

# Policy Adoption

A policy decision involves action by some official person or body to adopt, modify, or reject a preferred policy alternative. In positive fashion it takes such forms as the enactment of legislation or the issuance of an executive order. It is helpful to recall the distinction made in the chapter titled “The Study of Public Policy” between policy decisions, which significantly affect the content of public policy, and routine decisions, which involve the day-to-day application of policy. Furthermore, a policy decision is usually the culmination of many decisions, some routine and some not so routine, made during the operation of the policy process.

What is typically involved at the policy-adoption stage is not selection from among a number of full-blown policy alternatives but rather action on a preferred policy alternative for which the proponents of action think they can win approval, even though it does not provide all they might like. As the formulation process moves toward the decision stage, some provisions will be rejected, others accepted, and still others modified; differences will be narrowed; bargains will be struck; until ultimately, in some instances, the final policy decision will be only a formality. In other instances, the question may be in doubt until the votes are counted or the decision is announced.

Although private individuals and organizations also participate in making policy decisions, the formal authority to decide rests with public officials: legislators, executives, administrators, judges. Through the adoption process policies acquire the “weight of public authority.” In democracies, the task of making policy decisions is most closely identified with the legislature, which is designed to represent the interests of the populace. One frequently hears that a majority of the legislature represents a majority of the people. Whatever its accuracy in describing reality, such a contention does accord with our notion that in a democracy the people should rule, at least through their representatives. Policy decisions made by the legislature are usually accepted as legitimate, as being made in the proper way and hence binding on all. Generally, decisions made by public officials are regarded as legitimate if the officials have legal authority to act and they meet accepted procedural and substantive standards in taking action.

Legitimacy is a difficult concept to define. It is not the same as legality, although legality can contribute to belief in legitimacy, which focuses people’s attention on the rightness or appropriateness of government and its actions. For policymaking, legitimacy is affected both by how something is done (i.e., whether proper procedures are used) and by what is being done. Some actions of government, even when within the legal or constitutional authority of officials, may not

be regarded as legitimate because they depart too far from prevailing notions of what is acceptable. Thus many Americans never accepted the legitimacy of the Vietnam War. Other people do not accept the legitimacy of a constitutional right to privacy as a barrier to some governmental actions, such as the prohibition of abortions. On the other hand, even though the legislative veto was held unconstitutional in 1983 by the Supreme Court, it continues to be regarded as a necessary and appropriate—that is, legitimate—arrangement by Congress and the executive. Legislative veto arrangements have been incorporated into legislation dozens of times since 1983.<sup>1</sup> Constitutionality is not always a *sine qua non* for legitimacy. Legitimacy is an important factor in developing public support and acceptance for both government and the policies that it adopts. Public officials must be cognizant of this importance. When legitimacy erodes, governments and their policies diminish in effectiveness.

Political and social scientists have produced a large body of theoretical and empirical literature on political decision-making. In this literature, the reader will discover there are many disagreements and divergences over such matters as how best to study decision-making, how decisions are actually made, and even over what constitutes a decision. No attempt is made here to resolve any of these controversies. Rather, some topics are discussed that should assist the reader in getting a handle on political decision-making. These include some decision-making theories, criteria, and styles; the process of majority-building (or decision-making) in Congress; and presidential decision-making. As the discussion indicates, many forces, pressures, and constraints may play upon political decision-makers. They will likely try to cope by developing routine or procedures that simplify the making of choices. Incrementalism and decision rules are two illustrations of such behavior. In many instances, however, there are no easy routes to a good decision.



## Theories of Decision-Making

Decision-making, as stated in the chapter “The Study of Public Policy,” involves making a choice from among alternatives. Many highly formal, quantitative models of decision-making exist, including linear programming, game theory, and the Monte Carlo method. These are often grouped under the rubric “decision sciences.” Some very informal and nonrational ways to make decisions include palmistry, dart throwing, and reflection on one’s belly button. None of these genres is reviewed here.

People also make decisions on the basis of intuition.<sup>2</sup> A nonrational process, intuition relies on “hunches,” a “feel for the situation,” and other improvised premises. Lower-level administrative officials, for example, often need to act at least partly on the basis of intuition because of the lack of firm standards or rules. The judgments or decisions yielded by intuition are sometimes right, sometimes wrong. This of course is also true for other, more formalized modes of decision-making.

Three theories of decision-making that emphasize the procedure and intellectual activities involved in making a decision are presented here: the rational-comprehensive theory, the incremental theory, and mixed scanning theory. To the extent that these theories may describe how decisions are actually made by individuals and groups, they are empirical. Viewed as statements of how decisions *should* be made, they become normative. It is not always easy to separate these two qualities in decision-making theories and studies, as we will discover.

### **The Rational-Comprehensive Theory**

Perhaps the best-known theory of decision-making is the rational-comprehensive theory. It draws considerably from the economist's view of how a rational person would make decisions as well as from theories of rational decision-making developed by mathematicians, psychologists, and other social scientists. It should not be confused with rational-choice theory. Whereas rational-choice theory is used for developing deductive models of self-interested decision-makers, the rational-comprehensive theory specifies the procedures involved in making well-considered decisions that maximize the attainment of goals, whether personal or organizational.

The rational-comprehensive theory usually includes these elements:

1. The decision-maker is confronted with a problem that can be separated from other problems or at least considered meaningfully in comparison with them.
2. The goals, values, or objectives that guide the decision-maker are known and can be clarified and ranked according to their importance.
3. The various alternatives for dealing with the problem are examined.
4. The consequences (costs and benefits, advantages and disadvantages) that would follow from selecting each alternative are investigated.
5. Each alternative, and its attendant consequences, is then compared with the other alternatives.
6. The decision-maker will choose the alternative, and its consequences, that maximizes attainment of his or her goals, values, or objectives.

The result of this procedure is a rational decision—that is, one that most effectively achieves a given end. In short, it optimizes; it is the best possible decision. Rational decisions may make either large and basic or limited changes in public policies.

The rational-comprehensive theory has received substantial criticism. Professor Charles Lindblom contends that decision-makers are not faced with concrete, clearly defined problems. Rather, he says that they first have to identify and formulate the problems on which they make decisions. For example, when prices are rising rapidly and people are saying, "We must do something about the problem of inflation," what is the problem? Excessive demand? Inadequate production of goods and services? Administered prices controlled by powerful corporations and unions? Inflationary psychology? Some combination of

these? One does not, willy-nilly, attack inflation. Instead, the causes of inflation must be dealt with, and these may be difficult to determine. Defining the problem is, in short, often a major problem for the decision-maker.

A second criticism holds that rational-comprehensive theory is unrealistic in the intellectual demands it makes on the decision-maker. It assumes that he or she will have enough information on the alternatives for dealing with a problem, will be able to predict their consequences with some accuracy, and will be capable of making correct cost-benefit comparisons of the alternatives. A moment's reflection on the informational and intellectual resources needed for acting rationally on the problem of inflation indicates the barriers to rational action implied in these assumptions: lack of time, difficulty in collecting information and predicting the future, and complexity of calculations. Even use of that modern miracle, the computer, and sophisticated economic models replete with equations cannot fully alleviate these problems, as economists continually demonstrate. There is no need to overload the arguments, as some do, by talking of the need to consider all possible alternatives. Even a rational-comprehensive decision-maker should be permitted to ignore the absurd and the far-fetched.

The value aspect of the rational-comprehensive theory also draws some criticism. It is contended that in actuality the public decision-maker is usually confronted with a situation of value conflict rather than value agreement, and that the conflicting values do not permit easy comparison or weighing. Moreover, the decision-maker might confuse personal values with those of the public. In addition, the rationalistic assumption that facts and values can be readily separated does not hold up in practice. Some may support a dam on a stream as demonstrably necessary to control flooding, and others may oppose it, preferring a free-flowing stream for aesthetic and ecological reasons. Recourse to the "facts," even lots of them, will not resolve such controversies.

Yet another problem is that of "sunk costs." Previous decisions and commitments, investments in existing policies and programs, may foreclose or severely complicate the consideration of many alternatives. The Clinton administration's formulation of a national health-care program was restricted by the nation's extensive reliance upon employer-sponsored health insurance. An airport, once constructed, cannot be easily moved to the other side of town. Even if only partially constructed, pressure will be strong to complete the project rather than "waste" the money already invested by relocating the airport. Finally, the rational-comprehensive model assumes the existence of a unitary decision-maker. This condition cannot be met by legislative bodies, plural-headed agencies, or multiple-member courts.

### ***The Incremental Theory***

The incremental theory of decision-making is presented as a decision theory that avoids many of the problems of the rational-comprehensive theory and, at the same time, is more descriptive of the way in which public officials actually make decisions.<sup>3</sup> Certainly there is little evidence to indicate that the members of Congress utilize anything akin to the rational-comprehensive model in

enacting legislation. Incremental decisions involve limited changes or additions to existing policies, such as a small-percentage increase in an agency's budget or a modest tightening of eligibility requirements for student loans. Incrementalism (Lindblom refers to it as "disjointed incrementalism") can be summarized in the following manner:

1. The selection of goals or objectives and the empirical analysis of the action needed to attain them are closely intertwined with, rather than distinct from, one another.
2. The decision-maker considers only some of the alternatives for dealing with a problem, which will differ only incrementally (i.e., marginally) from existing policies.
3. For each alternative, only a limited number of "important" consequences are evaluated.
4. The problem confronting the decision-maker is continually redefined. Incrementalism allows for countless ends-means and means-ends adjustments that help make the problem more manageable.
5. There is no single decision or "right" solution for a problem. The test of a good decision is that various analysts find themselves directly agreeing on it, without agreeing that the decision is the most appropriate or optimum means to an agreed objective.
6. Incremental decision-making is essentially remedial and is geared more to ameliorating present, concrete social imperfections than to promoting future social goals.<sup>4</sup>

Lindblom contends that incrementalism is the typical decision-making procedure in pluralist societies such as the United States. Decisions and policies are the product of give and take and mutual consent among numerous participants ("partisans") in the decision process. Incrementalism is politically expedient because it is easier to reach agreement when the matters in dispute among various groups are only limited modifications of existing programs rather than policy issues of great magnitude or of an "all-or-nothing" character. Because decision-makers operate under conditions of uncertainty about the future consequences of their actions, incremental decisions reduce the risks and costs of uncertainty.

