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THE POLITICAL ECONOMY OF CRISIS OPPORTUNISM

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EXECUTIVE SUMMARY

Under modern ideological conditions, a national emergency produces a virtual free-for-all of policies, programs, and plans that expand the government's power in new directions and strengthen it where it previously existed. The crisis-driven surge of government growth may be analyzed usefully in terms of a multi-phase ratchet effect.

Opportunists, both inside and outside the formal state apparatus, play distinctive roles during each phase of this phenomenon. Indeed, their actions create the ratchet effect. These opportunists pursue their objectives by means of new government personnel, new government policies, new government agencies, new statutes, and new court decisions.

When the crisis ends, some emergency agencies (perhaps renamed or relocated within the bureaucracy) remain in operation; some emergency laws remain in force; and some court decisions reached during the crisis stand as precedents for future decisions, including decisions to be handed down in normal times. Above all, the populace goes forward with altered political and ideological sensibilities. Efforts to rein in the government's crisis-driven overreaching must concentrate, first, on affecting the public's thinking about how the government ought to act during an emergency and, second, on changing the machinery of government so that ill-considered or poorly justified measures cannot be adopted so easily.

THE POLITICAL ECONOMY OF CRISIS OPPORTUNISM

I Introduction

IN PERSONAL LIFE, no one relishes a crisis, but in political life, many people pray for a crisis as drought-stricken farmers pray for rain. For these people, a societal crisis promises to bring not extraordinary difficulties, dangers, and challenges, but rather enlarged opportunities. President Barack Obama's Chief of Staff Rahm Emanuel made no attempt to conceal his appreciation of such latent promise when he averred recently, "You never want a serious crisis to go to waste. . . . [T]his crisis provides the opportunity for us to do things that [we] could not do before."¹ This paper's first task is to explain the sense in which a crisis creates new opportunities for political actors and why it does so.

Politicians are not, however, the only ones who perceive opportunity in a crisis. Other types of actors also spring forth to exploit the economic, social, and political changes that crisis brings. These opportunists include ideologues who have previously failed to augment their ranks or realize their programmatic objectives; economic-privilege seekers who have previously found themselves stymied by public hostility or partisan political opposition; and militarists who see a new opening to promote their favorite foreign adventures, sometimes touting military spending as a cure for economic malaise and overseas intervention as a tonic for depressed public morale and an avenue to "national greatness." This paper's second task is to clarify how these various opportunists seek to exploit a crisis for the achievement of their particular ends and to identify the conditions that promote or impede their designs.

Anyone who has followed the news during the past year can appreciate the importance of understanding the political economy of crisis opportunism. Since the financial crisis came to a head in the summer of 2008, the nation—and, to a large extent, the whole world—has been buffeted by a tempest of unprecedented govern-

ment measures to mitigate the crisis. These steps were ostensibly intended to save large financial firms from bankruptcy; assist homeowners, businesses, and others affected by the credit stringency, the housing bust, and the deepening recession; and brake the overall economic decline with "stimulus" spending. By the end of November 2008, the government (including the Federal Reserve System) had already committed \$8.5 billion to an assortment of financial assistance measures, "including loans and loan guarantees, asset purchases, equity investments in financial companies, tax breaks for banks, help for struggling homeowners and a currency stabilization fund."² The snowball continued to roll, becoming ever larger, during the following six months. On June 15, 2009, *The Wall Street Journal* reported:

Since the onset of the financial crisis nine months ago, the government has become the nation's biggest mortgage lender, guaranteed nearly \$3 trillion in money-market mutual-fund assets, commandeered and restructured two car companies, taken equity stakes in nearly 600 banks, lent more than \$300 billion to blue-chip companies, supported the life-insurance industry and become a credit source for buyers of cars, tractors and even weapons for hunting.

. . . Government spending as a share of the economy has climbed to levels not seen since World War II. The geyser of money has turned Washington into an essential destination for more and more businesses. Spending on lobbying is up, as are luxury hotel bookings in the capital.³

We may debate whether the actual economic conditions warranted such extreme government reactions, but there is little doubt that government officials, politicians, media commentators, and substantial elements of the public have viewed the economic events of the past year as a national emergency. Thus, in the ominous meaning of the proverbial Chinese curse, we are indeed living in "interesting times." In this crisis, it behooves us

1. Charles Krauthammer, "Deception at Core of Obama Plans," *Real Clear Politics*, March 6, 2009, http://www.realclearpolitics.com/articles/2009/03/a_dishonest_gimmicky_budget.html.
2. Kathleen Pender, "Government Bailout Hits \$8.5 Billion," *San Francisco Chronicle*, November 26, 2008.
3. Bob Davis and Jon Hilsenrath, "Federal Intervention Pits 'Gets' vs. 'Get-Nots,'" *The Wall Street Journal*, June 15, 2009.

more than ever to understand the theory and the historical evidence that bear on the political economy of crisis opportunism. Our subject rises far above the realm of idle intellectual curiosity. Indeed, it has the greatest practical importance for the preservation of our prosperity and liberties.

2 Normality versus Crisis

DURING NORMAL TIMES in a modern representative democracy, political life involves much pulling and hauling with relatively little to show for all the effort. Countless individuals and interest groups seek to attain their political ends, but the legislature can attend to relatively few of these matters at the same time, and many proposals must perforce be dismissed or tabled for the time being. Moreover, as a rule (cribbed from Newton's Third Law of Motion), for every political action there is an equal and opposite reaction. Virtually every proposal of substantial consequence has both organized supporters and organized opponents, and in the great majority of cases the opponents are strong enough to block a proposal's adoption or to weaken it substantially.

