A WAY OF LIFE AND LAW

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This address stresses the importance of the study of lawmaking. Three advantages in particular are emphasized: lawmaking is the core decision-making process in a democracy, its study offers an opportunity for Americanists to overcome concentrations on a single institution, and it provides a basis for comparative analysis. The discussion focuses on statute making as a primary phase of lawmaking. Four concepts—iteration, inquiry, speculation, and declaration—are identified as key, unexplored characteristics of statute making that hold substantial promise for research.

> The American way is first a way of life and then of law—and then of life as the final object of government.
> —T.V. Smith, *The Legislative Way of Life*

Otto von Bismarck is believed to have said, "If you like laws and sausages, you should never watch either one being made." It is an observation widely cited by political cynics. I agree when it comes to the making of sausages. However, law is not bratwurst. I cannot accept that we should never watch laws being made. Such an aphorism is a threat to my professional raison d'être, as well as to that of many of my closest friends. Even more important—and not unrelated—to decline to observe lawmaking is to deny oneself an understanding of how democracy works, how life is expressed through law. I would not have expected that point to have troubled Bismarck. But it should bother political scholars greatly.

Therefore I will use this occasion to invite more concentrated study of lawmaking. As understood here, lawmaking is the means by which governments legitimize substantive and procedural actions to reshape public problems, perhaps to resolve them. Law is a major defining and stabilizing component for subsequent policy decisions, so that we may witness a revisiting of intent and meaning as specific laws and authoritative judgments are implemented and evaluated. Lawmaking for any one issue is a trackable process as legislators, executives, bureaucrats, judges, and others variably participate in statute making, rule-and-standard setting, administrative and executive interpretation, and court decision making, which, combined, constitute the legitimate base for public policy. The authorizing processes of lawmaking are therefore interactive with the initiating and executing processes of policymaking.

The justification for studying lawmaking, so conceived, is threefold:

1. Lawmaking is the core decision-making process of a democratic state. It is the means for defining, promoting, and regulating community life and, accordingly, is spectacularly interesting and highly relevant to our purposes as political scientists.
2. It offers the opportunity to integrate research, because the study of lawmaking cannot be confined to one institution, not even the legislature.
3. It affords a basis for comparative and historical analysis that is lacking in segmented institutional study. As a further contribution to comparative analysis, study of lawmaking in the United States reinforces the separationist over the presidentialist nature of the political system.

In this address, I shall review these advantages of a research focus on lawmaking, suggest concepts that hold promise for the comparative study of statute making as one major facet of the lawmaking enterprise, and briefly discuss tests of the lawmaking capacity of democratic states.

THE CORE PROCESS

In his classic work, *The Growth of American Law*, J. Willard Hurst explained, "Law moves with the main currents of American history" (1950, 13). Again,

> The most creative, driving, and powerful pressures upon our law emerged from the social setting. Social environment has two aspects: First, it is what [people] think: how they size up the universe and their place in it; what things they value, and how much; what they believe to be the relations between cause and effect, and the way these ideas affect their notions of how to go about getting the things they value. Second, it is what [people] do: their habits, their institutions. Ideas and institutions obviously are inseparable aspects of . . . history. We do not have to try to decide which, if either, is the more powerful. (p. 11)

T. V. Smith, a man who knew both the academic and political worlds, expressed this view in reflecting on legislative life: "Blessed is the man who, through patience, sagacity, and co-operation with other men, can take the purely private thing called conscience and turn it into socially acceptable action through law. . . . Whoever has a genius for legislation has a mission of major importance to mankind" (1940, 72–73).

Hurst and Smith make lawmaking sound vital and engrossing, interactive with social life and the human experience. Yet it has received limited direct attention

by political scientists, even by legislative scholars.[1] Martin Shapiro finds this deficiency rather curious: "Given the incredibly detailed and sophisticated levels that congressional studies have reached in political science, the refusal to pay any attention at all to the substance of the laws that Congress makes seems almost willfully perverse" (1989, 3:101). He is just as critical of his colleagues in public law: "If Congress specialists are so afraid of law that they will not read statutes, we might expect public law specialists to help them out. . . . But theories of law emanating from public law specialists are built up almost entirely from their observations of judge-made constitutional law rather than all law" (ibid.).

Why is this subject not of greater interest to us? Perhaps because the study of law is bound to be issue-specific and will be marked by the dreaded label *case study*, with its limited potential for theory. But, of course, there is no rule that one must study the making of just one law any more than there is an edict that one must study just one committee or one election or one legislature (a not uncommon practice, by the way). And, in any event, are we to conclude that a study that is right and limited has less merit for its scope than one that is wrong and broadly applied? I think not. Let us not allow methodological fashions or conventions to determine either what we study or what we are permitted to learn from the work of others. In that same spirit, let us not fail to study a vital subject because of an estimate of how the work will be received or because of a judgment in advance that the research will be difficult. We are free to tackle the important political questions. Truly, we are obliged to do so.

