

CHAPTER IV

IMPLEMENTATION TOOLS

Sponsors of initiatives address policy problems with a relatively small array of devices: simple court rulings that prohibit or allow a given behavior; simple legislation or executive orders that prohibit or allow a given behavior; competition in a market or market-like environment; incentives such as tax credits or deductions; complicated centralized federal bureaucracies or federal government/state government bureaucracies that distribute scarce resources or regulate behavior on a day-to-day basis; and federal government/state government police entities to maintain order.

These tools have varying capabilities, and they differ in the ways they are used by liberals and conservatives or opposed by them in their pursuit of equality, freedom, and order as well as economic prosperity and fairness. What we know about how implementation tools work comes from organization theory, complexity theory, diverse literatures specialized by policy initiatives, and liberal-conservative consensus and debates.

Simple Court Rulings, Laws, or Executive Orders that Prohibit or Allow Given Behaviors

Many of the policy initiatives begun or continued in the period 1961-2016 consist of simple court rulings, laws, or executive orders that prohibit or allow a given behavior. We define the word simple below. We will see that most of these simple initiatives were effective, that is, they achieved their sponsors' objectives. Typical initiatives (in no order) include: the Bush administration's severe limits on federal funding for embryonic stem cell research and the Obama administration's reversal of that initiative; expanding freedom of protected speech; expanding privacy rights (excluding abortion); legalizing abortion (we separate abortion from privacy rights because most political activists and writers do); banning prayer in schools; banning religious iconography on government property; and expanding freedom of unprotected speech. Other initiatives in this category also

took the form of simple court rulings, laws, or executive orders, but they required greater effort to implement by using sometimes large bureaucracies. They include: almost automatic liberal support for regular public schools; ending racial discrimination; ending discrimination against women; ending discrimination based on sexual preference; ending age discrimination; ending discrimination against the physically disabled; expanding and protecting voting rights; expanding the use of standardized student testing; expanding the use of charter schools, and providing school vouchers. With some debatable exceptions, the initiatives in these two fairly long lists were effective.

In contrast to effective simple initiatives, there are many examples of ineffective (in whole or in part) complicated initiatives that utilize large federal or federal/state hierarchical bureaucracies. Superfund, enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), is an example. It authorizes the Environmental Protection Agency to require those responsible for contaminating hazardous waste sites to clean them. However, as we see in a later chapter, the original legislation and later amendments contain extremely broad notions of responsibility that can ensnare entities such as banks and other businesses, municipalities, and in one case a university that had nothing to do with the generation or disposal of waste at a given site. Predictably, the result has been a morass of law suits with relatively little clean up.

It may have occurred to the reader that what makes Superfund ineffective is not that it is a complicated program run by a large hierarchical bureaucracy but the program's poor design, a point to which we will return. Other initiatives implemented by large hierarchical bureaucracies will be discussed in a later section of this chapter.

The contrast between simple initiatives that prohibit or allow given behaviors versus complicated initiatives requires us to define what we mean by simple and the related terms complex and complicated.

Simple, complex, and complicated defined

The topic of simple court orders, statutes, or executive orders places us in the realms of complexity theory and organization theory.

Complexity theory spans many physical and social sciences and devotes particular attention to complex adaptive systems (see Chu, Strand, & Fjelland 2003; Kochugovindan & Vriend 1998; Eble 2001; Kupers 2001). A complex adaptive system (CAS) is made up of semi-autonomous agents or components that influence one another's behavior and are not controlled by a central authority. The agents recognize when they are better or worse off by whatever criteria are relevant to them. A market economy is an example as is an ecological system such as a lake.

A partial definition of a simple initiative can be teased from the complexity theory literature: a simple initiative's operation is predictable and not the result of semi-autonomous components (Chu, Strand, & Fjelland 2003, 27; Kupers 2001, 14). The texts associated with some initiatives (such as the statutes that create them) that we categorize as simple may be relatively lengthy and may have required considerable effort to formulate, but our definition of simple includes the notion that the statute, executive order, or court order that created the initiative can be briefly summarized. Severely limiting federal funds for embryonic stem cell research and later fully legalizing and providing funds for that work are examples. Performing the research on stem cells is anything but simple and disputing the different capabilities of adult stem cells and embryonic stem cells in an informed manner requires advanced degrees, but the initiatives themselves were clear and straightforward. The 2001 executive order severely reduced federal support for embryonic stem cell research, and the 2009 executive order opened the spigot. Both were easily summarized and understood, and the results were predictable and predicted.

Defending and expanding freedom of protected speech (expressions relating to politics and government) is another simple policy area with complicated internals. Entire volumes have been written on this topic, but again the difficulty of the subject is not relevant from our point of view. National security was the pivot point of liberal and conservative differences regarding freedom of protected speech (*NYT* Free speech and direct action, 10/17/25). After World War II and the Soviet Union's takeover of Eastern Europe and its

development of nuclear weapons, Congress passed the McCarran Act (Internal Security Act of 1950) (Patenaude 2006). The new statute required that Communist organizations provide the federal government with information regarding their leaders, members, and finances. At the same time, many states passed laws requiring primary and secondary school teachers and university professors to sign oaths pledging their loyalty to the United States government. There followed the Communist Control Act of 1954 which outlawed the Communist Party in the United States (CPUSA). The McCarran Act was opposed by the American Civil Liberties Union and Americans for Democratic Action (ADA vote 16, 9/12/50). The *New York Times* and *Washington Post* also opposed restrictions on free speech such as loyalty oaths (*NYT*, A Return to McCarthyism 3/21/67). Meanwhile, conservatives applauded a 1961 U.S. Supreme Court ruling that endorsed the legality of the McCarran Act, maintaining that there was a substantial difference between the CPUSA and other political movements that justified special controls on Communist Party activities (*NR* On with it, 10/21/61; untitled 1/30/62).

Beginning in 1957 the Supreme Court began to move against the restrictions on CPUSA members. Liberals supported these decisions, and conservatives did not (*NR* The Martin and Mitchell bill, 10/9/62). The import of statutes and judicial rulings in this area was simple and straightforward.

U.S. v. Robel, 389 U.S. 358 (1967) was one of the group of Supreme Court decisions expanding freedom of protected speech with which liberals agreed. It is over 10,000 words or roughly 40 pages long, and it is closely reasoned and filled with legal references. By any casual definition of complicated, *Robel* is complicated. However, the key point here is that the finding is direct and easily summarized. The court held that the section of the Subversive Activities Control Act that made it illegal for a member of a communist organization to be employed in a defense facility was unconstitutional because it violated First Amendment guarantees of free association.

The initiatives under discussion are not just simple. They also prohibit or allow given behaviors. The policy theory supporting them is

that the court order, executive order, or statute will stop a given behavior or allow it. Enforcement may be necessary, but the prohibited behavior stops or is sharply reduced and the permitted behavior occurs if individuals so desire.

Simple initiatives that prohibit or allow a given behavior tend to be effective. When a definable behavior is permitted or forbidden by law, court ruling, or executive order that behavior occurs (if people so desire) or ends or diminishes. There are exceptions most notably criminal behaviors such as illegal drug distribution and usage. As with Prohibition, illegal drug usage has not been ended by clear and simple statutes forbidding it although it has probably been reduced compared to what it would be without those statutes. That is one reason why we place initiatives that relate to criminal behavior in a separate category in our list of implementation tools. Abortion before *Roe v. Wade* is another example of a ban that was violated. Before *Roe* illegal but medically safe abortions for some middle and upper class women occurred, but there can be little doubt that after *Roe* safe abortions were carried out in much greater numbers and for women of all income levels. Simple state laws forbidding abortions reduced them if only by making them expensive, inconvenient, and potentially unsafe.

We are not arguing that the formula for resolving all social, economic, and political problems is simple court rulings, legislation, or executive orders. Many problems are inherently complicated and require more and varied resources for their implementation.

