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Divided Government and the Design of Administrative Procedures: A Formal Model and Empirical Test

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Despite the abundance of recent studies on divided government, no clear consensus has emerged as to whether divided partisan control has an appreciable impact on policy outcomes. In this article we take a new perspective on the divided government debate by emphasizing the important role that the federal bureaucracy plays in shaping policy. We present a game theoretic model of the policy-making process in which legislators design administrative procedures, the president appoints agency heads, and bureaucrats collect information and promulgate regulations. The model predicts that during times of divided control Congress delegates less discretionary authority to the executive branch, and that these changes in authority have significant policy consequences. We then test the implications of our model with data drawn from U.S. trade policy between 1890 and 1990. Our central finding is that divided government influences policy indirectly, through the procedures that Congress designs to control the bureaucracy.

INTRODUCTION

Divided government has recently received considerable attention in both scholarly debate and popular discourse. Typically, critics claim that policymaking under divided government is “a difficult, arduous process, characterized by conflict, delay, and indecision, and leading frequently to deadlock, inadequate and ineffective policies, or no policies at all.”¹ Yet empirical evidence of divided government’s impact on policy remains elusive. Indeed, after extensively analyzing the frequency of important legislation and congressional investigations from 1946 to 1990, Mayhew (1991a, 179) concludes that “unified versus divided control has probably not made a notable difference during the postwar era.”

Are popular perceptions regarding divided government incorrect, or have empirical analyses failed to capture its real effects? In this article, we approach the

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¹Sundquist (1988, 629); see also Cutler (1988).

divided government debate from a new perspective. In the modern administrative state, much important policy is made not by direct legislation, but by administrative agencies. These agencies are located in the executive branch, but they are created and overseen by Congress. One important question to ask, then, is how divided government alters the preferences, institutions, and incentives that shape agency decision making.

We claim that divided government influences policy through the administrative procedures that legislators design for executive agencies. The logic of our approach is as follows. When Congress delegates to the executive branch, it relinquishes its authority to make policy in return for the advantages of reduced workload and bureaucratic expertise. If bureaucrats had preferences identical to those of legislators, Congress could assure itself of favorable outcomes simply by delegating to the executive branch, with unfettered discretion. As bureaucrats' preferences diverge from those of legislators, though, Congress will rationally place tighter constraints on the use of delegated authority through restrictive administrative procedures. Since the president appoints agency heads, who in turn direct agencies' actions, the implication is that legislators will grant more leeway to bureaucrats under unified than divided government. Thus, divided government is associated with bureaucrats having less discretionary authority. This is "procedural gridlock," policy stalemate and inflexibility produced through the intermediating institutions of administrative procedures.

The rest of the article elaborates this thesis both theoretically and empirically. First, we review the debate surrounding the policy consequences of divided government. We then present a game-theoretic model of administrative procedures and the impact of divided control on legislators' decision to delegate. The key parameter in our analysis is the amount of discretionary authority Congress grants the executive branch. Testing the implications of our theory, then, requires measuring both bureaucratic discretion and policy outcomes. We do so with data drawn from U.S. trade policy between 1890 and 1990. First, we codify key provisions in the statutes and identify how the laws altered agency discretion. Second, we analyze the effects of changes in administrative procedures on the tariff. After controlling for economic effects, our findings indicate that divided control leads to a decrease in the executive's discretionary authority, reduces procedural innovation, and has an appreciable impact on final policies enacted. The last section summarizes our conclusions and presents the implications of our analysis for the divided government debate.

LITERATURE REVIEW

Why the hoopla? The arguments about divided government are based on a long tradition in American political thought linking parties and the system of separate powers. The reasoning is as follows: although initially opposed by the founding fathers, political parties developed as a necessary corollary to our constitutional system of separate powers and checks and balances. As recounted by Sundquist (1988,

614), “traditional theory identified political parties as the indispensable instrument that brought cohesion and unity, and hence effectiveness, to the government as a whole by linking the executive and legislative branches in a bond of common interest.”² American parties, though admittedly weak in comparison with their European counterparts, were seen as an essential unifying force given our fragmented governmental structure.

Yet parties can fulfill their coordinating role only when both the legislative and executive branches are controlled by the same party. Up until the 1950s, the assumption that a single party would control the government seemed natural. Divided partisan control of federal government had been ephemeral, appearing mainly as a transition from unified control by one party to the other. In the 58 years between 1897 and 1954, divided government existed only 14% of the time, with the longest single episode of divided control being only two years. But since the mid-1950s, this pattern has reversed itself, to the point where divided government is now the norm. In the 40 years from 1955 to 1994, divided government appeared 65% of the time, including a 12-year stretch from 1980 to 1992. This shift from unified party government to coalitional government leads Sundquist (1988) to call for a new theory of political science in which parties no longer serve to unify across all branches of government.

Given the theory of responsible party government, the negative consequences of divided control are obvious: deadlock, partisan squabbles, and incoherent public policy. For instance, Cutler (1989) lays the blame for large deficits at the doorstep of divided government. Kiewiet and McCubbins (1991, 182–84) provide evidence that congressional conflict with the Office of Management and Budget over the disbursement of appropriated funds increases during times of divided control. And Fiorina (1992) claims that divided government further erodes the accountability of government officials for policies adopted and outcomes realized during their tenure.³

Has the prolonged presence of divided control indeed undermined the fabric of our political system? Despite the fact that this negative assessment has been most prevalent in popular discussions of divided government, a strong argument can be made that divided control does not matter. One can have gridlock under unified government, as in the Carter years, and coherent policy does not necessarily depend on a strong party system. Fiorina (1992) further notes that in certain cases partisan competition has led to greater government activism, either through an interparty “bidding war” or because neither party wants to appear responsible for the failure of a popular policy initiative.

Most of the empirical analyses to date find little evidence that divided government has an appreciable impact on outcomes. Alt and Stewart (1990) use historical

²For the traditional theory on responsible parties, see Ford (1898), Schattschneider (1942), APSA Committee on Political Parties (1950), and Key (1954).

³For additional suggestive evidence of the effects of divided government on policy, see Cox and Kernell (1991). An interesting review of recent work is found in Brady (1993).

data to show that budget deficits (and surpluses) are uncorrelated with the presence of divided government. Lemieux and Stewart (1990) and Cameron, Cover, and Segal (1990) find little to indicate that the Senate's accepting or rejecting Supreme Court appointments responds to divided partisan control in the twentieth century. Fiorina (1992) summarizes evidence that, in general, presidential appointments to executive branch offices are not rejected more often under divided government. And King and Ragsdale (1988) conclude that treaties, conventions, and protocols are accepted by the Senate equally under unified and divided control.

