Readings
of particular interest

Oranges, Diamonds, and Movie Bookings

"The Economics of Block Booking" by Roy W. Kenney and Benjamin Klein, in *Journal of Law and Economics*, vol. 26, no. 3 (October 1983). pp. 497-540.

Block booking is the practice of renting one motion picture to an exhibitor on condition that it also rent other features from the same company. Movie makers in the United States began using this marketing technique at least as far back as 1916. In the 1948 *Paramount Pictures* case, the U.S. Supreme Court declared that the block booking system violated the antitrust laws. The *Paramount* case applied only to theater bookings, but the Court's 1962 decision in *Loew's* extended the ban to movie rentals for television broadcast. In this article Roy W. Kenney and Benjamin Klein offer a rationale for block booking based on efficiency concerns. Kenney and Klein are associated with California State University at Northridge and University of California at Los Angeles, respectively.

The prime legal objection to block booking has been that it allows distributors to "extend" monopoly pricing power from one copyrighted picture to another, specifically from a hit film to less popular offerings. In *Loew's* the Supreme Court said that "the antitrust laws do not permit a compounding of the statutorily conferred monopoly" on a copyrighted film.

Many economic critics, however, have been dissatisfied with this line of reasoning. George Stigler has asked why the distributor could not make just as much money from his copyright on the hit simply by renting it out at a high price. In order to "overprice" the undesirable films, he must implicitly "underprice" the desirable one.

Stigler and others have speculated that the real function of block booking and other types of product "bundling" is to make possible a form of price discrimination. For example, the makers of early computers often sold their machines with a "tie-in" of high-priced tabulating cards. Customers with intense demand used a lot of tabulating cards and thus, in effect, paid a higher price than customers with weak demand. This tie-in would have been unnecessary if the manufacturer had had some way to gauge the intensity of buyers' demand in advance; then it could simply have charged differential prices for the computer itself. On this theory, films vary in their appeal from one market to another, so that setting a single block price results in different implicit prices for individual films across markets.

Kenney and Klein argue that this price-discrimination thesis is at variance with the facts of block booking in the movie business. That thesis assumes that movie makers could not tell which customers are especially eager to rent which individual films. But, in fact, in most markets there are many theaters and television stations that can compete with each other for the rights to a new film. In fact, distributors can and do rely on competitive bidding among TV stations to determine prices in each local market. This bidding offers distributors a more precise and profitable way to vary film prices among markets than does block booking, which suggests to the authors that block booking must serve some other purpose.

To elucidate that purpose, the authors compare film rentals with other markets for items of varying quality. Oranges sold in markets are one example. Some oranges in a shipment are better than others, but it would be unduly expensive for a grocer to rate and price each one individually. Setting a uniform price, however, encourages shoppers to rummage through the bin in search of the best specimens. This search leads to at least two kinds of costs. First, the search may itself damage the product; by bruising oranges, for example. Second, consumers will invest time in searching, even though (as-

suming that all the oranges are eventually sold) they will not on average get a better product. This lower level of consumer satisfaction will be reflected in a lower demand and price for oranges, which will harm the manufacturer.

Sellers can use a number of techniques to reduce oversearch by consumers, including "blind" packaging, which makes quality inspection more difficult, selling goods in lots, and installing dispensing mechanisms. Putting a coded "pull date" on a grocery package, rather than an "open date" that can be read by the consumer, may discourage inefficient search for the freshest items. Often various methods are used in combination. A seller of potatoes, for example, can prepackage and sell them in opaque bags.

Any of these techniques, the authors say, may turn out to be both profit-maximizing and socially efficient in particular situations. Nonetheless, they involve some hidden costs. Shoppers may refuse to accept the below-average offerings of a dispensing system, discarding the offending objects on a nearby store shelf and going back to the dispenser for another try. More fundamentally, blind packaging constitutes an implied deal in which the seller agrees to maintain an average level of product quality; reneging on this deal may be a tempting way for the seller to reap short-term profits (before customers are driven away) that would have been unavailable under an open-packaging system. The fear of such reneging will lower customers' willingness to pay for blind-packaged goods.

Sellers therefore have an incentive to rebuild this consumer confidence. One way of doing this is for sellers to invest more in brand-name maintenance—thus making it more costly for themselves to renege on their quality reputation. Another way is to compromise the blindness of the sale, either by allowing some form of "peeking" by the consumer, or by making it easier for the consumer to reject the lowest-quality lots.