Can the case study tag, with all that it implies, be overcome? There is no guarantee as long as one has decided to examine the actual work of government. But there are means by which scholars may build sufficient confidence as fortification against the patronizing review of their work as "just a case study." The first advisory is, do it right. Select an issue because of its public importance and conceptual interest. Alas, even doing it right may not guarantee publication in our prestige journals. An expert on health policy and politics surely contributes as much to basic and applied political science as an expert on the high incumbent-return rates of non-check-kiting members of the House of Representatives or the continuity of party voting in presidential elections. Yet I invite you to compare the number of published articles in our mainline journals on the former versus the latter.[2] The second advisory is related to the first: work from a conceptual framework that permits integration of findings so that study of one issue, like one election, can contribute to a broader understanding of government and politics. Realizing this goal requires the identification of concepts that facilitate a substantive or issue focus in studying the lawmaking process (as contrasted to an organizational or behavioral focus) yet are promising for comparison among political systems. I will introduce and discuss several such concepts.

Is there reason either to overcome the case study tag or to gain enough confidence to ignore it? The answer is an unqualified *yes*. As Hurst and Smith have led us to expect, lawmaking is so interesting—so absolutely captivating—that studying it will give you a reason to get up in the morning. It will put bounce back in your step. Lawmaking is life made public: How can a *social* scientist resist observing how that happens? Further, it surely is a part of our job description as political scientists. We study politics, presumably because it interests us. To be interested in politics is to care about government and lawmaking. Our subjects and methods vary, but even the normal scientists among us have selected politics as an object of attention.

We tend to study institutional processes and political behavior more than policy substance. Yet governments make laws to alter public problems, maybe even to solve some of them. To watch government work is to be struck by the attention paid to substance—to those issues currently on the agenda and those programs already on the books. These issues and programs have a forceful physical presence in the designation of buildings in a capital (transportation, education, health and human services, labor) and in the committees of a legislature (agriculture, education, finance, energy). In visiting an agency, or sitting in on an executive staff meeting, or listening to a committee hearing, or observing a representative meet with constituents, one cannot miss the dominance of public issues as central to the talk and work of government. There is, of course, good reason to study and generalize about the organizational features of institutions and the social and political behavior of legislators and bureaucrats. But there is also a strong justification for relating that behavior to the content of issues, which, through representation, reflect the ways of life.

THE OPPORTUNITY FOR CROSS-INSTITUTIONAL STUDY

The second advantage of a concentration on lawmaking is that it offers a means for cross-institutional analysis—a special benefit for Americanists. It is acknowledged that the branches of government are often mixed up in each other's business. Yet it is typical in the classroom to offer courses on the presidency, Congress, the courts, the bureaucracy, political parties, and interest groups. This pattern extends to graduate study, where students often specialize in one of the institutions; to hiring, with searches often identified as being for a "Congress," "presidency," or "judicial" scholar; and to research, as well, with publications accommodating these specializations even to the point of having journals devoted primarily to one institution or its work. With the development of organized sections of the American Political Science Association, it was to be expected that there would be sections on legislative

studies, presidency research, public administration, political organization and parties, and law, courts, and judicial process.

One can hardly begrudge these developments. We have profited greatly from this apportionment, with scholars laying claim to an institution and then proceeding through a lifetime of productive research to inform us as to how the place works. And given the coequality of the branches in a separated system, one can perhaps understand why it is that scholars tend to choose one or the other for concentrated study. There are, however, risks associated with this division of labor—risks related to our understanding that the separation is ultimately a means for governing and risks related to "going native" by identifying too closely with our institution of choice and overestimating its role in governing.

In regard to the first risk, it is worth remembering that the Founders were seeking to devise a working government. They did, of course, have fears about tyranny and thereby sought protection through competing legitimacies. But the point was not solely to stop the bad from happening; it was to permit the good, or even the middling, to occur as well. And so, as students of American government—not just one branch thereof—we need to be mindful that it is difficult to discern and weigh achievement with a method that is exclusively segmental.

The second risk is related to the first. It is natural to become attached to that with which we become identified. A commonly acknowledged problem is the failure then to remain objective, the developing of a bias in favor of the institution one has come to possess—even perhaps to define for others. A less-featured issue is the problem caused by a failure to relate the work of your institution to that of others with which it is inexorably associated and to which it is sometimes dependent. The result may be a distorted or flawed understanding of the institution of choice.

