BOOK REVIEWS


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Congress is a very difficult institution to describe or analyze. In the House of Representatives there are 435 different stories unfolding within the offices of each member. Each of the twenty-one standing committees likewise constitutes a world unto itself. And the leadership of the House, in its response to the White House or to public opinion, fashions a life of its own almost apart from the House itself. Because of all this fragmented complexity there has never been a satisfactory history of the House. Unlike the White House or the Supreme Court, the House is not really a unit with one underlying or unifying mission or mandate. It has been this diversity and even potential chaos that through the years has made the House sometimes almost ungovernable. It is not really a house; it is a balkanized linking of empires, all of which can be aroused or inhibited by a large number of unpredictable events. Despite the admitted ungovernability of the House, the dream has always existed that somehow there will emerge a benevolent bureaucrat or a benign despot who will keep perfect harmony within the House while simultaneously engendering a happy legislative resolution of all the agonizing problems and intractable issues confronting the nation.

That dream came to the floor once again in the House in the mid 1970's. It was provoked in part by a bad press received by the House over a few members who were indicted, and at least one

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prominent member who was involved in a sex scandal. The fear pervaded the Congress that more scandals would surface and public confidence would irretrievably decline unless the House, in the tired phrase, "put its house in order." In order to realize that dream the inevitable committee was established. It was called the United States Commission on Administrative Review, and it was chaired by Congressman David Obey, an articulate and respected Democrat from Wisconsin. The story of the Obey Commission is told in this book by a dozen of the professional staff who served on it.

The House at Work is probably the broadest survey and deepest analysis ever done on the House since its establishment almost 200 years ago. This volume contains the results of 200 interviews with congressional staff employees, a detailed analysis of the way members allocate their time, complex data about arcane topics, and, in general, exhaustive information about the structure and operation of the House. As a result, The House at Work lacks the readability of the book written by Congressman Richard Bolling about the House he loved so much. Similarly, The House at Work does not include the careful and perceptive reasoning and conclusions set forth in Professor Robert Peabody's penetrating work about the Congress. The House at Work, however, may be in the long run a more influential study than those of Bolling and Peabody because it is authored by professional staff members of a distinguished commission that performed the most comprehensive investigation of the House to date. Furthermore, its functional analysis is the product of numerous statistical and empirical studies. Its impact will be felt even though many of the recommendations of the Obey Commission were not ultimately accepted by the House.

Professor G. Calvin Mackenzie of Colby College, a senior staff member of the Obey Commission, opens this study with facts about the almost unbelievable explosion in the activities of Congress since

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2. "[W]e have a chance today to enact major reforms in this body—reforms that are needed to restore public confidence in the Congress." 122 CONG. REC. 21,793 (1976)(remarks of Rep. Wilson).
7. See, e.g., Cooper, Organization and Innovation in the House of Representatives, in THE HOUSE AT WORK, supra note 4, at 319, 346.
Since at least the early 1970's, constituents expect more services, the media are increasingly aggressive, the complexity of national and international problems intensifies, and the competition to get reelected stiffens. This last phenomenon reminds the members of Congress that, as Mackenzie puts it, "[t]here is little to suggest that creative legislators are more likely to be reelected than are those incumbents who participate only occasionally or passively in the legislative process."

In an effort to cope with the avalanche of work, the House has expanded its staff in an extraordinary way. In 1972, professional staff for all of the 130 committees and subcommittees totalled 783; in 1973 it was 1,844. In 1972, the total staff authorized for the offices of the 435 members of the House was 5,280; in 1978 it was 8,432. The House at Work raises challenging questions about the efficiency of the use of this expanding army in an institution that by its very nature is non-hierarchical. The House is balkanized by more than a thousand distinct units some of which clearly have overlapping or duplicating functions. It is, moreover, impossible to control the flow of work in these units since the pace of legislation is unpredictable and depends to some extent on outside factors beyond the control of Congress.

In view of these factors, Joseph Cooper, staff director of the Obey Commission and Dean of Social Sciences and Professor of Political Science at Rice University, writes in a concluding chapter that "House operations are not oriented toward efficiency [but] to insuring that resources will be adequate or sufficient when needed, quite aside from strict considerations of cost." Cooper does not seem certain that this can be altered in view of the "extensive replications of staff and equipment in individual member offices and the resistance to central pools or facilities." All of this derives ultimately from the nature of the process itself and the mandate given to each member by the electorate. That mandate will continue to prompt legislators to resist any growth in power by the leaders of the House or the chairmen of the committees. That mandate will also cause the lawmakers to insist that they have access on their own to the infor-

8. See Mackenzie, Coping in a Complex Age: Challenge, Response, and Reformation in the House of Representatives, in The House at Work, supra note 4, at 3, 5 (Table 1).
9. Id. at 12.
10. Id. at 16 (Table 2).
11. Cooper, supra note 7, at 324.
12. Id.
formation they need. The only clear conclusion that can be drawn from this study is the determination of Congress not to rely any longer on information generated by the executive branch for congressional use. This demand for accurate and reliable information is the reason for the explosion of units in the House like the Congressional Research Service of the Library of Congress, the Congressional Budget Office, and the Office of Technology Assessment.