The authors apply this analysis to the DeBeers group, the diamond cartel that has surprised many observers by the persistence of its grasp on the world diamond market. DeBeers's Central Selling Organization (CSO) in 1980 accounted for an estimated 80–85 percent of the world's sales of gem-quality uncut diamonds (with much of the rest reportedly consisting of stolen merchandise). However, DeBeers does not itself mine most of the diamonds it sells, instead buying them from independent mine owners under long-term (five to ten year) contracts with monthly production quotas. It might seem that the mine owners could easily chisel on the cartel by producing diamonds at full throttle and selling their output independently at the world price. That raises the question: why do they refrain from doing so?

The answer, say Kenney and Klein, may lie in the details of the DeBeers selling scheme. The quality of uncut diamonds varies greatly, and customers would have an incentive to invest enormous sums in the search process if they could choose individual diamonds. Instead, DeBeers preassigns a box of diamonds to each individual buyer, meeting the buyer's specifications for shape, weight, and so forth, and carrying a preset price. The buyer is free to reject the box, but that almost never happens "because buyers who reject the diamonds offered them are deleted from the list of invited customers." A buyer, however, is allowed to object that particular stones have been misclassified by weight or other factors.

This system provides some protection to both buyer and seller from the reneging that is possible under a blind-selling scheme—both the reneging that DeBeers would engage in by offering diamonds of grossly poor quality, and the reneging its customers would engage in if they rejected lots of below-average quality that were honestly drawn from an adequate average group. The authors speculate that economies of scale may make the expected costs of the two types of reneging (and the measures taken to prevent them) lower at DeBeers than at independent diamond outlets. If so, then DeBeers may have kept its dominant position in diamonds through the efficiency of its marketing system rather than through conventional "monopolistic" practices.

Much of the orange-diamond analysis can be applied to the movie industry. It is notoriously difficult to guess the likely popularity of a film before it is released, the authors point out; success is not related very predictably to production costs, for example. If films were priced in advance according to some average formula, exhibitors could simply wait a week or two to see which ones became hits and then rent (or extend their rental of) those films while

rejecting the duds. This problem might not be serious if the studio could reprice each movie after its success had become evident, but that turns out to be difficult or impossible for various reasons. After block booking was banned, studios increased their reliance on contracts entitling them to a percentage of theaters' receipts —thus recovering after the fact the same revenues that block booking allowed them to recover before the fact.

Industrial Air Pollution: A Case of Stationary Progress?

Controlling Industrial Pollution: The Economics and Politics of Clean Air by Robert W. Crandall (Brookings Institution, 1983), 199 pp.

When Congress enacted the 1970 amendments to the Clean Air Act, it instructed the Environmental Protection Agency to impose strict controls on "stationary sources" of air pollution such as factories and power plants to go alongside the controls on "mobile sources" such as vehicles. In 1980, according to the Department of Commerce, total outlays on air pollution control amounted to $25 billion, of which more than $15 billion is attributable to stationary sources. It is often claimed that, whatever their cost, the EPA controls have at least succeeded in making the air much cleaner than it would otherwise be. According to Robert Crandall of the Brookings Institution, there "is some evidence that emissions from automobiles have been reduced by federal new-car standards"—although at an unnecessarily high cost —"but no conclusive studies demonstrate similar success for federal stationary-source policies."

Crandall says the major evidence for the success of the latter standards consists of data on the concentrations of pollutants detected at various monitoring sites around the country. These data show a substantial drop in sulfur dioxide and carbon monoxide levels since the early 1970s, along with no improvement in the level of airborne particles and a rise for nitrogen oxide. Unfortunately, Crandall says, the quality control of the monitoring is poor. There are fewer than 100 monitoring sites for sulfur dioxide and carbon monoxide, and "monitors are not located randomly across a control region." A large number of monitoring sites are located in older central cities, where industrial activity is on the wane. The decline reported in concentrations may be partly illusory if polluters are simply relocating their operations away from the monitors.

Fragmentary data from the 1960s, furthermore, suggest that air quality was improving faster before 1970 than it did afterward. Although this data is highly inconclusive, Crandall says it calls into question the efficacy of EPA's regulatory efforts. Besides, what improvement there was in the 1970s might have owed more to high energy prices and the deceleration of industrial growth than to EPA's efforts.

EPA's data on air quality also do not correspond well with two other sets of government statistics, Crandall says. One is EPA's estimates of total emissions by stationary-source polluters; the other is Census Bureau data on the amount of pollutants manufacturers removed in pollution-control processes. The discrepancies suggest problems with either EPA's assumptions about compliance with its emissions standards, or its procedures for monitoring air quality, or both.

