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ASYMMETRIC INFORMATION, DELEGATION, AND THE STRUCTURE OF POLICY-MAKING

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ABSTRACT

Congress uses varying degrees of specificity when passing legislation. Sometimes it writes very detailed, exacting laws; other times it leaves these details to implementing agencies. A natural positive question then arises: what factors are critical for understanding the degree of delegation used by Congress in a particular circumstance? This paper exploits the tradeoff between the distributive and informational effects of organizational design to examine congressional delegation. We argue that variations in the relative preferences of committee, floor (congressional median voter), and executive actors cause a rational floor voter to choose different forms of collective decision making. We find that homogeneity of committee-floor preferences leads to less delegation, while preference homogeneity between Congress and the executive leads to more delegation. We also argue that delegation emerges when actors are more risk averse or when the uncertainty characterizing the collective choice environment is large. We develop our logic using a game theoretic model of the policy-making process and draw out the empirical implications of our approach.

KEY WORDS • delegation • hierarchies • institutional analysis • separation of powers • transaction cost economics

1. Introduction

Why does Congress delegate broad authority to the executive in some policy areas but not in others? Does this delegation reflect the particularities of an issue area, including which groups stand to gain or lose, and the issue's intrinsic complexity? Does it reflect deeper structural reasons, such as legislative organization, committee composition, or congressional-executive conflict? Is executive branch decision-making different from the internal workings of Congress, and how does this difference affect the decision to delegate? Can Congress perfectly control delegated authority through administrative procedures, oversight, and administrative law? Does it want to? In the end, what are the implications of delegating discretionary authority for our separation of powers system and the incremental mode of policy-making that it was meant to encourage?

We approach these questions by viewing policy-making as comprising a

set of tradeoffs similar to the decisions that must be made when structuring other contractual arrangements. Whether the exchange be between manager and stockholders, client and lawyer, or voters and their elected representatives, contractual relations carry a degree of uncertainty, differential amounts of information, and an inability to perfectly contract for all possible contingencies. So it is with policy-making: legislators have scarce time and resources, and therefore they must trade off the advantages and disadvantages of writing policy details themselves, as opposed to delegating them to the executive branch.

What are the costs associated with each alternative mode of policy production? Legislators can enact direct, detailed laws through normal congressional procedures, but the information necessary to make good policy is costly to obtain; bicameralism and supermajority requirements inhibit speedy action; and legislative logrolls tend to inflate the costs of even the simplest policy initiatives. Alternatively, Congress can delegate authority to the executive branch to escape these costs, but bureaucrats may be motivated as much by the desire to pursue their own policy goals, inflate their budgets, and increase their scope of control as by their desire to follow congressional intent. Thus, both internal policy production and external delegation involve significant political costs; we argue that where policy is made is determined by trading off these costs against each other.

This emphasis on competing costs distinguishes our work from previous studies, which focus on motivations for delegation in general, such as legislators' desire to keep their workload manageable, take advantage of agency expertise, protect favored constituents, or shift the blame for unpopular decisions. These assertions, while certainly correct in general, cannot explain well variations in Congress's specific decisions to delegate over time or across issue areas, and thus fail to provide a consistent account of which policy areas are decided by Congress and which are delegated to the executive branch. We suggest instead that congressional delegation to the executive can be seen as a rational response to the inefficiencies of congressional policy-making. Our approach thus links the details of legislative organization to congressional-executive relations and the decision to delegate.

A key variable in our analysis is the amount of *discretionary authority* delegated to an agency. Why is discretion so important? In one form or another, all laws passed by Congress must be implemented by the executive branch. However, the discretion accompanying this delegation varies widely from issue to issue. Often, we observe Congress delegating broad mandates to executive agencies. For example, the 1970 Clean Air Act required that industries use the 'best available control technology' to reduce emissions, but left the definition of the crucial term 'best' to the

Environmental Protection Agency's discretion. In these instances, the executive branch is an important policy-making actor in its own right.

In other cases, Congress enacts painfully detailed legislation, leaving administrative agencies with little or no leeway. For example, Congress specified in the Tax Reform Act of 1986 that the existing 14 tax brackets would be collapsed to two and mandated a sharp reduction in overall rates, and in 1974 Congress increased the minimum wage to $2.30 in three staged hikes. Here, all important policy decisions are made within Congress, and the executive merely implements them.

Executive discretion therefore delineates a continuum, with legislative policy-making at one end and agency policy-making at the other: to the extent that policy decisions are not made in the implementing legislation, they are perforce passed on to the executive via delegation. The crucial question is, what explains Congress's decision to delegate broad discretionary authority in some cases and write detailed legislation in others, and what are the implications of this institutional choice for public policy?

The outline of the paper is as follows. The next section reviews the previous literature addressing the question of when and why Congress delegates discretionary authority to executive agencies. Section 3 presents three models of political organization: internal delegation to committees, external delegation to an executive agency, and delegation with oversight. Section 4 analyzes the equilibria to these models and details their implications for where policy is made. The final section summarizes our approach and elucidates the empirical implications of our findings.

