POLICY WITHOUT POLITICIANS

Policy Without Politicians

Bureaucratic Influence in Comparative Perspective

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For Winifred Victoria Page, 1921–2007

Preface

Bureaucracy poses problems for democracy less because it creates powerful bureaucrats and more because political control over it can of necessity only be sporadic and occasional. Cases of outright bureaucratic sabotage, disobedience, or insubordination by top officials tend to be extremely rare in modern democracies, although this does not seem to have inhibited the development a whole sub-branch of the study of administration, the principal–agent approach, from using such bureaucratic recalcitrance as its founding myth. When political leaders with a democratic mandate and political support take decisions, those decisions will almost always stand even if the top officials in the department or agency are unenthusiastic about them, or even oppose them. Bureaucrats might seek to get politicians to change their minds or persuade them to do things differently, but it is generally the politicians' choice to accept or reject that advice.

The degree to which politicians intervene in the activities of the government organizations they head varies substantially. Some political leaders seek actively and frequently to use their executive leadership positions to achieve major policy change in line with party pledges only, others seek to 'micromanage' large parts of their ministries, while others are happier to let their departments or agencies run themselves as far as possible. Moreover, political leaders often have advisers or other staff to help them run their departments or agencies, and management systems that help them monitor what is going on within them. Yet however skilled and enthusiastic they are, and however elaborate their systems of command, supervision, and control, political leaders can generally intervene in the affairs of the bureaucracy for which they are responsible only on a tiny proportion of the total number of transactions that their ministry or agency carries out. There is simply not enough time to devote attention to the full range of activities carried out in most bureaucracies, and devoting attention to one area of activity usually means being forced to take less of an interest in another.

This book looks at bureaucratic involvement in in everyday policy-making, largely away from the main policy debates as they appear in party manifestos, parliament, and the media. It takes items of policy as reflected in secondary legislation (which go under a variety of names such as 'decrees', 'regulations', and 'statutory instruments') to look at this world. Such decrees tend to arouse less politician and public interest than the big laws that are passed by national legislatures. Thus we can more easily test the proposition that bureaucrats can take over when the politician is less interested in a particular policy issue: while

the cat is away the mice will play. Observing bureaucrats under such conditions, we are more likely to see them at play.

While the subject of the role of bureaucracy in everyday policy-making might be an important one, and while it might also be neglected, there might be good reasons for this neglect. One reason might be that the topic is itself quite boring. If it is a fair assumption that politicians find it hard to get interested in the kinds of issues raised in everyday policy-making, then an audience for an academic study might experience the same difficulty. The hardest thing about offering an account of the world of everyday policy-making, where many choices and issues revolve around obscure substantive and procedural points that tend to interest few, is to avoid boring people and becoming bored oneself. Few of the individual cases examined in this book were without clear points of interest on their own, but put fifty-two of them side by side and the effect is potentially narcotic. I have done what I can to bring this world to life, though the reader will judge with what success.

The study compares bureaucracies in six jurisdictions, and while the comparative design is discussed further in Chapter 1, the basic logic behind using the comparative method is that it is difficult to assess the character and significance of a set of arrangements, such as those governing bureaucratic participation in policy-making, without looking at how things work where the arrangements are different. Since we might expect at least some such routines and arrangements to be system-wide, assessing their importance and effects calls for cross-national comparative analysis.

Comparing more than two different bureaucratic systems generally requires extensive collaboration between scholars, whether in the context of an edited book (see e.g. Ridley 1979; Peters and Pierre 2004) or a book produced (if not written by) a cross-national team (Aberbach *et al.* 1981). The advantage of a single-author approach is that in such collaborations it is never entirely clear how much of the cross-national variation found results from the different perspectives of the collaborators. The disadvantage is that one person is unlikely to have as much familiarity with the politics, government, and administration of a country as a group. The methodology chosen here tries to get around the main disadvantage by concentrating on one relatively distinct and self-contained aspect of the administrative process (and, incidentally, one about which knowledge is limited in jurisdictions outside the US). It takes a few decrees in each country and tries to understand, mainly from talking to the people who wrote them, how they came about and how they were developed. The methodology is explained further in the next chapter. It builds on work I have done on the UK (Page 2001, 2003, 2009; Page and Jenkins 2005). Its true origin, however, lies in Richard Rose's (1977) *Managing Presidential Objectives* which showed how careful interview-based analysis of bureaucratic detail can be used to address much broader systemic political features.

The methodology to some degree ensured that the interviews were carried out over a protracted period, between 2006 and 2009. However, this is not, and cannot be, a study of change over time. With the exception, perhaps, of the United States, we do not know much about how regulations were made ten or twenty years ago in these jurisdictions, and certainly not enough to make fine-grained comparisons of how the process might have changed since. The book uses a series of snapshots taken at different times within a four-year period. In most of the systems there have been significant changes in political leadership since the time when the decrees I looked at were produced, and some of the decrees looked at have been altered, superseded, or revoked. Such changes are unlikely, however, to alter the fundamental character of the process of decree-making in each of the jurisdictions since the procedures tend to change slowly and have not generally experienced sudden transformation following changes in political leadership.

Another reason for doing all the spadework myself was that it was fun. Ninety-two officials in six jurisdictions were interviewed for this research. The simple fact is that, until I was sitting in the officials' offices, I had no real idea what they were going to talk about. While it was clear, for example, that one of the interviews was about decrees transporting lithium batteries (see Chapter 6), it was less predictable that the conversation would cover a big interdepartmental split, the role of quasi-regulatory bodies, and the power of video download sites like YouTube. Dull-sounding decrees often turned out to be far more exciting than any outsider could have imagined, and occasionally exciting-sounding decrees turned out to be more prosaic than their titles and contents would at first have suggested. I am extremely grateful to the officials interviewed in Brussels, Berlin, Bonn, London, Paris, Stockholm, Jonjöping, and Washington, DC. The interviews were conducted in French, German, and English—in most cases this meant the officials' native language except in Sweden and for some of the EU decrees.

What is often generally known as 'secondary legislation' comes under a variety of names. The main instruments are known variously as statutory instruments, rules, regulations, *décrets*, *arrêtés*, *förordninger*, *Verordnungen*. I generally use the term 'decree' and 'decree-making' in preference to 'regulations' and 'regulating' or even 'making regulations' because the term 'regulation' has come to refer to rules and rule-making more generally and I would like to make it clear that I am writing about particular documents with the force of law. Readers from some jurisdictions might find the term 'decree' a little odd. There is a risk that such a term is associated with authoritarian and/or arbitrary government, as suggested by Coleridge's 'In Xanadu did Kubla Khan/A stately pleasure-dome decree', the illiberal Carlsbad Decrees, or Michel Crozier's (1979) *On ne change pas la société par décret*. No such association is intended here: the term is used specifically to distinguish between the documents included in this research and the broader term

'regulation'. Occasionally this leads to some awkwardness, but this appeared to be the simplest and least confusing way of dealing with documents that go under different names in different jurisdictions.

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Silence, Conflict, and Bureaucratic Power

A CARD FROM THE PRESIDENT

Charles de Gaulle once sent me a Christmas card. The other leaders to whom I had sent cards—Mao Tse-tung and Ludwig Erhard—did not reply, but President de Gaulle did. Even at the age of 10 I wondered how much of the French president's effort went into sending his reply—whether he even saw the card I had sent and whether he himself signed the card he had sent, got someone else to do it, or had some sort of machine duplicate his signature. Yet such considerations were minor: it was there on an official card in an official envelope and with a signature that was not an obvious forgery. Whoever or whatever wrote it, the card bore the authority of the French president and to all intents and purposes it was a card from him.

In modern government the work of others is habitually passed off in similar ways as the work of its political leaders. This applies not only to symbolic gestures and speeches but also to significant policy issues. Ministers have decisions made in their name about matters as diverse as individual immigration cases, moving prisoners from one gaol to another, and who should sit on a technical scientific advisory board. If one takes a look at the official journals that publish rules and regulations such as the US Federal Register, the French *Journal Officiel,* or the German *Bundesgesetzblatt*, the diversity and volume of decisions taken in the name of ministers, political executives, or the organizations they head is striking. Of course, as we shall see, it is usually impossible for anyone not closely involved in putting these rules and regulations together to offer an accurate account of their importance or political significance just by reading them. Nevertheless, glancing at these journals in spring 2010 there were some issues likely to make minor headlines, such as a French *décret* addressing global warming by imposing a ban on recycling refrigeration fluids, a German *Verordnung* changing market entry for gas providers, and US rule changes on endangered species. There are also some less visible regulations changing herring catch quotas in the North Atlantic, arrangements for marketing cranberries, and rules governing the security of water supply to military installations, notification requirements for precursor drugs, the use of foghorns on inland waterways, and the insurance of foreign cars and drivers.

Given the range of decisions made in their names, and the frequency with which they are made, it is to be expected that politicians spend only marginally more time on many of these decisions than Charles de Gaulle is likely to have spent on my Christmas card.

What difference does it make that politicians who are in charge of providing public services and regulating societies might spend little time on many of the decisions taken in their name? One view might be that democracy is being short-circuited: political executives lend their names to the decisions taken by others. These others are usually members of the bureaucracy who either make the decisions themselves, or are in turn heavily influenced by the preferences of others such as professional and lobby organizations. It was the absence of genuine political direction of bureaucracy rather than any inherent authoritarianism that led theorists such as Michels (1962) and Weber (1972) to offer their famously pessimistic visions of a bureaucracy crowding out genuine democratic political choice. For instance, Weber (1972: 835) offered a generally darker view when he wrote that with the growth of bureaucratic power the ever-expanding state is 'working to create the iron cage of bondage of the future into which people will feel forced to enter, much like the fellahin of the ancient Egyptian state, since they value a technically good, that is to say rational, bureaucratic administration that provides for their needs and that this providential bureaucracy should decide over the way their affairs are conducted. For it is exactly what bureaucracy provides.'

OUTNUMBERED BUT STILL ON TOP?

While fear of bureaucracy might once have been a 'raging pandemic' (Kaufman 1981*b*), Weber's pessimism appears to be somewhat out of tune with contemporary scholarly discussions of policy-making which tend to be rather more relaxed about the idea that bureaucrats exercise delegated power in this way. If we look at the more recent literature on bureaucracy, four rather different approaches to understanding policy-making might offer some reason for optimism that politicians remain in control, despite being heavily outnumbered by bureaucrats, and despite being responsible for a range of issues they can hardly be expected really to engage with in any depth.

Reasons to Be Cheerful

First, a large portion of the literature on *agendas and decision-making* offers, albeit with substantial empirical evidence, a variant of the older 'politics decides, administration implements' approach to the question of bureaucratic

power in the policy process associated with Woodrow Wilson and many scholars since (Svara 1998). Kingdon (2003), whose work is central to the study of policy agendas, found in his analysis of US policy-making that bureaucrats were indeed key actors in the policy-making process, but rather as subordinates. In 247 interviews career civil servants were mentioned as 'important' actors in shaping policy one-third of the time but 'very important' only once. While civil servants may advise political appointees and others, the political level remains on top: 'It is quite common for the higher level appointees to define an agenda item and then to solicit the advice of careerists [i.e. career civil servants] in drafting the proposal. Bureaucrats are not the only source of such advice, but they are an important source.' While bureaucrats 'may have more impact on the specification of alternatives' than the definition of agendas, their impact is indirect since it is mediated through political actors such as appointees, legislators, and lobbyists (Kingdon 2003: 32). Baumgartner and Jones's (1993: 195) study of policy change points out that 'one of the most important instincts any bureaucrat or policymaker in the United States must develop is to pay attention to Congress' without whose support or acquiescence any significant policy proposals from agencies have little chance of success.

Second, a range of *institutional accounts of bureaucracy* in the past thirty years have suggested that any balance of power has swung away from bureaucrats and towards politicians. In 'Westminister' systems such as Britain, Canada, and Australia there has been the development of 'special advisers' who strengthen the policy role of ministers (Eichbaum and Shaw 2010). In Germany Goetz (2006) points to an increasing importance to bureaucratic careers of civil servants acquiring 'political craft'—showing their ability to serve politicians. Even though the interpenetration between political and administrative careers is long established in France,

> since the 1980s, politicization changed the rules of the game because the face-down between politicians and civil servants turned into a three-way game: ministers surrounded themselves with a large staff (sometimes up to 40 advisors in a large ministry such as Education) and networks of political advisors within the senior administrative management. A political administration in the true sense developed, monopolizing communication between politicians and managers. (Rouban 2007: 488)

Similar trends to politicization have been identified throughout Europe (Peters and Pierre 2004) as well as the institutions of the European Union (Wille 2010). In the United States the growth in the number of political appointments to the senior levels may have had perverse consequences, creating more layers between politicians and key parts of the organizations they lead which Light (1995) discusses as 'thickening'. Nevertheless it remains clear that 'political appointees began to displace career officers . . . [and] . . . brought increasing numbers of . . . special assistants along with them to do much of the work once

reserved for civil servants' (Light 1995: 92). The literature on bureaucracy that emphasizes increasing politicization is mirrored by studies of political parties that see in the development of 'cartel parties' a closer interpenetration between state and party (Katz and Mair 1995).

Third, from a smaller and more diverse literature based on the *study of bureaucratic and political norm*s can be taken a more benevolent understanding of how bureaucrats use their privileged positions close to the top of the executive policy-making hierarchy. Jim Sharpe (1976) pointed out that bureaucrats and politicians are not like strangers meeting for the first time at an international conference. They know each other and in their relationship with each other anticipate the other's reactions and adjust their own expectations and ambitions accordingly. Hood and Lodge (2006) use the metaphor of a 'bargain' to explore the different sets of understandings prevailing between top officials and politicians in a variety of jurisdictions. Politicians and bureaucrats each give up things in their possession to benefit from receiving something they desire from the other. One of the key 'gains' for a politician in such bargains is often the political loyalty of the bureaucrat; for the bureaucrat the benefit might be status or a generous pension. Of course, Hood and Lodge recognize that such bargains are not stable and that it is possible for both sides to 'cheat', but the basic position is a 'cooperative equilibrium' with 'high trust public service arrangements' (Hood and Lodge 2006: 158). Rhodes (2011: 129–30) found when studying 'anthropologically' the UK civil service that the most striking feature of the higher reaches of executive government was 'the permanent secretary's loyalty to his minister; perhaps the greatest crime in the civil service canon is to betray one's minister. Loyalty is a core belief and practice socialized into the newest recruit to the senior civil service. And that loyalty can spill over into, literally, devotion.' Colebatch *et al.* (2010: 233) conclude from surveying the diverse contributions to their edited collection that the 'authoritative instrumental view'—that those in authority in the bureaucracy can secure compliance from their subordinates—'has great normative power and this is how it should be'. One of the pieces of evidence they emphasize, for example, is the practice of 'officials looking for a "steer" from their political leaders; without which they are inclined to play it safe, and stick with the established positions'.

Fourth, a literature on *delegation* has transformed perceptions of the relationship between bureaucracy and politicians. In the first two-thirds of the twentieth century those who emphasized the growth of 'delegated powers' tended to be critics of a new bureaucratic 'despotism' (Hewart 1929; Allen 1956). Now delegation is associated with the opposite: a literature concerned with understanding how forms and instruments of delegation may be used to assert political control over a large bureaucracy (for an excellent review of the different generations of this literature see Krause 2010). Applying the analytical tools of the economist, the approach draws

from the 'principal–agent' approach previously used above all for business analysis. It starts from the rather pessimistic insight, not all that different from that of Max Weber, that bureaucratic agents with their potentially superior knowledge (described as an 'information asymmetry') are able to avoid direct control by their political principals or that they even have power over principals. However, politician principals, through deriving appropriate 'contracts' or procedural arrangements, can constrain the discretion of their bureaucratic agents. In particular, more costly 'police patrol' forms of supervision, which require politicians to examine a wide range of activities by bureaucratic agents, can be replaced by less politically labour-intensive 'fire alarm' forms of control (McCubbins and Schwartz 1984). 'Fire alarms' refer to procedures that allow third parties—whether interest groups, other organizations, or even individuals who take an interest in a particular policy area—to raise the alarm with politicians when bureaucrats propose actions that they perceive to be at odds with what politicians would endorse or sanction. A prime example would be the 'notice and comment' provisions in the United States that require publication of draft administrative regulations, allowing interested parties to raise objections to them. Thus, despite being outnumbered by bureaucrats, politicians can remain on top of the decisions that matter because a range of policy watchers will draw significant issues to their attention. Politicians can even 'stack the decks' by creating alarms that are more likely to be triggered by some interests than others (McCubbins *et al.* 1987). Thus, for example, according to Shapiro and Guston (2006), 'peer review' procedures in US regulation privilege professional experts over other stakeholders.

