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Legislative Chaos: An Exploratory Study

Vincent Di Lorenzo†

The study of legislative activity is the study of individual dynamics. Various theories have been proposed to explain why legislatures choose certain courses of action, yet each fails to capture the full scope of the dynamic nature of legislative decisionmaking. Proponents of pluralism, one of two dominant theories in the field, have emphasized that legislative decisionmaking is a process of change driven by interest group pressure.¹ Public choice theorists respond that pluralists have focused on the wrong underlying cause, or have failed to reduce the identified cause to its most basic component. Specifically, public choice advocates have identified individual utility maximization as the basic cause and defining force of legislative activity.² In this view, legislators take positions which will increase chances for reelection (electoral advantage) or attract campaign contributions and other support needed for reelection (financial advantage).³

Despite their differences, both pluralism and public choice theory assume that one can uncover one or several underlying causes that induce change and lead to a particular legislative result. In other words, both theories suggest that the legislative process operates in a linear and relatively predictable fashion. This is not to suggest that these theorists do not appreciate the complex nature of the political process—constantly changing coalitions, and the give-and-take of interest groups’ negotiations. Nevertheless, these theories generally encourage a search for the principal and predictable cause of a legislative

† Professor, St. John’s University School of Law, Center for Law and Public Policy. J.D., Columbia University School of Law. Financial assistance for this study was provided by the Faculty Research Program, St. John’s University School of Law. The results of the study were presented as a paper at the Western Political Science Association Annual Meeting, March 10-12, 1994 and the Canadian Political Science Association Annual Meeting, June 12-14, 1994. Helpful comments were also received from Daniel A. Farber, John W. Kingdon, Mancur Olson, and faculty colleagues at the School of Law, St. John’s University.

¹. See generally ARTHUR BENTLEY, THE PROCESS OF GOVERNMENT (1908); DAVID TRUMAN, THE GOVERNMENTAL PROCESS (1951).


Curiously, many case studies have not supported the constant dominant role of one factor that pluralism or public choice would predict. Some empirical studies have identified alternative explanations for particular legislative acts, such as legislator ideology. However, proponents of pluralist and public choice theories have dismissed such alternatives and suggested that the authors of these studies failed to analyze properly the cause uncovered. These critics have sought to recast actions seemingly based in ideology as actions taken to benefit certain interest groups or to maximize utility. Alternatively, the author in question is said to have merely uncovered an infrequent exception to

4. Theodore Lowi summarized the pluralist approach as follows:

It was inevitable that some general notions about power and public policy would develop out of the case-study literature. Together, these notions form what is variously called the group theory, the pressure-group, or the pluralist model of the democratic political system . . . [i]t seemed to provide an instant explanation, in more or less generalizable terms, of the politics of each decision. Analysis requires simply an inventory of the group participants and their strategies, usually in chronological form—for, after all, politics is a process. Each group participant is a datum, and power is attributed in terms of inferred patterns of advantage and indulgence in the final decision.

In group theory, all resources are treated as equivalent and interchangeable. And all the varieties of interaction among groups and between groups and officials are also treated as equivalent, to such an extent that only one term is employed for all forms of political interaction: the coalition.


6. E.g., James B. Kau & Paul H. Rubin, Self-Interest, Ideology and Logrolling in Congressional Voting, 22 J.L. & Econ. 365, 376 (1979); James P. Kalt & Mark A. Zupan, Capture and Ideology in the Economic Theory of Politics, 74 Am. Econ. Rev. 279 (1984). There have been numerous studies which have questioned the reductionist conclusion drawn by both pluralism and public choice theorists. These are summarized and discussed in FARBER & FRICKEY, supra note 5, at 17-33 (1991), and Mark Kelman, On Democracy-Bashing: A Skeptical Look At the Theoretical and 'Empirical' Practice of the Public Choice Movement, 74 Va. L. Rev. 199 (1988). Indeed, the conclusion has been drawn that the supporting evidence for public choice theory is actually quite thin and has shortcomings. FARBER & FRICKEY, supra note 5, at 28-33; Richard A. Posner, Theories of Economic Regulation, 5 Bell J. Econ. & Mgmt. Sci. 335, 352-56 (1974).


8. Id. See also Sam Peltzman, An Economic Interpretation of the History of Congressional Voting in the Twentieth Century, 75 Am. Econ. Rev. 656 (1985).
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the general theoretical framework. While pluralist and public choice theories have been refined, the basic assumptions underlying each theory have not been challenged for the most part. At best, scholars have searched for a larger number of constant factors, or factors which vary depending on the type of legislative product.

There are some exceptions. Some political scientists have rejected the concept of a constant determinant of legislative decisions. They have accepted as well the highly unpredictable nature of legislative policy outcomes. Here too, however, the break with a reductionist viewpoint has been limited to a recognition of complexity as a principle. An alternative theoretical perspective is still needed to explain the highly unpredictable nature of these policy outcomes.

Chaos theory does not merely recognize complexity but embraces it as the norm. It also provides a theoretical framework for explaining that complexity. More importantly, it confronts the prevalence of unpredictability in legislative decisionmaking and the character of that unpredictability. Finally, chaos theory suggests lessons from these findings for the development of legislative policy.

9. Sam Peltzman concludes that when "constituent interest" is given a more appropriate empirical characterization . . . it plays a far larger, even dominant, role in congressional voting, and party and ideology correspondingly smaller roles than heretofore believed." Peltzman, Constituent Interest, supra note 7, at 183. He admits that ideology may play a prominent role in voting on social policy issues, but suggests that future research may reveal that what appears to be shirking on social issues is explicable by constituent demand. Id. at 210. See also Douglas Nelson & Eugene Silberberg, Ideology and Legislator Shirking, 25 ECON. INQUIRY 15, 23 (1987) (finding ideology has greater explanatory power for congressional votes on general defense expenditure bills, as opposed to specific expenditure bills, but concluding that political behavior is consistent with economic theory).

10. An example of such a refinement is the characterization of government officials as a distinct interest group exerting their own demands rather than merely brokering others' demands. See Fred S. McChesney, Rent Extraction and Rent Creation In the Economic Theory of Regulation, 16 J. LEGAL STUD. 101, 102 (1987).

11. E.g., RICHARD FENNO, CONGRESSMEN IN COMMITTEES 276 (1973) (committee decisions are explainable in terms of its members' goals, the constraints of its environment, its decision strategies and its decisionmaking processes); id., at 1 (behavior of members of Congress is dictated by three basic goals: achieving reelection, gaining influence within the House, and making good public policy). A similar reductionist perspective is seen in FARRER & FRICKEY, supra note 5, who respond to the existing evidence by establishing a model based on utility maximization in the form of electoral advantage, but claim it identifies tendencies within the political system rather than explains all politics. See also Geoffrey Brennan & James M. Buchanan, Is Public Choice Immoral? The Case for the "Nobel" Lie, 74 VA. L. REV. 179, 180-81 (1988)(recognizing presence of additional factors, but identifying dominant factor as utility maximization).

12. E.g., Edward J. Mitchell, The Basis of Congressional Energy Policy, 57 TEX. L. REV. 591 (1979) (ideology is an extremely strong predictor of votes on energy legislation). See also Peltzman, Constituent Interest, supra note 7, at 183, 210 (economic motive dominant in congressional decisions, although on social policy issues ideology plays a prominent role).


14. See infra note 32.

The physical sciences have increasingly accepted the position that typical changes in physical structures are not best explained in reductionist or linear terms. Rather than one or several constant forces determining whether change will occur and what will result, scientists now recognize that there are many factors that might induce change and determine outcomes, that the existence and relative importance of each factor is not constant over time or space, and that the outcome can vary widely within boundaries. This recognition is part of an alternative theoretical approach to the study of physical dynamics which has come to be known as chaos theory.

Legislative activity does not involve changes in physical structures but changes in human decisions or choices. Yet is a reductionist or linear approach any more reflective of reality in this area? Recently, economists have begun to doubt the validity of a reductionist and linear approach to human decision-making. Some have suggested that chaos theory better explains changes in the capital markets. Similarly, it has been suggested that chaos theory can be fruitfully applied in psychoanalytic research. I propose that legislative dynamics are best understood when viewed through the lens of deterministic chaos.

Part I of this Article provides a theoretical background to chaos theory, and describes the components of a chaos theory of legislative dynamics. This theory is developed through case studies in Parts II and III. Part II analyzes existing case studies of congressional dynamics. Part III presents a new case study of legislative dynamics, which fleshes out the new theory of legislative chaos.

16. This change is best described in James Gleick, Chaos: Making a New Science (1987).
17. Hans-Walter Lorenz, Nonlinear Dynamical Economics and Chaotic Motion (2d ed. 1993); Santa Fe Institute, supra note 15.
20. The position that chaos theory can be applied to the study of legislative decisions has been advocated in earlier writings, but it has not been fully explored or detailed. See Norman Schofield, Formal Political Theory, 14 QUALITY & QUANTITY 249 (1980); Diana Richard, Is Strategic Decision Making Chaotic?, 35 BEHAV. SCI. 219 (1990). In addition, chaos theory has been applied to other areas of legal and social decisionmaking. See, e.g., Glenn Harlan Reynolds, Chaos and the Court, 91 COLUM. L. REV. 110 (1991) (applying chaos theory to constitutional scholarship); Alicia Juarrero-Roque, Fail-Safe Versus Safe-Fail: Suggestions Toward an Evolutionary Model of Justice, 69 TEX. L. REV. 1745 (1991) (applying chaos principles to social theory); John S. Murray, Improving Parent-Child Relationships Within the Divorced Family: A Call for Legal Reform, 19 U. MICH. J.L. REF. 563 (1986) (applying chaos theory to legal structures governing family relationships).
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presented in this Article. That study is of New York State legislation from 1958 through 1993 relating to condominium and cooperative housing. Before this period, there was no legislative activity with respect to condominium or cooperative housing. The study thus encompasses the complete time frame of legislative dynamics. It also contains a nationwide study of state legislative enactments on the issue of real estate developer self-dealing, which permits further analysis of principles of chaos theory.

At first, chaos theory may appear to be a disturbing alternative to public choice or pluralism, for it demands that we embrace uncertainty. On closer examination, however, chaos theory is a comforting alternative. First, it serves to sustain hope in the democratic process. Despite long periods of unmet need, and despite prior experiences with legislative unresponsiveness, the unpredictable nature of legislative action, which is at the core of chaos theory, keeps hope alive. In addition, a legislative body characterized by deterministic chaos should be better able to respond to rapidly changing conditions. A body influenced only by interest group pressure or self-interest is actually less responsive to changing needs—needs not immediately reflected by interest groups and not required to be addressed by considerations of self-interest. Finally, the aperiodic nature of legislative decisions discussed below makes them not only inherently unpredictable but also intrinsically creative. Complex variations are generated which may better address public needs, tailored to unique local conditions.

I. LEGISLATIVE CHAOS: A THEORETICAL EXPLORATION

After studying the articles in this symposium, I realize why I have found it hard to read or to profit from the “public choice” literature. The politicians and other people I have known in public life just do not fit the “rent-seeking” egoist model that the public choice theorists offer. . . . I have known a lot of public people over the years. Some undoubtedly fit the cynical description of “rent-seekers,” but most have not. I obtained my research from the field, unlike Professors [Geoffrey] Brennan and [James A.] Buchanan, who use equations and graphs. I have spent much time talking to politicians, watching them work, trying to figure out what they would do and why. I was wrong as often as I was right in my predictions. My quarter-century of empirical research persuades me that the quantification of a public person’s behavior for the purpose of predicting future behavior is even less useful than most otherquantifications of human behavior.21

A. An Introduction to Chaos Theory

Chaos theory recognizes that the process of change is frequently unpredictable. At times the moment of change is unpredictable, at other times the period of turbulence that results when change begins is unpredictable, and in all cases the new outcome is unpredictable.

In the past, scientists assumed that this appearance of unpredictability was due to our failure to understand properly the forces at work. If we could identify the precise cause(s) of change and the effects of such cause(s), then we would be able to predict and control these changes. The assumption was that there existed one or a small number of causes, which, once revealed, would produce predictable effects.

Physical scientists have increasingly abandoned this viewpoint. They recognize instead that in many physical systems the process of change is inherently unpredictable. There are several reasons for this conclusion. First, change results from the interaction of many forces. Such forces are constantly changing, and the effect of their interactions is constantly changing as well.22

Second, the effect of small changes in the initial conditions upon which the forces of change are exerted multiplies over time. The cumulative result is a large difference in outcome. This is the concept of sensitive dependence on initial conditions.23 Sensitive dependence is difficult to prove in legislative contexts, because of an inability to recreate a decisionmaking process with small variations in one discrete component.

Third, changes occurring in physical systems are nonlinear in character.24 In linear systems there is a proportionate relationship between cause and effect, and the mathematical relationship between variables is stable. In nonlinear systems the cause-effect relationship is not proportionate and that between variables is dynamic, rather than stable.

24. GLEICK, supra note 16, at 23-25, gives examples of nonlinear relationships:

Without friction a simple linear equation expresses the amount of energy you need to accelerate a hockey puck. With friction the relationship gets complicated, because the amount of energy changes depending on how fast the puck is already moving. Nonlinearity means that the act of playing the game has a way of changing the rules. You cannot assign a constant importance to friction, because its importance depends on speed. Speed, in turn, depends on friction. That twisted changeability makes nonlinearity hard to calculate, but it also creates rich kinds of behavior that never occur in linear systems. In fluid dynamics, everything boils down to one canonical equation, the Navier-Stokes equation. It is a miracle of brevity, relating a fluid’s velocity, pressure, density, and viscosity, but it happens to be nonlinear. So the nature of those relationships often becomes impossible to pin down. Analyzing the behavior of a nonlinear equation like the Navier-Stokes equation is like walking through a maze whose walls rearrange themselves with each step you take.

Id. at 24.
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Fourth, the point at which the physical item settles when undergoing a process of change—the equilibrium point—is not one fixed point. Rather, there are many points at which the item could settle, and the point which will be chosen is unpredictable. This is referred to as the aperiodic nature of change.25

Finally, natural systems do not exist in isolation, but in an environment. This environment is itself in flux. Alterations in the environment cause exact duplications to be impossible; initial conditions change, and the causes of change and the interaction of forces may be altered. These alterations in the environment constitute a feedback effect, the result of both earlier changes in the system in question and other unrelated spurs to change.

While physical changes are unpredictable, they are not random.26 Rather, outer boundaries, called “strange attractors,” constrain possible outcomes.27 The forces that cause outcomes to remain within such boundaries are generally still a mystery.28 Scientists disagree on this last point. Some take the position that strange attractors serve as the organizing constraint to the seemingly chaotic nature of physical changes.29 Others are of the view that a period of turbulence, which appears to be chaotic in nature, accompanies the onset of change; yet nature evolves or searches for a new order around which to organize itself.30 The former view is that order constrains chaos. The latter view is that chaos transforms itself into order. The outcome of this debate does not, however, suggest major implications for the analysis of legislative action presented here.

Chaos theory also opines repetitions of a pattern in different scales within a physical structure. The repetitions are not identical but similar, in the sense that they reflect a pattern. Theorists refer to this phenomenon as scaling or as the fractal nature of the structure.31

25. See GLEICK, supra note 16, at 299-300 (describing the aperiodic character of biological organisms).
27. The term was used in David Ruelle & Floris Takens, On the Nature of Turbulence, 20 COMM. IN MATHEMATICAL PHYSICS 167 (1971). See also GLEICK, supra note 16, at 133.
28. We must distinguish between understanding what serves as the strange attractor, and understanding why it exists. See COHEN & STEWART, supra note 26, at 242-45. Some understanding has been reached on either or both of these questions as to specific physical phenomena. E.g., Sean B. Carroll et al., Pattern Formation and Eyespot Determination in Butterfly Wings, Sci., Jul. 1, 1994, at 109 (identifying and explaining how a handful of genes in the embryonic wing disks mark the position of each cell in the future butterfly wings).
29. COHEN & STEWART, supra note 23, at ch. 7.
31. GLEICK, supra note 16, at 98 (describing the work of Benoit Mandelbrot). Fractal structures are common in the human body, for example.

Not immediately, but a decade after Mandelbrot published his physiological speculations, some theoretical biologists began to find fractal organization controlling structures all through the body. The standard "exponential" description of bronchial branching proved to be quite wrong; a fractal description turned out to fit the data. The urinary collecting system proved fractal. The biliary duct in the liver. The network of
B. A Model for Legislative Activity Based on Chaos

Chaos theory, as a framework for analysis of legislative activity, is characterized by three component principles:

1. There are many types of causes of legislative change and the existence and influence of each is not consistent over time and space.
2. Legislative decisionmaking is a feedback system. This helps to induce the first principle, and can lead to turbulence and evolution.
3. There is a prevailing legislative signature that constrains outcomes, as does a strange attractor in physical dynamics. However, in legislative activity the signature is not universal or pervasive. In addition, within the constraints of any signature, there are many possible equilibrium points for legislative choice. In other words, actual choices are unpredictable within one legislative body (nonconstant scaling), and across legislative bodies (aperiodic repetitions). One reason for such aperiodic behavior may be that legislative dynamics are sensitive to changes in initial conditions.

