

# Book Review

## Public Policy in the Public Interest

by Susan Rose-Ackerman\*

MAKING PUBLIC POLICY: A HOPEFUL VIEW OF AMERICAN GOVERNMENT, by Steven Kelman, Basic Books, N. Y., 1987.

Oliver North seems to be Steven Kelman's ideal public official. He uses his own initiative to carry out policies in which he passionately believes. He is not hampered by standard operating procedures or the need to clear his plans with a range of functionaries in various departments. He is flexible, creative, and hardworking in carrying out his view of the public welfare. After his downfall he quotes the beatitudes: "Blessed are those who are persecuted for righteousness' sake for they shall see God."

But in spite of all his admirable character traits, North is surely a counterexample for Kelman's claim that "when people try to achieve good public policy, the result tends to *be* good public policy."<sup>1</sup> North's behavior raises in dramatic form the tension between encouraging officials to carry out their view of the public interest and ensuring accountability to voters and organized political interests. Such accountability may imply taking action based on parochial interests. In contrast, Kelman believes that legislators, bureaucrats, judges, and the President are, and should be, imbued with the "public spirit." However, he is not very explicit about how conflicts over values should be resolved, beyond an appeal to the importance of "discussion and deliberation."<sup>2</sup> When do provisions for deliberation become just so much more red tape that stifles initiative and when do they promote high quality results?

In spite of such unresolved tensions in his analysis, Kelman has written a basically hopeful book about policymaking, although it obviously is not the behavior of President Reagan's National Security

---

\* Ely Professor of Law and Political Science, Yale University, New Haven, Connecticut.

1. S. Kelman, *Making Public Policy: A Hopeful View of American Government* 208-09 (1987)(emphasis in original).

2. Kelman at 208-09.

Council that he uses to support his argument. While Kelman does not dwell on such manifest failures, his message is more a counsel of realism in the face of inevitable difficulties than a misty-eyed apology for the status quo. Kelman's work is an attempt to rehabilitate government both by pointing to the strengths of our system and by taking a realistic view of its potential.

Since the book had its origins in Kelman's introductory courses on the policy process at the Kennedy School of Government at Harvard, part of it is high school civics with a graduate school twist. People who have almost no knowledge of the institutional structure of American government can read this book. Readers will come away with a good introduction to the government's basic framework: an introduction that is well-informed by current scholarship on the workings of Congress, the executive branch, and the courts, and enriched by comparisons with the institutional structures of other Western democracies. The book charts a sensible middle ground between criticism and appreciation of the policy process.

*The Workings of the Policy Process:  
Politics as Self-Interest and Public Spirit*

The first half of the book outlines the workings of the policy process. Kelman emphasizes the way political forces interact with institutional structures to affect both substantive policy results and citizens' feelings of self-respect and dignity in their dealings with the state.<sup>3</sup> Kelman sees politics as pervasive in all branches of government, including the judiciary, and argues that the widespread presence of political motivations is a desirable feature of government so long as institutional constraints operate effectively. He rejects any sharp division between political legislatures, political agencies, and the courts. Kelman's broad-gauged view of politics includes both "jousting among advocates" and deliberation.<sup>4</sup> Either element is incomplete taken alone. Political life is partly a contest between conflicting interests seeking to use the coercive power of the state for their own benefit. It is, however, also an arena for discussion where political learning occurs, minds can be changed, and politics becomes "a common problem-solving venture."<sup>5</sup> In Kelman's view

---

3. Kelman at 16.

4. Kelman at 42-43.

5. Kelman at 43.

## In the Public Interest

the aim of reformers should be to design, in all branches of government, institutions that encourage discussion and political learning.<sup>6</sup>

In this light, Kelman reviews the policymaking process in Congress, the Presidency, the bureaucracy, and the Supreme Court. His analysis of Congress recognizes the importance of local constituencies and campaign contributors in shaping legislators' positions. Nonetheless, his work is in the spirit of some recent scholarship that emphasizes the role of legislators' personal convictions in explaining votes.<sup>7</sup> Such scholarship also emphasizes the impact of information and ideas in producing successful lobbying campaigns in the public interest.<sup>8</sup>