Reasonable Doubts

These four literatures tend to offer us a more optimistic vision of the kind of political control that politicians heavily outnumbered by bureaucrats can exert, and so the question arises: for what reason do we raise the question of political control when a large volume of analysis tends to suggest it might not be particularly problematic? There are two broad answers to this question. First, for each of the four broad arguments to suggest that political control is not a substantial problem, there are four counter-arguments that call them into question. Second, the range of evidence on which the conclusions these four literatures draw is limited. Let us look at four counter-arguments to the somewhat more optimistic contentions.

First, the agenda-setting literature is based on a somewhat linear conception of the policy process: the big issues are decided in the early stages of agendas and alternatives and the decisions or choices made at this stage render subsequent choices subordinate to them. Bureaucrats generate alternatives in response 'to their superiors' agendas' and have a significant role

in 'implementation' (Kingdon 2003: 31). Such a linear conception might tend to underestimate the role of bureaucrats in policy-making. It has long been argued that implementation can profoundly shape a policy (Pressman and Wildavsky 1973). However, in between the commitment to a policy and its implementation comes the elaboration of the instruments to be used—the precise design of the legal, financial, and organizational arrangements which go to make the policy. In the elaboration of instruments, the role of civil servants can be crucial because politicians are often unclear about what the policy should look like and delegate instrument development to officials and because in developing these instruments it is possible to revisit fundamental questions about the goals and structure of the policy.

While we do not exactly know how typical it is for instruments to be developed on the basis of broad if not vague intimations from politicians of what they should look like, we know that it is possible for many key features of policy design to become clear only at the stage when policy instruments are being considered by bureaucrats. In earlier studies of the UK I found, for example, that major reforms of, among other things, criminal law and employment rights were fundamentally shaped by the groups of civil servants charged with drawing up the legislation (Page 2003). In an examination of the specialist legal officials who draft primary legislation, Parliamentary Counsel, it was clear that fundamental issues of what a policy should look like—whom the law was to affect, what effect it should have, what kind of organization should implement or enforce it—were decided in the drafting process (Page 2009). Drafting was not the simple technical translation of the language of policy and politics into the language of the statute books. Rather it was, in terms of the kinds of issues at stake and its effect on what was actually enacted, as crucial a part of the policy-making process as the party, ministerial, or legislative deliberations that led to the political commitment to legislate. Moreover these studies also indicate that we should not assume that bureaucrats are largely uninvolved in agenda-setting activities: civil servants in the UK played an important role in placing on the political agenda measures that were later incorporated into party election manifestos (Page 2003). That this role of civil servants can be found in the United States is acknowledged by Kingdon (2003: 32) but discussed as the official working on policy ideas and waiting for the political appointees to 'elevate their ideas to the point on the policy agenda of receiving serious attention'. The UK evidence suggests that civil servants have a more independent ability to shape key aspects of new policy, not least where policy commitments are little more than broad expressions of intentions to be filled in by subsequent elaboration. Here officials play a key role in elaborating policy and politicians' appetite to become involved is often limited.

Second, the institutional literature pointing to increasing 'politicization' of bureaucracy largely reaches this conclusion on the basis of the increasing

number of political appointees within the bureaucracy: more political appointees mean greater political control. Wood and Waterman (1991) certainly show that political appointees can shape the outputs of a US agency, as changes in agency leadership were followed by appreciable changes in the way the agency operated. However, more appointees does not necessarily mean more control. Political appointees can do a variety of things: they can manage relations between ministers and other ministers, legislators, parties, and interest groups, they can write speeches, and they can manage relations with the press. They can provide the minister with ideas for developing new policy. They do not, of necessity, bring about greater 'political' control because not all appointees have the job of supervising the bureaucracy. Moreover, Wood and Waterman's (1991) study focused on change in leadership at the top, and it was changes in the very top position to which the agencies appeared to be responding; the additional value of an expanded political leadership cadre is not altogether clear. In fact, Light (1995) argues that such 'thickening' of government, the expansion in numbers of higher leadership positions within the bureaucracy (in part generated by expanding numbers of political appointees), creates *barriers* to political control as it puts extra layers between the top leadership and the front line of the organization and 'fragments accountability'. More political appointees might mean more political control, but the case needs to be established rather than assumed.

Third, while investigations of the belief systems of bureaucrats might indeed find some strong evidence of a predisposition among bureaucrats to accept the legitimacy of the expressed wishes of politicians, whether through a public service bargain or some other mechanism, and act on them, this can only lead to extensive political control where the expressed wishes cover a large part of all the significant decisions to be taken in putting together a policy. As Geuijen and t'Hart (2010: 187) point out, Dutch national civil servants working in the European Union have to 'invent' their country's policy positions since there is often little by way of political steering. Their role is one of improvising (*bricolage*) where 'the civil servants in this process seemingly move seamlessly between acting as a unit or as a department civil servant involved in intra- or interdepartmental agency politics, as a domain expert involved in developing a professionally sound position, and as a "classic" civil servant serving his superiors and the hierarchy in general'. Similarly, in the UK, civil servants are often left to develop key details in legislation without direct instruction from their political leaders (Page 2003). While there may indeed be an acceptance among civil servants that political authority in principle trumps any bureaucratic wishes, political authority can remain silent over a vast array of public policy issues, leaving civil servants free to develop policy as they see fit.

Fourth, while we will look again at the principal–agent delegation literature further below, one of the main reasons not to accept the conclusion that it

serves to sustain a high degree of political control is that the strength of its case is largely theoretical rather than empirical. Krause's (2010: 526) review of the field points to the 'chasm between theory and evidence in the realm of procedural rule-type controls' arising from the 'paucity of clear and consistent evidence supporting the efficacy of procedural constraints'. West (1997, 2004) for example, shows that 'notice and comment' in the US (one of the key 'fire alarm' procedures) does indeed serve to mobilize interests and offer them opportunities to shape regulations (and this is not a theoretical insight but rather lives up to the ostensible goal of the provisions of the 1946 Administrative Procedure Act). Yet the idea that the procedure allows for 'deck stacking' by protecting the constituencies served by 'original winning legislative coalitions is highly dubious' (West 2004: 73). Balla's (1998: 670) study of the Health Care Financing Administration 'demonstrated that physician participation in the notice and comment process did not influence Medicare physician payment reform in the manner posited by the deck-stacking thesis'.

UNDERSTANDING POLICY CONSTRUCTION

In part our pessimism or optimism as regards the Weberian perspective is likely to be shaped by what we are looking at when we consider 'policy'. If we regard policy as *political commitment*; the broad agreement to develop a particular policy programme—decentralization initiatives, tax reform, combating climate change, restructuring welfare or health systems—then we are likely to find that those who can mobilize political support, politicians and key policy activists and groups, are in the driving seat. Certainly bureaucrats can advise or even inspire politicians in developing political commitments, but it is hard to think of many examples of a broad policy commitment of this kind that predominantly reflects bureaucratic preferences, still less the dominance of bureaucratic over political values. In this sense the insights of the agenda-setting model that found only sparse evidence of bureaucrats in agenda-setting arenas, seem likely to hold. However, as discussed above, one key limitation of the agenda-setting model is that its vision of bureaucratic influence on agendas and alternatives as predominantly mediated through politicians and other 'political' actors omits a large amount of 'everyday policy making' (Page 2001)—developing the legal, financial, and organizational arrangements for policies—where bureaucratic influence might be expected to be larger and more direct.

A second reason for looking at this everyday form of policy-making is that political control is not necessarily a contact sport. Much of the empirical analysis of bureaucratic power centres on the question of who prevails in a policy process—whether the minister gets what he or she wants in some kind

of direct opposition to what bureaucrats want.[1] Yet the argument that politicians can still influence without lifting a finger in any direct intervention is recognized by many approaches to political–bureaucratic relations, including principal–agent approaches (see e.g. Weingast 1984; see also Krause 2010). Bureaucrats might act in ways that politicians could be expected to want them to act without any direct instruction, possibly through some mixture of anticipating politician reactions, desiring to avoid conflict, or sharing identical views. As Kaufman's (1960) classic study of forest rangers showed, the ability to rely upon a body of officials who shared similar outlooks with each other and the federal leadership of the organization meant that direct supervision of the decisions of rangers was not necessary: rangers behaved no differently from the way they might be expected to behave if they had been under direction from federal headquarters. Highly effective central control need not rely on direct instruction or other forms of intervention.

In order to understand bureaucratic roles in policy-making we need to go beyond looking at instances where bureaucrats and politicians disagree or where politicians become noticeably involved in making decisions and take a wider look at the process of everyday policy-making, including examining cases where there appears to be little or no contact or conflict between bureaucrats and politicians. In particular this book focuses on three central questions. First, when do politicians get involved in making policy? We might expect them to be involved in the political initiatives that they themselves launch, but what involvement do they have in these more frequent everyday policy decisions? Second, what happens when politicians do get involved in such decisions? Do they get their own way or are they vulnerable to bureaucratic resistance and persuasion? And third, what happens when they *do not* become involved in such decisions? Does the silence of the politician leave the bureaucrat with the discretion to shape policies in ways that the bureaucrat wants?

What theoretical tools might we use to examine these questions? At first sight the questions seem to be natural principal–agent and delegation theory territory since the central concerns of this literature lie in understanding whether politicians can 'control policymaking and implementation when they apparently spend little effort at such tasks' (Krause 2010: 524) or in Weingast's (1984) words 'how do 535 people who are busy campaigning control 2–3 million bureaucrats?'. The reason for not using the methods of the principal–agent approach have in part to do with the fact that the approach

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[1] The wishes of bureaucrats and politicians are usually assumed rather than established by investigation, as in the case of the assumptions that bureaucrats want increases in staffing levels and politicians oppose them (see Boyne 1986; for a challenge, see Hood *et al.* 1984), or that there is general recalcitrance of the bureaucracy to politicians' wishes, as in the case of Aberbach *et al.* (1981).

itself does not refer to a distinctive set of intellectual concerns or a defined empirical research strategy. The central intellectual concern is with the character, form, and uses of delegation—an intellectual concern that can also be found in mainstream public administration and public policy approaches. The empirical strategies used to develop, examine, or sustain its insights range from casual and passing reference to one or two cases, the systematic and detailed case study, and the comparison of a small number of cases to the multivariate analysis of quantitative indicators of 'discretion'. Rather the approach defines a mode of argumentation and set of widely shared findings, and it is the mode of argumentation and findings that one would be adopting by using the tools of this kind of delegation theory rather than anything else.

The mode of argumentation of this approach focuses on deriving hypotheses about expected behaviour from basic propositions about actors' interests that follow a logic similar to that found in economics. As such it has developed a set of insights, widely shared but not uncontested, such as the proposition that politicians tend to delegate where the costs of monitoring agents are high, and tend not to delegate where there are differences in preferences between legislators and bureaucrats. The insights have generally looked at political control as legislative control—in part because of the dominance of the US, one of the few countries in the world with a powerful policy-making legislature separated from the executive branch, and in part because of the preponderance of scholars of Congress in the field. One of the central weaknesses of the way the argumentation has been applied is that it has largely failed to offer a clear understanding of intra-executive political control—the control exercised by political appointees and their staffs. This failing poses strong limitations on its useability not only in countries, such as many in Europe, where executive and legislative powers are fused in party government, but also for its applicability in the US. As Krause (2010: 534) suggests:

> Because most of the advances in legislative delegation research emanate from students of legislative politics in political science, it is hardly surprising that considerably more effort has been expended in modeling the role of the legislature than of the executive branch. The extent of modeling of the executive branch in separation-of-powers models of delegation is often relegated to providing a unique ideal point for agency heads and presidents. . . . Such a focus, however, comes at a considerable expense to theory. Specifically, the modern delegation literature is primarily focused on understanding the supply of bureaucratic discretion, with little explicit concern for either the demand for or actual exercise of bureaucratic discretion.

Since our concern is with understanding the exercise of bureaucratic discretion, the attractions of the principal–agent approach seem more limited than might at first sight be expected.

Would it not be a worthy objective for research to fill the perceived gaps in understanding the patterns of delegation from a principal–agent perspective? From the perspective of an evangelist for the approach with some strong prior faith that the result from such an elaboration would achieve results unattainable by other perspectives it certainly would. However, since the approach concentrates attention on a narrow set of mechanisms—procedural rules and their application—to measure and understand delegation, it is somewhat more prudent to include at least the possibility that a wider range of institutions and processes might be at work here than procedural devices and develop an approach to the research that does not rule this wider range of possibilities out through excluding them right at the start.

WHAT WE MIGHT EXPECT

While the study of the development of decrees has not generated much empirical analysis,[2] there is still plenty in the scholarly literature covering the relationship between politics and bureaucracy to direct our attention towards a series of expected answers to our three central questions of when politicians become involved in everyday processes of policy-making, what happens when they do, and what happens when they do not?

When do Politicians Get Involved?

We might certainly expect the politicians who lead departments and agencies to be more involved in the policy-making process when they are developing key party or presidential priorities and key personal ones. However, aside from such circumstances, what shapes their involvement? One can think of three types of variables likely to affect the role they take in this respect: the *cues* for their involvement, their *disposition* to become involved, and the *institutional capacity* to become involved. These variables are likely to be related to each other, and distinctions are not always easy to make between them, but they are worth separating out.

Cues

Politicians might be prompted to become involved in making policy through cues generated by others. As the delegation literature suggests, some of these

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[2] Even in the USA, where scholars have focused on later stages in rulemaking. Kerwin *et al.* (2010: 602) point out, that there is not 'a great deal of research' on the development of regulations.

cues for politician involvement can be legal and/or formal consequences of the decree-making process. 'Fire alarms' (McCubbins and Schwartz 1984)—procedures for consultation and approval that bring the issue to the attention of interest groups or legislators—can also act as a cue for political executive involvement. There are some circumstances in which politicians' participation is *mandatory*, as with the requirement under German law that a minister signs a decree before it can have the force of law. Indeed, it is a common feature of all the jurisdictions in this study that decrees are generally signed by a political executive. The requirement for the minister to sign a decree could prompt him or her to object to it or ask for a change in it.

Yet it is not only through bureaucrats following formal procedural requirements that an issue might be passed to a politician and thus a cue be offered to involvement. Accepted norms of bureaucratic behaviour not necessarily incorporated in formal rules might provide cues for political involvement. Politicians may also become involved because issues get pushed up to them. In particular the principle of hierarchy and its acceptance by bureaucrats might incline them to seek to involve politicians for two reasons. First, a basic principle of conflict resolution in a hierarchy is that any conflict between two units of a similar level, or two people of similar grade, can be resolved by the decision of the superior in charge of both units (see e.g. Downs 1967). Thus conflicts between two parts of a ministry or agency, where they cannot be resolved, may be passed up the hierarchy and eventually to the political leadership. We can extend this principle of hierarchy and argue that where a ministry is in conflict with another ministry and this cannot be resolved at lower administrative levels, the political leadership may also become involved to handle relations with the other ministry. Since politicians are superior to bureaucrats in hierarchical structures, they may push items to the top where there is uncertainty about which direction they should take in developing a policy. Thus they may offer cues for politicians to become involved by seeking guidance on how to develop a policy—it is not uncommon for UK civil servants to ask politicians for a 'steer' on how to develop policy (Page 2001). The cues might indeed be somewhat less predictable than the kinds discussed so far—through happenstance (say, a political colleague raising the issue with a senior political executive) or serendipity.

Disposition

How politicians respond to cues might be expected to reflect a disposition to become involved. For example, a party colleague mentioning a policy being developed in a minister's department could simply be ignored, or the intervention could lead to no more than a formal request by the minister for information on how the issue was progressing, or it could lead to the minister calling the policy in and seeking to deal with it entirely on her/his own.

Moreover, the disposition to become involved may mean that politicians do not need external or internal cues to seek to shape policies, but take an interest in them right from the start. What might affect politicians' disposition to become involved?

