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Mandates or Mandarins? Control and Discretion in the Modern Administrative State

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The development of the administrative state and the growth of political democracy constitute two of the most distinctive tendencies of modern government. The development of an advanced administrative apparatus carries with it claims to the values of continuity, professionalism, expertise, and effectiveness. The other development, that of political democracy, encompasses claims to the values of responsiveness, direction, and revitalization. Notwithstanding the desirability of each set of values, the means for meshing them in an optimal mix are hardly obvious. Even though it is widely accepted in democratic settings that the permanent administration must be accountable to constitutionally elected or delegated political overseers, the precise terms of this agreement are much more controversial.

Almost certainly, few of us come to see the struggle between political control and administrative discretion in entirely neutral terms. Typically, depending on our particular inclination, we tend to adopt perspectives that place more weight either on "political" or on "administrative" values, regardless of the importance we attach to the need for an optimal mix.

Partisans of political leadership (and these almost always include the incumbent set of leaders) are doers, not doubters. They want tools, not obstacles. To the extent that doubt exists about the willingness of career administrators to carry out faithfully the policy directions of the political leadership, career administrators are viewed by political actors as impediments rather than implements. Partisans of politics, consequently, typically look to enhance procedures for control and supervision of the permanent administrative apparatus and, when deemed necessary, to politicize it.

Partisans of the career administration, on the other hand, view it as the ballast that maintains the ship of state in unsteady seas. Its resistor-like qualities to the super-charged enthusiasms of new political leaders are seen as a virtue, not a vice—a deterrent, in fact, to longer-run damage inflicted by political leaders on themselves as well as on the organizational fabric of government. Partisans of public administration thus decry efforts to reduce the independence of career officialdom or to restrict severely administrative discretion.

The political leadership view in the modern democratic polity is one that we characterize as the "mandate" perspective. Underlying it is the logic that the elected political authorities have either a right, an obli-

■ *Although wide agreement exists that in democratic settings the permanent administration must be accountable to constitutionally elected or delegated political overseers, the precise terms of the agreement are controversial. The terms are especially elusive and unclear in the United States because the separation of powers system clouds any straightforward principal-agent relationship between political authorities and career officials. Competition between the political principals, indeed, makes the administrative apparatus a resource worth competing for in an effort to influence programmatic control over public policy. Some recent literature has emphasized the need for presidents to assert stringent control over the administrative apparatus in order to assure compliance with their goals. Politicization of the federal bureaucracy is justified thereby as being either in the broader public interest or at least in a president's own interest. We argue that neither is likely to be the case, and that such efforts invite retaliation on the part of Congress.*

gation, or a legitimate need to pursue their goals and policy proposals and that it is essential for the operative instruments of government to be in strict compliance with these. The next step in this logic goes farther—indeed, a critical distance. The next step is that discretionary authority within the administrative apparatus can be meted out only to those who meet requisite tests of ardor for the goals and methods of the elected authorities.

The administrative view we shall characterize as the "mandarin" perspective—a term that resonates, for historical reasons, better in Europe than in the United States. The essence of this view is surely applicable to the American setting as well. It is that a professionalized bureaucracy (which came late to the United States, we should note) elevates the effectiveness of government. The "good government" inclinations of the Progressives, for example, predisposed them to what might be called a democratic mandarin—*the synergistic fusion of executive leadership from a democratically-inspired elected executive and an efficiency-inspired professional civil service.* Historically in the United States, much of the modern administrative apparatus was created largely to advance the goals of proficiency

and universalistic standards sought by the Progressives, and later it was used to advance the goals of social and economic reform and the development of the welfare state through the New Deal, later fortified by the Great Society. A high degree of congruence in purpose between the presidency and the career executive was once thought to exist—a truly democratic (but probably also Democratic) mandarin state was seen to be in the service of the national interest (as that largely was defined by the president).

