The Dynamics of Incrementalism: Subsystems, Politics, and Public Lands

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Abstract

A good deal of research has been produced in the decade since Baumgartner and Jones' theory of punctuated equilibrium first drew attention to the dynamics of policy change over time. It has now become widely accepted that policy areas experience both long periods of incrementalism – where decisions are dominated by policy subsystems – and short periods of explosive policy change where subsystems are broken up and fundamentally restructured to reflect a new distribution of interests.

Much of the research to date follows a single issue area across time, highlighting the shift from negative to positive feedback as challengers gain momentum and successfully shift the issue from parallel to serial processing, or from the subsystem to the institutional level. Much less attention has been paid to periods between major punctuations, to the neglect of key questions such as whether incremental periods reflect the absence of challengers or the successful defense of established subsystem interests.

This research examines this question through a comparison of policy change in two segments of environmental policy: national forests and public rangelands. The successful breakup of the timber subsystem was a victory for environmental interests, yet they have been largely unsuccessful in a similar challenge to established grazing interests on public lands. The findings in this case highlight the strategic value of venue shifting and the role the judicial enforcement of the Endangered Species Act has played in disrupting one subsystem but not the other.

Key Words:

Policy Process
Subsystem
Punctuated Equilibrium
Venue Shifting
Incrementalism
Public Lands Policy
A great deal of progress appears to have been made in recent years in understanding the agenda setting stage of the policy process. After decades of largely descriptive, qualitative work that produced many interesting but rarely generalizable case studies, the policy process has experienced a renaissance of thought in the last 20 years comparable to Easton’s first conceptions of policymaking as a system (Easton 1957) or Laswell’s development of the stages metaphor (Lasswell 1956; 1971). Particularly at the national level, a number of solid empirical studies have emerged to support the theoretical modeling of the agenda process outlined by Kingdon (1984, 1995), Cobb and Elder (1971), and Baumgartner and Jones (1993, 2002).

Indeed, there seems increasingly to be a sense among scholars of progress toward a genuine understanding of agenda dynamics, with new efforts building squarely on the contributions of previous findings and comparatively little reinvention of the wheel. This is not to say that alternative perspectives have disappeared, but rather that the prominent approaches today are not diametrically opposed to one another, each armed with camps of followers and mounds of empirical studies. In fact, the most prominent alternative approach, Sabatier’s Advocacy Coalition Framework (ACF) largely embraces the punctuated equilibrium model when explaining agenda setting, but asserts that
the policy process is better conceptualized as a series of interaction between groups than as a series of transitions between stages (Sabatier and Jenkins Smith 1993).

A key element common to each of these theories is the policy subsystem. As first conceptualized by E.S. Griffith, subsystems were described as ‘whirlpools’ of activity around a specific policy area, often operating outside formal institutional relationships. As Griffith notes:

“…the relationship among these … legislators, administrators, lobbyists, and scholars … interested in a common problem is a much more real relationship than the relationships between congressmen generally or between administrators generally” (Griffith 1939, pp. 182-183).

The formation and role of subsystems in American politics continues to draw the attention of policy scholars. Variously described as iron triangles, issue networks, sub-governments, and policy monopolies, each of the dominant theories of the process acknowledges that the bulk of modern policymaking occurs in policy subsystems. For the ACF, many of the most important questions about the process revolve around how and why actors join subsystems and the dynamics of competition between competing coalitions within a specific subsystem. For Punctuated Equilibrium, the focus is on attention and understanding the conditions under which policymaking shifts from a ‘parallel’ model of information processing where multiple subsystems process multiple issues simultaneously, to a ‘serial’ model where issues are processed sequentially by the macropolitical institutions of the system, typically producing a major change, or punctuation, in the policy area.
Much of the policy-specific work on subsystems from the Punctuated Equilibrium perspective has focused on the events associated with major shifts in policy in the area (see Chapters 3 through 7 of Baumgartner and Jones 2002 for examples). A number of excellent studies have identified punctuations in a topic area and documented how actors outside the subsystem can reframe an issue, mobilize support among the previously apathetic, and draw sufficient attention to the problem to shift the problem onto the macropolitical agenda of Congress. The dynamic shifts in U.S. policy on tobacco, nuclear power, welfare, and the environment are all examples of entrenched policy subsystems that have been forced to restructure by the emergence of a competing policy image that was able to generate sufficient support and attention to leverage a place for their views in the subsystem (see Baumgartner and Jones 1993).