Simple court orders short circuiting democracy

It is often asserted that simple court orders that prohibit or allow a given behavior can short circuit democracy and backfire. Examples include the legalization of abortion, prohibiting prayer in public schools, and prohibiting religious iconography on public property. Rancorous opposition to these initiatives continued decades after the court rulings. In particular, anger and frustration remains evident in protests against abortion. Before *Roe*, democracy at the state level was processing this issue with legalization occurring or likely to occur in larger states such as California. Abortion opponents disliked these defeats, but these losses occurred or would have occurred democratically. A loss in a fair game

is very different from defeat at the hands of a referee perceived as biased. Instead of allowing democracy to work from state to state in ways that would have pleased and disappointed both sides, the *Roe* ruling was issued from the federal bench and a generation of angry abortion opponents organized and strengthened the Republican Party, and efforts to constrain abortion continue at state and local levels. The other two religiously connected initiatives also produced organized opponents, but in these instances those who favored prayer in schools and such practices as placing Christmas trees at City Hall had alternatives—private schools and religious displays on private property. With *Roe* the only way to oppose abortion are state and local laws that only partly constrain abortion.

Practically speaking, virtually no interest group or ideological group would reject a victory such as *Roe* out of fear that it would inspire opposing groups to organize. The court order was a victory for advocates of reproductive choice, and, apparently, those who favored *Roe* were willing to accept the backlash.

Initiatives that appear simple can become complicated if conditions change

The simple initiatives we just discussed prohibited or allowed a given behavior, and that was all they did. Some apparently simple initiatives that go beyond targeting particular behaviors and that require elaborate implementation may produce ineffective results or even results that have the opposite effect of those intended. Continuing almost automatic liberal support for regular public schools (which we are treating as an initiative even though it predates our somewhat flexible 1961 starting date) is an example. In the 1960s and 70s it seemed obvious to liberals that regular public schools offered opportunity to disadvantaged children. Public schools had been working for many decades, so the policy theory seemed firmly established. The simple liberal policy was to continue providing increased funding. But something or several things had changed.

The nation as a whole was dramatically alerted to the inadequacies of public primary and secondary schools in 1957 by the USSR's launch of the earth satellite Sputnik thus winning the first round

of what was called the space race. There followed reports by educators and foundations sharply critical of the quality of schooling being received by many children. At first, educational interest groups such as teachers' unions and school administrators were able to use Sputnik and related developments to push for increased funding from school districts, states, and the federal government. But it quickly became apparent to conservatives and later to liberals that many regular public schools especially those in inner cities were inadequate and that infusions of new funding would not improve them. Many large, centralized urban and state bureaucracies operating as de facto monopolies allied with teachers' unions were not effective school managers. They were not providing opportunity as they had in past decades, an assertion that we will document in a later chapter. The simple policy was no longer working under new conditions that included interstate and intrastate migration and de facto segregation tied to economics and housing patterns. The nature of those new conditions is still being debated.

Simple appearing initiatives can become complicated if implementation is complicated

Liberal support of gun control is an example of an apparently simple initiative that requires complicated implementation. The problem and answer seem elementary. People are killing other people with guns, so killing is reduced by banning guns. The complications are well known beginning with the widespread ownership in the U.S. of millions of firearms, the fact that properly maintained guns can last for decades, and the Second Amendment.

**Centralized Bureaucracy, Open Bureaucracy, and
Complex Adaptive (Market) Systems**

Most if not all policy initiatives have their origins in large scale social, economic, or technological (SET) change and much of that change is discontinuous. In earlier work one of the authors examined the creation of federal agencies in the years 1933-1971 and the reorganization of federal agencies in 1933-1976 (Grafton 1975, 1979, 1983). Agencies are defined as the largest divisions of departments (often called bureaus), parts of the Executive Office of the President, or independent commissions. Virtually all of them are centralized bureaucracies.

Agency creation and reorganization are often the last two steps in a process by which society deals with problems generated by large scale discontinuous SET changes called novelties (Grafton 1979, 438). The impact of novelties is often felt decades after they arise. Examples of novelties include electrical power, labor unions, corporations, radio, the Great Depression, Keynesian economics, atomic energy, Big Science, pollution, and rockets all of which led to the reorganization of existing agencies or the creation of new ones. Not all novelties led to agency creation and reorganization. These include motion pictures, the Dust Bowl, television, and automation.

All novelties generate social problems even the ones that do not result in agency reorganization and creation. Some of the problems are destructive, generating policy initiatives and agency creation, while others offer opportunities that also lead to policy initiatives and agency creation. The processes of formulating initiatives, agency reorganization, and agency creation require that the novelty be conceptualized. During conceptualization business entrepreneurs, interest groups, and government officials seek to understand a novelty's implications, to modify the novelty to fit socioeconomic-political systems, and to modify socioeconomic-political systems to fit the novelty. So, for example, one of the first applications of radio was for ship to shore telegraphy (wireless telegraphy). In its earliest years radio in the U.S. was controlled by the military as part of World War I. After the war it became a toy for hobbyists (albeit one with practical uses), and then it developed with many changes into the entertainment and news medium that we know today. None of this was planned. It simply developed out of myriad private sector experiments. In early years, interference with multiple broadcasts over identical frequencies required that the federal government step in to police the allocation of the air waves.

The idea that policy initiatives, agency reorganization, and agency creation often derive from large scale social, economic, or technological discontinuities is reinforced by the work of Baumgartner and Jones (2002, 1993) who describe comfortable and established "policy monopolies" (a.k.a. subgovernments) suddenly hit by outsiders with a new conceptualization of a policy area. The policy monopoly attempts to

discredit the outsiders as uninformed, irresponsible, and unqualified to be a part of policy making (Vergari 2007, 21). Robert S. Wood (2006) in his study of the 1998 product liability settlement between four large tobacco companies and 46 states joins Baumgartner and Jones (1993) in observing that this event had been building for some time. Smoking had been on the public agenda for decades before the seemingly sudden 1998 settlement. Baumgartner and Jones see the same kind of build up to pollution regulation and more strict regulation of nuclear power. In these fields the publication of Rachel Carson's book *Silent Spring* (1993) and the nuclear reactor accident at Three Mile Island were "attributed triggers" that reinforced processes already in place. Wood conveys a similar concept with the terms focusing event and tipping point. A tipping point can be: "an occurrence in the natural world, a judicial or regulatory decision, a political event, or just an idea." (Wood 2006, 422)

We have already observed that many policy initiatives do not lend themselves to simple court orders, statutes, or executive orders that forbid or permit a given behavior. Some policy areas are inherently complicated and require continuing implementation by experts in a large government agency. Scholars working out of several social science fields have for more than a century been studying the effectiveness of various governmental structures in implementing a variety of programs. Among other findings, this work yields distinctions among centralized bureaucracies, what are sometimes called open organizations, and complex adaptive systems.

Centralized bureaucracies

Modern centralized bureaucracies were first formally described by German sociologist Max Weber whose career spanned the late 1800s and early 1900s. Government administration in Western Europe and North America before the Industrial Revolution and during its early phases was personalized with authority flowing from the aristocracy in Europe or political parties in the United States. In the U.S. all executive branch employees were members of the chief executive's (e.g., president, governor, mayor) political party. A change in party meant a nearly complete replacement of government employees. Stated bluntly, one set of party hacks was replaced by another. Technical knowledge was

of little importance; party loyalty was critical. This approach to staffing is often called the Jacksonian (after President Andrew Jackson) spoils system. Jackson believed or was said to believe that no special intelligence or training were required for government work. In Jackson's time officialdom's general lack of technical expertise was of little consequence because the total store of technical expertise was small. As the Industrial Revolution accelerated, the economy and society rapidly became more complicated, and poorly educated party loyalists were less able to function effectively (Weber 1958, 216).

Weber (and to a lesser degree political scientist and later U.S. president Woodrow Wilson) observed and codified the development of a new approach to organizing the executive branch that featured bureaucracies made up of technically competent staff selected by objective examinations or professional training (Wilson 1997; Weber 1958, 199). For Weber (1958, 196) and Wilson officials in the new bureaucracies should operate according to laws or formal administrative regulations as opposed to partisan or aristocrat interests. Bureaucracies would be organized hierarchically in super-ordinate, sub-ordinate relationships defined by law and regulation. Officeholders would receive regular salaries and retirement benefits, and an official position could not legally be exploited for personal gain (Weber 1958, 201). Weber both codified and to some degree promoted bureaucracy. Ideally, its operation would be characterized by precision, speed, knowledge of applicable laws, regulations, technical information, and objectivity (pp. 214-215). Objectivity meant that procedures would adhere to objective and known rules (p. 215).

