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Book Review. Judges, Bureaucrats, and the Question of Independence by Donna Price Cofer

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Let us conclude with comments. The first concerns the rise in influence and prestige of agricultural economists over, say, the last 50 years or so. Bruce Gardner presents their case succinctly: "I believe that the opportunity exists to shape policy through analysis; for Congress, however motivated, wants to know the consequences of its actions (although it may not want them all published)" (Gardner, p. 15). To claim that agricultural economists "shape" policy seems to be something of an exaggeration; perhaps "expound on" would be a more accurate choice of verb. In any case, one could certainly argue that the members of the American Agricultural Economics Association have been extensively involved, over the last half-century, in efforts to influence policymakers to give credence to their analyses and legal sanctions to their prescriptions.

The second comment tends to modify the first. The research and scholarship of political scientists such as Theodore Lowi, Randall Ripley, and Grace Franklin (among numerous others) proved substantially more useful in predicting what actually came to be the principal provisions of the Food Security Act of 1985 than the valuable, but largely neglected, advice and counsel offered in the two conference proceedings reviewed here. The new farm law is another classic example of distributive politics; the iron triangle concept has not lost all of its analytical power, by any means. If political scientists and economists desire to become really influential in the rooms and corridors wherein policymakers negotiate and decide, we need to unite our disciplines in a much more effective form and manner. This fusion is underway, admittedly, but there is still very much to be done.

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This book about the role of administrative law judges (ALJs) in the Social Security Disability program moves along uneasily on two levels. First, it describes the battles in the continuing war among the administrators, politicians, and judges concerned with administering the program. Second, it criticizes the administrative process, primarily on the ground that ALJ independence has been threatened. The author sums up her point of view with the argument that

If ALJs are not afforded adequate protection against bureaucratic, and therefore political, intrusions into their role, their objectivity will be—or will at least appear to be—compromised. (p. 35)

The book succeeds well in its first goal of describing the conflicts that have marked the last decade or so of the Social Security program. The first three chapters give us a general history of the program, of the decision-making process in government benefit programs, and of the role of ALJs. This provides the background for chapters 4 and 5, which thoroughly explain the conflicts from 1960 to the present. We learn about the Social Security Administration's growing concern with how the program was being administered, specifically with the ALJs' productivity, inconsistency, and high pro-claimant decision rates. We are told how the agency brought pressure on ALJs by withholding travel and staff perquisites, and how ALJs fought back in court to maintain their independence.

The author does not conceal the complexity of these battles. The agency's concern with productivity produced the mechanically applied "grid" for determining disability, which reduced inconsistency and improved productivity, but increased pro-claimant decisions. The agency's equating of pro-claimant decisions with decision-making errors is also criticized. Chapter 6 provides a detailed report on the results of a questionnaire sent to ALJs to obtain their views about these problems, and chapter 7 concludes with proposals for reform, including improvement of the state agency process, experimenting with more adverse ALJ proceedings, and adoption of a Social Security court.

The book is less successful in its second objective of criticizing the decision-making process. The rhetoric of the critique is that ALJ independence, and therefore claimants' rights, are threatened by a bureaucratic, and therefore heartless and political, administration. The
characters in this morality play are too one-dimensional. Indeed, the strength of the book is its detailed description of the conflict among the actors, which is more complicated than the ALJ-vs.-bureaucracy rhetoric would suggest. It is not that the author’s perspective is without support. The decision-making process at the state level is too routinized and the pressure from the agency on ALJs is excessive. However, the significance of the threat to the ALJs is not fully captured by viewing it as a simple dispute between the defenders of individual rights and intruding political bureaucrats. Put differently, the issues are less those of a morality play pitting individual against government, and more those of high political drama pitting those with different political views against each other, compounded by the fact that the ALJs’ sense of professional self-worth is implicated by the definition of their role.

A somewhat richer view of these conflicts would point out that the Social Security Disability program is poised not-so-delicately at the conjunction of law, politics, and administration. It is not just that the definition of disability is unclear. The idea itself is the product of deep, even irreconcilable tensions arising from the public’s conception of malingering, and from the uncertain distinction among the risks covered by unemployment, old age, and disability insurance. The disability program builds these tensions into its administration by placing independent judges at the end of the review process, as is true of the Tax Court in the federal income tax system. When this more complex perspective is adopted, the agency appears less heartless and politically intrusive, and more likely any other agency trying to respond to shifts in political climate, often under congressional pressure. The clash between the agency and the ALJs becomes a dispute about interpretation, similar to what we might encounter if the Tax Court were inside the Internal Revenue Service rather than an independent court. The ALJs’ problems are the result of housing them inside an agency, where political conflicts are inevitable.

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The goal of this study is to understand what factors affect the degree of success with which criminal justice policies formulated at the federal level are implemented by states and, based upon these findings, to speculate more generally about political legitimacy and accountability in the United States. Toward this end, Dalton compares responses in four states (California, Colorado, Massachusetts, and Washington) to Supreme Court decisions concerning the rights of the accused and to executive and congressional policies concerning the quality of and access to criminal records.

The book’s potential strength is its description of what transpires when the federal government is dependent upon the state for implementing policy. Indeed, the most satisfying parts of the book discuss how state courts, legislatures, and administrative officers grapple with federal policy—either to enforce it, subvert it, or simply understand it—and the motives of the various actors. Although one suspects that he makes too much of perceived distinctions in the political traditions of the four states to explain differences in behavior, Dalton does contribute to our understanding of the complexity that characterizes state implementation of federal policy. Furthermore, the discussion of how state and federal courts respond to one another and to other political institutions in their respective environments is thought provoking. We are provided with accounts indicating that the constraints faced by the state courts in executing federal policy vary, depending upon how the courts are perceived by others in their respective environments.

Unfortunately, the book does not live up to its fullest potential, for several reasons: careless usage; lack of clarity in the presentation and incorrect information; and unsubstantiated and overly broad claims. These flaws seriously undercut the author’s credibility.

Interest groups and elites are referred to throughout the text, but the author makes little effort to define those attributes which might help the reader to identify an individual as