Although no president is ever prepared to leave what he regards as truly central activities to the career executive, the broad premises of what presidents and their administrative apparatus were about appeared to be in general concordance. Well-articulated and clear-cut strategies for controlling the administrative apparatus or cutting it out of the action would await the machinations of the Nixon White House and its successors, most notably, the Reagan Administration. What the Nixon White House made clear in its operative premise about the bureaucracy was that it assumed noncompliance rather than concordance. Moreover, it conceived of the Washington bureaucracy as tending toward uncontrollable fission rather than synergistic fusion. Whatever the realities of the situation, the underlying attitudes and perceptions of the relevant actors have determined the atmosphere in which these relationships recently have developed. The self-perceived possessors of the democratic mandate worked to tighten the leash, to diminish the possibilities of noncompliant bureaucratic tactics, and wherever possible, to ensure that implementation be carried out only by trusted agents. The imperative to command has grown increasingly compelling from the perspective of the White House.

The Intellectual Justification of Political Command

In the American case, however, the constitutional basis of hierarchical command is absent or, more properly, it is plural and thus potentially contradictory. In Richard Nathan's words, "it is the wonderfully animated, competitive, and open character of the American political system that distinguishes it among the democracies of the Western world."¹

It is exactly this competitiveness—a political market system as we shall think of it—that makes the administrative apparatus a resource worth competing for in an effort to influence programmatic control over federal policy. A system of segmented power such as that exhibited in the syndrome of subgovernmental domination over programs (the triad of congressional committee or subcommittee, clientele group, and bureau) produces what economists and, in their own way, presidents see as inefficient equilibria.² While economic theorists might define these inefficient equilibria in the form of misallocated resources, presidents tend to define them in the form of subsystemic resistances to policy change.

In recent years, the president's side of this problem—

his ability to manage the executive branch and his need to procure resources in the competitive struggle to govern—has been voiced in sophisticated ways. Richard Nathan articulates well the view that presidents not only need to, but properly ought to, "influence administrative processes in a way that enables (them) to move forward on important policy objectives."³ Clearly, it is within the power of a presidential administration and within, broadly speaking, the norms of American politics and government to make ideological harmony an important criterion for noncareer administrative appointments. The key obviously is how the "reds" interact with the "experts," and whether the "change agents" recognize any legitimate bounds to their strategies for effecting change. Above all, the central issue is how the presidential administration in its efforts to influence administrative processes interacts with other legitimate authorities, especially Congress and the judiciary.

Even though it is widely accepted in democratic settings that the permanent administration must be accountable to constitutionally elected or delegated political overseers, the precise terms of this agreement are much more controversial.

Nathan concludes, however, that because the American political system is dynamic and competitive, "leadership is hard to exercise. . . . Policy changes are not easy to achieve, yet are often needed. . . . [Consequently, because] American national government at high levels is not a subtle business . . . the administrative strategy of the presidency is a valid and valuable instrument of presidential leadership."⁴ In other words, it is legitimate for presidents to seek to politicize the bureaucracy on behalf of their goals because presidential leadership is essential to the system. When the wheel turns, other presidents with different goals may also legitimately seek to politicize the bureaucracy to their own ends. The model is, as a former president used to say, perfectly clear. It is collectively rational for the system that presidents should command, and it is individually rational for presidents to seek to command.

In an especially sophisticated analysis, Terry Moe argues correspondingly that a system such as that described by Nathan gives a rational president few options.⁵ Whether individual rationality leads to collectively rational solutions is a matter that Moe leaves open to debate. Even though Moe seems strongly to imply that presidential politicization of the bureaucracy, including the institutional presidency, is a good, his argument is couched very much in the language of individual rationality. What is a rational president to do given the logic prevailing between incentives and institutions? The answer seems to be to strive for control over everything that is not nailed down.

Whether presidential command is a good or a bad is not Moe's fundamental point. Presidents seek to assert control over what they can, he asserts, mostly because

they must. The maximization of control is viewed as a systemically necessary strategy.