A focus on lawmaking ensures that the scholars will exceed the bounds of any one institution. In its fullest sense (and by the original design in a separated system), lawmaking is a cross-institutional, often interlevel, enterprise. Not even statute making, which is most closely associated with the legislature, can conceivably be studied only within that body. Thus the substance of lawmaking forces scholars of the separated system out of one institution even at the early stages of decision making. Perhaps that is why there has been limited study of lawmaking by political scientists, while justifying the need for that work to be done.

THE COMPARATIVE ADVANTAGE

A third advantage of the concentrated study of lawmaking is its potential in comparative study. Political systems vary greatly in organization and their institutional relationships, yet all make law. The trick is to identify means and develop concepts that permit meaningful comparisons. That goal is unlikely to be achieved by comparing one institution with another (e.g., the British House of Commons with the American House of Representatives, the Norwegian Storting with the South Korean National Assembly). Such comparisons typically reaffirm the differences in the structure of the basic system but are of more limited utility for understanding lawmaking.

The problem of comparative analysis from an institutional base is particularly acute for Americanists, who are rightly criticized for their parochialism in failing to make comparisons with other systems. In part, this negligence may be an effect of the segmentation of institutional study noted earlier. Congressional scholars, for example, may well convince themselves that Congress is sui generis; presidency and Supreme Court scholars may do the same. Many scholars, therefore, justify becoming one-country, one-institution specialists, lacking any incentive to make comparisons. The more they burrow in, the less likely they are to compare, particularly since the institutional emphasis makes comparison of limited value. Why bother, if the effort is not satisfying or is unproductive?

Perhaps, too, Americanists are confused by how it is that comparativists classify the United States among the world's democracies. Presidentialism and parliamentarism are the categories relied on most.[3] The United States is often identified as "the model and prototype of presidential government," yet it is commonly acknowledged that "presidential government is often associated with the theory of the separation of powers" (Verney 1992, 40, 38). Why the limited-term president should win the label over a high-incumbent-return Congress, a career bureaucracy, and a life-term court is not altogether obvious.

The classification scheme—presidentialism and parliamentarism—creates problems that are avoidable. The United States has a separated system, not a presidential system. It is widely accepted that the separation of powers is a defining mark of the American government. It features coequal branches, sometimes sharing powers, sometimes competing for shares of power. In accepting this outstanding feature of the American system, scholars interested in lawmaking should be inspired to formulate cross-institutional concepts that may then serve well for cross-national comparisons. In other words, the separated nature of the American system invites segmented institutional study, which, in turn, complicates comparative analysis with the more unified one-party presidential systems and parliamentary systems. Therefore, a strictly institutional basis of comparison is not only of limited value, it probably cannot be accomplished due to the tendency of Americanists to pick off only one of the separated institutions for concentrated study. The study of lawmaking, like that of policymaking, enables scholars to break free of these constraints.

LAWMAKING AND LEGISLATURES

Hurst begins his treatment of the growth of American law with the legislature, followed by the courts, the bar, and the executive. Democratic governments normally require their legislatures to approve the statutes that in turn, authenticate most governmental policies and decisions. What varies is the principal locus of, and participants in, statute making. In parliamentary systems that work is often done at the behest of a supreme committee of the legislature, the cabinet, with the main body performing debating, modifying, and ratifying functions. In one-party, presidential systems, statute making may occur mostly in the executive, with the legislature ratifying the result.

In a separated system like that of the United States, statute making is exquisitely complex, because by constitutional directive, the executive and legislative branches have active roles to play and by judicial reading, the Supreme Court has the authority, on the call of a case, to test what has been decided against the understanding justices have of the basic charter. As a parochial Americanist, I begin where my interest and training have led me—with a discussion of statute making in the separated system. It is my intent, however, to do so in a manner that encourages and strengthens comparative, historical, and cross-institutional analysis and that places statute making in the broader context of lawmaking as defined here. I am, in short, attempting myself to break free from the constraints of an institutional focus. But a strong case can be made for doing so by making one's sightings from familiar territory—in my case, statute making. The advice, perhaps, is to start with what you know but to look outward, not inward.

I begin by asking, What are the principal features of a legislature in a democratic system? It is the variation among these characteristics that should help to explain differences in how and what statutes are enacted among political systems.

I observe that democratic legislatures are representational, institutional, and partisan. The *representational* feature confers legitimacy by linking legislators with the public, typically by elections. *Institutionalism* is the means by which a legislature seeks stability by carrying forward those rules, procedures, and structures that advance its performance. *Partisanship* is a facilitative grouping of legislators, typically in terms of ideology, a core of policy views, or perhaps historical relationships. Legislators find it convenient, often necessary, to seek election as partisans, then to organize as such within the legislature. Among its other advantages, partisan organization provides leadership, typically on the basis of divergent policy views.