It's not as though nothing gets done. Indeed, even a "do-nothing" Congress may enact hundreds of bills in a session, the regulatory agencies churn out several thousand new or revised regulations each year, and the courts decide a multitude of cases. But nearly all of these actions are fairly inconsequential. The public swallows them without choking, if indeed it has any awareness of them. Lawyers rewrite some contracts; payroll administrators and accountants tweak their software. Life goes on, altered, to be sure, but not altered greatly. As Thomas Jefferson remarked, "The natural progress of things is for liberty to yield and government to gain ground,"⁴ but in normal times, liberty does not yield greatly, and government does not gain much ground.

We may liken Jefferson's "natural progress of things" to a river's current, which flows invariably toward the sea. Most of the time this current is slow and predictable, and the river does not overflow its banks. The trees that loggers cut, trim, and shove into the river for transportation downstream we may liken to the proposals and cases that interested parties push onto the legislature, the reg-

ulatory agencies, and the courts. The floating logs are usually so numerous that when the river's current and water level are normal, logjams form, impeding the passage of nearly all the logs. Occasionally, one may break away and continue downstream, or the loggers, risking life and limb, may go onto the floating jumble and undertake to loosen the mass of logs and set some of them free to continue downstream.

In politics, the natural flow consists of an ideological current. Especially since the ascendancy of progressivism a century ago, Americans (as well as Western Europeans and others) have viewed the government as the institution of first resort for solving perceived social and economic problems. This progressive inclination, however, is not the same as a yearning for totalitarianism. Most people, including progressives, continue to believe that in normal times the government should be limited, though they disagree about where the limits should be placed. People are normally disposed to appreciate that a private sphere ought to be preserved and that, especially in economic life, the invisible hand of market relations can accomplish much good and ought not to be interfered with by the visible hand of the state.

A crisis, however, alters the fundamental conditions of political life. Like a river suddenly swollen by the collapse of an upstream dam, the ideological current becomes bloated by the public's fear and apprehension of impending dangers and its heightened uncertainty about future developments. Bewildered people turn to the government to resolve the situation, demanding that government officials "do something" to repair the damage already done and prevent further harm. The public's cry, for the most part, is not for any particular government action, because, in truth, few have a definite idea of what should be done. Nevertheless, the people demand that the government do something, trusting that government officials will react to the situation intelligently and effectively. In sum, *under modern ideological conditions*, the onset of a crisis is marked by heightened deference to government officials, trust in their judgment, and willingness to grant them discretion in selecting and implementing a course of action.⁵

In shaping a response to this public outcry, government officials draw from three major reservoirs. The first consists of plans and programs the government has already been seeking to implement but which have been

4. Thomas Jefferson to Edward Carrington, August 4, 1787, *The Jeffersonian Cyclopaedia* (New York: Funk and Wagnells, 1900), Entry No. 4683.

5. Robert Higgs, *Neither Liberty Nor Safety: Fear, Ideology, and the Growth of Government* (Oakland, CA: The Independent Institute, 2007).

blocked by public or interest-group opposition (e.g., the USA PATRIOT Act of 2001, which was mostly a collection of provisions long sought by the Department of Justice). These policies are already sitting, as it were, on the government’s shelf, and government officials need only take them down, whisk off the dust, and put them into operation as soon as they acquire authority to do so. The second source of crisis actions consists of proposals put forth by organized interest-group advocates (e.g., the Agricultural Adjustment Act of 1933, which was mostly a collection of subsidy schemes long sought by agricultural lobbies and related interest groups). Like the government’s own off-the-shelf policies, in the absence of a crisis these plans and programs may have languished for a long time without political success. Finally, the government and the interest groups may bring forward fresh proposals that they have formulated quickly as the crisis develops—attempts, so to speak, to “strike while the iron is hot” (e.g., proposals to raise the prices of agricultural exports in 1933 by abandonment of the gold standard and devaluation of the dollar in international exchange).

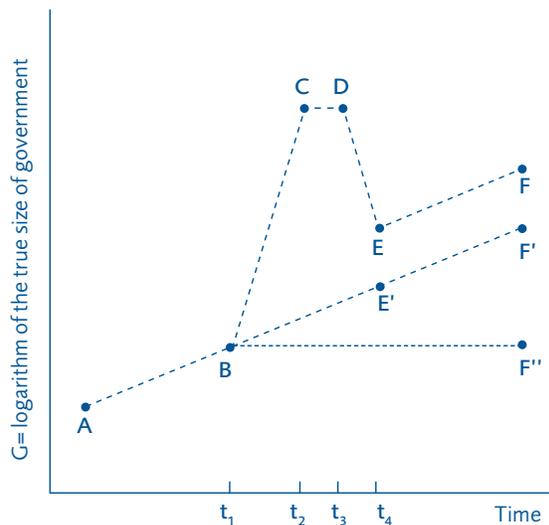
All of these proposals, under normal conditions, would serve only to clog the logjam even tighter, but in a crisis, they have a much greater chance of adoption. This enhanced potential arises in part from the public’s fear-driven insistence that the government “do something” extraordinary to restore peace, order, or prosperity. Adoption of a slew of new laws and regulations would be widely and favorably perceived as “doing something.” In addition, the government and interest groups may dynamite the logjam, so to speak, by a kind of implicit agreement that every important group may get its most-

desired policy adopted now, if only each group will set aside its normal objection to the other groups’ most-desired policies. Thus, what political scientists would call a huge “log roll” (i.e., the idea that an exchange of votes take place) serves to break the normal logjam. Crisis therefore produces a virtual free-for-all of policies, programs, and plans that expand the government’s power in new directions and strengthen it where it previously existed in a weaker form.

