

politely to logic, nevertheless "in its substance corresponds with what is then thought to be convenient," as Justice Holmes observed. Only just what is convenient is not always obvious. Economics is designed to trace the effect in human affairs of doing one thing rather than another. It is the basic theory in modern social science of just what is and is not convenient. Holmes, again, put it better: "Economics teaches us that in order to get something we have to give up something else and to know what we are doing when we elect." There are legal issues which only a crank could now try to discuss without coming to terms with the relevant economics. In leading this revolution, Richard Posner has had numerous rivals and a good many outright enemies. Yet not even the latter would dare to dispute his preeminence in law and economics. That is dramatic testimony to his stature.

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## Handicapped Transit

**Institutional Disability: The Saga of Transportation Policy for the Disabled**, by Robert A. Katzmann (Brookings Institution, 1986), 211 pp.

**Reviewed by Deborah A. Stone**

Like any good book, this one has several stories to tell. Nominally, it is an attempt to account for an incoherent collection of legislative, administrative, and judicial initiatives that masquerade under the banner of "transportation policy for the disabled." At another level, it provides an analysis of political institutions and finds them poorly suited to their tasks. And, ultimately, it is about a fundamental political dilemma: to what extent can and should society be organized according to individual characteristics and needs instead of averages, norms, and majorities?

Federal responses to the problem of transportation for the handicapped can only be described as a lot of activity amounting to "uncertainty and vacillation," "inconstant action and indirection." The statutory bases for special transportation provisions all were added as seemingly minor amendments to other pieces of legislation with little, if any, deliberation. The most important of these, the Biaggi Amendment

to the 1970 Urban Mass Transit Assistance Act, declared that elderly and handicapped people "have the same right as other persons to utilize mass transportation," and it mandated that transit programs receiving federal financial assistance must make "special efforts" to accommodate them in the design and planning of mass transportation.

This cornerstone of transportation policy for the handicapped shared many of the defects of the other statutory building blocks (notably, the Architectural Barriers Act of 1968 and Section 504 of the Rehabilitation Act of 1973). It was put on the congressional agenda without any preliminary analysis, by a legislator who was as interested in making a name for himself as in the merits of the policy. It was worded vaguely enough to sound "right-thinking" without offending anyone or implying unpleasant conflicts and sacrifices. Its sponsor's blunt assertions that it would entail "very little, if any, additional cost" went unchallenged. And it glossed over the issue of whether the transportation needs of the handicapped could be met more effectively by some means other than mass transit systems—means such as subsidized taxi services, a network of specialized door-to-door vans, or the development and subsidy of private automobiles tailored to the physical capacities of handicapped people.

The bits and pieces of often conflicting legislative guidance passed from a highly fragmented Congress to an equally fragmented administrative bureaucracy. Over the span of about a decade, the Department of Transportation first issued regulations granting communities "local options" to meet the transit needs of the handicapped by any appropriate means, then issued regulations saying that all mass transit systems had to become fully accessible to the handicapped, and then, under the Reagan administration, returned to the local option, the "effective mobility" approach. Elsewhere on the political stage, the Department of Health, Education and Welfare (HEW) and the courts were hashing out guidelines for Section 504, which generally prohibits discrimination against the handicapped in any federally assisted programs.

The result, of course, was policy confusion, and much of the book is devoted to analyzing the behavior of political institutions that could produce such confusion. Bureaucratic policy making is nicely portrayed by Katzmann as a resultant of many other forces: the career ambitions

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of individuals, the pressures of strong lobbies (handicapped rights groups and the transit industry), the policies of other agencies (HEW's guidelines on implementing Section 504), the policy preferences of political leaders (notably Reagan's deregulatory and defederalization initiatives), and the refereeing of courts.

Katzmann's study buttresses the picture of politics that has emerged from other political science studies in recent years. If the reader still has any notions of Congress being a deliberative body, they will be shattered here. Interest groups never made an appearance during the legislative phase of policy making on this issue. All the legislative initiatives were the products of a coalition of do-good congressmen and congressmen in search of an issue. Indeed, rather than interest groups producing legislation, it is fair to say that legislation produced interest groups: many disability coalitions came into being in order to fight for rights under the new statutes. The executive branch functioned not as a leader with one policy direction but as a collection of agencies frequently at odds with each other. The judiciary, often criticized for being "imperial," was a reluctant participant and, as Katzmann concludes, was "less attached to a rights-based approach to policy making than was either Congress or the bureaucracy." In short, fragmentation and response to short-term incentives characterized what is euphemistically called "the policy-making process."

Katzmann takes a stab at prescriptions for institutional reform, but one senses that he has little faith in either their effectiveness or their political feasibility. For example, he would render Congress a more competent deliberative body by eliminating overlapping committee jurisdictions, restricting tangential amendments, and calling on legislators to exercise more self-discipline in their use of committee reports and other low-visibility devices. But he knows as well as anyone the institutional pressures that multiply committees and force major legislative initiatives into seemingly trivial and hidden amendments.

Besides institutional failure, the other villain in Katzmann's tale of policy confusion is the "failure [of decision makers] to define the problem precisely and to choose between two different approaches—the rights-oriented full-accessibility conception and the transit-oriented effective mobility approach." These traditional remedies of professional policy analysis—pre-

*excellent review*

cise problem definition and rational choice among mutually exclusive alternatives—come as a surprise after such a sophisticated political analysis of institutional behavior. It is not obvious who could have made a clear choice between the two approaches, and whether anybody could have made such a decision stick. Handicapped people experience the problem of transportation *both* as an inability to get where they want to go, and as segregation from able-bodied people. Any approach addressing only one of these problems would be doomed to future political attack. Similarly, transit operators and political officials are caught between demands for low taxes and demands for better, more extensive services. As Katzmann's study shows, all the incentives are for political leaders to *avoid* making a clear choice and, instead, to use ambiguity, symbols, mixed programs, and long-term deadlines to satisfy all the conflicting constituencies.

Ultimately, the controversy detailed in this book goes beyond the question of whether people with handicaps will ride regular public buses or customized vans. It is about how institutions such as transportation, education, housing, and employment can be tailored to suit individual differences without destroying their virtues as large-scale mass institutions. Katzmann implicitly raises the question of what kind of political institutions can provide reasonably satisfying and stable resolutions of these tensions. The question is worth asking, and his insights into how the dilemma is played out in a specific context will surely contribute to the larger search for answers.

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## Politics Without Apology

**Who Profits: Winners, Losers, and Government Regulation**, by Robert A. Leone (Basic Books, Inc., 1986), 248 pp.

**Reviewed by W. Mark Crain**

Robert Leone's book should be required reading for students and practitioners of business/government relations. He advocates that public and private managers practice "politics without

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