2. Congress, Delegation, and the Policy-Making Process

Why does Congress choose to delegate some policy areas, but not others, to the bureaucracy? Given the importance of this question for the substance of public policy, remarkably few studies examine Congress's decision to delegate.[1] Traditional views of administrative agencies have emphasized legislators' need to keep their workload manageable (Ripley and Franklin, 1984) or take advantage of agency expertise (Dodd and Schott, 1979). Political economy rationales, on the other hand, argue that regulatory agencies are designed to benefit a particular constituency or group (Stigler, 1971). Although these arguments contain more than a grain

1. We are interested here only in those theories that explicitly state whether policy will be made by Congress or by the bureaucracy. There is a large literature on the closely related issue of *regulatory origin*, which is concerned with the question of which industries are regulated by the government, and to what effect. Classics in this tradition include Stigler (1971), Peltzman (1976), Becker (1983), and Wilson (1974). See Mitnick (1980) for an extensive overview of this literature.

of truth, they cannot consistently explain *variation* in Congress's decision to delegate across issue areas or over time. It is certainly not true, for instance, that Congress delegates in exactly those policy areas that require significant work, considerable expertise, or benefit a politically affluent group (consider tax law, defense spending, and the budget, none of which have been delegated to the executive). While such assertions offer plausible explanations for delegation in general, then, none of these theories provides exact predictions about which areas will be delegated as opposed to others.

A more specific hypothesis of why Congress delegates is offered by Fiorina (1982). Synthesizing the work of Wilson (1974) and Weingast et al. (1981), Fiorina posits that legislators prefer to delegate to bureaucrats whenever the policy in question has dispersed benefits and concentrated costs, and pass legislation themselves when the opposite is true. Thus Congress can shift the responsibility for politically difficult decisions onto bureaucrats and take the credit for more popular policies themselves. This argument is echoed in Arnold (1990), who asserts that legislators delegate to obfuscate the responsibility for unpopular policies. These 'blame shifting' theories, however, assume that groups cannot rationally anticipate the effect of delegation and hold their elected representatives accountable. In addition, bureaucratic implementation is not seen as a problem; in fact, Fiorina assumes that outcomes are identical no matter where policy is made.

In a later article, Fiorina (1986) relaxes this latter assumption, examining the delegation choice as one of deciding between two uncertainties. If Congress delegates, then the agency may implement a range of possible outcomes, perhaps with some bias towards one policy direction or the other. But direct legislation is subject to interpretation by the courts, which may also cause some distortions, even if the court is initially unbiased. Thus legislators' preferences over whether or not to delegate rest on their expected utility from bureaucratic uncertainty as opposed to judicial uncertainty. These works are a valuable first step toward a general theory of delegation, offering explicit predictions as to when policy will be made in Congress and when it will be shifted to the executive branch. However, they do not treat executive branch actors as fully strategic agents in their own right, reducing them to mere probability distributions over outcomes.

In a similar vein, McCubbins (1985) models bureaucrats as choice functions over sets of available policies. He assumes that legislators will delegate to agencies when there is no clear-cut majority for a specific alternative to the status quo. Thus decisive coalitions will delegate when they can all agree that some policy change is necessary, but they cannot agree on exactly which policy to enact instead.

An explicit formal model of the decision to delegate can be found in

Lohmann and O'Halloran (1994), who motivate delegation as a means to escape inefficient logrolls. Congress must decide whether to make policy itself, delegate to the president with no strings attached, or delegate but retain an ex post veto of the president's proposal. Further, presidents have a preference for distributing benefits to districts represented by their own party. After the institutional design stage, each district experiences an external economic shock. The authors show that when the expected shocks are large, legislators will choose to delegate, and that Congress is more likely to constrain the president under divided government. Thus legislators might rationally delegate power to the executive to avoid excessive logrolling.

3. Models of Delegation: Choosing How to Decide

Our view of legislative–executive relations, similar to the studies cited earlier, attempts to motivate delegation from the ground up as a rational institutional choice made by utility-maximizing legislators. This section captures the logic of our approach through a series of formal models in which Congress decides whether to delegate to an executive branch agency or make policy internally.

Models of Policy-making

We assume that Congress has three options for organizing the policy-making process: internal policy-making by committees, external delegation to executive agencies, and delegation to agencies with congressional oversight. If Congress makes policy internally, committees propose policy initiatives, which must then pass on the floor. Although committees may possess issue-specific expertise, their power is limited by legislative procedures that require the support of a majority of all members to pass legislation. Agencies have no such limits – once Congress delegates an issue area to the executive branch, an agency is free to pass regulations that have the force of law. But legislators can limit agency actions through the use of administrative procedures, which may dictate the policy-making process that agencies must follow, empower certain constituents to influence agency decisions, or circumscribe permissible agency actions. Finally, Congress may choose to combine these two options by delegating to an agency but relying on committees to oversee agency actions.

The median voter in Congress chooses from among these three options, so the decision-making method chosen will be the one that maximizes this voter's overall expected utility. Legislators' utility, in turn, has two

components. First, legislators would like expected outcomes to be as close as possible to their ideal points – that is, they would like policy to conform with their preferences. Second, given that legislators are assumed to be risk averse, they gain utility when the variance over outcomes is decreased. In this sense, legislators also value predictability in policy-making, and at the margin they will accept outcomes that are biased away from their preferences if the uncertainty over these outcomes is sufficiently reduced. The central variables in our analysis, then, will be the location of policy decisions and the efficiency with which information is incorporated into the policy-making process, meaning that legislators will be trading off distributive and informational concerns when deciding whether or not to delegate.

