



## Four Systems of Policy, Politics, and Choice

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*Public Administration Review*, Vol. 32, No. 4. (Jul. - Aug., 1972), pp. 298-310.

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*Public Administration Review* is currently published by American Society for Public Administration.

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represent may prove in practice to be the interests to which certain of his advisors are most sensitive. But there are increasing indications that greater "presidential" control will evoke a more representative response from Congress — one less frequently centered in a few subcommittees that are less responsive to shifting patterns of demand than are the agencies themselves.

The most encouraging feature of the FTC's renewed vitality is to be found in the additional points of access that are being opened to un- or under-represented interests, making systematic what has too often depended on crisis. If other agencies can emulate the FTC in this regard and keep the points of access open long enough to nurture new modes of public representation, then there is some genuine promise of support for agency initiatives that will force the White House to concentrate on substantive issues rather than the forms that obscure them. If this in turn evokes a congressional response that reflects a wide range of interests and supports further agency initiatives, deliberate recycling of the regulatory agencies may prove to be something more than a conceit that capitalizes on a contemporary metaphor.

#### Notes

1. *The President's Advisory Council on Executive Reorganization, A New Regulatory Framework: Report on Selected Independent Regulatory Agencies (1971)*. The principal recommendations included: (1) elimination of the collegial composition of the commission form in favor of a single administrator who would serve at the pleasure of the President (except for the FCC); (2) realignment of functional responsibilities by combining the regulatory functions of the ICC, CAB, and FMC in a new Transportation Regulatory Agency, transferring the CAB's promotional functions to the Department of Transportation, dividing the FTC's functions between a new Federal Trade Practices Agency and an Antitrust Board, and relocating the SEC's regulatory functions under the Public Utility Holding Company Act in a new Federal Power Agency; and (3) limitations on the time and scope of internal review of agency proceedings, and transfer of judicial review to a new Administrative Court.
2. "Views of the Administrative Conference of the United States on the 'Report on Selected Independent Regulatory Agencies' of the President's Advisory Council on Executive Organization," *Virginia Law Review*, Vol. 57, No. 6 (1971), pp. 927-932.
3. Louis L. Jaffe, "The Effective Limits of the Administrative Process: A Re-evaluation," *Harvard Law Review*, Vol. 67, No. 7 (May 1954), pp. 1105-1135.
4. Mark V. Nadel, *The Politics of Consumer Protection* (New York: The Bobbs-Merrill Company, Inc., 1971), pp. 31-43.
5. Stephen Cupps, "The Federal Trade Commission and the Consumer: A Study in Institutional Survival," paper presented to the 1972 Annual Meeting of the Western Political Science Association, pp. 21-27.
6. *Ibid.*, p. 6.
7. See, for example, William F. Cary, "Why I Oppose the Divorce of the Judicial Function from Federal Regulatory Agencies," *American Bar Association Journal*, Vol. 51, No. 1 (January 1965), pp. 33-38.
8. William F. Cary, *Politics and the Regulatory Agencies* (New York: McGraw-Hill, 1967), p. 69.
9. See in this regard, Edward F. Cox, Robert Fellmeth, and John Schulz, *The Nader Report on the Federal Trade Commission* (New York: Baron Publishing Co., 1969), and Professor Cupps' helpful commentary on p. 10 of the paper cited above.
10. Cary, *Politics and the Regulatory Agencies, op. cit.*, p. 8.
11. Cupps, *op. cit.*, pp. 29-31.
12. See S. 3434, a bill introduced by Senator Edward Kennedy during the 91st Congress, Second Session, providing for the establishment of a Public Counsel Corporation, and Simon Lazarus and Joseph Onek, "The Regulators and the People," *Virginia Law Review, op. cit.*, p. 1103.
13. *Ibid.*, p. 1098.
14. *Los Angeles Times*, "Backlash Hits 'Super' Agency for Consumers," July 20, 1971, Part 1, p. 3.
15. From the letter of transmittal to President Nixon accompanying the Ash Council Report.

## FOUR SYSTEMS OF POLICY, POLITICS, AND CHOICE

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The politics vocabulary is not rich in distinctions among governmental functions and policies. Even the great Cushman seems to have been satisfied with a distinction between regulation and

nonregulation, based upon an even simpler dichotomy between coercion and noncoercion.<sup>1</sup> Perhaps this poverty of language is due to the widespread liberal attitude that since government itself is not a

problem, the best approach is simply to point out and describe the unit or activity of concern. Part of the problem also lies in the fact that prevailing fashions in political science have put heaviest stress on the politics rather than the government side of the field. In many dimensions of politics there are well-developed vocabularies, indicating indeed where the major theoretical interests have been. Students of politics do occasionally turn to policy and government, but the tendency has been to do so only because the interesting conflicts are around issues, and many issues involve basic policies. But the issue of policy was not the part of these issues that came in for serious analysis.

Regulation is obviously only one of several ways governments seek to control society and individual conduct. There are rather specific purposes that are best pursued through regulatory techniques, and the reading of any account of regulatory administration suggests that there is a distinct set of moral and political-process consequences associated with this kind of governmental commitment. But this implies that there might be other governmental commitments to serve other ends involving other moralities and other processes. If this is the case, then no one type is meaningful except in comparison to other types.

There is more to the urge for classification than the desire for complexity. Finding different manifestations or types of a given phenomenon is the beginning of orderly control and prediction. Taxonomy before ontogeny *or* phylogeny. Moreover, to find the *basis* for classification reveals the hidden meanings and significance of the phenomenon, suggesting what the important hypotheses ought to be concerned with.

This is precisely what a policy taxonomy might do for the study of politics. To break through the weak and designative vocabulary of public law is perhaps to bring public policy—government—into a proper, analyzable, relationship with those dimensions of political science that are already well developed. In hard and practical terms, a good taxonomy of policies might ennoble this underdeveloped part of the field by converting these important phenomena into “variables,” which make them more esthetic to the scientist in political science.