The cumulative result is that legislative decisionmaking is highly unpredictable. Whether action will be taken is unpredictable. If taken, the details of the enactment are also unpredictable. All three principles support the nonlinear character of legislative decisionmaking.

The premise that there are many types of factors that individually or in combination cause legislative action, including interest group pressure and utility maximization, underlies the invocation of chaos theory. None of these factors consistently determines legislative outcomes. Typically, the confluence of several factors sparks legislative action, and the mix is a constantly changing

special fibers in the heart that carry pulses of electric current to the contracting muscles. The last structure, known to heart specialists as the His-Purkinje network, inspired a particularly important line of research. Considerable work on healthy and abnormal hearts turned out to hinge on the details of how the muscle cells of the left and right pumping chambers all manage to coordinate their timing. Several chaos-minded cardiologists found that the frequency spectrum of heartbeat timing, like earthquakes and economic phenomena, followed fractal laws, and they argued that one key to understanding heartbeat timing was the fractal organization of the His-Purkinje network, a labyrinth of branching pathways organized to be self-similar on smaller and smaller scales.

Id. at 109.

32. Heinz, Laumann, Nelson and Salisbury found outcomes to be unpredictable in their study of congressional decisions in four policy areas—agriculture, energy, health and labor—during the period 1977-1982. Heinze et al., supra note 13, at 352-58. They noted that outcomes turn on particular factors that vary from issue to issue. John Kingdon found similar unpredictability in his study of legislative agenda setting in the United States Congress. He found unpredictable, rather than incremental, jumps in placement on the legislative agenda and often unpredictable opening of policy windows, and he opined an unpredictable choice of outcomes. Kingdon, supra note 13, at 83-88, 188, 190-91.
The case studies in Parts II and III identify seven such factors. They are:

- policy entrepreneurs
- interest group pressure
- publicity
- pervasive ideological commitment
- electoral advantage
- legislative procedure
- chance

Policy entrepreneurs are members of government or their staff who introduce legislation and influence its course, and have an individual commitment to either legislative action or preservation of the status quo. This commitment may not be widely shared, and it is not induced by electoral advantage or interest group pressure. The policy entrepreneur is the initiator of the course of action or inaction.

Publicity refers to media coverage. Other factors such as policy entrepreneurs or interest groups may cultivate it. However, the nature and extent of coverage remains beyond their control. Publicity frequently arises on its own, moreover, not cultivated to any significant degree by legislative actors or private interest groups. As discussed below, the extensive coverage concerning financial defaults in New York State cooperatives during the period after December 1989 offers an example of such publicity.

Pervasive ideological commitment refers to a personal commitment to a course of action which is generally shared among legislators. Electoral advantage or interest group pressures do not compel it. There are two differences between pervasive ideological commitment and the existence of a policy entrepreneur or advocate. First, the policy entrepreneur's commitment need not be widely shared. Second, the policy entrepreneur is the initiator of action, whereas individuals sharing a pervasive commitment merely support a proposal initiated by others.

Electoral advantage refers to actions motivated by a desire to appeal to voters or to avoid risk to chances of reelection. The effect on electoral chances must be more than minimal, or at least perceived as such. Pervasive ideological

33. A similar conclusion was reached in John Kindgon's study of the setting of legislative agendas in the United States Congress. Kingdon found very few single factor explanations for high placement on the agenda. Rather placement was due to the joint effect of several factors coming together, and not to the effect of one or another of them singly. It was interactions among the factors that was important—and joint effects that were so powerful. KINGDON, supra note 13, at 78-82, 188.

34. The term "policy entrepreneur" was originally used by John Kingdon. Id. at 129. His definition of the term differs, however, from this author's usage.

35. See infra notes 139 and 143 and accompanying text.
commitment and electoral advantage at times closely coexist and are often
difficult to separate.

Legislative procedure refers to the structure of the legislative branch and
its mode of action, especially its written and unwritten rules and their use. It
includes compromise to induce sufficient support among proponents of various
approaches to secure passage. Legislative procedure may allow otherwise
unpopular or controversial provisions within a statute to pass because
legislators have focused their primary attention on other aspects of the
statute.36

Chance refers to a turn of events external to the specific legislative proposal
and the deliberations regarding it, which was not certain to occur and in many
cases was unexpected. Typically, chance occurrences cause other factors to
arise, such as the emergence of a policy entrepreneur. However, chance
occurrences themselves can also influence legislative decisions to the same
extent as interest group pressure.37

A recurring conclusion flowing from chaos theory is that change—from
legislative inertia to action—is unpredictable. The very existence of some of the
factors inducing change—e.g. chance and publicity—cannot be predicted even
in the short-term. The strength of any one of these factors at a particular point
in time similarly cannot be predicted. Not only is there unpredictability as to
the existence and strength of each factor that may induce legislative action, but
both existence and strength are strongly affected by feedback, which has a
cumulative influence over time. Feedback encompasses all changes that are
perceived by participants in the legislative process and by the legislative
decisionmakers. The changes are in any factual state of affairs, the availability
of information, or conclusions regarding a known state of affairs. The existence
of a feedback effect as well as the intensity of its effect are additional
unpredictable variables. Finally, the effect produced by the interaction of these
factors is also unpredictable, and yet determines whether action occurs. In sum,
while in the near-term (perhaps within a legislative session) one may
reasonably hope to predict the probability of legislative activity, legislative
activity becomes less and less predictable as time passes.

A word of caution is in order. There is no attempt in this Article to
substitute a constant, multiple-factor linear approach for the one-factor

36. The federal Rehabilitation Act of 1973 provides a valuable example. Section 504 of the Act
extended civil rights protection to disabled persons. Such a proposal had earlier been defeated when
presented on its own. As part of the Rehabilitation Act, however, it slipped by unnoticed as debate
centered on provisions for increased funding for rehabilitation programs. RICHARD K. SCOTCH, FROM
GOOD WILL TO CIVIL RIGHTS 43-54 (1984). See also ROBERT A. KATZMANN, INSTITUTIONAL
DISABILITY 45-95 (1986); STEPHEN L. PERCY, DISABILITY, CIVIL RIGHTS AND PUBLIC POLICY 54
(1989).

37. The death of Senator Kerr, Chair of the Senate Finance Committee, which critically weakened
Senate opposition to the federal Medicare proposal, is an example of such influence. See MARTHA
DERTHICK, POLICYMAKING FOR SOCIAL SECURITY 326 (1979).
approach which prevailed in the past. Some political theorists who have developed their conceptual framework from complexity theory might make such an attempt.\textsuperscript{38} The evidence discussed in this Article, however, suggests that even this framework is inadequate to explain the subtleties of legislative dynamics. The disparate nature of the seven factors identified above indicates there is no general \textit{type} of influence which was found. Moreover, other studies may reveal many types of influences beyond the seven identified above. Finally, influences such as chance and publicity are inherently uncontrollable and, in combination with other forces, lead to unexpected periods of turbulence.

As important as the decision to act or not to act is the nature of the action—the details of the enactment. In this Article I refer to this as the equilibrium points reached at a particular moment in time. There are typically many possible equilibrium points that the factors inducing change may embrace. Which equilibrium point will in fact be embraced is also an unpredictable conclusion.

This is not to suggest that legislative activity is random.\textsuperscript{39} Rather, there exists a pattern governing legislative activity in a particular field or as to a particular subject matter which constrains decisions by establishing boundaries for them. I refer to these constraints as a legislative signature. What creates the signature is a matter for future study. Unlike the fixed pattern uncovered by chaos theorists studying physical phenomena, in legislative chaos there exists a prevalent pattern (signature) that is not universally adopted by all lawmaking bodies. Moreover, when adopted by one legislative body it is not consistently followed in all subsequent enactments on the same subject matter. This is a final area of unpredictability.

II. LEGISLATIVE CHAOS AT WORK: REEXAMINING EXISTING CASE STUDIES

You don't see something until you have the right metaphor
to let you perceive it.\textsuperscript{40}

Existing case studies of legislative behavior show evidence of legislative chaos, although the authors of these studies were inattentive to this evidence. In order to analyze existing data in light of chaos theory, a study of legislative actions on the same issue spanning a number of years is required. This type of study is referred to as a time series study. A time series study permits comparisons of the influences of various factors on legislative decisions at

\textsuperscript{38} See \textit{Fenno}, \textit{supra} note 11.

\textsuperscript{39} John Kingdon found a similar unpredictable but not random quality to the setting of legislative agendas. \textit{Kingdon}, \textit{supra} note 13, at 216-18.

various points in time, and identification of a feedback effect. In addition, a
detailed case study that collects and presents data on any and all possible
influences on decisionmaking, rather than only one factor, is required. Finally,
in order to determine if legislative decisions are characterized by sensitive
dependence on initial conditions and by infinitely differential responses
(aperiodic behavior), it is useful to study the decisions made about the same
issue by various legislative bodies. This type of study is referred to as a spatial
comparison study.

Many case studies of the legislative process have been completed as
histories without espousing a particular theory of legislative activity. I searched
for evidence either supporting or rejecting a reductionist, linear model of
legislative dynamics in existing case studies. I have limited the number of case
studies to be reexamined to three. Time series studies were necessary to study
both the nonconstant influence of factors inducing legislative action and the
feedback effect. Thus, case studies involving enactment of just one bill were
excluded. From among the available time series studies, I chose three types of
case studies for analysis: (a) one involving an issue for legislative decision-
making that one would expect to be dominated by interest group pressure and
financial advantage; (b) one involving an issue that one would expect to be
dominated by a desire to appeal to voters (electoral advantage); and (c) one
involving an issue that one would expect not to be dominated by interest group
pressure, financial advantage, or electoral advantage.

The study of congressional decisions on trade policy during the 1953-62
period, conducted by Raymond Bauer, Ithiel de Sola Pool, and Lewis Dexter
satisfied the expectation of an issue dominated by interest group pressure and
financial advantage. The study of changes in social security during the
period 1950 to 1972 conducted by Martha Derthick satisfied the expectation of
an issue dominated by a desire to appeal to voters (electoral advantage). The
study of congressional decisions on civil rights protections for disabled persons
during the 1968-75 period conducted by Stephen Percy, with additional
detail provided by Richard Scotch, satisfied the expectation of an issue not
dominated by interest group pressure, financial advantage, or electoral
advantage.

In all of these studies the factors which the authors recognized as playing
a cognizable role in the deliberations concerning passage or defeat of the
legislation are listed and categorized by type. In addition, whenever action
(whether passage or defeat) is likely not to have occurred without the influence
of a particular factor, then that factor is described as a “key determinant” of

42. Derthick, supra note 37, at 295-429 (1979).
43. Percy, supra note 36.
44. Scotch, supra note 36. Additional details are also provided by Katzmann, supra note 36.
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action.

The case studies discussed deal solely with actions of the United States Congress. In part, this is because there are few detailed, time series case studies of state legislative action. A study of state legislative action is provided in Part III. In addition, while the case studies discussed here are time series studies, they are not spatial comparison studies. This type of study is necessary to judge the aperiodic character of legislative dynamics and sensitive dependence on initial conditions. Part III thus contains both additional study of state activity and a cross spatial comparison.

A. The Bauer, Pool, Dexter Tariff Study

Bauer, Pool, and Dexter's study of federal tariff legislation analyzed the factors leading to passage of four bills: (a) the 1953 renewal of the Reciprocal Trade Act; (b) the 1954 renewal of the Reciprocal Trade Act; (c) the 1955 renewal of the Reciprocal Trade Act; and (d) the 1962 Trade Expansion Act. This was a period in which Congress felt conflicting pressures. In the past, protection of United States industries had been accomplished through imposition of tariffs by Congress. By the 1950s, tariffs were probably no longer the most important barrier to trade, few infant industries in the U.S. were in need of their protection, and tariffs were no longer the important source of revenue they had been. Stimulation of international trade was seen as increasingly necessary. However, a number of U.S. industries were feeling the impact of increased competition from postwar revival of European and Japanese industries. In this climate, Congress authorized a one-year extension of the Reciprocal Trade Act in 1953, another one-year extension in 1954, and a three-year extension in 1955. This was subsequently renewed until 1962, when President Kennedy called for expanded power to cut tariffs.

The following is a schematic diagram of the factors leading to the four legislative decisions studied by Bauer, Pool, and Dexter.

Overall, Bauer, Pool, and Dexter found that legislative decisions were not determined by interest group pressure. They found, in fact, that lobbyist groups were poorly organized and underfunded. Recent evidence has cast doubt on the latter conclusion as a general proposition, but not on the former.
Key determinants of legislative action

Similarly, self-interested utility maximization, in the form of financial advantage or electoral advantage, was not a constant determinant of legislative decisions, according to Bauer, Pool and Dexter. As noted above, interest groups who might reward receptive legislators financially were not very active or successful. In only one of the four decisions studied was electoral advantage a key determinant, and in two of the four decisionmaking processes it was, for all practical purposes, nonexistent. Thus, Bauer, Pool, and Dexter found that neither interest group pressure nor utility maximization were constant, dominant determinants of legislative action. In fact, no factor was a constant and strong determinant of change. Additionally, the force of each factor varied substantially from one proposal to the next.

B. The Derthick Social Security Study

Derthick’s study of policymaking and the Social Security Act provides detailed information and time series studies concerning three distinct components of the Social Security program: (a) disability benefits, (b) federal health insurance (including Medicare), and (c) increases in cash benefits.

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The following schematic diagram summarizes Derthick's case study of disability benefits legislation. The four legislative enactments in the 1950-56 period reflect a gradual expansion of benefits for disabled persons under the Social Security program. This expansion varied in form. In 1950, the federal government established a program of grants-in-aid to state governments for support of disabled persons who were also poor. In 1952 and 1954, the legislative activity resulted in an exclusion of years of disability when a worker's OASI eligibility and benefits were calculated. Finally the 1956 legislation initiated federal cash benefits for disabled persons.

Disability Benefits Legislation

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</thead>
<tbody>
<tr>
<td>policy entrepreneurs</td>
<td>Y</td>
<td>Y</td>
<td>Y*</td>
<td>Y*</td>
</tr>
<tr>
<td>interest group pressure</td>
<td>Y*</td>
<td>Y*</td>
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<td>Y</td>
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<td>publicity</td>
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<tr>
<td>pervasive ideological commitment</td>
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<tr>
<td>electoral advantage</td>
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<td>Y*</td>
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<tr>
<td>legislative procedure</td>
<td>Y*</td>
<td>Y</td>
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<td>Y*</td>
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<tr>
<td>chance</td>
<td></td>
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<td>Y</td>
<td>Y</td>
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</tbody>
</table>

* Key determinants of action

This diagram demonstrates the first principle of chaos theory: There are many causes of legislative action, and no single cause constantly determines outcomes. Interest group pressure was consistently present, but did not always play a determinative role. Electoral advantage was not even consistently present.

Derthick also examines federal health insurance legislation from 1948 to 1965, focusing on the fate of four legislative proposals: (1) the defeat of a national health insurance proposal in the period 1948-50; (2) the defeat of the Forand bill, which would have provided surgical, hospital, and nursing-home care to OASI recipients in 1957; (3) the failure to act on a federal health insurance proposal similar to the Forand bill in the period 1960-64 (after
adoption of the Kerr-Mills Act in 1960, which provided grants-in-aid to states for a new form of public assistance called Medical Assistance to the Aged); and (4) the enactment of Medicare in 1965. The following schematic diagram summarizes Derthick's conclusions:

Federal Health Insurance and Medicare Proposals

<table>
<thead>
<tr>
<th>Factors</th>
<th>1948-50</th>
<th>1957</th>
<th>1960-64</th>
<th>1965</th>
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</thead>
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<td>Y*</td>
<td>Y</td>
<td>Y*</td>
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<tr>
<td>publicity</td>
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<td>Y</td>
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<td>pervasive ideological commitment</td>
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<td>Y*</td>
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<td>electoral advantage</td>
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<td>legislative procedure</td>
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<tr>
<td>chance</td>
<td></td>
<td>Y</td>
<td>Y*</td>
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</tbody>
</table>

* Key determinants of action.

** Legislative procedure played the key role in enactment of Part B of Medicare (as well as earlier enactment of the Kerr-Mills Act).

Once again, no single factor exercised a constant, significant influence on legislative decisionmaking, and no one factor was the sole or dominant determinant of legislative action or inaction.