Clearly, political systems vary in significant ways in regard to these three contextual features. These differences, however, hardly mask an important common attribute that invites comparative inquiry. Democratic legislatures at work are showplaces for what has been and what is coming next. Rules, order, and organization provide continuity, the place to start in making law. Representation constantly challenges the existing order, sometimes overthrowing it. Partisanship contributes the means for effecting peaceful change by offering an indulgent setting for those who think alike on major issues of the day.

STATUTE MAKING

Political scientists have produced a substantial literature on the three contextual features of legislatures, if not always on their interactive effects or their full bearing on statute making. Attention here is directed less to legislatures as political bodies than to statute making. I am not, however, simply promoting stories of how a bill becomes a law. Rather, I will identify attributes of statute making that, in my view, invite comparative study, establish a substantive basis for the study of process, and therefore have the potential for theory building. To reiterate, this exercise is my effort to capitalize on and expand that which is familiar to me so as to promote the broader understanding of laws and lawmaking.

Statute making in democratic systems is continuous, iterative, informative, deliberative, speculative, sequential, orderly, and declarative. To explain briefly, *continuity* refers to the fact that most new law in a mature government is derivative of existing statutes and their implementation; *iteration* directs attention to successive alterations as proposed legislation moves through the lawmaking process; *informativeness* indicates the fact-finding and educational functions of statute making; *deliberation* identifies the forms of discussion and debate that are characteristic of the process; *speculation* alludes to the estimates of effects that are characteristic of lawmaking as social experimentation; *sequence* refers to the stages in the progression of statute making and surely varies substantially among democratic systems; *orderliness* concerns the setting of priorities or rankings among proposed statutes; and *declaration* pertains to the publication of agreements through the course of statute making.

As expected, these features of statute making in a legislatures will be shaped by the contextual variables for that institution. For example, representation and partisanship in their various forms contribute to iteration—indeed, guarantee it. Institutionalism reinforces continuity and designates sequence, as well as granting the means for securing order and declaring agreements. All three influence *what* information will be developed and communicated, and *how* it will be. The amount and type of information aid us in understanding statute making as a speculative enterprise. Further—and also as expected—the attributes of statute making have interlocking effects that beg for fuller explication.

Four of these eight attributes—continuity, deliberation, sequence, and orderliness—are, I believe, commonly understood and have been the subject of sufficient scholarly treatment by legislative scholars to invite comparisons among political systems.[4] The

other four features—iteration, inquiry (information gathering), speculation, and declaration—are less well understood and yet appear to satisfy needs identified here, namely, a strong potential for cross-institutional and cross-national analysis of lawmaking and the means for studying the substance of lawmaking without resorting to story telling about how a bill becomes a law and how a law becomes a program.

Iteration

Statute making is iterative. It may be viewed as a progression of alterations. A policy idea is tested by those interests with a legitimate right through representation to introduce and promote change on their own. Democratic political systems naturally vary in the number and locus of public access to decision making, as well as in the scope of allowable alteration at various stages. Consider statute making in the U.S. Congress. The bicameral feature was designed in part to provide assorted perspectives on the public business. Given their coequal status, one could not imagine that either the House of Representatives or the Senate, save for a strategic purpose, would forgo their prerogative to participate actively in lawmaking. In fact, the members in each chamber tend to guard their independence, reacting critically to policy strategies that are perceived as threatening that status.

In the separated system, coequality of the two chambers and of the Congress itself with the other two institutions contributes to the need for a fully articulated structure that facilitates iteration. That structure includes the most refined and active committees of any legislature in the world—formidable policy units replete with user-friendly memories, a modified seniority-based structure, and a leadership-oriented staff. There are virtually no issues on the national policy agenda that have not been visited by congressional committees. (At least, there are no issues that lack file entries or alternative proposals.)

In a separated system like the United States, much can be learned about iteration in statute making by concentrating on legislatures. The same cannot be said for parliamentary and presidential systems, where the role of the legislature is more circumscribed by partisan or coalition governments or executive power. Iteration is more likely to occur within a ministry, a cabinet, the bureaucracy, or party councils. These differences in who participates in the iterative process and the scope of permissible alterations, as well as whether, when, and how closure is achieved, suggest a number of interesting questions in comparing political systems by this attribute. For example, are there significant substantive differences in statutes on the same issue when iteration is predominantly bureaucratic as compared to when the legislature is actively involved? Are the former technically sound and politically risky? Are the latter just the opposite? Which is more easily administered or more likely to gain public support? What is the nature of post-statute-making iteration among various democratic systems? How does discretion vary when the law is revisited at later stages? These questions suggest a distinction between open-ended and managed (or controlled) iterative processes that is potentially useful in comparing political systems, as well as in assessing the treatment of public issues in any one system.