One such attempt to formulate a politically relevant policy taxonomy has been made, and, although still in the process of development, it is possible to report upon it here, in fact, using this as part of the process of developing the scheme. The purpose here will be to bring the board,

theoretical policy considerations concretely to bear upon some real political situations to see if each enriches the other. It should soon be amply clear why one can say little new about the politics of regulation without introducing the general policy context within which regulation is only one small, albeit important, part.

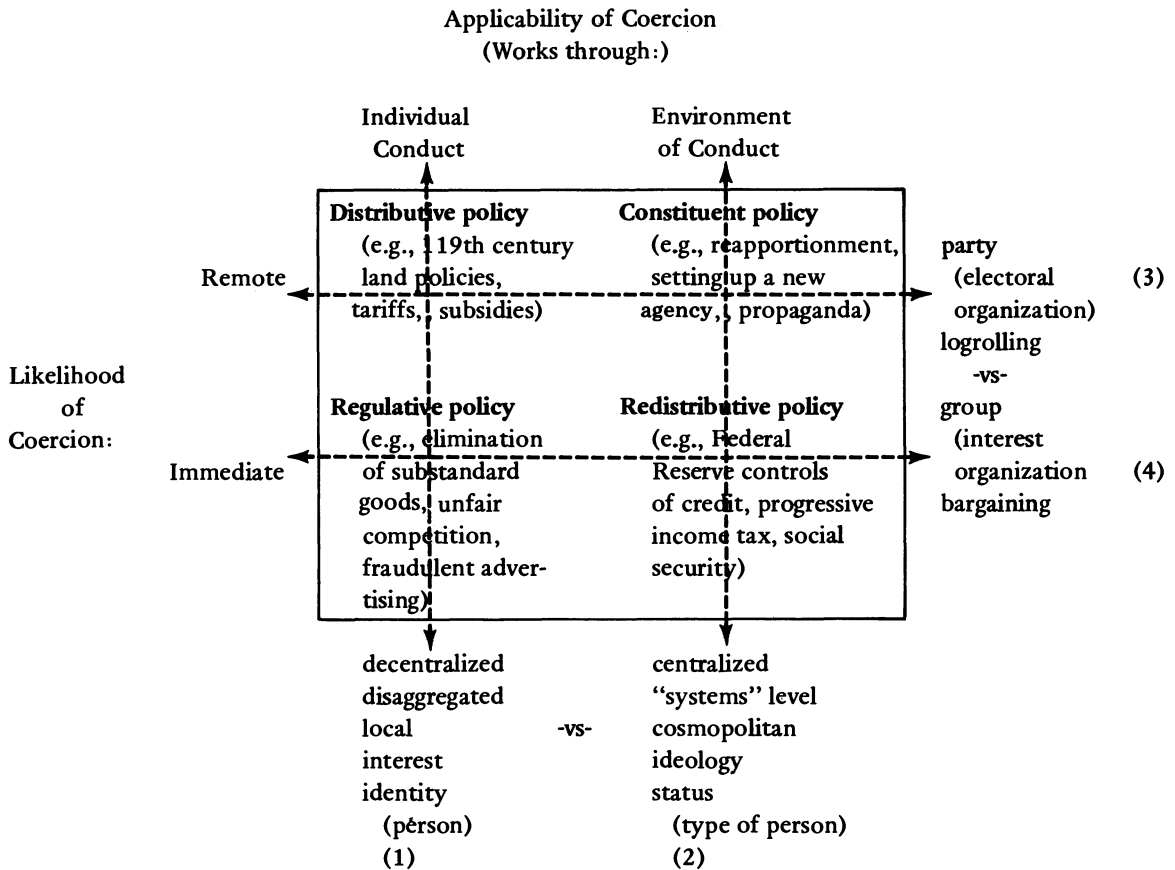
Since reference can readily be made to the earlier publications, only scant attention will be paid here to the rationale and the details of the scheme.<sup>2</sup> The perspective of the entire approach is the very opposite of the typical perspective in political science, for it begins with the assumption that *policies determine politics*. But the assumption is without value unless the taxonomy of policies captures features of real government that are politically significant; and the most significant political fact about government is that government coerces. Different ways of coercing provide a set of parameters, a context, within which politics takes place.

Table I is an attempt to identify and derive logically the types of coercion available to governments.<sup>3</sup> According to the vertical dimension, coercion can be remote or immediate; in a governmental context it can be remote if sanctions are absent, or if they are indirect—as for example a program based on a service or subsidy where the coercive element is displaced onto the general revenue system.

While the vertical dimension is usually easy to locate in the statute, the horizontal dimension offers a few more difficulties. Nonetheless it is clear that some policies do not come into operation until there is a question about someone's behavior. For example, there is a general rule covering all fraudulent advertising, but it is applicable only to the conduct of individual advertisers. In strong contrast, some policies do not need to wait for a particular behavior, but rather do not touch behavior directly at all. Instead they work through the environment of conduct. For example, a minor change in the Federal Reserve discount rate can have a major impact on my propensity to invest, yet no official need know of my existence.

Beyond the examples provided in each cell, there does not seem to be need for providing elaborate definitions here. The essential aspect of each type is provided or strongly implied in the cross-tabulation of each of the properties along the margins. This is the beauty of finding a basis of distinction to work with.