Part of the agency's problem is that its regulations do not foster the most efficient means of pollution abatement. EPA sets best-technology standards for thousands of different industrial processes, with separate standards for new and old plants. The standards are set to a variety of stringencies, so that the cost of controlling a marginal unit of a given pollutant can vary widely from one industry to another, between new and old plants in an industry, and from one process to another within a given plant. "For instance, particulate control in the utility sector costs only $36 to $680 per additional ton removed while it can cost as much as $1,010 to $3,030 in a secondary aluminum plant or $30,880 in a coke oven." To the extent that particulates from these sources are comparably harmful and affect the same localities, it should be possible to achieve both lower overall control costs and lower emissions by tightening controls on utilities while loosening controls on industry.

Even more important, EPA—in accord with congressional instructions—typically

holds new plants to much more stringent standards than existing plants. It also grants variances and compliance delays to some old plants but rarely to new ones. Crandall charges that this "new-source bias" discourages investment in new plant and equipment.

Why would Congress burden new sources with disproportionate control costs? Crandall argues that the lawmakers have used environmental policy in this and other ways to slow the migration of industry from the industrial areas of the North to the South and West. Vote breakdowns indicate that congressional support for activist environmental policy came predominantly from low-growth northern industrial states. The policy may have worked as intended: An analysis by the author shows that in six of eight major polluting industry groups, Sunbelt plants are spending a bigger share of their value-added on air pollution control than are Frostbelt plants. In the two industry groups with the highest control costs, metals and refining, the control costs of the Sunbelt plants were 50 percent higher.

Finally, differentially strict standards within a given plant can lead to inefficiency. According to estimates from the Battelle Institute, the steel industry could lower its costs of removing particulates by nearly 30 percent if EPA were to tighten standards for sintering (a heating process) and coal yards while weakening standards for blast furnaces, open hearths, and scarfing (metal joining).

A strategy intended to equalize the marginal costs of emission controls might have to be altered if the particles given off in some processes are more hazardous than those given off in others. It is also important to note, the author says, that the steel industry is not complying with the EPA standards in their full stringency. Total particulate controls for integrated steel mills would cost nearly $3 billion a year if Battelle's model-plant analysis is correct. "Actual air pollution control costs in the entire steel industry are probably less than $400 million per year. Hence the industry must be considerably out of compliance, or the projected costs are too high."

Since at least 1976 EPA has been trying to make its regulatory approach more efficient. The agency has promoted a system of tradable rights ("offsets") that would allow one polluter to pay another—presumably one with a lower cost of control—to reduce its emissions below its legally permitted maximum. But the agency has run into problems in determining the appropriate geographic bounds of trading areas and in enforcing the emissions ceiling assigned to each participant. Furthermore, statutory restrictions hold new sources of major pollutants to strict engineering standards, which prevents them from trading with existing sources.

Crandall considers emissions fees an even more promising way to control many types of pollution. This approach, however, would tend to redistribute wealth drastically, which makes it politically unpopular in many quarters. Crandall offers a "two-part" fee scheme that is designed to reduce that problem. It would combine standards and fees so as to keep EPA's total tax collections quite low while still imposing the "correct" marginal disincentive for pollution.

Of course, the author concludes, no incentives system can work very well if EPA lacks the capacity to monitor its enforcement. Hence the first order of business should be for Congress to spend substantially more on EPA's policing functions.

EPA as Gulliver

Regulation and the Courts: The Case of the Clean Air Act by R. Shep Melnick (Brookings Institution, 1983), 404 pp.

During the past twenty years federal judges, who had long deferred to the expertise of administrators, have increasingly intervened to oversee regulatory policy making. This judicial activism has been both praised and criticized as a matter of legal doctrine, but there have been few systematic analyses of whether it has in fact succeeded in improving agency policy making. In this book R. Shep Melnick examines how the federal courts have shaped Environmental Protection Agency regulation of air pollution under the Clean Air Act. He concludes that the courts have been ill-suited to their new role as regulatory reformers: in this field "the consequences of court action are neither random nor beneficial." Melnick is assistant professor of government at Harvard and was formerly a research associate at the Brookings Institution.