Derthick's study of cash benefit increases in Social Security examines in most detail the thirteen-percent benefit increase in 1967 and twenty-percent benefit increase in 1972. The following schematic diagram summarizes Derthick's evidence.
Legislative Chaos

Cash Benefit Increases

<table>
<thead>
<tr>
<th>Factors</th>
<th>1967 Bill</th>
<th>1972 Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>policy entrepreneurs</td>
<td>Y*</td>
<td>Y*</td>
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<tr>
<td>interest group pressure</td>
<td>Y*</td>
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<td>pervasive ideological commitment</td>
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<td>electoral advantage</td>
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<tr>
<td>legislative procedure</td>
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<td>chance</td>
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<td>Y</td>
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</tbody>
</table>

* Key determinants of legislative action

Interest group pressure and electoral advantage both played important but not decisive roles. Neither factor always determined outcomes and, when playing a key role, neither was a sole determinant of outcomes. These conclusions are true both in a field one would expect to be dominated by interest group pressure (i.e. trade legislation) and a field one would expect to be dominated by electoral advantage (i.e. Social Security legislation).

C. The Percy-Scotch Disabled Persons Civil Rights Study

Stephen Percy conducted a time series study of federal legislation extending civil rights protection to disabled persons.\(^{53}\) Percy analyzed the factors leading to passage of three bills: (a) the 1968 Architectural Barriers Act, ensuring access to public buildings by physically disabled persons;\(^{54}\) (b) section 504 of the 1973 Rehabilitation Act, forbidding discrimination against handicapped individuals under any program or activity receiving federal financial assistance;\(^{55}\) and (c) the 1975 Education for All Handicapped Children Act, requiring states, as a precondition for receiving federal funds, to ensure that they provide free and appropriate education to all handicapped children.\(^{56}\)

\(^{53}\) PERCY, supra note 36.

\(^{54}\) Id. at 49-52.

\(^{55}\) Id. at 52-55.

\(^{56}\) Id. at 55-62.
Richard Scotch has studied section 504 of the 1973 Rehabilitation Act, and provides additional details for analysis.

The following schematic diagram categorizes the factors leading to legislative action on the bills studied by Percy and Scotch.

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<td>policy entrepreneurs</td>
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<td>chance</td>
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<td>Y</td>
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</table>

* Key determinants of legislative action

The Percy-Scotch case study indicates that a reductionist view of the legislative process is flawed. The commitment of policy entrepreneurs was the key determinant of action on two of the three bills studied. The case study does not, however, indicate that we should search for another constant explanation for legislative decisionmaking, such as legislator ideology, which leads to emergence of a policy entrepreneur. Rather, the conclusion resulting from examination of the seventeen legislative initiatives is that many factors influence legislative action at every point in time. Each factor is not always present, nor are any one or several factors always determinative of legislative action.
Legislative Chaos

D. Shattering Reductionist Conclusions

The three case studies scrutinize congressional decisionmaking on three distinct types of issues over a period of more than twenty-five years. This cross-issue, time series scrutiny shows that neither interest group pressure nor self-interest in the form of financial or electoral advantage is the sole or dominant cause of legislative action. Interest group pressure (which might also be reflected in financial advantage) was not universally present in the seventeen bills studied. It was entirely absent as a noticeable influence almost twenty-five percent of the time. Moreover, even when present it did not solely or consistently determine outcomes. Interest group pressure had an important impact on passage of the legislation studied in only six of the seventeen cases. It was the sole motivating determinant of legislative action in only two of those six cases.

The cross-issue time series scrutiny in this Article also clarifies the role of self-interested utility maximization in the form of electoral advantage. It was entirely absent as a noticeable influence in almost half the seventeen legislative actions studied. When present, it had an important impact on passage of the legislation in only six of the seventeen cases. It was the sole motivating determinant of legislative action in only one of those six cases.

The table below summarizes the frequency with which the seven factors studied in this Article had an influence on the legislative actions examined in this section. The table summarizes the existence of the factor as a force, not its determinative effect.

Many factors are present and influence every legislative action. But reductionist viewpoints should not simply be recast by expanding the number of forces deemed consistently influential. Even when focusing on the eight cases (forty-seven percent) in which three factors influenced decisions, the same three factors were not influential in all eight cases. No single factor consistently determines outcomes. Rather, several key determinants come together to spark action, and the mix constantly changes.

III. New Evidence of Legislative Chaos

For years, a bill requiring advertisers to attach safety warnings to liquor commercials has collected more dust than votes. Then Nancy Moore Thurmond, the 22-year old daughter of the Republican Senator from South Carolina, was run down and killed by a drunken driver last month.

Her death gave the legislation a new life.

57. In their study of congressional decisions in four policy areas—agriculture, energy, health and labor—during the period 1977-82, Heinz, Laumann, Nelson and Salisbury came to the same conclusion. They found that the formidable array of groups in each policy area neither dictates the content nor decisively determines the policy agenda. Heinz ET AL., supra note 13, at 57.

Frequency Distribution of Influences

<table>
<thead>
<tr>
<th>Number of Factors Exercising Influence (Total No. of Factors Studied = 7)</th>
<th>Frequency of Numerical Confluence (Total No. of Bills studied = 17)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>1 (6%)</td>
</tr>
<tr>
<td>3</td>
<td>8 (47%)</td>
</tr>
<tr>
<td>4</td>
<td>2 (11.8%)</td>
</tr>
<tr>
<td>5</td>
<td>3 (17.6%)</td>
</tr>
<tr>
<td>6</td>
<td>3 (17.6%)</td>
</tr>
<tr>
<td>7</td>
<td>0</td>
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</tbody>
</table>

The results of two original studies are presented below. First, a time series study focusing on the New York State Legislature provides strong evidence of the unpredictable nature of legislative dynamics. It shows clear evidence of a feedback effect. Second, a spatial comparison study and a nationwide comparison of legislative equilibrium points on the issue of real estate developer self-dealing are also analyzed. It shows the existence of boundaries constraining choices, but also the aperiodic nature of legislative activity and the nonconstant nature of legislative patterns.

The time series case study focuses on all enactments of the New York State Legislature relating to condominium and cooperative housing over the 1958-93 period. The subject of the study was almost nonexistent prior to 1958 and was not subject to statutory regulation before 1960. The case study presents the complete time frame of legislative developments. The subject of the study would be expected to generate interest group pressure (from real estate and tenant interests), financial advantage (from real estate interests), and electoral advantage (from tenants). Thus, it is an ideal candidate for study of the competing reductionist claims of pluralist and public choice theorists.

The 1958-93 timeframe actually consists of eight periods during which the Legislature considered distinct actions. These periods are: (a) 1958-60, in which state oversight of the sales process was debated and finally enacted in the form of a disclosure statute; (b) 1964, in which the New York Condominium Act was enacted; (c) 1973-76, in which tenants were granted veto power over conversions through a requirement that thirty-five percent must purchase in order to declare a plan effective; (d) 1977-78, in which this tenant protection was allowed to expire, but was later replaced with a thirty-five-percent purchase requirement only for eviction plans in certain counties in the State;
Legislative Chaos

(e) overlapping 1977-79, during which special protections against evictions were enacted for senior citizens; (f) 1982-83, in which special protections were enacted for disabled persons and extended for senior citizens; (g) 1980-83, in which the purchase requirement for eviction plans was increased to fifty-one percent of tenants but applied only to New York City and Nassau, Westchester and Rockland counties (at local option); and (h) 1990-93, in which there were substantial numbers of defaults by developers and the Legislature considered protections for unit owners.

A. Multiple, Non-Constant Causes

Legislative dynamics during these eight periods expose many significant causes of legislative action or inaction at various points in time. This casts doubt upon the pluralists' conclusion that such action results from interest group pressure. Many of the causes, such as ideological commitment, chance, and often publicity, are unrelated to interest group pressure. The public choice advocates' conclusion that actions result from individual decisions to maximize utility is also false. Ideological commitment and chance, and perhaps publicity, are unrelated to utility maximization on the part of the legislators.

For purposes of this study, evidence of the factors which induced such action or inaction comes from three sources: (a) a review of documents constituting the legislative history of each bill enacted during the periods in question (i.e., all memoranda and letters in the Governor's Bill Jacket for each bill, and the Legislative Memorandum and Governors' Executive Memorandum on each bill for which they are available); (b) news accounts regarding the legislation proposed and the legislation enacted; and (c) interviews with individuals involved in drafting, sponsoring and/or supporting the legislation in question.

In all of the legislative enactments in this case study, those identified as

59. Interviews were conducted with the following individuals: Warren Anderson (member of the New York State Senate 1953-88; Senate majority leader 1973-88); David Clurman (Assistant Attorney General, New York State Department of Law 1952-75; Director, Bureau of Securities and Public Financing 1970-75); Irwin Fingerit (attorney representing section 213 cooperatives in the early 1960s); Daniel Furlong (principal attorney, Real Estate Financing Bureau, New York State Department of Law 1970-81 and Special Deputy Attorney General); R. Scott Greathed (first Assistant Attorney General, Real Estate Financing Bureau, New York State Department of Law 1984-90); Harold Lubell (Assistant Attorney General in charge of the Real Estate Financing Bureau, New York State Department of Law 1979-80); Frederick Mehlem (Assistant Attorney General, Real Estate Financing Bureau, New York State Department of Law 1985-90; bureau chief 1990-92); James Morrissey (Assistant Attorney General 1982-85, in charge of Real Estate Financing Bureau, New York State Department of Law 1983-85); Robert Robbin (Assistant Attorney General in charge of Real Estate Financing Bureau, New York State Department of Law 1980-81; General Counsel, New York City Department of Housing Preservation and Development 1977-80); Charles Rappaport (President, Federation of New York Housing Cooperatives); Jane Rosenberg (Assistant Attorney General and legislative lobbyist, New York State Department of Law 1981-85); Richard Runes (Counsel, State Senate Housing Committee 1982-91); Kenneth L. Shapiro (Counsel to Minority Leader, New York State Assembly, 1970-74; Counsel to Assembly Speaker, 1973-88).
playing a role in the deliberations concerning passage or defeat of the legislation are enumerated and categorized by type. In addition, a factor is described as a "key determinant" of action whenever that action (whether passage or defeat) is likely not to have occurred without the influence of that factor.

The schematic diagram below summarizes the factors leading to the eight decisions which form the New York legislative case study presented in this section. This summary illustrates that no single factor influenced each decision-making process. Although interest group pressure of some form was always present, the specific groups exerting pressure differed in different cases. Tenant group pressure, for example, was absent in the 1960 legislation, unit owner group pressure was absent in the 1978 legislation as well as the 1982-83 legislation, and real estate industry pressure was absent in the 1978-79 legislation regarding senior citizens. This absence is not explained by lack of interest, particularly in the last two situations. Thus, each interest did not constantly exert pressure even when the proposed legislation affected the group.

**New York State Condominium-Coop Legislation**

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<tbody>
<tr>
<td>policy entrepreneurs</td>
<td>Y*</td>
<td>Y</td>
<td>Y</td>
<td></td>
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<tr>
<td>interest group pressure</td>
<td>Y*</td>
<td>Y</td>
<td>Y*</td>
<td>Y*</td>
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<tr>
<td>publicity</td>
<td>Y</td>
<td>Y*</td>
<td>Y</td>
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<tr>
<td>pervasive ideological commitment</td>
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<td>electoral advantage</td>
<td>Y</td>
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<tr>
<td>chance</td>
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<td>Y*</td>
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* Key determinants of legislative action

In addition, no single factor consistently determined outcomes. Interest group pressure played an important role in six of eight enactments. Contrary to the assertion of pluralists or public choice theorists, however, it was the sole key determinant of action on only one occasion—the 1978 legislation.
Legislative Chaos

<table>
<thead>
<tr>
<th>Factors</th>
<th>1978-79 Acts (Senior Citizens)</th>
<th>1982-83 Acts (Disabled and Seniors)</th>
<th>1982-83 Acts (51% Req'ment)</th>
<th>1991 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>policy entrepreneurs</td>
<td>Y</td>
<td>Y*</td>
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<td>Y</td>
<td>Y*</td>
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<td>pervasive ideological commitment</td>
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<td>electoral advantage</td>
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<tr>
<td>legislative procedure</td>
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<td>chance</td>
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* Key determinants of legislative action

Typically, action was due to a constantly changing combination of factors. Further, electoral advantage exercised an even less pervasive and significant influence than interest group pressure.

Studies of shorter time periods or specific issues bear out the same conclusions. For example, comparison of the actions taken with regard to senior citizens and disabled persons in the 1978-79 and 1982-83 time periods indicates that no single factor constantly influenced outcomes. Similarly, comparison of actions taken with regard to percentage sale requirements to tenants in 1978 and 1982-83 confirms that the influence of any single factor is rarely determinative.

1. **The 1958-60 Time Period—Government Intervention**

The 1960 amendment of the Martin Act\(^6\) imposed a filing and disclosure requirement for public offerings of real estate securities, including cooperatives.

Four forces induced legislative action:
- **Policy Entrepreneurs.** The bill, supported by Attorney General Lefkowitz, grew out of a study of abuses in sales of real estate syndications conducted by the New York State Department of Law. David Clurman, chief of the securities and real estate financing bureau at the time, drafted the statute to

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\(^6\) 1960 N.Y. Laws 987.
encompass not only offerings of real estate syndications, but cooperative unit offerings as well. Both Lefkowitz and Clurman assumed the role of policy entrepreneurs. Prior to 1960, opposition of interest groups and an earlier policy advocate in the form of the New York State Governor prevented the bill's enactment: in 1958, Governor Harriman vetoed the legislation based on industry opposition and the opposition of bar groups. In 1959, the new Governor, Nelson Rockefeller, again vetoed the bill based on the short period of time available for the Attorney General to promulgate regulations. When the legislation was again passed in 1960, Governor Rockefeller did not veto it.

- **Interest Group Pressure.** During 1958 and 1959, the real estate industry opposed the legislation. By 1960, however, the Real Estate Board of New York, the Building Industry League, and the Association of Real Estate Syndicators supported the legislation in order to encourage investment in syndication activities. However, the New York State Home Builders Association and Mutual Housing Sponsors, Inc. continued to oppose the legislation. Both industry opposition and, later, industry support was directed at the decision to regulate offerings of real estate syndications. No industry pressure was directed at the decision to regulate cooperative unit offerings. Interest groups other than the real estate industry played little role in the 1958-60 legislative process.Tenant groups exercised no voice. Unit owners exerted modest pressure. The Tenant-Owned Apartment Association, representing cooperative apartment management firms, opposed applying the Martin Act to sales of cooperative units.

- **Publicity.** The New York State Attorney General conducted investigations and hearings in 1957 and 1958 which disclosed abuses in real estate syndications sales resulting in the loss of substantial sums by the investing public. The investigation and abuses were widely reported.

- **Legislative Procedure.** Legislative procedure played an important role in the specific decision to subject cooperative unit offerings to the Martin Act's new filing and disclosure requirements. Specifically, protection of cooperative unit purchasers was appended to legislation dealing with abuses in sales of real estate syndications. There were very few cooperative offerings at the time.

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64. Memorandum from the New York State Department of Law to the Governor (April 5, 1960), Governor's Bill Jacket to 1960 N.Y. Laws 987.
Legislative Chaos

Policy entrepreneurs and the real estate industry's shifting support played the most significant role for passage of legislation. Prior to 1960, the real estate industry opposed government regulation, leading the Governor to veto legislation that had passed both houses in 1958. By 1960, most members of the real estate industry supported legislative action as a means to calm investors and bolster their confidence in the real estate syndication business. However, real estate industry pressure was not the only influence on legislative decisionmaking. Both houses of the Legislature had passed legislation despite real estate industry opposition. The Attorney General's investigation of abuses in the sale of real estate syndications sparked legislative concern. Moreover, it is unlikely that the Attorney General's action and persistence were motivated by self-interest—to increase the likelihood of his reelection—for there were few real estate syndication investors (approximately 1200 reportedly suffered losses from fraudulent offerings65), and they did not engender sympathy among members of the general public.

The existence of a policy entrepreneur was perhaps the most significant determinant of the decision to regulate cooperative housing. As noted above, the initial impetus for legislative action in 1958-60 was not a widely perceived need to regulate offerings of cooperative housing. Yet, David Clurman, who served as chief of both the securities bureau and the real estate financing bureau of the New York State Department of Law, had witnessed personally a lack of timely and adequate disclosure to purchasers of Section 213 cooperatives. In addition, abuses in sales of Section 213 cooperatives had been encountered. Excessive ground rentals, construction contracts in which the cooperative was overcharged for work performed in an inferior and unworkman-like manner,66 and conversion of funds paid by occupant-shareholders had emerged in litigation.67 As a result, Mr. Clurman himself became convinced of the need to regulate the offering of cooperative housing. When drafting the proposed legislation regulating offerings of real estate syndications, therefore, he also subjected offerings of cooperative housing to regulation.68

65. *Investing Fraud of up to 5 Million is Laid to 4 Here*, N.Y. TIMES, Jan. 23, 1958, at 1. However, there was also concern over misleading advertising recently directed at attracting small investments of $100 to $500. *Syndicators Sift Real Estate Code*, N. Y. TIMES, Sept. 14, 1957, at 19.


