CHAPTER 27

COMMON AGENCY?
LEGISLATURES AND BUREAUCRACIES

MATHEW D. MCCUBBINS

27.1 Introduction

Since the rise of societal complexity, rulers have struggled to control their agents. According to the earliest history of ancient Egypt, Pharoah Othoës was assassinated by his own bodyguard in 2333 BC (Kanawati 2002). The Roman kingdom ended in 509 BC when Lucius Junius Brutus, commander of the king’s guard, overthrew the king and established the Roman republic. The Roman republic began to collapse in 49 BC when Julius Caesar, whom the Roman Senate had appointed proconsul of Gaul, violated Senate orders to disarm and marched on Rome. Though contemporary research on the subject tends to focus on questions of policy slippage (or “bureaucratic drift”), political control of the bureaucracy has long been a question of life or death.

To consider a milder, more modern example, in the exercise of its power over interstate commerce, the United States Congress may outlaw the transportation across state lines of food contaminated with pathogens, as it did in the Food and Drug Act of 1906. While they may pass such a law, members of Congress would be hard-pressed to enforce it personally. In fact, Congress may not even have the resources to identify which pathogens should be banned. In order to ensure that food sold in the United States is safe, Congress must delegate authority to agents in the bureaucracy. Like all forms of delegation, granting authority to implement policy involves some risk of agency loss; that is, an agency tasked with implementing law may implement it in ways that diverge from the intentions or preferences of the legislative coalition that created that agency.  

As a second example, consider the signatory states of the Schengen Agreement in Europe. The Schengen states—which now include most of Western Europe—agreed to eliminate border checks between each other while concentrating resources on control
of borders with non-Schengen states. This radical form of delegation involves sharing control of who can and cannot enter one’s country (and with what cargo) with every other Schengen state, and delegates some authority to an international bureaucratic agency called Frontex, which coordinates customs standards and helps patrol borders (European Parliament 2006).

When a single employer delegates work to a single employee, information asymmetries and divergent preferences cause agency loss. When a legislative coalition delegates authority to a bureaucratic agency, there are two additional complications: the multiplicity and temporal instability of the principal. In presidential systems, the multiple political principals arises from the separation of powers. In parliamentary systems with proportional representation, multiple principals arise from coalition politics. Even governments with the clearest delegation chains—for example, Westminster systems with first-past-the-post voting—often have diverse legislative coalitions, as have governing parties in Britain from 2010 to the writing of this chapter. Temporal instability of political principals, of course, is by definition a characteristic of all democratic governments (Przeworski 1996). Political scientists have of late produced a range of models addressing the multiplicity of legislative principals—incorporating congressional committees, bicameralism, and the presidential veto. (These models are referred to as common agency models.) Less frequently addressed is the related problem of the temporal instability of political principals.

There are four key methods for a legislature to mitigate the agency problems associated with delegation (see Kiewiet and McCubbins 1991, Ch. 2). The first two, contract design and screening/selection, are carried out before delegation occurs, and the last two, monitoring/reporting requirements and institutional checks, are carried out afterward. Table 27.1 shows these four methods along with examples from the formal institutional powers of the US Congress. For more than a century, political scientists have debated whether and to what extent these tools can and should allow Congress or any

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other legislature to govern the implementation of law. This article will provide an overview of these debates.

### 27.1.1 Comparative Work on Oversight

Most of the scholarship on the legislative control of bureaucracy has been shaped in the literature on American politics (Pollack 2002), but some work has extended the literature to shed light on East Asian and European politics (e.g., Thies 2001; Baum 2007a; 2007b; Pollack 2002). This section includes just a few outstanding examples.

Aberbach, Putnam, and Rockman (1981) present data from a survey of political and bureaucratic elites in Britain, France, Germany, Italy, the Netherlands, Sweden, and the United States. While they do not focus on oversight, they have several observations of importance to those who do. For example, in their sample of respondents, while American agency heads are slightly more liberal than their political principals, their European counterparts were slightly more conservative than their own political principals. They also contend that “Congress plays a more powerful and independent role in formulating policy and overseeing its implementation than do its sister legislatures in Europe,” and “congressional oversight is substantially more detailed and effective than in Europe.” (This claim, to the best of my knowledge, has yet to be rigorously proved.)

Moe and Caldwell (1994) offer a theoretical perspective on how parliamentary and presidential institutions (represented by those of Britain and the US, respectively) might influence political control of the bureaucracy. They argue that prime ministers exert much more effective control over their bureaucratic agents than do presidents.