Judicial control begins at the procedural level: court decisions have forced EPA to follow more elaborate rulemaking procedures than those specified in the Administrative Procedures Act, precisely in order to facilitate judicial review later on (as well as to encourage public participation). On the level of substantive policy, courts have forced EPA into a number of highly controversial regulatory programs. For instance, they have required the agency to set extremely stringent air-quality standards and regulate more pollutants than it had intended, develop a complex program to prevent "significant deterioration" in areas with clean air, and draw up highly unpopular plans to curtail driving and parking in big cities. At the same time, the courts have made it harder for EPA to enforce standards once it sets them, and have fashioned compliance schedules for individual polluters that extend well past the act's deadlines for achieving air-quality standards. Melnick concludes that by pushing legislators and administrators in these two contradictory directions, the courts have been "exacerbating the tendency of these institutions to promise far more than they can deliver."

Some of the problems lie in the institutional nature of the judiciary. The author says judges are often unfamiliar with the administrative process and intent on doing what seems fair in the particular case, which can leave them poorly informed about the wider issues at stake. They also tend to view crucial policy questions as mere technical details, Melnick asserts. For example, when courts told EPA to prevent significant deterioration in air quality and to limit the use of tall smokestacks, they gave no indication what "significant" meant or how to tell a tall smokestack from a normal one. Agency officials ran into serious problems when they tried to put judicial doctrine into regulatory practice.

The decentralized nature of the federal court system has led to some further anomalies. Many cases involving broad questions of national policy have been decided by the liberal D.C. Circuit Court of Appeals, while the enforcement process has been largely overseen by the various district courts around the country. The D.C. circuit has tended to look favorably on environmentalist challenges, while dismissing EPA's pleas that it lacked the resources to regulate; the district courts are less well disposed toward regulation. Both environmental groups and industry seek out those courts that share their views in the phenomenon of "forum-shopping." The two groups of jurists have proved unable to coordinate their hundreds of decisions with each other.

The author says court decisions have also altered the political balance between the branches. Specifically, they have made the agency more responsive to the chairmen and staffs of congressional subcommittees, and less responsive to the White House. The courts frequently look to the legislative history of the Clean Air Act in hopes of guessing congressional intent as to how it should be interpreted. But legislative history is typically written by subcommittee staffers who are eager partisans of regulatory activism, whereas the legislative coalition that originally passed a bill may have held a much broader spectrum of views.

The diversity of congressional opinion on the clean-air issue became more apparent when the time came for EPA to enforce the ambitious rules that it (and the courts) had adopted. Many members of Congress suddenly noticed that the rules would impose large and visible costs on a lot of voters and began accusing the agency of being "out of control," blindly absolutist, and so forth. These protests had their own effects on judicial behavior, leading courts to block rigorous enforcement of the rules, but not to call into question the regulatory standards themselves.

To a remarkable extent, Melnick says, large sectors of the current EPA are themselves the products of court action. Court decisions have created a variety of program advocates within the agency, have vastly increased the power of lawyers at the expense of air-pollution control professionals, have pushed enforcement officials into piecemeal negotiations that weaken their bargaining position, and have encouraged the political leadership of the agency to settle for symbolic victories against pollution at the standard-setting stage instead of success at the enforcement stage.

Although the regulatory process has turned out to be more complex and less amenable to judicial control than the legal literature has made it out to be, Melnick says, there are a number of specific things judges can do to improve their oversight of regulatory processes. Among them are narrowly interpreting an agen-

cy's "nondiscretionary duties," phrasing court orders in specific language, and discouraging agencies from reaching private consent agreements with plaintiffs. Without some such reforms, he says, EPA—far from running "out of control"—will continue to be tied down by thousands of Lilliputian strings all but invisible to those who view the agency from afar.

Regulatory Management in California

"Regulatory Reform: Assessing the California Plan" by Marsha N. Cohen, in *Duke Law Journal*, no. 2 (1983), pp. 231-284.

Not long after California led the tax revolt, it took a pioneering role in regulatory reform. In 1979 the California legislature passed a law creating a new agency called the Office of Administrative Law (OAL) with the power to review and approve all future regulations issued by state agencies. In this article Marsha N. Cohen of Hastings College of the Law, University of California, assesses the first two years of reform.

The new agency's powers were quite broadly defined, Cohen notes. If it finds a regulation to be lacking in "necessity," "authority," or "clarity," among several other qualities, it can send it back to the agency for revision or burial. The law also gave OAL a chance to review the state's entire 28,000-page body of existing regulations, which made up a fourteen-and-a-half-foot shelf. Unlike the Office of Management and Budget at the federal level, OAL can review all regulations, not just "major" ones. Moreover, it has some autonomy from the rest of the executive branch, although its decisions can be appealed to the governor. Originally, OAL's actions were nearly free from judicial review; later the legislature provided that "interested parties" could take the agency to court. [For background, see "More Governmental Innovation from the Golden State," Perspectives, *Regulation*, January/February 1981.]