When Weber wrote, it appeared that chain of command, hierarchical bureaucracies were the only alternative to the spoils system and other personalized and political approaches to staffing government. However, as economic systems and societies grew and developed, it became apparent that Weber's model bureaucracy was in some applications almost as inadequate as the systems it had replaced.

Designing bureaucracies

When Congress or a state legislature creates a bureaucracy it can attempt to specify what is to be done with restrictive detail or it can

delegate with a loose hand or anything between. Jonathan R. Macey (1992, 93) explains the structure of bureaucracies as a function of politicians designing them to make them as permanent and unchanging as possible (also see Schlager & Blomquist 1996). He sees legislators creating agencies with complicated rules that diminish their autonomy and flexibility so that later chief executives, bureaucrats, and legislators will find it difficult to follow different policy paths (p. 93). Also, Macey, citing McCubbins, Noll, and Weingast (1987) (MNW), argues that legislators find it troublesome to monitor agency behavior and so want to limit the behavior even in the present.

We do not entirely agree with Macey or MNW. Influence over executive decisions can give self-serving legislators power. Interests seeking a particular decision must actively pursue it, perhaps accompanied by or preceded by campaign contributions to legislators. In contrast, ideologue legislators might want to constrain agency decisions as Macey describes. This illustrates the importance of distinguishing between self-interest and ideology. Macey does not appear to agree with himself on this point because on a later page he describes self-seeking politicians interceding in agency deliberations, although it would be easy to imagine ideologue-politicians doing the same in some circumstances.

MNW (1987) provide examples of constraints Congress can place on agency behavior. The agency can be established so that poorly organized constituents can be enfranchised (or, we would add, disenfranchised). Macey discusses the impact of delays built into bureaucratic decisions by enabling legislation. The delays might make it easier for small poorly organized interest groups to coordinate support or opposition to a proposed decision. And the agency can be required to signal when it makes a decision, giving Congress a chance to counter.

Macey (1992, 104) notes that Congress can also influence agency decision-making by creating agencies with overlapping authority that compete with each other. Understanding the implications of this kind of design subtlety in particular cases would require specialized knowledge beyond what most scholars can detect except in case studies using personal interviews. It is probably better for us to view all bureaucracies as Weberian hierarchies.

Depending on a bureaucracy's charter and a chief executive's interest, the chief executive can exercise detailed supervision of implementation or relatively little control or anything between. George A. Krause (2009) discusses the many ways presidents can exert authority over the executive branch and by implication the many ways presidents do not succeed in exerting such authority if only for lack of time and the great number of agencies under their purview. Krause explains, as many others have, that formal authority is not sufficient for presidents to accomplish everything they desire. Presidential control is rendered even more problematic by bureaucratic self-interest including bureaucrats trying to increase their budgets and promoting an ideological agenda (Niskanen (1975; Carpenter, 2001; Huber, 2007). Also, bureaucracies can be governed by actors motivated by any of the ambitions described by Anthony Downs (1967, 88), Harold L. Wilensky (1967, 85-86), and Randall Ripley and Grace Franklin (1987) including careerists, politicians, professionals, and zealots. Careerists identify their life's work with their particular agency. Politicians are ambitious and see themselves as part of a capital-wide or nation-wide network. Professionals identify more with their professional field such as the law, accounting, or engineering than with the bureaucracy. Zealots sometimes dominate a bureaucracy in its early years and try to steer it toward policy goals with which they strongly identify. Often the motivations of bureaucratic leaders change over time. And depending on congressional or legislative committee interests, committees can influence bureaucratic activities in detail or not or anything between. And depending on myriad variables, interest groups can influence bureaucratic activities in detail or not or anything between (Gormley & Balla 2004; Clinton, Bertelli, Grose, Lewis, & Nixon 2012, 341). Thus the reasons why bureaucrats make particular decisions can vary widely (Frederickson, Smith, Larimer, & Licari 2012, 15, 25-35).

Bureaucratic policy environments

Bureaucratic decision-making is also influenced by a bureaucracy's policy environment. Theodore Lowi (1964), Randall Ripley and Grace Franklin (1987), and many others point out that some characteristics of policy implementation are affected by whether the policies' primarily concern are distribution, regulation, or redistribution. Ripley and

Franklin distinguish between two types of regulation: competitive and protective. Supposedly, each kind of activity produces specific patterns of, in Lowi's words: "political structure, political process, elites, and group relations." (pp. 689-690) Lowi admits that in the long run (a phrase he does not define precisely) his categories might not be sharp and distinct. For example, in the long run all government programs are redistributive in that some individuals or businesses pay more or less in taxes than they receive in services (p. 690). And in the long run all programs are regulatory in the sense that a government policy will supplant a private decision. But, Lowi argues, governmental decisions tend to be short term and made "without regard to limited resources." (p. 690) His examples include pork barrel legislation, business clientele services, and tariffs, all of which he characterizes as distributive. These goods are easily "dispensed unit by small unit, each unit more or less in isolation from other units and from any general rule." (p. 690) He continues: "These are policies that are virtually not policies at all but are highly individualized decisions that only by accumulation can be called a policy. They are policies in which the indulged and the deprived, the loser and the recipient, need never come into direct confrontation." (p. 690) We would add that the deprived may never even be aware of what they are losing or even if they are losing.

We are not the first to express discomfort with trying to operationalize an undefined distinction between long term and short term, and it is common to read complaints by interest group leaders, editorial writers, and politicians that tax payers are suffering the cost of pork, government aid to business (sometimes described sarcastically as welfare for business), and tariffs. Liberal and conservative ideologues are especially prone to characterize what Lowi describes as distributive policies as redistributive although the two sets of ideologues tend to portray different policies that way. Similar problems arise with all of Lowi's (and Ripley and Franklin's) categories. Nevertheless, it seems reasonable to theorize that various kinds of policies (however defined) can yield particular implementation patterns (however described).

Weaknesses in bureaucracies

In trying to explain the sharp economic downturn that began in 2007

and 2008 Geoffrey P. Miller and Gerald Rosenfeld (2010, 808) identify an organizational problem called intellectual hazard which they define as: “the tendency of behavioral biases to interfere with accurate thought and analysis within complex organizations.” They blame intellectual hazard for impairing: “the acquisition, analysis, communication, and implementation of information within an organization and the communication of such information between an organization and external parties.” (p. 808)

Miller and Rosenfeld concentrate on a form of intellectual hazard called complexity bias, where mistakes occur because there is too much information to be processed within limited time. Tunnel vision is one form of complexity bias. As they describe it: “An actor tasked with carrying out a particular function within a complex organization tends to see only the information apparently necessary to carry out that task. All other information is excluded, even if it is available.” (p. 813) They explain that, although the term tunnel vision is derogatory: “the focus it implies is often beneficial because it enhances the efficiency of operations.” (p. 813)

Confirmation bias is another type of complexity bias. Here the decision maker, faced with too much information and a shortage of time, tries to understand what she or he should do just within the framework of his organizational role and nothing else. The decision maker: “will tend to see a confirmation of his previous expectations, even if the evidence is more consistent with a different state of affairs.” (p. 813) Representativeness bias, another aspect of complexity bias, occurs when the decision-maker assumes that the information available is a representative sample of whatever universe applies. Still another element of complexity bias is oversimplification bias which almost defines itself. The decision-maker, faced with complexity and time constraints, applies rules of thumb even though unknown to him or her the situation is novel and rules of thumb are inapplicable. The overwhelmed decision-maker is relying on whatever guidelines the bureaucracy provides. What Miller and Rosenfeld call authoritarian bias fits Max Weber’s view of how a bureaucrat is supposed to operate because bureaucracies are based on chain of command.

Much of the organization theory literature is critical of how well government bureaucracies can respond to changing circumstances. For Alice Lam (2010, 164) whose subject is private sector organizations: “the main research aim is to identify the structural characteristics of an innovative organization, or to determine the effects of organizational structural variables on product and process innovation.” We suspect that this focus is less productive in the public sector where organizational structures may be less important than a bureaucracy’s relationships with its legislative and interest group environment (a.k.a. subgovernment) in addition to the relevant chief executive and ideologues. Lam describes her unit of analysis as the organization. That is probably too narrow for public sector agencies.