Ramseyer and Rosenbluth (1997) made a very controversial contribution to the study of Japanese politics, by extending the work of Weingast and Moran (1983) to argue that the famously independent Japanese bureaucracy was actually beholden to the longtime ruling Liberal Democratic Party.

Huber and Shipan (2002) measured the verbosity of enabling legislation (with controls for language variations) as a proxy for the thoroughness with which politicians attempt to control outcomes ex ante. Building on their work, Salmond (2011) argues that the parliamentary institution of Question Time in Westminster-system parliaments affects the delegation and oversight of bureaucracy, where “open, spontaneous question times” reduce discretion by increasing reputation risks to ministers.

### 27.2 The Normative Debate: Who Should Control the Bureaucracy?

Before asking whether politicians have the capacity to control bureaucracy, we should ask whether they have the right to. This is especially true for comparativists, since the
answer to the empirical question ("can they") may vary from government to government, whereas the normative question ("should they") is grounded in basic democratic theory. Broadly speaking, today most political scientists agree that in a democracy, elected representatives have the right to control the bureaucracy, because democracy is built on a chain of delegation: politicians are agents of the people, tasked with deciding law; bureaucrats are the agents of elected representatives, tasked with executing that law.

Political scientists have not always agreed on the normative question of who should control the bureaucracy, and even today there is a wide variety of perspectives on the degree to which that authority should be exercised. Wilson (1887) argued that “administrative questions are not political questions” and should be “removed from the hurry and strife of politics.” Wilson and the Progressives felt that cabinet officials were “not necessarily political officers at all,” and even that “the Constitution looks upon the President himself in the same way” (Wilson 2006). Progressives throughout the twentieth century continued to favor bureaucratic autonomy (Weber 1946; Landis 1938) while “democrats” (lower-case d) argued for legislative sovereignty (e.g. Shapiro 1964; Noll 1971; Woll 1977).

This disagreement strikes at the heart of two competing views of democratic governance. As Shapiro (1964, 45) puts it, “somewhere in the examination of every agency of American government, we may wish to ask to what extent the structure and function of this agency accords with whatever theory of democracy we have.”

While Wilson (1887) felt administration should be “sensitive to public opinion,” he believed the public should be “docile and acquiescent in learning what things it has not a right to think and speak about imperatively” and avoid meddling, since in “oversight of the daily details… of government, public criticism is of course a clumsy nuisance, a rustic handling delicate machinery.” Woll (1977) viewed this as a form of elitism, fearing instead that “the development of a bureaucracy that is not elected and that exercises broad political functions has apparently resulted in the breakdown of a primary constitutional check on arbitrary governmental power” (p. 29).

There are six schools of thought about who should govern the bureaucracy: the Progressives, the Pluralist School, the Neodemocrats, the Public Choice School, the Civic Republicans, and the Neoprogressives. The following is a brief overview of these perspectives.

On the side of bureaucratic autonomy, Progressives envisioned an apolitical technocracy. Landis (1938) argues that “the administrative process is, in essence, our generation’s answer to the inadequacy of the judicial and the legislative processes.” Progressives believed Congress should be engaged only in the highest level of policy-making, and then delegate broad authority to the bureaucracy, and expect bureaucrats to make unbiased choices on behalf of the public weal. Along these lines, Weber (1946) writes that “bureaucratization offers above all the optimum possibility for carrying through the principle of specializing administrative functions according to purely objective considerations.”

The Pluralist School largely replaced the Progressives in the 1950s (e.g. Truman 1951), building on the work of Bentley (1908). The Pluralists recognized that the bureaucracy was political, but viewed it as capable of forging compromise between competing
factions. In this view, the bureaucracy joined Congress as an appropriate forum for the kind of factional competition Madison foresaw in *Federalist 10*. While the Progressives denied that administration was part of politics, Pluralists acknowledged that administration was political, but considered bureaucrats (and courts) competent to make political decisions.