This paper takes a somewhat different track on the study of policy subsystems by comparing two cases of public land use policy – timber extraction and grazing rights – with strikingly similar characteristics but which have experienced two very different outcomes. The breakup of the timber-extraction subsystem was a substantial victory for environmental interests, yet these same actors have been largely unsuccessful over the same time period in similar challenges to unseat established grazing interests on public rangelands. The disparity of outcomes in these two areas prompts the underlying set of questions for this research. First, why have grazing interests been able to successfully defend their policy image while timber interests have not? Second, what makes one policy subsystem better able to resist external challenges than another?
And third, what can these cases contribute to our understanding of the dynamics of mobilization?

The findings in this study suggest that resource-extraction oriented subsystems were quite successful in both issue areas for many years. The institutional structure of the Congress and low salience of these issues outside the West allowed small coalitions, even a single Senator, to effectively repel external challenges to either subsystem. Though environmentalist groups have worked for decades to expand conflict and mobilize opposition to the dominant policy image, without a series of key judicial decisions it is possible, even likely that the timber-extraction subsystem would have been able to withstand the environmentalist challenge. This suggests that the role of judicial actors in disrupting or preserving an entrenched subsystem has been undervalued in previous explanations, and that in some cases the traditional strategies of conflict expansion and mobilization may be a necessary but not sufficient condition for policy change (Schattschneider 1960).

This research is organized in the following way. The data are discussed first, followed by the relevant aspects of Punctuated Equilibrium theory and a summary of the major developments in each topic area. This is followed by a comparison of the two cases and a discussion of the factors that contributed to the outcomes observed in these cases. In the final section, I discuss how these outcomes relate to outcomes predicted by the theory and the broader implications of these findings for the literature.
Data

The data used for this research were drawn from a number of sources. Much of the chronological detail for the two cases comes from the Congressional record, Dana’s and Fairfax’s *Forest and Range Policy* (1980), Judith Layzer’s *The Environmental Case* (2002), media reports, and a small number of GAO, BLM, and Forest Service publications. The data on committee assignments and characteristics of committee members comes primarily from a series of datasets maintained by Charles Stewart III at MIT, supplemented with data gathered by the author to include the 106th through 109th Congresses. The data on Congressional hearings were obtained from website of the Agendas Project at the Center for American Politics and Public Policy (CAPP) at the University of Washington, supplemented with additional detail from CIS abstracts.

Theoretical Foundations and Background

Baumgartner and Jones’ notions of long periods of equilibrium punctuated by bursts of change integrates and builds upon the substantial literature on policy subsystems, Cobb and Elder’s (1971) distinction between systemic and formal agendas and Kingdon’s (1995) ideas of policy streams, windows of opportunity and policy entrepreneurs. They identify the policy subsystem as a key element of agenda setting, defined as a closed system made up of those with compatible interests in a policy area. Under normal policymaking conditions the agenda

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1 1947-1993 data were collected by Nelson; 1993-1998 data were collected by Stewart and Woon. These authors are cited individually in the references. The data are available together at [http://web.mit.edu/17.251/www/data_page.html](http://web.mit.edu/17.251/www/data_page.html). 1998-2005 data were taken directly from House and Senate web pages and compiled by the author.
space allocated to an issue is dominated and controlled by the subsystem and alternative voices are systematically excluded.

However, when a group is able to expand the conflict by reframing an issue in such a way as to mobilize previously apathetic members of the electorate, they are able to draw increased attention to their perspective. Sometimes, this initiates a system of positive feedback that feeds upon itself and draws attention from other actors and issue areas until, ultimately, the resource advantage of the subsystem is overcome and a new equilibrium forms inclusive of the widened array of interests. Members of Congress, in particular, are often sensitive to the mobilization of the electorate around an issue and may reprioritize their preference structure to allow the consideration of previously excluded voices. The difficulty for challengers lies in generating enough public concern to give congressional members outside the subsystem sufficient incentives to expend their political capital on the issue.

The growth of the environmental movement in the late 1960s and early 1970s is arguably a textbook example of a Schattschneider mobilization as outlined by Baumgartner and Jones (1993). The conflict expands as opponents of the status quo work to raise awareness and mobilize supporters from the ranks of the uninvolved. A number of focusing events occurred during this time period that drew attention to the need for environmental regulations, and raised the profile of environmental groups generally as legitimate participants in the policy process. The publication of Rachel Carson’s *Silent Spring* in 1962 and the first Earth Day in April of 1970 were among the most prominent of these events.
Perhaps as a result of widely publicized events such as the spontaneous combustion of the Cuyahoga River in Cleveland, an oil spill off the coast of California that spoiled nearly 20 miles of coastal beaches, or the increasingly obvious degradation of air quality in the nation’s urban centers, Americans embraced Earth Day with unprecedented enthusiasm and a window of opportunity opened for environmental legislation which included the creation of the Environmental Protection Agency in 1970 and the passage of the Clean Air Act of 1970, the Clean Water Act of 1972, the National Environmental Policy Act of 1970, and the Endangered Species Act of 1973.

