Government Statistics: The Case for Independent Regulation—A New Legislative Proposal

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A month before the 1980 Presidential election, Ronald Reagan accused the incumbent Democratic administration of manipulating the Producer Price Index to show an artificial decrease in the inflation rate. In a campaign speech that received national publicity, Reagan claimed that the Carter administration had "jimmied" the Index, which reflects wholesale prices, by including a factor never before considered in compiling these statistics. Reagan maintained that, by tampering with economic indicators, the administration had transformed an increase in the inflation rate into an apparent decrease.

The Carter administration was not the first to be accused of distorting statistics for political gain. In 1972, Democrats claimed that the Nixon administration had fabricated economic statistics concerning farm income and had manipulated the Consumer Price Index to show a false decrease just weeks before the 1972 election. In fact, some commentators have maintained that all administrations politicize statistics; after forty-two years of work with government statistics, one au-

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3. Reagan contended that the Index should have risen by 0.4%, but because of a new system of collecting auto prices, the Index showed a 0.2% decrease. N.Y. Times, Oct. 7, 1980, § D, at 21, col. 5; Did Carter "Jimmy" Economic Statistics? Chi. Sun-Times, Oct. 30, 1980, § 1, at 4, col. 1.
5. R. REICHARD, THE FIGURE FINAGLERS 11-12 (1974); see text accompanying note 54 infra.

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thority concluded that he knew "of no administration in which some zealous politician or politically minded press relations 'eager beaver' did not, at some point, try to impair the integrity of statistical reports."\(^6\)

In addition to outright manipulation of statistics, data may also be distorted because of the role conflict facing the government statistician. Though charged with the responsibility of providing accurate information, the statistician—even if he is a career civil servant—also has a vested interest in the success of his bureau or agency, which, in turn, has an interest in the success of the incumbent administration. Thus, conspiratorial, politically inspired manipulations of federal statistics only augment the subtle, perhaps unconscious, but nonetheless ubiquitous pressures that emerge from the conflict between the statistician's professional and political roles.

In this Article, we examine the charge that federal statistics are distorted. We begin with a discussion of the role conflict facing the government statistician. We then document the unfortunate triumph of politics over professionalism and discuss the means by which economic indicators are distorted. Finally, we address the social consequences of inaccurate statistics. Ultimately, manipulation of statistics erodes self-government by undermining the ability of the people to know the truth about their government.

I. The Concept of Official Roles

Traditionally, administrative agencies have been deemed "transmission belt[s] for implementing legislative directives in particular cases."\(^7\) As government has assumed greater responsibility for providing services and for regulating or monitoring increasingly complex economic and social behavior, legislative mandates have been stated more generally and ambiguously. As a consequence, legislation rarely is self-executing; vague statutes give administrative agencies great discretion in formulating and implementing policies.\(^8\)


\(^8\) J. LANDIS, \textit{The Administrative Process} 69-73 (1938); Stewart, \textit{supra} note 7, at 1676-81.
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In carrying out their mandates, administrative agencies tend to organize themselves into bureaucracies characterized by specialization and rigidly drawn internal lines of authority.9 Highly technical responsibilities require bureaucracies to recruit and employ well-trained statistical experts.10 These experts answer directly to a supervisor who, in turn, must answer to his own superior.

The way in which a bureaucracy defines its tasks gives rise to a set of expectations for performance by its employees. A role—a set of norms defining the part the employee is to play in the organization—is created for each person who will occupy a specific position.11 Roles influence behavior by setting the requirements that superiors expect an occupant of the role to fulfill and defining his tasks in the agency.12 “If a role occupant meets the expectations, the ‘rights’ or ‘rewards’ associated with the role will be accorded him. If he fails to meet these expectations, the ‘rights’ or ‘rewards’ will be withheld from him, and ‘punishments’ may be meted out.”13 It is not surprising, therefore, that experimental research has consistently identified a positive relationship between role expectations and performance.14

II. The Government Statistician’s Role

As society has grown more complex, highly sophisticated statistical information has become more essential. Decisionmakers in all phases of government and business have come to rely on data and indices. Statisticians are charged with the role of collecting, aggregating, and often interpreting these measures. Intrinsic to their role is the expectation of accuracy: the statistician should be an objective recorder of so-

11. Social psychologists and organizational theorists have developed the concept of role to explain the influence upon the way a person performs by the way his task in the organization is defined. For a thorough discussion of role theory, see H. Simon, Administrative Behavior 110-53 (1957); Sabini & Allen, Role Theory, in Handbook of Social Psychology 488-558 (G. Lindzey 2d ed. 1968).
cial and economic phenomena, and his reports should be as precise and accurate as his mathematical tools make possible.

To insure the constant availability of timely, accurate data, government has gradually assumed the responsibility of collecting and disseminating statistical information. The severe economic conditions of the Depression prompted Franklin Roosevelt to seek accurate measures of the problems, as well as information about the effectiveness of relief efforts. Upon the recommendation of the Committee on Government Statistics and Information Services, Roosevelt established a Central Statistical Board by executive order.15 In 1935 Congress codified the authority of the Board in legislation.16 Seven years later, it passed the Federal Reports Act of 1942,17 which authorized the Director of the Bureau of the Budget to supervise the collection of government statistical information.