Game Forms

All three games share some elements in common. We assume three players: the median floor voter in Congress (F), a congressional committee (C), and an agency (A), all of whom have preferences which can be summarized by ideal points x_i, $i = F, C, A$, in a unidimensional policy space $X = \Re^1$; for convenience we set $F = 0$ and $A > 0$. All players have quadratic preferences over outcomes: for $U_i(x) = -(x_i - x)^2$ for $i = F, C, A$.

The outcome of the political decision-making process will be a policy p, but actual outcomes x depend not only on the policy passed but also on some exogenous parameter ω, according to the formula $x = p + \omega$. The value of ω represents information that legislators initially lack when deciding on policy. This information may be technical and costly to ascertain, such as the impact of tax code changes on foreign direct investment; it may represent the distributive consequences of various policy alternatives, such as the distribution of welfare benefits under alternative rules of eligibility; or it may be realized only in the future, such as the weather affecting next year's corn crop. In all cases, legislators treat ω as unknown when deciding where policy will be made; all other parameters are common knowledge. Legislators have ex ante prior probability distributions $f(\omega)$ over ω, where $f(\omega)$ is uniform in the interval $[-1,1]$.

The order of moves depends on the game being played. In the Committee game, nature first randomly determines the value of ω. Then the committee deliberates, learns ω, and reports a bill b to the Floor. The floor player is then free to amend this bill under an open rule, passing policy p^F. The final policy outcome is then $x = p^F + \omega$.

In the Delegation game, the Floor moves first and specifies two constraints. First, it establishes the status quo policy, SQ, which would be the final policy if the agency took no further action. Second, it gives the agency discretion to move policy away from the status quo by some fixed amount

d, so the agency can only choose policies p such that $|p - SQ| \leq d$.[2] The agency then learns ω and implements a permissible policy p^A, giving an outcome of $x = p^A + \omega$.

The Oversight game is the same as the Delegation game, but after the agency has promulgated its regulation, the congressional committee gathers information about the issue area through oversight hearings (it learns ω) and may suggest that the regulation be overturned. If it does so, then the floor player must decide whether to follow the committee's recommendation (thereby reverting policy to the status quo, SQ), or let the regulation stand. The sequence of events in all three games is shown in Figure 1 (p. 45).

Equilibria

The equilibria to the first two games can be adapted from previous formal models of the policy-making process. The Committee Referral game is equivalent to the Crawford–Sobel model of costless signaling, better known as the classic 'cheap talk' game.[3] Since the committee's proposal can be costlessly modified by the floor, it is valuable only for the information it contains. And given any divergence in preferences between the committee and floor, this information will never perfectly reveal the value of ω, so policy-making will exhibit some degree of uncertainty. We summarize the results of this game in the following proposition.

PROPOSITION 1. *In the equilibrium to the Committee Referral game:*

(i) the committee partitions the $[-1,1]$ *interval into a number of ranges and truthfully reports which range contains the true value of* ω*;*

(ii) the number of these ranges increases as the ideal points of the committee and floor become more similar; and

(iii) expected outcomes are always equal to the floor's ideal point.

The Agency Delegation game is analyzed in O'Halloran (1994). When setting the amount of discretion for the agency, the floor must trade off distributive and informational concerns. The more discretion the agency receives, the more it is able to incorporate its expertise into policy decisions. However, if the agency's preferences differ from those of Congress, then discretion can be used to move outcomes away from the median legislator's ideal point. The results of this model are summarized:

2. Equivalently, Congress can specify a range of permissible policies $[p^-, p^+]$ and let the agency choose any policy in this set. Notice that if Congress delegated to the executive branch but allowed for no discretion ($d = 0$), then the only possible outcome would be SQ, which is equivalent to Congress setting policy itself.

3. See Crawford and Sobel (1982), which also contains a proof of Proposition 1. This model was first employed in a political context in Gilligan and Krehbiel (1987).

PROPOSITION 2. *In the equilibrium to the Agency Delegation game:*

(i) discretion increases as the agency's ideal point becomes similar to the floor's;

(ii) the agency receives its ideal point for a range of values of ω*; and*

(iii) expected outcomes are not equal to the floor's ideal point; they are biased towards the agency's preferred policy.

The equilibrium to the Oversight game is more complicated. The outcome depends on the ideal point of the committee relative to that of Congress and the agency. When the committee's preferences are more extreme than the agency's ($C > A$), oversight plays no useful role in policy-making. In the case where committee preferences are less extreme than the agency's ($C < A$), agencies modify their proposals to garner the committee's endorsement, and in equilibrium the floor always follows the committee's recommendations. Interestingly, the median floor voter is best off with an oversight committee biased against the agency ($C = -A$) rather than one with preferences equal to her own ($C = 0$). Also, oversight may benefit not only the floor and committee, but the agency as well, since the presence of oversight may induce the floor to delegate greater discretionary authority in the first place. We now state,

PROPOSITION 3. *In the equilibrium to the Oversight game:*

(i) the floor player follows the advice of the committee;

(ii) the agency modifies its proposals so that the committee never recommends that they be overturned;

(iii) oversight brings expected outcomes closer to the floor's ideal point; and

(iv) the floor's utility is maximized when the committee's ideal point is opposite that of the agency.