It is widely accepted that Weber’s model bureaucracy stands at one end of a continuum with the open, democratic, or organic (names vary among authors) organization at the other (Burns & Stalker 1961). Open organizations are by definition less hierarchical and more fluid than Weberian bureaucracies. Weber’s bureaucracy is suited to accomplishing routine tasks in a stable environment (Dunsire 1999, 361; Gravenhorst, Bennebroek, Werkman, & Boonstra 2003, 86). Social Security which is managed by a hierarchical, chain of command bureaucracy is an example. Social Security is a relatively simple rule based system whose clientele is enormous—essentially the entire U.S. population. Congress sometimes modifies the rules, but adjusting to new rules is precisely what this kind of organization can do well as long as the rules are rigid and not changed frequently. However, many federal programs cannot be characterized as routine and performed in stable conditions. For example, the Department of Defense is in most respects a model chain of command bureaucracy, but its programs are scarcely routine and the conditions in which they are performed are the opposite of stable. Similarly, the Food and Drug Administration, the Department of Agriculture, and even the U.S. Postal Service operate in rapidly changing environments.

Many scholars have observed that hierarchical bureaucracies do a poor job of evaluating feedback from their environments because incoming information is often distorted as it travels through many organizational layers. Even when changes in circumstances are

correctly evaluated, these organizations' adaptability to those changes is often described as low (Pierre and Peters 2005; Nohria & Berkley 1994). The common criticism of armies prepared to fight the last war instead of the next is a good example of this phenomenon.

Organic model organizations

Tom Burns and G. M. Stalker (1961) among others saw the difficulties faced by hierarchical bureaucracies responding to novel problems. In their place they offered what they called an organic model organization characterized by communication flowing in all directions with the management of that communication consisting of consultation more than command and control (see also Becker & Gordon 1966; Perrow 1972; Galbraith 1972; Dunsire 1999; Nohria & Berkley 1994, 72). Authority resides at relatively low organizational levels so that the organization can respond quickly to changing circumstances (Fulk & deSanctis 1995). Consistent with this decentralization, an individual's responsibilities are defined dynamically via interactions with fellow employees (Burns & Stalker 1961, 105).

We would expect that the organic government agency would be relatively well suited to responding to changing circumstances (Lam 2010), although not all scholars agree with this sentiment (Sine, Mitsuhashi, & Kirsch 2006; Symon 2000). Burns and Stalker (1961, 106) cautioned that, while organic organizations do not operate in a vertical chain of command mode, they are nevertheless stratified. They are structured hierarchically with their component parts connected by legal authority. Thus, an organic government agency is not a complex adaptive system because an organic government agency is structured hierarchically with its component parts connected by legal authority. Organic government agencies can presumably produce more original ideas than hierarchical bureaucracies, but they are constrained by their enabling legislation and related statutes and executive orders. This point contrasts with Nitin Nohria's and James D. Berkley's (1994, 72) observation that: "our society has been witnessing a transition from a rigid, mechanistic, and monolithic philosophy to one founded on complexity, information, and flux." For them organizational structure

is not defined in advance of action, it emerges from action.

Presumably, more examples of organic organizations can be found in the private sector than in government. Contemporary organization theory critical of centralized bureaucracy concentrates on the private sector to the near exclusion of government (Nohria & Berkley 1994).

Complex adaptive systems

While elements of a complex adaptive system (CAS) might be adopted by organic government agencies, by definition a CAS lacks central control. Nevertheless, it might be guided by loose regulatory rules. A CAS consists of semi-independent agents that influence each other's behavior (Kupers 2001, 16). The agents recognize when they are better or worse off by whatever criterion is applicable. Regular public schools, charter schools, private schools, and parents of students in a school district can be considered agents in an educational CAS. In every interaction the agents obtain information regarding whether they are better or worse off and change their behavior to increase their well being. In our example parents whose children are not learning at what the parents regard as an acceptable level in whatever school they are in may shift children to other venues including regular public schools, charter schools, private schools, or home schooling.

Roland Kupers (2001, 16), following Adam Smith, observes that agents acting according to their own (or their children's) interests improve the quality of the entire system: poor schools (regular public, charter, home, private, or home schooling) are abandoned and good ones thrive. Frederick M. Hess, Robert A. Maranto, and Scott Milliman (2001, 389) observe that these benefits will not be realized unless parents are given access to accurate information about all school choices; this point applies to any market. The result is improvement for the school district as a whole. This model does not assume the inherent superiority of any particular kind of school—regular public, charter, home, or private—but it does assert the superiority of choice over no choice. The kinds of adjustments possible when alternatives are available are contrasted with a traditional mechanistic approach where schools are improved via orders following a Weberian chain of command from a board of education and superintendent downward to each individual

school and its instructors. Particular classrooms might be improved by the professionalism of individual instructors, but there is little incentive built into the system motivating teachers to improve.

To explain the core dynamics of a complex adaptive system's operation Kupers (2001) furnishes the example of a lost hiker in rugged terrain. The hiker's goal is to locate the deepest valley. One strategy is to always walk downhill from every point:

This will certainly achieve the goal of reaching a deep point, but it will be unclear whether this is the deepest point or just a local pit. Another strategy could be to walk downhill, but randomly change direction at a certain frequency and then compare the altitude. This will avoid becoming stuck in a local valley because the random deviation from the downhill path can very well send you back uphill in some direction. However, if there is too much changing of direction, this will result in purposeless wandering. The key to success is to strike the right balance between order (always walking downhill) and disorder (random changes of direction). What the "right" balance is depends on the circumstances, and it is the role of the leader to understand the dynamics of complexity and to design the right balance into his or her organization. (p. 18)

Leadership appropriate to an organization based on the complex adaptive system model would provide a clear criterion for success together with guidelines to prevent random behavior but also a style of leadership that encourages creativity among organization staff.

The components of complex adaptive systems are highly interconnected. Their interactions often produce surprises some of which are creative and effective and many not (Duit & Galaz 2008, 311-312). In the case of market economies, which are commonly used examples of complex adaptive systems, useful or at least desirable products and services are purchased and inadequate products and services after an initial trial or negative word of mouth are not. Presumably, charter schools and their regular school, private school, and home schooling competition go through the same endless winnowing process. In contrast, chain of command hierarchies are *designed* to not generate surprises. They are intended to implement legislative and

executive policy and that is all. The only creativity resides in the efficiency with which policy is implemented, and it is not clear how bureaucracies are motivated even to attain efficiency.

James G. March (1991) captured the contrasting characteristics of chain of command hierarchies and more open structures with two variables he called exploration and exploitation. Organizational exploration includes such activities as experimentation and innovation while exploitation concentrates on implementation with an eye toward efficiency. We would expect chain of command hierarchies to devote most of their energies to exploitation although in practice some barely manage adequate implementation and have little apparent concern for efficiency (Duit & Galaz 2008, 321). Chain of command hierarchies do not respond well to dynamic environments partly because of their inability to explore alternative policies (p. 325). On the other hand, organizations devoted exclusively to exploration might fail to apply their discoveries usefully.

Subgovernments

We saw above that bureaucracies are not alone in implementing initiatives. The policy formulation and implementation literatures indicate that bureaucratic decision-making is the product of the interactions of a bureaucracy (however structured) with a chief executive, legislature (usually committees or subcommittees), and interest groups. Such a system is sometimes described as an iron triangle or subgovernment (Sullivan & Glantz 2010; John 2003; McCool 1990; Cater 1964). James R. Temple (1980, 239) adds that subgovernments are: “relatively closed and autonomous alliances of political actors operating in a particular specialized policy area...” Since the chief executive does not specialize exclusively in a particular policy area and must spread his or her time among many policy areas, he or she is often not included in descriptions of the structure, but the chief executive can have a transformational impact if he or she is paying attention to the policy area (Miller 1985). Citations of scholarly works describing and analyzing these structures would fill pages (see a list in Sullivan & Glantz 2010, 1527).

Tim R. Miller (1985) examines iron triangles in water resource

management. Water policy-making had long been dominated by iron triangles. Miller describes iron triangles as institutionalized alliances of interest groups, executive branch agency personnel, and legislative committee members concerned with water policy. We would have written routinized alliance, not institutionalized. Also, scholars in this area have substituted the term subgovernment for iron triangle which conveys a sense of rigidity that is unrealistic. Miller presents the common view that a subgovernment dominates its policy area and attempts to handle disputes between or among conflicting interests within the subgovernment. Subgovernments try to avoid disputes spilling beyond the subgovernment and thus tempting outsiders to influence the policy area to the potential detriment of subgovernment members. However, this is not the only way outsiders can become involved in a subgovernment's policy area. According to Miller, since the late 1960s and early 1970s the water resources subgovernment had been losing control (p. 395). One reason for this development was the appearance of the environmental movement and its demand for inclusion in water decisions. Subgovernments strike back against such challenges; Miller uses President Jimmy Carter's 1977 failed attempt to kill a number of federal water projects as a way to document a temporary reinvigoration of the water resources subgovernment.