Favoring legislative sovereignty, the Neodemocrats view Congressional control of the bureaucracy as essential to democratic accountability (Shapiro 1964; Noll 1971; Woll 1977; Melnick 1983). Neodemocrats prefer democratic (mainly legislative) control of the bureaucracy, and have focused on explicating the mechanisms for such control—the structure and process of legislative delegation (Wilmerding 1943; Fiorina 1977; Cohen 1979; Wilson 1980; Fisher 1981; Breyer 1982; McCubbins and Schwartz 1984; Weingast 1984; McCubbins 1985; McCubbins and Page 1987; Moe 1987; Noll 1987; McCubbins, Noll, and Weingast 1987, 1989; Kiewiet and McCubbins 1991; Bawn 1995; Epstein and O’Halloran 1996).

The Public Choice School shares the preference for democratic control of the bureaucracy, but focuses on the argument that special interests, not public interests, have captured the benefits of government intervention. Perhaps the most succinct expression of the Public Choice perspective (especially as a critique of Pluralism) comes from Schattschneider (1960), who wrote that “the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent.” Public Choice models often focus on how bureaucrats are influenced by special interests to allocate rents (Buchanan and Tullock 1962; Kolko 1965; MacAvoy 1965; McConnell 1966; Lowi 1969; Stigler 1971; Peltzman 1976). Mashaw (1997) characterizes this view “somewhat hyperbolically, as a world of greed and chaos, of private self-interest and public incoherence…. It is a vision that makes all public action deeply suspect.” Since special-interest-dominated regulation threatens economic efficiency, Public Choice scholars wish for Congress to reduce the administrative footprint and “undelegate” its legislative authority (Lowi 1969).

The final two approaches extend the Progressive School. Civic Republicans like Sunstein (1990) and Seidenfeld (1992) believe the bureaucracy can lead the public in policy-making deliberation, both to resolve factional conflict and to instill the virtue of civic republicanism in the citizenry. Scholars have promoted this sort of guided deliberation in the form of negotiated rulemaking (Susskind and McMahon 1985) and deliberative polling (Fishkin 1991; Ackerman and Fishkin 2005). Seidenfeld writes:

Given the current ethic that approves of the private pursuit of self-interest as a means of making social policy, reliance on a more politically isolated administrative state may be necessary to implement something approaching the civic republican ideal.

The New Progressivists (chief among whom is Mashaw [1985; 1994; 1997]) reject the pessimism of Public Choice and argue that the bureaucracy is actually competent and responsive to the public will (e.g. Mashaw 1997, 206). New Progressivists believe that political meddling in the bureaucracy hinders the ability of bureaucrats to pursue public-interest policy (Mashaw 1994).
27.3 The Positive Debate: Who Does Control the Bureaucracy?

27.3.1 A Short Survey

In American politics, the early literature on delegation to the bureaucracy simply asked whether Congress could control the bureaucracy, and the answer was usually no. Wilson (1885) considered it “quite evident that the means which Congress has of controlling the departments and of exercising the searching oversight at which it aims are limited and defective.” Lowi (1969) and Niskanen (1971; 1975) were perhaps the leading twentieth-century proponents of the “abdication hypothesis” that Congress had yielded up control over the apparatus of government to administrative agencies, which were in turn influenced by the sort of factions Madison (1787) sought to constrain. Proponents of the abdication hypothesis pointed to the infrequency with which Congress could be observed to directly override agency decision-making (Pearson 1975; Seidman 1975; Hess 1976; Fiorina 1977). Scholars in the public administration school agreed with the fundamental assumption that agencies had considerable discretion, but were more sanguine about the ability of bureaucracies to implement policy without political meddling from Congress or presidential appointees (e.g. Wilson 1974; Heclo 1977). Congressional abdication is still a popular perspective today among scholars and politicians (e.g. Webb 2013).

The traditional view of an impotent legislature was challenged by what came to be called (mistakenly) the “Congressional Dominance” school of oversight, perhaps best represented by Weingast and Moran (1983; and Calvert, Moran, and Weingast 1987), who argue that the lack of evidence for Congressional override of the bureaucracy is consistent with a world in which bureaucrats do exactly as Congress desires for fear of retribution. Weingast and Moran (1983) argue that changes in the behavior of the Federal Trade Commission can be attributed to the changing preferences of the Senate’s FTC oversight subcommittee. And despite the observational equivalence of dominance and abdication in equilibrium, some evidence emerged that Congressional leadership can control the bureaucracy (via appointment of committee chairs) in 1994, when incoming House Speaker Newt Gingrich “bypassed more senior Republicans in the selection of chairs for the Appropriations, Energy, and Commerce, and Judiciary Committees” (Cox and McCubbins 2007).

