

In a parallel way, our experiments on priming reveal that the news reorders the importance viewers attach to various *plausible* standards of political evaluation: our experiments were not designed to test whether network news could induce viewers to apply trivial or irrelevant standards of evaluation to presidents or political candidates. We can only guess that had such experiments been conducted, they would demonstrate that television news cannot induce voters to abandon the traditional standards of evaluation.

In summary, television news shapes the priorities Americans attach to various national problems and the standards they apply to the performance of their government and the qualifications of their leaders. Although subject to limitations (television news cannot create priorities or standards out of thin air) television's power to shape political priorities is nonetheless formidable, as we will see shortly. This view clashes with the romantic ideal of the democratic citizen: one who is informed, skeptical, deeply engaged in public affairs, and thoughtful about the state of the nation and the quality of its leadership. But we know from other evidence that this vision is hopelessly idealistic; in fact, Americans pay casual and intermittent attention to public affairs and are often astonishingly ignorant of the details of contemporary politics (Kinder and Sears 1985).⁶

No doubt a portion of this indifference and ignorance can be attributed to candidates and government officials who practice evasion and deceit, and to the mass media (and especially television news), which operate all too often as if the average American were seven years old. But some of the indifference must be traced to the minor place accorded politics in everyday life. It seems to us highly unreasonable to demand of average citizens that they carefully and skeptically examine news presentations. If politics is ordinarily subordinate to the demands and activities of earning a living, raising a family, and forming and maintaining friendships, then citizens should hardly be expected to spend much of their time and energy each day grappling with the flow of news. How then do Americans "understand" politics?

The answer is that we muddle through. Faced with the enormous complexity and uncertainty of the political world, possessed of neither the motivation nor the wits to optimize, we strike various compromises. We resort to cognitive shortcuts (Tversky and Kahneman 1974)⁷ and settle for acceptable solutions (Simon 1955).⁸ As a consequence of such compromises, our judgments are often creatures of circumstance. What we think about the federal deficit, turmoil in Latin America, or the performance of our president depends less on what we know in some complete sense and more on what happens to come to mind.

The general moral here is that judgment and choice are inevitably shaped by considerations that are, however briefly, accessible. And when it comes to political judgment and choice, no institution yet devised can compete with television news in determining which considerations come to light and which remain in darkness.

POLITICAL RAMIFICATIONS

Although it was not our purpose to investigate the political ramifications of agenda-setting and priming directly, we nevertheless feel obliged to spell out what we take them to be. In doing so, we are in effect making explicit the assumptions that motivated our research. We undertook the various investigations reported here under the assumption that *if* television news could be shown to be a major force in shaping the viewing public's conception of national life, the political ramifications would be portentous. With the results now in, we believe that through agenda-setting and priming, television news affects the American political process in at least three important ways: first, by determining which problems the government must take up and which it can safely ignore; second, by facilitating or undermining an incumbent president's capacity to govern, and third, by intruding, sometimes dramatically and decisively, upon campaigns and elections.

The Government's Agenda

If television news influences the priorities Americans attach to national problems, and if such priorities eventually shape governmental

decision-making, our results on agenda-setting become important for what they reveal about the formation of public policy. The essential question, then, is whether policy makers heed instruction from the general public in selecting which problems to consider and which to ignore.

We believe that public opinion does influence the governmental political agenda. We also agree with V. O. Key,⁹ however, that although public opinion influences the focus and direction of government policy, such influence is sharply limited:

The articulation between government and opinion is relatively loose. Parallelism between action and opinion tends not to be precise in matters of detail; it prevails rather with respect to broad purpose. And in the correlation of purpose and action time lags may occur between the crystallization of a sense of mass purpose and its fulfillment in public action. Yet in the long run, majority purpose and public action tend to be brought into harmony (1961, 553).