The contention of The House at Work, therefore, is that major efforts at House reform usually fail not because the members are obstructionists or do not care about efficiency, but that they conceive their role not as functionaries of the House but as autonomous independent personal agencies representing the 500,000 or so citizens who elected them. Reform to change will come only when there is a “high degree of public concern and media support; a high, internal sense of crisis regarding the institution’s standing or performance; leadership support; and the availability of ‘sweeteners,’ such as pay raises, to mobilize individual self-interest.”

If one reads these conclusions of Professor Cooper before the remainder of the volume, the resistance to change chronicled in the book will be better understood. It will be easier to comprehend why Congress continues to resist any civil service job ratings for its employees, any machinery for equal employment opportunities, or almost any other administrative device that will diminish the autonomy of individual members or committee chairmen. It was this background that led to the rejection by the House of many of the reform recommendations made by the Obey Commission. Those recommendations would have conferred more supervisory power on the Speaker, would have created more centralized authority for administrative and housekeeping arrangements, and in general would have streamlined the procedures of the House. It should be noted, however, that prior to the Obey Commission the House agreed to a limitation on the outside earned income of its members. In addition, it should be pointed out that the House of Representatives during the 1970’s probably did more to improve its methods of operations than

13. See Mackenzie, supra note 8, at 14: “In making decisions about internal procedural and structural questions, [the House] operates very much like a confederation of autonomous units, each of which places a high value on its own independence.”

14. Cooper, supra note 7, at 350 (footnote omitted).

15. See, e.g., id. at 346.

at almost any other period in the past.

If *The House at Work* had detailed in a straightforward manner the story of the turmoil about reform and modernization that plagued the House in the 1970's it would be a fascinating book. But it is a collection of essays designed to probe the reasons why, despite all the reforms Congress imposed on the executive branch to prevent a recurrence of Watergate, Congress agreed to only limited changes in the way it conducts its own business. All of these essays are impressively documented and cogently presented. They reach into almost every aspect of the life of a member of Congress and his staff. They explore the complexity of the oversight function that congressional committees have over the regulatory agencies, the immensity of the information available to Congress, and the ambiguities in how the House and public perceive the role of Congress.

One comes away from this book much better informed about Congress but also more perplexed about how Congress can cope with the problems of the nation and the world with the machinery and framework devised by a small group of men almost 200 years ago. The wonder is not that the Congress has made so many mistakes but that, despite or because of its structure, it has over the past generation been able in general to produce plans and programs for the nation with adequate if not brilliant results. After exploring all of the serious and apparently chronic maladies of the House, Professor Cooper concludes that the House "remains a vital, energetic, and powerful actor in the political system."17

17. Cooper, supra note 7, at 351.
Despite its topical title, *Reforming Regulation* is a fascinating saga of the Carter administration's internal struggles over regulatory policy, as seen from a privileged vantage point. It is the story of a New York University professor who ventured to Washington to put microeconomic theory into practice at the Counsel of Economic Advisors (CEA), where he was "'one ear away from the President.'" Because White shares academics' penchant for publishing their observations, we are left with an intriguing glimpse of regulatory policymaking at the highest levels, made still more interesting by the author's recent appointment as the chief economist of the United States Justice Department, Antitrust Division.

The bulk of the book consists of twelve major episodes of policymaking that White personally observed; these include, for example, setting pollution standards and promulgating truck emission regulations, determining national policy on electronic mail, conglomerate mergers and Maritime shipping, and protecting the famous Snail Darter. Most of these episodes reveal intra-governmental battles over policy, and the fights are not always clean. It is hard to read this book and maintain much credulity in certain regulatory agencies, as the accuracy of their cost calculations seems to be inversely related to the strength of their arguments. Some agencies, it
seems, use economics in a highly imaginative way to suit their interests. Whether this is a desirable disposition for governmental bodies that often have quasi-judicial powers is a question worth pondering.