Most approaches to this question tend towards tautology: politicians are likely to want to get involved in issues that are 'political', with political issues being those that politicians take an interest in, usually because they could affect their re-election prospects (see e.g. Huber and Shipan 2002). Yet apart from this, one cannot easily stipulate what it is about an issue that makes it political. How many people are affected by the issue does not necessarily make it 'political' if what they are affected by seems to raise little interest. Many people are affected by changes in use of the multiplexes delivering digital signals to televisions in the UK, but that did not make them 'political' (see p. 51 below). Money is a poor guide too. While the decree covering the settlement of revenue sharing between German *Länder* meant the movement of billions of euros (see p. 75 below), it was applying a formula agreed years before (albeit contested in the courts at the same time the decree was being produced), and was widely regarded as a routine law that the minister merely signed without hesitation.

Contention and conflict is possibly the closest one can come to criteria that define whether an issue is 'political'. This corresponds not only to general conceptions of the nature of politics as conflict (Crick 1964), but also to perceptions of politicians and bureaucrats themselves (Suleiman 1975: 296–7; Aberbach *et al.* 1981) who, when asked in surveys, emphasize the struggle for power as a political role and the ordered 'management' of affairs as an administrative role. Almost any government policy or action might raise some form of controversy—changing the format of an expense claim form might irritate or upset some people—but that does not necessarily make it political. A working definition of political might be that a policy is related to controversies where significant support can be mobilized, whether this is in the form of support from the public or electorate, organized interests, or political and administrative elites themselves. While this definition offers no precise dividing line between what is and what is not political, it suffices to highlight a range of characteristics of a policy that might be expected to attract the attention of a politician.

By contrast the literature on technocracy strongly suggests that politicians are generally excluded, or exclude themselves, from technical discourse (Laird 1990). According to Schattschneider (1960) technical discourse is a classic strategy used to limit the number of people who can participate in decision-making (see Baumgartner 1989 for an application of this approach to French politics). Thus we would expect the disposition to intervene to be far weaker with technical issues than with those that allow politicians to make decisions on the basis of general political judgements.

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Institutional Capacity

The institutional capacity for politicians to become involved in bureaucratic policy-making might also be expected to shape their involvement, as the institutional literature on 'politicization' discussed above suggests. One politician faced with a huge department covering hundreds of policy issues each year is hard pressed to get involved in many such issues. The more help a politician has, the more we would expect him or her to have the opportunity to shape the policy work that goes on within a ministry or agency. There is a variety of institutional arrangements for sharing out the political policy direction/supervision work of an agency or ministry. Such arrangements include multiple political executives, such as junior ministers in the UK and France or agency heads and assistant heads of different kinds in the USA, political civil servants in the USA, Sweden, and Germany (and to a lesser extent in France), political advisers in the UK and Sweden, and an organized *cabinet* with powers to offer direction to ministries and agencies in the name of the minister in France and the EU. Such assistance has the result that politician involvement is often indirect as it is given though others. This means that the question of how far the various types of auxiliary politicians reflect the goals, values, or wishes of the politicians on whose behalf they might be expected to act remains open (see Light 1995). The issue of senior political executive-adviser/junior political executive relationships is rarely if ever approached in the study of executive policy-making. However, even though such auxiliaries may not directly carry out the instructions of those they have been appointed to support, we would expect, *ceteris paribus*, that politicians are better able to be involved in policy-making where they have more assistance.

What Happens When Politicians Get Involved?

At first glance the answer to this question appears obvious. If a bureaucrat wants to do something and a politician does not want it, other things being equal, the bureaucrat will not be able to do it. If a politician wants something and it can be provided by the bureaucrat (the politician is not, in Heclo's (1977) terms, asking for the equivalent of making 'water run uphill'), then, again, other things being equal, the politician will get it. Examples of successful bureaucratic sabotage are extremely rare. Müller (2006) for instance undertook a systematic search for evidence of different forms of bureaucratic sabotage and found no significant examples of them in Austria over the whole postwar period. So, in a straight fight, where a politician in charge of a ministry or agency wants something (or does not want something) the bureaucrat is generally likely to accept this and act accordingly. However,

another possible outcome of the involvement is that the bureaucrat changes the mind of the politician not to want something, or to want something else—one could call this in the jargon of social science 'preference shaping' (Dunleavy 1993) whether by direct engagement and argument or by more devious methods such as seeking to undermine the politician's preferred policy in the eyes of his or her colleagues.

The way the politicians initially become involved might also shape their subsequent involvement with any one policy. Politicians may also become involved on the terms suggested by the bureaucrats by, for example, being asked to choose between a range of options suggested by the bureaucrats, which biases politicians to accept the preferences of bureaucrats (see Bendor *et al.* 1987). Or the bureaucrats can reduce the chances that the politician will want to get involved more than he or she has to by making the issue appear dull and technical, thus decreasing the disposition to take any active involvement. The minister might be approached about the issue when work on it is nearly completed—after much time and resources have gone into developing the policy a politician might feel reluctant to undermine the work of his or her department (West 2004: 71–2). We might call any such attempt to shape the way politicians become involved a matter of *setting the terms of politician involvement*.

What Happens When Politicians Do Not Get Involved?

It is commonly assumed that when the politician is not directly involved the bureaucrat is likely to 'shirk'—to engage in behaviour that suits the bureaucrat's purposes but not those of the political leadership. It is possible to think of the types of motivations that might lead them to act in this way when not directly supervised or instructed. The public choice approach suggests that bureaucrats are motivated by *self-interest*: they follow the preferences that benefit most their own individual material well-being, whether this is pay, promotion, leisure, or a congenial working environment. It was, for example, the pursuit of better incomes and promotion prospects that led scholars such as Niskanen to assume that bureaucrats would favour the growth of government in the postwar era and could be regarded as a significant cause of the rise in public spending until the 1980s (see Niskanen 1971; Hood *et al.* 1984). *Socially acquired values*, those acquired through early or later socialization and/or membership of a social, political, or cultural group might shape decisions taken by officials. One of the main assumptions of the 'representative bureaucracy' literature is that social status and social experiences shape the way that bureaucrats think and behave (Sherif 1976).

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Professional values might shape the way bureaucrats approach policy-making. One of the central assertions of the literature on professionalism is that acquisition of a body of knowledge and techniques as well as socialization into a group predisposes officials towards a distinctive way of seeing the world. Road engineers see the world differently from land-use planners (Laffin 1998). *Agency values* are another source of cues for bureaucrats in exercising policy discretion. The idea that different ministries, agencies, or sections have their own distinctive values is central to the 'bureaucratic politics' approach (Allison 1971). Moreover the notion behind political leaders 'going native' is that they adopt the priorities and objectives of the agency they are supposed to be supervising (see also Downs 1967). Or the discretion of bureaucrats may be *externally constrained*: in deciding what to do they seek to avoid opposition from (or to gain the approval of) a body outside the bureaucracy, whether, for example, a court, a state or local authority, an interest group, or public opinion.

All these assumptions tend to underline the expectation that bureaucrats, when left on their own and given discretion to shape policy, might be expected to act in ways that can (or do) work against the preferences of politicians. However, shirking/undermining is only one possible response by bureaucrats when politicians are not directly involved in their policy work. It is possible to envisage bureaucrats exercising discretion in ways that are supportive of their political leadership. Bureaucrats may try to base their exercise of discretion on the *anticipated reactions* of political and administrative leaders, or some other figure inside or outside the organization (see Page and Jenkins 2005).

The degree to which the values that orient bureaucratic discretion support or undermine the authority of the political leadership is crucial to our understanding of bureaucracy and its political control. Briefly summarized, one can say that where bureaucratic values are supportive, political intervention is less necessary to guarantee leadership. Under these circumstances it is possible for political as well as administrative superiors within an organization such as a ministry or agency to claim responsibility for things that their subordinates do, even if the superiors have had little or nothing directly to do with them. In fact, direct order giving might even be a rare activity among those at the top of bureaucracies, whether politicians or unelected officials. As Kaufman (1981*a*: 86–7) argued in his study of US bureau chiefs based on observing their daily activities over an extended period of time, what is

> seemingly missing from this portrait of chiefs at work [is] . . . command . . . Didn't the chiefs order subordinates to do things? . . . Of course they did, but not in an obvious, authoritarian manner. Ordinarily . . . chiefs did not find it necessary to impose their will by fiat. Not that they were unable to do so: the moral and legal authority of their office was a powerful enough implement. But they seldom had to express it in the form of outright orders. . . . Cracking the whip and

personally regulating the flow of work were not ways in which the chiefs spent their working days.

Postmodern scholarship includes this phenomenon of direct instructions not being central to the exercise of authority as a part of 'governmentality' (see Rose and Miller 1992), where shared ideas and conformity substitute for the exercise of command, but the phenomenon was in reality something recognized long before postmodernity. It can be found in the works of Herbert Simon (1945), Alexis de Tocqueville (1945), Niccolo Machiavelli (1961), and Max Weber (1972) among many others. Where the values are supportive the degree of direct intervention becomes less crucial for understanding the character of political leadership.

ANSWERING THE QUESTIONS

Comparative Research Design

The answers to each of these questions of politician and bureaucrat involvement in policy of this kind are certainly likely to vary. We might expect to find at least three sources of variation: the nature of the individuals concerned, the nature of the policy issue, and the characteristics of the political system. We might expect some individual ministers to be more prone to intervene and be more assertive when they do, while others are less so, as a preferred style of politics. Similarly, some bureaucrats may be more likely to try to keep issues away from ministers, to try and change ministers' minds when they cannot avoid it and indulge their own predispositions about how the policy should be shaped, while others are more deferential and more likely to listen, say, to interest groups.

  While such individual characteristics might affect behaviour, bureaucrats and politicians generally act within an institutional, legal, and constitutional environment that varies from one jurisdiction to another. Thus, for example, the constitutional/legal arrangements for developing decrees in the United States offer different opportunities to politicians to get involved in policy-making from those offered to ministers in the United Kingdom. Indeed, the very nature of the executive political leadership differs as between the United States with its separation of legislative and executive powers and European countries where heads of ministries are generally members (or, where there is an incompatibility rule, ex-members) of the legislature. The impact of distinctive features of national systems might go beyond the institutional and affect the norms and patterns of expectations that bureaucrats and politicians have of themselves and each other. Crozier (1964) famously argued that bureaucracy was a national 'cultural phenomenon' and this broad thesis is sustained by recent work in the field such as that of Hood and Lodge (2006).

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The policy issue itself might shape our answer to these three questions. It has already been suggested that some policies are likely to be more 'political' than others and thus attract the attention of politicians. Whether we can systematize this and argue that some policy areas, whether economic policy or animal welfare, attract the attention of politicians, while others such as plant diseases and building regulations do not, cannot be settled here. Ever since Lowi's (1964) classic it has been hypothesized that policies shape politics—the political processes vary from one policy area to another—mainly because of the different constellations of interest groups surrounding each area, as some policy areas are dominated by one powerful group, others by many competing groups, and yet others by different patterns of interest group activity (see Wilson 1989).

Since one might expect some of the answers to the central questions—when do politicians become involved in everyday policy-making, what happens when they do, and what happens when they do not?—to vary according to country and policy area, this study is a comparative analysis of six jurisdictions: the United Kingdom, France, Germany, Sweden, the United States, and the European Union. Because I had to read the laws, speak to the people who wrote them, and consult supporting material as well as secondary literature, the selection was in part shaped by the languages I was able to read and converse in. Interviews were conducted in English in the US, UK, and (to my regret) Sweden, but in French and German in France and Germany and in French, German, and (mainly) English in the European Union. These six jurisdictions are also systems about which we know much from secondary literature, and we know they have distinctive politico-administrative systems. Some stick out in cross-national comparisons because of their institutional structure (e.g. the US and Sweden each have peculiar forms of agency structures; France has a *cabinet* system imitated elsewhere such as in the EU, but not exactly replicated); some stick out because of the character of the top officials (e.g. the *grands corps* of France, the Oxbridge types of the UK, and the political officials of Germany) and some stick out because they have distinctive constitutional structures that give bureaucrats tasks and roles they do not generally have in other jurisdictions (e.g. the power of the legislature in the US; the Commission as initiator of legislation in the EU). If we are looking for cross-national variation, we have a good chance of finding it as the similarities between the main contours of these six bureaucratic systems are few.

Focus on Secondary Legislation

Although more likely to produce a less rosy picture of the relationship between bureaucracy and democracy than a focus on the broad political commitments to policy, in this research I look at the everyday policy-making that produces secondary legislation—the mass of rules, regulations, and decrees that fill up

the bulk of the official registers of law in any jurisdiction. Secondary legislation was chosen because it is generally regarded as more likely to be the province of the bureaucrat than that of the politician alone. In fact, comparing two UK studies of legislation, one primary and one secondary (Page 2001, 2003), the differences between the two might not be quite as large as one might suppose, at least not in Britain. Primary legislation, procedural differences aside, often entails very similar processes to that of secondary as far as relationships between politicians and the bureaucracy are concerned. In both, middle-level officials are often left to develop detailed provisions with generally only infrequent involvement of political and administrative superiors. Nevertheless, if the main purpose is to understand the systemic features of bureaucratic power—i.e. what happens when politicians are silent as well as when they speak—then secondary legislation appeared likely to offer a reasonable way of exploring them.

There is the danger that secondary legislation, with its reputation for dull routine, is more likely to exaggerate the importance of politicians' silence than if one selected instruments such as primary legislation or white papers, more frequently associated with major policy initiatives, because dull and worthy secondary legislation matters less politically. The apparent dullness of secondary legislation is, however, somewhat exaggerated. As we will see among the small sample examined here, such decrees have been used to implement major party-political initiatives, have generated raucous opposition from powerful interests, and brought demonstrators out on the streets. Even if the tendency to dullness has to be conceded, this is no bad thing for a study that seeks to explore the rather neglected topic of what bureaucrats do when politicians are not looking over their shoulders. Since our understanding of how policy is put together, and of the role of politicians and bureaucrats in drawing it up, is generally based on a focus on the broad policy commitment rather than the detail of how policy measures are put together, looking at the everyday traffic in decrees is at a very minimum likely to offer a fuller understanding of how the interaction between politicians and bureaucrats works than a concentration on the broad policy commitments alone.

In fact, looking at policy-making within the executive from the perspective of everyday processes of decision-making offers an important corrective to the potentially misleading general accounts of how bureaucratic decision-making works in different countries. As will be discussed in later chapters, accounts of bureaucratic involvement in decision-making are often extrapolations based on limited understandings of how top civil servants behave or how policies that generated major controversies are put together. Yet top civil servants are not the main players in developing most policies within government, and much that government does raises, if at all, opposition or support from limited constituencies that are not usually enough to propel it to the attention of social scientists. We have many reasons to think that everyday policy-making might

offer a different broader picture of the relationship between bureaucracy and politics in any one country. The constitutional rules, norms, and procedures governing its generation are different, as are the people involved, the pressures they face, and the reasoning they might be expected to use as they face them. Unless we understand everyday processes of government, we do not understand government at all.

The basic design of this research was to pick a small sample of decrees in each jurisdiction and talk to the people who wrote them. If we want to find out when politicians become involved with the bureaucracy, what happens when they are involved, and what happens when they are not, we have to ask the people concerned. There are no alternative direct measures that could be used to piece together answers to these questions—no statement of the history of the decree containing such details—and there are no proxy variables (e.g. length of the decree or its wording) that could be used to address them either. This strategy brought problems of its own.

One problem was that of the selection of the decrees to be included in the study. The notion of selecting 'equivalent' items of secondary legislation in the six jurisdictions is an attractive sounding idea but cannot be used as a guide here. Defining 'same', 'similar', or 'equivalent' is problematic. Two decrees from different countries in the same policy area, say agriculture, are not in any meaningful sense equivalent: for example, a US decree on beef slaughter differs in form, content, subject, and effect from an EU decree on import tariffs for agricultural goods. If one takes 'equivalence' to mean decrees trying to achieve something similar in policy terms, it is impossible to find particularly close equivalents across all six jurisdictions. In part this is because of differences in the politico-administrative agendas in them (it is rare for the same issues to be dealt with in decrees across all six at roughly the same time) and in part because of the way in which policy instruments work in each of them. In some jurisdictions what is done by a piece of secondary legislation can be done by primary in another and by codes of guidance in yet another. What is done by one decree in one jurisdiction can be done by several elsewhere. Decrees often deal with highly specific and limited issues in the development of a policy such that finding two, let alone six, that do precisely the same thing or even something close, would be difficult. If one took the four EU member states one could look for decrees implementing EU laws. This is not as easy as it sounds, as all the arguments raised above about equivalence apply here too. Moreover such a strategy would bias the study in those four countries towards EU implementation issues. It would also detach the four countries from the other two jurisdictions, the EU and the US, where for different reasons one would not necessarily expect to find 'equivalent' secondary legislation dealing with the same issues.