The "harmonizing" of government policy and public opinion is loose, and sometimes occurs very gradually, partly because ordinary Americans are indifferent to and uninformed about the details of policy, and partly because of the successful intervention of organized interests whose preferences depart from those of the unorganized public (Edelman 1964; McConnell 1966; Schattschneider 1960).¹⁰ Nevertheless, the national government does appear to respond, if slowly and imperfectly, to the public's wishes (e.g., Burstein 1979; Burstein and Freudenburg 1978; Page and Shapiro 1983; Verba and Nie 1972; Weissberg 1976).¹¹ Thus, television news must assume a significant role in the intricate process by which citizens' inchoate goals and concerns eventually become government policy.

Presidential Power

Television news may also influence an incumbent president's capacity to govern. As Neustadt (1960)¹² proposed and others have shown (Kernell 1986; Rivers and Rose 1985),¹³ presidential power derives partly from public approval. A president

who is admired by the people tends to be powerful in Washington. The proliferation of opinion polls has accentuated this connection. Of course, public approval is not the only factor affecting a president's success. But other things being equal, the Congress, the governmental bureaucracy, world leaders, the private sector, and the executive branch itself all become more accommodating to a president who is riding high with the public. As television news shapes the criteria by which the president's performance is measured, so may it indirectly contribute to a president's power.

This point has not escaped presidents and their advisers. Without exception, presidents in the television age have assiduously sought to control the criteria by which they are viewed and evaluated. From the careful staging of news conferences to the manufacturing of pseudoevents, "making news" and "going public" have become essential presidential activities (Kernell 1986). Our findings suggest that presidents would be foolish to do otherwise. To the extent that the president succeeds in focusing public attention on his accomplishments while distracting the public from his mistakes, he contributes to his popularity and, eventually, to the influence he can exercise over national policy.

The Electoral Process

Finally, our results suggest that by priming some considerations and ignoring others, television news can shift the grounds on which campaigns are contested. Priming may therefore determine who takes office—and with what mandate—and who is sent home. Moreover, election results do matter in tangible ways: elected officials pursue policies that are broadly consistent with the interests of their core political constituencies (e.g., Bunce 1981; Cameron 1977; Hibbs 1977).¹⁴ Consequently, insofar as television news contributes, if unwittingly, to the success of one candidate over another, the results on priming we have uncovered here are politically important.

It seems clear to us that television news has become a major force in the American political process. The problems that government chooses to tackle, the president's power over the focus and direction of national policy, and the real and

tangible consequences of elections are all affected by the glare of the television camera. Less clear is whether this influence is necessarily undesirable. Whether, as many maintain, television threatens public opinion and menaces democratic government would seem to turn on the question of how faithfully the pictures and stories that appear on the news each night portray what of real consequence is actually happening in the world.

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43

Processing Politics: Learning from Television in the Internet Age

Doris Graber

THE "NEW" TELEVISION AUDIENCES

What kinds of programming preferences will the television journalists of the next few decades have to satisfy? Answering that question requires discussion of the major changes in attitudes toward political information between the baby boomer generation and their parents, on one hand, and the Internet generation, on the other. The early twenty-first century will belong to the Generation Xers, born in the 1960s and 1970s, and their offspring, who were immersed in

televised information from infancy onward. While it is always hazardous to project generational changes, it seems quite likely that the children of GenXers, raised in the age of audiovisual plenty, will continue the trends in audiovisual information-gathering set in motion by their parents and grandparents. What do studies of GenXers tell us about their choices of political information and their preferred information delivery systems?

GenXers have spent more time watching the world unfold on audiovisual monitors than in any

From Doris Graber, *Processing Politics: Learning from Television in the Internet Age* (Chicago, IL: The University of Chicago Press, 2001), pp. 161–169.

other waking-hours activity. They have learned from infancy on to prize the creation of virtual reality that visual presentations make possible. GenXers like a great deal of control over their information supply, rather than patiently watching what newscasters have assembled for them in a newscast. GenXers are not intimidated by the technologies that need to be mastered to get information from multiple sources. As table 43.1 shows, three out of four GenXers like to skip television stories at will, and two-thirds enjoy selecting additional information for stories of their choice. Many relish having hundreds of different news sources at their fingertips. They also are perpetual surfers who move quickly from program to program unless a presentation truly engages them. When it comes to political information, half indicate that they want instant, round-the-clock access to news at times of their choosing.