3 Opportunists' Actions Create the Ratchet Effect

IN ANALYZING THE crisis-driven growth of government, it is useful to think in terms of a stylized “ratchet phenomenon.” Figure 1 shows schematically how such episodes pass through five distinct phases, the net effect of which is to lift the trend line of the government’s growth to a higher level. We may identify these phases as follows: (1) pre-crisis normality, (2) expansion, (3) maturity, (4) retrenchment, and (5) post-crisis normality. The most important aspect of this representation is that the retrenchment phase is insufficient to return the true size of government (conceived as a composite index of the government’s size, scope, and power) to the level that would have been attained if the government had simply continued along the path of its growth during the phase of pre-crisis normality. Thus, although the government does surrender ground during the retrenchment phase, it does not lose enough to compensate fully for the ground gained during the expansion. It has a net gain, not only

FIGURE 1: SCHEMATIC REPRESENTATION OF THE RATCHET PHENOMENON



as compared with its pre-crisis size, but also as compared with the position it would have attained if it had continued to grow as it was growing before the onset of the crisis.⁶

Opportunists, both inside and outside the formal state apparatus, play distinctive roles during each of these phases. Indeed, it is fair to say that their actions create the ratchet effect, although, to repeat, this entire phenomenon presupposes an essential condition—a dominant ideology of progressivism or something akin to it, which disposes the public at large to regard the government as the savior of first resort in a national emergency.

During normal periods, interest groups, politically ambitious individuals, and ideological entrepreneurs work assiduously on politics as usual, seeking to gain marginal improvements in their positions, yet understanding that because of the mutually blocking logjam of competing proposals and counterproposals jostling for executive, legislative, and judicial attention and action, they will probably have to be satisfied with a half loaf, if indeed they have any success at all. These supplicants and schemers understand, however, that when a crisis comes along, their prospects will brighten substantially and that success will be more likely to the extent that they have prepared themselves and cultivated the relevant ground well in advance.

Therefore, the various individuals and groups occupy themselves in formulating and refining desired executive, legislative, and judicial actions that are more ambitious than present conditions will accommodate. As they do so, they devote resources to publicizing and promoting their ideas, to “soften up” opinion leaders and the public so that when the propitious day finally comes, people will not react strongly against a scheme that might seem unnecessary or excessive if they had never encountered arguments for it in the past. Thus, for example, if people had never heard proposals for nationalizing health insurance, they might be startled by political attempts to enact such a plan during an economic emergency such as the present one.⁷ Having softened up the public by promoting this scheme for years, however, the interest groups and ideological entrepreneurs who favor it stand a much

better chance of gaining its approval now than they otherwise would have.

Therefore, even in normal periods, when nothing extraordinary seems to be happening in politics, many groups are working hard to lay the groundwork for future gains, appreciating that ultimate success is unlikely except in a crisis, when a general dissolution of offsetting political blockages will occur as the quickening current of “do something” sentiment alters the calculations of the president, bureaucrats, legislators, and even judges. It was no mere coincidence, for example, that a revolution in the Supreme Court’s rulings on economic regulation took place in the late 1930s during the Great Depression, the nation’s greatest peacetime emergency. Judges, too, feel the pressure and feel compelled to yield to it. Justice Owen J. Roberts, the “swing man” who more than anyone else bore responsibility for the court’s turnaround in 1937, later observed, “Looking back, it is difficult to see how the Court could have resisted the popular urge.” He referred obliquely to “the tremendous strain and the threat to the existing Court, of which I was fully conscious.”⁸ During normal periods, interest groups are looking ahead to the crisis-driven emergence of, among other things, the next swing man or woman on the Supreme Court. Lawyers are honing their arguments for future briefs aimed at him or her.

Once a crisis breaks out, time becomes all-important, and each party who seeks to exploit the occasion rushes to get his nose under the policy tent first. Raymond Moley, the most important member of Franklin D. Roosevelt’s Brains Trust (the group of academics that helped devise the economic backbone of the New Deal), recalled that immediately after Roosevelt took office as president in 1933, “Washington became a mecca for the old Socialists, single-taxers, utility reformers, Civil Service reformers, and goo-goos of all types.”⁹ As Roosevelt’s “unofficial sieve on policy,” he spent hours each afternoon in appointments with “a choice variety of panacea artists.”¹⁰ He received, for example, “literally dozens” of “plans for industrial rehabilitation.”¹¹ “Official Washington,” he wrote, “was in the grip of a war psychology as surely as it had been in 1917.”¹²

6. Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987), 57–74.

7. “On Healthcare, Obama Pushes for Fast Action,” *Boston Globe*, May 29, 2009, http://www.boston.com/news/nation/articles/2009/05/29/on_healthcare_obama_pushes_for_fast_action/.

8. Quoted in Charles A. Leonard, *A Search for a Judicial Philosophy: Mr. Justice Roberts and the Constitutional Revolution of 1937* (Port Washington, NY: Kennikat Press, 1971), 144, 155.

9. Raymond Moley, *After Seven Years* (New York: Harper and Brothers, 1939), 128.

10. *Ibid.*, 167.

11. *Ibid.*, 185.

12. *Ibid.*, 191.