Inquiry

Statute making requires information. The plain characteristics of writing and enacting laws intimate the strategic relevance of inquiry. To act on public issues requires a knowledge of their nature and of proposed solutions. Elijah Jordan expressed it well: "The *necessity* of making law becomes the *obligation* to know. And the obligation to know has for its objective the willed order of fact which is life" (1952, 153). Representatives must find out who to represent for what purpose. Even Edmund Burke's "trustee" had to offer wisdom that presumably was not wholly inherited. Various rationales are relied on for locating the fact-finding function of lawmaking in one or another of the institutions. For some, it belongs in the legislature because of its electorally based legitimacy and representational function. For others, the need is for specialists, for a cadre of experts whose fidelity is to science, not constituents. For the United States, Hurst observed that fact-finding authority is naturally associated with legislative work: "Law represents an effort—however short of the ideal—to order men's affairs according to rational weighing of values and the means of achieving them; how the lawmaker learns the facts of the living society in which he intervenes is, therefore, a point of fundamental importance regarding the manner of lawmaking. No agency in [the U.S.] government inherited a fact-gathering authority in any degree comparable to that of the legislature" (1950, 25). Tracing the "broad power to investigate" to the House of Commons in the sixteenth and seventeenth centuries, Hurst explained that this "authority continued to be recognized in the almost unchallenged practice of the Continental Congress, the Congress under the Federal Constitution, and the legislatures of the states" (ibid.). He pointed out that the legislature's fact-finding authority in the United States extends, as well, to determining information gathering for the other branches:

> This authority plainly included the power to look for the facts that the lawmakers believed relevant to their decisions as to what laws ought to be passed, as well as facts about the way in which the executive and judicial branches were working under laws that already existed. Holding the purse, the legislature had the means with which to start and support broad inquiries. This fact had another aspect: apart from traditional limits upon their fact-finding authority, other government agencies could in any case pursue only such inquiries as funds granted by the legislature might permit.
>
> These were the factors that gave the legislature the opportunity to become the principal lawmaker in the United States. (p. 26)

This authority to inquire into public issues is the measure of legislative power in a separated system. To argue that there are limits to fact finding is to compromise the independence of Congress. No president, no department or agency head, no military commander, no technician or scientist can legitimately claim a policy subject to be out of bounds to members of Congress, though the members can, and do, restrict themselves on occasion (primarily in regard to national security issues).

And what exactly are the facts? What is the information base upon which statutes are promulgated? Who controls the information needed by others? What level of knowledge is acceptable for taking action, and how does that vary among issues? How systematically is information gathered, processed, and evaluated? What expectations are generated by what is learned—expectations regarding alternative proposals or as to what will be accomplished by a statute? To what extent do these expectations become commitments that are the basis for evaluating policy and for enacting reforms?

The information imperative for lawmaking is attracting attention among scholars. Keith Krehbiel offers an information-based perspective on legislative organization. In explicating a legislative signaling game, he identifies the motivations for and structure of statute making, as well as establishing the need for information given the uncertainty "about the relationship between policies and their outcomes" (1991, 249). Krehbiel concludes that "committee power in Congress is informational. . . . More specifically, committees earn the compliance of their parent chamber by convincing the chamber that what the committee wants is in the chamber's interest. In this respect, committee power is not only inherently informational but also inherently majoritarian" (pp. 255–56). Krehbiel invites us to define substance into power, proposing that it is there but for the sighting.

Robert A. Katzmann (1989) explains that signaling is not limited to the committees and the chamber. The drafting of laws sends signals to agencies and the courts. The more open-ended iterative system, like that in the United States, may produce highly ambiguous signals, sending administrators and judges scurrying for clarifying information to aid them in interpreting intent and meaning. Those more controlled iterative systems (e.g., Great Britain's) "closely approach the textbook ideal of lawmaking" (p. 304).

Thus, as Katzmann intimates, the need for information in the making of statutes is not limited to separated, openly iterative systems. Of special interest is the matter of who does the fact finding in other systems. What do legislators know, and what is the source of their information? To what extent, and by whom, is the information collected by bureaucrats challenged by elected officials in parliamentary or presidential systems? Does information shape expectations and commitments in the same way in all systems? Or may we expect reduced uncertainty with the lesser role played by legislators? Exploring the informational basis for defining life through law should be irresistible to political scientists.