These events set the stage for environmentalist challenges in a number of established policy subsystems including the management of national forests and the public rangelands. In each of these issue areas, a policy image centered on resource extraction had prevailed for decades and each had established powerful and entrenched interests in Congress. However, in each case the rate of extraction was considered unsustainable by environmentalists, and they hoped to use the momentum generated by the environmental movement to dislodge the established policy monopolies and force a redefinition of the policy image to incorporate the values of conservation and the non-economic uses of public lands.

**The Resource Extraction Subsystem**

The establishment of the Forest Service within the Department of Agriculture speaks volumes about the resource extraction orientation with which Congress viewed the nation’s forests in 1905. In fact, the founding principle of
the agency, as articulated by Forest Service Chief Gifford Pinchot, was to insure the “continued prosperity of the agricultural, lumbering, mining, and livestock interests” by managing the land so as to produce a “permanent and accessible supply of water, wood, and forage” (Wilkerson 1992, p.128).

The pattern was much the same when it came to the nation’s rangelands. Public lands in the West were considered too dry for cultivation and were not transferred to private ownership after the pattern of the East. Ranchers however, recognized a potential in these lands for raising livestock. Generally viewed as good for nothing but forage for cattle at the time, Congress encouraged this use of the land to promote the economic development of the West. In 1906, Congress did begin to charge ranchers for grazing on Forest Service land, and in 1934 they began to regulate grazing on the remaining public lands as well, but ranching interests were quite successful at shaping the policy image so that major battles focused on how much ranchers should pay for grazing privileges rather than whether grazing should be allowed at all. In 1946, the Bureau of Land Management was created to manage the public lands, but by all accounts, the policy image in place continued to define ‘management’ as distributing allotments and collecting grazing fees (Dana and Fairfax 1980).

Insert Figure 1 about here

In Congress, the management of both national forests and rangelands has exhibited many of the characteristics of a traditional policy monopoly illustrated in Figure 1. One measure of the strength of a policy monopoly is the level of jurisdictional overlap – that is, the proportion of total Congressional attention in a
topic area that is located in a single committee (see Baumgartner, Jones and MacLeod 2000 for a discussion of jurisdictional overlap). When a single committee conducts most of the hearings on a particular topic, there is little overlap and a high degree of jurisdictional clarity with respect to that issue.  

The Senate Energy and Natural Resources committee has experienced several name changes over the years, but has maintained consistent and nearly exclusive jurisdiction over most public lands issues including both grazing rights and timber extraction. In the House of Representatives, the Resources committee has followed a similar path.  

In Table 1, the total number of hearings with descriptions that include reference to the words grazing, forests, timber, endangered species, and spotted owl are presented. 

Insert Table 1 about here  

Of the 50 hearings held during this time period that dealt specifically with grazing issues, just 10 were held outside the Public Lands subsystem. Of those, only 2 hearings engaged the issue of grazing fees directly, and these appear to have been supportive of ranching interests rather than challenges to the subsystem. When examined by chamber, the Resources committee in the House controlled 72 percent of total hearings on grazing issues between 1946 and 2002, while in the Senate, the Energy and Natural Resources committee

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2 A second component of jurisdictional clarity that is not measured here is the percentage of a committee's time that is devoted to a single issue. Baumgartner, Jones and MacLeod refer to this dimension as the span of the committee.


held more than 90 percent of the hearings over the same time period, suggesting a high degree of jurisdictional clarity in this policy area.

In contrast, the topic of forests is broader with more dimensions, such as recreation, controlling insect damage, fire prevention, and endangered species impacts. As expected, the data for these hearings exhibits substantially greater overlap than for grazing. Hearings on the keywords ‘forests’ and ‘timber’ were held by 15 and 16 different committees respectively. The lion’s share occurred in the Public Lands and Agriculture subsystems, suggesting a resource extraction frame persists, but the jurisdictional clarity for ‘forests’ and ‘timber’ issues appears to be noticeably less concentrated than for grazing.

When forest issues are framed in terms of ‘endangered species’ or in this case the ‘spotted owl’, the hearings distribution broadens somewhat. Only 31 percent of the hearings that mention the key words endangered species were controlled by the Public Lands subsystem, while 55 percent were held in committees with an environmental focus. Of the nine hearings that were held specifically on the northern spotted owl, Public Lands and Environment conducted 44 percent each, though both of the 2 referral hearings were controlled by the Environment subsystem.