GenXers like to participate in shaping their information menu. Half of them, according to table 43.1, enjoy assembling their own television programs, picking and choosing among stories. They also demand interactivity. This is the “talking back to your television” concept that first surfaced in the 1960s. But, above all, GenXers are niche viewers. They want to limit their news consumption, including news about politics, to the information that interests them most. They resist being told what information they ought to consume. That means that they skip stories they do not like and are eager to get more information about preferred stories at the punch of a button or the click of a computer mouse. Modern

technologies make it possible to indulge all of these preferences. The supply of political information has grown exponentially, thanks to cable television, the Internet, and a bevy of new digital television channels. Viewers are able to collect these riches at will.

Even though studies of generational changes in interest show that curiosity about some aspects of politics has diminished, GenXers retain an appetite for political news. More than half claim high interest in news about their local communities and their state, and nearly half say they are interested in news about the entire country.

Table 43.2 shows the types of programs in which GenXers claim to be “very interested.” These programs should therefore be priorities for information suppliers, as long as expressed interests continue to be corroborated by audience statistics. Local community events rank at the top of news preferences for all generational groups. In fact, 45 percent of GenXers watched local news regularly in 2000 compared to 17 percent who watched network news (Pew 2000b). Events in one’s state of residence are second, and news about the country ranks third. At the turn of the twenty-first century, average Americans, including GenXers, by and large, are most interested in politics close to the grassroots. When news focuses on events abroad rather than events at home, interest drops sharply. Only 23 percent of GenXers express keen interest in international news—on a par with their interest in news about consumer products and about entertainment and celebrities. Interest in day-to-day reports about

TABLE 43.1 Interest in Technological Innovations by Generation (%)

Type of Innovation	GenXers	Parents	Grandparents
Skip TV stories at will, as in newspapers	74	69	49
Click button for more information on story	66	61	38
Select news mix (politics/sports/weather)	54	53	32
Design program from story menu	50	49	27
Have Instant access to news any time	50	45	30
Choose from 100+ channels	43	33	14

Source: Excerpted from *News in the Next Century* 1996, 67.

TABLE 43.2 News Interests by Generation (%)

News Topic	Generation X (18–29)	Boomers (30–49)	50 + and Older
Local community, hometown	59	71	67
State, place of residence	53	63	57
U.S., country as a whole	47	55	64
Weather	45	51	59
Health or fitness	34	33	37
Sports	29	22	23
Other countries, the world	23	18	29
Consumer products	23	24	25
Entertainment, movies, TV, celebrities	23	12	9
Computers/technology	18	20	11
Religion	17	19	29
Politics and government	11	23	36
Business, stock market	6	14	17

Source: Adapted from News in the Next Century 1996, 49.

the minutiae of politics and government in the nation ranks near the bottom, with a mere 11 percent of the GenXers—compared to 23 percent of their parents and 36 percent of their grandparents—saying they are “very interested.”

Overall, the numbers in table 43.2 are encouraging for observers who are worried that young Americans are alienated from politics because they read and watch and listen less to the kind of political fare preferred by prior generations. If we use the grandparent generation represented in table 43.2 as a point of departure, rather than the parents of GenXers who were stirred by the turbulent sixties, the intergenerational drop in interest for local, state, and international news is below 10 percent. The sharpest drops—as high as 25 percent—come in national news, especially Beltway gossip. That suggests that Beltway gossip should shrink in favor of the types of local news that audiences find relevant to their lives. If the news supply becomes genuinely attuned to the changing needs and desires of news audiences and if the quality of the stories improves, it is quite likely that the numbers of viewers of political news will rise again.

In an age where the accuracy of audience research has reached new heights, journalists should have no trouble ascertaining continuously what types of stories will attract their viewers. Research tools to assess audience needs and capabilities include depth interviews, skillfully run focus groups, and various psychological and psycho-physiological tests, such as heart rate and galvanic skin response measures and checks of eye and other facial movements. Psychographic models, which were developed to segment audiences for marketing or analysis purposes, have pioneered many analytical techniques for scientific segmentation. These techniques use responses to a battery of questions in order to identify people with similar interests (Wells 1974; Myers 1996). The seminal work... that has shed light on the real nature of information-processing is also a major resource for producing audience-friendly program designs. The journalism community, schooled in social-scientific procedures through “precision journalism” training, is already familiar with many of these tools.