In the final analysis, writers as different as Lowi, Rose, Nathan, and Moe all have bought into the mandate theory. Putting other analytic problems with such a theory to one side, however, only the system of government that Rose discusses (British party government and parliamentary supremacy) has institutions that are consistent with the premises of the mandate theory.⁶ In the more structurally complex American system, Lowi has chosen the statutory instrument as the anchor.⁷ This implies a kind of congressional supremacy even while it promotes both administrative and political inflexibility. Nathan and Moe, on the other hand, appear to gravitate to the opposite pole, namely that executive command is an appropriate (either desirable or simply necessary) form of politicization. Yet, the theory of organizational command and the theory that constitutionally organizes the American system of government are at odds.⁸ The point is that in the United States it is not enough to talk about what politicians have a right to; one must specify *which* politicians. That being said, an even more fundamental point about the American system that follows from it is that in a system of divided authority, to say that politicians have the right to control is not the equivalent of saying that the president has the right to control. Such rights, as Neustadt once noted, are joint property rights.⁹ And, as Neustadt, in essence, also saw, for such rights to be exercised, they would have to be jointly authorized.¹⁰ It is possible, perhaps even probable, to suggest that this may be asking too much of a system of divided authority and of a system that frequently also divides this authority along partisan lines. But it also is likely that such a system requires either unusual consensus-building skills and/or exceedingly clear political signals from the electorate to alter existing equilibria. Otherwise, presidents belatedly may come to discover many adverse political effects from their efforts to monopolize a shared resource.

The Presidential Role in the Administrative Process

More and more, however, what the White House wants of civil servants, as ex-White House aide (and not just coincidentally also ex-convict) John Ehrlichman so picturesquely put it, is the following: "When we say jump, the answer should be 'how high?'"

In recent decades, though, presidents and their entourages have come to conclude that when asked "to jump," bureaucrats are not immediately inclined to ask "how high?" but rather "to where?" For administrations bent on redefining the role of the state or just simply jamming through their definition of priorities, questions and conditionals are mere impediments. Accordingly, they conclude that it is best to cut the operating agencies out of the action as much as possible (centralization) and, when that is not possible, to cut the careerists out of the sphere of potential influence while

relying on increased layers of politically faithful appointees (politicization).

The logic, as presidents are inclined to see it, is that popular sovereignty empowers them to command the apparatus of government. Even if one were to conclude that the only concrete expression that could be given to the public interest lies in the momentary will of the authorized political leadership, the fundamental flaw in this conception is that this will is not derivable from a single source. Members of Congress also lay claim to a piece of the mandate. When the political will of Congress and the president are coincident, ironically, the need for exclusivity of control over the administrative apparatus diminishes. When they are in conflict, it is likely that exclusivity of claims for control will be countered. It is certainly likely that when institutional interests clash and presumptive behavior increases, nothing in Washington will stay uncontested for long. That includes control of the administrative process.

Increasingly, it seems, presidents and political theorists find the idea of "neutral competence" impossible to describe. No one plausibly can lack interests; thus, all advice or discretionary possibilities are skewed. The sentiment on behalf of politicization necessarily assumes this. Consequently, it follows that if all "parties" have interests, the concept of "neutral competence" lacks operational meaning. If that is so, then it is clear that the career executives themselves have to meet political criteria or, as a group, be buried sufficiently far from the centers of power to prevent them from exercising meaningful discretion or from being able to influence decision makers. The decline of the neutral competence ideal corresponds to the rise in Washington of the adversarial ideal—the belief that everyone has an interest that they are seeking to optimize and that all expressions of collective or public interest are only facades (even if these are internalized) for the operation of individual interest or preference. Accordingly, without presidential control of the executive, it is believed by many advocates of presidential control that the expression of those interests and preferences will be chaotic overall and unaccountable.

The case for presidential politicization of the executive boils down to these suppositions. The president is the supreme legitimate governor in the American system. And since no one possibly can be neutral, it is necessary to assure that the apparatus works unequivocally on behalf of presidential goals and needs.

Collective Rationality: Control or Synthesis?

Politics provides energy and revitalization while bureaucracy brings continuity, knowledge, and stability.¹¹ One can exist without the other but only to the detriment of effective government. The problem for government and, in our view, the public interest is not to have one of these values completely dominate the other, but to provide a creative dialogue or synthesis between the two. In recent times the dialogue has turned

into monologue as deinstitutionalization and centristic command have grown apace.

Each president in recent times has begun office with the supposition that the government has no organic past. At each turn, the wheel is to be reinvented anew. At their core, arguments for furthering the process of politicization and centristic command also conclude that leadership is equivalent to the introduction of novelty and that institutionalization is an obstacle to both.