The one positive finding, noted by Rohde and Simon (1985) and elaborated by Cameron and Fischman (1993), is that presidents veto more legislation when at least one branch of Congress is controlled by the opposite party. Divided control also seems to influence the president's success in Congress. For example, we analyzed *Congressional Quarterly's* Presidential Success Scores from 1953 to 1992, which measure the percentage of contested votes on which the president prevailed. Our findings indicate that after controlling for any trend over time, the president's success in enacting controversial policy initiatives decreased by approximately 15% during times of divided control.⁴

This evidence, while a good starting point for further analysis, is rather indirect. Most of the correlations measured are not between divided government and policy outcomes, but rather between divided government and certain procedural actions. It could be, for instance, that treaties submitted to the Senate are watered down in times of divided government to obtain the necessary two-thirds support, or that executive branch appointments are less ideologically extreme. If the ultimate question is the impact of divided government on policy, then more direct measures of outcomes are necessary.

The most comprehensive study of divided government to date is by Mayhew (1991a) in his book *Divided We Govern*. Looking at 267 major statutes enacted between 1947 and 1990, Mayhew finds that "neither major laws nor high-publicity investigations have accumulated on a schedule that the rules of party control can predict."⁵ Figure 1, calculated from Mayhew's table 4.1 (1991a, 52–73), shows that the average number of pieces of legislation passed during unified government is 12.8, and under divided, 11.7. From this evidence, Mayhew argues that public policy generally responds to changes in public opinion, and that the actors occupying different seats in government have only a marginal impact on what legislation gets passed.⁶

⁴The results were:

$$\text{President Success} = \frac{100.61 - 15.32(\text{Divided}) - 0.468(\text{Year})}{(5.19) \quad (3.83)}$$

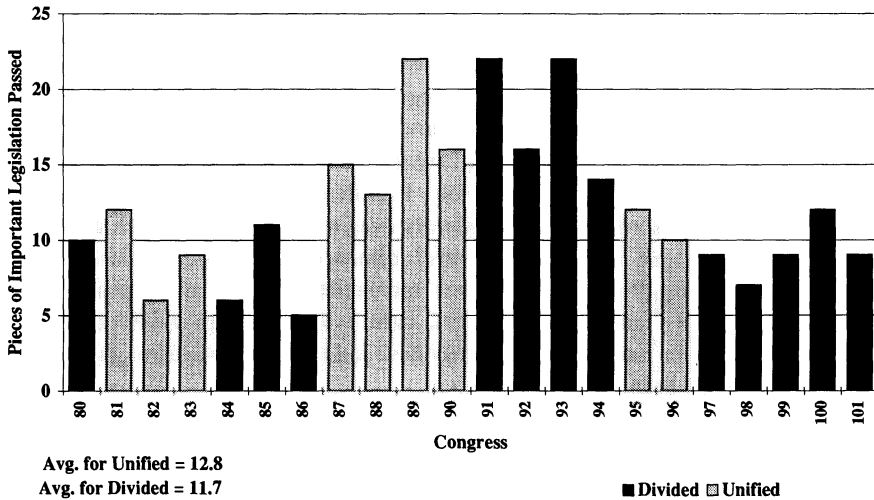
explaining some 61% of the total variation in the data. For further analysis of divided government's impact on presidential success scores, see Gibson (1994).

⁵Mayhew 1991b, 639.

⁶Similarly, Krehbiel (1994) analyzes a complete information model of the policy process and concludes that only in rare circumstances will the absence or presence of divided government make a difference as to whether or not new policy is passed.

FIGURE 1

MAJOR ACTS PASSED DURING UNIFIED AND DIVIDED GOVERNMENT



(Calculated from Mayhew 1991)

Mayhew’s findings, provocative though they may be, can be challenged on a number of grounds. For our purposes, we merely note that in addition to the number of important laws passed, the content of these laws is at least as important. To take but one example, the Civil Rights Acts of 1957, 1960, 1964, and 1965 are all cited by Mayhew as major pieces of legislation. But the Acts of 1957 and 1960, passed under divided government, were limited in scope, while the Acts of 1964 and 1965, passed under unified government, gave executive agencies significant authority to regulate employment, housing, and federal elections.

In sum, most of the empirical analysis on the effects of divided government deals either with congressional-executive relations directly or with the passage of legislation. Does this evidence capture all the important effects of divided government on policy? We argue that it does not, since it ignores the policy-making role of the bureaucracy.⁷ Currently, most significant legislation passed by Congress is enacted through federal agencies. Of Mayhew’s list of important laws passed in the post-war era, we estimate conservatively that 70% of them relied heavily on executive branch agencies for interpretation and implementation.

Despite the importance of agency actions in creating public policy, relatively little attention has been paid to the effect of divided government on how Congress

⁷In sheer bulk alone, the *Federal Register* dwarfs the *U.S. Code*: in recent years the ratio of pages in the former to pages of federal legislation is approximately 10 to 1.

delegates authority to the bureaucracy.⁸ When attention shifts from legislative behavior to federal agencies, however, the most frequently discussed issues in the divided government debate seem to fade in importance. Agencies continue to produce regulations, hold hearings, allocate resources, and adjudicate disputes no matter which parties control the legislative and executive branches.

Does this mean that partisan divisions have no effect on the bureaucracy? Not necessarily; after all, just as with the passage of legislation, mere agency activity does not necessarily indicate that important policy is being produced. Furthermore, agencies operate within a political environment in which executive and legislative preferences play a significant role. Presidents appoint agency heads and other important personnel, while legislators design the rules by which agencies make policy. We argue that divided control influences how Congress designs the institutions of delegation, and that these institutions in turn affect policy outcomes. Thus in the modern administrative state, even if partisan conflict does not seem to influence outcomes directly, it may have indirect influence through delegation and executive branch implementation.

MODEL: DIVIDED GOVERNMENT AND DELEGATION

To make this point more precisely, we analyze a game-theoretic model of the policy-making process. The key variable in our analysis of congressional-executive relations is the amount of *discretion* given to the bureaucracy. Why is discretion so important? All laws passed by Congress are implemented by the executive branch in one form or another. The question is the *range* of policy outcomes that executive agencies can enact without exceeding their legal authority. Discretion, then, measures the extent of statutorily permissible outcomes. When executive branch officials have significant latitude to implement legislation they will be important policy-making actors in their own right; otherwise, they will be mere clerks carrying out the laws of Congress.

In various guises, discussions of agency discretion permeate the bureaucracy literature.⁹ Statutory recognition of agency discretion dates back to the 1946 Administrative Procedures Act, which created three categories of permissible agency actions: rule making, adjudicatory hearings, and "discretionary actions" (also known as informal rule making). More recently, Shapiro (1988) equates bureaucratic discretion with the ability to make "prudent" policy choices. Levine and Forrence (1990) use the term "slack" to indicate the degree to which agencies can escape political control; in their model, bureaucrats can use their freedom to either further the goals of interest groups or to serve the public good. And Calvert, McCubbins,

⁸One notable exception is Fiorina (1992), who concludes that divided control makes congressional-executive relations more conflictual. He takes this as a positive sign, however: if conflict serves to ensure that public policies are more openly considered and more reflective of majoritarian sentiments, Fiorina argues, then divided government may reduce the problem of subgovernments, or iron triangles. Also, Bense (1980) codes legislation according to whether it increases or decreases executive discretion and analyzes congressional voting patterns. We compare our empirical results with Bense's below.