While progress in judging the audience’s preferences has been great in some areas, it has

lagged in others. For instance, few audience analyses appraise the knowledge base that particular audiences bring to political information. If this were done more frequently, journalists would be less likely to overestimate what audiences know and might recall to round out the sketchy information presented in news stories. Reporters would then be more likely to provide adequate contexts for news stories. When reporters write serious stories, they all too often tailor them to suit their own tastes, forgetting that their audiences' information backgrounds are generally far more limited. Stories about the need for reforming the welfare system, for example, convey little meaning when viewers are unfamiliar with the nature of the critical problems in the existing system.

NICHE PROGRAMMING: ADVANTAGES AND DISADVANTAGES

New digital technologies make it ever easier to satisfy the Internet generation's demand for news offerings that meet the special interests of various audience sectors. As has been true for radio, where the audience realms of giant stations splintered into tiny, specialized fiefdoms, so the audience realms of giant television networks are splintering into increasingly smaller configurations. While older viewers, especially women, have remained among the most loyal network television fans, younger viewers across the demographic spectrum are moving elsewhere (Pew 2000b). Television journalists therefore are less concerned about developing programs that please large, heterogeneous audiences, which previously forced them to offer much television fare pegged to the lowest common denominator. The trend toward narrowcasting began with the emergence of cable television. It has progressed to the digital technology stage, which allows a single television channel to carry multiple programs simultaneously.

The Internet has further extended the possibilities for niche programming. It allows people to select, at times and places of their choosing, from a seemingly endless array of multiple types of political information available worldwide. Even when Internet messages are substantively or technically flawed, they nonetheless diversify the

political information pool—and the opportunities for glimpsing diverse views—far beyond past boundaries. Jürgen Habermas's (1989) funeral oration for the public sphere may have been premature after all. While economic constraints and lack of technical skills will prevent the vast majority of the world's people from using the Internet for the foreseeable future, these constraints are shrinking in technologically developed countries, where the first generation raised in the computer age is taking the helm (Pew 1998c, 2000b).

Television diversification has followed two distinct paths. The established television networks have chosen to address their offerings to selected demographic groups splintered along cleavages of age, gender, and ethnicity. For example, CBS has targeted older Americans, while Fox has aimed for a younger crowd. Some networks direct programming toward African Americans, and others target Spanish-speaking Latinos. Cable channels, by contrast, have ignored explicit demographics and have concentrated instead on interest fields, such as science, history, cooking, or mechanics.

Threats to Democracy

Narrowcasting does raise concerns about the viability of American democracy. If citizens do not drink from the same well of information, will they splinter into communication ghettos? Will interactions diminish sharply among people whose backgrounds and matching preferences vary? Evidence of increasing fragmentation along various interest, lifestyle, age, income, religion, and ethnicity cleavage lines is mounting. A 1998 survey of audiences for entertainment shows, for example, showed that African Americans were flocking to newly available shows featuring African-American actors, while Caucasian Americans watched shows oriented toward white audiences. Fifty-one percent of African Americans followed crime news very closely in 2000 compared to 27 percent of whites and 32 percent of Hispanics. Figures for health news are 45 percent, 27 percent, and 29 percent, respectively (Pew 2000b). In the 1970s and 1980s, when fewer narrowly targeted choices were available, audience self-segregation along demographic lines was much less common (Sterngold 1998). As channel

capacity grows, niche programming tends to progress into niche-within-niche offerings that make the splinter audiences ever tinier. They may be more satisfied by these specialized programs but also more disconnected from others in their community whose interests differ.

Niche programming may also be socially dangerous because it supports the Internet generation's penchant to limit their information diet to their special interest topics, creating a nation of people who know more and more about less and less. It may also mean that much of the public largely ignores entire areas of politics to which they gave at least passive attention in the past. Large numbers of people may be tempted to ignore civic information entirely if specialized news channels offer alternative program choices in competition with broadcasts of civic events, which most of the audience finds boring. Audience tallies show that this does happen (Pew 2000b). Attention to major political broadcasts, such as presidential addresses, declined sharply when other programs became available simultaneously.