In the 1970s and 1980s, many students of American politics perceived an “imperial presidency.” Advocates of this perspective argue that Congress lacks the ability to set its own legislative agenda, leaving a vacuum into which the unified presidency enters (Fiorina 1974; Edwards 1980; Sundquist 1981). Moe (1985) argues for the (far from absolute) power of the president over administrative agencies via the imposition of an extra, politicized layer atop these agencies. (His argument builds on the work of Truman [1951] and Neustadt [1960].) Moe (1987) argues in particular against Weingast and Moran on
theoretical and empirical grounds, and (1987a) proposes an alternate model in which
the bureaucracy has multiple principals (Congress and the president) and illustrates his
argument with an account of the origin and development of the National Labor Review
Board. Moe and Howell (1999) show that the president can use executive orders to exert
control over the bureaucracy. The claimed rise of the imperial presidency places the
president rather than Congress in the role of political principal.9

27.3.2 Asking More Nuanced Questions

The theories described in the preceding paragraphs all tend to be addressed to the ques-
tion “who controls the bureaucracy?” The modern literature on political control of the
bureaucracy tends to draw on agency theory to answer the question “how and when
do different principals control the bureaucracy, and to what extent?” This begins with
McCubbins and Schwartz’s (1984) attempt to address how Congress might control the
bureaucracy. They argue that there are two forms of oversight, labeled metaphorically
“police patrols” and “fire alarms.” Police patrols are centralized, active, direct investiga-
tions into the behavior of agencies. Fire alarms are systems of rules, procedures, and
informal practices that allow others to alert Congress to abuses of bureaucratic discre-
ption. Their analysis is built on three assumptions: technological (the police-patrol and
fire-alarm methods are both available to Congress), motivational (Congressmen and
women seek to maximize credit for benefits to supporters and avoid blame), and insti-
tutional (executive agencies act as agents of Congress, according to the Constitution).
They conclude that Congress will neglect police-patrol oversight, and instead use
administrative rules and procedures to enable fire-alarm oversight.

Aberbach (1990) argues that Congress does indeed engage in a great deal of police-patrol
oversight (though he provides an expanded taxonomy of types that fit within that cat-
egory). Whereas many authors assume that Congress wants to control the bureaucracy
(and argue that they are strategic in the selection of methods), Aberbach gives special
attention to the strategic choice of whether or not to attempt to control the bureaucracy.
He argues that the 1970s brought expanding Congressional staffs, shrinking discretionary
budgets, growing scope and complexity of government, and increasing political competi-
tion with the president; and these changes and others led to higher payoffs for oversight
activities, which spurred Congress to spend more time on hearings and the like.

McNollgast10 (1987) develop this argument further, defining the executive agency’s
principal more precisely and considering its motive. They explain that the principal who
delegates administrative authority is the legislative coalition (including the president)
that passed the agency’s enabling legislation. They also point out the motive for this
degation: “Much of administrative law . . . is written for the purpose of helping elected
politicians retain control of policy-making.” Like models of war that treat whole nations
as unitary actors, previous theories of delegation to the bureaucracy treated Congress as
if it were an individual. But Congress is not a single actor—not a single individual in the
present, and not a single coalition over time.
McCubbins, Noll, and Weingast (1987) write that the members of a legislative coalition attempt to act in concert to implement ex ante controls on their agent's behavior by determining administrative structure and process. The members of this coalition know that each coalition member has an incentive to opportunistically influence agency behavior toward his own preferred outcome after the creation of the agency, and they also know that future attempts to correct and govern a noncompliant agency will "not, in general, reproduce the policy outcome that was sought by the winning coalition" (McCubbins, Noll, and Weingast 1989). Thus they will attempt in so far as possible to constrain bureaucratic agencies in advance to behave in ways that match the coalition's preferences.

Ex ante controls on the bureaucracy do have their limitations. Arnold (1987) argues that because Congress only gets one shot to write enabling legislation (and infrequent opportunities for major reform), ex ante controls are not as effective as ongoing efforts to oversee the bureaucracy. Spence (1997a; 1997b) argues that legislators may lack the foresight to implement effective controls. Potoski (1999) finds mixed evidence for the effectiveness of ex ante controls, arguing that politicians are not able to "stack the deck" in favor of preferred interest groups. Evidence in support of ex ante controls, on the other hand, can be found in Gerber et al.'s (2005) comparative study of American states. They found that bureaucratic agency heads were more likely to characterize as "high" the "degree of influence the legislature has on decisions your agency makes" in states that exerted stronger ex ante controls over bureaucratic decision-making.