One might be led to suspect that to some degree this distribution reflects the normal operation of the referrals process, but when the analysis is limited to non-referral hearings only, the ratio of public lands hearings actually increases for all but endangered species keywords. King (1997) and others have argued that committees often battle over jurisdictional ‘turf’ by holding non-referral
hearings on an issue. Indeed, according to Feeley, over half of all hearings in the modern Congress are non-referral hearings. Any committee chair may hold a non-referral hearing on any topic of interest to the committee, affording ample opportunity for “entrepreneurial members to explore topics beyond their statutory jurisdiction and attempt to expand their influence onto issues nominally beyond their control” (Feeley 2002 p. 132-33). These data show little evidence of committees extending their jurisdiction into the public lands subsystem where issues are not substantially reframed.

Committee membership patterns also reinforced the power of the public lands subsystem. While majority party status shifted several times between 1947 and 2005 in each chamber, rarely in the past 50 years have Western senators and representatives found themselves in the minority in public lands committees. Perhaps due to the generally low salience of public lands issues for legislators outside the West, representatives and senators from the West have been the majority voice in both chambers in the bulk of Congresses. Figure 2 shows a graphic illustration of this trend.

Insert Figure 2 about here

Layzer (2002) attributes the continued success of the status quo for grazing privileges to the efforts of powerful Western congressmen – especially senators – with strong ties to established ranching interests, and the data in Figure 2 appear to support this contention. In both chambers, a much higher percentage of members hail from the West than from any other single region. In
the House, membership from the West has remained relatively stable over time, dipping only occasionally below a majority.

Of course, this does not necessarily mean that all westerners see eye-to-eye on grazing, or on any public issues for that matter. In point of fact, many districts in western states are decidedly pro-environment. But as Fenno points out, members of Congress seek committee assignments that will help them achieve three goals: reelection, influence in Congress, and the opportunity to make policy in areas they think are important (Fenno 1973). Members from pro-environment districts have fewer incentives to serve on the Resources committee given the necessity of strategic committee assignments, suggesting that the patterns observed here may reflect an ideological in addition to a geographical concentration in the House.

In the Senate, the ratio of Western membership has been as high as 100 percent in the past, but has shown a clear trend toward a geographically diverse membership in recent Congresses. Representation from the West continues however, at levels that are substantially higher than any other region, and key leadership positions continue to be filled by Westerners with strong ties to ranching interests.

The lack of jurisdictional overlap and the concentration of committee membership in this case seem to suggest that a single policy image, reinforced by statute, fostered a powerful political subsystem that favored resource extraction interests and substantially limited the consideration of other perspectives. Members of Congress outside the subsystem have had few
incentives to get involved and were generally content to expend their political capital in other areas.

**The Environmentalist Challenges**

By 1980, much of what remained of old-growth forest in the nation was located in the Pacific Northwest, and timber extraction had become deeply integrated into the local economies of Washington and Oregon. While the Forest Service was required by law to harvest timber at a sustainable rate, administrators were often under pressure from western Congressmen to increase timber sales, particularly when local economies were sluggish.

The most valuable trees by far were the old-growth timber which had long since been harvested from privately owned forests. Environmentalists were alarmed at the rate at which old-growth was disappearing and began to question the fundamental resource extraction orientation of the policy. They argued that these forests had an aesthetic non-economic value to the nation that was ignored in the existing policy image. The Senate Interior committee held a series of oversight hearings on timber harvesting practices in 1971 (U.S. Senate 1971) and in 1972 the House established a commission to investigate clear cutting practices on public land but neither of these actions produced the fundamental shift in policy image sought by environmentalists (U.S. House 1972). Forest Service and BLM management practices under the Reagan administration continued to exhibit a resource extraction perspective, and environmentalist arguments about sustainability and species protection were generally unsuccessful at generating reform measures through Congress.
If anything, the situation was even worse for environmentalist challenges to grazing policy. Table 2 shows the timeline of events as reformers fought to improve range management through increased grazing fees.

Insert Table 2 about here

In virtually every major battle between 1976 and 1996, ranching interests were able to fend off reformers. While the Reagan administration was unabashedly favorable to ranching interests and had little interest in grazing reform, efforts were no more successful under the Bush administration. Four separate proposals to increase grazing fees were introduced and defeated between 1988 and 1991, despite a sea change in attitudes in the House of Representatives toward fee increases and support from the BLM. Western Senate committee members were able to kill most reforms in committee without needing to resort to the oft threatened filibuster.