⁹Good sources for the traditional legal view of discretion include Hawkins (1992) and Schuck (1994).

and Weingast (1989) define discretion as those actions that no political coalition can overturn.

Our approach begins with the fact that the limits of agency discretion are set explicitly by *Congress*. When agencies are first established, their scope of operations, details of procedures, and exemptions from agency control are enumerated in the implementing legislation. If Congress wishes to grant agencies wide latitude, it may state only that they regulate “in the public interest”; otherwise, it may establish more detailed criteria concerning agency findings and subsequent actions. In contrast to those who define discretion as whatever an agency can get away with, therefore, we argue that often Congress prefers to set *ex ante* limits on agency discretion *more stringent* than those implied by their *ex post* power to overturn agency decisions.

Presidential control over the bureaucracy stems mainly from the power of appointment, which begins with agency heads and usually extends several rungs down the organizational ladder. Presidents generally appoint administrators with preferences similar to their own and, if anything, this trend has increased over time. Moe (1985), summarizing Reagan’s preparations to take office after the 1980 election, states that:

The key part of this plan [to control and coordinate the resources of government], the element that would later bind all others together, was the use of the president’s appointment and removal powers. The Reagan team spent months interviewing enormous numbers of people for jobs throughout government, placing almost exclusive emphasis on loyalty and ideology. Their concern was not simply with filling the obviously important positions; they wanted partisans located deep within the established bureaucracy, even if expertise was lacking.¹⁰ (260)

And what resources do *bureaucrats* themselves possess? In a word, information. Executive agencies are created by Congress to make policy in areas where legislators have neither the time nor the expertise to do so themselves. These agencies in turn hire policy experts, who design regulations to insure that final policy outcomes are well-informed and politically acceptable to all relevant actors. Just as congressional committees specialize in their subject areas, then, agencies acquire valuable knowledge relating policies to outcomes, which they use when designing and implementing regulations.¹¹

Our model combines these three aspects of regulatory policymaking. Congress establishes the agency and sets limits on bureaucrats’ discretion. The president appoints agency heads. Finally, the agency itself gathers information and sets policy.

Formally, the game is played by three actors: Congress (*C*), the president (*P*), and an agency (*A*). Let outcomes x be represented in a one-dimensional policy space, and let policy outcomes be given by $x = SQ + p + \omega$, where SQ is the

¹⁰ See also Wilson (1989, 260–62) on appointment powers.

¹¹ The discussion of informational advantages as a component of bureaucratic power dates back to Weber. See Bendor (1988) for an overview of this literature and Martin (1992) for an interesting application to trade policy. Also, much of the recent economics literature on regulation stresses the informational role of agencies when regulating private firms. See Baron and Myerson (1982) for an early example of this approach and Laffont and Tirole (1993) for a recent overview.

status quo, p is the chosen policy, and ω is an external shock. Further assume that ex ante ω is unknown, and that Congress and the president have common knowledge priors $f(\omega)$ over ω , where $f(\omega)$ is uniform in the $[-R, R]$ interval. Without loss of generality, Congress's ideal point is set to 0, the president has an ideal point $P > 0$, and the agency has ideal point A . All players have quadratic preferences over outcomes:¹²

$$\begin{aligned} U_C(x) &= -(C - x)^2 = -x^2; \\ U_P(x) &= -(P - x)^2; \\ U_A(x) &= -(A - x)^2. \end{aligned} \quad (1)$$

The game is played as follows. First, Congress sets the status quo (SQ) and the level of agency discretion (d). The president then sets the agent's ideal point (A). Next, nature reveals the value of ω . The agent may then implement any policy (p) such that $|p| \leq d$. All players then receive their payoffs according to equation 1, and the game ends. We first prove two basic results about the agency's ideal point and the status quo.

Lemma 1. The agency's ideal point will be the same as the president's ideal point: $A = P$.

Proof. It is immediately apparent that the agent will choose final outcomes according to the rule:

$$x = \begin{cases} \omega + SQ + d & \text{if } -R \leq \omega \leq A - SQ - d; \\ A & \text{if } A - SQ - d \leq \omega \leq A - SQ + d; \\ \omega + SQ - d & \text{if } A - SQ + d \leq \omega \leq R. \end{cases} \quad (2)$$

Equation 2 states that the agency will choose the outcomes closest to its ideal point, given any discretion level (d). Given this rule, the president will maximize her own expected utility by choosing $A = P$; that is, by choosing an agency with preferences equal to her own. ■

Lemma 2. Congress sets the status quo equal to its ideal point: $SQ = 0$.

Proof. In choosing d , Congress maximizes its expected utility, which is equivalent to solving:

$$\begin{aligned} \max_{SQ, d} EU_C &= - \int_{-R}^{P-SQ-d} (\omega + SQ + d)^2 \frac{1}{2R} d\omega - \int_{P-SQ-d}^{P-SQ+d} P^2 \frac{1}{2R} d\omega - \\ &\quad \int_{P-SQ+d}^R (\omega + SQ - d)^2 \frac{1}{2R} d\omega \\ &= \frac{3SQ^2d - 3SQ^2R - R^3 - 3P^2d + 3R^2d - 3Rd^2 + d^3}{3R}. \end{aligned} \quad (3)$$

¹²Although quadratic preferences display risk aversion, the results derived are identical to those where risk neutral preferences are employed below.

Equation 3 assumes rational equilibrium behavior by the president ($A = P$). To find the optimal status quo, we solve:

$$\frac{\partial EU_c}{\partial SQ} = 0 \Rightarrow SQ = 0 \blacksquare$$

Thus Congress will set policy to obtain its ideal point in expectation, and the president will appoint an agency head such that the agency’s ideal point is equal to her own. This indicates that Congress does not initially bias legislation away from the outcomes preferred by the executive branch. Also, presidents will attempt to obtain agencies which share their policy goals. We are now in a position to state our major findings relating divided government to discretion and policy outcomes.

Proposition 1. Discretion declines monotonically in the distance between the ideal points of Congress and the executive.

Proposition 2. Policy outcomes are closer to Congress’s ideal point in expectation the less discretion given to the agency.