The Advocacy Coalition Framework distraction

Instead of subgovernments, we considered employing the Advocacy Coalition framework (ACF) developed by Paul A. Sabatier (1999, 1993) and Hank C. Jenkins-Smith, but it is too broadly conceived to be useful. Paul A. Sabatier (1988, 139) defines an advocacy coalition as: "people from a variety of positions (e.g., elected and agency officials, interest group leaders, researchers) who share a particular belief system—that is, a set of basic values, causal assumptions, and problem perceptions—and who show a nontrivial degree of coordinated activity over time." Christopher M. Weible, Paul A. Sabatier, and Kelly McQueen (2009, 122) describe the ACF's core as founded on the following assumptions: "(i) a central role of scientific and technical information in policy processes; (ii) a time perspective of 10 years or more to understand policy change; (iii) policy subsystems as the primary unit of analysis; (iv) a

broad set of subsystem actors that not only include more than the traditional iron triangles' members but also officials from all levels of government, consultants, scientists, and members of the media; and (v) a perspective that policies and programs are best thought of as translations of beliefs." We are puzzled as to why these assumptions should be presented as unique to the ACF. That scientific and technical information is sometimes important in policy-making has been well understood for many decades, nor does this assumption mention how commonly scientific and technical information is distorted by interest groups and individuals for reasons of self-interest or ideology. The ten year time perspective (point number two) is part of myriad policy analyses not employing ACF terminology. For example, studies of education, urban renewal, agribusiness subsidies, and anti-trust routinely span many decades. Regarding point number three, policy subsystems as the primary unit of analysis is assumed in many ways by scholars employing the concept of subgovernments and even iron triangles. The broad set of subsystem actors (point number four) including scientists and members of the media is, again, not new to the ACF. Finally, the perspective that policies and programs can be considered to be translations of beliefs conflates self-interest and ideology and borders on the circular.

Weible, Sabatier, and McQueen (2009, 123) characterize belief systems as viewed by the ACF as having a core that consists of broad, stable, and mostly normative beliefs. Examples are ideologies such as liberalism and conservatism. Policy beliefs are based on the core, but they are not as rigid as core beliefs. Policy beliefs can change in the face of new information. Secondary beliefs are based on policy beliefs. Weible, Sabatier, and McQueen assert that: "The ACF predicts that secondary beliefs, compared to deep core and policy core beliefs, are the most likely to change over time." (p. 123) There is nothing new here either.

Peter Nedergaard (2008, 180) asserts that the ACF predicts that major policy change can arise from external events such as sharp economic downturns, changes in public opinion (for whatever reason), or changes in the government (for whatever reason). Change can also occur as a

result of learning (Ellison & Newmark (2010, 656) and a long list of internal events (Sabatier and Weible, 2007, pp. 204–5). That such occurrences can cause policy changes are not observations original with the Advocacy Coalition framework.

The ACF approach appears to be more a framework for displaying case studies than a set of testable and unobvious hypotheses. See for example, a study by Jan Olsson (2009, 176) that concerns a land planning conflict in Sweden and how road and housing plans were upended by environmentalists in favor of a nature reserve. This case turned on the fact that members of an environmental group, municipal and county bureaucrats, a journalist, and a “strategically important local politician” were all ornithologists who opposed the road and housing plans. This narrative is considerably lengthened but not improved by labeling the moving parts with burdensome ACF terms. Similarly, a Brian Ellison and Adam J. Newmark (2010) account of the Animas-La Plata (ALP) project in Colorado is not enhanced by reference to obvious ACF hypotheses such as: “On major controversies within a policy subsystem [in this case, water resources] when policy core beliefs [a.k.a. interests] are in dispute, the lineup of allies and opponents tends to be rather stable over periods of a decade or so.” Ellison and Newmark provide an incisive conclusion of their study free of ACF terminology: “The Bureau of Reclamation will complete the ALP project because it controls the administrative processes that are essential to natural resources management decision making.” (p. 672) They list members of the subgovernment that made completion of the project possible including members of Congress, key Colorado politicians, and local officials.

Back to subgovernments

B. Dan Wood and Richard W. Waterman (1994, 18) denigrate the subgovernment concept as “still prevalent in some academic circles...” Despite this derisive remark, they offer a useful description of the president, Congress *as a whole*, and the courts as normally not participating in subgovernment activities. Subgovernment theorists and others hold this view partly because subgovernments, whatever internal disagreements they may suffer, try to manage their affairs without calling attention to themselves. The president, Congress as a whole, and the

courts are overloaded with work. They lack the time to oversee everything that is happening in the federal government (to a lesser degree this description also applies to state governments), so they focus their attention on disruptions. Wood and Waterman (1994,19) describe subgovernment theorists as interpreting this condition as bureaucracies being “unresponsive to the major U.S. institutional actors, which are uninterested in or incapable of controlling the bureaucracy.” In other words, bureaucracies (and their associated subgovernments) are unresponsive to major actors who have no concern for the bureaucracies’ policy areas. What else would we expect? Wood and Waterman also describe subgovernment concepts as “elite-based.” This is not a standard use of the word elite. At the federal level there are multitudes of subgovernments toiling away in their specialty areas, managing their affairs, and not, as we think of the word elite, a handful of individuals dominating a large part of the nation’s affairs.

Wood and Waterman (1994, 19) assert that the “elite-based” subgovernment models were “challenged” by a real world test in the form of the deregulation movement of the 1970s. Wood and Waterman somewhat misleadingly describe regulators as aggressively promoting deregulation. Transportation systems including railroads, airlines, trucking, and shipping had been tightly self-regulated by subgovernments including the Interstate Commerce Commission and associated interest groups for many decades before deregulation. Deregulation was forced on them, and even Wood and Waterman describe the active engagement of the president and Congress in this struggle (p. 20). But the subgovernment model includes the possibility and even the likelihood that the president and congressional outsiders might sometimes show an interest in subgovernment activities. That is why subgovernments try to avoid that eventuality. In the case of transportation subgovernments, presidents, consumer activists, academics (especially economists), and ideologues effectively attacked the status quo. As we saw above, with a different outcome, President Jimmy Carter attempted to kill a number of federal water projects (Miller 1985). In this case, the water resources subgovernment managed to fight off the incursion at least temporarily. An important aspect of this case is that water was becoming more scarce and also environmentalists became involved in a manner similar to

consumer rights groups in deregulation. Another case of deregulation concerned financial institutions, but in that instance the self-interested financial institutions favored deregulation as did conservative ideologues who also entered the fight. Wood and Waterman also ignore agribusiness subsidy subgovernments which have over many decades siphoned away hundreds of billions of dollars. On balance, we believe that there are many more cases of subgovernments that successfully defend their status quos than ones that self-immolate.

Wood and Waterman also mis-characterize the subgovernment literature describing it as a debating society posing but rarely answering questions. They contrast their straw man version of the subgovernment model with their preferred principal-agent model that they assert produces “clear and consistent findings.” (p. 22) They continue: “Quantifiable outputs from bureaucracies were shown to covary consistently with the changing preferences of the president, Congress, and the courts. And overhead democracy was shown to be alive and well in the United States.” (p. 22) Overhead democracy means that elected leaders (principals) set policy over nonelective bureaucracies (agents) (p. 22). The subgovernment literature makes clear that not only can this happen, it is a major fear of most if not all subgovernments.

When a program is created (assume a statute) Congress and the president try to design the bureaucracy so it will operate as they desire (p. 23). But, Wood and Waterman continue, over time discordance arises. New members of Congress reflect different interests than those responsible for creating the program, and interest groups change (slowly) as well. Similarly, bureaucratic interests may change: “Throughout this process, bureaucracies have distinct informational and expertise advantages over politicians... As a result, they have both the opportunity and incentive to manipulate politicians and processes for political gain.” (p. 23) Again, Wood and Waterman make a solid case in favor of the subgovernment model.