Incrementalism is also realistic because it recognizes that decision-makers lack the time, intelligence, and other resources needed to engage in comprehensive analysis of all alternative solutions to existing problems. Moreover, people are essentially pragmatic, seeking not always the single best way to deal with a problem but, more modestly, "something that will work." Incrementalism, in short, utilizes limited analysis to yield limited, practical, acceptable decisions. A sequence of incremental decisions, however, may produce a fundamental change in public policy. Myriad incremental decisions have made Social Security a vastly different program from the one Congress first authorized in 1935.

Several criticisms have been directed at incrementalism. One is that it is too conservative, too focused on the current order; hence, it is a barrier to innovation, which is often necessary for effective public policies. Another is that in crisis situations (such as the Iraqi invasion of Kuwait) or when major changes are made in policy (for instance, the 2001 tax cut), incrementalism provides no guidelines for handling the tasks of decision. Third, geared as it is to past actions and existing programs, and to limited changes in them, incrementalism may discourage the search for or use of other readily available alternatives. Fourth, incrementalism does not eliminate the need for theory in decision-making, as some of its more enthusiastic advocates contend. For, unless changes in policy (increments) are to be made simply at random or arbitrarily, some theory (of causation, relationships, etc.) is needed to guide the action and to indicate the likely effects of proposed changes.<sup>5</sup> Notwithstanding reservations of these sorts, incrementalism has become a form of conventional wisdom. Statements to the effect that policymaking in the United States is incremental are common. National budgeting during the three decades following World War II epitomized incrementalism. (See the “Budgeting and Public Policy” chapter.)

Analytical techniques such as cost-benefit analysis (see the chapter titled “Policy Impact, Evaluation, and Change”) risk analysis, and the planning-programming-budgeting system (PPB), which was in vogue during the Johnson Administration, are intended to move decision-making away from incrementalism and toward the rational-comprehensive model. The impact of these techniques will depend upon whether the information they produce is sound and impartial and on the disposition of decision-makers to rely upon them.

**Mixed Scanning** Sociologist Amitai Etzioni believes that both the rational-comprehensive theory and incremental theory have shortcomings. For instance, he says that decisions made by incrementalists will reflect the interests of the most powerful and organized interest in society, while neglecting the interests of the underprivileged and politically unorganized. Great or fundamental decisions, a declaration of war for example, do not come within the ambit of incrementalism. Although limited in number, these fundamental decisions are highly significant and often provide the context for numerous incremental decisions.<sup>6</sup>

Etzioni presents mixed scanning as an approach to decision-making that draws on both fundamental and incremental decisions and provides for “high-order, fundamental policy-making processes which set basic directions and . . . incremental processes which prepare for fundamental decisions and work them out after they have been reached.” He offers the following illustration:

Assume we are about to set up a worldwide weather observation system using weather satellites. The rationalistic approach would seek an exhaustive survey of weather conditions by using cameras capable of detailed observations and by scheduling reviews of the entire sky as often as possible. This would yield an avalanche of details, costly to analyze and likely to overwhelm our action capacities (e.g., “seeding” cloud formations

that could develop into hurricanes or bring rain to arid areas). Incrementalism would focus on those areas in which similar patterns developed in the recent past and, perhaps, on a few nearby regions; it would thus ignore all formations which might deserve attention if they arose in unexpected areas.

A mixed-scanning strategy would include elements of both approaches by employing two cameras: a broad-angle camera that would cover all parts of the sky but not in great detail, and a second one which would zero in on those areas revealed by the first camera to require a more in-depth examination. While mixed-scanning might miss areas in which only a detailed camera could reveal trouble, it is less likely than incrementalism to miss obvious trouble spots in unfamiliar areas.<sup>7</sup>

Mixed scanning enables decision-makers to utilize both the rational-comprehensive and incremental theories, but in different situations. In some instance, incrementalism will be adequate; in others, a more thorough approach along rational-comprehensive lines will be needed. Mixed scanning also takes into account differing capacities of decision-makers. The greater their capacity to mobilize power to implement their decisions, the more scanning they can realistically engage in; the more encompassing the scanning, the more effective the decision-making.

Professors David Rosenbloom and Robert Kravchuk state that mixed scanning is used by the national government from time to time. The Council of Economic Advisers analyzes the national economy; alerts the president to failures, threats of failure, or problems; and recommends policies for economic growth and stability. The CEA thus looks at both the overall operation of the economic and particular trouble spots. Again, agencies make five- or ten-year budget projections when attempting to realistically appraise where they are heading. These projections can serve as a check on administrative "drift" because of incremental budgeting.<sup>8</sup> Mixed scanning thus tries to combine the use of incrementalism and rationalism, drawing upon strengths while avoiding shortcomings.



## Decision Criteria

Decision-making can be studied either as an individual or as a collective process. In the first instance, the focus is on the criteria individuals use in making choices. In the latter, the focus is the processes by which majorities are built, or by which approval is otherwise gained, for specific decisions. Individual choices, of course, are usually made with some reference to how others involved in the decisional situation are likely to respond.

An individual may be subject to various influencing factors when deciding how to vote on or resolve a policy question. Which of these concerns is most crucial to the choice is often hard to specify. Public officials frequently make statements explaining their decisions in the *Congressional Record*, constituency

newsletters, speeches, press conferences, court opinions, memoirs, and elsewhere. The reasons they give for their decisions may be those which were actually controlling, or they may be those which are thought to be acceptable to the public at large or to important constituents, while their actual bases for choice go unstated. Nonetheless, it is often possible, by careful observation and analysis, to determine which factors were operating in a situation, if not necessarily to assign them specific weights. A number of criteria that may influence policy choice are discussed here. They include values, party affiliation, constituency interests, public opinion, deference, and decision rules. The concept of the public interest is scrutinized in the following section.

### **Values**

In considering the broader social and political forces that impinge on decision-makers, we tend to neglect their own values (or standards or preferences), which help them decide what is good or bad, desirable or undesirable. Often these may be difficult to determine and impossible to isolate. Decision-making persons, however, are not simply pieces of clay to be molded by others. Rather, their values or ideas may be important or even determinative in shaping their behavior. Some decision-makers may come under criticism if they insist too strenuously on the primacy of what they personally value. Here I comment on five categories of values that may guide the behavior of decision-makers: organizational, professional, personal, policy, and ideological.

**ORGANIZATIONAL VALUES** Decision-makers, especially bureaucrats, may be influenced by organizational values. Those who work for any agency for any extended period of time, whether the Tennessee Valley Authority, the Social Security Administration, or the Federal Trade Commission, are likely to become firm believers in the importance of the agency's goals and programs. Moreover, organizations may utilize rewards and sanctions to induce their members to accept and act in accordance with organizationally determined values.<sup>9</sup> Consequently, agency officials' decisions may reflect such considerations as a desire to see the agency survive, to increase its budget, to enhance or expand its programs or to maintain its power and prerogatives against external assaults. Career officials in the Environmental Protection Agency successfully resisted the Reagan administration's attempt to blunt the enforcement of agency programs.

Organizational values sometimes lead to conflict among agencies with competing or overlapping jurisdictions. The Army Corps of Engineers, the Bureau of Reclamation, and the Natural Resources Conservation Services (formerly the Soil Conservation Service) have differed over water-resource policies and projects.<sup>10</sup> "Turf" battles of this sort are an understandable, if not laudable, manifestation of differing organizational values.

**PROFESSIONAL VALUES** The professional values of agency personnel may be important. Professions tend to form distinctive preferences as to how problems should be handled. Professionally trained people carry these preferences or values with them into organizations, some of which become dominated by partic-



ular professions; two such examples are the prevalence of engineers in the National Highway Traffic Safety Administration and industrial hygienists in the Occupational Safety and Health Administration. OSHA's industrial health and safety rules reflect the industrial hygienist's preference for engineering or design standards over performance standards. Design standards specify the use of particular equipment, ventilating systems, and safety devices and are intended to eliminate hazards. Performance standards, in contrast, set health or safety goals, but leave the methods for attaining these goals to the company's discretion. Economists, preferring market solutions and efficiency, have held sway in the Federal Trade Commission since the 1980s. Their influence is manifested in the agency's disinclination to challenge many large corporate mergers and unfair trade practices on the grounds that mergers contribute to efficiency and the latter were simply forms of intense competition.

**PERSONAL VALUES** Decision-makers may also be guided by their personal values, or by the urge to protect or promote their own physical or financial well-being, reputation, or historical position. The politician who accepts a bribe to make a decision, such as the award of a license or contract, obviously has personal benefit in mind. On a different plane, the president who says he is not going to be "the first president to lose a war" and then acts accordingly is also manifesting the influence of personal values, such as concern for his place in history. Personal values are important, but the rational-choice theorists go much too far when they try to explain officials' behavior as totally driven by self-interest. The location of public buildings is probably better explained by self-interest than is the adoption of civil-rights policies.

**POLICY VALUES** Policy values are also significant. Neither the discussion thus far nor cynicism should lead us to assume that decision-makers are influenced only by personal, professional, and organization considerations. Decision-makers may well act according to their perceptions of the public interest or their beliefs about what is proper, necessary, or morally correct public policy. Legislators may vote in favor of civil-rights legislation because they believe that it is morally correct and that equality of opportunity is a desirable policy goal, even though their vote may place them in political jeopardy. Studies of the Supreme Court also indicate that in deciding cases the justices are influenced by policy values. People, of course, differ over what comprises "good" public policy.

**IDEOLOGICAL VALUES** Finally we come to ideological values. Ideologies are sets of coherent or logically related values and beliefs that present simplified pictures of the world and serve as guides to action for believers. For Communists, Marxist-Leninist ideology has served at least partly as a set of prescriptions for social and economic change. Although the Soviets sometimes deviated from this body of beliefs, as in their use of economic incentives to increase production toward the end of the regime, Marxist-Leninist ideology still served the regime as a means for rationalizing and legitimizing policy actions. In the twentieth century, *nationalism*—the desire of a nation or people for autonomy

and the deep regard for their own characteristics, needs, and problems—has been a major factor shaping the actions of many nations, especially developing countries in Asia, Africa, and the Middle East.