It might be natural, Cohen observes, to judge the success of the reform effort by the intentions of the legislature. But in this case, although the measure passed by a nearly unanimous vote, the motives of various legislative factions differed greatly. Some legislators believed that regulation was simply excessive and should be severely limited; others believed that the ill effects of regulation could be remedied by procedural improvements. Thus the law's provisions include some that encourage deregulation (for example, OAL has almost no authority to review repeals of existing regulations) and others that strive to reform the regulation-making process in neutral ways.

The procedural reforms include requirements that agencies conduct oral hearings on request, keep a rulemaking file, respond to public comments, and state their reasons for adopting rules. Commentators have generally praised these reforms for improving the quality of agency regulation-writing. Some of them, however, smack of absolutism. For example, anyone who wants to can demand that an agency hold an oral hearing before taking any rulemaking action, however trivial. Similarly, agencies must respond to every comment in the rulemaking file, however irrelevant. The increased formality of the new rulemaking process, the author says, may be frustrating the intent of stimulating citizen involvement in the rulemaking process, by conferring an advantage on those who can make sophisticated contributions to the rulemaking file. On the other hand, the author expects there will not be as many lawsuits challenging agency rules, since the most flagrant irregularities will not make it past the review stage.

Cohen is considerably more troubled by OAL's power to second-guess the "necessity" of regulations. (OAL must base this decision on whether there is substantial evidence of necessity in the rulemaking file.) Cohen contends that the "necessity" criterion (which is undefined) corresponds to a longstanding statutory requirement that new rules be "reasonably necessary," but the state's courts have not defined that standard either. Even if that ambiguity can be cleared up, the question remains: necessary for what?

The danger, Cohen says, is that OAL will simply replace agencies' substantive judgment with its own, centralizing all regulatory decisions in its own hands and eliminating the role of agency expertise. Some regulatory decisions, she says, rest on factual suppositions, others on judgments. A regulation setting the level of a licensing fee, for example, may be based on specific estimates of costs and expected revenues.

OAL can readily assess the "necessity" of such a decision. But an education requirement for occupational licensure is a matter of judgment, since it is hard to show that a professional must take some particular number of hours of clinical training rather than a bit more or less. "Perspective, philosophy, and judgment—particularly expert judgment—will ultimately play a significant role in formulating such standards." While the law explicitly forbids OAL to substitute its judgment for that of an agency, such substitution is inevitable if OAL is to judge the "necessity" of these decisions. At the federal level, incidentally, some reformers have proposed a statute whereby the rulemaking file would have to provide substantial support for the factual underpinnings of rules, but not for the judgments embodied in them.

Cohen concludes that OAL can best serve as an umpire between the regulators and the regulated if it avoids lurching to either side of the ideological spectrum on regulatory reform. If legislators perceive OAL as leaning toward one extreme or the other, they will begin to exempt programs and agencies from its review; legislative support will remain intact, however, if the agency is seen as serving the general cause of regulatory reform rather than any one side's programmatic agenda.

"Politics without Politicians" in Utility Regulation

The Politics of Public Utility Regulation by William T. Gormley, Jr. (Pittsburgh: University of Pittsburgh Press, 1983), 271 pp.

The political pressures on state utility commissioners have gotten more complicated in recent years, according to William T. Gormley, Jr., associate professor of political science at the University of Wisconsin at Madison. Legislators and governors complain when utility rates go up, although they usually avoid involving themselves in the detailed proceedings by which the commissioners decide the rate requests. Commissioners also feel pressure from the professionals on their own staffs, especially now that staffs are larger and dominated more by economists and lawyers than by engineers and accountants.

The most striking development in utility politics, according to Gormley, is that outside pressure groups have become an institutionalized part of the regulatory process. Some of these groups lobby against new power plants on environmental grounds; others press for lower rates for consumers and special help for the poorest customers. Most such groups were originally set up on an ad hoc basis, but over time many of them have established themselves as successful and quasi-permanent actors on the regulatory stage. Some state governments, moreover, have established official consumer advocates within the state bureaucracy. In thirteen states this position is held by the attorney general, and in eighteen others by a special consumer counsel. (These "proxy advocates," incidentally, differ from ombudsmen, whose role is to help consumers deal with the bureaucracy rather than to alter its overall policy.)