In many respects, a bureaucracy and its associated interest groups and legislative committees is an uncertain blunt tool, but often initiative sponsors appear satisfied with the results. We would include in a (non comprehensive) list of initiative sponsors well served by bureaucracies:

increased regular public school spending; agrabusiness subsidies; the regulation of transportation (for many years); increased welfare spending; workfare; health insurance; nontraditional energy sources; urban renewal (for a number of years); affirmative action; consumer protection; pollution control; gasohol; Superfund (or perhaps not); global warming reduction; family and medical leave; workplace safety; Brownfields (perhaps); and Cash for Clunkers (for a few months).

Incentives Such as Subsidies or Tax Breaks and Disincentives Such as Taxes

Government can nudge the behavior of public or private organizations in a desired direction by taxing an undesirable behavior or providing tax benefits or subsidies for desirable ones. Additional taxes on smoking or especially expensive automobiles and boats, tax deductions for interest on mortgage payments, and tax credits given to individuals who discard low mileage polluting “clunkers” are examples. The theory of incentives and disincentives is basic economics or equally basic stimulus-response Skinnerian psychology. Other things being equal, and ignoring side effects, economic actors respond in directions intended by designers of incentives or disincentives. However, the degree to which actors will move in response to stimuli is often not known until the stimuli have been applied and sometimes not even then. For example, an additional tax of 50 cents on a pack of cigarettes will probably reduce smoking, but the exact magnitude of change will not be known until months after the additional tax is levied. Even then an apparent effect may be caused by more than one stimulus with the relative contributions of each not understood. Past cigarette tax increases may be only a rough guide because the relationship between tax levels and consumption may not be known. Even if the relationship was linear in the past, the additional tax might produce a curvilinear pattern. In addition, past tax increases may have occurred during economic downturns, and separating the effects of the tax increase and a recession may be difficult.

An advantage of tax incentives over direct financial aid or taxes over legislation banning a given practice is that to some degree tax incentives allow actors to decide for themselves how to respond (Swaim 2003,

34). As Bernard Wolfman (1985, 492) observed: “tax relief allows substantial opportunity for diversity and experimentation, for action, speedy or deliberative, with federal direction or supervision virtually nonexistent.”

A complication of tax incentives is that they may be inefficient in that some actors might behave in a desired manner even without the tax incentives’ presence (Landis 1976, 1056). On the other hand, a tax incentive might be less costly to administer than, for example, a program of direct financial assistance or laws requiring regulatory and administrative activities (Landis 1976, 1059; Swaim 2003, 34). Yet another complication is that tax incentives may generate side effects (Prasad 2011, 252). For example, cigarette tax increases may make smuggling, theft, and black market sales more profitable. However, most forms of legislation of any kind can also generate unanticipated consequences.

Tax incentives are sometimes criticized as being hidden (Prasad 2011, 252). Tax incentives, sometimes called tax expenditures, are funded by tax receipts forgone because of the credits or deductions that constitute the incentive. Unlike a normal expenditure, they do not appear as part of standard budgets, although since 1974 the federal budget contains a separate section enumerating tax expenditures in the Office of Management and Budget’s *Analytical Perspectives* volume (www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/spec.pdf). The Office of Management and Budget (OMB) cautions that the accuracy of tax expenditure cost estimates depends on several judgments such as the assumption that other parts of the tax code are not changed (OMB, *Analytical Perspectives* 2013, 247-248).

Another undesirable characteristic of tax incentives is that usually they are uncontrollable without the passage of new legislation. Unless a sunset date is part of the law enacting them, they continue indefinitely.

Tax incentives also add to tax code complexity, making compliance costs higher (Prasad 2011, 252). In its 2013 *Analytical Perspectives* budget supplement the OMB lists 173 tax expenditures not counting 15 that it categorizes as “aid to state and local governments.” Examining all of them would require hundreds of pages, and most are highly

technical. Examples include: exclusion of income earned abroad by U.S. citizens; expensing of exploration and development costs for fuels; expensing of certain capital outlays (agriculture); exemption of credit union income; and deferral of taxes on shipping companies (pp. 241-242). A perusal of the OMB list supports the charge that tax expenditures complicate the tax code and are largely hidden.

In the next few sections we describe a number of major tax incentives and taxes intended to discourage undesirable activities or encourage desirable ones. Clearly, given the magnitude of the OMB's list of tax expenditures and the highly specialized and technical nature of most of them, our treatment will not be in-depth. The best we can do is to ascertain whether the benefits claimed for them and criticisms of them have any foundation.

The IRA tax incentive

The Employee Retirement Income Security Act (ERISA) enacted in 1974 was intended to encourage the widespread creation and maintenance of retirement savings. ERISA allows an employee under some circumstances to shift limited amounts from gross income into individual retirement accounts (IRA) which can hold common stocks, bonds, and other investment instruments. The funds and dividends or interest earned from them are not taxed until assets are removed from the IRA at which time they are taxed as ordinary income (Copeland 2010). According to a *Harvard Law Review* note (1981, 867-868), an IRA offers what amounts to: "an interest-free loan in the amount of the deferred taxes on both the contributions to the account and the interest earned on those contributions." This arrangement provides a substantial advantage over a multi-decade career compared to nonparticipation, but those who use it must be able to save enough to take part and earn enough to put them into tax brackets that make participation worthwhile (p. 868). The OMB (*Analytical Perspectives* FY 2013, 252) estimate of IRA totals for FY 2011 is more than \$12 billion. Its estimate for FY 2011 of "net exclusion of pension contributions and earnings" (of which IRAs are a part) was \$118 billion (p. 252).

After their enactment, IRAs were widely marketed by banks, investment brokers, and other financial organizations. By 1978 more

than 2.7 million IRA accounts had been established. However, this amounted to fewer than 10 percent of eligible taxpayers and most were high earners (*Harvard Law Review* note 1981, 872-873). The participation percentage had roughly doubled by 2009, but those with IRAs continued to be relatively affluent (Copeland 2010, 1). IRAs largely failed to motivate widespread retirement savings.

Like many tax incentives, the IRA was inefficient in that it mainly rewarded those who would have saved and invested without the IRA inducement. Dallas L. Salisbury (1985, 48-49), an IRA advocate, attempted to address this criticism with the argument that programs such as the IRA “make a significant dollar contribution to the economic security of workers and retirees, partially due to tax treatment.” (p. 48) This is an obvious and trivial assertion. What is meant by “significant dollar contribution” is not defined, and even if only a single worker was induced by the tax advantage to participate in an IRA, Salisbury could write that worker participation was partially due to tax treatment.

Health insurance

Health care has long been subsidized by tax incentives in many ways including: employer-provided health insurance being excluded from taxation; employee contributions to health savings accounts being tax deductible and employer contributions to health savings accounts being excluded from taxation; deductions for health insurance for the self-employed; and many others (Goldberg & Camic 2009, 74).

According to the OMB, health care insurance tax expenditures for FY 2011 totaled roughly \$171 billion, and affluent taxpayers receive a disproportionate amount of those subsidies (Goldberg & Camic 2009, 74). Fred T. Goldberg & Susannah Camic (2009, 75) observe that private health insurance and the tax code are “deeply entangled” and highly complex, making changes difficult.

In addition to its regressivity, Goldberg and Camic (2009, 77) fault this system for motivating individuals to over-insure themselves and their families, applying the logic that anything that is subsidized and therefore less expensive than its market price, will be over-bought. In a later chapter we add the point that any kind of third party payer system, whether subsidized private insurance or a government provided program

such as Medicare and Medicaid, encourages consumers to ignore or underweight the cost of services. Those costs mainly appear to the consumer in the form of incomprehensible computer-generated bills, with the consumer paying only a fraction of total medical expenses, making comparison shopping highly unlikely.

Over several decades there have been many sponsors of numerous health care subsidy initiatives. If their sole objective was to encourage employers, insurance companies, and consumers to create a (partial) system of health insurance, tax subsidies can be described as effective. But, when efficiency and fairness are also considered, this approach in the forms it has taken cannot be considered a complete success.