During the Reagan years, conservative ideology, and notably its intense variant known as “movement conservatism,” influenced the actions of many Reagan administration members. Devout believers in individualism, minimal government, and the free market, they strongly supported deregulation, privatization, and reduced governmental spending. For movement conservatives, that ideology was both their beacon and their shepherd. For some, it was more important to be right—to be true to their ideology—than to win on some legislative issue by compromising their principles. To them, “pragmatist” was a pejorative label, the American cultural preference for practicality notwithstanding. Quite a few members of the Republican House majority elected in 1994 fell into this category.

Arrayed against conservatives are modern liberals. Their ideology calls for vigorous use of the government’s powers to serve the interests of the poor, working people, minorities, and the disadvantaged generally.<sup>11</sup> They are defenders of civil rights and liberties, protectors of the environment, and proponents of consumer interests. “The regulatory state and the welfare state are two pillars of modern liberal ideology.” On the other hand, they are skeptical about the maintenance of a large defense establishment in the post–Cold War era. Although liberals are less sure of their policy preferences than they once were, on the whole they are optimistic concerning their ability to use government to improve the human condition and promote an egalitarian society.

Very few people, we should note, consistently or rigidly conform to the precepts of a particular ideology. Thus conservatives, though they generally favor minimal government, often support regulation of personal behavior.

### ***Political-Party Affiliation***

Party loyalty is an important decision-making criterion for most members of Congress, even though it is difficult to separate that loyalty from such other influences as party leadership pressures, ideological commitments, and constituency interests. Party affiliation is the best single predictor as to how members of Congress will vote on legislative issues. If one knows a member’s party affiliation and the party’s position on issues, and then uses party affiliation as the basis for predicting votes, he or she will probably be correct more often than when using any other indicator. In recent years, the average legislator has voted with the majority of his or her party about three-fourths of the time.<sup>12</sup> Party-unity voting, in which a majority of one party opposes a majority of the other party, has also been increasing. In the 1990s party-unity votes occurred on over half of the roll-call votes in both the House and the Senate.<sup>13</sup>

Contributing to an increase in voting along party lines has been a decrease in the appearance of the conservative coalition, an alliance between Republicans and conservative southern Democrats that formed on social welfare, labor, and some other issues. Electoral changes in the South have led to the replace-

ment of many conservative Democrats by Republicans. The remaining “new breed” southern Democrats are more likely to vote with their other Democratic colleagues. In Republican ranks, the number of “liberals” and moderates has been diminished.<sup>14</sup> The inclination of the parties in Congress to engage in party-based conflict has also increased as they have become more polarized. This was highly evident in the House in 1995–1996 under the control of the new Republican majority.

Strong-party voting, in which 90 percent or more of one party is aligned against 90 percent or more of the other party, customarily occurs on only a small percentage of roll-call votes in either the House or Senate. This type of party voting reached a peak in the nineteenth century during the McKinley era, when approximately 50 percent of the House votes met this standard.<sup>15</sup> The strong-party leadership and control that yielded such voting proved to be unacceptable to both members of Congress and the public, however, and were eliminated by congressional reforms early in the twentieth century.

In parliamentary systems, such as the British House of Commons, voting along strict party lines is the order of the day. In Commons most votes meet the “90 percent versus 90 percent” strong-party vote criterion. On many government proposals, formal votes (divisions) are not taken because they are unnecessary. Although dissenting votes to party positions have increased since 1970, they usually involve only a handful of a party’s members and customarily do not occur on crucial issues.<sup>16</sup>

Party loyalties or attachments in Congress have varied in importance among issue areas. Party conflict has arisen most consistently on such topics as business regulation, labor–management relations, social welfare, taxation, and agricultural price supports. Democrats have been more inclined, for example, to support new welfare programs—such as family leave and child care—and expansion of or increased funding for existing ones—such as Medicare and food stamps—than have Republicans. Again, Democrats have been stronger supporters of air and water pollution-control regulations than have Republicans. In some issue areas, however, it is difficult to delineate distinct and persistent party differences. Public works, veterans’ benefits, medical research, and international trade, are illustrative. Members of both parties have displayed a proclivity for securing pork-barrel projects (research facilities, public buildings, dams, highway “demonstration” projects), that is, those that are of particular benefit to their states and districts.

Party affiliation also influences the decisions of federal judges. Republican presidents typically appoint conservative Republicans to judgeships; Democratic presidents manifest a preference for moderate to liberal Democrats. Once appointed, federal judges do not entirely shed their partisan raiment. Based on their examination of tens of thousands of federal district court opinions issued by more than fifteen hundred judges between 1933 and 1987, Professors Robert A. Carp and Claude K. Rowland found that 48 percent of the decisions of Democratic judges were liberal compared with 39 percent of Republican jurists’ decisions. In cases involving civil rights and liberties, labor

relations, and economic regulation, Democratic judges were more likely to take liberal positions, such as making pro-labor decisions.<sup>17</sup>

### **Constituency Interests**

A bit of conventional wisdom in Congress holds that when party interests and state or district constituency interests conflict on some issue, members should “vote their constituency.” It is, after all, the voters at home who hold the ultimate power to hire and fire. In looking after the interests of his or her constituents, the representative may act as either a delegate, carrying out their actual or perceived instructions, or a trustee, exercising his or her best judgment in their behalf, when voting on policy questions.<sup>18</sup> Of course, the representative may try to combine these two styles, acting as a delegate on some issues and as a trustee on others, thus becoming a politico.

In some instances, constituents’ interests will be rather clear and strongly held, and representatives will act contrary to them at their own peril. In the past, southern members of Congress were well aware of the strong opposition among their white constituents to civil-rights legislation and voted accordingly. A legislator from a strong labor district will likewise probably have little doubt about the constituents’ interests on minimum-wage and right-to-work legislation. On a great many issues, however, representatives will be hard put to determine what their constituents want. Large portions of the electorate have little knowledge of most issues. How do representatives measure which way the wind is blowing from their districts if no air currents are moving? Legislators must then make a decision drawing on their own values or other criteria, such as recommendations from party leaders or the chief executive. They may also solicit opinions from some of their constituents or listen to the interested few.

Nonelected public officials, such as administrators, may also act as representatives. Agencies often have well-developed relationships with interest groups and strive to represent their interests in forming and administering policy. The Department of Agriculture is especially responsive to the interests of commercial farmers, and the Federal Maritime Commission has viewed itself as the representative of international shipping interests in the national administrative system. The two agencies’ decisions and actions have reflected the interests of their clientele. Some commentators have contended that administrative agencies may in fact be more representative of particular interests in society than are elected officials.<sup>19</sup> Whatever the validity of this contention, it is clear that legislators are not the only officials influenced by the need or desire to act representatively in making decisions.

### **Public Opinion**

Public opinion can be defined operationally as those public perspectives or viewpoints on policy issues that public officials consider or take into account in making decisions.

Public opinion may be expressed in many ways—letters to the editor and to public officials, meetings, public demonstrations, editorials, election results, legislators meeting with constituents, plebiscites, and radio talk shows. Most

commonly, however, public opinion is identified with the findings of opinion surveys that poll a representative sample of the population on political issues. Despite their increasing numbers and sophistication, opinion surveys have various limitations. Notably, they do not provide much insight into either the depth or intensity of people's opinions. Small focus groups are sometimes used to gauge the depth or intensity of feelings on some issues.

Moreover, although most people are quite willing to express their opinions to pollsters, typically it is unclear how much information or understanding underlies their perspectives. But consider this example. In 1995, a University of Maryland research organization released an opinion survey that found that 75 percent of the respondents thought the national government spent too much money on foreign-aid programs. Asked how much of the national budget went for foreign aid, the median response was 15 percent and the average response was 18 percent. In actuality, foreign aid accounted for less than one percent of the budget (about \$14 billion). To questions about how much foreign spending would be "appropriate" and how much would be "too little," the median responses were 5 percent and 3 percent, respectively.<sup>20</sup> The lack of respondent information indicated by this poll suggests that the "don't know" should have been the standard response. This example is likely not atypical.

Public opinion is also subject to manipulation by public officials, as through the management of the news—that is, the careful control of information provided to media representatives. Reagan administration officials, for instance, used a "theme of the day" format to influence the view of the president and his policies presented through the media to the public. Moreover, "The historical record indicates that government officials often mislead and sometimes lie, particularly in foreign affairs, where government control of information is great. . . . This tendency is not unique to the United States."<sup>21</sup>

Notwithstanding their limitations, opinion surveys draw much attention because of their frequency, regularity, and accessibility, and the seeming precision of the numbers they yield. Political scientists devote much time and effort to studying the formation, content, and change of public opinion on political issues. The more philosophically inclined consider the role of public opinion in the governmental process. Our subject is the effect of public opinion on the actions of policy-makers. Are the policy-makers' choices shaped or determined by public opinion? Does public opinion serve as a criterion for decision? It is advisable to proceed tentatively in answering such questions, bearing in mind Professor V. O. Key's comment that "to speak with precision of public opinion is a task not unlike coming to grips with the Holy Ghost."<sup>22</sup>

A useful way to approach the problem of how public opinion influences policymaking is to distinguish between decisions that shape the broad direction of policy and the day-to-day, often routine, decisions on specific aspects of policy. Public opinion is probably not a significant criterion for decisions in the second category. Drawing on Key again, "Many, if not most, policy decisions by legislatures and by other authorities exercising broad discretion are made under circumstances in which extremely small proportions of the general public have

any awareness of the particular issue, much less any understanding of the consequences of the decision.”<sup>23</sup> The legislator deciding how to vote on a specific tax amendment or a public-works bill will probably be unaffected by public opinion in any direct sense. Of course, he or she may try to anticipate the public’s reaction to such votes, but this tactic will leave substantial latitude to the legislator because of the lack of public awareness previously mentioned.

Nonetheless, the general boundaries and direction of public policy may be shaped by public opinion. Given public attitudes, such actions as nationalizing the airline industry, repealing the Clean Air Act, or making a major cutback in the Social Security program appear highly unlikely. Conversely, officials may come to believe that public opinion demands some kind of policy action, as with tax-reduction legislation in 1981 and welfare reform in 1995. These were generalized rather than specific demands, which left to Congress much discretion on details.