TABLE I  
 TYPES OF COERCION, TYPES OF POLICY, AND TYPES OF POLITICS



There are various ways to work from the scheme toward its normative and empirical implications. Some of the process variables are indicated around the margins of the paradigm. Cross-tabulations among these common-sense relationships produces many complex hypotheses that are systematically related to each other and to a common and known analytic posture. For example, it is not hard to document historically that the overwhelming proportion of policies produced by the federal government during the 19th century were distributive; it is also not hard to place alongside that the other well-documented fact, that the period produced a strong partisan politics, then became dominated by localized, logrolling, nonideological parties. The paradigm puts the two sets of facts into an intimate interrelation. The two separate sets of facts can be pulled together systematically in detail and yet in relation to other sets of facts by mixing marginal characteristics (1)

and (3) in a context established for them on Table I. Oblique turns in politics can be anticipated systematically by moving to another cell and mixing the marginal characteristics accordingly, as for example combining items (1) and (4) for an initial look at what tends to develop around regulatory policies. And so on.

Of all the ways of testing the hypotheses drawn from this scheme, perhaps the most effective, as well as the most useful one to begin with, is that of looking through the eyes of the top-most officials at the political system and how and to what extent the system shifts obliquely as their view of it shifts from one policy prism to another. The way to do this is with actual accounts; one of the virtues of the policy scheme is that it converts ordinary case studies from chronicles and teaching instruments into data. Yet the cases themselves require some preparation for this somewhat novel usage; and this can be provided by a brief and

superficial review of variations in the lives of a few Presidents, as these were seen, or could have been seen, by them.

**From Cleveland to FDR:  
What Makes Presidential Politics?**

The "Republican Era" of 1869-1901 is generally thought of as a period of congressional dominance and presidential passivity. To Woodrow Wilson, the period was not merely congressional government; congressional government meant committee government. And in his overview of that era, Leonard White observed that the presidency was at "low ebb" and that despite hard-fought battles between the two branches, the theory and practice of government was congressional supremacy. This went virtually unchallenged, according to White, Binkley, and others, from Grant through McKinley.<sup>4</sup> To students of that period it was for good reason that Woodrow Wilson could write *Congressional Government* and Bryce could ask *Why Great Men Are Not Chosen President*. The only thing Presidents were strong about was their faith in the separation of powers, which meant steadfast passivity in the policy-making process.<sup>5</sup>

Even Grover Cleveland, despite his standing as one of the stronger Presidents, was unquestionably passive in his relations with Congress. According to Woodrow Wilson, Cleveland "thought it not part of his proper function to press his preference in any other way than by recommendation in a message and upon acceptance of Congress. . . ."<sup>6</sup> It was simply an established fact about Presidents and had been true of all Presidents during and before the Republican Era, virtually from Jefferson to Buchanan, when, except for brief moments, Congress dominated.

This kind of dominance, especially by the committees, has been experienced whenever distributive policies have prevailed, and it so happened that such was the case for most of the 19th century, when the federal government turned out little but land disposal programs, shipping subsidies, tariffs, internal improvements, and the like. The federal level of politics was stable, and could have been governed by congressional committee and party logrolling precisely because policies dealing with slavery, public health, property, and so on were left to the states—which were duly radicalized.<sup>7</sup>

Out of this stable situation, politically speaking, grew the practice, then the theory, of presidential

obligation that prevailed until the Wilson Administration. Yet there were exceptional moments, and these underscore the influence that policy has upon politics. For, whenever politics took an exceptional turn, there seems to have been an exceptional policy issue at the bottom of it. Interesting cases, actually anticipating the New Deal, can be found in the Cleveland and the Harrison Administrations.<sup>8</sup>

President Cleveland seems to have allowed himself a single important exception to the accepted presidential posture of his day. On the one issue of repeal of the Silver Purchase Act he exerted strong leadership, legislative leadership in particular. In his efforts to secure the repeal "he gave one of his few instances of leadership," even though he had to compromise with "his theory of separated powers to do it." He was "humiliated by the necessity of purchasing the support of a Democratic member of the finance committee of the upper house. . . ." but he did it all the same, as part of a pattern of leadership not to be seen on a regular basis again for many years to come. Thus, when later an important tariff was being framed, "he played no effective part."<sup>9</sup>

Actually Harrison, though a much weaker man, headed a more vigorous Administration. Central leadership was of course not characteristic of it. Harrison more than shared Cleveland's views; to him, the President should be guided by his party in Congress. Nevertheless, his Administration is associated with many important political changes, all in the direction of greater vigor, greater political centrality and responsibility. It was during his Administration that Congress began the most far-reaching reforms in its history. In brief, the House gave itself a new constitution by adopting at long last an organized and codified set of rules. These were "Reed's Rules," named after their author, Speaker Thomas B. Reed, and they were concerned in particular with controlling individual congressmen, reducing dilatory tactics, and confining deliberation to relevant and efficient channels. All of this in turn amounted to an assertion of central leadership and of the parliamentary Congress over the tightly entrenched committees and individual, power-seeking congressmen.

After Harrison, Presidents would, at least more frequently, see a real Congress and deal directly with legislative problems. Presidents would thereafter also see more and more nationally organized interest groups, for the late 19th century witnessed the most phenomenal growth of such

organizations oriented to political influence and capable of sustaining pressure. It began somewhat earlier at the state level with commodity associations, but it spread to labor and business, the most effective eventually being the trade associations, almost all of whose foundings date during or after the mid-1890's. The number and strength of these interest groups provided political alternatives to the parties in policy formulation, and by 1900 parties in Congress went into a decline in their capacity to discipline members, a decline from which they have never fully recovered.

All of this is associated in turn with the rise of new kinds of public policy, new at least at the national level. These are regulatory and redistributive policies. As earlier observed, state governments had from the beginning of the Republic regularly enacted regulatory laws—for example, in the fields of property, quarantine and public health, crime, construction, banking, marriage and the family, trade, occupations, etc. On rarer occasions states also attempted to redistribute wealth. Surely state politics had a radical reputation because of the policies they were obliged to make. These kinds of policies kept state politics perpetually on the edge of organized turmoil. When this type of policy entered national government in large enough numbers, the politics would surely follow soon thereafter. And the policies would change the politics regardless of the character of the men or the party that inhabited the presidency or organized the Congress.