It was not possible to select decrees according to other measures of equivalence less directly related to their policy effect. We might be interested in

looking at decrees with similar levels of politician involvement, yet that can only be discovered once one has spoken to the people writing them. Moreover, very few features of a decree one might have liked to have used to create a sampling frame—such as how contentious it is—can be accurately (or even for the most part approximately) assessed simply by reading it. Even characteristics that appear more susceptible to clear definition and classification, such as how 'technical' a decree is, cannot be deduced from the text alone. One might have thought that decrees that contain scientific jargon, formulae, and/or tables of numbers could be classed as 'technical'. Yet this would be misleading as the key issue at stake in some decrees like these is a simple non-technical choice and the technical components a mere formality.

If one considers the methodology of the study—contacting and talking to people who write the legislation—then the choices become limited anyway as one has to select recent decrees in order to increase the chances that the people who wrote them are still in position (few civil servants in any of the jurisdictions were keen to talk about what they did in a former job) and that they can remember what happened. The strategy adopted was to select recent decrees that looked like they were related to policy decisions of some sort—a criterion mainly used to avoid investigating the formalistic uses of decrees such as the French *arrêtés* and *décrets* that confirm the appointment of named individuals to the governing council of a public body and the myriad of UK trunk road statutory instruments that designate new areas for no parking zones or changed speed limits. In selecting the decrees, I tried to get a broad spread across different ministries, insofar as it was possible to tell which ministry produced the decree (which minister signed the decree is not an infallible guide, as I found out). After the selection, it was a matter of securing the agreement of the ministries and agencies concerned. The variable numbers of decrees in each country (Sweden 7, Germany 6, EU 7, USA 10, France 10, UK 12) reflect, if anything, how quickly I managed to arrange interviews after initially contacting the ministry/agency concerned. When I did not hear from the people I approached connected with my initially targeted six decrees, I found substitutes. When the substitutes agreed and the original respondents later also agreed to participate, I found my sample expanding.

The respondents were bureaucrats—ninety-two were interviewed—mostly officials outside what are normally considered the senior ranks. Writing decrees is mainly a task for middle-ranking officials. Senior officials become involved usually, if at all, in the interdepartmental diplomacy or the higher politics of the policy process. However, gathering the information together, working out precise proposals that were to be contained in the decree, and drafting the decree itself were tasks normally carried out by people at this grade. The concern in this book is with how they went about their work, what considerations guided their approach to the policy problem, when they felt they needed to refer things to politicians, what happened once they referred things upward, how far they felt

they could decide things on their own, and how they handled any potentially contentious issues. The politicians' perspective would certainly have been useful, but exceptionally hard to get and even harder to interpret. The prospect, for example, of interviewing President Sarkozy of France on a decree allowing Texas Hold 'Em Poker in French casinos (as Interior Minister he was responsible for this decree included in the sample) was appealing but unrealistic. Moreover, as I had found from earlier research (Page 2001), a particular decree with few exceptions forms a small part of ministerial activity (even though it could have taken weeks or months of a bureaucrat's time) and politicians have difficulty remembering details about it. Understandably politicians tend to talk about the key decrees that stick in their minds rather than the one systematically or serendipitously selected by an academic.

Small N Research

A second problem generated by the research strategy is the size of the sample. To extend the sample to any size that would allow statistical extrapolation to the population of decrees is likely to require the study of hundreds in each country. This might be possible with a large collaborative project, but collaborative projects in bureaucracy (and other subjects) bring their own problems. Guy Peters once remarked that the main independent variable in a collaborative cross-national study, above all one conducted through contributions to an edited book, was the author contracted to contribute to it. The small N design above all allowed me to control for that particular independent variable: a more or less equal familiarity with the material from all the countries means that the person drawing up the conclusions is the person who gathered the information. Moreover I wanted to write a book on comparative bureaucracy that did not depend on trying to piece together pictures of different national systems from secondary material of varying quality and vintage (see Page 1985) or on interpreting the individual perspectives on the question likely to be produced by an edited collection.

One reason why it does not matter that this is not a random sample is that the numbers of decrees included in each jurisdiction are too small for a random sample to be of any advantage. However, that points to a bigger problem: what can a non-randomly selected handful of decrees tell us about the big questions raised in this chapter? Because they are based on a tiny sample, the results cannot all be extended to whole jurisdictions, ministries, or policy areas. To some degree we might expect some of the insights yielded by even a handful of decrees to have wider validity in the country concerned. For example, the requirement that decrees be submitted to the Conseil d'État for approval is a general requirement for a large proportion of all French decrees and the procedures by which the Conseil considers decrees (the fact-finding

and hearing stages and how they are conducted) are broadly common to all such decrees. Yet other results, especially those that relate to conventions and assumptions about appropriate ways of behaving, cannot with any confidence be extended to apply to the whole country (or to the whole ministry or to all decrees in a particular policy area).

The question about the appropriateness of the methodology thus becomes this: does it produce material that helps us address the central issues I have raised about bureaucratic and political roles in policy-making? The answer to this question must be that the proof of the pudding is in the eating: does the material and the way it is interpreted help us understand more about how bureaucracies shape, and how politicians can influence, policies largely developed within the bureaucracy? The question is certainly important enough to make the prospect of a decent glimpse at some answers, if not the answers themselves, worthwhile. This question of the validity of any conclusions based on a small non-random sample will be taken up again in the concluding chapter and cannot be settled here in advance.

PLAN OF THE BOOK

The logic pursued to answer these three questions will be what is often disparagingly described as 'inductive' in the sense of observing how things work and then seeing if the observations can be fitted to a particular pattern. The alternative, of course, is a deductive logic: setting up hypotheses derived from broader theoretical propositions and then testing them, knocking out the ones that don't seem to work, and offering a pat on the back to those that do.

The inductive method has been chosen over the deductive for two main reasons. The first is that few truly theoretical propositions offer us much help in understanding this world of everyday policy-making in such a way as to generate hypotheses. Some of the sub-questions outlined above can easily be framed in terms of the binary supported/not supported fashion characteristic of hypothesis testing, yet the insights on which such hypotheses may be based hardly go beyond what Lindblom and Cohen (1979) describe as 'ordinary knowledge'. For example, a hypothesis (set out earlier in this chapter) that greater institutional capacity is associated with a greater propensity for politicians to intervene in everyday policy-making is essentially derived from a commonsense 'ordinary knowledge' proposition (that in many cases the easier it is for you to do something, the more likely you are to do it) not true theoretical insight. To dress up such guesses as scientific hypotheses would be to attempt to mislead with the formal trappings of science. Second, and perhaps more important, it is impossible to understand how bureaucrats work if one focuses exclusively on a series of guesses about what one would expect

to find plucked out of the air through such ordinary knowledge. Moreover, we know that the empirical record of public choice accounts of delegation is not strong. To be guided in empirical strategy by armchair theorizing about a world which is still largely unknown is harder to defend than the inelegance and unfashionability associated with non-deductive methods.

Related to this, a comparative study might aspire to dividing itself on a thematic rather than a country-by-country basis. This book could have been written this way. Indeed, early drafts of it were, but what it produced was difficult to read, if not unreadable. Comparing six jurisdictions based on fifty-two individual cases, would involve a rather breathless juxtaposition of the detail of each case and a reminder to the reader of the context of the case (even if the context had been set out before) which threatened to become tedious and bury the conclusions in detail. Detail is an important part of this research, and to keep it entirely as hidden wiring would miss its central point, but it should not take over the general comparative argument. The best way to present the material seemed to be on a country-by-country basis for the main exposition. The synthesis and comparison, although implicit and sometimes explicit in the country chapters, is primarily concentrated in the last chapter.

Each chapter will address the questions discussed above about how politicians become involved in bureaucratic policy-making processes, what happens when they do, and what happens when they do not. However, the empirical material is not presented in the form of six identically structured chapters for each country. This would have been cumbersome, not least because the features that are particularly relevant for understanding the role of bureaucracy in one country are less important in others. For example, some of the detailed provisions of the law by which decrees are produced are central to understanding the whole process of decree-making in the United States but only need to be outlined in the other countries. A uniform chapter structure would also have been more tedious to read, with six different countries presented in a repetitive structure into which they would have to be forced. The order in which countries are presented is not particularly important for the development of the argument: I have sought to juxtapose countries that differ significantly from each other in order to try and make the material more interesting for anyone reading this book from start to finish.

Each chapter develops the exposition of how things work in the country concerned by contrasting the picture presented by an understanding of everyday government with conventional accounts of politico-administrative processes. In doing so, each chapter develops the observation, discussed briefly above, that our conventional understandings of how bureaucracies work in any one country are based on the view from the top, on policies that generate major conflict or on how top officials behave or see their roles, rather than on everyday process of government. Occasionally the contrast between accounts gained by the study of everyday policy-making on the one hand and high-

profile on the other is sharp, but for the most part the contrast shows how broad received understandings of policy-making have to be modified to produce an accurate account of how government works.

Each country chapter is structured using a basic pattern, even if the precise headings and subheadings are different. First, each describes the organizational and institutional context in which decrees are developed: who the bureaucrats are, and who the politicians are. Then the chapters broadly follow the process of policy-making, exploring how the decrees started life, how they were developed and drafted, and how they were approved and put on the statute book. However, it would be mistaken to consider the fifty-two cases without a clear idea of what one should look out for in them. To follow an inductive method is not to abandon theoretical argument but rather to make decisions about how theoretical insights should be used and applied. The final chapter will explore a range of arguments discussed already about the conditions under which politicians become involved and what happens when they are not involved—the impact of different cues, institutional capacities, what disposes politicians to intervene, the consequences of their intervention, and the way bureaucratic decisions are reached without intervention. The theoretical propositions are best discussed comparatively in the final chapter. This material will then be used in the conclusion to offer direct answers to the main questions posed in this chapter and to explore the implications of the answers I give for the wider understanding of bureaucracy.

2

France: A Cross-Pressured Bureaucracy

France's bureaucracy is the one that scholars and students of administration are most likely to know best after that of their own country. The seminal work of Crozier (1964) and Suleiman (1975) has done much to ensure that French bureaucracy is given substantial prominence in comparative studies and texts. Yet the view offered in both classics and texts is a view of the summit. It is the world of the *grandes écoles*, *énarques,* and ministerial *cabinets*; of *pantouflage*, *détachement,* and the notion of serving the *interêt général*. Of all the countries in this study, it is in France that one finds the clearest contrast between the generally accepted picture of how things work at the top and the revealed picture about how things work at a less elevated level. The view from the top is that the 'strong' French state is supposed to be resistant to the power of interests, except perhaps in a rather minor way—groups may play a role in 'implementation' rather than 'policy'—yet overall the French system is, certainly in European terms, distinctive because of its 'statism' (see Schmidt 2006). This 'strong' state is, however, far less apparent as one gets closer to the middle levels of the national bureaucracy at which policy is routinely made.

The picture that emerges from this examination of a sample, albeit small, of French secondary legislation casts strong doubt on the contention that the role of groups in policy-making is either exceptional or confined to 'implementation'. If the results apply even only to a limited extent outside the sample, this would certainly be sufficient to call the 'statism' of the French policy-making system into doubt and question whether the role of groups really is limited to 'implementation'. It is not claimed that the findings here are entirely unexpected. As we will see, some observers of the French state have cast strong doubt on this vision of a statist, interest-resistant, bureaucratic core and pointed instead to the importance of national interest groups and local 'notables' as powerful participants in French policy-making (see Hayward 1973, 1983; Cole 2008). Before discussing these findings, I have first to present them. In this chapter, as in the following five, I trace through the processes that gave rise to the decrees included in the sample. This is preceded by a brief account of the immediate environment in which bureaucrats help develop policy, without which it is difficult to keep track of the events described.

FRENCH MINISTRIES AND THEIR OFFICIALS

It is useful to think of the leadership of the ministry as a composed of two hierarchies closely intertwined at the top: one administrative, the other political. The administrative leadership of a ministry is the hierarchy composed of the top 'line' leadership even though these positions are in principle subject to ministerial appointment. The leadership structure in a ministry varies somewhat from ministry to ministry. In some, such as the Education and Budget ministries, the ministry is headed by the *sécretaire général*, the most senior civil servant in a line position with responsibility for the main units of the ministry. In others, such as Interior and Energy and Environment, the *sécretaire général* has more limited responsibilities. Ministries are divided into *directions générales*, *directions,* and *services* headed by *directeurs générales, directeurs, sous-directeurs,* and *chefs de service* in descending order of rank, each assisted by one or more deputies *(adjoints)*. These top levels of the civil service, especially *sous-directeur* and above, are usually occupied by civil servants who have been educated for, and followed, an elite career path within the French civil service. They are usually members of a top corps (*grand corps*)—effectively an exclusive job placement organization that steers its members into leading administrative positions throughout French government and beyond—and are educated in one of the top schools providing access to the *grands corps*, above all the École Nationale d'Administration and the École Polytechnique (see e.g. Thoenig 1987).

The grade structure of the French civil service is complex—it is broadly divided into three categories, A (managerial positions for those with university degrees), B (intermediate positions for those with high-school leaving certificates), and C (junior positions for those without educational qualifications). The arrangements for the higher civil servants in the *grands corps*, who occupy the leading positions within the ministry, are regulated by special salary arrangements (the '*hors echelle*' scale) and by the norms and regulations of the corps to which they belong. As Eymeri-Douzans (2008) puts it

> Unfortunately for the analyst, this status of '*haut fonctionnaire*' is a social status and not a legal one: nowhere in the whole legislation on civil service could be found a precise definition of what is a '*haut fonctionnaire*'; however, the vast majority of public servants have a clear and shared common understanding of who is and who is not a '*haut fonctionnaire*'.

The *political* hierarchy is the group immediately surrounding the minister. A minister in France cannot be an MP at the same time, and ministers are not always MPs immediately before becoming ministers; seventeen of the thirty-nine members of the Fillon government in late 2009 did not have to give up a seat in parliament to take a government post. Ministers are assisted by a *cabinet*, one of the distinctive institutions of the French

ANNEX: DECREES INCLUDED IN CHAPTER 7

Name	DG	Short Name
Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences	Agriculture and Rural Development (AGRI)	Tariff Simplification
Commission Regulation (Ec) No 1737/2006 of 7 November 2006 laying down detailed rules for the implementation of Regulation (EC) No 2152/2003 of the European Parliament and of the Council concerning monitoring of forests and environmental interactions in the Community	Environment (ENV)	Forest Focus
Commission Regulation (EC) No 1744/2006 of 24 November 2006 on detailed rules for aid in respect of silkworm	Agriculture and Rural Development (AGRI)	Silkworm
Commission Regulation (EC) No 1950/2006 of 13 December 2006 establishing, in accordance with Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products, a list of substances essential for the treatment of equidae	Enterprise and Industry (ENTR)	Horse Medicines
Council Regulation (EC) No 41/2006 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required	Fisheries (FISH)	Fish Quotas
Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo II) and repealing Regulation (EC) No 1382/2003	Energy and Transport (TREN)	Marco Polo
Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation	External Relations (RELEX)	Stability Instrument

8

Bureaucrats, Politicians, Choice, and Motivation

This investigation has brought us familiarity with some strange and exotic, as well as a number of distinctly prosaic, episodes in politico-administrative policy-making. So far the argument has been along the lines that a small sample of decrees in any one jurisdiction helps illuminate processes of decision-making, generally poorly understood in most jurisdictions, and can offer a fresh perspective on patterns of policy-making within it. Such illumination was an important objective of the research, but the main purpose was to try to answer the questions arising from the apparent likelihood that political executives could only become involved in a tiny portion of the deliberations that produce policies in their names: when do politicians get involved in policy-making, what happens when they do, and what happens when they stay out of policy-making? The purpose of this chapter is to stand back and look at the body of evidence supplied by our fifty-two decrees and answer these questions.