In foreign policy, public opinion appears to accord wide latitude to executive officials, as the conduct of American intervention in Vietnam during the 1960s clearly indicates. Ultimately, however, growing public opposition to the Vietnam War apparently contributed to President Johnson’s decision not to run for reelection in 1968 and to begin to “wind down the war and withdraw.”<sup>24</sup> Conversely, public opinion was strongly supportive of the Bush Administration’s campaign to drive the Iraqis out of Kuwait.<sup>25</sup>

Public opinion sometimes has a permissive quality, in that action on some topic is favored but not required. For years, public-opinion polls have indicated that a strong majority of the American population (70 percent in 1993) supports stronger gun-control legislation, such as requiring a police permit for the purchase of a handgun.<sup>26</sup> However, restrictive legislation has been scarce because of the strong, well-financed opposition of the National Rifle Association. In instances like this, an intense minority may prevail over a much larger but less committed majority.

In summary, policy-makers do not appear unaffected by public opinion in their choices. The relationship between public opinion and policy actions, however, is neither as simple nor as direct as once assumed. But elected public officials who totally ignore public opinion and do not include it among their criteria for decisions, should any be so foolish, are likely to find themselves out of luck at election time.

### **Deference**

Officials confronted with the task of making a decision may decide how to act by deferring to the judgment of others.

The “others” to whom deference is given may or may not be hierarchic superiors. Administrative officials often do make decisions in accordance with directives from department heads or chief executives. That is how we expect them to act, especially when the directives of superiors are clear in meaning, which, it must be added, they sometimes are not. Administrators may also defer to the suggestions or judgments of members of Congress, as Department of Agriculture officials did when receiving advice from Congressman

Jamie Whitten (D, Mississippi), who chaired the House Agricultural Appropriations Subcommittee from 1949 to 1992 (except for 1953 to 1954, when the Republicans controlled the House) and later the full Appropriations Committee. Because of his position and strong influence on the actions of the Department of Agriculture, Whitten was sometimes referred to as the “permanent Secretary of Agriculture.”<sup>27</sup>

Members of Congress often have to vote on issues that are of little interest to them, such as those that do not affect the members’ constituents, those on which they have little information, or those that are highly complex. On such issues they may decide how to vote by seeking the advice of other legislators whose judgment they trust, whether party leaders, committee chairs, or policy experts. When members are unable to decide how to vote from their own analysis of an issue, deference to someone whose judgment they trust is a reasonably rational, low-information strategy for making decisions. Political scientist Donald R. Matthews argues that, because of the widespread practice of deference to policy experts, “few institutions provide more power to the exceptionally competent member than does the House of Representatives.”<sup>28</sup>

Judges, too, make decisions that reflect deference. When they interpret a statute, in either applying it to a case or determining its constitutionality, they may defer to the intent of the legislature.<sup>29</sup> Statutory language is often ambiguous and unclear. In trying to determine what the legislature intends by phrases such as “restraint of trade” or “all lawful means,” they may make use of the legislative histories of statutes. One tenet in the theory of “judicial self-restraint” holds that judges “are not free to invoke their own personal notions of right and wrong or of good and bad public policy when they examine the constitutionality of legislation.”<sup>30</sup> To the extent that judges act accordingly in deciding cases, this course involves some deference to the judgment of legislatures.

### **Decision Rules**

Those confronted with the task of making many decisions often devise rules of thumb, or guidelines, to focus on facts and relationships and thereby both simplify and regularize decision-making. No set of decision rules is common to all decision-makers, although some may be widely utilized. Which guidelines apply in a situation is a matter to be determined by empirical investigation. A few examples are presented here to illustrate the concept.

The rule of *stare decisis* (in effect, “let the precedents stand”) is often used by the judiciary in deciding cases. According to this decision rule or principle, current cases should be decided in the same way as similar cases were decided in the past. Using precedents to guide decision-making is by no means limited to the judiciary. Executives, administrators, and legislators also frequently make decisions on the basis of precedents. They are often urged to do so by those who would be affected by their actions, particularly if this act will help maintain a desired status quo. Those adversely affected by precedents are likely to find them lacking in virtue and utility, or hopelessly out of date.

In the antitrust area, some *per se* rules have been developed. Certain economic actions, such as price fixing and market allocation, have been held to be *per se* (in effect, “as such”) violations of the Sherman Act. If the prohibited action is found to exist, this finding is sufficient to prove violation, and no effort is made to inquire into the reasonableness of the prices fixed or other possible justifications for the action in question. *Per se* rules thus add simplicity and certainty to antitrust decision-making.

Professor Richard F. Fenno, Jr., in his study of a number of congressional committees, finds that each committee has some rules for decision (strategic premises) that help shape its decision-making activities. Thus, the House Appropriations Committee, seeking to maintain its independence from the executive, has a “rule” that it should reduce executive budget requests, and in fact many requests are reduced. The Education and the Workforce Committee (formerly the House Education and Labor Committee) has a rule for decision, in Fenno’s words, “to prosecute policy partisanship.” That is, strong ideological conflict between its Republican and Democratic contingents is the expected style of committee behavior.<sup>31</sup> Fenno points out that every committee has decision rules, although some are easier to discover than others and they will change over time.



## **The Public Interest**

The task of government, it is often proclaimed, is to serve or promote the public interest. Statutes sometimes include the public interest as a guide for agency action, as when the Federal Communications Commission is directed to license broadcasters for the “public interest, convenience, and necessity.” In this section, this rather elusive normative concept and its usefulness as a criterion for decision-making will be discussed.

Most people, if asked whether public policy should be in accord with the public interest or with private interests, would opt for the former. As Professor Charles Anderson remarks: “One cannot justify a policy recommendation on the grounds that ‘it would make me and my friends richer.’ However refreshing the candor of such an argument might be, it does not and cannot stand as legitimate warrant for a public action.”<sup>32</sup>

Difficulty arises, however, when one is asked to define the public interest. Is it the interest of the majority? If so, how do we determine what policy the majority really wants? Is it the interest of consumers, who are a rather large group? Is it what people would want if they “thought clearly and acted rationally”? How does one define the public interest?

Many people, including most political scientists, would say that it is not possible to provide a universally accepted or objective definition of the concept, especially in substantive terms. Some would contend that whatever results from the political struggle over policy issues is the public interest. If all groups and persons had an equal chance to engage in that struggle, which in fact they do not, this notion of the public interest might be more appealing. An individual



may not care to define a multitude of tax loopholes or inaction that permits the wanton destruction of natural resources as in the public interest. (That statement, of course, indicates a normative bias, which will be especially disturbing to those who hold that "one person's opinion is as good as another's.")

Sometimes the public interest is depicted as a myth by which policy, however particularistic, can be rationalized as in the general interest and hence made more publicly acceptable. This stratagem is attempted or performed with regularity (just as scoundrels sometimes wrap themselves in the flag or cite Scripture to justify their predations). Beyond that, however, the concept can be given enough content to render it useful as a general standard for decision-making on public policy. When evaluating policy we need to be able to state not only whether the policy is accomplishing its asserted objectives but also whether the objectives are worthy of accomplishment. For the latter question a standard of more noble quality than "it is (or is not) in my interest" seems needed.

The question now arises about how to determine what constitutes the public interest. Professor Emmette S. Redford suggests three approaches to this task.<sup>33</sup> One is to look at policy areas rich in conflict among group interests, as in agriculture, labor relations, energy, and transportation. In some instances the direct interests of one group or another may prevail and become accepted as the public interest. There is no reason to assume that private interests and the public interest must always be antithetical. If it is in the private interest of medical doctors to prevent the practice of medicine by various quacks, because this would give the medical profession a bad reputation, so, too, it is in the public interest not to have unqualified people practicing medicine. (It would seem difficult to argue the contrary position reasonably.) In the struggle among private group interests, however, it may become apparent that others are indirectly involved and have interests that should be considered in policymaking. These public interests, though not represented by organized groups, may be responded to by decision-makers and thus influence the outcome.

In the conflict between labor and management over terms and conditions of employment, it becomes apparent that the public has an interest in maintaining industrial peace and preventing disruptions in the flow of vital goods and services. The result has been the adoption of several procedures for settling labor disputes. In a dispute such as one involving the railroad industry, a public interest may become clear along with those of the railroad companies and labor unions.

A second approach is to search for widely and continuously shared interests that, because of these characteristics, can be called public interests. Illustrative are the interests of people in such matters as world peace, better education, clean air, avoidance of severe inflation, and an adequate traffic-control system. Here the public interest appears as public needs. Especially in large cities there is a clear public interest in having a traffic-control system to facilitate safe, orderly, and convenient movement of pedestrians and vehicles. That various alternatives are available for meeting this need can be taken to mean that more than one way can be found to meet the public interest; that availability does not negate its existence. Nor does the concept, to be meaningful, need to be so precise as to indicate whether the traffic flow on a certain street should be one-way

or two-way. A concept to be useful need not always yield answers to the most minute questions.

There is nothing very mystical in talking about the public interest as a widely shared interest. We speak, for example, of wheat farmers' shared interest in higher wheat prices or that of sport fishermen in an adequate fish-stocking program, and attribute much reality to such interests. The public interest differs only in its wider scope. There is no way to determine precisely at what point the interest is widely enough shared as to become a public interest. Few interests, indeed, would be shared by everyone. The survival of the nation-state may be opposed by the advocate of world government; even at old-time western rustler lynchings at least one dissenter might be heard. Qualitative judgments are obviously called for in determining the existence of a public interest, as in many areas of political life and academic activity. They should be made with as much care and rigor as possible.<sup>34</sup>

A third approach to determining the public interest is to look at the need for organization and procedures to represent and balance interests, to resolve issues, to effect compromise in policy formation, and to carry public policy into effect. There is, in short, a public interest in fair, orderly, and effective government. The focus here is on process rather than policy content. The noted columnist Walter Lippmann wrote,

The public is interested in law, not in the laws; in the method of law, not in the substance; in the sanctity of contract, not in a particular contract; in understanding based on custom, not in this custom or that. It is concerned in these things to the end that men in their active affairs shall find a *modus vivendi*; its interest is in the workable rule which will define and predict the behavior of men so that they can make their adjustments.<sup>35</sup>

Although the public is obviously interested in individual laws as well as the law, Lippmann states well the desire for adequate process. How things are done, moreover, often affects the public's attitude about their acceptability.

The public interest is thus diverse and somewhat fugitive, and must be searched for in various ways. Although it probably cannot be converted into a precise set of guidelines to inform the action of decision-makers, neither can it fairly be described as merely a myth. It directs attention beyond the more immediate toward broader, more universal interests. It also directs attention toward unorganized and unarticulated interests that otherwise may be ignored in both the development and evaluation of policy. Moreover, it is an ideal, like justice and equality of opportunity, to which all can aspire.