Since politicians are constitutionally empowered to direct government, there can be no argument that the administrative apparatus, other things being equal, must be responsive to the political leadership. The question is what that responsiveness may mean and what, therefore, is the responsibility of the senior civil servant. We quote here from our earlier studies the reaction of a German civil servant to this problem:

We are not here to receive orders, mentally to click our heels, and to say "Jawohl!"—that's not why we are here. On the contrary, if (senior civil servants) have a different conception (of the problem)—and they should always have a political conception—they must under certain circumstances use their conception in conjunction with their expertise and simply say, "But I would propose thus and such for this reason." And if the minister says, "No, politically we can't do that on account of these reasons," then all right, it already will be done as proposed (by the minister). It must be this way, because the minister is the responsible official, who must have the last word. That can't be avoided.¹²

Even though senior career executives in the United States are more likely to be talking to assistant secretaries instead of the ministerial equivalents of their departments, it is not difficult to imagine discussions of the sort exemplified in the quote taking place much of the time.

Although a good many claims have been made about the recalcitrance of career civil servants to follow the policy and program course that a presidential administration is embarking on, little evidence supports these assertions when effective administrative leadership is brought to bear. Good management, as reflected in open channels of communication, willingness to listen to advice, clear articulation of goals, and mutual respect, in fact, may also constitute good politics for department secretaries or their assistant secretaries. No evidence shows that good management is incompatible with effective politics unless the imposition of stringent command procedures is regarded as an integral part of a presidential administration's political style. The anti-bureaucratic styles of recent administrations suggest that this symbolic component has become at least as important as achieving results.

Responsive competence from the executive apparatus is a legitimate request of presidents up to the limits we have described. No one seriously would argue that the administrative mandarin should be unaccountable. So, the issue is what can, and should, presidents try to control. That, it turns out, is a matter that presidential administrations often must settle internally amongst

their own appointees. Even more, it is a matter that presidential administrations must define in the context of other institutions that the American system constitutes as authoritative principals. Thus, it turns out that the real issue often is not politics versus neutral competence but clarifying the principals (and their underlying principles) in the principal-agent relationship. Politicization and centralization are appropriate presidential responses in efforts to define the terms of the relationship—to a degree. Beyond that unspecifiable point, however, strategies for achieving presidential responsiveness turn into tactics for exclusive presidential rule. Efforts to achieve that level of aggrandizement are ruinous for governance in the American system; that is, they are collectively irrational. They also are ultimately ruinous for presidents whose political well-being probably is essential for effective governance and are thus likely to be individually irrational as well.

At the basis of the contention that furthering politicization of the bureaucracy is in the collective interest is the belief that presidential leadership is essential and whatever enhances it is a good.

The key issue, therefore, is not whether some degree of politicization is necessary to promote responsiveness, but rather how much. The issue is not whether responsiveness should be promoted, but rather how reflexively and to whom. The model proposed for more presidential aggrandizement, ironically, is a prescription to rob government of its capability for reality testing, and it is without doubt a model for demoralization of the career service.

Individual Rationality: What Is in a President's Interests?

The argument that presidential command of the bureaucracy needs to be furthered is rooted in the value ascribed to presidential leadership and in the view that presidential goals and directions are overriding. In this view, the bureaucracy needs to be mobilized in accordance with these goals and directions. At the basis of the contention that furthering politicization of the bureaucracy is in the collective interest is the belief that presidential leadership is essential and whatever enhances it is a good.

While we believe that Terry Moe's analysis also is sympathetic to this general view, his more fundamental argument is that presidents ineluctably are driven to politicization and centralization because of the relationship between structures and incentives in the American governmental system.

As Moe asserts:

In an ideal world, presidents might pursue a variety of institutional reforms in righting the imbalance between expectations and capacity. In the real world, they readily embrace politicization and centraliza-

tion because they have no attractive alternatives. The causes are systemic—they are rooted in the way the larger institutionalized system is put together.¹³

Two points are necessary to address because they represent important ambiguities in any analysis of the subject of presidential prerogatives and the use of the executive. The first is what it is that constitutes politicization and centralization. The second is the need to distinguish between the apparent incentives a president has (or more properly is inclined to see) and his interests.