Speculation

Statute making is speculative. This is the feature that makes the study of lawmaking so exhilarating. Consider what is happening. Policymakers—some elected, some appointed, others hired, many self-interested, still others volunteering—participate in an authoritative process that presumes to reshape social and economic life. Farmers lose a crop to floods, sick persons need health care, industries foul the air and water, workers lose jobs, inflation increases, people hurt each other—and policymakers enact and implement laws as correctives. Election campaigns are often elaborate issue searches, with candidates proposing solutions: "Here is my plan for X." Will it work? The optimistic answer is *perhaps*. It is vitally important for a social system that certain persons are willing to venture in this way, given the risks involved. Lawmakers assume obligations and bear responsibilities that others often shun. T. V. Smith put it, "Legislatures exist to solve . . . otherwise insoluble problems" (1940, 29).

No one, to my knowledge, has written more eloquently on statute making as speculation than Elijah Jordan in his intriguing 1930 "essay on the dynamics of the public mind," entitled *Theory of Legislation*: "Legislation as the process of the application of will and intelligence to the practical problems of life is in its first motive an act of the speculative imagination" (1952, 313). The process itself depends heavily on "talk." It is therefore reasonable to apply a kind of "talk test" to the speculative feature of statute making.[5] "Discussion is the method by which ideas get cleared up as to their logical consistency with each other, and the formal statement of ideas in judgments under the pressure of critical comparison with other ideas constitutes that experimentation under logical conditions which we have accepted as the definition of legislative thinking. A parliamentary body is a laboratory whose function is to provide these conditions" (p. 346). Jordan explained that "the legislator also devises instruments [administrative and judicial bodies] through which ideas of policy are realized" (p. 133). In the doing, lawmakers reach beyond themselves: "*Man's vision outreaches his power of action*, his eye sees where his hand cannot reach" (p. 144, emphasis original). The risks are substantial. As Senator Daniel Patrick Moynihan (D–New York) explained in reference to health care reform, "You get into pretending to know the unknowable" (quoted in Priest 1994, A4).

The speculative nature of statute making can be used as a basis for rationalizing a separated, checked, and balanced representative government. Who among us has absolute confidence that one person's or one group's "vision" will be acceptable? "Whoever insists that he can state other people's position as well as they can is a dictator at heart; he has the psychological equipment if only he can add to it the

necessary power" (Smith, 1940, 13). One corrective, apart from the high access of an openly iterative process, may be accountability. If the one "vision" turns out to be wrong, then we know precisely who to blame.

Yet the costs of pure accountability for speculative failures may be very high: social and economic disruptions, human tragedy, war. Therefore the reality of speculation as characteristic of statute making and the anxiety regarding its results justify inviting many visions for resolving public problems. And so the speculative nature of statute making induces competition and compromise among legitimate participants, fashioning the enterprise as one of successive approximations. The consequences—disjointed incrementalism as a hedge against speculative failures and diffused responsibility among the elected and career officials with the right and responsibility to speculate—are often distasteful to those preferring classic responsible-party government. Thus speculation, as one of the basic features of statute making, is a stimulus for reform toward a certainty in decision making that is uncharacteristic of democracy and about which reformers themselves can only conjecture.

My present purpose is less to cope with the effects of competitive versus consolidated speculation than to encourage comparative study of this feature—across political systems, between institutions in the same political system, across issues, over time. A number of important questions require treatment: What is the basis in knowledge for speculation, and how does it vary among participants? What is the role of story telling or analogizing versus the more systematic or scientific methods of speculation? What are the expectations of participants for their plan or "vision"? Are these expectations modified through the iterative process of statute making? If so, how? Do they carry through to administration and evaluation of statutes? What conditions facilitate concentrated versus dispersed speculation? What explains a convergence, versus a divergence, of speculation among participants through the statute-making process? Comparative research would produce major insights on this central trait of statute making. We know how to find answers to these questions. And we should find a speculative enterprise of this order to be intriguing—after all, we are ourselves theorizers.

It is apparent that iteration, inquiry, and speculation are mutually reinforcing concepts in democratic systems. In fact, each can be subsumed by the other. Speculation is an act of intelligence, one obviously requiring information. Participants have personal and organizational sources of information; many rely on analogies, precedents, and experience. Interacting with others, they become aware of the informational basis for contrasting and complementary speculation. They may, as a result, be persuaded to alter their plan or to acknowledge the force of an alternative with others whose support is needed. Thus does competitive or segmented and differentially informed speculation lead to iteration in statute making.

Declaration

Statute making is declarative. Still another reinforcing concept in this interactive process of statute making is that of declaration. Here is yet another common feature to which we have paid little heed. Jordan points out that "the type of problem involved in practical life necessitates that the speculative process be also a public process, since life posits . . . a wider area for action than the will of the individual can comprehend" (p. 314). I argue that it is not only the type of problems dealt with in legislation that demands a public process but, as well, the need to keep track of what is happening where and when. Statute making in a democratic system requires declarations of the visions, plans, and agreements and various versions of the facts, so that others may test what is proposed by their own rendition of reality, however it is that their story has transpired.