In the mad scramble, it is easy for even powerful interest-group advocates to get lost in the crowd. The decisive advantage rests with the executive branch of government, especially with the president and the select few who have access to or influence over him. At such times, the president's autonomy and discretion reach a maximum, and hence his capacity for shaping events to suit his own desires also peaks. In the spring of 1933, Moley wrote, "Congress was in the mood to give [President Roosevelt] power as great as that of any other President in history."¹³ But even the president's extraordinary capacity does not last indefinitely, and if he does not move quickly, opponents of his favored measures may succeed in marshaling enough counterforce to foil him. Hence, all delays, even those required for gathering and assessing the most important facts about the crisis, must be avoided in favor of, as Roosevelt expressed it in his first inaugural address in March 1933, "action, and action now." It came as no surprise, then, when President Barack Obama declared on February 5, 2009: "The time for talk is over. The time for action is now, because we know that if we do not act, a bad situation will become dramatically worse. Crisis could turn into catastrophe for families and businesses across the country."¹⁴

Like President Obama, proponents of particular government actions after the onset of a crisis generally claim that the proposed action is imperative: Unless it is adopted, horrible consequences will ensue. Therefore, they insist that delays to weigh their proposal's costs against its benefits or studies to identify adverse longer-term effects or careful considerations of who will gain and who will lose are all intolerable. They urge that the government must act immediately. In such a frenzied atmosphere, the usual efforts to deliberate, hear different sides, adhere to procedural due process, and attend to due diligence before making expenditures are likely to be set aside in favor of quick action. In the current financial debacle, for example, trillions of dollars in loans, guarantees, capital infusions, and other forms of financial aid have been committed without the knowledge even of members of Congress. Senator Byron Dorgan complained on the floor of the Senate on February 3, "We've seen money go out the back door of this government unlike any time in the history of our country. Nobody knows what went out of the Federal Reserve Board, to whom and for what

purpose. How much from the FDIC? How much from TARP? When? Why?"¹⁵

This situation strongly favors the political insiders, especially the president and those closest to him. It is no accident, therefore, that crisis has been associated not only with the growth of government, but also with the centralization of government power and fiscal resources. A crisis is a president's time in the sun. As Jimmy Carter wrote to an adviser, "When a president has authority to act unilaterally (as in a crisis), his leadership can be exerted. Otherwise, compromise, delay and confusion are more likely."¹⁶ All modern presidents understand this reality, and most of them strive to exploit it to the maximum extent. The so-called imperial presidency has grown for the most part out of "bold" presidential actions during national emergencies and from the subsequent institutionalization of such crisis-time precedents.

As the president and others closest to the pinnacle of political power act, they undertake to rationalize their actions and to marshal mass support for those actions. Hence, they typically mount unusual efforts to propagandize the public and intimidate opponents by suggesting that they are "slackers" or otherwise lacking in patriotism and, in extreme cases, jailing dissidents or expelling them from the country. To ensure that opponents are not undermining the chosen emergency policies, the government usually undertakes to place many more people under surveillance. It often justifies this action as an effort to ferret out spies, saboteurs, or terrorists, even though such surveillance invariably extends much more widely and often targets completely peaceful persons and groups, such as pacifists and people who oppose the government's actions on religious grounds. As more and more people fall under the government's watchful eye, some who might have spoken out or organized others in opposition to the government's emergency measures are silenced, and such muzzling helps the government to create the impression that no real opposition exists except for that of traitors, subversives, and "wreckers."¹⁷ Government may also organize the masses to turn them into de facto informers, putting even greater pressure on opponents of its program to keep silent, lest they expose themselves to malicious reports by unfriendly neighbors or acquaintances.¹⁸

13. *Ibid.*, 221.

14. William A. Niskanen, "Slow Down the Political Response to a Perceived Crisis," *Cato Institute*, February 9, 2009, http://www.cato.org/pub_display.php?pub_id=9951.

15. Mark Pittman and Bob Ivry, "U.S. Taxpayers Risk \$9.7 Trillion on Bailout Programs (Update 1)," *Bloomberg.com*, February 9, 2009, <http://www.bloomberg.com/apps/news?pid=20601087&sid=aGq2B3XeCKok>.

16. Michael Gerson, "Obama's Crisis: Credibility," *The Washington Post*, September 9, 2009.

Meanwhile, the government paints the sacrifices and costs entailed by its chosen emergency policies as patriotic, beneficial, and even heroic. Policies that may bring benefits to only a chosen few are depicted as required by the “public interest” or by pressing economic or social necessity. Proponents invite those who remain hostile to the chosen policies to shut up unless they have “something better” to propose or “something constructive” to say. Such debating tactics help to quiet criticism and, again, create the impression that the government’s crisis policies enjoy near-universal public approbation.

During the third, or maturity, phase of the ratchet phenomenon, the government has implemented an array of emergency plans and programs, and it occupies itself primarily in making them work passably well while the crisis persists. To call this phase “maturity” does not mean that the government’s actions have settled into an enduring pattern or system; indeed, constant changes, adjustments, reversals, and accommodations of various sorts always occur. This flux reflects the “disequilibrium” that the government has created by imposing its power on a population disposed to act differently. If, for example, the government imposes price controls, it will have to devise ways to placate persons placed at a disadvantage by such controls, make exceptions to its rules in cases where they are proving especially counterproductive to the government’s own purposes, and refine the program’s substantive details and its administrative setup.¹⁹

In this phase, the opportunists who have succeeded in gaining implementation of their favored plans and programs occupy themselves with defending their schemes against critics (many of them insiders operating elsewhere, perhaps somewhat competitively, within the government), consolidating their newly gained powers, enlarging their budgets, and generally striving to entrench their operations within the government and the overall society. In a sense, these actions take place within a crisis setting that has itself, for the time being, become the “normal” situation for the government’s operations.