Proof. We solve equation 3 for the optimal agency discretion:

$$\begin{aligned} \frac{\partial EU_c}{\partial d} &= 0 \\ \frac{(P + R - d)(P - R + d)}{R} &= 0 \end{aligned} \tag{4}$$

Equation 4 has two solutions: $d = R - P$ and $d = R + P$. Given our assumption that $P > 0$, $d^* = R - P$ is the appropriate choice. Since $\partial d^*/\partial P < 0$, as the president’s ideal point diverges from Congress’s ideal point, the agency will be given less authority to set policy. At the extremes, when $P = R$, the agency has no authority ($d^* = 0$), and when $P = C$, the agency has complete authority ($d^* = R$). Furthermore, expected outcomes are given by the expression:

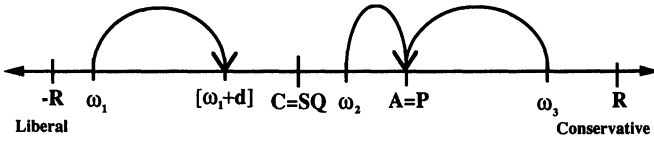
$$\begin{aligned} E(x) &= \int_{-R}^{P-d} (\omega + d) \frac{1}{2R} d\omega + \int_{P-d}^{P+d} P \frac{1}{2R} d\omega + \int_{P+d}^R (\omega - d) \frac{1}{2R} d\omega \\ &= \frac{Pd}{R}. \end{aligned}$$

Since this expression rises with d , expected outcomes move in the direction of the president’s ideal point as the agency is given more discretion. \blacksquare

It should be noted that this result holds for a given value of P ; that is, given the policy differences between Congress and the executive, more discretion leads to policy movement away from Congress’s ideal point. On the other hand, expected

FIGURE 2

DISCRETIONARY AUTHORITY AND POLICY OUTCOMES



Range	Outcomes	Example
$\omega \leq P - SQ - d$	$\omega + SQ + d$	ω_1
$P - SQ - d \leq \omega \leq P - SQ + d$	P	ω_2
$P - SQ + d \leq \omega$	$\omega + SQ - d$	ω_3

policy outcomes do *not* move monotonically with shifting values of P . If we substitute for the equilibrium value of d , then expected outcomes are equal to:

$$\begin{aligned}
 E(x) &= \frac{Pd}{R} \\
 &= \frac{P(R - P)}{R} \\
 &= P - \frac{P^2}{R},
 \end{aligned}$$

which are maximized at $P = R/2$. Thus although the relationship between discretion and outcomes is well-defined, the link between divided government and policy drift is ambiguous.

The equilibrium is illustrated in figure 2. The president's ideal point is labeled P , and the median congressional voter's ideal point is C . Note that in the diagram $A = P$ and $SQ = 0$, as implied in Lemma 1 and Lemma 2.

Assume Congress has delegated discretion $d > 0$ to the executive. If $\omega = \omega_1$ in figure 2, then the agency will use the full extent of its authority to move policy to the right. If $\omega = \omega_3$, then the agency will make policy more liberal. In either of these cases, Congress, the president, and the agency all profit. However, there is a range of possible values of ω , such as ω_2 , for which the agency will use its authority to Congress's detriment, moving policy closer to its ideal point (and the president's ideal point) and further from that of Congress. This range narrows as congressional and presidential preferences become more similar, and it disappears altogether when they overlap. Thus, Congress faces a trade-off when deciding how much discretionary authority to delegate to the executive branch. Legislators want to give agencies enough authority to make use of their expertise, but not so much authority that the executive dominates policymaking.

If we take partisanship as a proxy for preferences,¹³ then the implications of our model for divided government are clear: Congress will delegate more power to agencies under unified government than under divided government. In turn, the less discretion an agency has, the less it is able to adjust to changing circumstances. Executive branch policymaking under divided government will therefore be more rule-bound, less responsive, and produce more variable outcomes than under unified government. Thus, divided government should influence policy indirectly through the terms of delegation. Witness, for example, recent attempts by the new Republican majority in Congress to limit the discretion of executive branch agencies through the imposition of “cost-benefit analysis” on all new regulations.

EMPIRICAL ANALYSIS

We test the implications of our theory with data drawn from U.S. trade policy from 1890 to 1990. This issue area provides a convenient testing ground for theories of congressional-executive relations, as it contains the three basic elements of our model: (1) delegation, (2) uncertainty over outcomes, and (3) partisan differences over policy. First, Congress has a long history of delegation in the area of trade policy. Substantive delegations of authority to the executive branch started as early as 1890. After the 1934 Reciprocal Trade Agreements Act, the president was allowed to unilaterally set tariff rates within certain bounds. And the Trade Reform Act of 1974 gave the executive the right to negotiate the reduction of nontariff barriers subject to an up-or-down vote by Congress (fast-track procedures). Furthermore, the conditions of delegation have displayed considerable variation over time, with constraints more binding in some periods and looser in others. It is this variation, and its impact on policy outcomes, that we seek to explain.¹⁴

Second, although trade policy certainly has a significant distributive aspect, it is also characterized by a high degree of uncertainty and expertise. Consider, for instance, that at the time of delegating fast track authority in the Omnibus Trade and Competitiveness Act of 1988, legislators probably did not know the costs and benefits of a potential free-trade agreement with Mexico. Thus, a role exists for executive branch expertise in the formulation of policy. And third, in the postwar era Republicans have consistently advocated freer trade than Democrats, as Republicans tend to represent those constituencies that benefit from the expansion of export markets, while Democrats tend to represent more traditional import-competing industries.¹⁵

¹³ Given our model, this means that presidents of the same party as the median congressional voter will have preferences closer to that voter than would a president of the opposing party. In terms of the recent battle over NAFTA, for instance, assuming that the median congressional voter on free trade was a conservative Democrat, our assumption implies that President Clinton was more willing to accommodate congressional demands for protection than President Bush would have been.

¹⁴ O'Halloran (1994) provides a complete historical account of congressional delegation in trade policy.

¹⁵ See Magee, Brock, and Young (1989).

Overall, we conclude that the assumptions of our model are realized in the area of U.S. trade policy. What predictions follow? First, in our model, the greater the difference in policy preferences between Congress and the president, the less latitude will be given to the executive branch. Our first testable prediction, then, is:

Hypothesis 1: Congress will delegate more discretionary authority over trade policy to the executive under unified government than under divided government.

Indeed, as mentioned earlier, Congress frequently imposes provisions that force the president, the International Trade Commission (ITC), or the United States Trade Representative (USTR) to comply more closely with congressional views. Hypothesis 1 implies that, in general, these constraints will be more limiting during times of divided government. For example, the original 1934 Reciprocal Trade Agreements Act (RTAA) was enacted during unified government, and while Democrats continued to occupy the White House, extensions of the RTAA were fairly automatic. But when Eisenhower became president in 1952, and the Democrats regained control of Congress in 1954, future extensions of the RTAA contained provisions limiting executive authority over the traditionally Democratic steel, coal, and textile industries.¹⁶

The second prediction rests on the assumption that the president will favor free trade policies more than Congress. A considerable literature has argued that in trade policy, Congress delegates authority to the president in order to overcome unrestrained logrolling. The president is assumed to be less protectionist than Congress because he has a national constituency and is less susceptible to particularistic demands.¹⁷ According to our model, the less authority delegated to the executive, the closer outcomes will be to the congressional norm of protectionism. This implies our second hypothesis:

Hypothesis 2: Protectionism will be higher the less discretionary authority delegated to the president.