Often these declarations are made part of the rules in the U.S. Congress, with (for example) reports, calendars of business, time requirements prior to floor consideration, official objectors, and "holds" all playing a role. Political parties and interest groups, too, are important for advertising agreements to their members, with the media informing the public, as well as stimulating further communication among policymakers. If anything, declarations are more vital than ever with the magnitude of statutes dealing with issues like trade, tax, regulatory, welfare, and health-care reforms. One measure of the growing significance of declarations is the reaction to efforts to plan in seclusion, even at the very early stages of policymaking. Presidents Carter, Reagan, and Clinton were criticized for preparing energy, economic, and health-care proposals, respectively, behind closed doors. The rationale in each case was to escape the pressure of "vested interests." Yet these interests believed that they should have the right to know what was being planned and to offer their own policy speculation in an official setting.

Statute making, then, can be properly understood as a series of *agree-and-display* exercises, with each iteration declared to a wider and wider audience for their response. Typically accompanying the agreement are revelations as to how it was reached—including the compromises and the breadth and depth of support. With proposals as big as comprehensive tax or national health-care reform, the declaratory process becomes an intriguing subject of study in and of itself. When to display what to whom is a strategic consideration of some moment, particularly given the number of decision makers and the broad effect of decisions made.

As with the other features of statute making, declaration entices comparative study. What is the scope of declaration or display of agreements in other democratic systems? To what extent is declaration managed by the majority party or coalition? What is the role of the strategic leak? Does declaration extend to the administration of statutes, as, for example, to rule making? Are there discernable effects of a more

open and sequential declaratory process on public support for and acceptance of statutes?

LAWMAKING BEYOND STATUTES

Statutes are the beginnings of life through law. They represent an agreement at one point in time regarding a public issue. Thus it is that those few works on lawmaking (e.g., Hurst, Jordan) are comprehensive treatments on the work of government. Conceptually, statutes become the law only through interpretation and application. Here then is a means by which political scientists can be more integrative and less institution- and country-bound. For example, to study the politics of environmental law is to carry the research beyond statute making to determine how it is that the words of a statute come to have meaning in their application and review. Clearly, as scholars, we cannot remain fixed on one institution if we are to understand lawmaking. Even if we limit study to statute making, no such isolation is possible—especially if we intend to make comparisons on that basis.

Would we be merely duplicating the work of legal scholars? I think not. We bring a unique perspective to the study of lawmaking—that of politics. We are interested in more than the words that form statutes and how those words are read. We are also interested in the bargaining, the fact finding, the speculation, the testing by declaration, the manifold actions and interpretations that transform words into actions. And our purpose is not, typically, as participants in the making of new laws or as users to serve and interpret existing laws. Rather, we seek to understand the workings of government through study of one of its crucial functions.

I reiterate that I am not inviting abstract musings, however dense may be my prose. Speak with the lawmakers, whatever their institutional locale. They know the law for what it is—a set of past agreements interpreted and applied adaptively over time. They are sensitive to how changes will be received. Those estimates are a significant part of the speculative enterprise of statute making and revision. As political scientists, we can reconstruct how this all works for different governments over time.

TESTS OF LAWMAKING CAPACITY

Comparative scholars give the American system (typically labeled "presidential") relatively low marks when measuring its capabilities against those of parliamentary systems. As R. Kent Weaver and Bert A. Rockman put it, "Governing institutions, especially in the United States, have been strongly criticized for lacking in effectiveness" (1993, 7). Many Americanists, too, are critical and some are moved to propose constitutional reform (see Sundquist 1992). And media analysts often comment disparagingly about the workability of the separated system.

A diffused-responsibility government of mixed representation, disconnected elections, and multiple access points does not show well. Therefore one may expect, even hope for, continued criticism. There is little prospect of major constitutional change in the system, as is conceded even by the most ardent reformers. Political scientists, therefore, have an incentive to contribute dispassionate analyses of governmental capacity. An effective means for doing so is to study lawmaking. I also estimate that now is the time to do so. Here is the argument.

The United States is in a policy phase characterized by large-scale proposals that test the capacity of its political system. Many of the New Deal and Great Society programs are at a point where reevaluation and reform are inevitable. Previously unimagined deficits have stimulated a review of what works and what doesn't. The persistence of certain issues on the agenda despite sizable government programs has stimulated programmatic reform. Dramatic changes in international politics have had numerous effects on domestic politics. Other great nations, too, have undergone virtual transformations that have tested the capacity of governmental institutions to cope.