So, to some extent, logjams similar to those that characterize the pre-crisis period may develop, although they will differ in their details, reflecting the way in which the crisis has brought forth an assortment of emergency programs to deal with the prevailing situation. Thus, for example, at the peak of a war, interservice rivalry may characterize the military budgeting process just as it did before the war began, only now its dimensions will be greatly enlarged—the army, navy, and air force may be fighting over the division of 10 or 20 percent of GDP, rather than 3 percent.

As the crisis continues, the emergency programs will benefit from the general public’s accommodation to the new realities of the government’s enlarged role. People not only will learn how to avoid the worst disadvantages of the new arrangements, but, more generally, will to some extent accommodate their thinking to those arrangements as well. To people who had not been subject to military conscription (e.g., Americans between 1919 and 1939), the initiation of a draft may seem to be an outrageous imposition on their liberties. Once this system of involuntary military service has operated for years, however, people may come to regard it much as they regard destructive weather—an act of nature that must be endured in the event that it happens. (When I was growing up in the 1950s, the young men of my acquaintance thought about the draft much as they thought about the possibility that a drunk driver might crash into them and kill them on the highway: Bad things happen sometimes. They did not organize protests against the draft, and when selected, virtually everybody went quietly, resigned to having his life derailed for a couple of years. I never knew anyone who tried to evade the draft in those days. Of course, once the Vietnam War began, conditions began to change in this regard.)

When the crisis ends or at least wanes significantly, many people will naturally expect that some, if not all, of the government’s extraordinary measures adopted ostensibly in response to the crisis will be terminated or greatly

17. The actions described in this paragraph were most notable during the War Between the States and the two world wars, but the government also took similar egregious actions under the COINTELPRO rubric between 1956 and the early 1970s. For a well-documented survey, see Michael Linfield, *Freedom Under Fire: U.S. Civil Liberties in Times of War* (Boston: South End Press, 1990). See also Higgs, *Neither Liberty Nor Safety*, 1–22, which gives evidence running up to the present “war on terror.” Peacetime emergencies brought forth less of this kind of government action, but by no means a complete absence of it. During the early New Deal, for example, the government strove to whip up mass support for the National Industrial Recovery Act and to stigmatize those who declined to cooperate with this national cartelization scheme as “slackers” and “chiselers.” See Higgs, *Crisis and Leviathan*, 179 and sources cited there.

18. One example is the government’s on-again, off-again Operation TIPS; for a brief discussion, see “What Is Operation TIPS?” *The Washington Post*, July 14, 2002.

19. See, for example, George P. Shultz and Kenneth W. Dam, “The Life Cycle of Wage and Price Controls,” in *Economic Policy Beyond the Headlines* (New York: Norton, 1977), 65–85.

scaled back. After all, one invariant aspect of the government's actions during the expansion phase of the ratchet phenomenon is that significant new burdens are placed on the general public. Even if people have accepted the government's measures as desirable or necessary in combating the crisis, their enthusiasm for them will eventually wear thin, especially when the measures' rationale seems to have evaporated. At this point, the government will feel pressured to "return to normalcy," as Warren G. Harding expressed the idea during his campaign for the presidency in 1920. Now, as we enter the fourth, or retrenchment, phase of the ratchet phenomenon, the opportunists who gained so much ground in the second phase and successfully defended it during the third phase are placed unavoidably on the defensive.

Although some emergency-program managers may themselves be keen for a return to normal conditions, many others will not. During the crisis, a variety of new "iron triangles" will have been created or strengthened. Each of them consists of government oversight and appropriations committees in the legislature, a government bureau responsible for making purchases or for administering regulations or controls, and a set of private-sector beneficiaries who have profited somehow from the emergency program's operation during the crisis. The leaders of these three groups, and to a lesser extent, their rank and file, stand to lose positions of substantial value in the event that the program is abolished or greatly diminished. They are therefore likely to search for and to find reasons why such retrenchment should not occur at all or at least should not be carried out on a drastic scale.

One time-honored tactic is to redefine the threat against which their crisis-time operations presumably were directed. So, for example, after the surrender of German and Japanese forces in 1945, the U.S. armed forces, which had grown spectacularly between 1940 and 1944, faced the prospect of returning to a budget of 1 percent of GDP (approximately the amount spent on the military in fiscal year 1940) after having reached a level of more than 40

percent of GDP at the peak of the war effort.²⁰ Not only would the military's cash flow be squeezed to a relative trickle, but the number of required flag officers would be diminished commensurately, which would mean the involuntary retirement of hundreds of generals and admirals who had only recently attained these high commands. Is it any surprise, then, that the leaders of the armed forces immediately perceived a need to maintain an armed force much larger than the one the nation had maintained in 1940, in order to face down the alleged threat posed by the Soviet Union?²¹