These, then, are the possible equilibria that Congress can choose from. Which game maximizes the floor's utility will, in general, depend on the ideal points of the players involved, the degree of uncertainty in the policy environment, and the degree of risk aversion shown by all players. These factors, in turn, determine the relative costs of delegation as opposed to internal policy production. We now proceed to analyze Congress's optimal design of the policy-making process.

4. Discussion

This section addresses which of the three policy-making alternatives illustrated in Figure 1 Congress will choose under various conditions. We

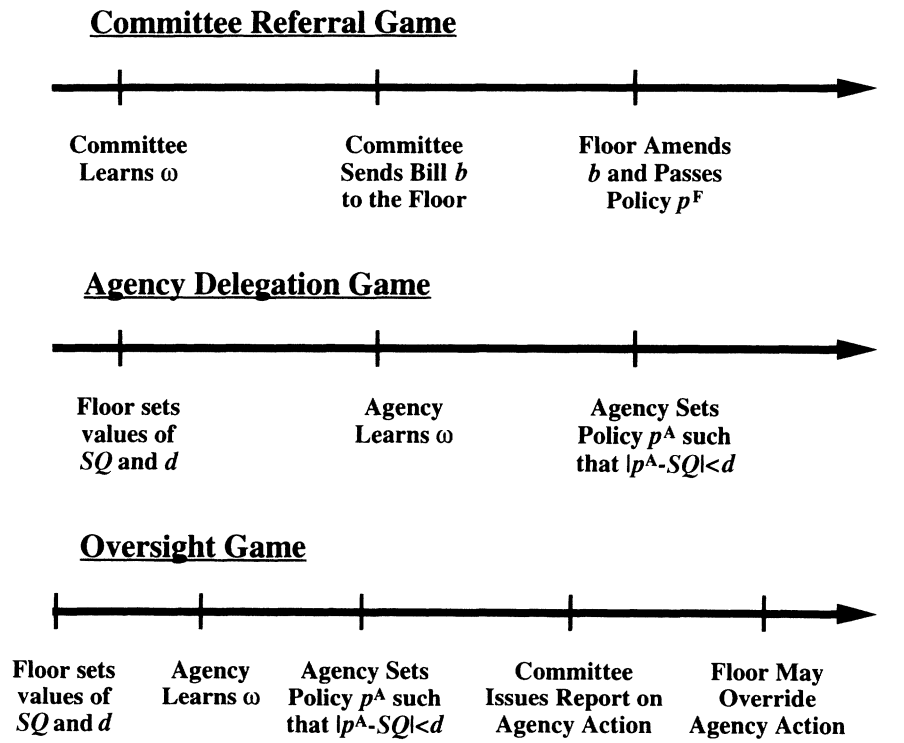

Figure 1. Committee, Delegation and Oversight Games

first compare internal delegation to committees against external delegation to agencies. We then allow for the possibility of delegation with committee oversight. Last, we compare the expected utility of each alternative as the preferences of the agency and committee vary. As we derive our results, we will also discuss their implications for broader debates concerning legislative organization, divided government, and policy-making in general under separate powers.

Committees versus Agencies

Consider the choice of whether to delegate to committees or to agencies. In equilibrium, delegation to committees will always involve some degree of uncertainty over policy outcomes, except when the preferences of the committee and floor overlap perfectly. This uncertainty is eliminated to