Historically, major shifts in trade have been associated with changes in the executive's discretionary authority. After the 1934 RTAA, in which Congress delegated broad authority to the executive, tariff rates dropped dramatically. On the other hand, the procedural constraints added to fast track during the 1980s—the initial congressional veto over the use of fast track in 1984 and reverse fast track procedures in 1988—forced the Clinton administration to accommodate numerous protectionist demands to secure congressional support for NAFTA.

¹⁶In a similar vein, House Majority Leader Richard Gephardt (D-MO) recently stated that he would not request renewing the controversial "Super-301" provision, which mandates presidential retaliation against certain unfair trade practices. As reported in *Congressional Quarterly Weekly Report* (Feb. 26, 1994, 464), "A long-time proponent of an aggressive trade policy, Gephardt said the change in his approach is the result of having a Democrat in the White House." Two weeks after this announcement, President Clinton himself renewed the Super-301 clause.

¹⁷See Lohmann and O'Halloran (1994) for a model that explicitly motivates delegation as a means of avoiding the inefficiencies that arise from distributive politics.

TABLE 1
DESCRIPTIVE STATISTICS, 1890–1990

Variable Name	Description	Mean	S.D.
TARIFF	Duties collected as a percent of the value of total imports.	12.3%	7.8%
GNP	Gross National Product in billions of 1982 dollars.	1,342.97	1,133.54
UNEMPLOY	The unemployment rate.	7.05%	5.0%
PPI	Producer Price Index (1982 = 100).	32.49	28.75
DELEGATION	Dummy variable equal to 1 if the president's discretionary authority increases; 0 if there is no change; and -1 if the president's discretionary authority is decreased.	0.08	0.48
DIVIDED	Dummy variable equal to 1 if Congress and the presidency are controlled by opposing parties; 0 if there is split partisan control of Congress; and -1 if Congress and the presidency are controlled by the same party.	-0.40	0.85

Sources: Tariff Data—U.S. Bureau of the Census (1975), *Historical Statistics of the United States*, Series U 207-12; and U.S. Bureau of the Census (1991), *Statistical Abstract*. Political Data—U.S. Bureau of the Census (1975), Series Y 204-10; Stanley and Niemi (1988); and Ornstein, Mann, and Malbin (1992). Economic Data—*Economic Report of the President* (1975–1991); and U.S. Bureau of the Census (1975), Series D 11-25 and E 52-63. Early GNP estimates calculated from Balke and Gordon (1989).

DATA

What determines levels of protection over time? Numerous studies attribute changes in trade policy to changes in economic conditions.¹⁸ Clearly, some of the pressure for protectionist provisions comes from import-sensitive industries lobbying for relief from foreign competition, and this pressure should rise as economic conditions worsen. But if our view of divided government is correct, part of the willingness of legislators to limit executive authority also stems from whether Congress believes that the president will accurately reflect members' concerns. Our empirical analysis thus includes both political and economic variables to test whether divided government influences trade policy over and above what pure economic theories of protectionism would predict.

Table 1 defines and provides descriptive statistics for the variables used in the analysis. The variable TARIFF is the level of protection, measured as the ratio of the value of duties collected to the value of total imports.¹⁹ Other economic

¹⁸ See Magee, Brock, and Young (1989) for an overview of this literature.

¹⁹ The analysis is limited by the difficulty of measuring aggregate levels of protection. One important problem is the recent proliferation of nontariff barriers (NTBs). Unfortunately, accurate estimates of NTBs are not available for the sample period. The dependent variable does identify barriers to trade resulting from increases in the actual tariff rate, as well as certain NTBs, such as the imposition of antidumping or countervailing duties, the granting of affirmative escape clause actions, and other forms

variables include both demands for protection and the current political environment. We measure aggregate economic conditions by the real gross national product (GNP), the constant dollar producer price index (PPI), and the unemployment rate (UNEMPLOY). These variables are similar to those used in most economic analyses of the tariff and are included to make our results comparable with previous studies.²⁰ The economic variables are estimated in logarithms and are lagged by one year; the political variables are also lagged by one year.

Our key political variable, DELEGATION, measures the change in executive branch discretion in trade policy from year to year. It can take on three possible values: 1 if legislation is passed increasing the president's discretionary authority; 0 if there is no change; and -1 if legislation decreases the president's authority. Table 2 shows the major trade acts from 1890 to 1990 and indicates whether each act increased or decreased the president's latitude to set policy. As shown, Congress increased the president's discretionary authority in 16 cases, restricted the actions of the president in eight cases, and left the president's authority unaltered in 77 cases. This method of coding the dependent variable is consistent with our model, which defines discretion as the president's ability to move policy away from the status quo.

For these 101 years, then, we coded whether legislation promoted, restricted, or left unchanged the executive branch's discretionary authority to affect trade policy. There are several potential weaknesses in measuring discretionary authority along these lines. Delegated authority is multidimensional, and in some cases Congress extends existing tariff-cutting authority but imposes restrictions on the use of this authority, such as a congressional veto or reporting requirements. At other times, even though Congress allows the president to negotiate trade agreements, it shifts the locus of decision-making authority on some issues away from the president to other agencies. Furthermore, legislators may change the criteria of those determinations to make it easier or harder for the president to disregard agency decisions. Thus, the fact that Congress does or does not grant the president negotiating authority reveals little about whether the institutions that govern trade policy are more or less restrictive. Taking into account these difficulties, we examined closely the provisions included in each act and classified trade acts according to whether their overall effect was to increase or decrease the level of presidential discretion in setting trade policy.

Finally, to measure partisan conflict between Congress and the president, we create a variable labeled DIVIDED. In a given year, if Congress and the administration are controlled by opposing parties (divided government), this variable takes on the value 1. If exactly one chamber of Congress and the administration are

of protection that result in higher tariffs. The measure does *not* capture the barriers to trade due to voluntary export restraints, orderly marketing arrangements, or quotas. Nor does it identify the more oblique but equally pervasive impediments, such as labeling requirements and health and safety standards, that raise the costs of imports and in some cases prohibit them altogether.

²⁰ See, for instance, Magee, Brock, and Young (1989) and Bohara and Kaempfer (1991).