The first point is especially difficult. It is impossible, we agree, to deny the need for politics or for political leadership of the administrative apparatus. However, the reverse argument, that which implicitly denies the need for deliberation, skepticism, and continuity, has become more frequent. What makes this issue so complex is not the readily agreed upon notion that the bureaucracy requires political leadership and supervision, but the problem of defining the legitimate thresholds of this. At what point, for example, should an issue be politicized in decision making?

Precisely because the president and presidential appointees in the executive have such short time horizons, the norms of cooperation are difficult to develop, especially once noncooperative norms of behavior have taken hold.

Rather than the broad argument as to whether politicization and centralization are goods or bads, we need to specify the mechanisms and also the political conditions under which these operate. Some mechanisms are legitimate; others are not. Some may be wise; others are not.

With regard to the second point—that of presidential incentives and interests—we distinguish different conceptions of “interest.” The discipline of economics tends to define a person’s interests by what one is willing to pay for. Interest has an operative meaning. Therefore, by this logic, how presidents behave in a situation expresses their interest. When they behave so as to aggrandize power, that expresses their interest and reflects the structure of incentives around them. But presidents, like consumers, make choices with uncertain information. Put in front of a candy counter, a child is likely to make dietary decisions inconsistent with his interests. When presidents come to office without having been exposed to career officials, but often only to horror stories told about them, they too may make decisions inconsistent with their interests.

The fact is that presidents can get into very deep trouble when they do end-runs around the bureaucracy, when command replaces deliberation, and when White House centrism brings forth the illusion of central control. Nixon’s fall from power was paved by the Watergate break-in, but it had as much to do with abuses of

the executive as anything else. Even had Watergate not occurred, but with Congress remaining in the hands of the Democratic opposition, it is hard to imagine that the congressional hand would have been stayed for long. The revelations of 1986-87 involving the White House-NSC operation of arms shipments to Iran and laundered funds to the Nicaraguan contras also threatens to erode fatally the political standing and the policy credibility of the Reagan presidency. Operating through the back door and around the institutionalized apparatus of government can lead to decisions and illegalities that are truly presidency-threatening. It is hard to imagine that this is in a president’s interests.

One of the major functions, in short, of the permanent apparatus is to serve presidents by helping them avoid stupid mistakes that threaten their political viability. The urge to command and to centralize often fails to recognize that political impulses should be subjected to tests of sobriety. Though there are a good many reasons to argue on behalf of the basic idea of “neutral competence” and against the politicization of all executive organizations, the most fundamental one that a president ought to consider is the avoidance of error and illegality that have wracked recent presidencies.

Conclusion: Monopoly and Competition in American Government

As we read the insightful and provocative analyses of Richard Nathan and Terry Moe about the need for more presidentialism (or, in Moe’s case especially, the needs of presidents themselves), we are struck by how similar their and our descriptions of the American system are. We see, as they do, a system of intense competition for resources in the struggles to define public policy and to jockey for political advantage. In broad contours, the system looks to us (two centuries removed) as Madison hoped it would. The competitive struggle leaves no single institutional actor with sufficient resources to fully dominate the system in the absence of extensive and deep consensus.

The analyses of Nathan and Moe, while imbued with some novel twists, fit broadly into a long line of presidentialist literature that urges reform to make the system more compliant with presidential objectives. The difference, as Moe indicates, is that most of that literature is organized around nonexecutive reforms whose prospects are implausible. The only significant tools available, according to this logic, are executive ones—politicizing the bureaucracy and centralizing executive command. In essence, presidents do what they have to do with what they have available. But the spirit of presidentialism is the motivating ideal. In the end, it is the president on whom falls the responsibility of governing.

That being the case, presidents need, in this line of analysis, to maximize their advantages in a system that endows them with too few. Maximizing advantage through the executive, in Moe’s view, is a norm that has evolved because presidents increasingly have found it

essential as a means of accomplishing their goals. The trouble with this norm, among other things, is that it tends to induce retaliatory behavior. When U.S. Office of Management and Budget (OMB) or presidential emissaries decide to rewrite regulations to fit their, rather than statutory, definitions of policy, Congress will retaliate when it has the political will. Because presidents have the advantage of initiative in these situations, however, they may see little to lose in pressing that advantage. But retaliatory behavior—and with it, a loss of credibility—has a good chance of being provoked.