Once a coalition of elected officials delegates to bureaucrats, they essentially create a new player whose unconstrained incentives may diverge from those of the coalition. For this reason, they seek to include institutional constraints that induce more favorable preferences. As an analogy, if a business owner wants his business to thrive through the sale of widgets, but he does not have time to both produce and sell widgets, he may hire agents and delegate sales to them. Since those agents don't innately care about the sale of widgets, the owner pays them a commission to induce them to care. This kind of comparison between the process of delegation to the bureaucracy and the process of delegation in firms is the basis of a revolution in political science: the importation of tools from the field of industrial organization, particularly agency theory and institutional economics.

Since the infusion of agency theory into the study of oversight, advocates of presidential control of the bureaucracy have also shifted from asking does "the president control the bureaucracy" to asking "how and when does the president control the bureaucracy?" Here are some of their conclusions:

- Carpenter (2001) presents conditions for administrative independence, but without a very well specified general-equilibrium theory of political control, it is still difficult to distinguish empirically between administrative independence and political control (as noted by Weingast and Moran 1983).
- Skowronek (1982) provides a sort of general-equilibrium theory, explaining the expansion of the American state in the twentieth century as a result of the demand for and supply of regulation among interest groups, Congress, the president, courts, and the states (see further, Orren and Skowronek 2004).
Epstein and O’Halloran (1996) show that Congress delegates more power to executive agencies under unified government, and more power to independent agencies and commissions under unified government.14

Wilson (1989) argues that agencies have more discretion from the president when outputs or outcomes are non-observable.

27.3.3 Spatial Models for Multiple Principals at a Given Moment

The separation of powers in American government produces multiple policy-making principals during any given term of Congress. In addition, turnover among representatives, senators, and presidents from term to term—and even changing pressures and preferences within a term—mean that the principal of yesterday does not exist today. Since the principal that delegates to a bureau is the legislative coalition that creates it, this principal only exists from the moment the president decides to sign the final form of the agency’s enabling legislation to the moment that he does sign it—this being the only period in which all members of the legislative coalition desire for that legislation to determine outcomes. Once the legislation becomes status quo, the individuals who cooperated to pass the legislation now wish to push policy closer to their own ideal points. As Laver and Shepsle (1990, 873) put it, “forming a government is not the end of politics but the beginning.”

Bureaucracies are designed (so far as possible) to act in the interests of the coalition that formed or reformed them. But once a bureaucratic agency actually exists, serves a multiplicity of agents. To model this complex principal-agent relationship, political scientists often use spatial models to represent preferences. Wood (1988) shows that when Congress and the president both hold ideal points on the same side of an agency’s current policy, they can force that agency to move that policy in the direction they prefer. When Congress and the president hold ideal points on opposite sides of the agency’s current policy, that agency has much greater discretion to choose policy (see further, Kiewiet and McCubbins 1988). He illustrates this point with monthly data on the EPA’s monitoring and abatement actions.

Shipan (2004) offers a more formal spatial model of three actors on a one-dimensional policy continuum, which he labeled C, F, and A (committee, floor, and agency). In this model, A proposes an action, a; C chooses either to take no action or to introduce a bill, labeled b; if C introduces b, F chooses either to reject the bill (yielding outcome a), pass the bill as written (outcome b), or pass an amended bill (outcome b*). There is one more element in the game, C(F), or the indifference point for the committee with respect to F. There are three different “regimes,” or arrangements of the three points on the continuum, as listed below. Fig. 27.1, taken from Shipan’s article, illustrates these three regimes.

1. Committee-Floor Regime: A < C(F) < C < F
2. Gatekeeping Regime: A ∈ [C(F), F]
3. Floor Regime: C < F < A
Under a Committee-Floor Regime, the agency picks \( C(F) \) and the committee, satisfied with this policy, chooses not to act. Under a Gatekeeping Regime, the agency picks its own ideal point \( C \) and the committee doesn’t act. Under a Floor Regime, the agency picks \( F \) and again, the committee doesn’t act. In an extension, Shipan treats the president as an actor who gets to choose the vicinity of the agency’s preference before the game starts, but doesn’t get to use a veto once the game begins.\(^{15}\) He also adds a second legislature to the model, but ultimately collapses the regimes into the same three spatial arrangements, to make the analysis tractable.