Another tactic is to shift missions while keeping the emergency agency or powers intact. An example of this is the U.S. War Finance Corporation, which had operated during World War I to steer financial capital to enterprises given high priority by the government's economic mobilization plans. After the armistice in 1918 and the peace treaty in 1919, the finance corporation's wartime managing director, Eugene Meyer, and others saw opportunity in financing U.S. exports, especially agricultural exports, to Europe at a time when the European purchasers were hard pressed to arrange their own financing.²² Similarly, the Emergency Fleet Corporation, created to build merchant ships to carry U.S. supplies to Europe during World War I, continued to build ships after the armistice and, under the Merchant Marine Act of 1920, the agency, now called the Merchant Fleet Corporation, put the ships to use by transforming itself into a government-owned shipping line.²³

Attempts to eliminate or diminish emergency programs run up against a fundamental principle of political action: People will fight harder to keep an established benefit than they will fight to obtain an identical benefit in the first place. This asymmetry assists every effort to hang onto iron triangles created or enlarged during a crisis. Legislators do not enjoy taking benefits away from constituents; doing so may cost them votes down the line. Political actors thrive on the creation of programs with concentrated benefits and dispersed costs. By the same token, they try to avoid actions that entail dispersed benefits and concentrated

20. Robert Higgs, "Introduction: Fifty Years of Arms, Politics, and the Economy," in *Arms, Politics, and the Economy: Historical and Contemporary Perspectives*, Robert Higgs, ed. (New York: Holmes and Meier, 1990), xvii.

21. I say "alleged threat" not because I take a benign view of the Soviets or minimize the genuine threat they posed to many Europeans and Asians, but because the threat they posed to U.S. national security was a much more problematic matter. The literature on the origins of the Cold War is immense, but with special relevance to the "switching missions" point I am making here, see Arlene Lazarowitz, "Promoting Air Power: The Influence of the U.S. Air Force on the Creation of the National Security State," *The Independent Review* 9 (Spring 2005): 477–99.

22. Higgs, *Crisis and Leviathan*, 153–54.

23. *Ibid.*, 153.

costs, because those on whom the concentrated losses will fall are certain to howl and to scratch and claw with every resource they can command to avoid the loss. After a crisis has clearly ended, it is not possible for beneficiaries of crisis-oriented programs to hang onto everything they have gained during the emergency, but often they can stage an organized retreat that allows them to retain some of the ground they previously occupied.

When the dust of the retrenchment fights has settled, the politico-economic system finds itself endowed with an altered dynamic. Some emergency agencies (perhaps renamed or redirected to permanent departments) remain in operation; some emergency laws remain in force; some court decisions reached during the crisis stand as precedents for future decisions, including decisions arising in normal times. Above all, the population goes forward with its political sensibilities altered from their pre-crisis configuration. If the government's crisis management can be plausibly represented as having been successful, which it often can be, then people may be more likely to trust the government to take on more tasks or to engage old problems more energetically than it did previously. Which is to say, the experience gained by having passed more or less successfully (or so people believe) through a crisis in which the government took a variety of extraordinary actions is likely to move the dominant ideology in a direction more favorably disposed toward new government initiatives in the future. We may think of this kind of change as ideological learning from experience (and propaganda).

Of course, such learning will not be left for people to arrive at on their own. The crisis-program managers are virtually certain to write memoirs recounting their heroic emergency performance and proclaiming the virtues of the extraordinary government activities they oversaw during the crisis. Ideologues who prefer bigger, more powerful government in any event will seize on the apparent lessons to be taken from the just-concluded crisis and the surge of government action that came forth in response to it. Many progressives will seek to use wartime experiences as springboards for similar, permanent government activities.

4

The Crisis Opportunist's Priority List

AS WE HAVE seen, the opportunists who emerge to exploit a national emergency have a variety of options at their

disposal. It is helpful in understanding their actions to recognize that some options serve their purposes better than others, even if they pursue simultaneously all feasible avenues to achieve their ends. The general ordering of these options, in increasing order of potency, is as follows:

- new government personnel
- new government policies
- new government agencies
- new statutes
- new court decisions, especially Supreme Court decisions

Another option, difficult to rank because it may take a multitude of specific forms, consists of new precedents in government action, responses to problems created by crisis policies, and accommodation of opponents and other aggrieved parties. Generally speaking, all of these amount to new precedents for dealing with the negative feedback that crisis-time government actions may generate. If new government actions are to succeed, the government must somehow soothe the people who are irate about its actions. Simply telling them “we’ve got the guns and you don’t” only stimulates the opposition to work harder.

As a well-known political aphorism informs us, “personnel is policy.” Even if the laws, regulations, and judicial precedents have not changed, new officeholders can move the substance of the government’s policy substantially in new directions by choosing to ignore certain issues or pour more resources into them. Benign neglect of enforcement is a time-honored way for regulators to gut a regulation, even though it remains formally in force. Alternatively, regulators or judges may begin to come down hard on violators of rules that no one was bothering to enforce previously.

So, the first, and usually the easiest, thing government officials (backed, as usual, by their supporting coalition of interest groups inside and outside the government) can do in a crisis is to replace existing officeholders with “our people.” Within the federal executive branch, this sort of replacement goes back at least to Andrew Jackson’s administration, with its forthright embrace of the “spoils system,” whereby the incoming administration tossed out the old federal employees and replaced them with loyal party members. The civil service system eventually reined in this system for the bulk of the

executive branch's personnel, but at the upper reaches, where the most important officeholders are, they continue to serve at the president's pleasure, and every president begins his tenure in office with a thorough "housecleaning" and installation of his own appointees. The onset of a national emergency often calls for another housecleaning, sometimes as a gesture of national unity (e.g., Franklin D. Roosevelt's appointment of leading Republicans Henry Stimson and Frank Knox to head the war and navy departments in 1940, when the president was striving to win over Republicans in general and Republican industrialists in particular to support his preparation for war).