#### The Roosevelt Era

All of these tendencies came to a head in the 1930's, because Roosevelt was responsible for expanding national government on all fronts through all kinds of policies. The politics of the New Deal cannot be understood except by identifying and appreciating the multiple patterns of policy and of politics. Multiple patterns can be found before, but in the 1930's and thereafter, passage of large numbers of all four types of policies was so regular and frequent that these patterns began to institutionalize themselves into clear and distinct systems of politics.

Lack of full appreciation of these multiple patterns of policy and politics had led to many and conflicting interpretations of Roosevelt. For example, Leuchtenberg could argue that the New Deal was a "broker state," yet that this "clashed with the fact that he was agent, both willingly and

unwillingly, of forces of reform that business found unacceptable."<sup>10</sup> On top of this, many have argued that he was the savior of capitalism while others argued he was the chief enemy. He was to some a social democrat, to others a corporatist, to others simply a savvy and scheming politician.

These conflicting characterizations and interpretations become more interesting when all of them are taken as accurate and correct. Each simply applies to a special set of conditions; and each loses value when over-generalized to the whole man rather than to aspects of his behavior. Each interpretation comes out of one set of policy issues; the observer must have had that set in mind as he tried to describe, vainly, the entire man and the whole New Deal.

For example, Binkley, like most students of the period, stressed Roosevelt's unqualified and unprecedented leadership during the 100 days, and goes on to explain it as an emergency phenomenon. Yet, almost immediately, he saw that Roosevelt faced a "crucial test" over the economy bill (a constituent policy providing for severe reductions in the salaries of government personnel and the compensation of veterans). Only the most strenuous party discipline kept dissident Democrats in line.<sup>11</sup> Thus, here the pattern was not presidential power but national party power, which tends, if at all, to re-emerge whenever constituent issues emerge. This could have been predicted, with some degree of confidence, by knowing only the formal provisions of the bill.

Roosevelt was indeed a strong President, but his strength was conditioned and shaped by its environment, and the most determinative part of that environment was the policy environment. Roosevelt responded to more pressures than any national leader ever had. And in translating those pressures into public policies he also transformed those pressures into special and meaningful political forces that were shaped by the type of policy the demand became. It is in this sense that the Roosevelt Revolution is the key to American politics even into the 1970's. Granted, it was a bit of a revolution in terms of the scale of its expansion, and in terms of the extent to which it turned round the Constitution. But the precise meaning of the revolution will be found in the multiplicity rather than the scale of policy actions. This multiplicity of policies differentiated politics.

Thus, the impression of Roosevelt the strong, Roosevelt the opinion leader, the social democrat, is gained primarily from the unprecedentedly large

number of redistributive programs he formulated and sent up to Congress. On these, during and after the 100 days, he overwhelmed the opposition with the support of the masses and the force of rhetoric heavily laden with class fear and antagonism. Congress operated like a meek Parliament before a mighty Crown. During the first two months alone these programs included: suspension of the convertibility of dollars into gold, suspension of gold export, the Emergency Banking Act loosening Federal Reserve authorization on loans to member banks, broad authority to issue unsecured greenbacks up to \$3 billion under the Thomas Amendment to the AAA, temporary deposit insurance, and authority to purchase up to \$2 billion in gold or foreign exchange—the first step toward devaluation. These were all presidential in that they were created there, were approved quickly by a cooperative Congress, and amounted to large and explicit grants of power back to the President.

But on other matters Roosevelt looked more like the classic politician, playing the role of broker, the cajoler, the man in the center more by placement than power. Indeed, his broker role included an unprecedented willingness to alienate a large share of national sovereignty in order to get enough consensus for formulation and passage of legislation. And this is why Roosevelt looks, through the prism of regulatory issues, like a 1930's European corporate syndicalist. Only a brief look at such programs as AAA (parity provisions), the Securities Act, the Glass Steagall Banking Bill, and NIRA will reveal the distinctly different political process around the President—and this was going on exactly at the same time the President was also the social democratic leader. In these regulatory matters he was willing to share power and to co-opt business support because neither his presidency nor anyone else's has had sufficient independent power to pass important regulatory programs without paying a big price to build a coalition for the purpose. Access to public opinion and use of lofty rhetoric are resources that simply do not spend well in the regulatory area.

Thus, to this vastly popular and unilaterally powerful President (as he could easily have seen himself through the prism of redistributive policies), it must have been something of a comedown to look out at the world through the prism of securities and banking and labor regulatory legislation. Every account of these policies in 1933 and 1934 stresses the pronouncedly congressional factor. Despite the fact that the Securities Act of

1933 and the Securities and Exchange Act of 1934 were drafted by Landis, Cohen, and Corcoran in the White House (or Cambridge), both acts were gone over carefully and were very creatively rewritten in Congress.<sup>12</sup> House treatment of the Public Utility Holding Company Act of 1935 was "one of the most comprehensive and complete. . . ever given. . . any bill."<sup>13</sup> House and Senate versions were different from one another, and both were different from the White House. The final draft, worked out in conference committee, was quite different from all of these. And to any observer, President, or casual reader of the accounts, this looks like congressional, not presidential, power.

Or, take the Wagner Act, well after the opening blast of the New Deal. It was of congressional origin and was dominated by congressional forces. President Roosevelt held out for a few changes in particularly objectionable parts, but he was dragged along more as an unhappy supplicant than as a leader of nation, government, and party.<sup>14</sup>

But Roosevelt does not constitute a sufficient case. The real question here is whether this differentiated pattern, set during the 1930's, became institutionalized into separate and predictable systems of policy and politics. Rather than concentrate only on the 1930's, it would be better to span the entire period since those formative days. Strong *and* weak Presidents have been in the office since then, and the test will be whether, regardless of that, they face the same kinds of politics when the policy conditions are the same. If this is true, it would mean that strong Presidents may increase the amount of political action or the level of intensity, but they are less likely to alter the pattern of politics except insofar as they pursue one type of policy overwhelmingly more than the three others.