Kelman views the President as an official with less actual power than he is perceived to have. Yet the President is not completely powerless in his dealings with Congress and the bureaucracy. His main impact on Congress is in drafting legislative proposals for congressional consideration. In spite of the growth in congressional staff and the decline of party loyalty, Kelman still sees the President's agenda-setting role as important. The President's personal impact on the bureaucracy is a function of the way he organizes White House staff to oversee agencies and to generate legislative proposals. Within the constraints imposed by statutory mandates and by the sheer size of the executive branch, the President can still influence the behavior of agencies.<sup>9</sup>

In discussing the bureaucracy, Kelman emphasizes the political nature of many of its choices, especially in the promulgation of major rules. Congressional delegation of authority to an agency is likely to affect the relative strength of outside advocates, since "some interest groups will prefer to deal with the bureaucracy, but others will prefer Congress."<sup>10</sup> As in his discussion of Congress, Kelman ends his institutional analyses of the President and the bureaucracy with a recognition of the key role of "public spirit."<sup>11</sup> Kelman believes that most such officials try to "do good," but he also recognizes the dangers of this type of effort: a rigid, fanatical president; a bureaucracy that subverts the congressional will.

---

6. Kelman at 43.

7. See, e.g., Kalt and Zupan, Capture and Ideology in the Economic Theory of Politics, 74 *Am. Econ. Rev.* 279 (1984); Levine, Revisionism Revised? Airline Deregulation and the Public Interest, 74 *Law & Contemp. Prob.* 179 (1981).

8. See, e.g., D. Robyn, *Braking the Special Interests: Trucking Deregulation and the Politics of Policy Reform* (1987).

9. Kelman at 100-102.

10. Kelman at 110.

11. Kelman at 83-87, 112-13.

Finally, Kelman views the federal courts as the "political institution most explicitly designed to encourage those making decisions to examine policies in the light of what is right rather than what is in the personal interest of the decisionmaker."<sup>12</sup> As shown by Robert Bork's confirmation hearings, this position is a controversial one, raising the question of how much substantive review courts should provide. Kelman does not directly address this issue in any detail, however, since his main concern is with the operation of the policymaking process in Congress and the bureaucracy.

*Evaluating the Policy Process: Of Incentives and Values*

Kelman's evaluation of the policy process is best understood in the context of the changing field of public policy analysis in the post-war period. In the late 1950s and early 1960s, economists developed techniques of project evaluation based on cost-benefit tests and systems analysis, and many of those who made seminal contributions to this development became active advocates for the application of economic analysis to the policy process.<sup>13</sup> These techniques began to affect public decisionmaking with the appointment of Robert McNamara as Secretary of Defense in 1961. McNamara peopled the Department with a group of self-styled "whiz kids" committed to systems analysis and economic methods.<sup>14</sup> Several years later, the Johnson Administration followed the Defense Department model in establishing offices for Policy, Planning, and Budgeting in agencies with domestic programmatic responsibilities such as Health, Education and Welfare, and Housing and Urban Development.<sup>15</sup>

Eventually, however, the Vietnam War and domestic unrest dampened the optimism of reform-minded students of the federal spending process. The problems of those years were not amenable to solution solely by technocrats. Furthermore, at the same time that cost-benefit analysts were forced to recognize the limitations of their techniques, other economists began to use their analytic tools to undermine the legitimacy of existing regulatory policies. Their work

---

12. Kelman at 133.

13. R. McKean, *Efficiency in Government Through Systems Analysis* (1958); *Measuring Benefits of Government Investments* (R. Dorfman ed. 1965); A. Maass, M. Hufschmidt, R. Dorfman, H. Thomas, S. Marglin, & G. Fair, *Design of Water-Resources Systems* (1962).

14. C. Hitch & R. McKean, *The Economics of Defense in the Nuclear Age* (1960).

15. For a selection of papers from Congressional hearings on the Policy, Planning and Budget (PPB) process held in 1968 and 1969, see R. Haveman & J. Margolis, *Public Expenditures and Policy Analysis* (1970).

## In the Public Interest

viewed legislation as the outcome of political dealmaking that frequently did no more than preserve or enhance the monopoly power of existing producers.<sup>16</sup> One implication of this work was that government intervention in the economy should be prevented because such intervention was usually no more than a device to benefit narrow, well-organized interests.