TABLE 2
 TRADE LEGISLATION, DIVIDED GOVERNMENT,
 AND DELEGATION, 1890–1990

Legislation	President	House	Senate	Divided	Delegation
1890 McKinley Tariff Act	Rep	Rep	Rep	Unified	Increased
1894 Wilson-Gorman Tariff Act	Dem	Dem	Dem	Unified	Decreased
1897 Dingley Tariff Act	Rep	Rep	Rep	Unified	Increased
1909 Payne-Aldrich Tariff Act	Rep	Rep	Rep	Unified	Decreased
1913 Underwood Tariff Act	Dem	Dem	Dem	Unified	Increased
1922 Fordney-McCumber Tariff Act	Rep	Rep	Rep	Unified	Increased
1930 Smoot-Hawley Tariff Act	Rep	Rep	Rep	Unified	Increased
1934 Reciprocal Trade Agreements Act	Dem	Dem	Dem	Unified	Increased
1937 Extension of the RTAA	Dem	Dem	Dem	Unified	Increased
1940 Extension of the RTAA	Dem	Dem	Dem	Unified	Increased
1943 Extension of the RTAA	Dem	Dem	Dem	Unified	Increased
1945 Extension of the RTAA	Dem	Dem	Dem	Unified	Increased
1948 Extension of the RTAA	Dem	Rep	Rep	Divided	Decreased
1949 Extension of the RTAA	Dem	Dem	Dem	Unified	Increased
1951 Extension of the RTAA	Dem	Dem	Dem	Unified	Decreased
1953 Extension of the RTAA	Rep	Rep	Rep	Unified	Increased
1954 Extension of the RTAA	Rep	Rep	Rep	Unified	Increased
1955 Extension of the RTAA	Rep	Dem	Dem	Divided	Decreased
1958 Extension of the RTAA	Rep	Dem	Dem	Divided	Decreased
1962 Trade Expansion Act	Dem	Dem	Dem	Unified	Increased
1974 Trade Reform Act	Rep	Dem	Dem	Divided	Increased
1979 Trade Agreements Act	Dem	Dem	Dem	Unified	Increased
1984 Trade and Tariff Act	Rep	Dem	Rep	Split	Decreased
1988 Omnibus Trade and Competitiveness Act	Rep	Dem	Dem	Divided	Decreased

controlled by the same party (split partisan control), the variable is assigned the value 0. Finally, if both houses of Congress and the president are controlled by the same party (unified government), the variable takes on the value -1 . In the sample there are 65 cases of unified partisan control, 12 cases of split partisan control of government, and 24 cases of divided government.

Testing Hypothesis 1: Divided Government and Delegation

Hypothesis 1 asserts that legislators will delegate more authority when the president has preferences over trade policy more similar to their own. Congress will then give the executive branch less discretionary authority during times of divided government than when there is unified partisan control of government. One could also hypothesize, in line with traditional business cycle theories, that Congress is less willing to delegate authority to the president during times of economic

hardship, as legislators' constituents will clamor for legislative intervention. To control for changes in interest group pressure, then, we also include key economic indicators in our analysis. The basic equation to be estimated incorporates both the political and economic determinants of delegation:

$$\begin{aligned} DELEGATION_t = & \alpha + \beta_1 \Delta \log(GNP)_{t-1} + \\ & \beta_2 \Delta \log(UNEMPLOY)_{t-1} + \\ & \beta_3 \Delta \log(PPI)_{t-1} + \beta_4 \Delta DIVIDED_{t-1} + \epsilon_t. \end{aligned} \quad (5)$$

Recall that according to our model, the president's discretion rises as the policy differences between Congress and the president decrease. Thus, we expect a negative relation between divided government and delegation. Also note that while the model relates levels of conflict to levels of discretion, the dependent variable *DELEGATION* is the *change* in discretion from one year to the next. To be consistent with the theoretical model, then, we difference the right-hand side variables only, making the constant in the equation a trend variable.

Equation 5 can be estimated by ordinary least-squares methods, with the predicted coefficients interpreted as the marginal change in the probabilities that delegation increases, decreases, or remains the same. This *linear probability* model, however, imposes the rather severe assumption that, on average, increases in delegation are equal but opposite to decreases in delegation. It may also produce negative variances and predicted probabilities less than 0 or greater than 1.

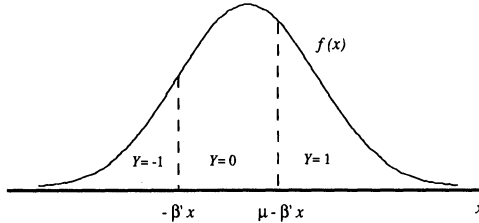
A more natural method is to estimate equation 5 by an *ordered probit* model, which always produces predictions between 0 and 1. This approach is used when the categories of the dependent variable are inherently ordered, as they are here. It falls between regular probit models, which ignore the ordering of the dependent variable, and linear probability models, which assume that the increments from one category to the next are exactly equal.

To understand the logic of a probit estimator, consider again equation 5. *DELEGATION* can take on three different values: increase (1), no change (0), and decrease (-1). Of course, the discretionary authority actually given to the president is a continuous variable, ranging from complete authority, $d = R$, to no authority, $d = 0$. If we could observe this authority directly, we could apply standard regression methods to equation 5, but since its exact value cannot be determined, we approximate it with a category variable, and the appropriate estimating technique is an ordered probit.

In more technical terms, we can think of the discrete dependent variable Y_i (*DELEGATION*) as being the realization of a continuous, but unobserved, variable Y_i^* . As illustrated in figure 3, the relationship between the categories of Y_i and the values of Y_i^* are:

$$\begin{aligned} Y_i = & \text{decrease if } Y_i^* < 0; \\ & \text{no change if } 0 \leq Y_i^* \leq \mu; \\ & \text{increase if } Y_i^* > \mu. \end{aligned}$$

FIGURE 3
PROBABILITY DISTRIBUTION OF ORDERED PROBIT ESTIMATES



Probit estimators assume that Y_i is represented by the cumulative normal distribution:

$$\text{Prob}(Y_i = j) = \Phi(\mu_j - \beta'x_i) - \Phi(\mu_{j+1} - \beta'x_i)$$

where μ_j and μ_{j+1} denote the upper and lower threshold values for category j . The probit equation estimates the components of β and μ by maximum likelihood, from which the underlying probabilities can be calculated.

The results of the ordered probit estimation are presented in table 3. They show that institutional restraints do respond to both economic conditions and divided partisan control of government. Column 1 tests the simple economic model, omitting the political variable. The results suggest that changes in unemployment and price levels are negatively and significantly related to the president's discretionary authority at the 5% level, indicating that in times of economic expansion Congress is more willing to delegate power to the president than in times of economic downturns. GNP is not a significant determinant of delegation but has the expected sign.