The rationale for allocating this responsibility to government is twofold. First, public confidence in statistics is necessary for political legitimacy. As the Committee on the Integrity of Federal Statistics has concluded, “Nothing could undermine the politician and implementation of his policy recommendations as much as an accumulated and intense public distrust in the statistical basis for the decisions which the policy-maker must inevitably make, or in the figures by which the results of these decisions are measured.”18 For example, the Committee suggested that “[i]f the public were to lose confidence in the basic data which are used by regulatory agencies, the very nature of regulation itself would be subject to distrust and controversy.”19 Likewise, business, labor, and policy planners would be crippled in their decision-making if they were not confident of the accuracy of statistical studies. Government and business alike believe that the people will respect the integrity of statistics only if they are compiled by government agencies.20 Private groups are thought to be inherently beset by biases that

19. Id. at 66.
20. Id.
would taint their work. Public and business confidence in statistics is essential, and advocates of government collection have argued that compilation by private groups would undermine that confidence.

The second reason for allocating the responsibility to government is that the statistics themselves and the expertise necessary for their collection would then be readily available. Because compilation of statistics must be a nationwide operation and, necessarily, a costly one, proponents of government collection have argued that only the federal government can guarantee constant access to the requisite data. The task exceeds the capacity of private groups; indeed, no private enterprise has the financial incentive to undertake such a massive project. Moreover, many data are generated in the process of administering federal programs, and private agencies are unlikely to have any access to this type of data.

The desire for constant availability, the need for coordination of data, and the incomplete statistical series that existing efforts produced prompted Congress to pass the Budget and Accounting Procedures Act of 1950. Title I delegated all power for compiling statistics to the executive branch. It stated:

The President . . . is authorized and directed to develop programs and to issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Government. Such regulations and orders shall be adhered to by such agencies.

It was logical to vest this authority in executive agencies, which are familiar with the specific needs for statistical information. Their expertise should insure the proper design of indices and the relevance of the indices to policymakers and scholars. In administering their programs,

22. Ewan Clague, former Commissioner of Labor Statistics, provided the example of the Consumer Price Index: "[T]he continuing statistical series should be produced by a Government agency. I do not see, for instance, how the Consumer Price Index could be produced by a private agency and have the standing which it does." The Coordination and Integration of Government Statistical Programs: Hearings Before the Subcomm. on Economic Statistics of the Joint Economic Comm., 90th Cong., 1st Sess. 140 (1967) [hereinafter cited as Hearings on Statistical Coordination]. Moreover, as the Committee on the Integrity of Federal Statistics noted, "Accurate and credible Federal Statistics are absolutely essential if the ongoing policy and planning needs of private and governmental users alike are to be satisfied." Committee on the Integrity of Federal Statistics, supra note 18, at 1.
23. Hearings on Statistical Coordination, supra note 22, at 135 (statement of Ewan Clague).
24. See text accompanying notes 27-29 infra.
they produce much of the information necessary for compiling national indices. For example, law enforcement agencies generate crime statistics, while requests for unemployment compensation provide a basis for unemployment statistics. By the end of the 1960s, five agencies, each a part of a larger cabinet-level department—the Statistical Reporting Service of the Department of Agriculture, the Bureau of Labor Statistics, the National Center for Health Statistics, the Census Bureau, and the Social Security Administration—made 76.5% of all expenditures for collection of government statistics.

Within the executive bureaucracies, special offices designed to be staffed by professional statisticians supervise the compilation of data. Although no legislative history reveals the impetus for the creation of these offices, the statisticians are presumably employed within the bureaus to intensify the pressure for precision. In theory, evaluation of the bureaus should be based on their skill in measurement and use of the most accurate statistical techniques. The bureaus' professional role seemingly would dictate scrupulous accuracy in collecting information.

III. Political Pressure on the Government Statistician

Statistical offices, however, constitute but one agency in the larger bureaucracy. The desire for accuracy, which should permeate the statistician's role, may often conflict with other interests within the bureaucracy. Because a bureau exists to administer government programs, its survival wholly depends upon the continued existence of these programs. Consequently, bureau heads seek to maintain and expand the responsibility of their agencies and thereby increase their own power and influence. It is in their interest to prove that their programs succeed. If a bureau's programs are successful in dealing with a chronic problem (such as unemployment, poverty among the elderly, medical needs, or agricultural production), the bureau will continue to gain funding. If the programs appear to be failing, there will be pressure on the agency from Congress and the public to eliminate them.

30. Stockfisch, supra note 10, at 461.
32. See Stockfisch, supra note 10, at 467.
ical pressures thus encourage the bureau heads to prove that their agencies are successful in solving serious social problems.

Since statistics can measure the incidence of social problems and reflect the extent to which these problems have been lessened or solved, they are instruments that Congress and the public use in assessing the success of government programs. But agencies that have a vested interest in proving that their programs are successful are the very bodies that compile the statistics. As a result, while accuracy may theoretically remain the statistician's byword, a competing role emerges for the government statistician—that of advocate for agency programs.