68. Telephone Interview with David Clurman, Assistant Attorney General, New York State Department of Law 1952-75; Director, Bureau of Securities and Public Financing 1970-75 (June 30, 1993).
2. *The 1964 Time Period—The Condominium Form of Ownership*

The Condominium Act of 1964\(^{69}\) provided statutory authorization for this novel form of property interest. It also subjected the public offering of such interests to the filing and disclosure requirements of the Martin Act.

Four forces induced legislative action:

- **Policy entrepreneurs.** Senator Mitchell and Assemblyman Lama were policy entrepreneurs for the Act generally. Both supported it as a means to assist middle-income families in purchasing housing units in the New York City metropolitan area.\(^{70}\) These two legislators had earlier sponsored the bill creating limited-profit, middle-income housing, known as the Mitchell-Lama Law.\(^{71}\) There was some doubt whether condominiums would be and should be subject to the disclosure requirements of the Martin Act.\(^{72}\) The 1962 proposed bill excluded condominiums from coverage under the Martin Act. However, the 1963 proposed bill and the bill enacted in 1964 expressly provided for coverage. David Clurman, again, was the source of this requirement. He thought disclosure was necessary and pressed for express coverage. As a result, the Condominium Act of 1964 provided that condominium units were to be treated as "cooperative interests in realty" for purpose of the Martin Act—i.e., clearly subject to its disclosure requirements.\(^{73}\)

- **Interest Group Pressure.** Various interest groups supported passage of the Condominium Act. For example, the bill was supported by the Savings Banks Association of the State of New York and the Savings Association League of New York State.\(^{74}\) It was also supported by the Community Service Society, as a mechanism for creating housing attractive to middle-income persons.\(^{75}\) The bill was also supported by the Building Industry Employers of New York State, Building Trades Employers Association of the City of New York, and New York State Home Builders Association.\(^{76}\) While these groups were not the key players inducing the legislative

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\(^{69}\) 1964 N.Y. Laws 82.


\(^{71}\) 1961 N.Y. Laws 803.

\(^{72}\) Telephone Interview with David Clurman, *supra note 68*.

\(^{73}\) 1964 N.Y. Laws 82.

\(^{74}\) Memorandum of New York State Banking Department, p.3 (Feb. 25, 1964), Governor's Bill Jacket to 1964 N.Y. Laws 82.

\(^{75}\) Letter from Byard Williams, Chairman, Committee on Housing and Urban Development, to the Honorable Sol Neil Corbin (Feb. 25, 1964), Governor's Bill Jacket to 1964 N.Y. Laws 82.

\(^{76}\) Letter from French, Fink, Markle & McCullion, Counsel to Building Industry Employers of New York State, to the Honorable Sol Neil Corbin (Feb. 1, 1964), Governor's Bill Jacket to 1964 N.Y. Laws 82; Letter from Richard Christiansen, Legislative Chairman, & Frank J. Lasch, Legislative Counsel, to the Honorable Nelson A. Rockefeller (Feb. 26, 1964), Governor's Bill Jacket to 1964 N.Y. Laws 82.
initiative, they gave support to the initiative put forth by Senator Mitchell and Assemblyman Lama. Neither tenant groups nor unit owners' groups played a role.

- **Electoral Advantage.** The role of electoral advantage in the 1964 initiative is not clear. As noted above, Senator Mitchell and Assemblyman Lama introduced the measure to enable families to afford to purchase housing in the City of New York. Both Mitchell and Lama had consistently favored and initiated proposals aimed to serve this purpose. It is possible that both legislators were motivated by personal commitment or the potential electoral advantage that was likely to accrue. It is plausible that both were motivating factors.

- **Chance.** Chance played an important role in the 1964 initiative, clothed in the form of federal law authorizing FHA mortgage guarantees for condominium units. In 1961 federal law was amended to allow the FHA mortgage guarantee for condominium units if the state in which the units were located had enacted an enabling statute for this form of property interest. As a result, thirty-eight states adopted condominium statutes by the end of the 1963 legislative year. A bill was introduced in the 1962 New York legislative session for purposes of study. In the 1963 New York legislative session different versions of condominium statutes passed the Senate and Assembly, but the session ended before the differences could be resolved. In the next legislative session, the New York Condominium Act was enacted.

Chance played the most important role in the enactment of some form of condominium legislation by the New York State Legislature in 1964. The advocacy of a policy entrepreneur played the most important role in the specific decision to subject condominiums to the Martin Act. Interest groups supported the legislation but they were not the most significant determinant of action, and certainly not the sole determinant. Interest group pressure did not play a role in the specific decision to subject condominiums to the Martin Act. Indeed, that decision was made despite apparently mild opposition by the real estate industry. Self-interest, in the form of electoral advantage, played a role in enactment of the Condominium Act as well. The motivation for Senator Mitchell's and Assemblyman Lama's actions are not clear. It is true that the Act was heralded as a means to create additional housing opportunities for the middle class. But it was uncertain if those opportunities would be realized.

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78. Memorandum of New York State Banking Department (Feb. 25, 1964), Governor's Bill Jacket to 1964 N.Y. Laws 82; Memorandum of the New York State Division of Housing and Community Renewal (Feb. 28, 1964), Governor's Bill Jacket to 1964 N.Y. Laws 82.
79. Memorandum of Joint Legislative Committee on Housing and Urban Development, 1964 N.Y. Laws 1839, 1840 (stating that enactment can be expected to stimulate greater building activity and allow private enterprise to supply additional housing units, particularly in the middle income rental range).
Given the novel nature of the condominium format, the protections enacted were only potentially beneficial to members of the general public. Thus, the electoral advantage was prospective and hypothetical at best. As to the specific decision to subject public offerings of condominiums to the registration and disclosure provisions of the Martin Act, electoral advantage did not play a role. Indeed, the policy entrepreneur behind the decision, David Clurman, was not an elected official.

3. The 1973-76 Time Period—Tenant Protections, Phase One

The 1974 Goodman-Dearie Law amended the Martin Act to impose a statewide requirement that thirty-five percent of tenants purchase before any residential building could be converted to cooperative or condominium status. This was the first such statewide requirement, and the first requirement imposed regardless of whether the nonpurchasing tenants were to be evicted or not.

Five forces induced legislative action:

- **Policy entrepreneurs.** Assemblyman John Dearie and Senator Roy Goodman proposed the bill out of a desire to provide tenants with negotiating power and thereby “establish a device to determine if the price and terms are reasonable.” Senator Goodman was a powerful member of the Republican-controlled Senate, and thus induced both Assembly and Senate action. Attorney General Lefkowitz, who supported the bill, actually desired a more protective fifty-one-percent consent requirement. Such a bill had been introduced as part of the Attorney General’s legislative program in 1973. Thus Dearie, Goodman, and Lefkowitz were all policy entrepreneurs. Their advocacy may have been ideologically motivated or motivated by electoral advantage. As discussed below, it is likely that both served as motivations.

- **Electoral Advantage.** The impetus for the bill was the proposed conversion of the Parkchester complex, allegedly at an excessive price to purchasers. Parkchester contained 12,200 units housing 50,000 individuals, and was located in the middle of Assemblyman Dearie’s district. Thus, the motivation may have been to inject fairness into the conversion process, or to protect voting constituents. The effect of conversions on electoral prospects was not only of interest to Assemblyman Dearie but also to Senator Goodman, whose district was to face a substantial number of

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82. Memorandum of Louis J. Lefkowitz to the Governor (May 23, 1974), Governor’s Bill Jacket to 1974 N.Y. Laws 1021.
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conversions. Other legislators were affected as well, as conversions threatened an increasing number of tenants. The increasing number of conversions put political pressure on certain legislators to enact protections for tenants. The conversions occurred almost exclusively in the City of New York during this period, and largely in the Borough of Manhattan.

- **Interest group pressure.** Interest group pressure, although divided, was prevalent in the 1974 initiative. The real estate industry vigorously opposed the measure. The legislation was opposed by the New York Chamber of Commerce and Industry, the Real Estate Board of New York, the New York State Association of Real Estate Boards, the New York State Builders Association, and the Community Housing Improvement Program Inc. (which represented residential real estate owners), as well as many individual real estate owners and developers. Opposition also came from unit owners' groups. The Tenant-Owned Apartment Association, representing cooperative buildings, their unit owners and managing agents, opposed the legislation because it would eliminate the conversion of rental properties to cooperative and condominium ownership. The Citizen's Housing and Planning Council, although not a unit owners' groups, also opposed the legislation because it would discourage cooperative ownership, which helped to preserve the housing stock. Tenant groups such as the New York Tenants Legislative Coalition vigorously lobbied for passage of the measure.

- **Chance.** Chance played an important role in the 1974 initiative. Harry Helmsley, the powerful developer, decided to convert a 12,200-unit apartment complex in the Bronx, the Parkchester complex, to cooperative units. Parkchester housed 50,000 people. It was to be a noneviction conversion—i.e. nonpurchasing tenants would not be evicted. However, it highlighted the large number of tenants affected by proposed conversions and the possible adverse effects even in noneviction plans. Yet such a large complex is rare, and its conversion even rarer. It is not certain that conversion of a significant number of much smaller buildings, as occurs typically, would have sparked legislative action.

- **Publicity.** This chance occurrence induced another cause of legislative activity: publicity. The conversion was seen and reported as an offering of

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84. *See infra* note 159 and accompanying text.
units at excessive prices. The property had been purchased by Harry Helmsley for $90 million soon before the conversion ($9 million in cash and $81 million in mortgage notes). The sale price of the completely converted property, without alterations or renovations being made, was approximately $390 million, yielding a $300 million profit on a $9 million investment. There was also concern over a decline in services provided to nonpurchasing tenants. Finally, prior to enactment of the Goodman-Dearie law there was publicity regarding evictions and displacement resulting from other conversions and possible future conversions.

Pressure from tenant groups was a very important cause of legislative action in the 1974 initiative. Interestingly, such pressure had a more powerful influence than pressure from the real estate industry. This pressure and that of chance and publicity were the key determinants of legislative action.

Both tenant group and real estate industry pressure had an effect on the details of the final bill enacted; the tenants desired protection in the form of a fifty-one-percent purchase requirement, and the real estate industry desired no purchase requirement. The final bill did impose a purchase requirement, but reduced it to thirty-five percent of tenants. While interest group pressure played an important role in the 1974 enactment of the Goodman-Dearie Law, therefore, as noted above it was not alone in inducing legislative action.

Self-interest in the form of electoral advantage played a limited role, as it affected only a limited number of legislators. Other, more potent forces induced action on the part of the Legislature as a whole.

4. The 1977-78 Time Period—Tenant Protections, Phase Two

The subsequent history of the 1974 Goodman-Dearie Law illuminates the nonconstant presence of particular factors inducing legislative action and, when present, their nonconstant influence. In 1977 the Goodman-Dearie Law was allowed to expire. By that time, the force of tenant group pressure was not sufficient to overcome real estate industry opposition, largely because other influences had shifted. In particular, the protection enacted in 1974 was coming under attack for bringing conversions to a standstill.


89. A 51% purchase requirement had passed the Senate in 1973, but not the Assembly. S. 881, 196th Leg. (N.Y. 1973) (applicable within the City of New York), in New York Legislative Record and Index (1973).

90. The original statute contained an automatic two-year expiration. It was extended for one year in 1976, 1976 N.Y. Laws 504, but then allowed to expire in 1977.

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During the 1974-76 period in which the Goodman-Dearie Law was in force, the number of conversions dropped dramatically. Real estate industry spokespersons attributed the decline to the uncertainty and difficulty of securing purchases from thirty-five percent of the tenants. In 1977, the State Assembly passed a three-year extension of the law, but the Senate was not willing to extend it and many members of the Assembly were not enthusiastic about an extension without change. In 1978, a thirty-five-percent purchase requirement was enacted but only for plans in which nonpurchasing tenants would be evicted (so-called eviction plans), and only for plans involving conversions in Nassau, Westchester and Rockland Counties.

Five forces induced legislative action:

- **Interest Group Pressure.** In the consideration of the 1978 initiative, interest groups amassed again on both sides of the issue. Opposition, even to the modified measure, came from the New York State Board of Realtors, among others. Voicing the fears of the real estate industry, the New York State Bar Association's Condominium Committee also opposed the measure because it would discourage the conversion of rental housing to condominium and cooperative status. Tenant groups lobbied for renewed protections, particularly in areas faced with conversions. Edward Lehner, Chair of the State Assembly Committee on Housing, and David Sweet, counsel to the Committee, reported that after expiration of the Goodman-Dearie Law in 1977 "the number of conversion plans in suburban counties increased sharply and the outcry of suburban tenants, few of whom had

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92. In 1976, the Real Estate Board of New York reported that in the first two years the law was in effect only one conversion occurred in an apartment building with over 12 units. Letter from D.K. Patton to Hugh Carey, N.Y. Governor (July 1, 1976), Governor's Bill Jacket to 1976 N.Y. Laws 504. The New York State Commission on Rental Housing reported a higher figure but found that during this two-year period only 533 apartments were converted throughout the State. NEW YORK STATE COMMISSION ON RENTAL HOUSING, STUDY OF CONVERSION OF RESIDENTIAL PROPERTIES TO COOPERATIVE OR CONDOMINIUM STATUS (1979), reprinted in 1 PATRICK ROHAN & MELVIN RESKIN, CONDOMINIUM LAW AND PRACTICE, at 3A-16.24 (1991). See also id. at 3A—16.25 (noting that the decline cannot be attributed to the recession, although the negative impact of the Goodman—Dearie Law was exaggerated by the recession), and 3A—16.32 (listing, at Table 4, successful conversions between June 15, 1974 and July 1, 1976).

93. Edward H. Lehner & David J. Sweet, Goodman-Dearie Expiration Leaves Coop Conversions Radically Altered, N.Y. L.J., Nov. 16, 1977, at 25, 34. Mr. Lehner was Chair of the New York State Assembly's Committee on Housing, and Mr. Sweet was counsel to the Committee.

94. Even in these three counties the bill's protections were local options. However, the New York City Rent Stabilization Law and Rent Control Law also contained a 35% purchase requirement for eviction plans. See infra note 183.


96. Letter from David Clurman, Chair, New York State Bar Association Condominium Committee, to Hon. Judah Eribetz, Counsel to the Governor (July 13, 1978), Governor's Bill Jacket to 1978 N.Y. Laws 544.
protection for continued occupancy, was loud and clear." In the 1978 initiative, unit owners as a group were silent on the proposal.

- **Publicity.** Publicity played a role in 1978, as it had in 1974. Publicity took the form of media outcry over the complete standstill in conversions due, in part, to the Goodman-Dearie Law.98

- **Pervasive Ideological Commitment.** By 1978, pervasive ideological commitment surfaced as a recognizable force. Many legislators shared the belief that, notwithstanding the desirability of coop conversion generally, tenants required protections.99

- **Electoral Advantage.** Electoral advantage also played a role in 1978. As noted above, the area experiencing conversions had grown to include the suburbs surrounding New York City. Legislators from these areas tailored the 1978 legislation to protect tenants solely in those areas. City, town, and village officials in the three counties affected by the legislation supported it.100 This might be due to individual ideological commitments or to pressures exerted by tenant groups. However, given the outcry of suburban tenants reported above, the electoral consequence was clear.

- **Legislative Procedure.** Legislative procedure played a role in 1978 in the form of compromise structured to secure passage. The decision to reinstate a thirty-five-percent sales requirement only for eviction plans was a compromise measure. The only way in which it served tenants' demands was by requiring slightly more than one-third of the tenants to agree to a conversion. In that sense, the bill also partly served the real estate industry's demands for freedom to convert with minimal interference. Additionally, the statute expressly allowed noneviction conversions with purchases of only fifteen percent of the units by tenants. Demands for protection were too strong to allow no protections to exist, but sentiment against the former thirty-five-percent requirement for all plans was powerful enough to prevent its reenactment. The Assembly had passed a bill which also included New York City. The Senate refused to act on the Assembly bill, and passed a bill applicable only in the three-county area. Assembly Democrats went along with the Senate bill after concluding that they could not permit conversions in the suburban areas to go unchecked, and that New York City tenants were protected already by the rent control

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98. See infra note 163 and accompanying text.
99. See Richard J. Meislin, Albany Officials Debate Extension of Law on Apartment Conversions, N.Y. TIMES, May 15, 1977, at 42 (reporting that both sides sought to make cooperative conversions easier—with negotiations centering on the level of protection for nonpurchasing tenants).
100. See Memorandum of the State Division of Housing and Community Renewal (July 6, 1978), Governor's Bill Jacket to 1978 N.Y. Laws 544.
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and rent stabilization laws. In some cases, legislative procedures such as compromise reflect other influences like ideological commitment, interest group pressure, or electoral advantage. The process of compromise, however, among other legislative procedures, is treated as an independently recognizable factor in legislative decisions because it allowed legislative action to proceed without stalemate.