Even an environmentally oriented administration with reform-oriented appointees proved insufficient to overcome the institutional advantages of a dominant subsystem. The Clinton administration was successful at issuing new management rules under Interior Secretary Bruce Babbitt and BLM head Jim Baca, but had difficulty when senators added a rider to the Appropriations bill to prevent implementation of the changes (U.S. Senate 1995). After three years of struggle over implementation of the new rules and grazing fee increases, the grazing subsystem emerged intact when in 1996 the U.S. District Court judge Clarence Brimmer rejected the Clinton administration’s new rules and returned

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5 This was indicated by the House approval of substantial grazing fee increases in the BLM reauthorization bill (1991) and the Interior Appropriations bill (1992). Both measures were subsequently defeated in the Senate.
rates to their 1987 level, instructing the BLM to honor the ‘grazing preference’ specified in its enabliing legislation.

Prior to 1990, the picture was largely the same for both grazing and timber extraction policy, but in the early 1990s their paths diverged. The controversy over the northern spotted owl opened a window of opportunity for supporters of forest preservation that has yet to be duplicated for rangelands policy. While ranching interests continued to dominate policy on the rangelands, environmentalists in the Pacific Northwest were able to successfully reframe the forest issue in a way that expanded the conflict, changing both the players and the rules of the game in the process. Committees that had been disinterested in public lands previously became interested in the spotted owl issue, as was shown in the distribution of hearings for ‘spotted owl’ and ‘endangered species’ in Table 1.

The timeline of grazing reform however, suggests that expanding the conflict through traditional means may ultimately have been insufficient to overcome the institutional advantages of western land interests by itself. A key difference, as shown in the forest management timeline in Table 3, is the entrance of judicial actors on the side of environmental interests.

Insert Table 3 about here

Until 1988, the mechanisms for overcoming an established policy subsystem were primarily political, as outlined by Schattschneider (1960). When the Sierra Club Legal Defense Fund brought suit against the Department of Interior over the denial of a petition to have the spotted owl listed as endangered,
there was considerable concern over potential backlash against the environmental movement for frivolous litigation. When the U.S. District Court found in their favor, it fundamentally shifted the balance of power within a policy subsystem.

While the battles over grazing rights were fought in Congress, the battles over timber sales were largely fought in the Courts. In 1988, injunctions were issued against both the Forest Service and the BLM prohibiting the sale of the federal timber harvest until the requirements of the Endangered Species Act (ESA) were met. Powerful interests in Congress responded to the involvement of these new actors by passing a law prohibiting injunctions on federal timber sales and mandating that the sales proceed. In an unusual move, the 9th Circuit Court of Appeals declared the law unconstitutional, restoring the previous injunctions.

In 1995, Western timber interests in the newly elected Republican Congress were able to attach a ‘timber salvage’ rider to the Emergency Supplemental Rescissions Act. This was an ambitious attempt to shift the balance of power back to extraction interests. It authorized increased logging in areas where trees had been damaged by fire or insects but still retained some commercial value. In the process, the bill suspended several provisions of ESA and NEPA for these sales.

Environmentalists, by now accustomed to challenging policy through litigation, filed a number of suits, but the U.S. District Court affirmed the constitutionality of the salvage rider and allowed the sales to proceed. The 9th
Circuit Court of Appeals however, disagreed and overturned the decision, stopping a number of scheduled sales.

The Role of Judicial Actors in a Subsystem
The many similarities between these cases make them an excellent vehicle for examining the impact of judicial actors on policy dynamics. In both cases, an established subsystem based on a philosophy of resource extraction had been in place for decades. Both cases experienced a low level of attention in Congress and were subject to the jurisdiction of public lands committees. The constituencies promoting reform in each case were part of the general environmental movement, and the strategies that each employed initially were virtually identical.

In each case, a political strategy was attempted first, complete with a redefinition of the problem and a concentrated effort to restructure the conflict by recasting the issue in terms of environmental, rather than economic terms. Each group conducted a public relations campaign with catch phrases – such as ‘welfare cowboys’, ‘hobby ranchers’, and ‘ancient forest’ – designed to frame the conflict from their perspective.

Ultimately, what distinguishes success from failure in these cases is the presence of support from judicial actors. Judicial actors however, cannot base their support on political considerations but must issue their rulings on the basis of facts and the existing laws as passed by Congress. Had the Endangered Species Act never been passed, it seems unlikely that old-growth timber sales would be at the level they are today. If spotted owl populations were not
impacted by logging, it seems unlikely that forest protection would win in a political fight against timber jobs. The lesson from these examples appears to be that an existing statute and a receptive judiciary are able to overcome entrenched interests that are unlikely to be dislodged any other way.