#### The Record Since Roosevelt: Stabilized Variation

The "Summary of Case Studies" (Table II) presents a pattern of stabilized variation. Once we began regularly to get a goodly number of policies of all four types, we also began to witness four quite different types of politics. Were it not for the possibility of overstating the argument, one could say that each is a distinct subsystem.

The summary is comprised of 17 published case studies. Many are book-length, all are very detailed, and each was written by a reputable

scholar. Our task was essentially to "interview" each author by addressing certain questions to his case study. The questions are presented in shorthand across the top of the summary. For example, it was important to learn what each author had to say about the typical participant in his story (column 1)—if indeed the author was struck by anything worth reporting on that subject. As is clear, almost all authors did stress some characteristic of the participants that could be coded, as indicated by the adjectives running down column (1). To take one case, Bailey and Samuel were impressed by the quality of "every man for himself," in the formulation of the Rivers and Harbors Act of 1950.<sup>15</sup> For another that has been covered in enormous detail, the politics of the traditional tariff has by all observers been considered highly individualized.<sup>16</sup>

Each author, through his case, was also asked if he had anything special to report on how the actors seemed to relate to each other (column 2). Did they mainly engage in mutual back scratching? Or, does the author report that he found careful strategy over long periods along broad, ideological lines? Or was there careful plotting and coalition building but along sector or other more special lines of cleavage? Ideological ties and long and stable lines of cleavage were reported by McConnell in his accounts of Farm Security and Farmers Home Administrations, as did Munger and Fenno in the fight over aid to education. In contrast, all of the authors of the middle six grouping of cases reported unstable cleavages (coalitions) based on sector and trade lines. It was this type of case, of which there were so many in the 1940's and '50's, that provided the empirical

TABLE II  
VARIATIONS IN THE POLICY PROCESS  
SUMMARY OF CASE STUDIES I: ACTORS AND THEIR ROLES

<u>Case</u>	<u>Attribute</u>			
	(1) Primary Units	(2) Relationships Among	(3) Stability Among	(4) Bu.-Prof. Factor
<b>Distributive</b>				
Rivers-Harbors '50	single	logrolling	highest	some
Airports Aid '58-'59	single	logrolling	very high	low
ARA	single	logrolling	highest	low
Tariff, '50's	single	logrolling	highest	low
<b>Regulative</b>				
FDA, '38	tr. assn.	bargaining	high	high
Rent Control '50	tr. assn.	bargaining	low	low
Robinson-Patman	tr. assn.	bargaining	low	low
AAA '38	tr. assn.	bargaining	low	low
Taft-Hartley	tr. assn.	bargaining	moderate*	low
Landrum-Griffin	tr. assn.	bargaining	low	low
<b>Redistributive</b>				
Farm Security Administration	(Bu. only)	ideol.	high	highest
Farmers Home Administration	(Bu. only)	ideol.	very high	highest
Social Security '35	Peaks	ideol.	very high	highest
Federal Aid to Education	Peaks	ideol.	very high	high**
Employment Act '46	Peaks	ideol.	very high	high**
Excess Profits	***	ideol.	very high	high**
Internal Revenue '54 (exemption and rates)	Peaks	ideol.	high	highest

\*Pro's high, anti's low.

\*\*Professionalism very high; agency personnel involvement as lobbyists or draftsmen not high.

\*\*\*No mention is made of any groups or associations. The "business community" is termed "unanimous" and "concerted" but not managed.



TABLE II, CONTINUED  
 VARIATIONS IN THE POLICY PROCESS  
 SUMMARY OF CASE STUDIES I: ACTORS AND THEIR ROLES

<u>Case</u>	<u>Attribute</u>			
	(5) Lobby Role	(6) Committee Role	(7) Floor Role	(8) Executive Role
Rivers-Harbors '50	very high	determinative	counsensual	supplicative
Airports Aid	high	determinative	consensual	supplicative
ARA	high	creative	consensual	supplicative
Tariff, 50's	low	creative	contentious	supplicative
FDA '38	low	creative	very creative	supplicative
Rent Control '50	low	creative	creative	supplicative
Robinson-Patman	very high	creative	creative	passive
AAA '38	very high	creative	not asc.	coordinative
Taft-Hartley	very high	creative	creative	passive (stalemated)
Landrum-Griffin	high	conduit	very creative	coordinative & supplicative
Farm Security Administration	very high	none	none	legislative
Farmers Home Administration	high	lobbyist	not ascertained	legislative
Social Security Act	moderate	conduit	consensual	legislative
Aid to Education '59*	high	lobbyist	contentious	inactive*
Employment Act of '46	moderate	very low	very creative	legislative
Excess Profits '50	moderate	lobbyist	contentious	supplicative
Internal Revenue '54	moderate	low-creative**	contentious	legislative

Legend

Lobby role: *Very high* if prominent and creative in legislature, executive, and grass roots; *high* if prominent and creative at any point; *moderate* if only prominent; and *low* if no evidence of anything.

Committee role: *conduit*, *lobbyist*, *creative*, *determinative*, in that rough order of importance.

Floor role: *consensual*, *contentious* (if a lot of debate but little alteration of the bill), *creative* (if evidence of alteration).

Executive role: *passive*, *coordinative*, *supplicative*, *legislative* in that order.

\*Failed of passage. As a general rule, if executive activity is low on a redistributive activity, the bill is probably doomed. This is not true of the other two types.

\*\*Joint Committee on Internal Revenue Taxation very creative – especially its staff; but it is not a legislative committee. The Ways and Means Committee and Finance Committee were much less creative, much more ratifiers of accords reached between JCIRT and Treasury lawyers.

basis for the formalizing of the pluralist interpretation of American politics.<sup>17</sup>

The President is most likely to perceive for himself the patterns reported on columns (5) through (8) of the summary. Here the authors were asked what they had to report about the relative importance of lobbying, congressional committees, the floor, and the White House, respectively, to the final outcome of the program.