In 1978, the key determinant of action was pressure from both tenant groups and the real estate industry. Recognition of tenant groups' demands also held electoral advantage for state legislators. Viewed in isolation, this 1978 legislative act may support the pluralists or public choice advocates in identifying interest group pressure and legislative self-interest respectively as the fundamental cause of legislative action. In this instance, however, interest group pressure and electoral advantage did not act alone. They combined with the influence of publicity, pervasive ideological commitment, and legislative procedure to induce action.

Moreover, evidence from other periods suggests that these influences did not affect legislation in a consistent manner over time. In the 1958-60 period, the real estate industry exerted only minor pressure to block enactment of the Martin Act. Similarly, in 1974 industry pressure was only strong enough to modify the legislation in question. In neither case did such pressure exercise a determinative influence. In 1977 and 1978, however, the real estate industry succeeded in imposing its agenda on the relevant legislation.

A similar conclusion can be drawn regarding the influence of tenant groups. In 1974, their influence was much greater than in 1977 or 1978. In 1960 and 1964, it was nonexistent. Similarly, while unit owners' interests were voiced in 1960 and 1974, they were silent in 1978. Overall, the influence of any particular factor that induces legislative action is not constant over time. In fact, the very existence of any factor is not constant.

5. The 1977-79 Time Period—Senior Citizens, Phase One

In 1978 and 1979, senior citizens were granted special protections in the conversion process. The legislation provided that senior citizens who did not purchase their units upon conversion could never be evicted, even if the eviction plan was declared effective. The 1978 legislation protected senior citizens from the counties of Nassau, Westchester, and Rockland. The 1979 legislation protected senior citizens located in New York City.

Three forces induced legislative action:

* Interest Group Pressure. Interest group pressure for the legislation came

101. Lehner & Sweet, supra note 97, at 1.
103. 1979 N.Y. Laws 432.
from many sources. Groups such as the Northwest Bronx Community and Clergy Coalition (representing ten neighborhood associations), the United Neighborhood House (comprised of thirty settlement houses throughout New York City), the Mitchell-Lama & Allied Housing Council, the Lenox-Hill Neighborhood Association (a nonprofit, multiservice social agency), Harlem Restoration Project Inc., the Jewish Association for Services for the Aged, and the Project Helping Aged Needing Direction supported passage of the legislation on behalf of senior citizens. Tenant groups such as the New York State Tenant and Neighborhood Coalition also supported the legislation.\textsuperscript{104} The Federation of Section 213's, Inc. (a federation of FHA Section 213 cooperatives), opposed the legislation based on the view that the "regulations" it imposed were excessive.\textsuperscript{105}

- **Publicity.** Congressional hearings focused attention on the struggles of senior citizens faced with conversion of their rental apartment buildings.\textsuperscript{106} In addition there were news accounts of the adverse effects of conversions on senior citizens.\textsuperscript{107}

- **Pervasive Ideological Commitment.** Senior citizens benefited from a generally shared belief that they, as a group, should be protected against eviction. Governor Hugh Carey, on signing the legislation, emphasized the precarious position of senior citizens, whose limited financial resources, physical limits, and long-term attachments to neighborhoods made such protection necessary.\textsuperscript{108} Support existed not only among New York State legislators, but also New York City officials and U.S. congressmen from New York.\textsuperscript{109} In other words, the support for protective legislation for senior citizens was widespread. In part, this was based on a conclusion that if senior citizens were not protected as a group, then broader protections might be required to protect tenants and consumers in the conversion

\textsuperscript{104}. Memorandum of the New York State Tenant and Neighborhood Coalition (July 3, 1979), Governor's Bill Jacket to 1979 N.Y. Laws 432.

\textsuperscript{105}. Letter from Charles Rappaport, President, Federation of Section 213's, Inc., to Governor Carey (June 25, 1979), Governor's Bill Jacket to 1979 N.Y. Laws 432.


\textsuperscript{108}. Executive Memoranda, N.Y. Laws 432 at 1804 (McKinney 1979).

\textsuperscript{109}. Mailgram from Congressmen Ted Weiss and Charles Rangel to Governor Hugh Carey (July 6, 1979), Governor's Bill Jacket to 1979 N.Y. Laws 432; Letter from Ruth Messinger, New York City Council, to Governor Hugh Carey (not dated), \textit{id.}

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process. This may help to explain the lack of, or at least tepid nature of, opposition to the measure.\textsuperscript{110}

The key determinants of action were interest group pressure and pervasive ideological commitment. Individuals and groups who would not directly benefit from the proposed protections lobbied for them. This included not only private persons, but also public officials who were not members of state government. Pervasive ideological commitment had not played a visible role in our case study prior to 1978. However, in 1978 it played a determinative role. Ideology continued to play a role in subsequent legislation. In 1982, protection against eviction was extended to disabled persons in conversion plans within the City of New York. In 1983, it was extended to disabled persons in conversion plans in Nassau, Westchester, and Rockland counties. At the same time, protection was also extended to senior citizens and disabled persons in conversion plans throughout the state.\textsuperscript{111} When signing the legislation, Governor Carey, who had vetoed it a year earlier, emphasized the need to protect these tenants against the trauma of moving or paying exorbitant rent increases after conversion.\textsuperscript{112}

The 1977-79 experience confirms that the existence of particular factors is not constant. On this issue the real estate industry exerted no pressure. Pervasive ideological commitment, on the other hand, emerged not only as a factor, but as a determinative factor, combining with pressures exerted by lobbyists for senior citizens to induce action.

In addition, the 1977-79 experience casts significant doubt on the public choice theorists’ emphasis on utility maximization as the principal cause of legislative action. The diverse individuals and groups who sought to protect senior citizens and handicapped persons received no benefit for their efforts; this is certainly true of private persons and organizations, and is likely true of congressional representatives. Of course, beneficent action could always be used by elected officials in public relations aimed at constituents, but such benefits were minimal and indirect at best.

6. \textit{The 1982-83 Time Period—Disabled Persons and Senior Citizens, Phase Two}

In the 1982-83 period, disabled persons received the same protections

\textsuperscript{110}. Telephone Interview with Harold Lubell, Assistant Attorney General in charge of Real Estate Financing Bureau, New York State Department of Law, 1979-80 (June 30, 1993).

\textsuperscript{111}. 1983 N.Y. Laws 771.

\textsuperscript{112}. Executive Memoranda, N.Y. Laws 771 at 2804 (McKinney 1983). The Governor noted: “The elderly and handicapped have suffered disproportionately from the recent economic recession and federal cutbacks; these bills will insure that they do not continue to suffer as the country’s economic recovery makes condominium and cooperative conversions more profitable.” \textit{Id.} at 2804.
against eviction that had previously been granted to senior citizens.\textsuperscript{113} Later in the 1983 legislative session, such special protections for senior citizens and disabled persons were extended statewide.\textsuperscript{114}

Six forces induced legislative action:

- **Policy Entrepreneurs.** Attorney General Abrams had consistently sought greater protections and played a key role in negotiations with the State Senate.\textsuperscript{115} One initiative had stalled based on the opposition of another policy entrepreneur. Specifically, statewide protective legislation for seniors and disabled persons was passed by the Legislature in 1982 but vetoed by Governor Carey. The primary reason given for the veto was that the bill contained no findings by the Legislature that there was a housing shortage with respect to the protected persons.\textsuperscript{116} When it was again passed in 1982 the bill was signed by the new governor, Mario Cuomo.\textsuperscript{117} It could be argued that Abrams' initiative and Cuomo's support were due to perceived electoral advantage—i.e. the support of elected officials for groups which the general public viewed as deserving of protections. The prevalent support among both elected officials and private individuals and groups discussed below, however, suggests that it may be just as likely that these advocates acted out of a personal commitment.

- **Interest Group Pressure.** Interest group pressure was exerted both in favor and in opposition to the legislative initiatives. The legislation had the support of various groups, including those representing senior citizens and disabled persons who lobbied for its passage. The 1983 legislation extending protections statewide, for example, was supported by the American Association of Retired Persons (AARP), the New York State Catholic Conference, La Union Hispanica, Suffolk Community Council, the Industrial Home for the Blind, the Urban Ministry Board of Syracuse, and the Syracuse Area Interreligious Council. Tenant groups also lobbied for the legislation, in part because it was included in a larger pro tenant legislative package. The 1982-83 legislation, offering greater protections to senior citizens and disabled persons in the City of New York and the three-county area, was part of a bill that raised the number of tenant-purchasers required to declare a plan effective as an eviction plan to fifty-one percent. This had been sought at length by tenant groups, who vigorously lobbied for the legislation.\textsuperscript{118} The 1983 legislation, extending

\textsuperscript{113} 1982 N.Y. Laws 555 § 2 (City of New York); 1983 N.Y. Laws 402 § 1 (Nassau, Westchester, and Rockland counties, at local option).
\textsuperscript{114} 1983 N.Y. Laws 771 § 1.
\textsuperscript{115} Letter from Alexander B. Grannis, New York State Assembly, to Governor Hugh Carey (July 14, 1982), Governor's Bill Jacket to 1982 N.Y. Laws 555.
\textsuperscript{116} Veto Message (July 20, 1982), Governor's Bill Jacket to 1983 N.Y. Laws 771.
\textsuperscript{117} Executive Memorandum, N.Y. Laws 771 at 2804 (McKinney 1983).
\textsuperscript{118} See supra note 97 and accompanying text.
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special protections for senior citizens and disabled persons statewide at local option, engendered the greatest opposition from the real estate industry. It was opposed by the New York State Association of Realtors, the New York State Builders Association, the Greater Buffalo Board of Realtors, and the Greater Syracuse Board of Realtors.¹¹⁹

- **Publicity.** The period was tumultuous, with a great number of hearings and much pressure on Senate Republicans, including upstate members.¹²⁰ Senator Martin Auer, who represented the Syracuse area, for example, pointed to legislative hearings which established a growing trend toward conversions resulting in serious consequences for the disabled and senior citizens.¹²¹ Attention also focused on seniors at that time through a call for a State law prohibiting age discrimination in housing. The New York State Attorney General decided to lobby for both bills at the same time.¹²²

- **Pervasive Ideological Commitment.** As in the 1978-79 period, ideological commitment in favor of protections for senior citizens remained strong in 1983. There was a similar commitment in favor of protections for disabled persons. As early as 1979, for example, Assembly Speaker Steingut had created the Legislative Task Force on the Disabled. By 1981, the Assembly had approved a package of thirteen bills described by Assembly Speaker Fink as a bill of rights for disabled persons.¹²³ In 1982, many of these bills became law, including the establishment of an Office of Advocate for the Disabled¹²⁴ and an amendment to the state civil rights and labor laws to prohibit discrimination based on disability.¹²⁵ The degree of empathy for the plight of disabled persons among legislators is exemplified by the participation of a group of state legislators, including Assembly Speaker Stanley Fink, in a sensitivity project in Albany which simulated the absence of sight, hearing, and mobility. Speaker Fink's mother had become blind six years earlier.¹²⁶ Further, there was widespread support among other executive and local officials. The following entities and individuals recommended passage of the bill: the Attorney General, the Division of the

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¹¹⁹. Letter from Robert A. Wieboldt, Executive Vice President, New York State Builders Association, Inc., to Alice Daniel, Counsel to the Governor of New York (July 1, 1983), Governor's Bill Jacket to 1983 N.Y. Laws 771; Letter from Patrick Reilly, Director of Governmental Affairs, New York State Association of Realtors, Inc., to Alice Daniel, Counsel to the Governor of New York (July 11, 1983), id.


¹²². Telephone Interview with Jane Rosenberg, supra note 120.


¹²⁴. 1982 N.Y. Laws 718 (part of the Governor's legislative program).

¹²⁵. 1982 N.Y. Laws 720, 826.

¹²⁶. Williams, supra note 123.
Budget, Office of Advocate for the Disabled, Office for the Aging, Division of Human Rights, Consumer Protection Board, New York State Association of Renewal & Housing Officials, the Onondaga County Legislature, the Supervisor of the Town of Huntington, and the Mayor of the City of Rochester.

- **Electoral Advantage.** As discussed above, legislative and executive support for the bill may have been motivated, in part, by the perceived electoral advantage of supporting protections popular among the electorate.

- **Legislative Procedure.** Legislative procedure aided the passage of the first two bills, which extended special protections to disabled persons. This legislation was part of a bill increasing tenant protections, including a purchase requirement of fifty-one percent of tenants in order to declare a plan effective as an eviction plan. The debate focused on this requirement, and the forces that led to its passage permitted the protections for disabled persons to be enacted as well. In some cases, legislative procedure thus allows the passage of provisions that would otherwise fail if offered alone.  

Such was probably not the case with the 1982-83 legislation for disabled persons, but legislative procedure most likely improved its chances of consideration and passage. Legislative procedure was a factor, though not determinative, in passage of the protections in question.

Pervasive ideological commitment and interest group pressure together served as the key determinants for action. Enactment of special protections in 1982-83 for disabled persons and senior citizens was greatly assisted by pressure on behalf of tenant groups and other groups interested in the plight of seniors and disabled persons. Yet this pressure was not the sole determinant of action, and it is uncertain whether it would have overcome the opposing pressure of the real estate industry alone. When it was combined with the other factors favoring passage, however, including the existence of a large number of policy advocates, publicity, and most importantly, pervasive ideological commitment on the part of legislators, the legislation passed.

7. **The 1980-83 Time Period—Tenant Protections, Phase Three**

In 1982-83, the tenant protection provisions of the Martin Act were again revised. Sales to fifty-one percent of tenants were required to declare a conversion plan effective as an eviction plan in the City of New York, and in the counties of Nassau, Westchester, and Rockland.

Five forces induced legislative action:

- **Policy Entrepreneurs.** Policy entrepreneurs played an important role in

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keeping the fifty-one-percent purchase requirement on the legislative agenda. It had been proposed throughout the 1970s, but never passed. By 1982, the number of policy entrepreneurs had multiplied. New York State Attorney General Robert Abrams played a key role in the negotiations between the Assembly and Senate leading to the 1982 passage.130 The bill had earlier been opposed by Governor Carey, but the Governor changed his position in 1981.131 By 1982, the fifty-one-percent purchase requirement was part of the Governor's Program Bills. By 1982, it was also supported by New York City Mayor Ed Koch,132 who had also opposed it earlier,133 and by Westchester County Executive Andrew O'Rourke.134 The shift in positions of policy entrepreneurs exemplifies the constantly changing nature of the factors which influence legislative outcomes. The goal of the 1983 legislation was to subject tenants to eviction only when a majority agreed, rather than a thirty-five-percent minority. For some of these elected officials the motivation may have been electoral advantage. Yet there was a clear ideological motivation expressed by participants in the legislative process. There was a belief that the thirty-five-percent requirement was unfair to tenants, or contrary to proper notions of majoritarianism. In the wake of the increased number of conversions, there was a genuine belief that increased protections for tenants were necessary.

- **Interest Group Pressure.** Tenant groups exerted strong pressure demanding legislative amendment. Indeed, politicians were bombarded with protests regarding the large number of conversions and evictions and the undemocratic nature of the thirty-five-percent purchase requirement.135 Unit owners did not exercise an organized influence in these legislative initiatives. Unlike the 1974 Goodman-Dearie Law, the real estate industry showed little opposition in this instance.136 The New York State Builders Association voiced limited opposition to the 1983 legislation applicable to Nassau, Westchester, and Rockland counties. For the most part, however, members of the real estate industry concluded that the terms of an offering plan that would convince thirty-five percent of the tenants to purchase, as

133. *Bill to Limit Use of Personal Data by State Gains Bipartisan Support*, N.Y. TIMES, June 6, 1980, at B3 (Mayor's opposition seen as virtual death blow).
134. Letter from Andrew P. O'Rourke (June 30, 1983), Governor's Bill Jacket to 1983 N.Y. Laws 402.
135. Telephone Interview with James M. Morrisey, Assistant Attorney General 1982-85; Director of Real Estate Financing Bureau, New York State Department of Law 1983-85 (June 30, 1993).
136. The Governor's Bill Jacket to the 1982 legislation, for example, includes no evidence of such opposition.
required under existing law, would usually convince more than fifty percent
to purchase.  