The key result appears in column 2, when divided partisan control of government is added to the equation. As in column 1, economic conditions tend to affect the willingness of Congress to delegate authority. But even after accounting for aggregate economic conditions, divided government is negatively and significantly related to the extent of delegation, as predicted by hypothesis 1. Thus, our results suggest that institutions do respond to partisan conflict.²¹

Our findings are similar to those found in Bensel's (1980) pioneering work on legislative preferences over delegation. Bensel analyzed voting patterns on bills and amendments that would increase or decrease executive branch discretion, as opposed to what he terms the "rule of law." Bensel found that legislators of the president's party were more likely to support delegation than legislators of the opposite party, all else being equal. This result would imply that the median voter would

²¹ A number of sensitivity tests were conducted to determine whether these results are robust to different specifications of divided government; for example, the consequences of distinguishing only between unified versus divided government were examined. These variations led to qualitatively similar results.

TABLE 3
ORDERED PROBIT ESTIMATES OF DISCRETIONARY AUTHORITY

Dependent Variable: DELEGATION		
Independent Variable	Model 1	Model 2
CONSTANT	1.56 (7.37)**	1.66 (7.66)**
$\Delta \log(\text{GNP})_{t-1}$	1.45 (0.52)	0.24 (0.088)
$\Delta \log(\text{UNEMPLOY})_{t-1}$	-0.69 (-1.85)**	-0.93 (-2.29)**
$\Delta \log(\text{PPI})_{t-1}$	-3.60 (-2.47)**	-3.04 (-2.30)**
$\Delta \text{DIVIDED}_{t-1}$		-0.46 (-2.84)**
μ	2.63	2.75
Number of observations	99	99
Log likelihood	-63.73	-61.11
Percentage correctly predicted	76.8	77.8

Note: *t*-statistics in parentheses. Standard errors computed from analytic first and second derivatives (Eicker-White).

* $\alpha < .10$; ** $\alpha < .05$.

prefer to delegate less authority in times of divided government as compared with unified government.

In an ordered probit analysis, the β coefficients cannot be interpreted as the marginal effects of the independent variables on delegation. To discern the complete effects of a multinomial independent variable like *DIVIDED* on the amount of delegation, additional calculations are required. In trichotomous probit models, the cutpoints which divide the three categories depend on the independent variables, the β coefficients, and two threshold parameters. Without loss of generality, one of these can be set to zero; the other, denoted μ , is estimated. Given estimates $\hat{\mu}$ and $\hat{\beta}$, and for any values of the independent variables x , the cut points occur at $0 - \hat{\beta}'x$ and $\hat{\mu} - \hat{\beta}'x$. To estimate the effects of divided government on *DELEGATION*, we set all other independent variables equal to their mean values and then estimate these cut points, letting *DIVIDED* range from -1 to 0 to 1 .²²

The results are presented in table 4. The top row of the table shows that when *DIVIDED* is equal to -1 , the cut points of the normal distribution are -2.053 and 0.701 . Consulting a standard normal table, this indicates that the area in the left tail of the curve is 0.020 , the area in the middle region is 0.738 , and the area in the right tail is 0.242 . In other words, when there is unified government there is a 2.0% chance that Congress will decrease delegated authority, a 74% chance of no change

²²See Greene (1993, 703-6) for details.

TABLE 4

EFFECTS OF DIVIDED GOVERNMENT ON DISCRETIONARY AUTHORITY

Category	$0-\hat{\beta}'x$	$\mu-\hat{\beta}'x$	Prob [DEL = -1]	Prob [DEL = 0]	Prob [DEL = 1]
DIVIDED = -1	-2.053	0.701	0.020	0.738	0.242
DIVIDED = 0	-1.598	1.156	0.055	0.822	0.123
DIVIDED = 1	-1.142	1.612	0.127	0.819	0.054
Change: -1 to 0			0.035	0.084	-0.119
Unified to split					
Change: 0 to 1			0.072	-0.003	-0.069
Split to divided					
Change: -1 to 1			0.107	0.081	-0.188
Unified to divided					

in delegated power, and a 24% chance of an increase in authority. The next two rows of the table replicate this analysis for the cases of split and divided partisan control of government.

From the results in table 3, it is clear that divided government makes delegations of authority less likely and restrictions more likely. The last three rows in table 4 confirm these results. As we move from unified to divided government, the probability of delegating less power rises, while the probability of delegating more power falls. To be precise, a change from unified to divided government increases the probability that Congress will restrict the president’s authority by approximately 11% and decreases the probability that his authority will be expanded by approximately 19%.

Interestingly, the table also shows that no action, *DELEGATION* = 0, is most likely under split or divided control of government (82.2% and 81.9%, respectively). That is, institutional innovation, either expanding or constricting delegated authority, appears most frequently when both branches of the federal government are controlled by the same party. This should not be surprising; under unified government Congress is more inclined to increase the president’s discretionary authority, and the president will certainly not be averse to accepting it. In times of divided government, however, Congress is less likely to extend the president’s authority, despite the president’s wishes to the contrary. This was the case from 1968 to 1973, when the Democratically controlled Congress refused to extend Nixon negotiating authority.

The analysis presented here confirms that the design of trade institutions reflects partisan conflict between Congress and the president. In times of divided partisan control of national government, Congress will delegate less authority to the president than in times of unified government. The interesting implication is that procedural innovations that increase the president’s discretionary authority will occur during times of unified government. The first delegation in 1890, the RTAA in

1934, and the first multilateral negotiating authority in 1962 all took place under unified partisan control. One notable exception was the 1974 Trade Reform Act, which was enacted when the Republicans controlled the presidency and the Democrats, Congress. But although this act increased the president's discretionary authority, it was much more restrictive than previous postwar delegations in that it required congressional approval of presidential trade proposals.

Testing Hypothesis 2: Delegation and Policy Outcomes

We next test hypothesis 2, which states that delegations of authority actually do produce lower tariffs, and that restrictions on authority are associated with higher tariffs. The basic estimation technique used to test hypothesis 2 is ordinary least squares. However, there are two potential econometric problems to consider here: (1) the standard times-series issues of serial correlation, unit roots, and the like; and (2) the possibility of selection bias in the outcome stage of our analysis. We will discuss each in turn.

As is common with many economic time series, the tariff shows a unit root.²³ Since the economic variables are not cointegrated, we must correct for nonstationarity by estimating the equation in first differences. Recall that *DELEGATION* is the change in discretion from one year to the next; therefore, it need not be differenced again. The basic model to be estimated, then, is defined as:

$$\Delta \log(TARIFF)_t = \alpha + \beta_1 \Delta \log(GNP)_{t-1} + \beta_2 \Delta \log(UNEMPLOY)_{t-1} + \beta_3 \Delta \log(PPI)_{t-1} + \beta_4 DELEGATION_{t-1} + \epsilon_t. \quad (6)$$

Equation 6 asserts that changes in tariff levels respond to changes in demands for protection and the president's discretionary authority to set trade policy. Furthermore, delegation to the executive branch only had an appreciable effect on policy after the passage of the RTAA, and trade flows were adversely affected by the Great Depression and WWII. Therefore, we estimate equation 6 for the postwar years only.