Consider the setting of ozone standards, an extremely costly set of anti-pollution regulations. The legislation empowering the Environmental Protection Agency (EPA) to set pollution standards is based, according to White, on the faulty premise that there is a threshold beyond which pollution suddenly becomes no longer “safe.” In reality, however, we have to choose one point on a continuum of trade-offs. The EPA’s initial standards were 0.08 parts per million (ppm), not to be exceeded more than once per year. Five years later, White notes, this standard was attained in only one metropolitan area. The EPA, under pressure, proposed therefore to raise the standard to 0.10 ppm, the first revision of any of its air standards. A host of agencies entered the debate, while the CEA and the Regulatory Analysis Review Group (RARG) began an analysis of the relevant EPA procedures. They found that the voluminous study on which the EPA’s standards had been based was critically flawed in its methodology, and that the agency had not considered the economic costs that it imposed. When the EPA was forced to estimate the costs required to achieve these standards, these estimates were found to be remarkably low. Not surprisingly, the EPA rebutted this charge, claiming that the RARG report was erroneous. This in turn led the President’s chief science advisor to begin an intensive review of the medical evidence, and the Council of Wages and Productivity to express a concern about the inflationary effect of these pollution standards. Ultimately, the figures became either meaningless “(the costs [estimated by the EPA] got smaller

10. Id. at 47-70.
11. White notes that the determination of a threshold point beyond which pollution allegedly becomes unsafe “allows Congress to avoid the disastrous economic consequences of trying to achieve zero pollution.” Id. at 49.
12. Id. at 50.
13. Id. at 51.
14. Id.
15. Id. at 52.
16. The RARG was formed in 1977, and its “function is to review the analyses that accompany major rulemakings by executive branch regulatory agencies.” Id. at 21.
17. Id. at 56-66.
18. Id. at 61-64.
19. Id. at 66.
20. Id.
every time we talked with EPA)" or magical ("the number itself, 0.10 ppm, was beginning to take on a life of its own," since any change would signify a political defeat for the EPA).22

Eventually the EPA swallowed a standard of 0.12 ppm, and the CEA decided not to appeal the decision to the President. The EPA was, however, immediately sued by the American Petroleum Institute and the Natural Resources Defense Council.23 Interestingly, despite the harsh criticism leveled against the EPA throughout this regulatory episode, White claims that the Agency did not change its research methodology when it began setting standards for carbon monoxide and nitrogen oxides. Claims will again be made that there are safe thresholds.24

The internal struggles surrounding the EPA's effort to set ozone standards reveal how the unenviable task of evaluating the merits of the conflicting claims on policy is left with a handful of inner-circle agencies and groups with names such as CEA, COWPS,25 RARG and OMB.26 It is striking that in a federal government numbering legions of civil servants, regulatory policy decisions are often based on the evaluations of a tiny band of economists and lawyers — who are by necessity generalists rather than experts. Yet, the alternative is to leave the field to experts from the specialized agencies who have their own institution’s ax to grind.

What are the lessons that White imparts to his readers? First, despite the pressures of interest groups and politics, microeconomics has an actual role in policymaking, and the arguments set forth by its practitioners seem to be given serious, though not necessarily primary, consideration. Economic advice, however, deals with only one aspect of the problems created by the regulatory process, as evidence by White's provocative comment that "to a microeconomist, the issue of job preservation is not an interesting public policy problem."27

A second lesson is that the regulatory process too often results in a dichotomous view of the issues, applying yes-no, safe-unsafe, healthy-unhealthy approaches to a world that is continuous, complex

21. Id. at 67.
22. Id.
23. American Petroleum Inst. v. Costle, 609 F.2d 20 (D.C. Cir. 1979). The action concerned one of several motions by the parties to alter the record. The court did not intimate any views on the merits of the case. Id. at 21.
24. L. White, supra note 1, at 68.
27. L. White, supra note 1, at 74.
and uncertain. White contends that economists can analyze such a world, but that lawyers and administrators seem to have a more difficult time with it.

White further reveals to the reader the inaccurate manner in which the costs of regulation are considered, if at all, by the agencies. While this is a standard business complaint, it is much more credible when expressed by a senior staff economist of the CEA as opposed, for example to the chairman of Mobil. I do not share White's pessimism on the subject; at least part of the cost problem could be alleviated by procedural changes. Some procedure of cost-benefit justification would at least identify the most blatant cases of costly regulations. White, however, contends that since "there are too many instances of regulation that generate large social costs without commensurate social benefits, procedural reforms will have little or no effect."

Nonetheless, as for the contribution that economists can make to government, perhaps all that need be said is that through efforts of White and his small group of colleagues at the CEA, at least one, and possibly up to three billion dollars were saved in annual regulatory costs to business and the public on the ozone standards alone.

In sum, while White's general lessons on the regulatory process are both perceptive and insightful, his most important contributions are his case studies with their details of intra-governmental wrangling. They should make fascinating reading for lawyers seeking the regulatory history of a policy, and for students and teachers of regulation, who can now supplement their theoretical materials with a thoughtful analysis of the public policy problems involved. Reforming Regulation is, quite simply, a very interesting book to read, and a lucidly written integration of economic and political analysis.

28. Id. at 214-17.
29. Id. at 6-7.
30. Id. at 225.
31. See id. at 62, (table 4(2)).