## ***Styles of Decision-Making***

Most policy decisions of any magnitude are made by coalitions, which frequently take the form of numerical majorities, whether one's attention is on Congress, the Michigan State Legislature, the Oakland City Council, or the Danish Folketing. Even when a numerical majority is not officially required, the support (or consent, which is much the same) of others is needed to ensure that the

decision is implemented and compliance is achieved. The president is often vested with the final authority to make decisions, as on budget recommendations to Congress and tariff reductions. However, he will need to gain cooperation or support from other officials if his decisions are to be effective. Political scientist Richard E. Neustadt, an astute observer of the presidency, remarks, "Underneath our images of Presidents-in-boots, astride decisions, are the half-observed realities of Presidents-in-sneakers, stirrups in hand, trying to induce particular department heads, or Congressmen or Senators, to climb aboard."<sup>36</sup> President John F. Kennedy sometimes told friends who offered policy suggestions or criticism, "Well I agree with you, but I'm not sure the government will."<sup>37</sup> These comments emphasize the coalitional form of much presidential decision-making and the president's need to induce others to go along if he is to be successful.

Although coalition building is necessary in all democratic legislative bodies, it is especially notable in multiparty legislatures. This requirement is well illustrated by the Danish Folketing, whose 179 seats are divided among nine or ten parties, none of which holds close to a majority of seats. To take office, a Danish prime minister must draw on several parties to put together a majority coalition, which takes considerable negotiation and bargaining. Once in office the prime minister, in taking policy actions, must always be alert to the need to hold the coalition together, lest he lose his majority and thus the power to govern. In India, following the 1996 elections, coalition building was more precarious than in Denmark. More than twenty political parties held seats in the 545-member Parliament.<sup>38</sup>

In this section the focus shifts from individual decision-making to decision-making as a social or collective process. We examine three styles of collective decision-making: bargaining, persuasion, and command. Each entails action to reach agreement and induce others to comply. Practitioners of these styles of decision-making will be motivated by the decision criteria examined in the preceding section.

### ***Bargaining***

The most common style of decision-making in the American political system is bargaining. Bargaining can be defined as a process in which two or more persons in positions of power or authority adjust their at least partially inconsistent goals in order to formulate a course of action that is acceptable but not necessarily ideal for all the participants. In short, bargaining involves negotiation, give-and-take, and compromise to reach a mutually acceptable position. In the private realm, it is epitomized in collective bargaining over the terms of work by union leaders and management officials, or by the haggling that takes place at flea markets. For bargaining to occur, the bargainers must be willing to negotiate, they must have something to negotiate about, and each must have something (i.e., resources) that others want or need.

Two factors seem especially important in making bargaining the dominant mode of decision-making in our society. One is social pluralism, or the presence

of a multitude of partially autonomous groups such as labor unions, business organizations, professional associations, farm organizations, environmental groups, sportsmen's clubs, and civil-rights groups. Although partially autonomous, these groups are also interdependent and "must bargain with one another for protection and advantage."<sup>39</sup> The second factor is use of such constitutional practices as federalism, separation of powers, bicameral legislatures, and legislative committees, which fragment and disperse political power among many public officials and decision points. Major policy decisions at the national level often require approval by all branches of government plus acceptance by state or local governments and affected private groups. This is the case with many current federal policies on aid to public education and environmental pollution control.

Bargaining may be either explicit or implicit. When it is explicit, the bargainers (group leaders, party officials, committee chairs, department heads, executives, and so on) state their agreements (bargains) clearly to minimize the likelihood of misunderstanding. The U.S. Constitution was a product of explicit bargaining between large and small states, North and South, and other interests at the Philadelphia convention in 1787. An explicit bargain was struck by President George Bush and the Democratic Congressional leadership in 1990 when the president agreed to tax increases in return for the Democratic agreement to expenditure reductions in order to reduce the budget deficit. In international politics, treaties exemplify explicit bargains. Bargaining is widely practiced in the international arena because the idea of national interests is well accepted. In domestic politics bargaining, however necessary and prevalent, is often looked upon as incompatible with a quest for the "public interest" or, in more crude language, as a sell-out.

More frequently, however, bargaining is probably implicit. In implicit bargaining, the terms of agreement among the bargainers are frequently vague or ambiguous and may be expressed in such phrases as "future support" or "favorable disposition." Such bargaining frequently occurs in Congress, where one member will agree to support another on a bill in return for "future cooperation." Understandings or "gentlemen's agreements" may be negotiated by administrators in agencies with overlapping responsibilities for administering programs so as to reduce or eliminate conflict among themselves. Sometimes implicit bargaining is so nebulous that it is unclear whether an agreement actually has been reached. In Congress, bargaining frequently occurs on procedural actions intended either to slow down or to accelerate the handling of legislation as well as on the content of legislation.

Three common forms of bargaining are logrolling, side payments, and compromise. Logrolling, a way of gaining support from those who are indifferent to or have little interest in a matter, usually encompasses a straightforward mutual exchange of support on two different topics. This is a common form of bargaining because every item on an agenda is not of interest to all decision-makers. The classic example of logrolling is an appropriations bill for rivers-and-harbors legislation, which funds various river, harbor, and flood-control projects. Members

of Congress care mainly about the projects in their own districts; consequently those who want a project in their district essentially agree to support the projects for all the other members' districts. Logrolling is usually implicit.<sup>40</sup>

Side payments are rewards offered to prospective supporters or coalition members who are not directly related to the decision at hand, or at least to its main provisions, but are valued by them for other reasons. Legislative leaders may use committee assignments, allocation of office space, campaign assistance, and support for members' "pet" bills as means of securing their support for legislation. During consideration of the 1986 tax-reform legislation, the chairman of the House Ways and Means Committee, Dan Rostenkowski (D, Illinois) used "transition rules" to gain support for it.<sup>41</sup> Supposedly, these rules ease the transition between current tax law and a new tax law for various taxpayers. However, transition rules also become legislative favors that can be doled out to win or confirm votes. Because they provide millions of dollars in tax benefits to companies and others in legislators' home states or districts, they are highly valued. The chairman of the Senate Finance Committee also used this form of bargaining to elicit support for the tax-reform proposal. In all, about 340 transition rules were included in the Tax Reform Act at an estimated total cost in lost revenue of \$10.6 billion over five years.<sup>42</sup>

Compromise typically involves explicit bargaining, is normally centered on a single issue, and involves questions of more or less of something. Here the bargainers regard half a loaf as better than none and consequently adjust their differences, each giving up something so as to come into agreement. This tactic contrasts with logrolling, which requires no change in the bargainers' original positions. A fine historical example is the Missouri Compromise of 1820, which temporarily settled the conflict between North and South over extending slavery into the Louisiana Territory. The North wanted slavery excluded from the territory, and the South wanted no such prohibition. It was finally agreed that slavery would be prohibited in the territory except in Missouri, north of latitude 36° 30'. The Civil Rights Act of 1964 also involved many compromises between those favoring stronger legislation and those wanting weaker or no legislation, especially on the provisions pertaining to public accommodations, equal employment opportunity, and judicial enforcement. On equal employment opportunity it was provided that the federal Equal Employment Opportunity Commission (EEOC) could handle discrimination cases only after existing state equal opportunity agencies had a chance to act, and even then the EEOC could use only voluntary means to reach settlements. This limited enforcement authority was agreed to in an attempt to reduce conservative opposition to the legislation. Issues involving money, such as budgets, are probably the easiest matters on which to compromise because they are readily amenable to the splitting of differences.

### **Persuasion**

Persuasion involves the marshaling of facts, data, and information, the skillful construction of arguments, and the use of reason and logic to convince another person of the wisdom or correctness of one's own position.<sup>43</sup> Unlike bargainers, persuaders seek to build

support for what they favor without having to modify their own positions. This task may involve striving to convince others of the merits or soundness of one's position, or the benefits that will accrue to them or their constituents if they accept it, or some combination of the two. In short, persuaders seek to induce others to go along or do it their way. Accurate information, reason and logic, and effective argument are the instruments of persuasion; manipulation, deception, and bullying and hectoring are beyond its bounds.

President Harry S. Truman once remarked, "I sit here all day trying to persuade people to do things that they ought to have sense enough to do without my persuading them. . . . That's all the powers of the President amount to."<sup>44</sup> Presidential meetings with congressional leaders, for example, are often sessions in which presidential programs and priorities are explained, their likely benefits for members of Congress and their constituents are outlined, and appeals are made for Congressional leaders' support. Meetings with administrative officials are used to explain presidential preferences and to win their allegiance. "A President is most persuasive when he makes his pitch personally in direct conversation with those involved."<sup>45</sup> Presidents, of course, also have extensive capacity to bargain and command.

The use of persuasion is widespread in the governmental process. Attorneys who argue cases before the Supreme Court not only present their side of the issue through written briefs and oral arguments but also seek to convince a majority of the justices of the correctness of their position. In this process the justices are more than inert sponges absorbing the advocacy directed at them. Their questions and comments provide positive or negative responses and guidance to the opposing attorneys. Within Congress, appeals by party leaders to the rank-and-file members to the effect that "your party needs your support on this issue, can't you go along?" are essentially persuasive in style and content. In these and many other instances, decision-makers or those wishing to influence their decisions, as the case may be, either lack the capacity to command or know that bargaining is inappropriate or of limited utility. Persuasion is then the alternative on which they must rely.

**Command** Bargaining involves interaction among peers; command involves hierarchic relationships among superordinates and subordinates. Command is the ability of those in superior positions to make decisions that are binding upon those who come within their jurisdiction. They may use sanctions in the form of either rewards or penalties, although usually sanctions are thought of as penalties, to reinforce their decisions. Thus, the subordinate who faithfully accepts and carries out a superior's decision may be rewarded with favorable recognition or a promotion, and the one who refuses to comply may be fired or demoted. President Clinton's decision to issue an executive order replacing the Reagan-Bush regulatory review program with one of his own devising was essentially an act of command. The Office of Management and Budget engages in command behavior when it approves, rejects, or modifies agency requests for appropriations and proposals

for legislation prior to their transmittal to Congress. On the whole, however, command is more characteristic of decision processes in dictatorial rather than democratic societies and in military rather than civilian organizations because of their greater hierarchic qualities. Command is the primary style of decision-making in many developing countries in Africa and Southeast Asia.