The questions are addressed in the order they were posed, starting with the nature of political involvement in decree-making. It goes on to look at what might explain such patterns before discussing briefly the bureaucratic reaction to political interventions. The chapter then moves to the topic of bureaucratic choice in making policy where political direction is largely absent and explores both the constraints on choice and the problematic nature of bureaucratic discretion. I then go on to explore the implications of the findings for our understanding of bureaucratic roles in policy-making, above all their motivations, and draw some conclusions about the relationship between bureaucracy and democracy.

THE SPORADIC INVOLVEMENT OF POLITICIANS

Varieties of Involvement

Since it was the basic starting point of this research that political executives could not play a large part in the everyday process of policy-making, we

should not be surprised to find that their involvement in the kinds of policy decisions surrounding decree-making is indeed sporadic in the sense that it was seldom constant. It would be misleading to regard decree-making within the executive as some kind of continuous process of bargaining between politicians and bureaucrats.

We can develop this argument further by distinguishing between different kinds of involvement by politicians. Involvement varies, as has been suggested in the structure of the individual chapters, according to the *stage in the policy process* at which it is found. In some cases politicians and their auxiliaries can become involved as agenda setters by initiating bureaucratic work on the decree, they can be participants in developing the decree, and they can be significant in securing legitimation for it once it has been developed. Involvement also varies by *intensity*. In some cases politicians and their auxiliaries were *actively* involved in the sense that they made positive decisions that helped shape the decree. In other cases the role of the politician was largely *passive*—approving what is being done in their name.

Politicians and their auxiliaries—their advisers and political appointees—played an active part in the initiation of decrees just over one-third of the time (in eighteen out of fifty-two cases, Table 8.1—the assessments on which these and other calculations and tables are based are set out in the Annex at the end of this chapter). Yet before devoting significant effort to developing a decree, civil servants simply informed politicians and/or auxiliaries that work was starting on it (thirteen cases). In twenty-one of our fifty-two decrees politicians were not even directly involved in this minimal passive way in its birth.

Moving on to policy development, many decisions taken or faced by civil servants were referred upwards during the process of developing the decree. In the development of decrees active political involvement was slightly higher (twenty-one cases), although a significant proportion (fifteen out of fifty-two cases) of interventions in policy development were passive—approving, acquiescing in, or offering support for what was being proposed. It is not surprising that the stage at which the politicians or their auxiliaries are almost always involved (forty-nine out of fifty-two cases) in some way is in the legitimation of decrees. It is common, though not invariably a constitutional requirement, that decrees are signed by ministers or senior appointed officials and thus at a minimum some passive political involvement is almost guaranteed. Active involvement by politicians can be found in nine cases—where the

Table 8.1. Involvement in the decrees by the political level

	Not Involved	Passive Involvement	Active Involvement
Initiation	21	13	18
Development	16	15	21
Legitimation	3	39	10

support of politicians was needed to ensure that the decree passed through procedural hurdles such as parliamentary, judicial, or executive approval. Two French *arrêtés* and one US decree signed by career officials account for the three decrees in which political leadership was not involved at all in legitimation. If we exclude the final legitimation stage of decree-making on the ground that in most cases it is less significant for the eventual shape of the decree,[1] in fifteen cases there was no evidence of the decree having been put to a politician or an auxiliary at some stage before it was sent for a formal signature.

The fact that politicians or their auxiliaries are involved actively in the development of twenty-one out of our fifty-two decrees (40 per cent) is, if anything, much higher than one might have expected. This figure, however, probably exaggerates somewhat the involvement of politicians and their auxiliaries. If we look at the types of interventions by politicians, they were not invariably 'strategic' or sustained. For example, while the minister gave a clear steer about what he wanted to see in the UK Fire Services Decree, his concern was largely limited to ensuring that the decree addressed ethnic minority recruitment and this issue formed a small part of a much larger decree. In five other decrees the active involvement by politicians was similarly limited. Thus active and sustained political involvement, even though it might fall short of fully or extensively supervising how a decree was developed, could be found in at most fifteen cases.

We cannot assume that, with sixteen cases of active and sustained involvement in developing decrees, the other thirty-six decrees were developed effectively by bureaucrats or processes in which bureaucrats played a significant part. Many decrees involved virtually no policy deliberation at all. The German decree fixing the amounts of money to be given to *Länder* as part of the intergovernmental fiscal equalization arrangement, was essentially a formality which involved almost no policy deliberation, the policy deliberation having been completed years before in negotiations about fiscal equalization formulae (Renzsch 2010). Eight of the fifty-two decrees fell into this category. These contrast with decrees which involved some policy deliberation, as narrow as whether to allow a slightly higher sugar content to be added in Champagne production or as broad as what precisely the catch limits should be for European fisheries.

Patterns of Bureaucrat–Politician Interaction

If we define political involvement as sustained and active political involvement, in the development of a decree such that major contours of the decree

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[1] The major exception here is with the three EU decrees issued under the authority of the Council and Parliament.

were directly shaped by expressed politician priorities, and acknowledge that some decrees involve no appreciable policy deliberation, we can distinguish between four types of decree-making process. The classification of decrees is approximate as they tend not to correspond neatly to one form of the four policy-making patterns. Decrees vary in length. Some can be quite lengthy and do a range of different things. Even in the most politically contentious of decrees in which ministers become closely and continuously involved, there are parts that attract less attention and there are also consequential parts which are little more than formalities. Nevertheless, one can broadly divide the fifty-two decrees into groupings broadly on the basis of whether such politician involvement in key aspects of developing the decree was sustained rather than sporadic or passive, and whether significant policy choices can be found in any of the various components of the decree.

Directed bureaucratic policy-making (fifteen decrees) is found when politicians and auxiliaries become directly and actively involved in developing key aspects of a decree and where the decree makes some changes to existing policy. An example of this kind would be the French Casinos Decree, involving as a key issue the introduction of the Texas Hold 'Em poker game into French casinos and a range of changes in regulations for running casinos that addressed key issues of principle and substance affecting casino owners and employees. Here, as can be seen from Chapter 2, the development of the decree soon was taken over by the Minister of the Interior (later President of the Republic), Nicolas Sarkozy. The role of the bureaucrats in developing this decree became one of offering advice and technical assistance (such as framing the decree in a form that is consistent with French law), but on the key issues they followed the instructions of the political leadership in the form of the minister and his *cabinet* and top officials.[2]

Undirected bureaucratic policy-making (twenty-nine decrees) refers to the pattern found when civil servants are largely left with at best indirect instructions about how a decree should be developed, or no instructions at all. The development of the German Ship Safety Decree, discussed in Chapter 4, was bureaucrat-led and the bureaucrats made significant choices in a range of key areas connected with the decree. These choices might be passed on to politicians or their auxiliaries for approval, but this type of policy-making refers to decrees where the bureaucrats have significant initiative in shaping the main contours of the decree. In the Ship Safety Decree provisions the Transport Ministry civil servant took it on herself to develop the relaxation of the zero

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[2] The category includes one EU decree (Horse Medicines) not strictly under direct political supervision but under that of a scientific committee made up of specialists from member states. The process involved, of referring any decisions to an external body, was similar to that found in politician-directed policy-making.

tolerance limit for ships' captains in the knowledge that the minister would be very likely to accept it.

Consequential policy-making (eight decrees) involves the bureaucracy in putting together decrees where the initiative rests with bureaucrats but they (and indeed the politicians they serve) have little or no discretion in shaping the decree. An example of this kind of decree is the EU Silkworm Decree that simply brought two existing decrees into one in the process of simplification of the corpus of legislation. Nothing at all was changed by this decree. Indeed under the formal rules governing the simplified decree-making process employed, no detectable change to existing provisions could legitimately be made. Where the decisions on the decrees are constrained entirely by previous decisions or by the decision of other bodies, the role of bureaucrats is different from their role in the other two forms (although, as will be discussed below, it is not necessarily insignificant). That this consequential group is smaller than the first two reflects the non-randomness of the selection of decrees for the study. When selecting decrees for inclusion in the study the huge number of decrees that appeared to be effectively formalities and involved little or no policy deliberation were intentionally omitted. That eight were nevertheless included indicates how hard it is to tell what a decree is about in advance of looking in detail into how it was made.

We will not be elaborating much on the role of bureaucrats in decrees developed under consequential policy-making, on the ground that by definition these decrees involve little or no policy deliberation since they are the direct result of earlier decisions, or are so strongly constrained by them, such that bureaucratic and/or political choices are excluded from their production. It is, however, important to point out that part of the activity of developing consequential decrees might involve making sure that the decree *remains consequential*. That is to say, to make sure that the routine decree does not smuggle in a policy change. In most cases all involved in making consequential decrees understand that trying to use the consequential decree-making process to make changes in policy is illegitimate and sometimes unlawful. In one of the consequential EU decrees, however, there were pressures to go beyond existing policy. Some individual member states tried to use the opportunity provided by the Silkworm Decree to make changes to policy and had to be rebuffed. Protecting the legislative process from being used to make changes beyond the legal scope of the legislation is also a feature of non-consequential decrees. For example, some member states tried to incorporate policy changes outside the scope of the EU directive in the Horse Medicines Decree and the civil servant concerned drew it to the attention of the comitology committee which defeated the ploy.

A fourth pattern of policy-making, where there is active politician involvement but no policy deliberation, is logically possible and we have an example of a decree that comes close to this. The French Rhine Transport Decree was

negotiated internationally by officials from the Transport Ministry where the decree was actually written. It had to be later issued as a separate decree by the Foreign Ministry and signed by the Foreign Minister. This might be termed a *ceremonial* pattern of policy-making. However, the original Transport Ministry decree was not ceremonial and so it has not been included as such here and I discuss only the three types of policy-making found in the fifty-two decrees.

UNDERSTANDING POLITICIAN INVOLVEMENT

Cues for Involvement

As discussed in the introduction, much of the literature on delegation places emphasis on controversy, specifically some form of explicit or latent disagreement between politicians and civil servants, as a cue to politician involvement. Politicians are prompted to intervene either directly after they identify things they do not like in routine monitoring of the bureaucracy ('police patrols') or indirectly after procedural devices have alerted interest groups to proposals the groups do not like, which leads them to raise the alarm with politicians who might then decide to intervene ('fire alarms'). As we will see below, there is certainly a link between controversy and political involvement. However, fire alarms, police patrols, and the related 'deck stacking' hypothesis do not account for the *process* by which politicians and their auxiliaries become involved.

If we take all fifty-two decrees, in no case did politician involvement follow an interest group, or any other outside body, blowing the whistle or raising the alarm about what bureaucrats were planning. In all cases of directed policy-making the involvement of the politicians or their auxiliaries came either from the very start—especially in the cases where the political level was also involved in initiating the policy as, for example, with the French Casinos Decree or the US Criminal Checks Decree—or the decree-making process had not progressed very far before politicians became involved. For both fire alarms and police patrols the suggestion is that bureaucrats are caught *in flagrante delicto* by a politician or auxiliary monitoring the work of bureaucracy or by interest groups raising their concerns. In general with decrees developed under both directed and undirected policy-making, it was the bureaucrats themselves that passed the issues up to the political level. To continue with metaphors connected with policing: the civil servants 'grassed themselves up' to the political levels. In making decrees, whether directed or undirected, career officials generally informed their superiors: in controversial cases to make sure of political support and in non-controversial cases as a

matter of courtesy and procedural propriety. The exceptions could be found in cases where the political level was deemed to know about the matter anyway—most importantly in the UK where decrees implementing primary legislation were considered to have been approved at the same time as the broad strategy of developing the primary legislation from which the decrees were derived.

In fact, bureaucrats interviewed placed great importance on obeying procedural norms and rules, at least the most significant ones, and political approval features significantly among such norms and rules. The broad contours of the procedures to be observed in undirected policy-making are broadly similar across all jurisdictions where it was found. Initially comes political approval to begin work on a decree. Explicit approval—sending up a formal request to start work on a proposal—tends to be reserved for the more controversial or politically visible decrees; in many cases the approval is deemed to have been given already, above all in cases where there is little or no choice but to issue a decree (e.g. implementing European Union legislation). Internal bureaucratic consultation, whether inter- or just intra-ministerial/agency, is required in all but the most consequential of decrees. The principle of hierarchy is the most common means of resolving conflicts that emerge from such consultations: disagreements between two or more units or subunits within an organization get pushed up to a senior level for arbitration or decision. Inter-ministerial (or inter-agency) conflicts or disagreements follow a similar pattern in that they are pushed upwards for resolution. Those that are not agreed at the bureaucratic level between civil servants of equal rank get pushed upwards and can reach the level of bilateral or multilateral ministerial or even *cabinet* negotiations, as with the French Farmers Decree.

External consultation of some form, whether informally talking to outside interests or a staged internet or write-in public consultation, is common to all but the consequential decrees, and political approval or acquiescence is often sought again at this stage too; not least because the ministry or agency is 'going public' on its proposals and the political leadership needs to approve this. There are different kinds of approval of legal form designed to ensure that the form of the decree and its content do not violate principles of constitutionality or legality, ranging from judicial approval by the Conseil d'État, approval by Justice Ministry (Germany), or a committee within the legislature (UK). The norms governing which particular decrees are subjected to this are highly variable, and politicians can be brought in to the process again if such approval is problematic. Final political approval may take the form of the decree being signed off by an individual minister, a full agreement from the collective Cabinet, and/or the more elaborate procedures governing co-decision between different parts of government including the comitology and co-decision procedures of the EU and ratification by the *Bundesrat* in Germany. All in all, informing politicians is part of the bureaucratic policy-making routine.

This bureaucratic routine of informing the top does not dispense entirely with the 'fire alarm' argument. Informing politicians early on might be taken as indirect support for the fire alarm notion: that bureaucrats secure the necessary political support early. Even so, the argument would go, it is the procedure of securing OMB approval in the US that causes them to seek such support. Knowing that the alarm will go off anyway, bureaucrats raise it themselves. It is even possible to see this mechanism in action from bureaucrats' accounts of the process of decree-making. In the US Broadband Decree, for instance, the civil servants wanted to keep the changes to the decrees small so that it need not go through the full comment procedure: 'Originally we would try and do [something different] but [the department's legal advisers] said that was too much of a change. We'd need to send that out for comment. [And] we took [their] advice...'

The central difficulty with regarding bureaucratic self-disclosure as supporting the 'fire alarm' argument is that it confuses a specific set of rules with a general condition of hierarchical life in a bureaucracy. It is a basic norm that superiors should be kept informed when something is done in their name and another that bureaucrats must be able to legitimize their actions. In the US these norms were not the creation of the US Administrative Procedure Act of 1946. Gellhorn (1986: 232) for example argued the Act itself 'was declaratory of what had already become the general, though not yet universal, patterns of good behavior; nudging the laggards did no harm, though my own guess is that changes for the better were of small dimensions'. Moreover in other jurisdictions, such as France and the UK, informing the political level appeared to be even more remotely related to the formal procedures of external political control than in the US. In the UK, for example, those decrees that required parliamentary approval by an affirmative vote were no more likely to be drawn to the attention of ministers than those that were not, and French decrees were no more likely to be raised with a member of the ministerial *cabinet* or the minister because they were *décrets en Conseil d'État* (French decrees that had to be referred to the judicial Conseil d'État) rather than other forms of decree. Internal norms rather than the impact of external scrutiny or outside interests caused issues to be brought to the attention of politicians or their auxiliaries in the decrees examined here.

Politicians' Disposition

Another argument links the technical character of the issue at stake with the level of politician involvement: the technical or scientific nature of an issue is commonly thought to make it less likely that an inexpert politician will interfere (see Schattschneider 1960). The argument is certainly a powerful one that relates to a wider set of propositions about political conflict management

and public involvement in political debates. However, on the basis of the fifty-two decrees we have no firm reason to believe that scientific or technical issues and language excludes politicians as a whole from intervening in policy-making processes. Of the thirteen decrees which appeared to have significant scientific or technical content, three involved directed, nine undirected policy-making, and one was in the consequential category. Moreover, it is quite possible for politicians to become closely involved in technical matters. Perhaps the clearest example of this comes from the EU Fish Quotas Decree where the dominance of expert scientific evidence does not prevent political involvement by the commissioner and his *cabinet* or even, somewhat outside the scope of this research, the members of the Council who make the biennial negotiation around fish stocks among the most politically contentious issues discussed in the European Union. Indeed, as discussed in Chapter 7, one of the scientists involved in this decree complained that politicians were *too involved* in the technical issues and too little concerned with the broad direction of fisheries policy.