Tax deductions for home ownership

The federal government offers several incentives to encourage home ownership (Fogel, Smith, & Williamson 2008). For example, federal tax law permits homeowners to deduct property tax payments, the interest on mortgage payments, and capital gains from home sales (subject to limits) from taxable income (Landis & McClure 2010, 325). The OMB (2013) estimates that for FY 2011 these incentives totaled \$138 billion in taxes not paid to the federal government. It is virtually impossible to estimate the impact of these incentives on home ownership with precision, but many specialists in housing policy believe that it is substantial (Kocieniewski 2010; Stern 2011; Varian 2005; Porter & Leonhardt 2005). For some families the incentives are quite significant. For example, Lawrence Zelenak (2007, 1145) provides the example of a household with a \$400,000 mortgage with a 5 percent interest rate that can save \$5,600 per year in taxes by deducting the interest expense.

The President's Advisory Panel on Federal Tax Reform (2005, 70-72) regarded the mortgage interest deduction as distorting the housing market by encouraging affluent households to assume more debt than they otherwise would for the purchase of vacation and luxury houses. In addition, 46 percent of families with mortgages claimed the standard deduction and thus could not take the mortgage interest deduction (p. 72; see also McKinnon & Timiraos 2010).

Experience with this initiative suggests that an incentive program

must be carefully designed to avoid wasteful side effects (Ventry 2010), although incentives move economic decision makers such as home buyers and builders in directions intended by program sponsors (Fennell 2008).

Tax incentives and U.S. shopping center construction

Thomas W. Hanchett (1996, 1088-1089) begins his discussion of large regional shopping center proliferation with the observation that soon after automobile usage became widespread, the concept of the shopping center arose almost immediately, but four decades elapsed before large shopping centers appeared in significant numbers. It seems likely that the Great Depression and World War II played major roles in delaying the inevitable or seemingly inevitable, a point that Hanchett makes (p. 1090). However, he emphasizes the importance of a 1954 income tax reform called accelerated depreciation that facilitated shopping center construction as well as the development of other types of commercial real estate projects.

Hanchett contrasts his thesis with the conventional wisdom that points to suburban growth and racial tension in inner cities as factors that accelerated shopping center development. He presents case studies of: the “fast-expanding” Charlotte, North Carolina, the “slow-growing small town” Cortland, New York, and the “declining” Scranton and Wilkes Barre, Pennsylvania (p. 1084). Despite their social and economic differences, all three areas experienced explosive shopping center construction beginning in the mid to late 1950s. Hanchett finds equally rapid shopping center growth in the two areas with relatively small African-American populations and in Charlotte, North Carolina with its comparatively large African-American population, although, of course, a sample size of three is not enough to draw firm conclusions. Hanchett also finds no significant relationship between automobile ownership and shopping center development, although, again, the sample size is very small.

Hanchett (p. 1091) observes that even though small local shopping areas were growing along major thoroughfares, by the mid-1950s fewer than two dozen major shopping centers had been built in the entire nation. One reason he emphasizes the importance of accelerated

depreciation is that before it was put in place large suburban shopping centers were not cost-effective even into the early 1950s (pp. 1090-1092). Depreciation as established by law in 1913 and 1916 permitted “reasonable” deductions for “wear and tear” of equipment and buildings, but what constituted “reasonable” was not defined. The predictable result was that businesses took advantage of this wording by making inflated depreciation assumptions. In 1934 the Department of the Treasury, responding to requests by Congress, corrected the problem by establishing straight line depreciation that estimated the useful life of income producing property as X years (e.g., 40 years for buildings) and allowed the deduction of $1/X$ of the property each year.

In 1954, partly due to a recession, Congress replaced straight-line depreciation with two formulas both of which provided much higher deductions in a capital investment’s early years (Hanchett 1966, 1094). Businesses were permitted to select the more advantageous formula. According to Hanchett (pp. 1094-1095), congressional committee hearings on the accelerated depreciation bill were devoted almost entirely to manufacturing equipment and factory buildings with only one witness from real estate interests taking a significant amount of time. A Treasury official described the bill’s impact on shopping centers, office space, and apartments as a happenstance (p. 1094), but apparently it was so important that it made tax advantages the most important reason for new construction to occur. Renovation of existing structures was not given the advantage of accelerated depreciation.

Immediately after passage of the legislation, shopping center planning began, and two years later they began opening in great numbers throughout the United States. From 1949-1955 the yearly average number of shopping centers opening in the U.S. was less than three. In the years 1956-1967 the average jumped to a little over 31 (p. 1098), and the facilities grew in size as the years passed. A comparison with Canada which lacked accelerated depreciation shows that far more shopping construction occurred in the U.S.

Accelerated depreciation also encouraged rapid turnover in project ownership. It was profitable for a project’s builder to sell it after he or she had realized the richest tax advantages. The new owner could then

essentially restart the clock and gain tax advantages from accelerated depreciation although not as much as the first owner. Not surprisingly, frequent ownership turnover discouraged property upkeep (Hanchett 1966, 1103). Once again, we have an example of a tax incentive being used differently than its designers intended with accompanying side effects.

Tax incentives to encourage inner-city housing development

Another example of a tax incentive that generated unanticipated consequences (or at least unanticipated by some) is provided by Ireland. James Berry, Alastair Adair, and Stanley McGreal (1995) report on the use of tax incentives to encourage inner-city housing improvements in Dublin. Their description of disadvantaged people living in deteriorating buildings could apply to virtually any large city in the world. They observe that inner-city housing problems may be partly caused by market failure. Housing needs in normal real estate markets are resolved by competitive markets. However, ghettos give rise to risk and uncertainty that prevent developers from investing, especially when reconstruction projects can involve many years of high costs followed by rewards even more uncertain than is common in real estate.

Berry, Adair, and McGreal list typical command and control (our term, not their's) governmental programs including grants, urban renewal (removal of building tenants followed by razing buildings and constructing new ones), and infrastructure improvements, arguing that these approaches have not been effective in many situations. The Urban Renewal Act of 1986 and the Finance Act of 1986 jointly created the framework for development programs in Ireland. The Urban Renewal Act allowed the establishment of target areas for tax incentive programs created through the Finance Act.

When these initiatives were enacted, the tax incentives targeted commercial property, but within four years demand in that market was filled, and development shifted to residences where there was more opportunity because of such factors as demographics (e.g., increasing numbers of young buyers) and high transportation costs. Tax incentives helped buyers and developers. For example, buyers were allowed to deduct five percent of construction or remodeling costs from

taxable income for ten years, and owners of rental properties were given tax shelters. Resulting savings for both buyers and rental property developers were substantial. There followed increases in developmental activity that broke trends of declines in population and investment. Berry, Adair, and McGreal (1995) credit the urban reconstruction and finance programs with these improvements. Although they do not make this point directly, the fact that programs that began with an emphasis on commercial property were able to shift to residential development suggests that tax incentives might be better able to respond to changing conditions than more traditional government initiatives.

As Berry, Adair, and McGreal describe it, this program appeared to be effective, efficient, and worthwhile. Broadly speaking, it achieved its sponsors' objectives. It appears that few of the businesses and individuals who took advantage of it would have performed the improvement work and moved into the properties without this program, and it may well have saved at least part of the inner city from continued decay. All of this is in marked contrast to urban renewal in the United States—a point discussed in a later chapter.

Luxury taxes on automobiles and boats and a mileage tax on automobiles

A so-called gas-guzzler tax was enacted in the United States in 1978 to discourage the purchase of low mileage cars. A 1990 luxury tax on automobiles selling for more than \$30,000 was enacted with a similar objective. Trucks are excluded from the gas-guzzler tax because of the low fuel mileage inherent in their weight and power, but so are sport utility vehicles and vans. Some believe that the gas-guzzler tax is responsible for a sharp decline in the number of what were once called full size cars and that the luxury tax caused a sharp reduction in sales of high cost (and low mileage) imports, but we have seen no rigorous study to that effect. Still, Congress repealed the luxury tax on cars in 2002.

In addition to the luxury tax on automobiles, the year 1990 also brought a 10 percent tax on boats costing more than \$100,000. The boat tax appears to have had a devastating impact on sales, causing widespread manufacturing plant shutdowns and employee cutbacks (Sokolic 1993;

Salpukas 1992; Carrier 1998, D1). On the other hand, the tax may have stimulated businesses that rebuilt existing boats. Boat reconstruction is relatively common because fiber glass hulls last for decades and engines are replaceable.