Gormley sent questionnaires to utility commissioners around the nation and interviewed regulators, commission staffers, utility executives, and public and private intervenors in twelve states. His object was to determine the policy preferences of these groups and the degree of "concurrence" in their views. He found that citizens' groups seemed to be more successful at influencing the agenda of the commissions than at influencing final issue outcomes. "On procedural issues," he says, "commissioners concur about equally with utility executives and grassroots activists. On substantive issues, though, commissioners are much more likely to agree with utility executives than with grassroots advocates." For instance, the survey participants were asked whether they agreed that "investor-owned utilities are generally more efficient than publicly owned utilities." Most of the commissioners (79 percent) and even more of the commission staffers (92 percent) agreed with that statement, compared with 96 percent of the utility executives, 36 percent of the "proxy advocates," and only 15 percent of the grassroots advocates. Likewise, commission members and staffers favored the use of fuel adjustment clauses by margins of ten-to-one and eight-to-one respectively, while only 28 percent of the grassroots advocates took that position.

Among regulators, lawyers differed significantly from nonlawyers on many issues, with lawyers generally taking positions that are

more hostile to utilities. However, lawyers are opposed to direct election of utility commissioners by an even greater margin than nonlawyers (90 percent to 75 percent).

Citizens' groups are now active participants in utility regulation in around half the states, the survey found. As might be expected, they are especially active in states where rates are high. Perhaps more surprising, they are more active in states where utility commissioners are appointed rather than elected, possibly because they "assume that elected agency officials can be trusted to safeguard their interests."

Some citizens' groups have won access to official sources of funding: 13 percent say they get money from the federal legal services program, 19 percent from other federal programs, and 25 percent from state government. But they are often ineffective in the goal that most of them share, blocking rate increases, the author says. The reason is that they lack the resources and expertise to address the sort of highly complex issues that figure in revenue requirements decisions.

The "official" consumer advocates within state governments have far bigger budgets and can thus address the complexities of revenue requirements issues, but the author found their issue priorities to be sharply different from those of the grass-roots advocates. They usually avoid issues that pit one group of consumers against another, such as "lifeline" rates, discounts for the elderly, and proposals to shift costs from residential to business customers. Gormley believes that the "proxy advocates" stay out of conflicts between groups of consumers for fear of splitting their political constituency—a strategy that keeps the agencies popular in state legislatures, but results in what the author calls a "lowest common denominator" approach to representation. States with official advocates were just as likely as other states to have a high level of grass-roots activism, which suggests to Gormley that the official advocates are not a very good substitute for the private variety. He believes states would do better to acknowledge the diversity of consumer interests and foster consumer advocacy through programs that reimburse private groups for the cost of testifying (intervenor funding).

Some critics have decried the "revolving door" by which employees shuttle from regulated industry to commission and back again. Gormley found, however, that regulators who have worked for a utility are no more likely than other regulators to take pro-industry policy stands. It is even possible, he says, that former utility employees may sometimes be tougher critics of utility arguments, because they "know where to find skeletons in the closet." This finding, he says, is consistent with other recent studies that have found the "revolving door effect" to be weak at best, at least on the "entry" side (although the possibility remains open that regulators might be swayed by hopes of working for a utility after they leave the government).

Gormley identifies a number of other factors that seem to make state commissions more acquiescent to utility interests, if not actually "captured" by them. One is the absence of active, effective public advocacy groups. Another is underfunding and understaffing, which can keep commissions from developing an independent information base. But although commissions that are rich in money and resources may avoid "capture," they do not necessarily share the views of consumer groups. Instead, Gormley finds, they have their own policy preferences, or in practice borrow them from one or another of the professions represented on commission staffs. Economists, for instance, are enamored of marginal cost pricing in rate structures, while lawyers favor more elaborate hearing procedures with fuller public participation.

At the moment, Gormley argues, state utility regulation is subject to political pressure, but not much of it comes from elected officials —resulting in a sort of "politics without politicians." He supports the initiative process, not because it will affect regulatory outcomes directly, but because its presence serves as a threat to spur politicians to tackle utility issues. He also suggests ending the civil service status of some commission staff positions so as to promote flexible (and politically aware) personnel policies. Paradoxically, he says, consumer groups may be mistaken in advocating direct election of commissioners as a pro-consumer measure: he argues that elected commissioners pursue voter support through "casework" and speech making, not by more pro-consumer policy making.