Various factors insure that the statistician's role as an advocate will often triumph. The administrators of statistical bureaus wield great influence over the collection of statistics. They determine whether to continue a statistical program, the bases for measurement, the frequency of compilation, and the nature of the statistical tool. These administrators, who also control personnel policies, are likely to hire statisticians who share their outlook. Thus, one commentator spoke of "political clearance" procedures for members of statistical organizations and the resultant search for Republican statisticians and demographers during the Nixon administration. Personnel policies within the agencies—promotions, rewards, and firings—also reflected the motives of bureau heads. These institutional pressures make it likely that statisticians will adopt the role of advocate. Bureau administrators who expect data to help the agency may design incentives to make such an expectation the norm within the bureau. Statisticians may then shape their behavior through modeling—imitation of the behavior of those whose approval they desire—thus fulfilling the administrators' expectations.

Personal contacts within the agency reinforce the statistician's perception of his role. Administrators pressure statisticians to provide statistics that will "make a case" to show the agency in a favorable light and supply the type of data that will lend seemingly objective support to their employer's side of the debate, making a given administration, administrator, or agency "look good."

33. 1 FEDERAL STATISTICS, supra note 10, at 28-29, 49-51, 57-59.
34. Hauser, supra note 6, at 69.
35. Id. at 69-70.
37. Hauser, supra note 6, at 68.
All of these pressures tend to distort statistical indicators. As the director of Biostatistics at Rosewell Park Memorial Institute explained:

All of us may want to tell the truth, but it isn't always easy to do this under the conditions that exist in some government agencies.

For instance, a regulatory agency may not want to hear the truth if it happens to go against the official doctrines or policy of that agency.\textsuperscript{39}

Overt political action often supplements institutional pressures in favor of advocacy: those hired to administer statistical programs may be political appointees. The practices of the Nixon administration illustrate the potential influence of politics upon statistical agencies. In 1973 the Nixon administration hired two men without statistical training or expertise to head two key statistical agencies, the Bureau of the Census and the Social and Economic Statistics Administration.\textsuperscript{40} One commentator charged that in the same year the administration, for political purposes, placed five key men within the Bureau of the Census to oversee statistical questions and analyses.\textsuperscript{41}

Political pressures can permeate the lower levels of an agency as well. When the statistician is a member of a group or committee, he or she may then be subject to heavy pressures of uniformity or conformity from other persons who seem to know what they are doing. In my experience, statisticians are not very assertive, and they tend to go along with what seems to be the majority. But what seems to be the will of the majority may really be the will of one or two persons who are planted on the committee for the specific purpose of influencing its decision.\textsuperscript{42}

Even suspicion of political pressure may be enough to induce scrupulous employees to leave the bureaus. There are numerous reports of the premature retirement of career service statisticians for political reasons.\textsuperscript{43} The result of such resignations is to make it all the more likely that the statistical agency's role will not be a purely objective one. If suspicions of political interference surround statistical agencies, it will become increasingly difficult for them to retain honest,

\textsuperscript{39} Bross, \textit{When Speaking to Washington, Tell the Truth, the Whole Truth, and Nothing but the Truth, and Do So Intelligibly}, 34 AM. STATISTICIAN 34, 34 (1980).

\textsuperscript{40} 119 CONG. REC. 23,222 (1973) (remarks of Sen. Proxmire).

\textsuperscript{41} Hauser, supra note 6, at 69. Hauser concluded that "these actions constitute a deliberate effort to place into statistical agencies an ideological point of view comparable to the placement of 'conservatives' and 'strict constructionists' on the Supreme Court." \textit{Id}.

\textsuperscript{42} Bross, supra note 39, at 34.

\textsuperscript{43} Hauser, supra note 6, at 69-70. Hauser indicated that undue political pressure has led to the premature retirement of the Deputy Director of the Census, the Chief of the Population Division, the Chief of the Construction Statistics Division, and a number of other statisticians in the Census Bureau.
professional statisticians.44

Again the result is obvious. On the one hand, the statisticians are entrusted with compiling statistical information accurately. On the other hand, their supervisors wish to use statistics to prove the effectiveness of programs in order to retain jobs and prestige. Administrative decisions, personal pressures, and political actions all increase the likelihood that statisticians will sacrifice accuracy for the bureau’s interest. The pressure for advocacy is immediate; the incentives for accuracy are more abstract and easily compromised. In the report of the President’s Commission on Federal Statistics, one authority stated this point bluntly:

[S]elf-serving motive means that seldom will information be gathered that can be used to show that a bureau’s programs . . . might not be going well, or that they may be creating unpleasant by-products . . . bureaus are frequently adroit at passing off numbers that may . . . be fabricated or the products of various manipulations . . . .45

IV. The Methods of Manipulation

If the role of advocate creates pressures to sacrifice accuracy by manipulating government statistics, several methods of manipulation are available.46 These methods include definitional manipulation,47 failure to collect damaging data,48 and fabrication.