Even better than replacing personnel at the outset of a crisis is the alteration of policies. To some extent, such changes, even when highly important, require nothing but executive orders as authorization. Many policies can be changed without any formal proceedings at all; department heads simply announce that henceforth certain matters are to be handled differently. Policy changes are likely to be more durable than personnel changes because policies that remain in place for some time create vested interests in their preservation—new sets of beneficiaries who stand to lose power, jobs, contracts, subsidies, or other privileges if the new policy is abandoned. Such vested interests will work hard to prevent a future policy reversal, and therefore they will help to ensure that the emergency policy, perhaps with some reconfiguration of its public rationale, continues after the emergency has passed. On May 21, 2009, *The Wall Street Journal* reported that although some big banks are seeking to repay TARP funds to the government, "many of the other emergency measures created to prop up the financial system are developing an air of permanence."²⁴

For a crisis opportunist, even better than a new policy is a new government agency, especially one with a new, designated function that effectively institutionalizes support for an interest-group agenda inside the apparatus of government itself. Such agencies may be created by executive order, as Woodrow Wilson created the War Industries Board during World War I. Agencies first created by the presidential order may then proceed to acquire statutory authority. Thus, the Federal Energy Office, created by Richard Nixon to deal with the energy crisis in 1973, became the statutorily authorized Federal Energy Administration in 1974 and ultimately the Department of Energy in 1977.

Although such a progression may appear in retrospect to have developed sequentially in response to an ongoing series of events, crisis opportunists sometimes foresee—and work to bring about—this kind of permanent institutionalization from the very beginning. Thus, as Broadus Mitchell writes, "though the framers of the [Agricultural Adjustment Act of 1933], to overcome congressional objections, presented it as an emergency measure, there is abundant evidence that all along they intended it to be the basis of long-time policy."²⁵ Although the Agricultural Adjustment Administration, which administered the act's provisions during the 1930s, was later eliminated (and the 1933 act itself was overturned by the Supreme Court in 1936), its functions were folded into the Department of Agriculture (USDA). Under authority of statutes enacted in 1936, 1938, and later years, the USDA has continued to administer a system of agricultural income and price supports since the 1930s.

For a crisis opportunist, even better than a new agency is a new law. Once a policy and its administrative agency have received statutory authority, the burden of discontinuing the policy weighs heavily on the policy's opponents. In Congress, it is much easier to pass a new statute than to repeal an existing one. Legislative procedures give the defenders an advantage (e.g., single senatorial objection to a bill, traditional filibuster, etc.). Vested interests invariably lobby to retain their statutory privileges. Rarely does the general public take much interest in a law's repeal, and public apathy fosters legislative inertia. Laws often remain on the books long after they have become completely obsolete or even absurd. Ronald Reagan famously quipped that "nothing is as permanent as a temporary government program." He might well have added, "especially if it rests on statutory authority."²⁶

For a crisis opportunist, even better than a new statute is a new court decision, especially one by the Supreme Court. Statutes mean nothing if the courts of appeal declare them unconstitutional. During a crisis, of course, the courts are likely to be especially accommodating to the government's programs: *Inter arma enim silent leges*.²⁶ Although the courts may not become completely mute or totally submissive during a peacetime crisis, as the federal courts' resistance to many New Deal measures prior to 1937 illustrates, they are always more likely to concede extraordinary powers to the government during a perceived national emergency than they would be in normal times. Once the court has rendered an obliging decision,

24. Damian Paletta, David Enrich, and Deborah Solomon, "U.S. Rescue Aid Entrenches Itself," *The Wall Street Journal*, May 21, 2009.

25. Broadus Mitchell, *Depression Decade: From New Era through New Deal, 1929–1941* (New York: Harper Torchbooks, 1969), 187.

26. Translation: In times of war, the laws fall silent.

5 Can Anything Be Done?

however, that decision remains on the record and may serve as a precedent for subsequent cases in which the government's power during normal times is contested. If statutes are difficult to overturn, Supreme Court decisions are even more difficult. Constitutional revolutions occur only at long intervals. For this reason, crisis opportunists especially prize their court victories during episodes of national emergency. To this day, for example, the Supreme Court's favorable decisions on rent controls and military conscription during World War I continue to carry legal weight.

Finally, crisis opportunists may value (above everything else they achieve during a national emergency) the lessons they learn about how to manage new powers so that opponents do not obstruct their operation or somehow nullify them. Crisis managers learn how to deal with dissent: Some opponents may be clapped in prison or deported; others may be silenced by vaguely worded warnings against unpatriotic obstructionism. Thus, in December 2001, Attorney General John Ashcroft wasted no words on nuance, declaring: "To those who . . . scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve."²⁷ Each time the crisis managers navigate through a new storm, they learn more about where the rocks are and how to avoid them (or blow them out of the water).

During World War II, for example, the government strictly censored news from the battlefields and, for most of the war, even forbade publication of photographs of dead American servicemen. In Vietnam, in contrast, the reporters got into the thick of the fighting and sent back gory, unsettling footage that, being shown regularly on the nightly news programs, helped to undermine the usual lies and distortions being distributed by the military authorities. Taking this lesson to heart, the armed forces in the U.S. attack on Iraq in 2003 put into effect a system of "embedding" reporters in military units, which had a dual result: preventing reporters from going where they might need to go to find out about the most important developments, and helping to ensure that they bond with their de facto protectors and report the news from the point of view of these soldiers.²⁸

HAVING RECOGNIZED THE dangers that inhere in the government's responses to perceived national emergencies, we might well ponder whether anything can be done to prevent or moderate the harms they cause. Although an ironclad guarantee against such harms is inconceivable, apart from the dissolution of the government that causes them, we can imagine several ways in which the government's worst crisis-time excesses might be checked.