No author undertakes to write a policy-making case study unless he intends to have something significant to say about the relative importance of these "loci of power."

The first thing one is struck by in the returns from these 17 cases is their sheer variation. Yet, if we could really generalize about national politics, would there not be a great deal of similarity in these adjectives?

The second thing one is struck by is the pattern of variation. Other readers might use different adjectives, but that is not likely to change the pattern much, since the adjectives used here were either used in the original or were careful translations of longer accounts. Even if something is lost by converting a paragraph or section into a single, summary word, the repetition and regular variation of these word across 17 important cases cannot be taken lightly.<sup>18</sup>

What the Roosevelt watchers report as exceptions to the general rule of Roosevelt mastery, therefore, turn out on closer examination to be not exceptions at all, but the rule under certain conditions that can be known in advance and understood in theoretically and jurisprudentially interesting terms. In all four of the distributive cases—the top group on the summary—the authors report that the President was either out of the picture altogether or was in it as a very weak and striving supplicant. Often the only way the President has been able to get into this act has been to try to convert the legislation into something else besides pork barrel—as Roosevelt succeeded in doing once and no more on TVA, and as Kennedy succeeded once in doing with his emergency public works proposal, which he tied to fiscal planning and general redistribution. But usually the committees succeed in severing these redistributive features from distributive bills.

A variety of words describe Presidents in the six cases of regulatory legislation, but one thing runs dramatically through all of them: Whether the President is strongly involved (as in AAA legislation on parity), or is stalemated due to squabbles within his own branch and party (as was true in the case of Taft-Hartley), Congress dominates the

regulatory process. And this is the parliamentary Congress—the floor, not the committees. Sometimes the President has presented full-blown draft legislation, and sometimes the relevant committee will draft the original version. But in either event, according to the authors of the six regulatory cases, there is likely to be a lot of rewriting on the floor, through the amending process, and through conference

Table III is a statistical confirmation of the results in the summary. It is a count of the actual amending actions involved in the 13 post-1948 bills on the summary, plus all bills in the 87th Congress, First Session, that received roll call votes in both houses. We used eight types of amending activity, and we ranked them according to degree of difficulty: (1) number of amendments offered; (2) per cent passed; (3) number of important amendments offered; (4) per cent of those that passed; (5) number of amendments offered over objections of the sponsor; (6) per cent of those that passed; (7) number of important amendments offered over objections of sponsor; (8) per cent of these that passed. The average amending activity, using each of the eight types, were tallied, and the results of three of these are presented in the table. We then attached weights from 1 to 8 to these categories to reflect roughly the degree of difficulty a member would have in getting each type of amendment adopted, and the "weighted mean" for each chamber is presented in the last column.

First, we can see that floor activity jumps up dramatically from distributive to redistributive bills. Since other evidence (see the summary) indicates presidential dominance over redistributive legislation, this finding suggests that on redistributive bills we get something like an acting

TABLE III  
EVIDENCE OF FLOOR CREATIVITY: AMENDMENTS

Three examples of straight amendment counts:

	(1) Average Number of Amendments Offered Per Bill	(2) Per Cent of These Passed	(3) Per Cent of Significant Amendments Passed Over Sponsor	Weighted Means, a Summary of All 8 Levels of Amending Action:	
				House	Senate
Distributive Bills (N=22)	5.8	41.8%	0	.05	.16
Redistributive Bills (N=25)	9.1	62.4%	24%	.15	.45
Regulative Bills (N=15)	12.8	48.9%	67%	.46	.50

out of the intent of the framers: direct communication between Executive and Legislative Branches. But the evidence in Table III is really classic for regulative bills. The goose egg for significant creativity in distributive legislation tends to dramatize the fact that on 67 per cent of all regulative bills at least two significant amendments were added during floor debate in the House despite the objections of the sponsor, who is usually the committee chairman. Indeed, that is a lot of rewriting, a lot of creativity, especially in the era of the "rise of the presidency" when Congress' reputation for creativity has declined.

The "weighted mean" adds considerable confirmation.<sup>19</sup> Obviously the overall level of floor action was much higher in the Senate, where smaller size and permissive rules prevail. But within the Senate the amounts of floor action, i.e., the evidence of floor creativity, varied from policy type to policy type, in a predictable way.

In House and Senate the dramatic jump upward was from distributive to regulative. This is much more significant in the House because of the many rules that discourage access to the floor under any circumstances. But even in the Senate, the reputation for floor creativity would hardly exist if we went back to the period when federal legislation was all distributive.

Finally, in the Senate, as in the House, there is a significant jump from distributive to redistributive, in evidence of floor creativity. This finding will bear further examination. Since history and the cases have revealed the special role of the Executive on redistributive matters, and since we now see also the considerable creativity of Congress as well, we might be led to reformulate our notions of policy and institutions, and how they relate to each other. It is quite conceivable that political scientists can develop criteria for policy choice in terms of predicted and desired impacts on the political system, just as economists, biologists, and the like attempt to predict and guide policies according to their societal impacts.

#### Implications for Prediction and Choice

Neither these data nor data of any other sort would support a drastically diminished interpretation of presidential power. His freedom to commit us to war, his command of secret information and diplomacy, his power to use executive agreements are all too impressive. But these impressive powers have overshadowed real varia-

tions even in that area defined, quite erroneously, as "foreign policy."<sup>20</sup> One need only note the amount of revision of factual and normative interpretation about presidential power since the Vietnam failures to realize the variability that was probably masked in the political science of national power during the 1950's and '60's.