A. Definitional Manipulation

A critical first step in the compilation of indices is the choice of definition to be used. In compiling unemployment statistics, for instance, the government must decide which people shall be counted as unemployed. Should people who leave their jobs voluntarily be considered “unemployed?” Should those people temporarily unemployed be included in the index? What constitutes “temporary” unemployment? These and other questions must be answered before an index can be compiled. No one answer is necessarily correct, and the government has answered the questions differently at different times. De-

44. Id. at 69-70.
45. Stockfisch, supra note 10, at 467-68.
46. Id.
47. Definitional manipulation includes both a self-serving choice from among possible meanings for a construct and a self-serving change of an existing definition.
48. R. Reichard, The Numbers Game 330 (1972) (“The analyst may attempt to present accurate information, but because he is obsessed with his goal, he intentionally ignores any data which might refute his basic hypothesis.”).
pending on the definition chosen, the estimates of unemployment can be raised or lowered with ease.⁴⁹ A certain measure of discretion is, of course, unavoidable, but an administration so inclined can use this discretion for self-serving ends. In the early 1970s, for example, the decision whether to include returning Vietnam veterans in the labor force was a discretionary one. Because the veterans were not included in the definition of the labor force, the unemployment rate was lower than it would otherwise have been—a smaller percentage of returning veterans had jobs than did members of the population at large. Since the number of veterans was so great, this decision had a dramatic effect on economic statistics.⁵⁰

Incumbent administrations normally resolve questions of definition in favor of themselves. Naturally, an administration attempting to justify itself and its program will favor a definitional change that would result in a lower unemployment rate. For instance, in the 1930s the Works Progress Administration (WPA) devised a procedure for counting the number of unemployed in order to determine how many jobs it would need to create. The WPA apparently wished to prove that its efforts in combating the unemployment problem had been effective. Accordingly, rather than count all people out of work, the WPA decided to label as unemployed only "active," "primary" job seekers, leaving out those who might later choose to seek employment.⁵¹ A less stringent definition of unemployment would have increased the number of people reported as unemployed and would have made it seem as though the WPA had accomplished little for the funds spent.

Similarly, one witness testified before a congressional committee:

In early 1965, the Bureau of Labor Statistics and the Bureau of the Census jointly decided that in making the monthly survey of the labor force, they would henceforth count the enrollees in certain manpower programs as either "employed" or "not in the labor force." . . . [N]o public announcement of this change in definition was ever made.

[T]he national unemployment rate at the end of 1967 was 0.4 percent lower than it would have been without the programs and the definition change . . . ⁵²

⁵¹. Moses, supra note 49, at 32.
Hence, the record on unemployment was cast in a favorable light. Even today, millions of people are excluded from the official definition of unemployment because they have not actively sought work during the four weeks preceding the count. The definition thus “may permit the Labor Department to maintain the fiction that these individuals are, in fact, different from currently active job seekers.”

Other examples of self-serving definitions illustrate the scope of the problem. In 1972 the government reversed the policy of including the cost of antismog devices in government price indices. Allegedly attempting to hold prices down, the Nixon administration ruled that the devices constituted a quality improvement, which is not counted as a price increase in government indices. The result was a significant lowering in the Consumer Price Index just weeks before the 1972 election.

In his accusation that President Carter manipulated statistics, Ronald Reagan pointed to similar changes in definitions. Specifically, Reagan condemned a change in the way the Producer Price Index reflects the discounts that the major auto manufacturers allow dealers as part of their efforts to clear out excess inventories at the end of each model year. Until 1980, the Index did not account for these “liquidation allowances.” Thus, Reagan charged that what traditionally would have been reflected as an increase in prices was shown as a decrease in October, a month before the 1980 Presidential election. Reagan contended that the “creative use of statistics by the Administration is a cruel hoax on the American people,” perpetrated to influence the election.

Still another instance of definitional manipulation consisted of broadening the definition of criminal offenders to include all people released from the judicial system even if they had been acquitted, and labeling all people who were rearrested as repeat offenders even though

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the Subcomm. on Labor of the House Comm. on Education and Labor, 91st Cong., 1st Sess. 605 (1970) (statement of Charles Killingsworth, Prof. of Labor & Industrial Relations, Michigan State University) [hereinafter cited as Hearings on the Manpower Act]. Killingsworth does not address the motives for this decision, and emphasizes that he is “not questioning the good faith of the technicians who decided upon these changes in definition.” Id. at 604. The example illustrates the effect of an unannounced definitional change; conscious and unconscious motives for a change are addressed within the text of this essay.

54. R. REICHARD, supra note 5, at 11-12.
56. Id.
they may never have been convicted. The Federal Bureau of Investigation thus could point to evidence of a high recidivism rate, for which it claimed the courts were responsible. In yet another example, a Census Bureau economist discovered an error in one of the nation’s leading economic indicators, the “M-3” series. The error stood uncorrected for four years, until the Census Bureau finally began an internal review to determine whether the indicator was accurate. Cumulative errors may have thrown the indicator off by as much as 100% over the past fourteen years.

Since the government usually does not publish definitional changes, it is reasonable to expect that the press and public would attribute improvements in statistical trends to administration policy rather than to the real cause, the change in definition. In the absence of specific notice, one has no basis to assume that a definitional change has been made; thus, misperceptions of data are common. Although the government thus succeeds in misleading the public, there is little the citizenry can do to remedy this situation, since “it is not yet a crime for the Government to give false information to its citizens” without informing anyone.