Advocates of grazing reform appear to have reached this conclusion as well. As Table 4 shows, the battle for America’s rangelands is shifting to the courts as well. Though there is considerable support among grazing reformers for a voluntary buyout plan being promoted in Congress, the majority of efforts seem to have shifted to the judicial arena. Since 2000, anti-grazing advocates have shifted their emphasis away from negotiating fee increases to legal actions alleging that grazing is an inherently inappropriate and inefficient use of public lands. Reformers argue that public lands provide less than 2 percent of the forage used by the livestock industry and that the recreational and ecological value of the land is considerably higher.⁶

A recent article on federal grazing policy in the William and Mary Law Review paints this trend in stark perspective:

“Private lawsuits seeking injunctive relief against the federal government, in the absence of physical sickness or financial harm, are a relatively recent cultural phenomenon. The most enthusiastic environmentalists argue that, properly pied, no case motivated by good environmental intentions is unwinnable as a matter of law….Given the continuing growth in the number of wild animal activists, outdoor enthusiasts, and the annual increase of young, idealistic lawyers going into environmental law, regional and local proliferation of environmental groups who have decided that they must litigate to be taken seriously… is likely to continue” (Rundle 2004).

⁶ Private lands in the east, which are much more productive per acre, account for 81 percent of all livestock forage. Another 17 percent comes from private lands in the west, and the remaining 2 percent from public lands (Layzer 2002 p. 137).
Implications and Conclusions

For more than a decade now, Punctuated Equilibrium scholars have studied the conditions under which policy subsystems form, change, and break up. In many, even most cases, the models have accurately explained how issues get on the agenda, whether through a successful problem redefinition and expansion of the conflict (Schattschneider mobilization) or as a result of an external focusing event that produces an ‘alarmed discovery’ of the problem (Downsian mobilization). The theory has proven equally adept at explaining the real world observations that over time, periods of incremental change are the norm but that when conditions are right we can see dramatic changes. Much of the empirical research in this vein has focused on identifying those conditions, perhaps assuming that periods of incrementalism were less interesting.

This research makes three relevant contributions to our understanding of policy subsystems. The first is that the absence of a punctuation does not necessarily indicate an absence of conflict. For all intents and purposes, the history of federal grazing policy shows an uninterrupted period of incremental adjustments to grazing fees since 1934, with no indication of subsystem challenges because all were unsuccessful. However, given the current trend in Congress to increase committee power by expanding jurisdiction into new areas, a period of uninterrupted incrementalism in a topic area may actually be a good indicator of the strength of a subsystem.

The second point is that the institutional advantages in the legislative arena – particularly the filibuster – allowed entrenched interests in rangelands
policy to fend off challenges even after the conflict had expanded to include a majority in the House, a President leading the charge, and a supportive bureaucracy. Clearly, these advantages can be overcome at some point by sufficient pressure and attention from the electorate, but these cases suggest that strong subsystems can resist even periods of positive feedback for a time.

The third point is that too little attention has been paid in the literature to the impacts of judicial actors. While some research has looked at Supreme Court decisions and the notion of venue shopping, in these cases decisions by lesser courts played a pivotal role. In fact, litigation is becoming the preferred strategy for challenging subsystems, and groups are becoming ever more creative at finding statutory leverage to get their case on the docket.

A good deal of progress has been made in recent years toward understanding how issues move onto and off the public agenda, but more research is needed to unpack the role of judicial actors at different levels and across multiple policy domains. A proper treatment of the impact of judicial actors on policy subsystems is beyond the scope of this article, but it appears clear that the message is broader than simply ‘courts matter’. To date, the dominant theories of agenda setting and subsystem dynamics are largely based on the political notions of conflict expansion and mobilization, and the comparison of these cases suggests this may be inadequate to handle the complexities of the current policy environment.

The Center for American Politics and Public Policy at the University of Washington is in the process of adding Supreme Court data to the Agendas
Project, data that may prove invaluable in future studies of subsystem challenges via the judiciary. Additional data on lawsuits filed and lower court decisions coded by major topic however, would be very useful for gauging attention levels across the judicial venue, though the sheer scope of such an effort may be prohibitive. Barring this type of large-scale data collection effort however, the impact of actions in this increasingly important venue will be visible only through qualitative comparisons such as these.
References


Figure 1: The Public Lands Resource Extraction Subsystem
Western states were operationalized using ICPSR’s region coding designation. Those designated “mountain states” or “pacific states” were considered Western with two noteworthy exceptions. First, Texas was added to the analysis for its extensive public land base and strong cattle industry, but is not in either region category. Second, Hawaii was excluded from the analysis though both Senator Akaka and Rep. Abercrombie are long-time members of their respective committees. The states included were WA, OR, CA, ID, UT, NV, NM, AZ, CO, WY, MT, AK, TX.