## 27.4 Frontiers in the Study of Oversight

### 27.4.1 Understanding Agents

Political scientists have developed strong models for explaining the preferences and predicting the behavior of elected officials. By contrast, there is a surprising paucity of empirically justified theory about the preferences and behavior of bureaucrats. The normative debate over policy delegation hinges crucially on the preferences of the agents enacting policy. If bureaucrats seek to maximize social welfare, perhaps the Progressives and their intellectual heirs are correct in thinking that politicians shouldn’t meddle in the bureaucracy. If, on the other hand, bureaucrats seek to maximize their budgets or provide favors to industry in exchange for personal enrichment, then the Neodemocrats may be right in advocating legislative control of the bureaucracy.

The positive debate over who controls the bureaucracy hinges on the preferences of bureaucrats as well. Consider Fig. 27.2, a diagram (presented in Shepsle [1992]) that illustrates McNollgast’s concept of bureaucratic drift. In this diagram, a legislative coalition of majorities in the House (H) and Senate (S) along with the president (P) pass a law. The political principal is this coalition of actors, each of which we can place in a two-dimensional policy space. (We could choose any positive number of dimensions, but two yields the clearest picture.) H, S, and P compromise to pass a law designed to bring about outcome \( X \) somewhere near the center of HSP, but once that law is passed, the bureaucratic agency can implement any policy \( X' \) within HSP. This bureaucratic drift cannot be undone by elected officials, because no matter where \( X' \) is within HSP,
every alternative point (including the original outcome, X) is less preferred than X′ for at least one of the three coalition members. Fig. 27.2 only makes sense, however, if B’s preferences can be defined along the same dimensions as those of H, S, and P. If B’s only preference is for something universally opposed by the coalition members—say, to maximize agency salaries—the coalition members should be able to prevent drift (through mechanism design).

Of course, this description assumes that when an agency pulls policy from X to X′, the “drift” is instigated by bureaucrats—that is, the policy changes because of the political preferences of the bureaucrats. This is a common assumption (see, for example, Romer and Rosenthal 1978; 1979), but one plausible alternative is that the misbehaving agent is not the bureau but some other part of the “subgovernment” such as the congressional committee or subcommittee empowered to oversee the bureau.

As in their discussion of The Logic of Delegation, Kiewiet and McCubbins (1991) argue that the agency loss arising from the delegation of policy-making from the majority party and its leadership in the House or Senate to its Committee Chairs, or from a governing coalition to its ministers (Thies, 2001), is the most challenging. The difference is important because the methods for mitigating agency loss differ between these two scenarios. If an agency misbehaves, Congress can rein it in using the Appropriations Committee (who must approve any policy change that costs money). An agency seeking to change policy also may have to talk to a budget committee, which is even more tightly controlled by majority party leadership than is the Appropriations Committee. But if the Appropriations chair is deviating from the preferences of the majority party leadership, the chain of delegation and accountability is essentially broken. Perhaps this explains why Newt Gingrich chose a more ideologically faithful junior representative as chair over the ranking Republican when he took control of the House in 1995.
Regardless of whether errant agencies are generally seeking their own policy objectives or following the whims of the ministers or congressional committees empowered to govern them, it is clear that bureaucrats’ preferences play a crucial role in most models of legislative oversight (e.g. Dessein 2002; Bendor and Meirowitz 2004; Bertelli and Feldmann 2007; Prendergast 2007; Gailmard 2009). Given the central role of bureaucrats’ preferences, the lack of empirically justified theory about those preferences is surprising. Niskanen (1971) originally assumed that bureaucrats sought to maximize agency budgets, and later (1975) popularized Migué and Bélanger’s (1974) view that bureaucrats sought to maximize discretionary budgets. McNollgast (1987) argue that “in the absence of effective oversight,” bureaucrats are motivated by “personal preferences, derived from some combination of private political values, personal career objectives, and, all else equal, an aversion to effort.” In a review of formal models of bureaucracy, Gailmard and Patty (2012) observe that most contemporary models assume bureaucrats “maximize policy preferences of the same nature as most other political actors.” This perspective is of course quite contrary to the Progressives’ view that “the field of administration is a field of business . . . removed from the hurry and strife of politics” (Wilson 1887).