B. Failure to Collect Damaging Data

Indices may also be deliberately suspended or combined so that damaging data are not collected. For instance, the President’s Commission on Federal Statistics reported that the Urban Renewal Agency failed to determine the ultimate fate of low income people uprooted by renewal programs. Had it been determined that those who were displaced were not cared for properly, the agency would have risked intense criticism. Of course, it cannot be proved that the agency conspired to ignore these data in order to avoid embarrassment. Whether the motive was conscious or unconscious, however, the omission was self-serving. Another example of such governmental manipulation is demonstrated by the decision to halt publication of poverty statistics for fear that the statistics might indicate an increase in poverty or might fail to demonstrate the progress that the government wished to report. Here too “it is much easier to make glowing, optimistic state-

58. Zeisel, supra note 27, at 40-41.
59. Economic Indicator is Suspect, Wash. Post, Sept. 6, 1976, § D, at 11, col. 3.
60. Id.
62. See Stockfisch, supra note 10, at 468.
63. Id.
ments when information doesn’t exist than when contradictory information does exist.”64

C. Fabrication of Data

Finally, an administration can fabricate data in order to present itself in a favorable light. Before statisticians compile a final index, they subject their data to many levels of analysis. Initially, the agent in the field collects the raw data. Then the information is transmitted upward until the data are aggregated into an index. In many cases, a simple number substitution at any level could alter the final result substantially. Since calculations are cumulative, each level of analysis is based on what previously has taken place. As one authority noted, the “fabrication of data is widespread and achievable by a variety of subtle techniques.”65 Thus, an administration desiring to show growth in the domestic economy could fabricate an increase in the number of housing starts. Likewise, the inflation or unemployment statistics could be changed arbitrarily somewhere along the bureaucratic chain before release. Such fears are not pure conjecture. A ranking Agriculture Department official reported that in 1972 the Department overstated farm income by more than one billion dollars by omitting and understating certain farm costs.66 This incident led Representative Neal Smith, an Iowa Democrat, to allege that Secretary of Agriculture Earl Butz “is deliberately using phony statistics regarding farm income for electioneering purposes and has ordered that the Department not correct the errors until after the election.”67 Of course, the allegation by Democrat Smith against Republican Butz had obvious political overtones. But the problem is that such charges can be neither verified nor disproved.

The ease with which statistics can be fabricated and the difficulty in detecting the fabrication make charges such as Smith’s particularly troubling. It may seem easy to dismiss the charges of manipulation as only the allegations of irate bureaucrats or persons disappointed with a policy decision. But in light of the statistician’s role conflict, which furnishes the motive for statistical manipulation, and the easy availability of means for manipulation, it should not be surprising that incidents such as these occur. The pressure on statisticians to produce data supporting the bureaucracy’s self-interest insures that statistical series will

64. *Hearings on Federal Statistics,* supra note 50, at 35 (statement of Richard Ruggles, Prof. of Economics, Yale University).
67. *Id.*
not be compiled impartially. The statistician's role as a loyal member of the bureaucracy influences his use of definitions that skew indices to exhibit trends favorable to the agency. Likewise, the ease of fabrication and of selectively discontinuing certain series makes it inevitable that there will be countless intentional and unintentional distortions. 68

V. The Consequences of Statistical Manipulation

When advocacy triumphs over accuracy in the statistician's role definition, the consequences are immense because American society depends heavily upon government statistics. This section reviews the extent of this dependence and explores the consequences of data manipulation.

Increasingly, legislation has provided for programs that come into effect when a particular statistic reaches a given figure. These figures indicate that a problem is sufficiently serious to require remedial action. Called "trigger figures," they activate particular programs or terminate programs already in existence. 69 An example is the legislation Congress passed in 1974 to provide emergency public service jobs and expanded unemployment benefits. When national unemployment figures fell below a given level, no further funds would be appropriated. 70 Social Security benefits, the Supplemental Social Insurance program, government pensions, food stamps, public works and economic development programs, and public employment programs, to cite but a few examples, are also adjusted automatically to respond to the Consumer Price Index. 71 Over twenty years ago the President of the American Statistical Association recognized the pervasiveness of trigger legislation when he wrote that such figures have "come to determine what prices millions of farmers get for their crops, or other millions of farmers get for their day's work, or the amount of taxes a business enterprise must pay." 72 More recently, the Comptroller General has explained that


68. See Gibbons, supra note 38, at 73.
72. Wickens, supra note 21, at 3.
rates for states and local areas to determine eligibility for funds. The Economic Development Administration uses unemployment rates to establish eligibility for area assistance programs. Poverty indexes help determine who is eligible for food stamps, job corps training, and summer youth employment.

Trigger figures are important because they are the operational definitions of society's value judgments. If a particular figure remains below the trigger level, society has determined that the problem does not warrant remedial or corrective action; if it exceeds that level, continued inaction is unjustified. Two hypothetical examples illustrate the potential impact of statistical distortion upon trigger figures. First, an artificial change in the definition of the Consumer Price Index could cause the inflation rate to appear higher than it otherwise would, generating unjustified cost of living increases in wages indexed to the Consumer Price Index. Similarly, the change in definition would cause a premature increase in Social Security benefits, which in turn would require an increase in taxes (arbitrarily shifting resources from taxpayers to beneficiaries) or the depletion of the Social Security trust fund. These results would accrue not because society deemed them valuable—indeed, the results may not even be intended—but as a consequence of statistical manipulation. Of course, an artificial downward adjustment of the Consumer Price Index would have exactly the opposite effect (though one equally unjustified). It could be argued that the statistician who makes such a definitional change can anticipate its second-order effects, but changes may go unreported, and it is highly unlikely that anyone could foresee all the possible unintended consequences of a statistical change. Moreover, even if the impending changes were announced and all their effects described, remedial action would still be triggered if required by law.