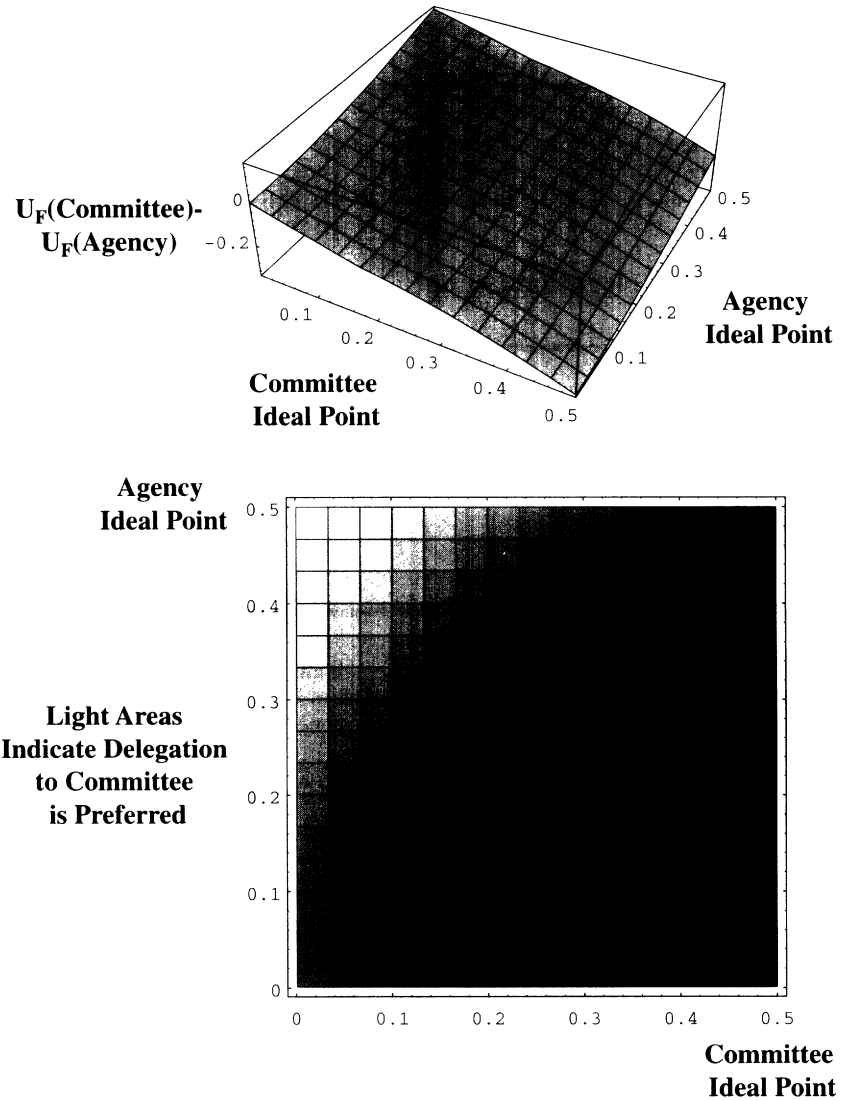

Figure 2. Utility Difference Between Delegation to Committees and Agencies

some degree by delegation to agencies, although with external delegation expected outcomes are no longer equal to the floor's ideal point.[4]

So which option is better overall? Figure 2 provides two graphical

4. Expected outcomes are $A - A^2$ for Agency Delegation, as compared with 0 (the Floor's ideal point) under Committee Referral.

illustrations of the answer – one three-dimensional plot showing the floor's utility differential for various values of C and A, and one two-dimensional summary in which the lighter area represents points where the Committee Referral game is preferred to the Agency Delegation game.

Note first that as the committee's ideal point moves further from the floor's, delegation to the executive becomes more attractive, and vice versa as A increases. As the level of legislative–executive conflict over policy increases, then, delegation to the executive becomes less attractive. If we take partisan affiliation as a rough proxy for policy preferences, then we would expect Congress to delegate more discretion during times of unified government than under divided partisan control of government.

This allows us to address the recent debate over the policy-relevant consequences of divided government. Some observers (Sundquist, 1988; Cutler, 1988) adopt the view, now standard in popular discourse, that divided government leads to deadlock, stalemate, and ineffective government. They take the recent trend towards split partisan control of the legislative and executive branches as an indication that American politics has entered a new phase where parties can no longer serve to unify across branches of government, and policy movement has become nearly impossible to achieve.

On the other hand, other commentators assert that the policy impact of divided government has been overstated. Krehbiel (1997) points out that our constitutional system of government has many impediments to policy-making, so divided government per se may have little impact on the volume of legislation passed. Fiorina (1992) notes that if neither party wants to take the blame for the lack of policy movement, then divided government may actually facilitate coordination and cooperation in passing legislation, as arguably happened in 1996 prior to the national elections. And Mayhew (1991) surveys important post-war legislation and concludes that the level of legislative activity has not been significantly different under divided and unified government.

Our analysis examines a different aspect of the policy-making process. If our theory is correct, then the policy impact of divided government may occur not in the *quantity* of legislation passed, but its *quality*. In particular, divided government will be associated with more direct legislation by Congress and less delegation. If executive agents are ceded less discretionary authority under divided government, then we may observe 'procedural gridlock', under which bureaucrats have less authority to change policy, find themselves under greater scrutiny from outside actors, and in general have less leeway to make coherent, well-considered policy.

Note next from Figure 2 that as C moves further away from F, delegation to the executive becomes more attractive. The presence of committee outliers will thus lead rational floor members to delegate greater discre-

tionary authority to executive branch actors. This finding, in turn, has implications for the theoretical view of committee outliers. In the congressional literature, committee outliers simply result in less information being incorporated into legislation. In our view, the poorer the performance of the committee system (i.e. the less useful committees are as a source of information), the more likely it is that Congress will delegate to the executive. So even though committees have monopoly power internally, they face external competition from the executive branch, and this may be sufficient to rein in committee excesses.

Continuing with our analysis of Figure 2, consider the effect of raising the degree of uncertainty associated with a given policy area, so that instead of ranging from -1 to 1, ω would lie in the range $[-R, R]$, $R > 1$. This change is equivalent to reducing the values of C and A proportionately, so that they move on a straight line toward the origin. Finally, note that such a change, if it makes any difference in the delegation regime, will induce the floor to delegate to agencies rather than committees. Thus an increase in uncertainty or complexity favors delegation to the executive branch.

To understand this result, we shall first concentrate on the Committee Referral equilibrium, which exhibits a relatively high degree of variance in outcomes. What are the strategic origins of this variance? Committees have expertise, but they cannot make policy themselves. The floor can make policy, but it must rely on the committee's information. And given the hierarchical relationship between the actors, committees can credibly convey only limited information to the floor, leading to relatively uninformed policy-making. This leads to the general observation that hierarchies are not efficient mechanisms for incorporating information into policy, given a divergence of preferences.