Knowing the level or nature of interest group involvement does not appear to have a particularly strong impact on whether politicians became involved in directed policy-making. Most of the decrees, forty of the fifty-two, involved some interest group consultation. Those that did not included three directed, one undirected, and seven consequential decrees. Politician involvement may indeed, as in the case of the French Casinos Decree, be associated with interest group lobbying for a policy. In another French case, the Farmers Decree, politician involvement had the effect of *excluding groups* from the process of policy-making as the higher levels of the politico-administrative system could make their decision without negotiating with them. In a Swedish directed case, the Rescue Services Agency Decree, politicians became involved although no outside interests voiced any preferences about the policy. Conversely, there are plenty of examples of undirected decrees that were at the centre of controversies between groups, including the contentious US Lithium Decree in the US and the Alcohol Disorder Zones Decree in the UK.

Disposition does, however, appear to be more closely related to the propensity for politicians or their auxiliaries to become involved when one considers the political importance of the decree. While definitions of whether something is 'minor' or not are highly subjective, we have already established that some decrees are consequential—effectively formalities that put in legal form decisions that have been made elsewhere or tidy up the law. Yet on the other had there are politically major decrees, such as the French Osteopaths Decree, that brought demonstrators out on to the streets of Paris, or the reform of the green card process that pitched the legal might of major US electronics corporations among others against the federal government in the Alien Substitution Decree.

Eight of our decrees, the consequential decrees, can be classed as 'truly minor'. At the other extreme, a further fifteen could be classified as 'truly major' since they address issues that are politically significant (such as the minimization of exposure to BSE in the US) or sensitive (such as modifying the UK Labour Party manifesto promise to introduce home information packs for house buyers). The remaining twenty-nine fall in between these two: these are decrees with a discernible intended impact on the interests and behaviour of individuals and organizations but they are politically neither sensitive nor of truly major significance. We may call these of 'moderate significance'. In this category I would include decrees that affected BBC and ITV use of bandwidth to broadcast TV programmes in the UK, the German Ship Safety provisions, and the EU Horse Medicines Decree determining which medicines can be given to horses that enter the food chain. They involved appreciable changes, but their significance was primarily to a relatively small group and did not become linked to wider public societal conflicts.

Unsurprisingly, politicians are less likely to become involved in the truly minor decrees. However, aside from this, the significance of the decree does not make such a clear difference to the pattern of policy-making that might be expected to produce it. There is a clear tendency for the truly major decrees to be developed under directed policy-making: of the fifteen truly major decrees, ten were so developed, but five were developed under undirected policy-making. The figures look more supportive to the 'importance matters' argument if we consider that twenty-three of the twenty-nine undirected decrees were of moderate significance (compared to five of the fifteen directed) and only five of the twenty-four undirected decrees involved truly major issues (compared to ten of the fifteen directed). If one were to guess the style of policy-making from the significance of the issue at stake, one would be right in forty out of fifty-two cases (77 per cent) or, if one prefers to exclude the consequential decrees on the ground that they are by definition minor, thirty-three out of forty-four cases (75 per cent).

Institutional Capacity

If we consider the exceptions to this expectation that the political level becomes involved on truly major issues we get an indication that there are features related to the politico-administrative system as a whole that might affect the forms of policy-making by which issues are handled. Three of the five 'moderate importance' decrees which were handled by directed policy-making (i.e. where politicians were involved when one might have expected them not to be) were from Sweden, and three of the five 'major significance' decrees handled by undirected policy-making (i.e. where politicians were not involved when one might expect them to be) were from the UK.

Table 8.2. Patterns of policy-making by jurisdiction

	Consequential	Undirected	Directed
Germany	2	4	0
EU	3	1	3
France	0	7	3
Sweden	1	0	6
UK	1	11	0
US	1	6	3
TOTAL	8	29	15

Table 8.2 gives the breakdown of the incidence of the three policy-making patterns found in each country. It is perfectly possible that with such a small sample in each country the fact that there are no directed decrees in Germany is simply bad luck—with six decrees the chance of missing one such decree is reasonably high. This point has to be considered a possibility. However, there is a range of features characteristic of each country, noticeable in the material gathered for the body of decrees in our sample, that might explain why some forms of policy-making are more likely than others. The small number of cases prevents one from reading too much into any breakdowns of the different numbers, but if we look at the figures along with the content of the chapters the evidence suggests that the politico-administrative systems of different countries probably shape the role of politicians and bureaucrats by encouraging some forms of policy-making and discouraging others. This is most obviously the case in Sweden (Table 8.2) where six of the seven decrees were brought in with the close involvement of state secretaries, advisers, and (less frequently) ministers. In a small Swedish ministry headed by a political state secretary and housing several political advisers it is not difficult for politicians and their appointees to drive policy agendas, even on issues that in many other jurisdictions might be left entirely to bureaucrats.

The importance of the broader politico-administrative structure is further suggested by the fact that three of the four directed policy-making group of decrees in the European Union sample were proposals for decrees to be made by the Parliament and/or Council under co-decision that involved member state consultation. Since these involved significant bargaining with member states, the higher leadership (though, as with the Marco Polo Decree, not always the commissioner) within the Commission tended to become closely involved. Of the Commission's own decrees, which needed no other approval or approval of comitology committees, three of the four fell into the consequential category where no significant policy-making discretion was exercised by the civil servants involved. The fourth, the Horse Medicines Decree, was closely supervised by an 'expert' panel and comitology committee so that, although by the criteria used to classify our decrees it was 'undirected' by

the Commission political leadership, it had the characteristics of a decree made under 'directed' policy-making, where civil servants alone make fewer choices about the content of the decree and work to turn the decisions of others into law.

Of those decrees where significant policy choices were to be made, politician involvement was least in Germany and the UK where such decrees were handled under undirected policy-making—i.e. main contours of the decree were effectively constructed by bureaucrats albeit with the approval of politicians. The reasons for the absence of direct politician involvement in policy-making in these two countries might be, extrapolating from the discussion in Chapters 3 and 4, rather different. The lack of decrees under directed policy-making in Germany might reflect two distinctive features of the German system. First, there are arrangements to ensure that a range of key political issues is settled outside the decree-writing process. This clearly covered the consequential Fiscal Equalization Decree, as key political decisions were taken after a process of intergovernmental bargaining years before. But such separation of political negotiation from rule writing can also be found in undirected decrees in Germany. Some of the more contentious points of policy (but certainly not all of them) were covered in the process of developing the *Eckpunktpapiere* governing the Noise Maps and Milk Quotas Decrees, albeit with federal bureaucrats playing an influential role in them.

If the lack of directed decrees in Germany reflects the fact that major political conflicts surrounding the decrees tend to be dealt with in separate political arenas (i.e. the political direction comes *before* the process of decree-making), the absence of directed policy-making in the UK is more likely to reflect a general reluctance among politicians to get directly and actively involved in the activity of rule-making as well as the importance that UK civil servants place on ensuring that what they are proposing conforms with political expectations before they invite politicians to become involved at each stage in the process (Page 2001; Page and Jenkins 2005). The UK pattern of civil servants inviting ministers to exercise authority contrasts very strongly with the French pattern in which a politico-bureaucratic leadership structure in the form of the *cabinet* allows politically connected bureaucrats to identify which of the issues being worked on in their part of the ministry are politically sensitive, take them out of the hands of the ordinary ministerial bureaucrats and handle them themselves. In the French system the procedure for routine checking with the *cabinet* on anything sensitive allows the higher politico-administrative structure to take the issues it selects out of the hands of the routine administrative policy-making level and handle them for itself, as happened with the decrees covering Farmers, Casinos, and Osteopaths. Nevertheless, some sensitive issues (such as Bird Flu) among other decrees described above of 'moderate importance' that involved policy discretion were handled at the administrative level under undirected policy-making.

The US pattern is similar to the French in that it is the only other country in the sample with a spread across all three patterns of policy-making (while the EU Horse Medicines Decree must be classified as 'undirected' it was effectively directed, see above). In two of the decrees developed under directed policy-making the political level took a major interest from the start even though the issues, albeit related to sensitive questions, were not divisive political issues—criminal history checks for volunteers in a range of voluntary organizations and technical aspects of telecommunications in disasters (following lessons learnt from Hurricane Katrina). In a third the political level pushed forward an already well-established bureaucratic impetus (to make a range of changes to cattle slaughtering procedures in the wake of BSE).

Again, while the number of decrees in the sample is small, they nevertheless suggest that bureaucratic responses to direction might also display some significant national differences around the general proposition that the major issues tend to be the ones that attract political attention. In general civil servants developing decrees make every effort fully to follow the express wishes of those giving direction. In this sense the notion that bureaucrats 'shirk' or otherwise subvert the clear and expressed wish of political leaders is based on an entirely misleading view of the nature of how public bureaucracies work. However, acting on directions does not necessarily mean an inability of bureaucrats to shape policies. With the French cases, once the issues had passed from the administrative to the higher politico-administrative level, the role of the middle-level bureaucrats tended to cease as their superiors took them forward. In Sweden too, the extensive intervention of political advisers, ministers, and appointed officials gave bureaucrats relatively little to do on their own by way of making or shaping policy decisions. In the European Union and the United States, directed policy-making involved significant further input from the bureaucrats writing the decrees. Direction meant close involvement and significant steering of bureaucratic work, but not the removal of much of the deliberation from the administrative level as in France and Sweden. Civil servants in the EU and the US made significant contributions to the policy work even under direction.

Politics as Trumps

What happens when politicians get involved, whether in directed decrees or the less intensive intervention in otherwise undirected decrees? They generally get their way: civil servants make every effort to follow the express wishes of their political leaders. The only time in the study this proved difficult was where the prevailing political preferences clashed directly with a court mandate (in the US Salmon Decree). However, generally politicians get their way and this can happen through a variety of mechanisms.

a) when political executives or auxiliaries put items on the bureaucratic agenda, suggesting items that would not have been the subject of a decree were it not for their intervention (e.g. the Swedish Free Year Decree);

b) when the political level effectively takes over the lead in developing or negotiating the legitimation of a decree and shaping it according to their preferences (e.g. the French Osteopaths Decree);

c) by ensuring that the decree does what they want it to do by instructing bureaucrats on part or all of its content (e.g. the UK Fire Services Decree); or

d) by making decisions on proposals passed on to them by bureaucrats (e.g. the German Noise Maps Decree).

The first two mechanisms conform to general expectations about political leadership in bureaucratic systems and refer to directed policy-making processes. The fourth less so since it places the initiative, as well as the structure of the choices to be made, in the hands of the civil servants and affords politicians a sometimes limited role and thus is characteristic of undirected policy-making. The third can belong to either directed or undirected policy-making depending on the extent to which they give direction: whether their directions shape much of the decree or just limited parts of it. There is no evidence in the fifty-two decrees of bureaucrats using either the timing of the approach to the politician or auxiliary, or skewing the question put to the political level, either to 'bounce' politicians into a decision or to remove any effective choice from them. So, a popular conspiracy theory is not validated.

MAKING POLICY WITHOUT POLITICAL DIRECTION

Shirking and Subordination

Given that political direction can be generally characterized as sporadic—relatively infrequent and limited in scope—one would expect the corresponding scope for bureaucratic decision-making to be substantial. As discussed in Chapter 1, a significant literature on bureaucratic motivations suggests that a range of characteristics—self-interest, socially acquired values, professional values, or agency values—might lead bureaucrats to act or propose action in ways that conflict with what politicians want or might be expected to want. In the language of the public choice approach (though the claim is by no means limited to this approach), bureaucrats 'shirk'.

One problem of the 'shirking' hypothesis, in so far as it suggests that bureaucrats act on the basis of individual self-regarding motivations, is that

the evidence to support it is so sparse one must doubt whether such motivations are at all significant (Brehm and Gates 1997). Moreover, if one takes the notion that bureaucratic values are derived from past socialization (see Sowa and Selden 2003) or different varieties of self-interest (Niskanen 1971), including status gratification (Dunleavy 1993), the evidence in earlier chapters suggests it might be hard to link many of the issues bureaucrats deal with to such personal motivations. For example, it is hard to see what the bureaucrat concerned stood to gain materially, in status terms or through the satisfaction of some wishes acquired through socialization, from setting the population size of towns that have to produce a noise map at 200,000 rather than 150,000 in the German Noise Maps Decree. It is unlikely that many bureaucrats will have developed as children or young adults particularly strong preferences about most of the things they deal with prior to doing the job they do—views on designing milk quotas, assessing the liability of pharmaceutical companies to damages claims in times of civil emergency, or eligibility for mesothelioma payments, for example. Moreover, it is hard to know exactly how one might explore the impact of such motivations. Psychological investigation might help here. However, the necessary experimental design is not only likely to be extremely hard to conduct, it might also be difficult to control effectively for the great variety of influences and constraints that would be expected to shape decision-making. To say such explanations are difficult to handle or investigate is not, however, to dismiss them. It is possible, however, to say that there is little available evidence to justify giving them any significant weight in explaining the choices bureaucrats make in putting together the decrees examined in this analysis.

A Plurality of Constraints

A wider problem with the 'when the cat's away' argument as applied to bureaucratic activity is that, once one examines what helps explain the choices made by bureaucrats in the absence of direct political control, a whole range of additional constraints on their behaviour becomes apparent. We can classify them in two broad groups on the basis of how the bureaucrats concerned tended to account for the form and structure of the decree in the interviews.

The first group arises from *conformity with precedent.* Precedent imposes a powerful constraint not because bureaucrats are instinctively conservative or even risk-averse. Rather, decrees, like many other kinds of policy instruments, have to conform to existing patterns of policy and policy intervention. Many decrees add to or amend a legal framework. Indeed, this is how many of them have any effect at all. The relationship with existing laws often means that there are limits to what can be proposed without fundamentally changing

these legal frameworks—a task not usually achievable by a decree. The constraints of existing policies is particularly clearly seen in the case of a codified legal system such as that found in France, where decrees generally consist of small changes to voluminous legal codes. A French civil servant explained: 'Decrees all change codes. They are not free standing.' Thus, if you want to reduce your payments to farmers by altering the age at which farmers are eligible for transfer payments under the *agriculteurs en difficulté* scheme you have to amend the *Code rural* and the way you do that is by *décret*. The constraints of legal frameworks are not simply the province of codified Roman law legal systems: pre-existing legislation sets up frameworks which specify what actions can be taken to change a regime. Thus, for instance, in the United States the series of incidents involving lithium polymer batteries generated debate within the federal government (above all, the two main agencies involved in airline safety) about how the *existing* Hazardous Materials (HAZMAT) rules should be amended and the range of actions was significantly defined by the existing regime.

The second group of constraints arises from *avoiding potential vetoes*. Procedural norms not only constitute cues for political involvement (see above); negotiating them requires bureaucrats to anticipate potential opposition or sticking points as they frame their proposals. Where the approval of politicians is required (and as has been discussed, reference to a politician or auxiliary for approval is universal for any decree) bureaucrats devote significant attention to anticipating their likely reactions. Moreover, decrees that have implications for other departments or agencies generally have to secure some kind of agreement with them. Similarly where it is necessary to secure the approval of a supervisory body, whether a dedicated specialized scrutinizer of legislative proposals (such as the French AFSSA or an EU comitology committee), a body exploring the legality or constitutionality of the decree (such as the Conseil d'État or the UK parliamentary scrutiny committees), bureaucrats seek to frame proposals in such a way as they will pass through them.