Unemployment statistics offer a second example of the potential effects of distortion on trigger figures. A government acting consciously or unconsciously to improve its political fortunes might change the definition of "unemployment" in a way that understates the number of people out of work. This change probably would help the government politically, but it also would have harmful—and probably unintended—second-order effects. It would deprive those who should

73. Staats, supra note 69, at 279. Staats also noted that "the significance of these numbers has resulted in public attention to their definitions and accuracy. The series have been criticized as inaccurate because of poor technique or because they are not appropriate for representing the concerns described in the legislation." Id. at 279-80.
be benefiting from public service jobs of the chance to work (since the artificially low unemployment rate prevents the triggering of the public employment program), and it would deprive society of the intended economic stimulation resulting from the public service jobs. As with the previous example, it would be very difficult to discover all definitional changes or to cushion their unintended consequences even if the changes were known.

While the definitional changes may be cosmetic, the deprivations are real, since Congress selected the trigger figures assuming the earlier definition. The effect of the statistician's manipulation of statistics is a de facto change in the trigger figure, achieved by fiat rather than by public decision. The harm is not tempered by the statistician's innocent intent. Nor is it likely that the problem could be corrected once Congress was informed that the statistics were biased. As explained above, distortions are difficult to discover. Moreover, when definitions are changed, the old definition ceases to be used. Hence, comparable statistics are not collected, and it becomes impossible to measure the difference in statistical reports for which Congress would adjust.

It is not only in the public sector that trigger figures are influential. The Consumer Price Index, for example, is important to labor-management negotiations. Increasingly, labor unions are demanding wage-escalator clauses that automatically adjust wages as the Index changes. A report published in 1973 stated that changes in the Index automatically affected four million workers and two million retired pensioners; the number has undoubtedly increased since that date. Indeed, were there an error, for whatever reason, of only 0.1% in the Index, more than one hundred million dollars in wage-escalator provisions alone would be misallocated.

Of course, the private sector relies upon federal statistics for more than just trigger figures. The Committee on the Integrity of Federal Statistics has concluded that "nearly all facets [of] basic decisions which are essential to effective operation of the corporation are made on the basis of Federal data."76 The Committee cited many other examples of groups dependent upon government statistics, including farmers and consumers who use crop reports and other agricultural statistics, educators who rely on statistics in planning their schools' pro-

grams, and members of the news media who employ them in determining the emphasis of future reporting.77

Social scientists in particular depend upon federal statistics; indeed, those engaging in empirical research may have little choice.78 Since the collection of national statistical indices has been accepted as a federal function, and since nationwide private collection is costly and impractical, few if any alternative sources for these statistics exist. Social scientists rely upon economic statistics for econometric modeling, crime statistics in testing the effectiveness of alternative penal systems, health statistics in researching approaches to preventive medicine, census figures for basic definitions of measurement units, and numerous other statistics for research leading to the formulation of policy or the evaluation of alternative strategies for responding to social problems. Accordingly, distorted statistics severely impair their work. Several examples should establish the severity of the problem.

One example of a contaminated data base may be seen in drug statistics. Frequently, these statistics are collected by local law enforcement agencies. Myriad local collection efforts and the changing classification of drug offenses have meant that agencies have not employed consistent categories from area to area or year to year. Definitional changes reflect agencies' interest in defending their efforts against the drug problem.79 Consequently, these statistics are "often relatively useless to the serious drug researcher," because they do not permit him "to analyze trends of drug use over time or . . . to determine the patterns of drug use at any one time or even during one particular year."80 Since there is no way for the researcher to know of the definitional changes or their impact, there is no way for him to adjust for their effects. One should question the reliability of crime statistics collected by "an organization with vested interests in the results of the statistics it gathers."81 Statistical deficiencies have likewise "handicapped the development of effective policies to combat construction inflation and to

77. Id. at 67. For a full discussion of various groups that use statistics, see 1 Federal Statistics, supra note 10, at 77-102.
78. Hearings on Statistical Coordination, supra note 22, at 22 (statement of Richard Ruggles, Prof. of Economics, Yale University).
80. Id. at 992.
81. Zeisel, supra note 27, at 42. Zeisel also describes the mechanism for collecting crime statistics and details the widespread inaccuracies in reporting them.
meet future construction needs.”82 These examples, of course, do not exhaust the consequences of inaccurate statistics for social scientists; virtually every area of their research is affected.

Federal statistics are also essential to the formulation of policy in the legislative process. Article I vests all legislative power in the Congress, but without reliable information about national problems, Congress cannot legislate effectively. For example, in 1967, when the official unemployment rate underrepresented the real figure by at least 0.5%, Congress was unable to assess effectively the need for or the effects of unemployment programs because any conclusion would have been skewed by the statistical distortion. Similarly, Congress could not determine whether monetary or fiscal policies were reducing unemployment without reliable unemployment statistics.83 In the absence of reliable figures, Congressmen have no objective basis on which to decide whether to continue existing monetary and fiscal policies or to legislate additional measures such as public employment programs or tax cuts. Referring to decisions about budgetary allocation, one Congressman speculated that “we could save in federal expenditures, if we had available improved statistics to provide better guidance to policy-makers in developing new programs or operating old ones, . . . billions.”84 Indeed, whatever empirical criteria legislators use to make policy decisions, they cannot be certain whether the criteria are satisfied if the possibility of distorted statistics is always present. Without accurate statistics, legislative decisions necessarily must be made on less than objective grounds.