To put it another way, the central problem is that the floor cannot commit itself to cede the committee control over policy outcomes. Given constitutional imperatives that require the parent chamber as a whole to approve legislation, committees will find themselves with strategic incentives to reveal only part of what they know. In a firm, a manager could conceivably allow subunits to make important business decisions if these subunits have superior information. Since this option is unavailable in Congress, however, policy decisions will display some residual uncertainty, which lowers the expected utility of all players.

Given this perspective on the informational costs associated with committee policy-making, the advantages of agency delegation are clear. Delegation to the executive branch can be seen as a commitment device that allows those with expertise (bureaucrats) to make final policy without having to consult Congress first. The distributive losses involved in handing over policy-making authority to an executive branch agency are out-

weighed by the informational gains; hence the incentives to move towards a more decentralized structure of policy-making. These results echo the conclusions of the legislative organization literature (see, for instance, Gilligan and Krehbiel, 1987) – when delegating to executive branch actors, legislators trade off informational gains against distributive losses. The greater the complexity of the policy area, the more the scales tip in favor of ceding bureaucrats greater discretionary authority.[5]

In political terms, the implication is that different types of policies will generate different types of politics. Some policy areas are characterized more by informational concerns, others by distributive, and still others by both. We would expect this divergence to be reflected in the types of procedures used to implement policy in each area; specifically, we argue that informationally intense policy areas will be good candidates for delegation, while distributive issues will tend to be made in Congress.

The Effect of Oversight

Of course, delegation does not solve all of Congress's problems, as the agents (or agencies) taking action will in general have preferences that conflict with their political principals. One method for partially overcoming these problems is to couple delegation to an agency with oversight by congressional committees. In fact, it is easy to see that this can never make the Floor player worse off, for she could always give the agency the same amount of discretion as in the Agency Delegation game and ignore the committee's report, in which case the game reverts to the case studied earlier. And in the cases where $C \geq A$ or $C \leq -4A$, the committee cannot offer any useful information in equilibrium, and all outcomes do revert to the Agency Delegation game.

Monitoring, however, imposes its own set of costs in the form of committee time and resources that must be used to gather information; therefore, we expect to see it only when it confers direct policy benefits. And even when oversight works well, it only partially constrains agency actors who do not share legislators' policy preferences. Committee oversight, then, may help Congress control bureaucrats, and it may influence the original terms of delegation, but it cannot completely overcome the distributional losses involved.[6]

5. These findings are also similar to recent work in theoretical accounting, which finds that delegation is often an efficient solution to problems of monitoring within hierachies. For instance, Melumad and Mookherjee (1989) argue that delegation to managers with specific information about a firm's transactions may maximize income tax collections, and Melumad et al. (1992) conclude that 'responsibility centers' within a firm are more efficient than contracting directly with each employee on a team project.

6. For discussions of the effect of administrative procedures in overseeing executive agencies, see McCubbins and Schwartz (1984), and McCubbins et al. (1987, 1989).

Optimal Institutional Arrangements

We are now in a position to calculate which of the three possible institutional structures Congress prefers for a given arrangement of ideal points C and A. The results are shown in Figure 3.[7] The horizontal axis shows the committee's ideal point, while the agency's ideal point is on the vertical axis. When the committee has preferences opposite to those of the agency, delegation with oversight is most preferred. Otherwise, agency delegation is better, with delegation to committees occupying a small portion of the graph.

Given these results, the appropriate question is not 'Why does Congress delegate to the executive branch?' but rather 'Why are some issues *not*

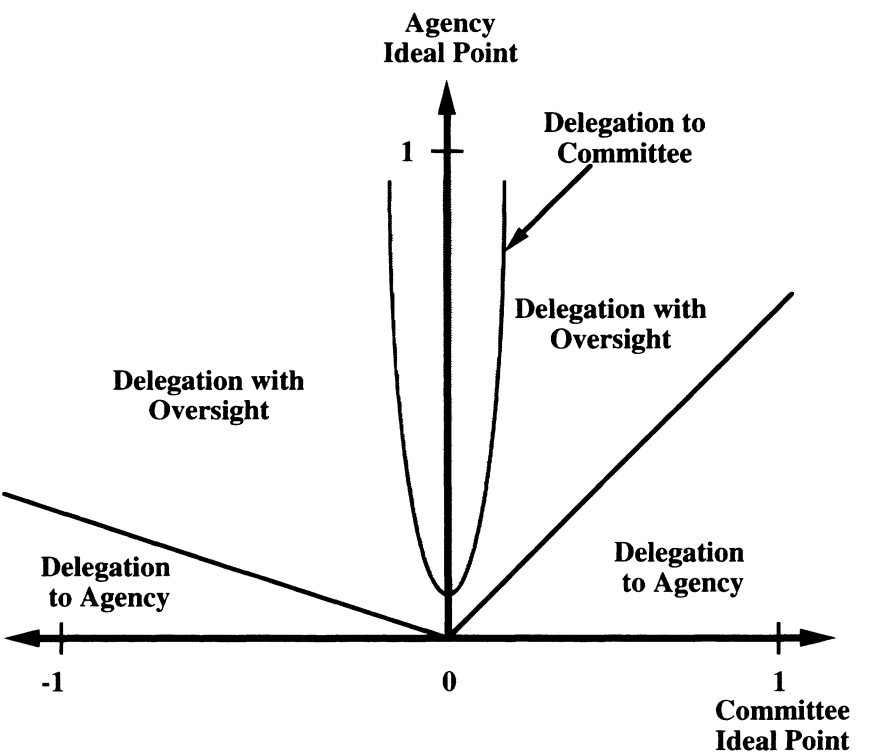

Figure 3. Optimal Organizational Structure

7. Assuming some small cost of monitoring, the Oversight game is indicated only in those regions where it is strictly better than the Agency Delegation game.