Table 8.3 presents some of the major constraints that tended to be found in the accounts that civil servants gave of the shape and timing of each of the undirected decrees. The first two columns indicate the constraints of domestic and European law. Since decrees are generally understood to be 'subordinate' legislation, it is hardly surprising that the constraints of what is contained in parent and related domestic law played a significant role in the accounts given of twenty-seven out of twenty-nine decrees. In the two exceptions (the UK Energy Billing and the French Rhine Transport Decrees) the constraints of international law (an EU directive and an international agreement respectively) were so strong that existing domestic legislation appeared to play little significant role. International law (mainly European Union law) played a significant role in shaping fourteen out of the twenty-nine decrees. The third column indicates the constraints imposed by the reactions, largely anticipated,

Table 8.3. Sources of constraint under undirected policy-making

| Country | Decree | Conformity with Precedent | | Avoiding Potential Vetoes | | Supervisory Bodies[i] |
		Domestic Law	International/EU Law	Political Leadership	Interagency Bargaining	
D	Noise Maps	x	x	-	x	Bundesrat/Länder
D	Milk Quotas	x	x	-	-	Bundesrat/Länder
D	Civil Emergencies	x	x	-	x	Bundesrat/Länder
D	Ship Safety	x	x	x	x	Bundesrat/Länder
EU	Horse medicines	x[ii]	-	-	-	CVMP/comitology committee
F	Bird Flu	x	x	-	x	AFSSA
F	Soups	x	x	-	x	AFSSA/Conseil d'État
F	Rhine	-	x	-	x	Central Commission for Navigation on the Rhine[iii]
F	Cosmetics	x	x	-	x	AFSSAPS
F	Housing	x	-	-	x	Conseil supereieur des HLM/Conseil d'État
F	Handicap	x	-	-	x	Ad hoc working parties on reform/Conseil national des personnes handicappées/Conseil d'État
F	Champagne	x	-	-	-	Comité national des vins et eaux-de-vie/Organisme de défense et de gestion du vin de Champagne
UK	Home Information Pack (HIP)	x	-	x	x	Two ad hoc groups/Merits Committee
UK	Fire Services	x	x	x	-	Business and Community Safety Forum/Merits Committee
UK	Mesothelioma	x	x	x	-	Parliament (affirmative resolution required)

UK	Alcohol Disorder Zones	x	-	x	-	JCSI/Merits Committee
UK	Police Best Value	x	-	x	x	Merits Committee
UK	Mental Capacity	x	x	x	x	Mental Health Bill Implementation Advisory Group
UK	Energy Billing	-	x	-	x	Better Regulation Unit
UK	Animal Mutilations	x	x	x	-	Parliament (affirmative resolution required)
UK	TV Multiplex	x	-	x	-	Ofcom
UK	Casinos	x	x	x	-	Parliament (affirmative resolution required)
UK	Criminal Justice	x	-	-	x	Ad hoc group
US	Salmon	x	-	x	x	OMB
US	Labour Certification	x	-	x	x	OMB
US	Lithium	x	x	x	x	National Transportation Safety Board/OMB
US	Exchange Visitor	x	-	-	x	Government Accountability Office
US	Community Broadband	x	-	x	-	OMB
US	Mentor	x	-	-	x	OMB

i. Abbreviations and acronyms explained in adjacent text.
ii. EU law is classed as 'domestic' in this case.
iii. An international regulatory body.

of politicians (those decrees reflecting active and sustained intervention by politicians are classified as being passed under directed policy-making, and thus not included in Table 8.3). In fourteen of the twenty-nine accounts of directed policy-making the anticipated reaction of the politician plays a significant role. Ten of these are from the UK cases. Interagency bargaining (which includes inter-ministerial bargaining but not intra-ministerial discussion or negotiation) was found in nineteen cases.

The last column includes a diverse range of bodies, generally specific to the jurisdiction in question, which have either veto powers over legislation or a significant advisory role that would be difficult to circumvent. Thus the role of the *Länder* through the need for *Bundesrat* approval of legislation was apparent in all four German undirected decrees in Table 8.3; a statutory advisory body (Committee for Medicinal Products for Veterinary Use) and a comitology committee (Standing Committee on Veterinary Medicinal Products) supervised the production of the EU Horse Medicines Decree; the French tradition of 'expert' and representative supervisory bodies meant that French civil servants' accounts referred to bodies such as the Agence française de sécurité sanitaire des aliments (AFSSA), the Agence française de sécurité sanitaire des produits de santé (AFSSAPS), the advisory Conseil supérieur des HLM and Conseil national des personnes handicappées and the statutory Organisme de défense et de gestion du vin de Champagne. Of the seven French decrees in Table 8.3 the Conseil d'État appeared to play a significant role in three. In the UK cases parliamentary approval (an affirmative resolution in Parliament) for the decree was a significant part of the story in three cases, and the parliamentary bodies (the Merits Committee and Joint Committee on Statutory Instruments, JCSI) in another three. In addition, one UK decree was significantly shaped by Ofcom, the independent regulator and competition authority for the UK communications industries, and two others by *ad hoc* but formally constituted advisory groups (such as the Business and Community Safety Forum). In the United States the Office of Management and Budget played a significant part in five of the six accounts, the Government Accountability Office which audits accounts and increasingly performance made recommendations which played a part in the Exchange Visitor Decree and the Lithium Decree was in part a response to the report by the National Transportation Safety Board.

Of course, to say that an institution or law played a significant role in an account given by a bureaucrat of how a decree was put together does not necessarily imply enormous constraint and the elimination of any bureaucratic choices. It does, however, suggest that bureaucrats, when they describe what they do, are thinking of a range of constraints within which they do their work and develop a decree. It is not possible to classify the undirected decrees in terms of the 'discretion' that they offer the bureaucrats that write them, in part because we have no clear metric of assessing discretion, in part because any

assessment would involve a counter-factual argument about what would have happened if apparent constraints had been ignored, and in part because discretion is often a matter of perception: those on the receiving end of a decree might be expected to be generally more likely than those who write them to think that it could have been written differently or not at all.

However, one can say that in many cases the choices of the bureaucrats writing the decrees appeared to be severely constrained. For example, the official writing the Horse Medicines Decree was applying Directive 2001/82/EC on the Community code relating to veterinary medicinal products and in particular a recent amending decree made under it (Regulation (EC) No. 726/2004 of 31 March 2004 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use). Writing the decree essentially meant getting a list of medicines from the Committee for Medicinal Products for Veterinary Use (described on its website as a thirty-four-strong body of experts, 'nominated by the Member States, in consultation with the [European Medicine] Agency's Management Board'), sending the list out for public consultation, consulting within the Commission units in other Commission DGs, and getting the final list approved by the Standing Committee on Veterinary Medicinal Products, the comitology committee whose approval is required for a proposed decree to come into effect. If one adds up all the constraints listed in Table 8.3, no decree is accounted for with fewer than three constraints. It is thus clear that once one discounts sustained and active political control, a whole range of other constraints help shape bureaucratic activity, such that the notion that the absence of political constraint means that bureaucrats shape decisions according to their own preferences is inaccurate and fanciful.

Subordination and Discretion

Bureaucrats involved in shaping policy, especially but not only where political direction is unclear or absent, tended to emphasize when accounting for their actions the constraints to which they respond and generally do not claim that they have a particularly wide scope for shaping policy. This is hardly surprising since it is the essence of a bureaucratic career that it is a career of *service*. This does not suggest that bureaucrats have or should have any kind of unique or rare selfless moral dedication to serve others. Rather it is the nature of the job that they are generally subordinate, whether to other bureaucrats, politicians, or regulatory and supervisory institutions. If one wants to be promoted on merit one has to conform to expectations about what kind of behaviour is deemed to be meritorious. One could see this as reflecting a form of self-interest, but by this token there is nothing that is not self-interest and the notion loses all meaning. In public bureaucracies, conformity with

procedural norms, following political guidance, and observing constitutional and legal constraints are basic components of conceptions of merit; non-observance would require some special justification. This is not to say that acting as a subordinate is all there is to being a bureaucrat, but any creativity and initiative has to observe the constraints imposed by subordination. Indeed, Max Weber (1972: 632) makes subordination the defining characteristic of a bureaucratic as opposed to a political career. One of the consequences as regards relations between bureaucrats and politicians of this subordination has been discussed already: the general observance of procedural norms that involve bureaucrats bringing issues to the attention of politicians.

A second consequence of the subordinate character of bureaucracy is the way in which conflicts with, or opposition to, political leadership are handled. A strategy of 'sabotage', one device that public choice theories assume to result from bureaucrats opposing politicians, insofar as it means deliberately ignoring or undermining the instructions of a politician, is unlikely to be prevalent not only because of the predisposition of bureaucrats to observe rules but also because such actions are likely to require active conspiracy rather than individual recalcitrance. While none of the decrees examined here involved anything approaching 'sabotage', it seems likely that such collective action would be difficult to organize, sustain, and hide from administrative or political superiors where such heavy normative emphasis is placed on compliance.

However, this is not to say that the policy work of bureaucrats does not bring them into conflict or potential conflict with political masters. As discussed above, the most common response to disagreements with politicians is to give the politicians what they want. In five cases, however, we can see evidence of a distinctive bureaucratic approach to handling disagreements or potential disagreements with politicians, *mobilizing force majeure:* using a third party within the structure of the state to persuade politicians to change their minds. In one of the US cases (the Salmon Decree) it was the courts which eventually led a reluctant political leadership to accept what bureaucrats within the Commerce Department felt it should do, and in another (the Exchange Visitor Decree) a Government Accountability Office report helped civil servants in the State Department give priority to a revision they had long wanted. In the UK Home Information Packs Decree the civil servants dealt with the anticipated political reluctance to delay introducing part of the scheme (a party election manifesto commitment) by commissioning the Deputy Chief Executive of the Land Registry, a 150-year-old agency responsible for the legal registration of land and the transfer of property, to point out the difficulties that would arise from putting it into force prematurely. In two French decrees (Soups and Bird Flu) the recommendations of the AFSSA neutralized the nervousness among politicians and auxiliaries that the proposed measures generated.

A third consequence of the subordinate character of bureaucracy is that it becomes difficult to talk of 'bureaucratic discretion' as a sort of space where bureaucrats are given, by design or negligence, the opportunity to act without instruction or constraint, as the 'hole at the centre of a doughnut' (Jowell 1973)—a space where the rules allow bureaucrats to decide more or less what they like. Where the written rules do not tell bureaucrats what to do, a range of generalized rules, norms, and expectations not only prevents them from doing as they please, but makes the whole notion of 'doing as they please' problematic. To take a hypothetical example, a bureaucrat might feel it is desirable, for whatever reason, to abolish a particular regulatory scheme and is perfectly free to suggest it, but if it has no chance of gaining political approval, all the civil servant stands to achieve is the prospect of being regarded as someone without any political sensitivity. Bureaucrats might thus be expected to limit their actions to what is acceptable for someone in their subordinate position and what is feasible given the wider constraints within which they operate.

THE NATURE OF BUREAUCRATIC INTENTIONS

If it is correct to argue that bureaucrats writing decrees and doing 'policy work' (Page and Jenkins 2005) do not have programmatic intentions in the same way that a party or interest group has policy intentions, and that the notion that they are motivated by self-interest or socialization is implausible, we are left with the open question of what it is that motivates bureaucrats. We know from our case study materials that they influence the shape of the decrees they write. Much political science understanding of influence and power is based upon intentionality—A has power over B insofar as A gets B to do things that B would not otherwise do (Dahl 1969). Yet without conventional interest-based or socialization-based theories of motivation, how can we characterize the nature of bureaucratic influence? In a nutshell: what are the goals that bureaucrats pursue when they shape policy?

Their objectives and the resulting influence of bureaucrats on the process of policy-making come from the character of their jobs as subordinates. Bureaucrats are given responsibility for a particular patch of public policy. In its most basic form, success as a bureaucrat in dealing with your patch means essentially making sure that no awkward political, legal, or financial irregularities or embarrassments arise in it, that the policy runs reasonably well, and that, where they exist, politicians' wishes for the patch are accommodated as best they can be. This goal tends to produce three types of activity which shape bureaucratic interventions in the policy process as far as decree-making is concerned.

Routinization

First, bureaucrats *routinize* public policy. Once a policy change has been accepted by a department or agency, irrespective of where it comes from, whether it is a party election commitment or an initiative proposed by groups or even by civil servants themselves, it has to conform to procedural and formal norms in order to become a set of legitimate policy provisions. Bureaucrats take proposals through deliberative procedures—these vary from system to system but include, among other things, intra- and inter-organizational negotiation in government, consultation with interests, approval by relevant supervisory bodies, and votes in legislatures. In order to get things to pass through these procedures they must make calculations about the strength of any political support they have from their own political leadership and whether this is enough to take the proposal through unchanged or whether they have to amend proposals in order to get them through. Routinization also requires developing the substance of the proposed policy as a set of measures that conforms to an existing body of measures in the same or similar policy area, or at least does not create awkward incompatibilities or inconsistencies.

In both forms of routinization, procedural and substantive, bureaucrats are not simply automatically translating existing 'constraints' into public policy but making judgements about how policy should be shaped to meet them. It was not, for example, automatic that the *only* solution to the problem of developing a policy on the air transport of hazardous lithium batteries in the face of industry opposition to further regulation was the curious compromise of the US Lithium Decree. It was possible that something harsher might have got through and would have gone further to satisfying the National Transportation Safety Board whose negative report on a fire at Los Angeles International Airport created the need to make a decree in the first place. In developing the proposals that ended up in the EU Fish Quota Decree, the civil servants used the existing regulatory regime (the Total Allowable Catch system) to respond to scientific advice on fish stock depletion as set out in the directives governing European fisheries. They might conceivably have proposed more radical changes to the regime. The civil servants developing the UK Fire Services Decree who set less mandatory performance targets for firefighting services could conceivably have done the reverse—they could have stuck with the more directive regime of the previous years, but instead they chose a different way of developing performance indicators for the service.

Bureaucrats typically make decisions about how to routinize policy, and it is often assumed that such decisions are conservative or biased towards the status quo, especially when helping to make policy under directed policy-making (see e.g. Aberbach *et al.* 1981: 256). This is frequently the case. Altering incrementally existing statutory provisions to accommodate a policy

change is a parsimonious way of making a policy, and the kind of 'consensus mongering' that results from procedurally mandated consultation might be expected to be likely to lead often to agreement on limited change. But it is not invariably conservative. The French Soups Decree deregulated soup production partly on the ground that this was consistent with changes introduced elsewhere in the food industry in France. The process of consultation on the UK Animal Mutilations Decree, which set out to regulate the conditions under which one surgical procedure was allowed (the laproscopic insemination of sheep), itself produced a wider set of changes to the law, covering procedures such as trimming birds' beaks, than civil servants originally anticipated.

Regularization

Second, bureaucrats *regularize* policy. Regularization refers to the activity of amending or altering policy when there is a perceived technical problem that means the law is either incomplete or deficient: there is something awry in the patch that needs straightening. Regularization is often behind consequential decrees. The change from one regime for administering the environmental protection scheme 'Forest Focus' in the EU led to the development of a new decree; and the extension of existing privacy provisions to a new database led to the US Privacy Act Decree. Much of the initiative behind decrees implementing EU legislation can be explained not as a result of any direct instruction to implement, but as a regularization of the law as civil servants see that the law in their patch is deficient and government could be open to formal infraction procedures were they not to act. Here as elsewhere, regularization can also be behind the introduction of decrees making significant policy changes. Perhaps the most significant such decree in our sample was the US Salmon Decree which reflected concerns among civil servants responsible for portions of the Endangered Species Act of 1973, confirmed by court decisions, that the law was not being properly implemented. Regularization also played a significant role in the development of the French Osteopaths decree. The law as constructed anticipated the development of a framework for regulating osteopathy as a profession and this led to the process of recasting the law surrounding the practice of osteopathy and the training of osteopaths. Moreover, within this law the decree in our sample reflected the regularization of the position of osteopaths who happened to be stuck in a no-man's-land between the old and the new regulatory regimes. The whole reform of the parts of the mental health care regime that led to the UK Mental Capacity Decree arose from the identification of gaps in the existing regime, and the deficiency was even given a name, the 'Bournewood Gap', after the name of the hospital in which an incident led to a critical European Court of Human Rights case.

Regularization is not necessarily an automatic process. In some cases where the irregularity or problems are obvious or immediate, such as where a court has identified it, the pressures for regularization are strong. Moreover, the perception of irregularities may also require significant bureaucratic judgements, judgements over whether the 'time is right' to make the changes (e.g. the EU Horse Medicines Decree, so a civil servant involved explained, might have been introduced earlier but the director general wanted to wait until after the 2004 enlargement of the European Union to start work on it) as well as whether to remedy it at all. The method for analysing decree-making did not look at the possibilities for decrees that were not developed. Large parts of primary legislation in the UK lie on the statute books 'uncommenced'—i.e. not brought into force by implementing and commencing decrees—and judgements about regularization can be expected to be reflected in what is *not* the subject of a decree.