Accurate federal statistics are essential if the premise of governmental accountability is to be meaningful. Our democracy assumes that governments derive “their just Powers from the Consent of the Governed.”85 The knowledge that behavior in office must be submitted to the voters for approval deters unwise judgments or, failing that, enables the people to replace public officials with others who will implement better policies. However, the electorate can assess officials’ performance only by reference to what the officials have accomplished or how they have failed, and the information necessary to make a judg-

83. Hearings on the Manpower Act, supra note 52, at 606 (statement of Charles Killingworth, Prof. of Labor & Industrial Relations, Michigan State University).
ment regarding success or failure is often contained in government statistics. An administration that asked, for example, to be judged according to whether it had trimmed the federal budget deficit would evade accountability if statistical distortions made it impossible for the voters to know whether the deficit had in fact been reduced.

Presidential elections are one vehicle for accountability, but they cannot serve this function if voters do not have trustworthy information concerning the economic and social conditions out of which campaign issues grow. An administration that manipulates statistics can alter voters’ perceptions of important issues and easily distort election results. Senator Proxmire has pointed out that if just before an election economic statistics showed that the unemployment situation was improving, or that prices were moderating, this could change millions of votes and win the election. While evidence of manipulation to influence an election is difficult to discover, it would be very easy for an administration to accomplish such manipulation, since even the slightest numerical change can affect a statistical report. More blatant manipulation is also possible; the allegations of manipulation during the 1972 and 1980 Presidential campaigns illustrate the potential for abuse described by Proxmire. Clearly, control over statistical information augments the ability of an administration to use its incumbency to political advantage.

Governmental accountability is an ongoing obligation to the people. To suppose that an election provides a mandate for leaders to operate without popular checks during their terms of office is to give them carte blanche to impose their own policy preferences without requiring that their constituents be kept informed. That situation results when manipulation of federal statistics makes it impossible for the citizenry to determine whether a program is working and whether it deserves support. Two previously mentioned examples of such manipulation come to mind: the claim that the 1970 unemployment rate was lower than that of the early 1960s (a decrease that resulted entirely from changes in the Labor Department’s counting procedure), and the

87. President Nixon . . . told the press and the public that the actual unemployment rate averaged lower in 1970 than during the recession years of the 1960s. He is, unfortunately, mistaken. Actually, the current estimate of unemployment would read higher had the Department of Labor not changed its counting procedures. Until 1967, the Department in its monthly survey counted as unemployed all those who volunteered that they were too discouraged to look for work. . . . Despite these findings, the Department of Labor decided to assume that anyone not actively looking for work must therefore not be interested in working.
claim that inflation had been reduced drastically in the second quarter of 1970 (a drop that was the product of reweighting the components of the Gross National Product and other statistical changes). 88

The effect of abdicating policy choices to elected officials is difficult to overstate. However benign one might regard a particular leader’s objectives and values, the same theory that elections are mandates would license some other, more despotic leader to impose his preferences in a malevolent way. The only alternative to such a course is to acknowledge that government requires the constant reconciliation of competing values by the public. It is because of the danger in allowing a small group of people to govern by imposing their personal values that we require that the people as a whole shall govern. But they can govern meaningfully only if they know the truth, and much of the needed information is statistical. 89 If the American people cannot trust their President to make wise decisions for them, neither can they permit the President’s men to arrogate public decisions by placing before the nation inaccurate statistical information. Part VI proposes establishing an independent statistical agency to ensure that the information necessary to provide government accountability be readily available.

VI. A Proposal for Reform

It could be objected that the line of argument advanced here is too absolute or idealistic. Statistical distortions have benefits as well as costs. A distortion must be evaluated “on balance,” and if the benefits outweigh the costs, then the distortion should be condoned. For example, if manipulation of statistics by the executive branch would cause Congress to pass a “good” program that it is not disposed to pass, the “benefits” of the program must be counted as an effect of statistical distortion. If these benefits outweigh the harms of distortion, then no action to control the executive branch is warranted.

This argument, however, suffers from a fundamental flaw: it presumes an omniscient point of view as to what is “good.” The American political system is not premised upon a preconceived definition of the good. It assumes that the nature of the good is determined operationally by the actors in the political process. If the policymaking process were to grant to any agent the power to determine unilaterally the

Leggett & Cervinka, supra note 28, at 99 (quoting Harry Brill, Prof. of Sociology, University of Massachusetts); see text accompanying notes 52-53 supra.

88. R. Reichard, supra note 48, at 304-05; see note 54 supra & accompanying text.

social good, society would wield a double-edged sword. A grant of
discretion to the statisticians would be as likely to produce bad results as
good.

The importance of relying on an institutionalized process instead
of the discretion of individuals can be seen by analogy. During the
early 1960s, many leaders of American opinion advocated a strong
Presidency, having in mind a particular incumbent and sympathizing
with the goals for which he proposed to use Presidential power. A deca-
ade later many of these same leaders recoiled in horror at the evils a
strong Presidency could produce. What had happened in the interim
was that a different person used power for ends that the erstwhile sup-
porters of a strong Presidency found repulsive. The point is simply that
a grant of discretion to officials who will make “good” decisions is
equally available to their successors, who may make “bad” ones.