In practice, bargaining, persuasion, and command often run together in decisional situations. The president, although he has authority to make many decisions unilaterally, may nonetheless also implicitly bargain with subordinates, modifying his position somewhat and accepting some of their suggestions, in order to gain more ready and enthusiastic support.<sup>46</sup> Within agencies, subordinates often seek to convert command relationships into bargaining relationships. A bureau that gains considerable congressional support may thus put itself into position to bargain with, rather than simply be commanded by, the department head. A pollution-control agency may have the statutory authority to set and enforce pollutant-emission standards. In the course of setting the standards it may, however, bargain with those potentially affected, hoping to gain easier and greater compliance with the standards set. Presidential and gubernatorial efforts to win support for legislative proposals also typically combine persuasion and bargaining.

In summary, bargaining is the most common form of decision-making in the American policy process. Persuasion and command are supplementary, being "better suited to a society marked by more universal agreements on values and a more tightly integrated system of authority."<sup>47</sup> Nowhere is the bargaining process better illustrated than in Congress, to which we now turn.

**Majority Building in Congress** The enactment of major legislation by Congress requires development of a numerical majority or, more likely, a series of numerical majorities, which are most commonly created by bargaining. Even if a majority in Congress agrees on the need for action on an issue such as labor-union reform, they may not agree on the form it should take, thereby making bargaining essential.

A highly important characteristic of Congress that has much importance for policy formation is its decentralization of political power. Three factors contribute to this condition. First, the political parties in Congress are weak, party leaders having only limited power to control and discipline party members. (A partial exception to these comments must be made for the House Republicans in 1995–1996.) In contrast with the strong-party leaders in the British House of Commons, who have a variety of means for ensuring support of party policy proposals by party members, congressional leaders, such as the floor leaders, have few sanctions with which to discipline or punish recalcitrant party members. The party leadership possess only "bits and fragments" of power, such as desired committee assignments, office space, use of the rules, and ability to persuade, with which to influence the rank-and-file. The member who chooses to defy party leadership can usually do so with impunity, and, indeed, not a few people will probably applaud such independence.

Second, the system of geographic representation and decentralized elections contributes to the decentralization of power in Congress. Members of the House and Senate are nominated and elected by the voters in their constituencies and owe little or nothing for their election to the national party organizations or congressional leaders. It is their constituencies that ultimately wield the power to hire and fire them, and it is therefore to their constituencies that they must be responsive, at least on some crucial matters, if they wish to remain in Congress. From time to time, important constituent interests in a district may be adversely affected by party programs. Conventional congressional wisdom holds that, when party and constituency interests conflict, members should vote their constituency, as their reelection may depend upon it.

A third factor contributing to the decentralization of power in Congress is the committee system. The House has nineteen standing committees and the Senate sixteen, with jurisdiction over legislation in such areas as agriculture, appropriations, energy and natural resources, international relations, and human resources. Traditionally, these committees have done most of the legislative work in Congress. Nearly all bills are referred to the appropriate standing committees for consideration before being brought to the floor of the House or Senate for debate and decision. The standing committees possess vast power to kill, alter, or report unchanged the bills sent to them; most bills sent to committees are never heard from again.

Until the 1970s the committee chairs, who gained their positions by seniority, had much power over the operation of their committees. Often referred to as "barons," they selected the committee staff, scheduled and presided over meetings, set the agenda, scheduled hearings and chose witnesses, and decided when votes would be taken. Through long experience, they were often highly knowledgeable on the policy matters within their committees' jurisdiction. Because of the fairly large number of interests that came within their jurisdiction, the chairs could act as brokers to build compromises among conflicting or differing interests.

Reforms in the 1970s reduced the power of committee chairs and altered the organization and operation of the committee. Most committees divided their jurisdiction among a number of subcommittees. In the House a subcommittee "Bill of Rights" provided substantial independence for subcommittees from their parent committees. This significantly decentralized and fragmented legislative work and power, and produced what some called "subcommittee government." Changes made by the House Republicans after they gained the majority in 1995 restored some of the power of committee chairs and reduced the independence of subcommittees.

Currently the number of subcommittees totals eighty-eight in the House and sixty-eight in the Senate. They do much of the legislative work for most committees and give members additional opportunities to specialize and develop policy expertise.

Committees in the House and Senate generally act as gatekeepers, controlling the flow of legislation to the floors. "The bills they report largely determine



what each chamber will debate and in what form."<sup>48</sup> The committee system also increases the points of access for interest groups, administrative officials, and others wanting to get involved in the legislative process.

Decentralization of power in Congress, together with the complexities of its legislative procedures, usually requires the cobbling together of a series of majorities to enact important legislation. A bill must pass through a number of decision stages (they have also been called obstacles) in becoming a law.<sup>49</sup> Briefly, in the House, these are subcommittee, committee, Rules Committee, and finally floor action; and in the Senate, subcommittee, committee, and floor action. Assuming that the bill is passed in different versions by the two houses, a conference committee must agree on a compromise version, which then must be approved by the two houses. If the president approves it, the bill becomes law; if he vetoes it, however, the bill becomes law only if it is passed again by a two-thirds majority in each house. Thus at ten or twelve stages a bill requires approval by some kind of majority. If it fails to win majority approval at any one of these stages, it is probably dead. Should it win approval, its enactment is not ensured; rather, its supporters face the task of building a majority at the next stage.

Extraordinary majorities are sometimes needed to get bills through some stages in the legislative process. I have referred to the two-thirds majorities needed to override a presidential veto. Only infrequently are bills able to secure these majorities. From 1789 to 2001, of the 2,553 bills vetoed by the presidents, only 105 were subsequently enacted into law. Congress overrode only one of George Bush's 46 vetoes and two of Bill Clinton's.<sup>50</sup> Bills that are vetoed usually stay vetoed.

Debate on a bill in the Senate, can be effectively terminated only by a unanimous-consent agreement or by imposing cloture. The cloture rule provides that debate may be terminated upon a motion signed by sixteen senators that then must be approved by three-fifths of the entire membership (sixty senators). Because one senator who is so inclined can block the closing of debate by a unanimous-consent agreement, cloture is left as the only alternative for shutting down a filibuster. The difficulties in obtaining cloture in times past enabled southern Democrats consistently to block enactment of major civil-rights legislation through filibusters or threats thereof until the adoption of the 1964 Civil Rights Act. Since then, resistance to cloture has weakened and the procedure has been used dozens of times to close off filibusters on numerous bills. Still, filibusters have frequently been used successfully to block legislation, such as a campaign-finance reform bill, the Clinton administration's economic stimulus package, and regulatory reform. The threat of a veto is ever present.

Indeed, for controversial legislation, the multiplicity of stages, or decision points, in the congressional legislative process provides access for many groups and interests. Those who lack access or influence at one stage may secure it at another. It thus becomes quite unlikely that one group or interest will dominate the process. The complexity of the legislative process, however, has a conservative effect in that it gives an advantage to those seeking to block the enactment

of legislation. And it is well to remember that many groups are more interested in preventing than securing enactment of legislation, or in holding change to a minimum when the adoption of legislation is inevitable. All they have to do to achieve their preference is to win support by a majority, or perhaps only a dominant legislator, at one stage in the process. Here is support for the familiar generalization that procedure is not neutral in its effects.

Much bargaining is usually necessary for the enactment of legislation by Congress. Those who control the various decision points, or whose votes are needed to construct a majority, may require the modification of a bill as a condition for their approval, or they may exact future support for some item of interest to themselves. Bargaining is facilitated not only by the many decision points but also because legislators are not intensely interested in many matters on which they must decide. It is no doubt easier for them to bargain on such issues than on issues on which they have strong feelings. It seems necessary to elaborate further here upon the ubiquity of bargaining in Congress.



### ***Presidential Decision-Making***

Apart from an integral role in the legislative process, the president can also be viewed as a policy adopter in his own right. In foreign affairs, much policy is a product of presidential actions and decisions, based either on the president's constitutional authority or broad congressional delegations of power. Decisions to recognize foreign governments and to establish formal diplomatic relations with them, as the Nixon and Carter administrations did with the People's Republic of China, are in the president's domain. Treaties with other nations are made and entered into on behalf of the United States by the president, subject to approval by the Senate. One can cavil on whether the president is the true decision-maker here. In the instance of executive agreements, which have the same legal force as treaties, and which are used much more frequently than treaties in foreign relations, there can be no doubt: the president makes the decisions. Executive agreements have been used to end wars, establish or expand military bases in other countries, and limit possession of offensive weapons by the United States and the Soviet Union. They are also often used for such routine purposes as tariff reductions and customs enforcement.<sup>51</sup>

For more than a half-century, international trade policies have been primarily a construct of presidential action, albeit based on congressional authorizations, because the Constitution delegates to Congress control of "commerce with foreign nations." Through the time of the 1930 Smoot-Hawley Tariff, by which Congress in an orgy of logrolling elevated tariffs to an all-time high, this issue area had been dominated by Congress. Change began with the New Deal and enactment of the Reciprocal Trade Agreements Act of 1934. This statute authorized the president to enter into agreements with other nations to lower tariffs and other trade barriers (e.g., import quotas). Since then, under the guidance of presidential leadership and decisions, the United States has continually ad-

vocated and moved toward free trade. All presidents since the Great Depression have been advocates of the reduction of trade barriers. United States tariffs now average less than 5 percent of the value of imported products.

In domestic matters, Congress often delegates discretionary authority to the president or to agencies under his direction and control. Executive orders, which are not mentioned in the Constitution, but which have become an accepted presidential prerogative, are also used by presidents for making domestic policies.<sup>52</sup> Executive orders have been promulgated to desegregate the armed services, establish loyalty–security programs, require affirmative action by government contractors, classify and withhold government documents from the public, and provide for presidential supervision of agency rulemaking. Presidents Johnson and Carter used executive orders to establish systems of voluntary wage and price controls to combat inflation. Nothing in the Constitution or laws specifically authorized them to so act. On the other hand, nothing prohibited them from so doing. Operating with a broad view of presidential power under the Constitution, they responded to necessity as they saw it.

By considering some of the factors that shape and limit presidential decision-making, we not only can gain useful insight into presidential decision-making but also discover another perspective from which to view decision-making in general. Before proceeding further, it must be stressed that presidential decision-making is an institutional process. Many executive staff agencies, White House aides, and other advisers (both official and unofficial) assist the president in the discharge of his responsibilities. But whether he simply approves a recommendation from below or makes his own independent choice, the president alone has the ultimate responsibility for the decision.