Figure 2: Western Influence on Public Lands Committees

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*Source:* Policy Tools Topic Search, Agendas Project website, Center For American Politics and Public Policy (CAPP), University of Washington.

*Notes:*
- <sup>a</sup> Keyword search for the total number of hearings with the selected keyword in the hearing description in U.S. Senate and House committees.
- <sup>b</sup> The committee consolidation scheme used by the Agendas Project reconciles changing names and jurisdictions over time. Information on committee designations can be found at [www.policyagendas.org/codebooks/house.html](http://www.policyagendas.org/codebooks/house.html) and [www.policyagendas.org/codebooks/senate.html](http://www.policyagendas.org/codebooks/senate.html).
- <sup>c</sup> Includes referral and non-referral hearings.
- <sup>d</sup> Comprised of the House and Senate Agriculture committees (CAPP codes 102 and 202).
- <sup>e</sup> Comprised of House Resources (CAPP code 114) and Senate Energy and Natural Resources (CAPP code 208).
- <sup>f</sup> Comprised of House Merchant Marine and Fisheries (CAPP code 116) and Senate Environment and Public Works (CAPP code 209).
- <sup>g</sup> Includes Oversight, Small Business, Appropriations, Finance, Governmental Affairs, Transportation, Intl. Relations, Indian Affairs, and Banking, Housing, and Urban Affairs.
<table>
<thead>
<tr>
<th>Impacts(^a)</th>
<th>Year</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>=</td>
<td>1934</td>
<td>Taylor Grazing Act – establishes structure and fee structure for grazing of livestock on public lands.</td>
</tr>
<tr>
<td>+</td>
<td>1946</td>
<td>Bureau of Land Management created by the Truman administration.</td>
</tr>
<tr>
<td>-</td>
<td>1976</td>
<td>Carter authorizes a study by Interior and Agriculture on raising grazing fees.</td>
</tr>
<tr>
<td>+</td>
<td>1978</td>
<td>Public Rangelands Improvement Act (PRIA) – heavily favors ranching interests.</td>
</tr>
<tr>
<td>+</td>
<td>1980</td>
<td>Idaho Senator McClure engineers a mandated 2 year phase in for stock reduction changes greater than 10%.</td>
</tr>
<tr>
<td>+</td>
<td>1981</td>
<td>Reagan administration appoints livestock industry supporters to key positions.</td>
</tr>
<tr>
<td>+</td>
<td>1986</td>
<td>Executive Order 12,548 – extends PRIA formula indefinitely.</td>
</tr>
<tr>
<td>+</td>
<td>1988</td>
<td>Reform effort to raise grazing fees – blocked in House.</td>
</tr>
<tr>
<td>+</td>
<td>1990</td>
<td>Reform effort to raise grazing fees – blocked in Senate.</td>
</tr>
<tr>
<td>+</td>
<td>1991</td>
<td>BLM Reauthorization bill – blocked in House Interior committee, but passed by Appropriations then killed in Senate. Sea change in House toward raising fees.</td>
</tr>
<tr>
<td>-</td>
<td>1993</td>
<td>Clinton administration appoints Environmentalist supporters to key positions.</td>
</tr>
</tbody>
</table>
| +              | 1993 | Appropriations bill battle  
  - Babbitt doubles grazing fees.  
  - Senate amends with a 1 year moratorium on implementation.  
  - Conference committee works out a compromise fee structure.  
  - Senator Domenici (NM) filibusters until fee increases are dropped. |
| +              | 1994 | Babbitt retracts fee increase plans. |
| -              | 1995 | Republican Congress attempt numerous times to pass legislation designed to preempt Sec. Babbitt’s proposed rule changes, but cannot produce the votes. |
| -              | 1995 | Babbitt issues new, environmentally-based grazing rules for BLM, including spots on advisory councils for environmentalists. |