delegated?' Obviously, the answer is that in some cases Congress feels that committee preferences are closer to its own, relative to the agency. This would occur, for instance, if the policy in question were a distributive issue, and Congress feared that the agency would not favor a certain set of constituents, as for example in tax policy.

Similarly, delegation to committees becomes more attractive as the risk aversion of legislators decreases. Recall that expected outcomes are always equal to Congress's ideal point in the Committee Delegation game, and the loss of information is only important due to risk aversion. Therefore in policy areas where the consequences of mistakes are less costly, committees may be preferred over agencies. And, conversely, agencies are a more apt solution as the degree of uncertainty in the policy environment increases, or as risk aversion increases. Thus airline safety is a prototypical issue to delegate to agencies: a complex policy area where the costs of mistakes are usually public relations disasters.

In sum, our model predicts that legislators trade off informational and distributive concerns when deciding whether to make policy internally, delegate to agencies, or delegate but give committees an oversight role. The literature on legislative decision-making emphasizes the informational and distributive problems associated with the committee system. These must be compared, though, to the next best alternative, which is giving executive agencies policy-making discretion. The basic problem, as our model indicates, is the separation of expertise and control, of the resources to make informed decisions and the constitutional prerogative to make policy. The organizational structure that is relatively most effective from the median legislator's point of view in light of these costs, dictates where policy will be made.

5. Conclusions and Empirical Implications

This article addresses an important yet under-investigated question in American politics: which policy areas does Congress delegate to the executive branch, which does it keep to itself, and what are the systematic effects of delegation on public policy? Rather than approach delegation as a convenient method of protecting favored constituents, or as a way to shirk the blame for unpopular decisions, we see it as a rational response of legislators to a complex policy environment which they must manage with only a limited set of resources. We begin with the fact that legislators have a choice of whether to make policy themselves or delegate to the executive branch. Therefore, to understand the decision to delegate one must first understand the internal organization of Congress and the methods by which legislators can oversee executive branch policy-making.

From this perspective we developed a series of formal models relating political conditions to legislators' decision to delegate in a particular policy area, and to the constraints placed on executive branch authority. Overall, this approach provides a clearer understanding of when Congress keeps control of a policy area itself, when it delegates, and what this means for the making of public policy. Our theory also has several directly testable empirical implications, which relate naturally to the three major variables in our model: A, the ideal point of the agency; C, the committee's ideal point; and R, the range of uncertainty in the policy area. Mirroring the comparative statics results from the model, our theory predicts that Congress will delegate more authority to the executive branch:

1. When policy conflict between Congress and the executive is small, as for example during unified as opposed to divided government (A is small);
2. When committees are preference outliers (C is large); and
3. When the policy issue at hand is characterized by uncertainty in outcomes (R is large).

If our theory is correct, then, divided government will be associated with more direct legislation by Congress and less delegation. If Congress cedes executive agents less discretionary authority under divided government, then we may observe 'procedural gridlock,' under which bureaucrats have less authority to change policy, find themselves under greater scrutiny from outside actors and, in general, have less leeway to make coherent, well-considered policy. In testing this proposition, conflict between the branches can be measured in a number of ways: a simple measure of divided and unified government, a more nuanced measure based on the percentage of seats held by the party opposite the president, and an even more sensitive measure in which the president is assigned an ideal point based on the positions he announces on congressional rollcalls.

The next set of testable predictions revolves around the proposition that the closer the preferences of the median floor voter and the committee are, the less likely Congress is to delegate power to the executive branch. The most direct test of this proposition uses the policy differences between committees and floors as an explanatory variable for delegation to executive agencies, so that outlying committees will be associated with greater delegation. This policy divergence can be measured using standard rating scores derived from roll call votes (ADA, Nominate, etc.).

One of the most interesting implications of our model, and the hardest to test, concerns the differences between issue areas characterized mainly by distributive concerns as opposed to those characterized by expertise. Where the policy area is complex, making the link between policies and

outcomes more uncertain, legislators will prefer bureaucratic policy-making; if these concerns are minimal, though, policy-making through committees gives Congress greater control over the distribution of benefits to constituents.

The amount of uncertainty surrounding an issue is difficult to measure in any direct way, so we would take a twofold approach to the problem. First, several previous authors have attempted to classify public laws according to a number of different schemes: some by the type of issue area involved (agriculture, defense, trade), some by the interest groups affected by the policy (tax payers, corporations, the airline industry), and some by the scope of regulatory activity (national, local, or industry-specific).[8] One could take several of these classifications and examine if any natural pattern emerges regarding informational intensity and delegation. Second, one could use the number of committee hearings as a proxy for the complexity of a policy area and correlate the number of hearings with delegation to the executive.