Research critical of the process by which legislation was produced was complemented by research showing that many regulatory programs actually harmed consumers.<sup>17</sup> Even research that accepted the economic justifications for federal regulation in such areas as environmental protection was critical of the forms such regulation took and urged more reliance on economic incentives to produce compliance.<sup>18</sup> At the same time studies of government spending programs tended to emphasize their weaknesses, showing, for example, that most subsidized housing was built outside of central cities and that many who completed job training programs were unable to find jobs.<sup>19</sup> Although many scholars who criticized existing social welfare and spending programs were deeply committed to the programs' purposes, others used the generally critical tone of this work to show that government domestic spending and regulatory activity were too intrusive, too costly and in need of drastic curtailment. These analysts and policymakers used arguments in favor of deregulating airlines or trucking to advocate cutting back environmental protection, and they used critiques of existing welfare policies to argue for drastic reductions in government spending. They interpreted studies showing that social programs had not accomplished all of their goals to imply that the goals themselves were not worth pursuing.<sup>20</sup>

---

16. Posner, *Theories of Economic Regulation*, 5 *Bell J. Econ. & Mgmt. Sci.* 335 (1974); Stigler, *The Theory of Economic Regulation*, 2 *Bell J. Econ. & Mgmt. Sci.* 3 (1971); Peltzman, *Toward a More General Theory of Regulation*, 19 *J. Law & Econ.* 211 (1976).

17. *See, e.g.*, *The Crisis of the Regulatory Commissions* (P. MacAvoy ed. 1970); Moore, *The Beneficiaries of Trucking Regulation*, 21 *J. Law & Econ.* 327 (1978); and Wilson, *The Dead Hand of Regulation*, *The Public Interest*, Fall 1971, at 39.

18. B. Ackerman, S. Rose-Ackerman, J. Sawyer & D. Henderson, *The Uncertain Search for Environmental Quality* (1974); A. Kneese & C. Schultze, *Pollution, Prices, and Public Policy* (1975); C. Schultze, *The Public Use of the Private Interest* (1977).

19. *See, e.g.*, H. Aaron, *Shelter and Subsidies: Who Benefits From Federal Housing Policies* (1972); R. Nelson, *The Moon and the Ghetto* (1977); G. Steiner, *The State of Welfare* (1971).

20. *See, e.g.*, M. Anderson, *The Federal Bulldozer* (1964); C. Murray, *Losing Ground: American Social Policy, 1950-80* (1984); E. Savas, *Privatizing the Public Sector: How to Shrink Government* (1982). Arguments of these analysts were accepted by some officials within the Reagan Administration. For an explication and critical review of the

Not surprisingly, liberal reform-minded public policy analysts have not responded sympathetically to what they consider to be a misuse of their work. In a counterattack emphasizing the real accomplishments of recent regulatory and social programs,<sup>21</sup> they have pointed to the importance of information, ideas, and public spiritedness in determining government policy.<sup>22</sup> Kelman's book, basically optimistic in tone, falls in this category. His work is part of the current reaction to seven years of Reaganite criticism of government social policy, building upon Jimmy Carter's presidential campaign "against" Washington. In this political climate, policy analysts worry that if they are too critical of government policies, politicians may decide not to reform programs but eliminate them altogether. In the 1960s many policy analysts were insiders or, at least, sympathetic outsiders who supported the contemporary substantive goals but were critical of existing means. In contrast, analysts who support current program goals fear that others will use their criticism of means to cast doubt on the ends themselves: if the government cannot accomplish its goals efficiently, it should change those goals.

In keeping with his sympathetic view of public officials, Kelman characterizes bureaucrats as officials who are called upon to make highly political decisions and who need both outside information and individual principles to perform their function competently. Bureaucrats are constantly required to make decisions on the basis of imperfect scientific, social, and economic information, and in the face of vague congressional mandates. Their major decisions will be reviewed by courts, congressional committees, and members of the public, who may misunderstand the constraints under which they operate. Kelman's understanding of the difficulties faced by the bureaucracy is, however, colored by his understanding of the character of the legislation that it is called upon to enforce. Kelman believes that since the 1930s statutes have become less detailed and more general. In his view "a good deal of the formal authority to make controversial, and hence political, choices has left Congress and gone to the bureaucracy."<sup>23</sup> This has happened, according to Kelman, because time pressures on Congress have intensified, giv-

---

goals and philosophy of the Reagan policymakers in a variety of areas, see J. Palmer & I. Sawhill, *The Reagan Record* (1984).