All of this is to say that presidential power, and all other political phenomena, must be put in proportion and perspective. Whether we are concerned about the issue of presidential power or the issue of adopting a regulatory approach to a social problem, and whether we are concerned with the objective business of prediction or the normative business of choosing a particular outcome, perspective must reside in at least two considerations: (1) prediction or choice must begin by recognizing the possibility of more than one pattern, and by pattern we must mean whole models rather than incremental differences in specific behavior patterns; and (2) if predictions can be made at this massive, institutional level, then they can, and inevitably will, become a major criterion for policy choice—i.e., really good theory is unavoidably normative.

(1) If this essay has shown anything, it is that almost any generalization about national politics is inapplicable to as many as two-thirds of the cases of policy formulation. If we reverse the generalization by adding a "not," the new generalization would also tend to be inapplicable to about two-thirds of the known cases. The policy framework provides a basis for stating the conditions under which a given proposition is applicable, rather than merely helping improve the batting average from .333 to .335, or something of the sort. The policy framework locates the smaller universe where the batting average might be .677 or higher, and additionally it puts each of the generalizations into a theoretically orderly relation to all others. In turn, this produces new insights but, more important, it builds the propositions toward whole models rather than merely stringing out specific x-y statements.

One example alluded to earlier, where whole models of government and politics are seen to be involved, has to do with the conventional wisdom that American politics is all subsumed under a "presidential system," with exceptions. The cases and statistics here suggest first that several models have been masked over by the notion of a single system with multiple centers of power. One of the worst consequences of this assumption is its central construct, the "rise of presidential power,

the decline of legislative power." *Sub rosa* it is then recognized that presidential power is not unilateral, nor is it even remotely equivalent to executive power; but those ambiguities are left theoretically unsettled. When one allows for multiple models rather than multiple power centers in a single model, many tendencies that must be left as ambiguities or anomalies can be brought explicitly to the center and handled rather easily. At least two such models involve a very strong Congress, and in one or perhaps both of these, presidential and congressional power are consonant, not zero-sum.

This bears further pursuit. Evidence of floor creativity is stronger for strong Presidents, such as Kennedy and Johnson, than for weak Presidents, such as Eisenhower, or Truman during his first three years in office. And floor creativity, as Table III shows, is high for redistributive bills, when the presidential role is most pronounced, for strong as well as for weak Presidents. What this really means is that the levels of political responsibility in the two branches tend to be consonant, and that they exist together in counterpoise to the administrative or bureaucratic levels of both branches. When the President is weak it is his bureaucracies and the congressional committees—the levels of low political responsibility—that tend to dominate the process; when the President is strong it is because he controls the bureaucratic levels.

(2) If the policy scheme developed in this essay, or some superior one to come along, can predict when a President will be strong and weak, as well as when other gross institutional patterns will prevail, then it is no step at all to a policy science for political scientists. This kind of wisdom provides criteria for choosing among policies, criteria that do not require the imposition of private goals upon legislators or the people. To illustrate, if two policies have about an equal chance of failure or success in the achievement of some social purpose the legislature has agreed upon, then that one should be preferred that has the most desirable impact on the political system. It should be the expertise of the political scientist to specify these kinds of consequences, and a policy framework would be necessary to do this. This is science, yet it reaches to the very foundations of democratic politics and the public interest. Let us pursue both, the second first.<sup>21</sup>

For a public interest to be involved at all, at least one of two properties must be present: The policy should be large enough in scope to affect a large number of people in a consistent way. This

could be true of constituent policies, where a basic structural change in the system tends to create a class even where it does not directly define one, as for example in electoral reforms.

Or, the policy must, regardless of its scope, express a clear rule of law. A rule of law identifies the citizen in each person, the public part of each of us. The making of a real law (as contrasted with a policy-without-law) is an act of setting a public morality upon some action or status hitherto considered private.<sup>22</sup>

Distributive policy, in this context, clearly comes closest to being a complete privatization of the public. Much of it is intended to be *sub rosa*, and usually succeeds, given the capacity of these policies for continual fission according to the number of individuals making claims. To take but one contrasting example, regulatory politics that embody even vague rules of law cannot be fully privatized. The directly coercive element introduces public concerns of increasingly general applicability.<sup>23</sup> The overriding point is that these policy considerations, within the arena's framework, provide a systematic and plausible basis for defining good and bad legislation—without holding one moral code absolutely above another.

We can also judge public policy as good or bad in still another sense, a sense that leads toward fundamental questions about the relationship between public policy and democracy. If we want an open and public politics, we are limited to certain kinds of policies—regardless of whether the manifest goals of these policies are fulfilled. Again we would try to avoid distributive policies, because nothing open and democratic can come of them. But more nuance can be added. There can be moments in history, or changes of fashion, where the presidency is thought to be too powerful—perhaps we live in such a period today. In such a situation, Keynesian fiscal policies should be resisted, and regulatory policies should be preferred, for the latter tend to bring things to Congress and tend to invigorate interest group action. If anxiety about unlimited presidential power in international affairs continues to grow, regulatory provisions could even be tied to treaties or executive agreements. To trace this out is to illustrate rather dramatically the possibilities of looking at politics through policies: The best way, in other words, to open up the presidency and to expose the relations he is developing with another country is to put into policy terms some reciprocal commitments that require internal controls in both countries. For example, a provision requiring

exchange of stock between two or more corporations, or their countries, in order to deal with air or water pollution would destabilize the politics of both countries, at least enough to gain entree into what is going on. Requirements for inspection of financial institutions dealing in our foreign aid would do about the same thing.

Finally, if we wished to introduce strong national parties into our system, we might try to pursue more goals through constituent policies—like effective public propaganda in the birth control field, or dealing with monopolies by changing the rules protecting their limited liability rather than by adding regulations affecting their conduct.

The point is that if we can discover empirically the policy conditions underlying our political patterns, we have a basis for better public policies as well as better political science. Should we regulate? If there is the slightest contribution to political theory or policy science in this article, it would be in having established a basis for actually answering that question.