In addition, the fifty-one percent purchase requirement was expected to blunt calls for increased consumer protections and create a moratorium on conversions.  

- **Publicity.** Between 1978 and 1983 there was media coverage of the accelerating number of conversion plans and steadily increasing number of tenants subject to eviction after conversion. The number of conversion plans was 123 in 1978, 238 in 1980, 294 in 1981, and 599 in 1982.  

- **Electoral Advantage.** The support of some elected executive officials may have been an attempt to secure electoral advantage. In the Legislature, moreover, key members of the Senate, such as Senator Goodman, were up for reelection and their constituents viewed the increasing number of conversions in their districts unfavorably. The Senate leadership had an interest in assisting fellow Republicans.  

- **Legislative Procedure.** Legislative procedure in the form of legislative compromise played a determinative role. Two important concessions to the real estate industry substantially mitigated opposition to the final bill and facilitated its passage. These concessions allowed noneviction plans to be declared effective with sales of only fifteen percent of the units—not twenty-five percent or higher, as tenant groups had urged—and, in the City of New York, allowed purchasers to live outside of the building. In addition, the prohibition on warehousing was not strengthened.  

As in the earlier legislative initiatives, many factors besides interest group pressure influenced legislative activity. Interest group pressure, policy entrepreneurs, and legislative procedure were all key determinants of legislative action. Compromise was also critical, as it overcame competing interest group pressures. In addition, a change of heart by influential players—particularly Governor Carey who had earlier threatened to veto the legislation—cleared the
path for legislative action. The 1982-83 legislation demonstrates again the varying influence of particular factors.

8. The 1990-93 Time Period—Government Intervention Reconsidered

Between 1990 and 1993, a substantial number of sponsors defaulted in their obligations resulting in financial losses for many unit owners. In response, unit purchasers called for substantial amendments to the Martin Act to provide them greater protections, such as escrow or bond requirements for developers' financial obligations and a requirement that control over the board be turned over to them. The Legislature enacted a small measure of relief, allowing cooperative and condominium boards to collect rents from tenants when the unit owner defaulted.

Three forces induced this limited legislative action:

- **Policy Entrepreneurs and Electoral Advantage.** Claire Shulman, President of the Borough of Queens, was instrumental in bringing together various interest groups; on her own initiative, she formed a task force as soon as financial difficulties began to surface. Shulman's efforts may have been influenced by the large number of developments and unit purchasers in her borough facing financial difficulties. However, her personal commitment to protecting individuals in difficulty was an important motive for her involvement. Other legislators, including the Senate leadership, believed that the matter should be left in the hands of market forces rather than addressed through legislation. The Senate passed only small measures of relief as a result.

- **Publicity.** There were numerous press reports in 1990 and 1991 regarding

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144. 1991 N.Y. Laws 594. Two other statutes were enacted during this period. One granted any board member of a condominium association the right to file a lien for unpaid common charges. 1992 N.Y. Laws 104. The other exempted the cooperative housing corporation from the obligation to pay State Gains Tax as transferee when the sponsor defaults and it takes over the unsold shares. 1992 N.Y. Laws 172.

145. See Thomas Lueck, *Toll of Troubled Conversions is Rising*, N.Y. TIMES, Dec. 9, 1990, § 10 at 10 (estimating that 14,000 Queens apartment owners threatened because sponsors in default).

146. This commitment was apparent in meetings I attended as a member of the Co-op/Condo Task Force formed by Borough President Shulman. The Task Force met for the first time in September, 1990, and has met at least bi-monthly since that time.
financial defaults by sponsors and losses faced by unit owners. Yet, while publicity helped generate sweeping protections in 1974 (Goodman-Dearie Law) and in 1982-83 (fifty-one-percent requirement), the 1991 protections were quite limited. In short, the influence of publicity may not be constant over time.

- **Interest Group Pressure.** The number of unit owners’ organizations which actively lobbied during this period was greater than in earlier periods. These organizations included the Council of New York Cooperatives, the Federation of New York Housing Cooperatives, and the Queens Co-Op/Condo Coalition. They were joined by some tenant organizations, who recognized that the financial difficulty facing the cooperatives jeopardized the services provided to the tenants. In opposition, real estate industry groups such as the Real Estate Board of New York, the New York State Builders Association, the Rent Stabilization Association of NYC, and the Associated Builders & Owners of Greater New York resisted even the small measure of protection provided by the 1991 law.

The key determinants of action in 1991 were policy entrepreneurs and publicity. The 1991 legislation demonstrates the nonconstant existence and influence of these factors. During this period, for example, pressure from unit-owners reappeared as a factor, and for the first time influenced legislators. It was not, however, a key determinant of action. Substantial publicity induced the specific proposal in question, but not the enactment of more significant protections for unit owners.

Legislative dynamics in this period contrast with events leading to the passage of the 1960 amendments to the Martin Act. Far fewer investors experienced losses from 1957 to 1960 as a result of abusive offerings than did from 1990 to 1993. Still, publicity combined with ideological commitment of policy entrepreneurs to produce quick legislative action in 1958, 1959, and 1960, despite real estate industry opposition. In the period from 1990 to 1993, a key determinant again was the ideological commitment of some public officials. The conflicting contentions of other policy entrepreneurs, however, caused only small measures of relief to pass the Senate. In other words, the mix and relative weight of factors leading to action are constantly changing, with the result that whether legislative action emerges is unpredictable.

**B. Feedback in Legislative Dynamics**

Feedback refers to changes over time—in factual conditions and informa-
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tion— that legislators and other participants in the legislative process may perceive. Some of it is induced by deliberate actions; some of it is the result of unexpected occurrences. For example, the death of Senator Kerr in 1963 was a factual change that affected the Senate's opposition to the Medicare bill. Similarly, the congressional hearings and resulting media attention to evictions caused by coop conversions, especially of senior citizens, was a change in available information that influenced New York's decision to enact tenant protections in 1978-79. Feedback also includes evolving conclusions regarding a known state of affairs. The varying views taken toward the desirability of conversions in the 1973-76, 1977-79, and post-1979 periods reflected changes in available information, and influenced New York's evolving protections for tenants in buildings undergoing conversion.

The New York case study evidences four conclusions regarding the feedback effect in legislative dynamics. First, the feedback effect is a prevalent and important influence in the legislative process. Second, the manner in which feedback exerts an influence is in constant flux. Third, feedback compounds the unpredictability of legislative outcomes. Fourth, feedback produces periods of legislative turbulence.

Feedback affects the factors that influence legislative decisions. Feedback affects interest groups' position on an issue, their decision to lobby or refrain from lobbying, and their forcefulness in any lobbying effort. Feedback also affects decisionmakers' views regarding the necessity for action and their attentiveness to the requests of interest groups. Feedback also sometimes makes public officials the proponents of change.

The existence of feedback has two important implications. First, it exacerbates the unpredictability of both the timing and the content of legislative action. It is uncertain, for example, when perception of the need for legislative action will develop. How a diverse group of legislators and interested parties will interpret information as demanding immediate action, warranting further study, or not requiring any action by government, is also unpredictable. Finally, if information is perceived and interpreted as requiring legislative action, the detailed nature of the action to be taken is also uncertain.

Second, the feedback effect often produces a series of increasingly responsive and complex legislative actions. This evolution is inherent in the

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149. David Easton has developed the concept of legislative feedback by using systems analysis. DAVID EASTON, A SYSTEMS ANALYSIS OF POLITICAL LIFE 363-468 (2d ed. 1979). Easton focuses solely on the effect of feedback on "authorities" (political decisionmakers). Easton also limits the term to encompass information about the authorities' own behavior. In this article, a broader affected group and a broader scope of information are considered as parts of the concept of feedback. Easton was convinced of the nonlinear nature of the feedback response. Id. at 408-10.
150. DERTHICK, supra note 37, at 326.
151. See supra notes 106-108 and accompanying text.
152. See infra notes 88, 89, 95, 96, 118, 119 and accompanying text.
feedback process. More and more information is perceived after focusing on an issue over a long period of time. In addition, the effects of early actions are perceived, evaluated, and, in turn, influence decisions to refine or alter the legislative response.

1. Existence of Feedback

The existence of feedback is illustrated in this Article in three time periods during which the New York State Legislature considered a distinct issue: (a) 1957-60, during which state government regulation of securities offerings was debated, (b) 1970-83, during which tenant protection measures were debated, and (c) 1990-93, during which protections against sponsor default were debated. These periods demonstrate that feedback is an inherent characteristic of legislative dynamics.

In the period from 1957 to 1960, investigators uncovered abuses in real estate syndication offerings which caused losses to approximately 1200 individuals. In addition, misleading advertisements directed at small investors began to surface. As a result, legislation was quickly proposed and passed by both houses of the Legislature in 1958. However, elements within the New York Bar and the real estate industry opposed the legislation, which led Governor Harriman to veto the bill. The legislation was again passed and vetoed in 1959 by the new Governor, Nelson Rockefeller. Although he recognized the need for action, Governor Rockefeller stated that he vetoed the bill because too short a period of time was provided for the formulation of regulations to implement the statute’s requirements. However, investors had lost confidence in the syndication market, and by 1960 the real estate industry realized that governmental regulation could bolster investor confidence. As a result, in 1960 legislation was again passed by both houses—legislation almost identical to that previously proposed, but providing a longer period between enactment and effective date. This time the real estate industry supported the action, and the Governor signed it.

Thus, in 1957-60 feedback took three forms: (a) a change of factual circumstance in the form of the identity of a key decisionmaker, the Governor; (b) a small change in the terms of the legislation itself, in response to a perception or recognition of the insufficiency of time provided for implementation in the original proposal; and, most importantly, (c) an evolving perception of a problem of investor confidence and a changing view of the desirability of government intervention in ameliorating that problem. Feedback had an effect

153. Governor’s Memoranda on Bills Vetoed, GEN. BUS., Real Estate Syndications, 1958 N.Y.S. LEGISLATIVE ANNUAL 577-78 (discussing S.L. 3652).
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on the position of interest groups which were actively lobbying. It also had an
effect, directly or through the vision of the lobbyists, on the position of the
Governor. In other words, feedback influenced two very important determi-
nants of legislative action so as to make action possible.

The second period studied is the period from 1970 to 1983, characterized
by legislative proposals and actions protective of tenants. Prior to 1970, no
bills had been submitted to the Legislature granting tenants veto power over
proposed conversions to condominium or cooperative status and otherwise
protecting them against eviction. Legislation requiring fifty-one percent of
tenants to purchase in order for any conversion plan to become effective was
first introduced in 1970. Such legislation was subsequently introduced each
year through 1981.

This proposed legislation and the legislative changes that were actually
adopted must be considered in light of the magnitude and nature of the
conversion activity that was taking place over time. In the 1960s, conversion
activity occurred almost entirely within the City of New York. In the period
through 1965, New York City experienced an average of thirteen conversion
projects per year, totaling 1650 units. In the period 1966-70, it experienced an
average of thirty-five conversion projects per year, totaling 4400 units. This
sustained period of conversion activity, which was increasing in
magnitude, sparked legislative interest in intervention. However, nothing was
done until 1974. During the 1971-73 period, New York City experienced an
average of sixty-five conversion projects, totaling 8125 units. The overwhelm-
ing majority of these conversion plans were eviction plans in which all
nonpurchasing tenants were evicted. It was this increasing magnitude of
conversion activity, a change in factual circumstances, and the increasingly
loud demands for protection by tenants which these engendered, that affected
legislative decisionmaking. After years of inaction, the Legislature in 1974
adopted the Goodman-Dearie Law, which required thirty-five percent of tenants
to purchase in order for any offering plan to become effective. In sum, the
feedback effect increased the force with which tenants pressed their demands
and also magnified their influence on decisionmakers as the number of
conversions and the resulting evictions of nonpurchasing tenants multiplied.

Legislators' perceptions regarding the need for action constitute a distinct

156. S.8621, A.6265, and A.5137 (applicable to all plans), and S.8120 and S.9504 (applicable
within the City of New York), NEW YORK LEGISLATIVE DIGEST (1970).
158. U.S. DEP'T OF HOUS. & URBAN DEV., HUD CONDOMINIUM/COOPERATIVE STUDY (1975),
reprinted in PATRICK ROHAN & MELVIN RESKIN, CONDOMINIUM LAW AND PRACTICE 3A-16.141
159. In 1973, for example, 55 conversion plans were accepted for filing by the New York State
Department of Law, and 48 of the 55 were eviction plans. NEW YORK STATE COMMISSION ON RENTAL
HOUSING, STUDY OF CONVERSION OF RESIDENTIAL PROPERTIES TO COOPERATIVE OR CONDOMINIUM
STATUS Table 7 (1979), reprinted in ROHAN & RESKIN, id. at 3A-16.36.
feedback effect. At times, perceived need is sparked by a chance occurrence. For example, prior to the enactment of the Goodman-Dearie Law, the allegedly excessive prices charged in connection with the conversion of the Parkchester complex, a noneviction plan affecting 50,000 tenants, caused a realization that increased protections for tenants were needed even in noneviction conversions.160

The Goodman-Dearie Law itself had an enormous effect on the market, causing a second-round feedback effect in the Legislature. During the period in which Goodman-Dearie was in effect, conversions came to a standstill. The Real Estate Board of New York reported that only one conversion in buildings with over twelve units occurred during the first two years of the law's operation.161 The New York State Commission on Rental Housing found that only 533 units were converted during this two-year period.162 As a result, there was a cry for change, not only by members of the real estate industry but also by public interest advocates who recognized that conversions had desirable consequences for building rehabilitation.163 This cry did not immediately meet a receptive ear. In 1976, a one-year extension of the Goodman-Dearie Law was passed. However, by the following year the State Senate heard the cry and refused to extend the law further without amendment. The amendment came in 1978, in the form of a thirty-five-percent purchase requirement only for eviction plans, and a fifteen-percent purchase requirement for noneviction plans.164 The amendment also included a protection for senior citizens against eviction even when an eviction plan was declared effective. In sum, between 1974 and 1978 feedback influenced both the willingness of decisionmakers to react to the needs of tenants and the nature of the reaction they were willing to endorse.

Although the amended thirty-five-percent purchase requirement revitalized cooperative/condominium development activity, evidence mounted that it was not adequately protective of tenants. While many plans were offered as noneviction plans, the total number of eviction plans and total number of

160. See supra note 88 and accompanying text.
161. Letter of D. K. Patton, President of the Real Estate Board of New York, to Governor Hugh L. Carey (July 1, 1976), Governor's Bill Jacket to 1976 N.Y. Laws 504.
162. Supra note 92, at 3A-16.24.
164. 1978 N.Y. Laws 544 (applicable solely in localities within Nassau, Westchester, and Rockland counties that chose to adopt it). In New York City, such a requirement was contained in the Rent Stabilization Law and the Rent Control Law. Code of the Rent Stabilization Association of New York City, Inc. § 61; NEW YORK CITY RENT AND EVICTION REGULATIONS, N.Y. UNCONSOL. LAW § 55 (McKinney 1974).
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nonpurchasing tenants evicted continued to rise after 1978. In 1973, before Goodman-Dearie, fifty-five conversion plans were accepted for filing throughout the State of New York, and forty-eight of the fifty-five were eviction plans. In 1978, after expiration of Goodman-Dearie and while the amended thirty-five-percent requirement was largely in effect, 123 conversion plans were accepted for filing, and fifty-seven of the 123 were eviction plans.\(^{165}\) By 1980, 230 conversion plans were accepted for filing.\(^{166}\) This was expected to affect 25,000 apartments containing 75,000 tenants in that year alone.\(^{167}\) In 1981, 294 conversion plans (containing 18,501 apartments) were accepted for filing. By 1982, the number had doubled to 599 plans (containing 45,726 apartments).\(^{168}\) Legislative hearings brought to the attention of legislators the accelerating number of conversion plans relative to plans for new construction of condominiums or cooperatives, and led to the 1982-1983 legislation.\(^{169}\)

By 1982-83, the State Legislature increased the sale requirement for eviction plans from thirty-five percent to fifty-one percent of bona fide tenants.\(^{170}\) In contrast to the 1974, 1976, and 1978 legislation, the Governor received no communications of real estate industry opposition for the 1982 bill, and only one group voiced opposition to the 1983 bill.\(^{171}\) Real estate developers saw from their experience with past conversions that those concessions sufficient to induce thirty-five percent of tenants to purchase the property were also probably sufficient to induce more than fifty-one percent to purchase.\(^{172}\) The diminishing force of real estate industry opposition thus was the result of a feedback effect.

Another feedback effect in the 1970-83 period is the willingness of the decisionmakers to reexamine and modify the protections supported earlier, after the number of conversions and evictions mounted. Legislators accorded increasing weight to the demands of tenant groups and perhaps became more

\(^{165}\) NEW YORK STATE COMMISSION ON RENTAL HOUSING, supra note 159, at tables 1 and 7.