Policy Adjustment

A third activity is *policy adjustment*. It refers to the desire to make things work better or respond to known or coming problems in the patch. In some cases this can be very similar to some forms of regularization, but the difference between the two lies essentially in whether the proposed remedies are conceived as a means of resolving some problem, or filling some lacuna, in the existing arrangements as currently conceived (regularization) or whether what is being proposed is designed as an improvement of existing arrangements (policy adjustment). Thus, for example, the US Alien Substitution Decree changed significantly the conditions of the green card scheme for immigration in order to combat the increasingly visible signs of immigration fraud and was an example of adjustment; the US Salmon Decree involved regularization as it reflected an application of the existing statutory principles which had not been implemented.

Adjustment refers to the ability of civil servants to propose changes to the arrangements in their patch to achieve what they would judge to be improvements, and this of necessity also requires bureaucratic judgements. Thus the civil servant writing the German Ship Safety Decree perceived the existing rules on ships captains being prohibited from drinking any alcohol while at sea as problematic and believed she saw a way to improve it, just as the French civil servant writing the Bird Flu Decree thought the regulations on the movement of birds could be changed to allow pigeon racing. Adjustment not only shapes the judgements of bureaucrats as they develop policy under directed and undirected policy-making, it also helps to account for the agenda-setting role of the bureaucracy. Thus, for example, the changes produced by the US Exchange Visitor Decree had been proposed by civil servants running

the scheme within the State Department and taken up by the Government Accountability Office as a recommendation which they were happy to draft and the civil servants proposing the changes to immigration policy under the US Alien Substitution Decree had to ensure that they first had political support before they could start drafting it.

The fact that some changes are considered as 'improvements' raises the question of how proposals are evaluated. On what grounds do bureaucrats evaluate whether a policy adjustment needs to be made and whether what they are proposing is an improvement? The specific rationalizations behind bureaucratic initiatives reflect a range of considerations specific to the case in hand. However the evidence from the preceding chapters does suggest that bureaucrats in the different jurisdictions tend to emphasize rather distinctive bases, in particular a distinctive *locus standi*, from which proposals for policy adjustment as well as regularization are evaluated. For the German and the American civil servants interviewed, the *locus standi* was that of themselves or their organization as experienced administrators of the relevant programmes. While not all civil servants had served for a long time looking after the particular patch, many had; moreover in the German and American cases they could call on the accumulated experience of the *Ressort* or agency.

For the French and European civil servants the *locus standi* was significantly provided by external sources of expertise—the advisory or scientific 'expert' group or, in the French case, the 'specialist' interest group. Of course in the EU case the specialist expertise was often mandated through rules that require consultation of specialist expert groups (as with the Fishing Quota Decree) or through comitology procedures. While it is also frequently mandatory to consult similar advisory and expert groups in France, significant French bureaucratic initiatives resulted from civil servants identifying interest group recommendations (the Bird Flu and Soups Decrees reflected interest group pressure) as legitimate candidates for improving their patch.

In Sweden and the UK the *locus standi* is somewhat harder to identify as bureaucratic initiative in proposing decrees was limited (Sweden) or predominantly involved regularization and adjustment (UK). However, in the UK the anticipated perspective of the minister appears to play a significant role in the decree-making initiatives that emerged from the bureaucracy, as with the need to avoid the embarrassment of the policy mess that would have resulted had not the House Information Pack (HIP) decree been passed. There were simply not enough qualified professionals to produce HIPs in the way the original legislation required, so the introduction of this part of the HIP scheme had to be delayed. Similarly, in the Police Best Value decree civil servants approached the task of changing the framework for judging the 'efficiency' of police forces in part through assessing how ministerial views on the subject had changed in favour of reducing the number of performance indicators.

CONCLUSIONS

President de Gaulle's Christmas card to me might not have been written by him personally, but it was produced by a set of procedures and routines over which he presided. Other politicians might not have replied, indeed Ludwig Erhard and Mao Tse-tung did not. De Gaulle's response could have reflected some direct volition—a specific instruction from the president to his civil servants that Christmas cards should be responded to. It may have been the product of a routine—that French politicians generally make arrangements for replying to correspondence in this way—that his civil servants interpreted without even asking him. Or it may have been something in between. Similarly, with decrees many things apart from direct involvement can link politician to government action. Shaping policy-making, and in particular shaping bureaucratic actions, is not necessarily a contact sport.

A wide range of bureaucratic routines and norms push issues to the attention of political leaders, even though the attention required from them is often minimal. All the decrees in this study reflected in some form the most powerful norm steering bureaucratic issues to the attention of political leadership: the notion that any significant choices be approved by it. Some decrees appear to manage to avoid this requirement entirely, but only because the choices they reflect are believed to have been taken earlier and already legitimized. In many cases the political leadership simply acknowledges and acquiesces in what is put in front of them or makes marginal suggestions, although in a significant number of cases it offers active and sustained guidance on what is to be done.

In all three circumstances, the fact that political leadership legitimizes bureaucratic actions is more than a democratic fiction. It underpins the whole operation of the bureaucracy. If a bureaucrat were to develop a decree without deemed or actual political authorization it would be likely to be construed less as an affront to democracy than as incompetence, as anything vaguely controversial is likely to be brought to politicians' attention anyway at some stage and anything uncontroversial is unlikely to be held up by them. One could construe this as a sort of 'fire alarm'. However, the idea that employees seek authorization for actions they take in the name of the organization for which they work, and avoid actions that are unlikely to be authorized, is such a basic feature of organizational life that the metaphor adds little to our understanding of it.

Nevertheless, the procedures for ensuring that this norm of approval is observed are somewhat variable: in Germany the formal preparation of the *Vorlage* and its progress through the politico-administrative system are set out in a gemeinsame Geschäftsordnung; in France the *cabinet* system means that the representatives of the ministry's political leadership have routine contacts with bureaucrats working on policy; and in Britain and the United States the

internal procedures are generally less formalized. Moreover, the arrangements for the involvement of the political leadership are also highly variable, from the pattern found in Sweden, where a relatively large group of political auxiliaries can take a highly active role in shaping what bureaucrats do, to the more sporadic 'hands off' pattern found in the United Kingdom.

Even taking into account the variability of political intervention in bureaucratic processes, and with the possible exception of the Swedish decrees in the study, bureaucrats nevertheless have a significant role to play in shaping decrees. Their role is generally variable and they usually have a good idea very early on whether they are dealing with policy issues in which considerable political interest is likely to be shown or whether they will be largely left to get on with developing the decree themselves—whether the issue is likely to be a case of directed, undirected, or consequential policy-making—but can switch even if things change. Once one strips away the constraints imposed by any political leadership on how bureaucrats go about drafting decrees, one finds a range of other constraints: constraints above all derived from the legal, constitutional, and organizational environment in which decrees are being developed. Bureaucratic judgements about what should be done become so intricately bound up with what can be done within the confines of this environment that the suggestion that there exists a realm of bureaucratic discretion, where bureaucrats can shape policies according to their own preferences, is at best pointing to a set of considerations that marginally affect what bureaucrats do. Bureaucrats have to exercise judgements. The evidence suggests that bureaucrats in different systems, in the exercise of these judgements, are more likely to be influenced by different features of their working environment: interest groups in France, specified sources of expertise and authority in the European Commission, the accumulated experience of the *Ressort* or agency in Germany and the US, and by interpretations of ministerial will in the UK.

How much confidence can one have in conclusions drawn from a handful of decrees when in some of our jurisdictions thousands of them are passed each year? We simply do not know for certain whether a different sample would have led to different conclusions, but it is very likely that a large random sample of all decrees would have produced a picture suggesting preponderance of consequential policy-making in countries such as France and the UK where decrees are routinely used for essentially formal purposes that would elsewhere be filled by an agency or ministerial decision or announcement. Can a few selected decrees offer a reliable guide to what goes on within bureaucracies? In some respects one can have greater confidence about the generalizability of some of the findings than others. The principles of the operation of major institutions, such as the Conseil d'État or the gemeinsame Geschäftsordnung, are unlikely to vary substantially from one decree to another. Some of the discussion, such as the analysis of how often politicians intervene in the

policy process earlier in this chapter, has offered estimates of scale and frequency based on the sample. But these should not be taken as population estimates from a sample, rather as indications that the phenomena and events to which the numbers refer are not rare or unique.

The kinds of statements for which the evidence can only be at best suggestive are those that concern the patterns of bureaucratic behaviour in individual jurisdictions. Whether the preponderance of interest group initiated legislation is truly distinctive for France or whether there are in reality plenty of examples of decrees developed under directed policy-making in Germany which the sample simply missed, are examples of issues that cannot be determined with any confidence with such a small sample. While the evidence base for such arguments in this book is a larger number of case studies than usually used in cross-national comparisons, it still does not make up the size of sample from which reliable population estimates could be drawn. Nevertheless, limited though it may be, the methodology allows for the development of plausible assessments of the everyday operation of different bureaucratic systems based on empirical evidence rather than on conjecture, the use of empirical indicators only indirectly and tenuously related to the phenomena they are supposed to refer, or other methods of making theoretical bricks without empirical straw.

Do any of the findings make any difference to what actually happens? Are some ways of making decrees better than others? One thing that has been omitted is any evaluation of the quality of the work done on decrees. It would certainly make a neat conclusion to a comparative study to be able to show that a particular feature leads to good decrees and good government and another to bad. While one might imagine that some features of decree production are more likely to result in better decrees—say the 'expertise' of the bureaucrats producing them—the simple fact is that we do not know this to be the case. It is not just that a study of this kind cannot expect to perform an evaluation of each of the decrees examined, or even that a convincing assessment of the individual contribution of a decree to the success or otherwise of broader policy objectives for which the decree is a small part is probably beyond reach, but also that political science is generally very bad at reaching a clear definition about what is successful and what unsuccessful in policy terms (McConnell 2010).

Nevertheless, the evidence does suggest that bureaucrats might be better able to make a distinctive contribution to policy-making in some jurisdictions than others. Routinization and regularization appear to be rather generalized skills of a bureaucrat. Although the legal training and indeed the place of law in the administrative process vary substantially, the ability to understand how one might put together a decree that sets your patch in order is a largely transferable skill and one could detect no appreciable difference between jurisdictions in the ability of bureaucrats to exercise it. The most creative contribution of bureaucrats is that which brings the experience of bureaucrats

as a group that actually manages and/or delivers public policies to bear on the deliberative problem-solving process of policy design—the policy adjustment role of bureaucrats. While bureaucrats from all jurisdictions were involved to some degree in policy adjustment, it was primarily in the United States and Germany, where agencies and *Ressorts* served as repositories of past experience and where lengthy service in a particular position or sector is not uncommon, that the *locus standi* from which policy adjustment appears to be developed is that of bureaucratic experience. Rather than holding up a mirror to political elites by concentrating on anticipating their wishes or selectively transmitting the proposals of interest groups, one might expect the contribution of such bureaucratic expertise to problem-solving to be valuable not necessarily because it is 'right', but because it brings a valuable perspective to the process of policy-making that otherwise is lost.

Where do these findings stand in relation to the optimism or pessimism about bureaucracy and democratic political control discussed in the first chapter? On the one hand they fall into the optimists' camp. The idea that bureaucrats use their position to shape policy as they wish away from the gaze, if not control, of politicians finds no supporting evidence. In fact a range of general procedures, bureaucratic norms, and institutional arrangements specific to individual systems ensure that politicians have a chance to intervene in even the tiniest issues of public policy should they wish. Moreover, they intervene more often than one might expect, even though such intervention remains sporadic and bureaucrats generally do as they are told. On the pessimistic side, little is lost from Weber's picture of modern bureaucratic society if we consider that the bureaucrats themselves do not have that much independent power. A host of constraints built up by past bureaucratic and political decisions, legal forms, and institutional structures narrow the scope for political choices. Bureaucrats as well as politicians are caught up in Weber's 'iron cage of bondage'.

ANNEX TO CHAPTER 8: CLASSIFICATION OF MAJOR PROPERTIES OF DECREES

Name	Country	Political involvement Initiation	Political involvement Development	Political involvement Legitimation	Significance	Scientific	Form of Policy-Making
Employee Insurance	D	Not involved	Passive	Passive	Minor	No	Consequential
Fiscal Equalization	D	Not involved	Passive	Passive	Minor	Yes	Consequential
Noise Maps	D	Active	Active[i]	Passive	Moderate	Yes	Undirected
Milk Quotas	D	Passive	Passive	Passive	Moderate	No	Undirected
Civil Emergencies	D	Not involved	Not involved	Passive	Moderate	No	Undirected
Ship Safety	D	Not involved	Not involved	Passive	Moderate	No	Undirected
Forest Focus	EU	Not involved	Not involved	Passive	Minor	No	Consequential
Tariff Simplification	EU	Not involved	Not involved	Not involved	Minor	No	Consequential
Silkworm	EU	Not involved	Not involved	Not involved	Minor	No	Consequential
Stability Instrument	EU	Active	Active	Active	Major	No	Directed
Fish Quotas	EU	Not involved	Active	Active	Major	Yes	Directed
Marco Polo	EU	Active	Active	Passive	Major	No	Directed
Horse Medicines	EU	Not involved	Not involved	Passive	Moderate	Yes	Undirected
Casinos	F	Active	Active	Active	Major	No	Directed
Osteopaths	F	Active	Active	Active	Major	Yes	Directed
Farmers	F	Passive	Active	Active	Major	No	Directed
Bird Flu	F	Not involved	Passive	Active	Moderate	Yes	Undirected
Soups	F	Not involved	Not involved	Passive	Moderate	Yes	Undirected
Rhine	F	Not involved	Not involved	Passive	Moderate	Yes	Undirected
Cosmetics	F	Not involved	Not involved	Passive	Moderate	Yes	Undirected
Housing	F	Not involved	Not involved	Passive	Moderate	No	Undirected
Handicap	F	Not involved	Not involved	Passive	Moderate	Yes	Undirected
Champagne	F	Not involved	Not involved	Not involved	Moderate	No	Undirected
Rescue Services Agency	S	Passive	Active	Passive	Moderate	No	Consequential
Unemployed Graduates	S	Active	Active	Passive	Moderate	No	Directed

	Country				Magnitude		
Women's Organizations	S	Active	Active	Active	Major	No	Directed
Free Year	S	Active	Active	Passive	Moderate	No	Directed
Public Employment	S	Active	Active	Passive	Moderate	No	Directed
Farm Payments	S	Active	Active	Passive	Major	No	Directed
Electrical Goods	S	Active	Active	Passive	Major	No	Directed
Offender Management	UK	Not involved	Not involved	Passive	Minor	No	Consequential
Criminal Justice	UK	Passive	Passive	Passive	Minor	No	Undirected
Home Information (HIP)	UK	Active	Passive	Active	Major	No	Undirected
Fire Services	UK	Passive	Active[i]	Passive	Moderate	No	Undirected
Mesothelioma	UK	Active	Passive	Passive	Major	No	Undirected
Alcohol Disorder Zones	UK	Active	Passive	Passive	Moderate	No	Undirected
Police Best Value	UK	Passive	Passive	Passive	Moderate	No	Undirected
Mental Capacity	UK	Passive	Passive	Passive	Moderate	No	Undirected
Energy Billing	UK	Passive	Passive	Passive	Moderate	No	Undirected
Animal Mutilation	UK	Passive	Passive	Passive	Major	No	Undirected
TV Multiplex	UK	Passive	Passive	Passive	Moderate	No	Undirected
Casinos	UK	Not involved	Not involved	Passive	Moderate	No	Undirected
Privacy Act	US	Not involved	Not involved	Passive	Minor	No	Consequential
Katrina	US	Active	Active	Passive	Moderate	No	Directed
BSE	US	Active	Active	Passive	Major	Yes	Directed
Criminal Checks	US	Active	Active[i]	Passive	Moderate	No	Directed
Salmon	US	Active	Active[i]	Active	Major	Yes	Undirected
Alien Substitution	US	Passive	Active[i]	Active	Major	No	Undirected
Lithium	US	Passive	Active[i]	Passive	Moderate	Yes	Undirected
Exchange Visitor	US	Not involved	Passive	Passive	Moderate	No	Undirected
Community Connect	US	Passive	Not involved	Passive	Moderate	No	Undirected
Mentor	US	Not involved	Passive	Passive	Moderate	No	Undirected

i. Not sustained (see text).

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