Why should a bureaucrat seek private gain through the maximization of discretionary budgets (as in Niskanen’s model) when he could attain it by more direct means? For example, the US Department of the Interior found that members of its Mineral Management Service “frequently consumed alcohol at industry functions, had used cocaine and marijuana, and had sexual relations with oil and gas company representatives” (US Department of the Interior, 2008), in addition to receiving “ski and golf trips, tickets to sporting events, a jaunt to a party in New Orleans,” and other gifts (Denver Post 2008). On the opposite extreme, Carpenter (2001) argues that the FDA highly values its reputation for scientific thoroughness and objectivity—if not for the intrinsic satisfaction of a job well done, then at least as a source of public support, a bargaining chip for greater autonomy from politicians, and a resource in recruiting outstanding employees. In light of these different perspectives, it may be time to stop viewing bureaucratic preferences as monolithic. It may also be time for a Fenno (1978)-style soak-and-poke approach to understanding bureaucrats and their preferences.

McNollgast (and chapter nine of Wilson 1989) argue that bureaucrats may choose to follow instructions in the interest of career advancement within the government, and this is especially likely since 1982, when Anne Gorsuch was found to be in contempt of Congress and forced out of her position as EPA administrator. Spiller (1990), however, points out that bureaucrats may face more lucrative career opportunities in their regulated industries, and multiple scholars have argued that the career trajectory of bureaucrats influences their policy choices (Gormley 1979; Grace and Phillips 2008). The “revolving door of politics” (in which regulators move to industry and vice versa) is common not only in the United States (US General Accounting Office 1986) but throughout Western Europe (Thatcher 2002) and in Japan (Horiuchi and Shimizu 2001), where the phenomenon is called amakudari, or “descent from heaven.”
27.4.2 Temporal Instability of Principals

As noted earlier, turnover in politics is by definition a universal characteristic of democratic governance. Also discussed above, the principal that generates a bureaucratic agent is an ephemeral legislative coalition (McNollgast 1987). Unfortunately, the oversight literature often overlooks the temporal instability of political principals. Notable exceptions include Horn and Shepsle’s (1989) response to McNollgast (1987; 1989), Macey’s addition to Horn and Shepsle, and the line of research that grew out of Macey’s work (Levine 1992; Shepsle 1992; Epstein and O’Halloran 1994; Shapiro 1994; 2007; Hamilton and Schroeder 1994; Wood and Bohte 2004; Thomson et al. 2006). In this work, the temporal instability of principals is referred to as coalition drift. Shepsle (1989) argues that coalition drift makes ex-ante controls on the bureaucracy more appealing than ex-post oversight to Congress because (1) such controls do more to preserve their preferences after the political principals are replaced (2) by doing more to preserve their chosen policy, ex-ante controls heighten the value of any favors that the enacting legislative coalition provides to interest groups. More recently, Stephenson (2006) and Alesina and Tabellini (2008) have investigated the effects of temporal instability of agents.

27.5 Conclusion

I conclude by briefly discussing how delegation works over time, why it is likely to produce inaction among political principals, and whether we can view this as a good or bad thing. In this simple model of delegation over time, at each moment in time (each period $t$) the current Congress ($C_t$) gets to decide law. As soon as Congress acts, that moment ends and Congress finds itself in a new moment. The law, however, remains until it is taken off the books. (As a practical matter, this typically means that the law remains forever.) So in period 1, $C_1$ creates Law A. In period 2, $C_2$ creates Law B. In period 3, if Laws A and B come into conflict, $C_3$ must decide whether and how to respond. If $C_3$ doesn’t respond, interest groups will bring a case to court, and the court will render a judgment that alters one or both of the laws. After the court rules, $C_3$ may choose to reform one or both of the laws. But for $C_3$ to successfully reform any law, the reformed law must be preferred by the relevant committees and the floors of both houses, as well as by the president.

In this little model, Congress has many reasons not to act when two laws come into conflict. First, changing the law is difficult, and the court may render a judgment that $C_3$ approves of, so Congress may simply decide to wait and see what the court does. Second, Congress may not know the level of public support or interest-group support for the alternative outcomes. Observing interest-group investment in a court case and public response to its outcome provides Congress with free information about the likely payoffs of the alternative policy solutions. Finally, Congress may know that its own veto players have preferences that diverge enough to make reform impossible.
It is clear that the American founders established in Article 1, Section 7 of the Constitution a consensus procedure. One of the leading arguments among Madison’s contributions to the Federalist Papers—especially Federalist 51—is that this makes lawmaking very difficult. It is clear from this simple model of lawmaking that when two agencies believe their directives bring them into conflict, or when two factions conflict over the ruling of a single agency, Congress is quite likely not to act.