These taxes were effective in that they probably reduced the waste inherent in expensive, low gas mileage cars and perhaps boats and encouraged sales of high mileage cars, although it would be difficult to separate the impact of the taxes and that of federal automobile fleet mileage standards together with increasing fuel costs. Furthermore, these taxes generated destructive side effects in some parts of the economy. Nevertheless, they probably reduced the targeted activities, and they did so at minimal expense to the government which was able to use existing agencies and procedures to administer the programs.

Cash for Clunkers

During this 2009 initiative's short life, owners of qualifying low gas mileage automobiles could trade them toward the purchase of a high mileage vehicle. The federal government would contribute a voucher worth up to \$4,500 for the replacement car. This was a direct incentive, not a tax incentive, but it illustrates side effects associated with this well-known program. The biggest problem was that the law that created Cash for Clunkers required that the low mileage "clunkers" be destroyed. The logic behind this initiative was that it would conserve gasoline by removing low mileage cars from the marketplace, and some sponsors also voiced the desire to aid the U.S. auto industry that was suffering from the largest economic downturn since the Great Depression.

Cash for Clunkers was so popular that it exhausted its funding. This wide acceptance demonstrates in a limited way how effective incentives can be (Ahrens 2009). The program was part of the sale of nearly 700,000 high gas mileage cars at a cost of roughly \$3 billion to the federal government. In the narrow sense that this initiative removed some low mileage cars from the road and replaced them with high mileage models, it was effective. But some members of Congress such as Representative Betty Sutton (D-OH) who also hoped that the program would stimulate the U.S. auto industry, wanted a requirement that replacement cars would be assembled in the United

States (*NYT* Cash for clunkers, 4/7/09). Language to this effect did not make it into the statute due to constraints such as international trade agreements, and eight of the top ten car brands purchased were manufactured by Korean and Japanese companies (although some of those cars were built in plants located in the U.S.).

Cash for Clunkers cannot be characterized as efficient. It resulted in substantial waste because of the requirement that the trade-ins be destroyed. This meant that the value of the trade-ins would be lost—part of the energy, raw materials costs, and environmental damage resulting from automobile manufacturing was thrown away. In addition, used car prices increased because of diminished supply thus hurting low income used car buyers (Milbank 2009). Finally, while the program temporarily increased new car sales, that figure was not sustained once the program ended. Cash for Clunkers demonstrated once again that incentives must be carefully designed to avoid undesirable side effects and waste.

Incentives and disincentives

This survey of government incentives and disincentives was not systematic and contained a relatively small number of cases, but they exhibited marked similarities, and we can conclude that:

Tax incentives, direct incentives, and disincentives can be effective in the sense that they sometimes influence target populations to move in desired directions.

Tax incentives and disincentives can allow target populations to decide for themselves whether to respond and in what ways. The personal autonomy inherent in tax incentives and disincentives may make designing these programs a more difficult task than simply issuing regulations.

Tax incentives can be designed to respond quickly to changing conditions, but sometimes such responses arise outside of sponsors' original intentions.

Unanticipated consequences of tax incentives and disincentives may be sufficiently common to warrant expecting such events. The cliché “expect the unexpected” is applicable.

Federal Government/State Government Bureaucracies that Distribute Scarce Resources or Regulate Behavior

A number of important programs utilize federal-state partnerships. Perhaps the best known are air and water pollution control, Medicaid, and No Child Left Behind. There is a broad tendency for liberals to favor initiatives that are run entirely by the federal government and for conservatives to prefer state involvement. Conservatives appear to believe that the state components make these programs more responsive to varying conditions among the states. Whether this belief is well founded will be explored in later chapters.

There are constitutional foundations for state-federal divisions of labor in law enforcement, and the states (along with the localities) have real autonomy in this area. State-federal law enforcement programs are thus quite different from the state-federal programs discussed immediately above.

Chapter Conclusions

As with a physical tool box containing such items as a hammer and screw drivers, all of the major tools for implementing initiatives (and existing government programs) are useful for some tasks and less so for others. We will see in later chapters that liberals and conservatives exhibit marked preferences for particular tools.

Simple court rulings, laws, or executive orders that prohibit or allow given behaviors can be effective and predictable if initiative sponsors only want to prohibit or allow given behaviors. Initiatives that employ these tools have been some of the most important in the more than five decade span of this study including defending and expanding freedom of protected and unprotected speech, legalization of abortion, banning prayer in public schools, and an array of civil rights protections. The effectiveness and predictability of these tools derives from their simplicity: they tend to reduce the prohibited behaviors and increase ones that are permitted, and associated moral/value theories and policy theories are clear.

Much of what government does involves performing large scale, complicated tasks that require large and complicated organizations. The first systematic attempt to address this problem was the development

of hierarchical bureaucracies governed by laws and regulations and operated by employees selected according to objective criteria and protected against political pressure. Among other things, these employees would supposedly apply calculable rules in an unbiased manner.

Unfortunately, bureaucracies suffer from syndromes that hinder their performance. Miller and Rosenfeld (2010, 808) called one group of symptoms intellectual hazard which they defined as biases that “interfere with accurate thought and analysis” within bureaucracies. One such symptom is tunnel vision where the specialist-bureaucrat is assigned a narrowly defined function and he or she sees only what is required to perform that function. Perhaps the most serious aspect of this problem is that this behavior is necessary for the efficient operation of the bureaucracy. It and other forms of intellectual hazard are an integral part of the nature of bureaucracy as described by Weber as well as being causes of failure.

A Weberian bureaucracy can accomplish routine tasks in a stable environment. Social Security is an example. This program is a relatively simple rule based system that does not change rapidly over time and serves many clients. Weber’s rendition of bureaucracy suggests that one of its advantages is efficiency, but he did not explain what motivates bureaucrats to be efficient. Using the United States as an example, a department is headed by a presidential appointee who is not a member of the Civil Service. Theoretically, the department head such as the Secretary of Agriculture or Secretary of the Interior wants to maintain efficient operations because a failure to do so would reflect badly on the president, but the presidential-Secretary relationship is the first of several loose linkages; some appointees are selected as much for their interest group affiliations as loyalty to the president. The day-to-day work of the department is conducted by a layer of presidential appointees and Civil Service employees (as specified by Weber). Congress is also part of this system by way of authorizations and appropriations, as well as Senate ratification of the department heads’ nominations and both houses of Congress are not necessarily controlled by the president’s political party. Aside from the professionalism of some bureaucrats, it is difficult to see what incentives motivate

efficient operations and equally difficult to see how information regarding inefficiencies filters upward to the secretary and the president or to relevant congressional committees.

A large number of federal programs are not routine and are performed in unstable conditions. Bureaucracies are not ideally suited for detecting information regarding their environment because this feedback may be blocked or distorted as it moves through organizational layers, and appropriate responses to new information are equally problematic. On the other hand, many initiatives are implemented by bureaucracies in a manner agreeable to initiative sponsors and their successors. We will see that a major reason for this positive outcome is subgovernment components that work in concert.

So-called organic organizations, using free-flowing consultation instead of vertical command-and-control, might be considered a solution to the rigidity of Weberian bureaucracies, but as government agencies they are stratified structures, governed by laws and regulations, and constrained by interest groups. Examples of government agencies structured organically are rare or nonexistent.

In some cases, complex adaptive systems offer real alternatives to bureaucracies. A complex adaptive system (CAS) consists of independent agents that influence each other's behavior. The agents recognize when they are better or worse off by whatever criterion is applicable. Unlike Weberian bureaucracies or organic organizations, CAS actors are motivated by self-interest to improve their conditions and therefore the CAS as a whole. In every interaction the agents obtain information regarding whether they are better or worse off and change their behavior to increase their well-being. Of course, a market economy is the best example of a CAS. Market-like CASs are not all-purpose substitutes for bureaucracies such as, for example, the Department of Defense. But we will see in later chapters that in some cases CASs might be improvements.

Tax incentives and taxes as disincentives are a specialized but widely used implementation tool. They generally move actors in directions desired by their sponsors, but they must be carefully designed to avoid undesirable side effects. In particular, they can be

inefficient and regressive. Nevertheless, incentives and disincentives can give participants greater freedom of movement than court rulings, statutes, or executive orders.

Some believe that programs that utilize federal-state partnership bureaucracies to distribute scarce resources or regulate behavior facilitate flexibility by allowing states to mold programs to fit local circumstances. Our sense is that the difference between federal bureaucracies and federal-state partnerships is often over stated, but we will examine this question more closely in later chapters.

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