Overall, the trends evident at the start of the twenty-first century do not bear out the nightmarish vision of large numbers of people isolating themselves from public affairs. The vast majority of citizens, including the Internet generation, have continued to attend to more general information sources, even when they devote substantial time to narrow-cast fare (Pew 2000b). Moreover, many of the news choice options on different programs are like peas in a pod, often low-intellectual-calorie peas at that. Such programs do restore some commonality to the political information supply, but they waste the chance for diversifying it.

Whenever major national events have loomed, such as key decisions in the impeachment case against President Clinton, viewing levels for general news programs have risen sharply. For example, on 19 December 1998, when the House of Representatives voted to impeach the president, CNN news scored its highest single-day rating of the year. Other broadcast outlets reported similar audience peaks, although these were below the levels of attention lavished a few years earlier on the verdict in football legend O.J. Simpson's murder trial or the events connected to the accidental

death of the widely cherished Diana, Princess of Wales. However, CBS, which covered a major football game (New York Jets versus Buffalo Bills), attracted more than 12 million viewers on the day of the Clinton impeachment vote, surpassing the audience levels of all political news programs combined.

The Shrinking Scope of News

If news production is audience driven, will news offerings supply the political information that the public needs? For example, lack of interest among viewers has been cited as a major reason for the sharp reduction in the number of stories dealing with events outside the United States following the end of the cold war. ...[F]ocus group data...suggest that citizens will continue to demand political information about the broad range of issues that they deem salient to their lives. But citizens' interests do not necessarily encompass all the issues that elites deem important for average citizens. This portends a shrinking of the scope of news for individual citizens, though less severely than some observers fear, depending on the skill of journalists in clarifying the relevancy of seemingly remote issues.

The idea of allowing consumers of political news to guide the choice of information presented to them for immediate attention has been partially implemented already by print, television, and radio outlets in the United States that follow the tenets of "public" (or "civic") journalism. The staffs of papers like the *Charlotte Observer* in North Carolina and the *Wichita Eagle* in Kansas try to ascertain the interests of their readers through devices such as polls, focus groups, or town meetings. They then prepare stories that cover these concerns in exceptional depth. For instance, television programs can show how other communities have dealt with particular problems and provide guidelines for making fact-based comparisons between the local and the remote situations. Advocates of this type of journalism believe that it restores the role of the media as the mobilizer of civic action and the voice of public opinion. Journalists respect the public's choices, rather than derogating them. Opponents, who are plentiful and include prominent mainline

journalists, argue that public journalism abandons the press's hallowed leadership role in setting the civic agenda, that it shamelessly panders to shallow public tastes, and that it leads to neglectful and dangerous silence about many important issues (Schudson 1998).

Leaving aside the question whether journalists know better than ordinary citizens what information belongs on the civic agenda, we do need to ask the "to what avail" question. If journalists supply information that is unwanted and largely ignored, while covering areas of strong demand sparingly, what is accomplished? It amounts to preaching to an empty church. If people do not want much international news but crave local news, shouldn't the demands of the mass audience be heeded, especially when specialized media, tailored to the preferences of elites, are available? A public that is exposed to political information that is of little interest is unlikely to be motivated to political thinking and action. "[I]t is not an informed public ... with the motivation or frame of reference or capacity to act in a democracy" (Schudson 1995, 26–27).

Regardless of what journalists do, in the end it is the audience that determines whether or not the content will lead to civic enlightenment and political participation. Attempts to force-feed audiences with news they do not care about are apt to fail when the audiences have alternative program choices (Entman 1989). However, it is within the grasp of journalists, as well as the political leaders who are their sources, to whet the public's appetite for important news stories. If it can be made clear that the story is, indeed, important and relevant to the audience's concerns and if story presentation

is appealing, sizable audiences will be attracted. The presidency and other visible public offices have often served as the bully pulpit that can draw nationwide attention to important stories.

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