Several factors help shape and limit presidential decision-making.<sup>53</sup> One is permissibility, an aspect of which is legality. The president is expected to act in conformity with the Constitution, statutes, and court decisions. The lack of a clear constitutional or legal basis certainly contributed to congressional criticism of the Nixon administration's Cambodian bombing policy in the summer of 1973 and to an agreement by the administration to cease bombing after August 15, 1973, in the absence of congressional authorization. Another aspect of permissibility is acceptability. Foreign-policy decisions often depend for their effectiveness upon acceptance by other nations, and domestic-policy decisions, such as that by President Reagan to recommend elimination of the Department of Energy, may depend upon their acceptance by Congress, executive-branch officials and agencies, or the public.

A second factor is available resources. The president does not have the resources to do everything he might want to do, whether by resources one means money, manpower, patronage, time, or credibility. Funds allocated to defense are not available for education or medical research. Only a limited number of appeals to the public for support for his actions can be made without the possibility of diminishing returns. Time devoted to foreign-policy problems is time not available for domestic matters. Although the president has considerable control over the use of his time—over whether he devotes more time to foreign

than domestic affairs, for instance—he does not have time to involve himself with everything that he might wish.<sup>54</sup> Lack of credibility (or the existence of a “credibility gap”) may also limit the president, as the experiences of Presidents Johnson and Nixon attest.

A third factor is available time, in the sense of timing and the need to act. A foreign-policy crisis may require a quick response, as in the Cuban missile crisis of 1962, or the Iraqi invasion of Kuwait in 1990, or the September 11, 2001, terrorist attack, without all the time for deliberation and fact-gathering one might prefer.<sup>55</sup> Domestic-policy decisions may be “forced,” as by the need to submit the annual budget to Congress in February or the constitutional requirement to act on a bill passed by Congress within ten days if the president wishes to veto it, barring the possibility of a pocket veto. (If a bill reaches the President during the last ten days of a session, or after the Congress has adjourned, and the President does not sign it, it is automatically vetoed.) Former White House aide Theodore C. Sorensen states,

There is a time to act and a time to wait. By not acting too soon, the President may find that the problem dissolves or resolves itself, that the facts are different from what he thought, or that the state of the nation has changed. By not waiting too long, he may make the most of the mood of the moment, or retain that element of surprise which is so often essential to military and other maneuvers.<sup>56</sup>

President Reagan demonstrated the importance of timing when he moved quickly and decisively in the first months of his term to secure adoption of his economic program of tax cuts and reductions in domestic expenditures. By so doing he was able to capitalize on the euphoria and political support that attend the early days of a new administration. As time goes on, these conditions decline, and the president’s political life becomes more difficult.

Professor Paul Light states that presidents are confronted with cycles of increasing effectiveness and decreasing influence. Presidents become more effective over the course of their terms as their information and expertise expand and their staffs become more knowledgeable and skilled in handling their duties. In short, learning occurs. At the same time, however, presidential influence diminishes. Presidents customarily suffer a midterm loss of party seats in Congress and their standing in public opinion polls declines as more people find fault with their performance. Also, time becomes too short to launch major initiatives, and staff energy and creative stamina lessen. The two cycles create a presidential dilemma. The cycle of decreasing influence encourages a president to move quickly on his agenda; the cycle of increasing effectiveness suggests restraint. “If there is any point in the presidential term when the cycles are at the best blend,” Light says, “it is in the first moments of the second term.”<sup>57</sup> But that depends on the president being lucky enough to have a second term.

Previous commitments are a fourth factor that may shape presidential decisions. These commitments may be personal, taking the form, for instance, of campaign promises or earlier decisions. Although too much emphasis can be

placed on the need for consistency, the president must avoid the appearance of deception or vacillation if he is to retain his credibility and political support. Jimmy Carter suffered from a reputation (not fully deserved) for indecisiveness, as when in 1977 he proposed a tax rebate to stimulate the economy and then reversed himself a few months later. Campaigning for the presidency in 1980, Ronald Reagan pledged to eliminate the Department of Education. He neither made good on the pledge nor suffered much in reputation as a consequence. People were often more attentive to and influenced by the president's words than by his actions. But woe may befall the reneger. When George Bush violated his 1988 campaign pledge of "Read my lips. No new taxes" by supporting a tax increase in 1990, this greatly angered many of his supporters and caused him much political discomfort.

Commitments may also take the form of traditions and principles, such as those holding that the United States meets its treaty obligations and engages in military action only if attacked. During the Cuban missile crisis, an air strike without warning on the Soviet missile sites was rejected by the Kennedy administration as a "Pearl Harbor in reverse"; a naval blockade of Cuba was chosen instead. A "first-strike" strategy generally has been excluded from American foreign policy.

Finally, available information can be an important influence on presidential decisions. Many sources of information—official and unofficial, overt and covert—are available to the president. At times, particularly on domestic policy issues, he may be subject to drowning in a torrent of words, paper, and conflicting recommendations. Still, the president at times may be confronted by a shortage of reliable information, especially in foreign affairs, even though he likely has the best information that is available. Reliable information on possible national and international reactions to the possible bombing of Serbian forces in Kosovo, the resumption of nuclear testing, or a Strategic Defense Initiative ("Star Wars"), may be scarce because of the need to predict what will happen in the future. Predicting the future is an uncertain task, except perhaps for a few who claim a sixth sense or a clear crystal ball.

Domestic-policy decisions may also involve some uncertainty. This may become quite obvious when economic-stability policy is under consideration. Will a reduction in income taxes encourage higher levels of investment and economic growth? How much restraint must be imposed on the economy to break the back of the inflationary psychology contributing to inflation? When all the advice is in, the president has to make a choice—a calculated one based on limited information—that the alternative chosen will produce the desired result. Uncertainty may contribute to delay and lack of action on some matters. Amid doubts as to what needs to be done, or what effect an action may have, the decision may be to hold off, to see whether things will work themselves out or to let the situation "clarify itself" (i.e., to give oneself more time to gather information on conditions and alternatives). Sometimes doing nothing can be a good policy.

As a leader in policy formation, the president is subject to numerous political pressures and constraints, however great his legal powers may appear to be. Legal authority by itself often does not convey the capacity to act effectively. Thus the president may have to persuade because he cannot command; he may have to bargain because he cannot compel action. On many issues, once he has made a decision, he must seek the support of an often fickle public or a skeptical Washington community. “The struggling facilitator, not the dominating director, is the description that generally matches the process of presidential decision-making.”<sup>58</sup>

## CASE STUDY

### ***Policy Adoption: Consumer Bankruptcy***

This case illustrates some of the difficulties involved in getting policy adopted, even when the votes are apparently there. Subsidiary issues, largely symbolic in nature, can and do complicate the process.

The Constitution delegates authority to Congress “to establish . . . uniform laws on the subject of bankruptcies throughout the United States.” Congress did not accomplish this until 1898 when it adopted the National Bankruptcy Act. Periodically this law has been altered in response to pro-creditor or pro-debtor forces. In 1978 the policy pendulum swung in a pro-debtor direction. The Bankruptcy Reform Act of 1994 made a variety of changes in the bankruptcy code and provided for the appointment of a National Bankruptcy Review Commission, whose mandate was to determine whether yet more changes were needed.

People filing for personal bankruptcy, which is the subject of this case study, may do this under either Chapter 7 or Chapter 13 of the bankruptcy code, subject to the approval of a bankruptcy judge. Under Chapter 7, a person is required to sell all of his eligible assets (work tools and home furnishings are exempted). The proceeds are then allocated among those owed unsecured credit, such as credit card companies and hospitals. Secured credit—as for cars and houses—is handled separately. In contrast, under the more stringent Chapter 13, the debtor is required to restructure her debt and work out a plan to repay as much of her debt as possible over a three-to-five-year period. Assuming that the debtor can do this, creditors will recover more of their money under Chapter 13 proceedings.

Since the early 1980s personal bankruptcy filings, which comprise more than 95 percent of total filings, have greatly increased (see Table 4.1). Solid evidence on how to explain the increase is lacking. It is indisputable that buying on credit has become part of the American way of life, and that the use of credit cards has increased exponentially. A Federal Reserve Board study found that only 15 percent of Americans possessed credit cards like Visa and MasterCard in 1970. In 1983, 43 percent did; in 1998, 68 percent carried cards.<sup>59</sup> As one would expect, consumer debt has skyrocketed.

**TABLE 4.1*****Personal Bankruptcy Filings, 1980–2001***

|      |           |
|------|-----------|
| 1980 | 287,570   |
| 1985 | 341,233   |
| 1990 | 718,107   |
| 1995 | 874,672   |
| 1996 | 1,125,006 |
| 1997 | 1,260,118 |
| 1998 | 1,398,182 |
| 1999 | 1,281,581 |
| 2000 | 1,217,972 |
| 2001 | 1,452,030 |

Source: American Bankruptcy Institute.

Some argue that personal crises—divorce, job loss, and major illness among them—have caused many people to be unable to pay their debts and consequently chose to file for bankruptcy. Other proffered explanations include the consequences of legalized gambling, the increased social acceptability (or decreased social stigma) of bankruptcy, a large number of small, independent business failures, and aggressive advertising by bankruptcy attorneys. Many place some of the blame on creditors themselves and their profligate distribution of credit cards, even to unemployed college students with no credit history.

In its 1999 final report, the National Bankruptcy Review Commission said that the rise in consumer bankruptcies was probably “more a function of a changing debt structure [on the part of consumers] than a sudden willingness to take advantage of the bankruptcy system.” The commission noted that between 1977 and 1997 consumer debt had increased by nearly 700 percent. It recommended many limited changes in the bankruptcy code to block both creditor and debtor abuses.<sup>60</sup>

Undeterred by the commission’s report, creditor groups launched an intense campaign to get Congress to make major changes in the bankruptcy code.<sup>61</sup> They most strongly wanted provisions for “means testing” that would herd many people into filing under Chapter 13 rather than Chapter 7. Banks, credit card companies, retailers, and other lenders, many allied in the National Consumer Bankruptcy Coalition, vigorously lobbied members of Congress. Campaign contributions flowed in generous quantities to both parties, amounting to hundreds of millions of dollars over a six-year period.<sup>62</sup> Opinion polls showing public support for bankruptcy reform were commissioned, as were studies on the costs of bankruptcy. Newspaper advertising trumpeted claims like “Today’s record number of personal bankruptcies costs every American family \$400 a year.” As a likely consequence of all of this, bankruptcy reform became a top item on the congressional agenda. Its strong bipartisan support includes practically all Republicans and a substantial contingent of Democrats.