Since the statistician’s role conflict is endemic to the current sys-
tem, a solution will require a reallocation of roles. Two changes are
possible. The first would seek to alter the relative weight of the con-
flicting roles by imposing external pressure on the statistician to favor
accuracy. Illustrative of such possible changes are audits and subpoe-
nas. But the assumption underlying such proposals—that statistical
distortions can be discovered after the fact by an outside source—is
incorrect. For example, if the government does not publish definition-
al changes, the auditing of records will produce no evidence of manipu-
lation. Or, if the government simply fails to collect certain information, a
subpoena for that information will be useless. It is also hard to dis-
cover whether data are fabricated, since so many numbers are used in
an index. External controls, then, are unlikely to detect statistical
manipulation.90

A second solution would be to resolve the role conflict by separat-
ing roles through the establishment of an independent, central statisti-
cal agency, which would have the responsibility to compile all national
statistical indices, but would have no advocacy function. Similar agen-
cies exist in most industrialized nations, including the Netherlands,91
Great Britain,92 and Canada.93 In the Netherlands, for example, a

90. Moreover, the administration may invoke executive privilege in order to avoid releasing
information about how statistics were compiled. The Carter administration took such a position
regarding its projections of the effects of an extended coal strike during the winter of 1977-78.
92. COMMISSION ON FEDERAL PAPERWORK, STATISTICS 135 (1977).
93. Id. at 135-43; cf. MacFarlane, Understanding and Using Chinese Statistics, 13 J. Int’l L.
Central Bureau of Statistics has been in existence since 1899.94 The Bureau "is responsible for practically all statistical activities in which the government engages."95 A law passed in 1936 stipulates that once a statistical inquiry is approved by the Minister of Economic Affairs, citizens and organizations must supply the desired data; in cases of doubtful information, the Bureau may request the substantiating documents. Cooperation in providing data for many economic statistics that the Bureau collects is compulsory, but wage and price statistics still depend upon voluntary compliance.96 overseeing the Bureau is the Central Commission of Statistics, composed of fifty members from different socioeconomic and scientific groups as well as government bureaucrats. The Commission has twenty subcommittees, each concerned with a different statistical series. These subcommittees examine proposed statistical surveys from a technical perspective. The general aim of the Commission is "to preserve the impartiality of the Central Bureau of Statistics and to emphasize the professional nature of the work it does."97

This arrangement has permitted the Netherlands to separate political and technical processes in the formulation of economic policy. There is a clear separation of roles: the technical process "provides information and analysis relating to the main issues facing policy-makers," and the political process "decides upon economic policy objectives and selects means to obtain them."98

In 1972 a House subcommittee recommended a study of the feasibility of an independent statistical agency for the United States. The subcommittee found no evidence of "conspiratory politicization of Federal statistics,"99 but—as demonstrated above—the methods of politicization make the results difficult to detect after the fact. The subcommittee concluded that "under the present decentralized system of collecting and analyzing statistics, it is indeed possible and could be politically advantageous for an incumbent Administration to politically influence and utilize the various statistical agencies."100 Such a strong

94. J. Abert, supra note 91, at 99.
95. Id.
96. Id. at 100.
97. Id. at 101.
98. Id. at 247.
99. HOUSE COMM. ON POST OFFICE AND CIVIL SERVICE, supra note 6, at 15.
100. Id. In a similar vein, a proposal was introduced to invest the statistical functions of the FBI in a centralized, professionally staffed office within the Justice Department. Such a plan had long been supported by lawyers and criminologists who believed the current system produced
warning by a subcommittee whose report was described by critics as a “whitewash”\textsuperscript{101} should be cause for serious concern. Moreover, the likelihood of nonconspiratorial politicization—unconscious and unintentional distortions—makes the case for an independent statistical agency even more striking.

Drawing on the same power used in 1935 to create a statistical board, Congress should create a new independent statistical agency. The agency would be structured according to the various types of data needed. Trained statisticians would staff each section, the sections would be responsible to the agency director, and the director would be answerable to the Congress.

The agency would make all final decisions about what statistics to collect and what definitions to employ. Government departments and agencies would funnel requests for statistical information through Congress to the new agency. This procedure would allow existing departments to share their expertise with the new agency without controlling the results of its investigation.

By separating the roles of scientist and advocate, this proposal would best avoid conscious and unconscious manipulation. An independent agency would be composed entirely of people competent in the field of statistical collection and reporting, with no institutionalized policy bias. Employees would be responsible only to the agency director, who in turn would be responsible to Congress. Having no particular programs to support, the agency director would have only the interest of accurate collection and reporting in mind; pressure to distort statistics would therefore not trickle down within the agency. The individual statistician would no longer face the conflict between accuracy and advocacy. Regardless of the result of any particular report, statisticians would be compensated and kept in office as long as they were competent.

By contrast, in the current system statistical collection is the responsibility of bureau employees who cannot ignore the possibility that their results may cast doubt upon the success or value of the very bureau that employs them. Job security may depend not only on accurate data collection, but also on results that are politically favorable to the bureau or agency. Under the proposed system, competence rather than the content of particular results would be the watchword.

\textsuperscript{101} Shanahan, \textit{supra} note 6, \S\ C, at 3, col. 2.
Decisionmaking in a complex society requires highly sophisticated statistical information. For decisions to be made fairly and accurately, this information must be reliable. Reliability should be enhanced by eliminating the existing role conflict for the government statistician through the creation of an independent statistical agency.