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2. Theodore Lowi, "American Business and Public Policy, Case Studies and Political Theory," *World Politics* (July 1964); and Lowi, "Decision Making vs. Policy Making: Toward an Antidote for Technocracy," *Public Administration Review* (May/June 1970).
3. To visualize the analysis best, the reader should substitute "statute" for "policy." This gives up a great deal of information about policies in the real world, but clarity is gained by having a clear and common unit to classify. Moreover, even from this partial and formalized operational definition of policy, there is a great deal of predictive and ethical value in the classification scheme.
4. Leonard White, *The Republican Era* (New York: The Free Press, 1958); and W. Binkley, *President and Congress* (New York: Vintage Ed., 1962), pp. 215 ff.
5. See especially Binkley, *op. cit.*, pp. 217-218.
6. Quoted in *ibid.*, p. 217. The essence of Wilson's treatment will be found in *Congressional Government* (New York: Meridian Edition, n.d.), pp. 58-81.
7. This goes a long way toward explaining the Huntington paradox, the spectacle of a highly dynamic economy developing in the context of a stable, "undeveloping" policy. See Samuel P. Huntington, "Political Modernization: America vs. Europe," *World Politics* (April 1966), pp. 378-414.
8. Earlier instances, such as the Fugitive Slave Act of 1850, are dealt with in another article.
9. Binkley, *op. cit.*, pp. 225, 217, 227.
10. Leuchtenberg, Franklin D. Roosevelt and the New Deal, 1932-1940 (1963), pp. 87-94, esp. 90.
11. Binkley, *op. cit.*, pp. 296-298.
12. Landis' own account has been republished in Lowi, *Legislative Politics USA* (Boston: Little, Brown, 1965), pp. 143 ff.; see also Chamberlain, *The President, Congress and Legislation* (New York: Columbia University Press, 1946), pp. 58 ff.
13. *Ibid.*, p. 72.
14. Leuchtenberg, *op. cit.*, pp. 150 ff; and compare James McG. Burns, *The Lion and the Fox* (New York: Harcourt, 1956): "Quite unwittingly the new President acted as midwife in the rebirth of labor

action" (p. 215). "Neither Roosevelt nor Miss Perkins had much to do with this provision (Sec. 7A, NRA). Framed mainly by congressmen and labor leaders, it was simply part of a bargain under which labor joined the NRA's great 'concert of interest' " (pp. 215-216). ". . . Roosevelt failed to see the potentialities of an enlarged labor movement. . ." (p. 216). The Wagner Act: "was the most radical legislation passed during the New Deal. . . yet . . . he threw his weight behind the measure only at the last moment, when it was due to pass anyway" (p. 219). These are not the portrait of a lion or a fox, but only of a man running hard to keep up with history.

15. Bailey and Samuel, cited on the bibliography accompanying the summary.
16. Schattschneider, and also Bauer, *et al.*, cited in the bibliography.
17. See David B. Truman, *The Governmental Process* (New York: Knopf, 1951), especially his notes on sources in chapters XI-XV, dealing with policy formulation; see also Earl Latham, *The Group Theory of Politics* (Ithaca: Cornell University Press, 1952), whose opening theoretical chapter generalized on a pattern developed in the rest of his book, a case study of the federal attempt to regulate basing points practices in the cement industry and elsewhere. This case is very frequently cited in Truman.
18. Eighteen additional cases have been given the same treatment, but they are not yet ready for the same presentation. The pattern is about the same, although a few surprise exceptions bear checking out or explaining.
19. Each category of amending activity was dichotomized, so that the action on each bill and for each type of amendment could be scored 0 or 1—then multiplied by the difficulty weights, as described above. For example, if two or more significant amendments were added to a bill despite the objections of the sponsor, that was scored 1 and multiplied by 8. (If fewer than two such amendments passed, it was then scored 0 and did not increase the score.) These scores were then cumulated for all bills in each policy category, and the average shown on the table was the result of dividing by each of the N's.
20. Some of these variations can be captured in the

fourth category, constituent or system maintenance policy. These are not dealt with in this essay because of many considerations too complicating for this first effort at reanalyzing cases. However, I have dealt with some of these patterns elsewhere, and have argued at length that the so-called foreign policy area actually breaks down into the four types captured in the paradigm. The break comes when one asks about the kinds of disciplines governments place upon their own populations in order to carry out foreign influence. For example, setting up a Marshall Plan is not the same kind of policy as actions revising our relations with Red China. Foreign policy is no more of a single piece than agriculture policy or any other conventional, subject-matter designation. And, as shown with the different types of agriculture policy, the politics of each type of foreign policy will vary accordingly. See my chapter in James Rosenau (ed.), *The Domestic Sources of Foreign Policy* (New York: The Free Press, 1967).

21. A more elaborate argument, with many more illustrations, will be found in my companion paper, "Population Policies and the Political System," mimeo., 1971.
22. Cf. Hannah Arendt, *The Human Condition*, Chapter II and pp. 193-199, especially her treatment of the Greek concept of law making as akin to architecture in that laws define a space entirely restricted to citizens.
23. Obviously a distinction is being made here when a continuum is involved. There are degrees of vagueness, degrees to which a rule of law is present. However, any rule, no matter how vague, begins to transform distributive into regulatory patterns. For example, adding a vague and very mild anti-discrimination provision to an education subsidy statute can turn established distributive patterns literally inside out. On the other hand, it should be added that very broad delegations of regulatory authority to an agency can lead in the long run to a decline into an all too stable and private politics. Thus, the rule of law criterion is a good one that is often not provided in quantity sufficient to produce the predicted results. Cf. my *The End of Liberalism*, (New York: Norton, 1969), esp. chapters V and X.

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### <sup>7</sup> **Political Modernization: America vs. Europe**

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