All crisis policy making springs fundamentally from widespread public fear (or even panic) and little can be done to prevent such hysteria except challenging the government propaganda and the inaccurate news reports that magnify it. Efforts to rein in the government's overreaching must concentrate, first, on affecting the public's thinking about how the government ought to act during an emergency and, second, on changing the machinery of government so that ill-considered or poorly justified measures cannot be adopted so easily. In short, protective efforts may be directed first toward policy education and ideological change and, second, toward institutional change.

Policy education might well seek to reveal the great extent to which past government emergency measures have proved counterproductive at the time of their implementation and, even worse, when they persisted after the emergency had passed. Analysts might well emphasize how these policies have been driven by special interests posing as friends of the general public interest, while often advancing transparently fallacious arguments. Studies might well focus on the distribution of benefits and costs. A showing that some group, perhaps even a seemingly large one, benefited from a crisis-driven policy should never be accepted as a sufficient justification for the policy's adoption: Analysts should reveal the policy's costs, the distribution of these costs across the entire population, and the various pecuniary and non-pecuniary forms the costs took. They should also trace how these aspects of the policy changed over the entire period in which the policy remained in effect or continued to have discernible consequences. To a large extent, these efforts amount to little more than systematically

27. "Ashcroft: Critics of New Terror Measures Undermine Effort," CNN News, December 7, 2001, <http://archives.cnn.com/2001/US/12/06/inv.ashcroft.hearing/>.

28. See, for example, Center for Media and Democracy, "Embedded," SourceWatch, <http://www.sourcewatch.org/index.php?title=Embedded>; and Jeffrey Kahn, "Postmortem: Iraq War Media Coverage Dazzled but It Also Obscured," *UC Berkeley News*, March 18, 2004, http://www.berkeley.edu/news/media/releases/2004/03/18_iraqmedia.shtml.

fleshing out Frédéric Bastiat’s teachings about taking into account both the seen and the unseen and Henry Hazlitt’s insistence that economic analysis, properly performed, must relate to how an action affects not simply some, but all groups, and not simply the immediate situation, but the long-run future as well.

Above all, the government should never be given a pass merely because, in someone’s estimation, government officials “cared” about the people, even as they acted in ways that harmed the very people about whom they allegedly cared. Franklin D. Roosevelt and the New Deal constitute the classic case of this sort of faulty evaluation by historians and other policy analysts. Giving government officials credit for caring, rather than for actually promoting the general public interest, encourages emotional posturing and the public shedding of crocodile tears, rather than the implementation of public policies that actually benefit the people as a whole (e.g., protection of private property rights, enforcement of voluntary private contracts, non-interference with domestic and international trade, maintenance of sound money or, better yet, relinquishment of monetary matters to the private sector).

In reforming government institutions to guard against harmful government actions during a crisis, anything done to restore the classic protections of federalism and the separation of powers—fundamental aspects of U.S. governmental design that have eroded dangerously over the ages—will prove helpful. Many of the mistakes the government makes during a national emergency spring from excessively hasty action and the inordinate discretion ceded to the executive branch by the other branches of government. One may grant that emergencies may justify quicker government action, yet still insist that even in such circumstances, actions may be taken *too* hastily. What is the point of acting very quickly if the government can do so only in a biased, ill-considered, and ultimately (on net) harmful way? Gridlock is not an altogether bad thing, even in a crisis. By allowing time for competing points of view to be heard and for potentially adversely affected interests to mount and voice opposition, more balanced and better justified measures may be designed before bad policy provisions become locked in place, perhaps forever.

All emergency measures should have sunset provisions, lest special interests and other opportunists use the pretext of crisis to get a permanent foot in the door. If the government’s crisis measures have explicitly stated dates of expiration in the near future (say, in two years or less),

special interests will have less incentive to push for them because their long-term duration will be less certain and because the prospect of having to gain their future reapproval, probably under calmer conditions, will lower their prospective benefits and increase their prospective costs to the special interests.

6 Conclusion

CRISIS BRINGS OPPORTUNISTS running, both from inside and from outside the government, because crisis alters the fundamental forces that impel and constrain political action. It thereby creates unusual opportunities for extraordinary government actions, plans, and programs to be implemented. That crisis has this effect is widely understood by political actors inside and outside government. Opportunism is therefore to be expected and—especially for the general public, which is likely to be saddled with the crisis programs’ burdens and injustices—to be guarded against. Throughout U.S. history, national emergencies have served as outstanding occasions for the (ratcheting) loss of liberties. If government is by its very nature an institution allowing some people to benefit from what others have created, then national emergency creates the context in which this nature becomes expressed to the maximum. Of course, the crisis opportunists invariably claim that every move they make actually serves the broad public interest—we would scarcely expect them to say anything else, would we? But these reassurances ring hollow when contrasted with the political logic and the historical facts that pertain to national emergencies. Everyone understands that a crisis, virtually by definition, is a time of great danger, but too few understand that the greatest danger often resides not so much in the perceived threat as in the government’s ostensible measures to fend it off. The public needs a greater understanding that in a crisis, not all the barbarians are outside the walls.



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