It is therefore a propitious time to study lawmaking. Large-scale proposals like those reforming the tax code, welfare, health-care delivery, the criminal code, trade, the regulatory system, and education challenge the representational, institutional, and partisan features of Congress. Lawmakers are sometimes engulfed by the communicators, adherents, and adversaries of change. The normal tension between representing change and preserving stability is amplified considerably. Then there are the effects of large reform packages on the four attributes identified here. Iteration is a multiphased process with a large number of participants. Information gathering is continuous and often redundant due to the independence of participating units. Speculation may vary through the process of statute making—unguarded in the early stages as reform is initiated, circumspect in the later stages when proposals are modified and inquiry reveals the risks involved. Declaration becomes highly strategic as lawmakers consider how much to reveal, to whom, and when. As statute making proceeds, declaration is less and less in the control of one person or group, further complicating decision making for any one set of participants. Health-care reform in the United States is a prime contemporary example of each of these developments.

The study of lawmaking will produce the basis for comparative judgments about governmental capacity and effectiveness. We have hardly begun that task, in my view. It is it time we started, because the challenges of large-scale reform and change provide an opportunity to identify the limits of the system. As Bismarck intimated, watching laws being made is not a pretty sight. My personal view is that those in search of beauty should visit an art gallery or canoe down the Wisconsin River on an October afternoon. One of our tasks as scholars is to understand politics

as it is so that others may get it right when they are moved to make change.

The theme of the nintieth annual meeting of the American Political Science Association is "Politics and Political Science in a Changing World." Great political systems are wrestling with the types of large issues that prompted the theme: Russia and China with economic reforms, Japan with electoral reforms, Great Britain with its place in the European Community, the United States with health care and welfare reform. Other nations are coping with even more fundamental issues of constitutional structure and institutional arrangements. Lawmaking is a pivotal decision-making process by which these matters will be acted on. Statutes will be the basis for the laws that affect social and economic life. Analysis of the iterative, informational, speculative, and declarative activities will inform us how it is that these various political systems do their work, thus providing a basis for comparison that is grounded in the substance of politics, as well as a means for judging capacities to govern.

Thomas Brackett Reed, Speaker of the House in 1889–91 and 1895–99, proposed his own version of the ways of life and law. For him, "freedom never meant the best government in the abstract, it only meant the government best fitted to the people governed. We have not the best laws in the United States that wise men could dream of. What we have [are] the best laws our people are fit for; and as they grow in knowledge and sense the laws follow in laggard procession. But they follow" (McCall 1914, 256).

It is this fascinating process by which the laws follow the growth in knowledge that should stimulate our research impulses. Ultimately, any government will be tested by its capacity to make laws of a quality to meet the needs of its citizens. To the extent that we as political scientists are prepared to explain and predict the procession of laws, we justify our professional craft and create a need for what we have learned.

Notes

I acknowledge with gratitude the comments on an earlier draft by Thomas E. Mann, Robert A. Katzmann, and J. Willard Hurst.

1. In their comprehensive bibliography on the U.S. Congress (5,630 entries), Robert U. Goehlert and John R. Sayre (1982) have no entry for "lawmaking" in either table of contents or subject index. There are sections for "Legislative Case Studies" (one of the smallest sections) and "Legislative Analysis" (with a majority of the entries being voting studies). The *Handbook of Legislative Research* (Loewenberg, Patterson, and Jewell 1985) includes 16 chapters, none of which is on lawmaking as such. Many of the chapters are, to be sure, relevant to an understanding of lawmaking. But the volume indicates that scholars are more interested in elections, voting, committees, and leadership than in lawmaking.

2. Here is the count of articles for three journals—*American Political Science Review, American Journal of Political Science,* and *Journal of Politics*—for the years 1983–93: high return of incumbents and related topics, 36 articles; party voting in presidential elections and related topics, 35 articles; and health policy and politics, 4 articles.

3. Distinctions are often made within these broad categories, however. For examples, see Weaver and Rockman 1993, chap. 1, and Shugart and Carey 1992, chaps. 5–8. See also Lijphart 1992 for a sample of literature on presidentialism and parliamentarism, including the criticisms often leveled at the former.

4. For example, in the United States, continuity is evident from much of the literature on the policy process, with the other attributes—deliberation, sequence, and orderliness—treated extensively in studies of committees, floor debate, and the rules. Of the four, sequence has been subject of the least study, despite the urging of Richard F. Fenno, Jr. (1986) in his presidential address, "Observation, Context, and Sequence in the Study of Politics."

5. Arthur Maass emphasizes the importance of policy conversation and deliberation in a "discussion model" (1983, chap. 1).

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