21. See, e.g., J. Schwarz, *America's Hidden Success* (1983); *Challenge to Leadership* 215 (I. Sawhill ed. 1988).

22. Levine, *supra* note 7, at 179; D. Robyn, *supra* note 8.

23. Kelman at 56.

ing its members no time to draft detailed statutes. But while no one doubts that agency officials have considerable discretion, Kelman's view of the trend toward highly general legislation is directly opposed to the view of other scholars that regulatory statutes—if not all laws—are *more* detailed than in the past, give less leeway to bureaucrats, and are less likely to use the independent agency form.<sup>24</sup> These authors have studied the Clean Air Act, a law that Kelman recognizes as an exception. Nevertheless, it remains an open question whether current statutes really are generally less detailed, especially in light of the greater role of Congress in initiating policy and the number of years in which Congress and the White House have been of different political parties. One might argue not only that statutes generally are more specific than heretofore, but also that the greater specificity of statutes has made bureaucrats' tasks harder, not easier. Even statutes thought to be quite detailed have plenty of ambiguous language for bureaucrats to interpret and are likely to include deadlines and specific directives that make rational priority setting difficult. Under the Clean Air Act, for example, public officials have hardly been reduced to technocratic automatons facelessly enforcing congressional directives.

The problem of motivating people to high quality performance remains, as Kelman argues, the central problem of public administration. In fact, given the complexity of the issues dealt with in many recent regulatory statutes, the need for committed public servants may be even greater than under more general statutes that dealt with simpler problems.

Kelman's response to the task of improving bureaucratic behavior is to advocate blending selective incentives such as bonuses, promotions, and performance-based merit pay with the development of public-spirited attitudes. He criticizes economic models of political and bureaucratic processes as caricatures of human behavior which ignore the possibility that commitment to the public good is a major motivating force. Yet he does recognize that individualized incentives, be they money or power, are important for public officials, and he understands that even ideologues want to be reelected.

So long as political-economic thinkers do not claim that narrow self-interest is the *only* desirable motivation, these scholars, whom Kelman criticizes, provide a useful antidote to those who identify government actions solely with the furtherance of the "public

---

24. B. Ackerman and W. Hassler, *Clean Coal/Dirty Air* (1981); S. Melnick, *Regulation and the Courts: The Case of the Clean Air Act* (1983).

good.” While these scholars, whose operating assumption is self-interested maximizing behavior, have sometimes gone too far in identifying their theory both with what is and what ought to be,<sup>25</sup> such overenthusiasm should not blind us to the very real contributions they have made. Kelman would temper the extreme claims of some public choice analysts with the empirical observation that many government officials care deeply about the policies they seek to implement. While this claim is undoubtedly true, it does not mean either that self-interest is unimportant or that public spirit necessarily produces high quality performance.

While I share Kelman’s belief that organizations perform better with an atmosphere of personal trust and mutual respect and with subordinates who believe in the goals of the organization, I perceive considerable risk for a democracy that seeks in a self-conscious way to develop “public spirit” in its people. Teaching people the values of respect for others’ points of view, of mutual accommodation to divergent convictions, and of the necessity of dialogue and open discussion is an important precondition for a liberal democratic (lower case l, lower case d) state. However, peopling government offices with ideologues who hold strong views on substantive policy that may diverge from those of the President and Congress can create problems exemplified by the behavior of Oliver North. While Kelman makes a passing reference to the risk of fanatical presidents, he does not, to my mind, place enough emphasis on the dangers of strong commitments in general. Furthermore, state-sponsored indoctrination along the lines of Nazi Germany or Khomeni’s Iran has the obvious danger of suppressing independent thought and oppressing divergent opinions. Clearly, Kelman is not recommending going to that extreme, but his book invites this criticism because he does not specify what kind of “public spirit” he has in mind or how it should be generated.

Perhaps in conjuring up Oliver North I have been unfair to Professor Kelman. He has, after all, done no more than echo a common complaint about the suppression of initiative in rigid rulebound systems. But the Iran-Contra Affair should give us all pause, even those concerned with policies—such as health and safety regulation and aid to the poor—that do not require security

---

25. Posner, *Economics, Politics, and the Reading of Statutes and the Constitution*, 49 U. Chi. L. Rev. 263 (1982); Easterbrook, *Foreward: The Court and the Economic System*, 98 Harv. L. Rev. 4 (1984).



## **In the Public Interest**

clearances. Basic bureaucratic practices that produce consultation and accountability begin to seem worth preserving. A government of ideologues committed to their own view of the public welfare can be a threat to the very basis of liberal democratic government.