\(^{169}\) See Letter of Senator Martin Auer to Alice Damel, Counsel to the Governor (July 8, 1983), Governor's Bill Jacket to 1983 N.Y. Laws 771.

\(^{170}\) 1982 N.Y. Laws 555 (applicable within the City of New York), and 1983 N.Y. Laws 402 (applicable within Nassau, Westchester, and Rockland Counties, at local option).

\(^{171}\) No real estate industry opposition is found in the Governor's Bill Jacket to the 1982 law, which applied to conversions within the City of New York. 1982 N.Y. Laws 555. The New York State Builders Association was the only real estate group voicing opposition to the 1983 law. This law applied to conversions in Nassau, Westchester, and Rockland counties (at local option). 1983 N.Y. Laws 402.

\(^{172}\) Interview with R. Scott Greathead, supra note 137; Interview with Robert Robbin, supra note 137.
willing to take up their plight as a matter of ideological commitment. The tenant protection provision reflected a changed view of the desirability of conversion activity. Prior to the 1980s, conversions were generally viewed favorably, offering a salvation for deteriorating rental buildings without substantially diminishing the availability of rental housing. As a result, the fifty-one-percent sales requirement proposed by former Attorney General Lefkowitz every year from 1970 through 1975 did not pass either house of the Legislature. At that time, such a requirement was considered an excessive impediment to what was viewed as a generally desirable development. As the number of conversions and evictions multiplied, however, conversions were regarded less favorably. For example, in 1980 New York City Mayor Koch urged the State Senate to defeat a bill, which had passed the Assembly, requiring fifty-one percent of tenants to purchase to declare an eviction plan effective. The Mayor's opposition was a virtual "death blow" to the legislation and was premised on his view that conversions stabilized neighborhoods and the tax base of the City of New York. By 1982, however, Mayor Koch supported the fifty-one-percent purchase requirement. Similarly, as late as 1981 Governor Carey opposed a fifty-one-percent sales requirement because it would stop conversions and lead to abandonment of buildings. However, he signed the 1982 legislation applying such a requirement within the City of New York due to the steady increase in the number of conversions and the extreme housing shortage in the City.

Overall, the 1970-83 period evidences constant feedback. It often took the form of sudden realizations of the need for action. Feedback continually resulted in cognition of the changing magnitude of conversion activity. Feedback consisted not only of fact recognition and recognition of changing circumstances, but also of varying evaluations of the perceived effects of a proposed course of action.

From 1990 to 1993, the third period, there was a significant number of developer defaults, and the Legislature debated possible unit owner protections. By 1990, the number of unit-owners had swelled, and they had become

173. For example, the New York State Office of Development Planning, which traditionally would not need to cultivate tenants' votes, supported the legislation as a means of minimizing social costs imposed on tenants. New York Office of Development Planning Memorandum (July 14, 1982), Governor's Bill Jacket to 1982 N.Y. Laws 555.
178. Executive Memoranda, N.Y. Session Law 2616-17 (McKinney 1982).
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organized. As a result, unlike earlier periods, in which lobbying was limited and sporadic, many organized unit-owner groups pressured the Legislature for protection. This constituted a change in input.

Local political leaders also took up the cause of unit owners and lobbied the Legislature on their behalf, creating an additional change in input. Public officials had earlier taken up the cause of tenants, but not unit owners. By 1990, however, there was a change in State Senate leadership. As a result, during the 1990-93 period the involvement of public officials was not entirely favorable to unit owners’ interests. For example, Senator Kemp Hannon, chair of the Senate Housing Committee, was opposed to most proposed legislative changes. Senator Hannon’s leadership during this period meant that the Senate would refuse to enact protections. Finally, whereas it had stood silent in 1982-83, the real estate industry actively opposed the proposed legislative intervention in 1990-93. This was largely due to the nature of the proposed changes, and the depressed nature of the general public’s demands for action. In other words, there exists a feedback effect among the forces that influence change. As one force gains (or loses) strength, other forces may conclude that some change is (or is not) inevitable and thus decrease (or increase) the strength with which they oppose action.

2. Turbulence and Evolution

One product of the feedback effect is that factual changes and altered conclusions produced by them sometimes spark turbulence. This will not take the form of a single legislative act. Rather, a period of evolutionary response is triggered, during which legislative actions are taken, evaluated, modified, and reevaluated. The increasingly responsive and complex outcomes produced by the feedback effect are illustrated by the actions of the New York State Legislature in two areas: (a) the percentage of tenants required to purchase, which evolved during the 1974-82 period; and (b) the protections to be afforded senior citizens and disabled persons, which evolved during the 1978-83 period.

Prior to 1974, the New York State Legislature did not enact protections for the benefit of tenants of buildings converted to condominium or cooperative status. The Legislature had settled on an equilibrium point of no action. As discussed above, by 1974 sufficient spark was produced to induce legislative action. This lead to a nine-year period of turbulence which saw various enactments, each evidencing an interim equilibrium point. In 1974, an

179. This was voiced at meetings I attended during lobbying efforts on behalf of the Co-op/Condo Task Force in April, 1991 and May, 1992.
180. See supra note 148 and accompanying text.
181. See supra note 88 and accompanying text.
equilibrium point was reached: \(182\) (a) thirty-five percent of tenants in occupancy must consent to purchase, (b) before any plan can be declared effective for the conversion of any building from rental status (c) anywhere in the State of New York. In 1977, a second interim equilibrium point was reached. That year the requirements enacted in 1974 were allowed to expire, leaving no state law imposing a tenant purchase requirement in effect. At the time, however, the rent stabilization and rent control laws, which govern most rental apartments in the City of New York, continued to require thirty-five percent of tenants to purchase before such buildings could be converted. \(183\) As noted above, almost all conversions during this period were taking place within the City of New York. \(184\)

In 1978, a third interim equilibrium point was reached. The law provided that cities, towns, and villages in the three-county area could elect to subject their jurisdictions to the following requirements: (a) to declare a plan to convert a rental building effective as an eviction plan, thirty-five percent of tenants in occupancy must agree to purchase, (b) to declare a plan effective as a noneviction plan, fifteen percent of tenants in occupancy must agree to purchase, and (c) all such agreements to purchase must be made with no discriminatory repurchase agreements or other discriminatory inducement. \(185\)

As noted above, in 1978 a thirty-five-percent sales requirement was also in effect in the City of New York. It did not, however, stipulate any requirement to declare plans effective as noneviction plans. \(186\) Also in the mid-to-late 1970s, conversions began to spread to Westchester and Nassau counties. \(187\)

This equilibrium point was sustained for a number of years. In the 1978-82 period, there was one form of protection in parts of Nassau, Westchester, and Rockland counties, a similar form of protection throughout the City of New York, and no legislative protection in other parts of the State.

In 1982, a fourth interim equilibrium point was reached. The law provided that within the City of New York, (a) a plan could be declared effective as an eviction plan if at least fifty-one percent of the bona fide tenants (excluding eligible senior citizens and disabled persons) agreed to purchase; (b) a plan could be declared effective as a noneviction plan if at least fifteen percent of the units in a building had been purchased by either bona fide tenants or bona fide purchasers; and (c) all purchase agreements were to be obtained without

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183. NEW YORK CITY RENT AND EVICTION REGULATIONS, N.Y. UNCONSOL. LAW § 55(c) (McKinney 1974); Code of the Rent Stabilization Association of New York City, Inc. § 61. It also required that such agreements to purchase be secured without discriminatory repurchase agreements or other discriminatory inducement.
184. See supra note 158 and accompanying text.
186. The New York State Department of Law required 15% sales, as an administratively imposed requirement. However, there existed no clear statutory authority for this requirement.
187. See supra note 100 and accompanying text.
discriminatory repurchase agreements or other discriminatory inducements.\textsuperscript{188}

Finally, in 1983 a fifth interim equilibrium point was reached. In that year, the requirements which were imposed in 1982 upon the City of New York were extended to cities, towns, and villages in Nassau, Westchester, and Rockland Counties (at local option). This legislation included several important variations: (a) a noneviction plan required that at least fifteen percent of all units be purchased by bona fide tenants (not by bona fide purchasers); and (b) an eviction plan required not only the fifty-one-percent sales requirement, but also that at least thirty-five percent of bona fide tenants agree to purchase, including all eligible senior citizens and disabled persons. The requirements in Nassau, Westchester, and Rockland counties were potentially more protective than those in New York City as they required a minimum number of tenants to agree to any conversion, and granted nonpurchasing seniors and disabled persons a voice in the decision to convert buildings pursuant to an eviction plan even though they could not be evicted according to state law.

This 1983 equilibrium point has remained unchanged. At the time, however, there was uncertainty about the future result as there were still demands for further changes. For example, tenants demanded that the number of units required to be sold to declare a plan effective as a noneviction plan be increased to twenty-five percent. Thus, a final area of uncertainty is at what point in time a period of turbulence will settle into a time of stability.

Legislation protecting senior citizens and disabled persons against eviction similarly exemplifies a period of turbulence during which the nature of the protections granted was altered and refined. This period of turbulence lasted from 1979 until 1983. In 1979, senior citizens were given special status, but only in the City of New York.\textsuperscript{189} Certain senior citizens in buildings undergoing conversion could not be evicted if they did not purchase, even if the plan was declared effective as an eviction plan. This protective measure was limited to tenants sixty-two years of age or older, who had resided in the building as their primary residence for at least two years and had annual incomes of less than $30,000.\textsuperscript{190} In 1982, these protections were amended to remove the income limits and two-year-residency requirement. In addition, protection against eviction was extended to disabled persons.\textsuperscript{191} In 1983, these protections were extended to senior citizens and disabled persons located in buildings converted in Nassau, Westchester, and Rockland counties (at local option).\textsuperscript{192} A month later, they were made applicable throughout the State.\textsuperscript{193}

\begin{itemize}
\item 188. 1982 N.Y. Laws 555.
\item 189. 1979 N.Y. Laws 432.
\item 190. Id.
\item 191. 1982 N.Y. Laws 555.
\item 192. 1983 N.Y. Laws 402.
\item 193. 1983 N.Y. Laws 771.
\end{itemize}
Both the 1974-82 developments regarding sales requirements and the 1979-83 developments regarding protections for seniors and disabled persons illustrate a continuing refinement of the scope of action taken in light of accepted objectives. One can never be certain, however, whether the spark for change will induce merely one small change or a period of turbulence. During the 1990-93 period, for example, a substantial number of developer defaults caused losses to many persons. This trend was publicized and sparked the interest of legislative advocates. A period of turbulence might have resulted, but did not. What triggers a period of turbulence, as against a single legislative act, remains unclear.

C. Legislative Signatures

In this section two points are discussed and documented: the existence of legislative signatures, and the nature of such signatures. Legislative signatures are found not only to constrain decisions within boundaries but also to permit infinite variations in various legislative bodies. They are also found to be prevalent but neither universal nor pervasive. This conclusion differs from findings in the physical sciences.

1. The Character of Legislative Signatures

In the physical sciences, investigators have discovered an aperiodic nature in physical changes, with newly formed objects following a basic pattern common to all objects of a particular type (e.g. butterflies) but displaying individual variations within that pattern (e.g. color patterns).\textsuperscript{194} Chaos theorists have searched for the cause or causes of the pattern, sometimes referred to as the strange attractor,\textsuperscript{195} that determines the basic structure or form of the end product. The aperiodic nature of change prevents foreknowledge of the precise contours of the final product, but its basic structure is predictable. Legislation, the product of human decision rather than physical change, may be more resistant to such predictions. The cross-spatial study presented here documents the existence of legislative signatures\textsuperscript{196}—that is, a pattern of legislative decisions on a particular topic by various state legislatures which constrains legislative choices. Most subsequent decisions by the same legislative body with respect to that topic reflect the signature already adopted, and are confined by its boundaries.

The signature which is chosen by a particular legislature on a particular topic is unpredictable; there are various possible signatures. The particular

\textsuperscript{194} See GLEICK, supra note 16, at 15-20 (discussing work of Edward Lorenz).
\textsuperscript{195} Id. at 132-53 (discussing work of David Ruelle and Floris Takens).
signature chosen to govern a particular topic is found to be prevalent among legislative bodies. For example, full disclosure is the prevalent signature of state enactments regulating condominium and cooperative offerings. However, the signature’s adoption is not universal. It is uncertain which signature will be chosen. The choice is affected by the factors that determine the legislature’s decision to act. As discussed in Part II of this Article, those factors and their influence are unpredictable.

Not only is the choice of signature unpredictable, but the details of decisions on subissues are also unpredictable. As is true in nature, within each pattern there exists the possibility of an infinite number of variations. This is equally true of individual state legislative decisions. Even states following a certain pattern or signature have molded the details of decisions on individual issues in a manner that perhaps best serves local needs and circumstances. The result is an infinite number of possible variations; the exact outcome in an individual state is unpredictable. The cross-spatial case study presented below demonstrates this conclusion.

This Article provides evidence of the existence of a prevalent pattern and of infinite variations within that pattern. A determination of what causes the pattern to exist—the basic strange attractors in legislative decisions—must await further study.

2. The Evidence

Two legislative issues are considered to document the conclusions drawn above. The first issue concerns the nature of state regulation imposed on offerings of condominiums and cooperatives to the general public. A cross-spatial study is presented below of the type of signature chosen by the three states with the largest number of condominium and cooperative units: California, Florida, and New York.197

The second issue concerns the form of state restriction upon developer self-dealing arrangements which might be imposed for the protection of the unit purchasers. A nationwide cross-spatial study of this issue is presented below. It documents even more clearly the extensive variations which are both possible and existent within the basic pattern a state has chosen as its approach to regulation.

In the field of state regulation of condominium and cooperative offerings,

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197. The 1990 Census found 856,165 condominium units in California, 944,590 condominium units in Florida, and 343,825 condominium units in New York. COMMUNITY ASSOCIATIONS INSTITUTE, COMMUNITY ASSOCIATIONS FACTBOOK 14-16 (Clifford J. Treese ed., 1993) (condominium units, Department of Census summary tape files 3-A). New York State also contains a large number of cooperative units. The Bureau of Census does not collect data on cooperative units, but the New York City Department of Finance reported that, as of July 1991, there were 342,883 cooperative units in the City of New York alone. JOCELYNE CHAIT, UNRAVELING THE MYTH 25 (1993).
for example, there were at least four possible signature choices when the
development was in its infancy: (a) caveat emptor, or no government regulation
to protect the purchaser, which is the approach that had been taken to sales of
one-family homes by developers; (b) disclosure, which is the approach that had
been taken to sales of securities to the general public; (c) warranty of basic
systems and quality of workmanship, which is the approach later adopted by
some states to the sale of newly built homes; and (d) fairness, in the terms of
the transaction and in the product offered. In the early 1960s, what choice each
state legislature would make was unpredictable. However, once a given choice
was made, it then provided the parameters for future legislative decisions
governing aspects of the same basic transaction. In addition, it provided a
likely choice of approach toward regulation of similar transactions. After New
York legislators chose the disclosure pattern to regulate offerings of coopera-
tive units in 1960, they employed the same choice in regulating condominiums
in 1964, and time shares thereafter.\footnote{198}

The initial cross-spatial study which I conducted concerned the type of
signatures adopted by the state legislatures of California, Florida, and New
York. As noted above, there are many possible choices that can be made with
respect to the pattern or signature of state regulation. California adopted a
fairness approach. New York and Florida adopted a full disclosure approach.
Significantly, the actual choice of signature is not uniform. The choices were
not predetermined by the nature of the issue.

New York, which embraced a disclosure approach to state regulation,
permitted any offering as long as the material terms of the offering were fully
disclosed to prospective purchasers.\footnote{199} Over the years, a few statutory limits
on developer discretion over the terms of offerings have been imposed, chiefly
to protect tenants in conversions of existing buildings. However, apart from a
few such requirements, current legislation permits any offering as long as its
terms are fully disclosed. Thus, the developer need not cure building or
housing violations, need not ensure that the building is free of defects (even if
they endanger the life, health, or safety of residents), need not post guarantees
of financial obligations, and need not undertake any other obligation relating
to the physical or financial condition of the property beyond those obligations

\footnote{198. 1960 N.Y. Laws 987 (subjecting offerings of cooperative interests in real estate to disclosure
obligations), and 1964 N.Y. Laws 82 (defining condominium units as cooperative interests in real estate
for the purpose of subjecting them to disclosure obligations). No legislation has been adopted specifically
subjecting offerings of time shares to the same disclosure obligation. However, the New York State
Attorney General has concluded that time shares are subject to disclosure obligations, pursuant to the
broad scope of coverage contained in existing legislation, N.Y. COMP. CODES R. & REGS. tit. 13 § 24
(1994), and the legislature has not chosen to disagree.