The legislative struggle over consumer bankruptcy got underway in 1997. Legislation was sponsored in the House by Representative George Gekas (R, Pennsylvania) and in the Senate by Charles Grassley (R, Iowa) and Richard Durbin (D, Illinois). Both bills were intended to make it more difficult for people to file for bankruptcy under Chapter 7, although the “means test” used for this purpose was more stringent in the House bill. The Senate bill provided more protection for consumers, as in a provision requiring credit card companies to tell a borrower in every monthly statement how long it would take to pay off the balance if only the minimum payment was made each month.<sup>63</sup>

The House acted first, passing its bill in June, 1998 by a vote of 306–118. No Republicans voted against the bill whereas eighty-four Democrats voted in favor. The Senate followed in September, passing its bill by a 97–1 vote. Many Democrats supported it because of its consumer protection provisions. The conference committee that met to resolve differences in the two bills was dominated by the Republicans, who stripped many of the consumer protection provisions from the compromise version, even though the Clinton Administration threatened a veto if the bill was too hard on borrowers. Because of the conference committee action Senator Durbin now opposed the bill.

The House adopted the conference committee report 300–125. Because of Democratic opposition and end of the sessions pressures, the Senate never voted on the conference report. The Republicans proposed that the measure be included in an omnibus appropriations bill that was moving through Congress. This ploy failed because the Clinton Administration insisted on changes in the means test that creditors would not accept.<sup>64</sup>

The consumer bankruptcy struggle was renewed during the 106th Congress (1999–2000). The House Judiciary Committee quickly reported a bankruptcy bill similar to the previous bill. On May 5, 1999, the bill passed the House, 331–108, after some consumer-friendly amendments to it were adopted. For example, credit card companies were required to state when low “teaser” interest rates would expire and what rate of interest would then apply.

The Senate Judiciary Committee reported a bankruptcy bill on April 14 by a 14–4 vote. Bipartisan support was achieved by leaving some issues, such as information disclosure by credit card companies, unresolved. The bill encountered major difficulty when it was targeted by proponents of several nongermane amendments, including an increase in the minimum wage. Not until February, 2000 was the Senate able to act on the bankruptcy bill, which it then easily passed 83–14. However, the bill included controversial provisions raising the minimum wage to \$6.15 an hour over three years and providing \$18.4 billion in tax cuts, mostly for small businesses. These were opposed by the White House.<sup>65</sup> The Senate bill imposed fewer restrictions on bankruptcy filers than did the House bill.

In time, Senate leaders were able to disentangle the minimum wage and tax provisions from the bankruptcy bill. Then they confronted the task of reaching agreement with the House. Two issues—the Schumer Amendment and the homestead exemption—were major sticking points.



An amendment to the Senate bill proposed by Senator Charles Schumer (D, New York) barred protestors at abortion clinics from declaring bankruptcy to avoid paying fines or other financial judgments imposed on them. Republicans argued that it was unfair to single out abortion protestors. Representative Henry Hyde (R, Illinois) sponsored an amendment that provides that any individual convicted of “willful and malicious” acts of violence in any venue should be unable to use bankruptcy to discharge debts resulting from those actions. This was acceptable to Republican leaders but not to many Democrats, who argued that it would be too difficult to enforce. It was also opposed by President Bill Clinton.

The homestead exemption in the bankruptcy code permits many debtors to protect home equity from creditors. The limits are set by the states and in most range from \$40,000 down to zero. However, in five states—Florida, Iowa, Kansas, South Dakota, and Texas—there is no limit. As a consequence, Texas and Florida have developed a reputation as havens for wealthy bankruptcy filers. An example is the often cited case of movie actor Burt Reynolds, who used a bankruptcy proceeding to shed \$8 million dollars of debt while retaining title to his \$2.5 million Florida mansion. The conference committee set the cap on the homestead exemption at \$100,000, but only for homes bought within two years of a bankruptcy filing. Many, including the president, saw this as a loophole and favored a limit with no conditions.

The House approved the conference committee report by a voice vote on October 12. Because of delaying tactics by the conference report’s opponents, the Senate Republican leaders were not able to get a vote on it until near the session’s end on December 7. It was approved, 70–28. Called the Bankruptcy Reform Act of 2000, it was pocket vetoed by President Clinton after Congress adjourned. In addition to the absence of the Schumer amendment and the nature of the homestead exemption, Clinton objected to the bill because it put too much pressure on low-income families.

Round three of the consumer bankruptcy struggle began in January, 2001. The situation looked favorable to the proponents of bankruptcy overhaul because President George W. Bush pledged to sign the bill when it reached him. Bills similar to the one vetoed by President Clinton were introduced in the House and Senate. The “means test” in them provided that persons filing for bankruptcy would have to use Chapter 13 if they had incomes sufficient to repay 25 percent of their debt or \$10,000, whichever was less, over five years. However, debtors who earned less than the state median income would be exempt and could file under Chapter 7.

The House Judiciary Committee, after acting to block amendments to the bill, approved it by a 19–8 vote. On March 1, following rejection of a Democratic substitute more friendly to debtors, the House passed the bill 306–108. In the Senate Judiciary Committee the Republicans sought to speed up floor action by cutting deals with the Democrats. A compromise was reached on the Schumer amendment. Now, rather than specifically mentioning abortion protestors, it referred to the 1994 Freedom of Access to Clinics Act, which made obstructing access to abortion clinics a federal crime.

The bankruptcy bill reached the Senate floor early in March. Republican leaders were able to defeat almost all amendments to the bill, which passed by an 83–15 margin after the Senate had voted, 80–19, to close debate. Republican leaders in the two houses had hoped to be able to avoid a conference committee. House Republican leaders, however, indicated that the Schumer amendment was objectionable to them. House Republicans opposed to abortion rights were expected to try to remove the provision in the conference committee. That, however, would increase Democratic objections to the entire bill. Another sticking point was an amendment to the Senate bill putting a \$125,000 limit on a house, whenever purchased, that could be shielded from bankruptcy. This was strongly opposed by Florida and Texas legislators.<sup>66</sup>

Moving the bankruptcy bill to conference was delayed by a Senate disagreement over its membership. Because the Senate was evenly split, 50–50, between the parties, the Democrats insisted on an even split of all seats on conference committees; the Republicans said they were entitled to at least a one-seat edge over the Democrats. This logjam was finally broken in June, when the Democrats took over the Senate, following Senator James Jeffords (I, Vermont) departure from the Republican Party. Democratic leader Senator Tom Daschle (D, South Dakota), a supporter of the bankruptcy bill, pledged to get the bill passed.

The conference committee was scheduled to meet on September 12. That meeting was put off, however, because of the September 11 terrorist attacks. Then, as the economy lapsed into recession, some members of Congress, notably Democrats, lost some of their enthusiasm for cracking down on debtors.<sup>67</sup> Consequently, not until November 14 did the conference committee meet, and then no real bargaining was done. Staff members of the House and Senate Judiciary Committees then began working to resolve differences between the houses. Neither side was willing to give much ground on the homestead exemption, where the House favored a two-year time limit, and the Schumer Amendment.

In April 2002, House and Senate negotiators were finally able to resolve the homestead exemption issue. It was agreed that no more than \$125,000 in home equity could be shielded from creditors when the home had been bought less than forty months prior to the bankruptcy filing. Prompted by the collapse of the Enron corporation, the time limit was denied to persons convicted of felonies and securities fraud.

The abortion issue was not resolved, however, because of the intransigence of Senator Schumer and Representative Hyde, who were backed by the Senate Democrats and House Republicans, respectively. Each “offered compromise versions of the abortion provision that would narrow it to cover only certain intentional criminal acts against abortion clinics. But they disagree[d] on the wording and the crimes that would be covered.”<sup>68</sup> A meeting of the conference committee in late May adjourned without being able to settle the issue. Despite renewed pressure from the financial interests, who feared their hopes would be again dashed, the stalemate persisted on into the summer.

Finally, in late July, Schumer and Hyde were able to reach agreements. The wording of the bill was tweaked by removing “reproductive health services” and substituting general language ensuring that abortion clinic protesters could not

hide behind the bankruptcy laws. This cleared the way for enactment of the bankruptcy reform bill. Corporate interests clearly triumphed over consumers in this policy struggle. ■



## For Further Exploration

■ <http://www.gallup.com>

The Gallup Organization's web site contains public opinion survey results on many issues, such as presidential approval, the state of the economy, and various policy issues currently affecting the country.

■ <http://www.politicalindex.com/sect32.htm>

This site provides links to numerous simulations and games that deal with topics related to American politics, including an opportunity to balance the federal budget. There is also a link entitled "You are the President."



## Suggested Readings

Graham T. Allison and Philip Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis*, 2nd ed. (New York: Longman, 1999). This edition, which draws on recently available evidence, examines decision-making from the rational actor, organizational process, and governmental politics perspectives.

Frank R. Baumgartner and Bryan D. Jones, eds., *Policy Dynamics* (Chicago: University of Chicago Press, 2002). The dynamic duo have put together a strong collection of essays on the policy process.

Michael T. Hayes, *Incrementalism and Public Policy* (New York: Longman, 1992). Several major policymaking models are examined here as the sources of incrementalism. Nonincremental policy change is also treated.

James G. March, *A Primer on Decision Making: How Decisions Happen* (New York: Free Press, 1994). Drawing widely on the social sciences, March offers much theory, information and insight, but few empirical examples, on decision-making.

Gary Mucciaroni, *Reversals of Fortune: Public Policy and Private Interests* (Washington, D.C.: Brookings Institution, 1995). The authors seeks to explain why the success of interest groups may vary among policy areas and over time.

Deborah Stone, *Policy Paradox: The Art of Political Decision Making* (New York: Norton, 1998). Readable, insightful, theoretical, and stimulating, this book looks at goals, problems, and solutions in the policy process.

Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, 2nd ed. (Washington, D.C.: CQ Press, 2000). General analysis and case studies are used in this book to demonstrate that the legislative process often departs from the textbook model.