The other issue to address is the fact that *DELEGATION*, one of the regressors in equation 6, has been shown to be endogenous to the economic variables, which are also included as regressors. This creates a potential problem of selection bias in the OLS estimates.²⁴ To determine the extent of this bias, we also estimated equation 6 by a two-stage least-squares procedure (also known as 2SLS), corrected for the fact that our first stage estimation was an ordered probit.

²³For the sample period, we tested the null hypothesis that $\rho = 1$ in the equation $TARIFF_t = \rho TARIFF_{t-1} + \epsilon_t$. The resulting t statistic is -1.02 . Thus, we cannot reject the hypothesis of a unit root at the 5% level. After first differencing the dependent variable, the estimated t -statistic is now 6.75. This time we can reject the hypothesis that the differenced tariff series has a unit root at the 5% significance level. For further analysis indicating that tariffs exhibit a unit root, see Gardner and Kimbrough (1989).

²⁴See Achen (1986) for an excellent summary of these issues. The procedures used to estimate the 2SLS equation are found on pages 628–32 of Greene (1992).

TABLE 5

LEAST SQUARES ESTIMATES OF THE EFFECT OF DELEGATION ON THE TARIFF

Dependent Variable: $\Delta \log(\text{TARIFF})$			
Independent Variable	Model 1 (OLS)	Model 2 (OLS)	Model 2 (2SLS)
CONSTANT	0.023 (0.92)	0.032 (1.24)	0.199 (1.94)**
$\Delta \log(\text{GNP})_{t-1}$	-0.67 (-1.00)	-0.85 (-1.28)*	-1.33 (-4.06)**
$\Delta \log(\text{UNEMPLOY})_{t-1}$	0.045 (0.73)	0.040 (0.62)	0.042 (0.77)
$\Delta \log(\text{PPI})_{t-1}$	-0.44 (-1.44)*	-0.49 (-1.63)**	-0.29 (-1.20)
DELEGATION _{t-1}		-0.024 (-2.10)**	-0.040 (-1.53)*
λ			-0.071 (-1.24)
Number of observations	42	42	42
R ²	0.17	0.19	0.27

Note: *t*-statistics in parentheses. Standard errors are White heteroskedastic-consistent estimates.

* $\alpha < .10$; ** $\alpha < .05$.

To perform the 2SLS procedure, we estimate the equation:

$$\Delta \log(\text{TARIFF})_t = \alpha + \beta_1 \Delta \log(\text{GNP})_{t-1} + \beta_2 \Delta \log(\text{UNEMPLOY})_{t-1} + \beta_3 \Delta \log(\text{PPI})_{t-1} + \beta_4 \text{DELEGATION}_{t-1} + \lambda_t + \epsilon_t \quad (7)$$

where

$$\lambda_t = \frac{\phi[\mu(j-1) - \beta'x_t] - \phi[\mu(j) - \beta'x_t]}{\Phi[\mu(j) - \beta'x_t] - \Phi[\mu(j-1) - \beta'x_t]}$$

is a correction factor for an observation falling in the *j*'th interval in the ordered probit equation, ϕ and Φ are the normal density and distribution functions, respectively, and β is the vector of estimated coefficients from equation 5.

Table 5 reports the results of both the OLS and 2SLS estimations. Column 1 includes only the economic variables; it shows that the price level is negatively and significantly correlated with the tariff. GNP is also negatively correlated, but the coefficient is insignificant. Unemployment is positively correlated and insignificant.²⁵

Column 2 and column 3 incorporate DELEGATION into the analysis and provide a test of hypothesis 2. Column 2 shows that changes in GNP and the price

²⁵These results are similar to those reported in Bohara and Kaempfer (1991).

level are significant determinants of the tariff. Unemployment is not significant in this instance. The coefficient on the institutional variable is significant at the 5% level and has the sign predicted by hypothesis 2.

The two-stage least-squares estimates in column 3 confirm these findings. The constant term becomes significant in this specification, and the price level becomes insignificant, but our institutional variable remains significant.²⁶ These results suggest that, in the postwar era, increasing the president's discretionary authority on average decreased the tariff rate. Thus, we conclude that divided government affects the institutions of delegation, and these institutions have real effects on policy outcomes.

CONCLUSION

Our analysis began with a theoretical model predicting that rational legislators will delegate less discretionary authority to the executive under divided government than unified government, and that the less discretion the executive has to set policy the closer policy outcomes are to those preferred by Congress. Therefore, divided government affects policy outcomes indirectly through the institutions that Congress designs. We then tested the implications of this model with trade data. Our empirical results show that Congress does indeed give the president less authority during times of unified than divided government and that tighter procedural constraints are associated with higher protectionism. Our findings also suggested that procedural innovation is more likely to occur under unified than divided government.

How do our findings relate to the divided government debate? In policy areas characterized by delegated authority, our results suggest that divided government does matter. As the debate over divided government is really a discussion about the separation of powers system and political parties, our conclusions carry implications for both these issues.

First, the constitutional system of separate powers is important because Congress has the authority to enact legislation, thus giving legislators control over the institutions of delegation. Legislators decide how policy will be enacted, either through direct legislation, as with increases in the minimum wage, or by delegating broad authority to the executive, as with environmental policy. The executive branch is charged with carrying out legislation passed by Congress, and the president has the power to appoint major agency officials. The division of labor implied by this system will make legislators wary about delegating too much discretion to an executive branch they do not trust. And it is this difference in preferences that makes partisanship important. As our model suggests, and as is borne out in our data, partisan conflict between Congress and the executive affects how much leeway agencies have to set policy. So divided government results in procedural grid-

²⁶The 2SLS estimation also showed that the error term in equation 7 and the error term in the ordered probit (equation 5) are correlated at the tolerably low level of $\sigma_{12} = 0.13$.

lock: a more constrained bureaucracy, with less flexibility to respond to changing circumstances, and in greater conflict with its political supervisors.

Our study is limited to one particular issue area, trade policy, and so our conclusions must be regarded as preliminary. Nevertheless, our findings are suggestive on a number of grounds. First, our method of collecting and coding administrative procedures illustrates one way to calculate the effects of institutional constraints on policy. Much of the previous literature on divided government focuses exclusively on the use of procedural instruments like a presidential veto or aggregate policy indicators like legislative activity. In contrast, we directly measure both institutional change and policy outcomes and relate them to the absence or presence of divided government. Second, the argument we develop redirects the thrust of the debate on divided government. Given the size and importance of federal agencies, the road to understanding policy formation runs through bureaucratic territory. Thus, to analyze and understand federal policymaking in general and divided government in particular, it is necessary to understand the constraints placed on agencies and the political environment in which they operate.

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