199. N.Y. GEN. BUS. LAW § 352-e (McKinney 1984).}

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specifically enumerated in the New York statutes. The Real Estate Financing Bureau of the Department of Law reviews offerings solely to ensure full disclosure.

California embraced an entirely different approach. The California statute imposes many substantive requirements on developers, regulating the terms of the offering for the protection of unit purchasers. Developers are required, for example, to make adequate financial arrangements for off-site improvements, community facilities, and all guarantees or warranties contained in the offering; reasonable arrangements for delivery of control to purchasers; and reasonable arrangements for the management, maintenance, preservation, and operation of the property. The regulatory approach authorized under the California statutes is also different from that authorized in New York. In California, the Department of Real Estate reviews offerings to ensure suitability of the project for its intended use, fair dealing, and full disclosure. This approach has permitted, for example, the issuance of regulations requiring that eighty percent of the units be sold to ensure sufficient funds for operation of a development, or that a surety bond or other security be posted to assure fulfillment of the developer's obligations.

These studies of New York and California support the conclusions that the choice of one signature or another is unpredictable, and that once a signature is chosen, its use is not pervasive. California's decision regarding the developers' obligations concerning building conditions in buildings converted to condominium status provides an example. In 1981, California addressed this issue, and decided to enact only a disclosure obligation. Thus, the specific areas in which obligations will be imposed on developers, and the exact nature of such obligations, are unpredictable choices.

Similarly, while both New York and Florida have enacted full disclosure statutes regulating the offering of condominiums and cooperatives, they have, at times, imposed substantive obligations on developers. The variation has been individual rather than uniform. For example, Florida has departed from the full disclosure signature with respect to reserve accounts required to be created by

200. The New York courts have invalidated regulations issued by the New York State Department of Law requiring more than mere disclosure. Council for Owner Occupied Housing, Inc. v. Abrams, 125 A.D.2d 10 (N.Y. App. Div. 1987) (regulation requiring disclosure of the existence of asbestos-containing material and completion of remedial work by the offeror declared invalid); Council for Owner Occupied Housing, Inc., v. Abrams, 135 A.D.2d 12 (N.Y. App. Div. 1988) (regulation requiring offeror to cure all building violations of record and all other dangerous or hazardous conditions declared invalid).

201. CAL. BUS. & PROF. CODE §§ 11018, 11018.5 (West 1987).

202. Id. § 11018.5.


205. CAL. CIV. CODE § 1134 (West 1982) (developer must deliver to prospective buyer a statement of all substantial defects or malfunctions in major systems, if any).
a developer for existing buildings converted to condominium or cooperative ownership.\textsuperscript{206} New York has adopted no such requirement as a matter of state law.\textsuperscript{207}

The third conclusion supported by these studies is that once a signature has been followed on a specific issue, the exact details of the enactment it will produce are still uncertain and unpredictable. This last point becomes apparent in the cross-spatial study of state statutes on the issue of developer self-dealing. This legislative topic involves the permissibility of binding the condominium association or cooperative corporation to contracts (such as long-term management agreements or leases) which benefit the developer.

Study of self-dealing legislation demonstrates that the pattern or signature adopted by a state legislature for condominium and cooperative offerings is not pervasive. In other words, the fractal character discovered in the physical sciences—with the same basic pattern repeated at smaller and smaller intervals—exists in legislative enactments but, unlike the physical sciences, is not constant. This becomes an additional area of unpredictability since one never knows if the pattern will govern or will be ignored on a particular issue.

To begin, New York adopted a full disclosure approach to condominium and cooperative offerings, and its law governing self-dealing contracts is consistent with this approach. The New York State Legislature has enacted no statutory prohibitions or controls over self-dealing contracts, allowing common law principles, which are based on full disclosure, to govern.\textsuperscript{208} Thus, in New York there is evidence of a fractal character—the specific issue showing the same pattern as the general topic.

Similarly, in California there is evidence of a fractal character. As discussed above, California adopted fairness to the unit purchaser as its basic pattern for regulation of condominium and cooperative offerings. Pursuant to this mandate, regulations have been adopted by the California Department of Real Estate limiting the effective time period of any contract entered into by a developer unless the other unit purchasers consent.\textsuperscript{209} The decision to permit such contracts but limit their terms is consistent with the fractal character discovered by investigators in the physical sciences.

The Florida experience, however, demonstrates that a fractal character is

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{206} FLA. STAT. ANN. § 718.618 (West 1993) (reserve account for the air conditioning system, plumbing and roof based on a formula estimating replacement cost, or implied warranty of fitness and merchantability for roof, structural components of improvements, fireproofing and fire protection systems, and mechanical, electrical, and plumbing elements serving the improvements).
\item \textsuperscript{207} The City of New York, however, has imposed a requirement that developers create a reserve fund for capital repairs, replacements and improvements based on the sales price of the units sold in a converted building. N.Y. ADMIN. CODE & CHARTER § 26-703 (1993).
\item \textsuperscript{208} \textit{See}, e.g., Northridge Coop. Section No. 1, Inc. v. 32nd Ave. Constr. Corp., 2 N.Y.2d 14 (N.Y. 1957) (officers and directors of cooperative corporations have no fiduciary duty to present tenants who had not subscribed at time of contract).
\item \textsuperscript{209} 10 CAL. ADMIN. CODE § 2792.21 (b)(1).
\end{itemize}
\end{footnotesize}
not pervasive. Florida, like New York, adopted a full disclosure pattern in its legislation governing offerings of condominiums and cooperatives. However, when faced with the issue of developer self-dealing contracts, this pattern was ignored. Instead, the Florida Legislature granted unit purchasers the right to terminate any contract made before the unit owners assume control of the association.\(^\text{210}\)

A second revealing aspect of the study of legislation addressing the issue of developer self-dealing is that it clearly shows the nonidentical nature of the legislation that is adopted even when a controlling pattern is discoverable on the specific issue. This illustrates the aperiodic nature of legislative actions in the form of infinite equilibrium points within a general pattern. This aspect of the cross-spatial study does not deal with scaling—i.e. investigation of the existence of a pattern in one jurisdiction and in each segment of a topic which is the subject of legislation in that jurisdiction. Rather, it deals with investigation of the existence of a pattern across various jurisdictions when they address one issue. This would be analogous to repetitions of a pattern in similar but unique objects in nature—e.g. each butterfly.

To investigate the manifestation of infinite variations created by legislatures addressing a particular issue, I conducted a nationwide study of legislation concerning developer self-dealing contracts in the offerings of condominium or cooperative units. I examined legislation in every state and the District of Columbia, as well as legislation adopted at the federal level. This study uncovered statutory enactments in thirty states plus the District of Columbia.\(^\text{211}\) as well as legislation at the federal level.\(^\text{212}\)

\(^{210}\) Fla. Stat. Ann. §§ 718.302(1)(b) (condominiums), 719.302(1)(b) (cooperatives) (West 1994). See also id. § 718.3025 (specifying terms of contracts for maintenance or management); id. §§ 718.3026, 719.3026 (requiring competitive bids under certain conditions for contracts to purchase, lease, or rent materials or equipment); id. §§ 718.122 and 719.112 (creating rebuttable presumption that specified recreational leases unconscionable).


In California, the governmental control over self-dealing contracts is found in the administrative code. 10 Cal. Admin. Code § 2792.21(b)(1). This specific regulation is issued pursuant to general statutory authority and therefore is included in this study. In New York, a regulation regarding self-dealing contracts has also been issued. N.Y. Comp. Codes R. & Regs. tit. 13, § 18.3 (bb)(5)(v).
This legislation falls into two basic patterns: (a) grants of termination rights, and (b) imposition of limited binding periods. Twenty-five states plus the District of Columbia and the federal government follow the first pattern. Nine states plus the District of Columbia have embraced the second pattern. Some states have a hybrid approach in which certain contracts are subject to termination while other contracts are subject to a limited binding period. These numbers reveal the prevalence, but also the lack of universality, of an adopted pattern.

The nonidentical nature of legislative adoptions is further revealed when one examines the details of the individual enactments. The legislatures which have granted a right of termination have done so in diverse ways. This reflects the fractal character of the process, namely enormous, perhaps infinite, variations within a constraining pattern. Three major variations—presented to show the point rather than to cover the field—involve the following: (a) scope of coverage, (b) basis for termination, and (c) procedure to terminate. As to scope of coverage, some statutes encompass any contract entered into while the developer controls the association. Other statutes encompass only contracts with the developer. As to the basis for termination, some statutes allow only unconscionable contracts to be terminated. Other statutes allow any and all contracts which fall within the scope of coverage discussed above to be terminated—regardless of the fairness of their terms. Finally, as to the procedure for termination, some statutes provide for judicial proceedings and

(prohibiting unconscionable terms in leases). Yet, the power to issue such a regulation under applicable state statutes is doubtful. See discussion supra note 198. Therefore, the New York regulation is not included in this study.

212. 15 U.S.C. § 3607. See also 15 U.S.C. § 3608 (judicial termination of unconscionable leases entered into before June 4, 1975). The latter provision is subject to a limitations period which already time bars all actions. 15 U.S.C. § 3613 (action must be brought within four years after October 8, 1980).

213. Alabama, Alaska, Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey (only leases), New Mexico, North Carolina, Oregon (only management, service or employment contracts), Pennsylvania, Rhode Island, Virginia (for cooperatives), Washington, West Virginia and Wisconsin have adopted such a provision. See supra note 211.

214. The District of Columbia, Hawaii, Michigan (but only leases in a leasehold condominium), and Virginia (for condominiums) have adopted such a provision. See supra note 211. The federal statute also contains this limitation. 12 U.S.C. § 3607(a)(2).

215. The District of Columbia and Michigan have limited the right to terminate. Supra note 211.

216. Florida, Georgia, Hawaii, Illinois, Louisiana, Maryland, Nebraska, New Jersey, and Oregon have enacted such statutes. Supra note 211. Alabama, Alaska, Arizona, Colorado, Connecticut, Maine, Minnesota, Missouri, New Mexico, North Carolina, Pennsylvania, Rhode Island, Virginia, Washington, West Virginia, and Wisconsin, see supra note 211, take a hybrid approach. They grant a right to terminate any contract with the developer, certain so-called critical contracts (i.e., management or employment contracts and recreational leases), and any other contract if unconscionable. The federal statute grants an absolute right of termination.
declarations that the contracts are terminated.\textsuperscript{217} Other statutes require no judicial intervention, and simply a vote of the unit purchasers.\textsuperscript{218} These variations are a small fraction of possible variations between and among statutory enactments. Among states following the termination pattern, there are various possible equilibrium points on the three issues/variations noted above. In addition, there are various possible equilibrium points on further refinement of these issues (e.g. percentage of unit owners who must authorize a nonjudicial termination of a self-dealing contract) and related issues (e.g. limitations periods).

This aperiodic character surfaces as well in an examination of state enactments limiting the time period in which a self-dealing contract made in the early stages of organization may bind a condominium or cooperative. States adopting this approach present variations, among others, concerning the type of contract which is subject to the limitation\textsuperscript{219} and the time period to which a contract shall be limited, from one to five years.\textsuperscript{220} The New Jersey statute is a perfect example of the unique outcomes produced by individual state legislative decisions. While following the pattern of statutory limit on the time period in which a contract is binding, the New Jersey statute contains a two-year maximum term for employment, service, or maintenance contracts, or contracts for the supply of equipment or material, but a floating maximum term for management contracts. Management contracts terminate automatically ninety days after the first meeting of the board of managers of which unit owners other than the developer constitute a majority of the membership, unless the unit owners, or the board they elect, vote to ratify the contract.\textsuperscript{221} An aperiodic character thus appears, nonidentical variations within repetitions of a basic pattern. As a result, the exact details of a statutory enactment are highly unpredictable until its completion.


\textsuperscript{218} Alabama, Alaska, Arizona, Colorado, Georgia, Hawaii, Illinois, Louisiana, Maryland, Michigan, Nebraska, North Carolina, Oregon, and Wisconsin use this approach. \textit{See supra} note 211. It is also the procedure contained in the federal statute. 12 U.S.C. § 3607.

\textsuperscript{219} The California, New Hampshire, New Jersey, Oregon, South Dakota, and Virginia enactments extend to any contract entered into while the association was controlled by the developer. The District of Columbia and Hawaii enactments extend to contracts with the developer. \textit{See supra} note 211.

\textsuperscript{220} The time periods imposed are as follows:

\begin{itemize}
  \item \textbf{One year} California and Hawaii
  \item \textbf{Two years} District of Columbia, New Jersey, South Dakota, and Virginia (other contracts and leases)
  \item \textbf{Three years} Oregon
  \item \textbf{Five years} Connecticut (prior to 1984) and Virginia (management contracts)
  \item \textbf{Variable Period} New Hampshire (during period of declarant control—i.e., two to five years maximum, depending on nature of development, or on sale of three-quarters of undivided interests)
\end{itemize}

\textit{See supra} note 211.

\textsuperscript{221} \textit{N.J. STAT. ANN.} § 46:8B-12.2 (West 1994).
IV. CONCLUSION

Traditional theories used to explain and analyze legislative behavior, such as public choice and pluralism, are based on a reductionist and linear view of legislative dynamics: legislative action is best understood and can be predicted by isolating the basic cause(s) of all decisions. Such causes then are treated as the norm, with actions outside the norm dismissed as the exception. This Article argues that just as the physical sciences have begun to reject a reductionist, linear viewpoint, political science should do the same. Instead, legislative activity is best understood, and should be further studied, through the use of chaos theory.

The evidence from case studies of federal and state legislative initiatives on a range of issues reveals that complexity and nonlinearity characterize the causes of legislative decisions. Such causes are not constant in identity or force. Moreover, their individual effect and the effect produced by the interaction of various causes vary over time (within the same legislative body at different times) and space (among different legislative bodies).

Legislative decisions are thus unpredictable, and this unpredictability is compounded by the influence of a feedback effect in legislative decisions. Although the effect is clearly seen in federal and state case studies, the event which is the source of feedback, the moment it is recognized, and the nature of its effect on decisionmakers, are all unpredictable.

Legislative activity is also characterized by the existence of legislative signatures, which distinguishes activity subject to deterministic chaos from random activity. As in the physical sciences, this constraint allows a great deal of variation within its outer boundaries. This is the aperiodic character of decisionmaking. Legislative dynamics differ in two relevant respects from physical dynamics, however, making them even more unpredictable. First, specific legislative signatures for an area of legislative action are commonly but not universally followed across legislative bodies. Second, within each legislative body, the adoption of a particular legislative signature for a subject of legislative activity is commonly, but not universally, mirrored in subparts of the enactment. This is a variation on the fractal character of physical dynamics.

The significance of the recognition of the deterministic chaotic nature of legislative decisions is that it transforms our view of existing evidence and our evaluation of legislative reform efforts. Chaos theory provides a sense of order in the face of conflicting evidence in past studies as to the causes of legislative
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decisions.\(^{222}\) It also may help to bring within a larger framework various
theories of legislative behavior which have grown out of this evidence.
Examples of such theories are complexity theory\(^{223}\) and the convergence
thesis.\(^{224}\)

Chaos theory also provides a new vantage point from which to explore the
debate on proof of causation in social science research.\(^{225}\) Given the complex
and nonlinear nature of decisionmaking, any reliance on statistical correla-
tions\(^{226}\) may be misplaced. Chaos theory may provide a more appropriate
model for analysis.

Finally, chaos theory transforms our view of suggested legislative reform
efforts and their likely impact. Campaign finance reform, for example, which
has recently occupied the federal legislative agenda, may be unlikely to alter
congressional decisions substantively, if enacted. There may be other
justifications for such reform, or its incremental effect may be sufficient reason
for enactment. However, in light of chaos theory any hopes of substantial
changes in congressional decisionmaking appear groundless. Instead, chaos
theory asks us to focus legislative reform efforts on the structure of the
governmental process to remove barriers to the evolutionary character of
legislative decisions.

\(^{222}\) See supra notes 2-6 and accompanying text. See also PAUL ANAND, FOUNDATIONS OF
RATIONAL CHOICE UNDER RISK 19-42 (1993) (noting that a large body of empirical evidence has been
reviewed by psychologists and economists, and that both groups have come to the conclusion that if it
is possible to test rational choice theory, then the theory must fail).

\(^{223}\) See supra notes 11, 15, and accompanying text.

\(^{224}\) The convergence thesis is reviewed in Michael Howlett, The Judicialization of Canadian
J. POL. SCI. 99 (1994). The convergence thesis examines the extent to which, and reasons why, one
country adopts a policy whose overall approach and specific solution to a policy problem is very similar
to that of another country.

\(^{225}\) See, e.g., GARY KING ET AL., DESIGNING SOCIAL INQUIRY (1994).

\(^{226}\) See, e.g., Peltzman, Constituent Interest, supra note 7.