We have constructed the underpinnings of our theory as broadly as possible; legislators make policy themselves or delegate depending on the relative costs of either option. This logic should be applicable to governmental systems outside of the United States as well. The costs and benefits of delegating will vary according to the constitutional provisions defining the relationship among the various branches of government. Thus our approach can be seen as the first step towards a more general theory of comparative political institutions, including broader implications for international systems of trade, defense and development.

APPENDIX

To state Proposition 3, assume that Congress can set parameters d^- and d^+ such that an agency may offer only $p \in [d^-, d^+]$. Let the game without oversight be denoted Γ_0 and the present game Γ, and define the optimal amounts of discretion d_Γ for all d and Γ.

PROPOSITION 3:

(i) $d^- = -\infty, \forall A, C$;
(ii) $d_\Gamma^+ \geq d_{\Gamma_0}^+$;
(iii) EU_F *is maximized when* $C = -A$.

8. See, for example, Mayhew (1991) and Ripley and Franklin (1984: 21–2).

Proof. First, notice that in all settings, whenever $p < 0$, the outcome is A and all players prefer $p + \omega$ to ω. Further, reducing discretion can only harm final utilities, so $d^- = -\infty$.

There are two cases to consider in Γ_0: $d > 4A$ and $d < 4A$.

$d > 4A$.

$$\begin{aligned} EU_F &= -\int_{-1}^{A-d} d^2 f(\omega)\,d\omega - \int_{A-d}^{-3A} (A-\omega)^2 f(\omega)\,d\omega - \int_{-3A}^{-A} (4A)^2 f(\omega)\,d\omega \\ &\quad - \int_{-A}^{A} 0\, f(\omega)\,d\omega - \int_{A}^{1} (A-\omega)^2 f(\omega)\,d\omega \\ &= -\frac{1}{3} - A^2 - \frac{14A^3}{3} + d - A^2 d - d^2 + \frac{d^3}{3} \end{aligned}$$

which is maximized at $d^+ = 1 - A$.

$d < 4A$.

$$\begin{aligned} EU_F &= -\int_{-1}^{A-\frac{1}{2}d} d^2 f(\omega)\,d\omega - \int_{A-\frac{1}{2}d}^{A} 0 f(\omega)\,d\omega - \int_{A}^{1} (A-\omega)^2 f(\omega)\,d\omega \\ &= -\frac{1}{3} - A^2 - \frac{2A^3}{3} + d - A^2 d - d^2 + \frac{d^3}{4} \end{aligned}$$

which is maximized at

$$d^+ = \frac{8 - 4\sqrt{1+3A^2}}{6}$$

$$1 - A = \frac{8 - 4\sqrt{1+3A^2}}{6} \Rightarrow A \approx 0.177,$$

so

$$A < 0.177 \Rightarrow d^+_{\Gamma_0} = 1 - A; \qquad A > 0.177 \Rightarrow$$

$$d^+_{\Gamma_0} = \frac{8 - 4\sqrt{1+3A^2}}{6}$$

We use these discretion levels as a benchmark against which to measure the optimal discretion with Congressional oversight.

$C < F < A$. Again, there are two cases, $d > 2A - 2C$ and $d < 2A - 2C$.

$d > 2A - 2C$.

$$\begin{aligned} EU_F &= -\int_{-1}^{A-d} d^2 f(\omega)\,d\omega - \int_{A-d}^{2C-A} (A-\omega)^2 f(\omega)\,d\omega - \int_{2C-A}^{C} (2C-2\omega)^2 f(\omega)\,d\omega \\ &\quad - \int_{C}^{A} 0 f(\omega)\,d\omega - \int_{A}^{1} (A-\omega)^2 f(\omega)\,d\omega \\ &= -\frac{1}{3} - A^2 + 2A^3 + d - A^2 d - d^2 + \frac{d^3}{3} - 2A^2 C + \frac{2C^3}{3} \end{aligned}$$

which is maximized at $d = 1 - A$.

$d < 2A - 2C$.

$$EU_F = -\int_{-1}^{C-d/2} d^2 \, f(\omega)\, d\omega - \int_{C-d/2}^{C} (2C - 2\omega)^2 f(\omega)\, d\omega - \int_{C}^{A} 0\, f(\omega)\, d\omega - \int_{A}^{1} (A - \omega)^2 f(\omega)\, d\omega$$

$$= -\frac{1}{3} - A^2 + 2A^3 + d - d^2 + \frac{d^3}{4} - \frac{d^2 C}{2} - dC^2,$$

which is maximized at $d = \frac{2}{3}(1 - C)$.

Comparing with Γ_0, we find that $d_{\Gamma}^{+} \geqslant d_{\Gamma_0}^{+}$ $\forall A,C$.

$F < C < A$. Here, a closed form solution is impossible. A grid-search technique determined the optimal amount of discretion for each A and C and again it was weakly greater than the optimal discretion without oversight.

$F < C < A$. The equilibria here are identical to those for Γ_0, so $d_{\Gamma}^{+} = d_{\Gamma_0}^{+}$

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