Source: Adapted from narratives in Dana and Fairfax 1980, Layzer 2002, and Congressional records.  
Notes:  
\(^a\) Shifts balance of power in favor of environmentally-oriented subsystem challengers.  
\(^+\) Shifts balance of power in favor of established resource extraction subsystem.  
\(\text{=}\) Compromise outcome or no clear advantage for either side.
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<th>Impacts</th>
<th>Year</th>
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</tr>
</thead>
<tbody>
<tr>
<td>-</td>
<td>1981</td>
<td>Scientists determine the spotted owl is in danger under existing timber management practices and recommend protection.</td>
</tr>
<tr>
<td>-</td>
<td>1986</td>
<td>Greenworld petitions Fish and Wildlife Services (FWS) to have the owl listed as endangered.</td>
</tr>
<tr>
<td>+</td>
<td>1987</td>
<td>FWS denies the petition under pressure from White House.</td>
</tr>
<tr>
<td>-</td>
<td>1988</td>
<td>Sierra Club Legal Defense Fund (SCLDF) sues Department of Interior and FWS for ignoring scientific evidence in denying petition.</td>
</tr>
<tr>
<td>-</td>
<td>1988</td>
<td>U.S. District Court finds for SCLDF and orders FWS to defend its decision.</td>
</tr>
<tr>
<td>-</td>
<td>1988</td>
<td>Portland judge Helen Fry issues temporary injunction against BLM sales until a plan is in place to protect owl populations.</td>
</tr>
<tr>
<td>-</td>
<td>1988</td>
<td>Federal District judge William Dwyer enjoin Forest Service for same reasons.</td>
</tr>
<tr>
<td>-</td>
<td>1989</td>
<td>GAO report finds that FWS changed reports to facilitate denial.</td>
</tr>
<tr>
<td>+</td>
<td>1989</td>
<td>Congress passes Hatfield-Adams rider to Appropriations bill. Prohibits injunctions and allows timber sales to proceed.</td>
</tr>
<tr>
<td>-</td>
<td>1990</td>
<td>9th Circuit Court of Appeals declares Hatfield-Adams unconstitutional.</td>
</tr>
<tr>
<td>=</td>
<td>1991</td>
<td>Judge Dwyer makes his injunction against Forest Service permanent unless a valid plan is presented.</td>
</tr>
<tr>
<td>=</td>
<td>1993</td>
<td>President Clinton issues long awaited Northwest Forest Plan.</td>
</tr>
<tr>
<td>+</td>
<td>1994</td>
<td>Judge Dwyer approves Clinton’s plan and allows sales to proceed.</td>
</tr>
<tr>
<td>+</td>
<td>1995</td>
<td>U.S. District judge Michael Hogan sides with Congress on Timber Salvage rider.</td>
</tr>
<tr>
<td>-</td>
<td>1996</td>
<td>9th Circuit Court of Appeals overturns Judge Hogan, invoking ESA protections.</td>
</tr>
</tbody>
</table>

Source: Adapted from narratives in Dana and Fairfax 1980, Layzer 2002, and Congressional records.

Notes:
- Shifted balance in favor of environmentally-oriented subsystem challengers.
+ Shifted balance in favor of established resource extraction subsystem.
= Compromise outcome or no clear advantage for either side.
### Table 4: Grazing Reform Efforts Shift to Judicial Venue

*Events in bold indicate actions in a judicial venue*

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>=</td>
<td>2000</td>
<td>Oregon National Desert Association files suit against BLM for failing to “promote the highest use of the public lands” as required by Taylor Grazing Act of 1934 (ONDA 2005).</td>
</tr>
<tr>
<td>=</td>
<td>2001</td>
<td>Western Watersheds Project and Idaho Conservation League file suit against BLM for violations of NEPA and Federal Land Policy Management Act (Western Watersheds Project 2001)</td>
</tr>
<tr>
<td>=</td>
<td>2002</td>
<td>Forest Guardians file suit against BLM for violating the Clean Water Act by allowing grazing cattle to pollute water supplies (<a href="http://www.propertyrightsresearch.org">www.propertyrightsresearch.org</a> 2002).</td>
</tr>
<tr>
<td>+</td>
<td>2003</td>
<td>Voluntary Grazing Permit Buyout Act introduced in House - dies in committee (HR 3324).</td>
</tr>
<tr>
<td>-</td>
<td>2003</td>
<td>Three Judges rule that Forest Service is violating ESA by permitting grazing on Lincoln National Forest, which is habitat for the Mexican spotted owl (Forest Guardians 2003).</td>
</tr>
<tr>
<td>=</td>
<td>2004</td>
<td>Forest Guardians and others file suit against Forest Service alleging that all grazing practices across the Southwest are in violation of ESA (Forest Guardians 2004).</td>
</tr>
<tr>
<td>-</td>
<td>2005</td>
<td>District Court Judge B. Lynn Winmill rules that the BLM is violating ESA by permitting grazing on 800,000 acres of BLM land in Nevada that is habitat for the sage grouse. Grazing on these lands is halted by court order and BLM is ordered to prepare a comprehensive Environmental Impact Statement (Twin Falls Times-News 2005).</td>
</tr>
</tbody>
</table>

*Source:* Compiled by the author from media reports and court documents.

*Notes:*
- Shifts balance in favor of environmentally-oriented subsystem challengers.
- Shifts balance in favor of established resource extraction subsystem.
- Compromise outcome or no clear advantage for either side.