In the short run, the system, as Moe argues, provides incentives for maximizing advantage, and since the players, especially the presidential ones, are short-term actors, it is understandable that these incentives seem compelling. Norms have evolved in the White House, particularly among Republican presidents, to politicize and centralize the executive apparatus in especially exuberant fashion. But other norms can evolve as well if, *in the long run*, ceaseless politicization and centrism are seen as having disadvantages.

Through his experiments, Robert Axelrod draws some interesting lessons about how norms of cooperation evolve. In Axelrod's model, which he calls TIT for TAT, time and the continuity of relationship are important elements.¹⁴ Negative sanctions must be timely so that they can be linked clearly to a player's move to defect. Thus, we can infer that using the executive in illegal ways should be met more swiftly than not with congressional or judicial retribution. A larger time horizon is necessary, however, to ensure that a benefit to improving a continuous relationship is perceived. When the marginal cost to defect is low, stemming from a failure to retaliate in a timely way, and, above all, from a belief that a relationship is noncontinuous, it is difficult for norms of reciprocity and cooperation to develop.

Of course, the extent to which Congress or the judiciary will react will depend largely on the prevailing political climate, and to the extent that there is reaction, it likely means that senior career officials will be squeezed from all sides. That is not likely to be a condition that enhances either the status or the role of career officials or the quality of governance. And the slowness of reaction under most circumstances means that presidents often learn the necessary lessons late, perhaps too late.

The incentives toward reciprocity need to be strengthened. If presidents are quickly and forcefully reminded about what they cannot as well as about what they can achieve by efforts to monopolize institutional power through command, perhaps, then, they will be more inclined to seek other means for influencing a government that they only partially head and which has an executive apparatus that is not under their exclusive control. Respect for that principle may turn out to afford presidents the best opportunity to achieve their goals without recurrent backlash. In a system such as ours, it is vital to develop norms of cooperative behavior. That, of course, is a different model of how a system structured around competition might work.

It is hard, however, to be optimistic about this. Precisely because the president and presidential appointees in the executive have such short time horizons, the norms of cooperation are difficult to develop, especially once noncooperative norms of behavior have taken hold.

This is the crux of a crucial current dilemma facing the American presidency as an institution. If presidents follow their short-term interests, they are likely to stimulate more and more restrictive congressional bonds on their behavior, thereby giving presidents incentives to engage in the types of behavior exemplified by the Iran-Contra Affair. Yet each individual president is likely to put his short-term interests above the institution's interests. As in many other aspects of American politics, Congress is key here. It will ultimately determine the kind of presidency we get. It must act expeditiously when presidents arrogate for their exclusive use constitutionally shared authority. Otherwise, presidents will take as theirs what Congress by its inaction bestows.

* * *

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Notes

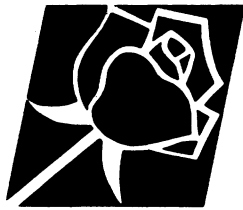
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2. Richard Rose, "Government Against Sub-Governments: A European Perspective on Washington," in Richard Rose and

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7. Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 2d. ed. (New York: W. W. Norton, 1979).
8. Bert A. Rockman, "The Modern Presidency and Theories of Accountability: Old Wine and Old Bottles," *Congress and the Presidency*, vol. 13 (Autumn 1986), p. 138.
9. Richard E. Neustadt, "Politicians and Bureaucrats," in David B. Truman, ed., *The Congress and America's Future* (Englewood Cliffs, NJ: Prentice-Hall, 1965), pp. 102-120.
10. Speaking of both the White House and Capitol Hill, in regard to direction of the bureaucracy, Neustadt comments (from present perspectives, ironically) that "at both ends of the Avenue, to urge awareness of joint stakes and common risks is not perhaps to ask too much of our established system." Neustadt, p. 120.
11. Joel D. Aberbach, Robert D. Putnam, and Bert A. Rockman, *Bureaucrats and Politicians in Western Democracies* (Cambridge: Harvard University Press, 1981), especially Chapter 8.
12. Aberbach *et al.*, p. 249.
13. Moe, p. 246.
14. Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).



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