Neodemocrats such as McNollgast note that the consensus decision-making described in Article 1, Section 7 of the Constitution is mirrored in the procedures of executive agencies, with the result of decreasing the activity of agencies—or to put it more plainly, not much gets done. Of course, the value of bureaucratic activity to society depends on the actions being taken, so Neoprogressives such as Mashaw lament the stifling gridlock caused by the consensus decision-making rules Congress forces upon executive agencies, while students of the Public Choice school rejoice in the obstacles Congress places in the way of bureaucrats’ natural inclination to impose market distortions.

What are the conditions under which things do get done? In America, Progressives controlled the House, Senate, and presidency from 1933 to 1969 (and arguably into the 1970s), and therefore also controlled the Courts, and there was a great flurry of change, from the New Deal to the Civil Rights Act. Since then, a period of divided government—and especially, of late, a divided Congress—has slowed the rate of policy change considerably. Whether this is for good or ill depends in large part on one’s perspective on the normative debate over the appropriate role of the bureaucracy.

Notes

1. Of course, not all delegation arises out of necessity—after all, Congress is comprised of politicians. One alternative motivation for delegation is that Congress may wish to implement a policy but avoid blame for that policy (Fiorina 1982; Epstein and O’Halloran 2000).
2. The legal title of this agency is in fact the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, or EAMOCEBMS for short.
3. Note that only these last two constitute “oversight.” The literature discussed in this article is often erroneously referred to as “legislative oversight of the bureaucracy.” Oversight is only one form of legislative control (or perhaps more appropriately, influence) over the bureaucracy.
4. One of Moe and Caldwell’s arguments is that “Prime ministers do not need such an enormous, politicized institution [as the American executive branch] to see their will implemented by the bureaucracy.” They do not mention that, since its creation in 1968, the title of Minister for the Civil Service has been held by the Prime Minister (Daintith and Page 1999).
5. This perspective is presaged in legal scholarship by the work of Holmes (1881; 1897), Cardozo (1922), and Pound (1931). These three argued that law is a form of policy and that judges had an obligation to implement policy in tune with the law established by the people.
and their representatives. Holmes wrote that “if my fellow citizens want to go to Hell I will help them. It's my job” (Howe 1953).
6. This view of executive agencies has been extended in the way many legal scholars see the Supreme Court as a counter-majoritarian institution.
7. Of course, some scholars argue that administrative procedures often fail to induce bureaucracies to follow Congressional preferences (e.g. Balla 1998).
8. Ramseyer and Rosenbluth (1997) made a similar argument for Japanese politics, arguing that policy decisions made in the Japanese bureaucracy promoted the electoral interests of the ruling Liberal Democratic Party. This was a highly controversial argument in Japan, where the popular wisdom had long been that the bureaucrats enjoyed extraordinary independence.
9. Both McCubbins, et al. (1987; 1989) and Kiewiet and McCubbins (1991) use the word “Congress” as a shorthand for the legislative powers of the federal government as defined in Article 1, Section 7, which includes the House, Senate, and president.
10. McNollgast is the nom de plume of coauthors Mathew McCubbins, Roger Noll, and Barry Weingast. The first two papers published by this trio (1987; 1989) were attributed to McCubbins, Noll, and Weingast; subsequent works are attributed to McNollgast.
11. In a system with separation of powers, this coalition is comprised of deciding factions (almost always the majority party) within each institution; in a parliamentary system, this coalition is comprised of parties in the government.
12. For a few leading works in industrial organization, see Alchian and Demsetz 1972; North and Thomas 1976; Tirole 1988; Milgrom and Roberts 1992; Ostrom 1990; Arrow 1970; North (1981; 1990); Williamson 1975; Knight 1992; Greif 2006; Olson 1965; Schelling 1965.
13. Huber and Shipan (2002) offer an innovative comparative attempt to measure the construct of political control of the bureaucracy, by measuring a proxy for the thoroughness of enabling legislation.
15. Bizarrely, Shipan justifies the lack of veto power by observing that the president never vetoed legislation on the FDA during the time period covered in his correlational study. Given that his entire model is based on the idea that actors act strategically in light of predictable responses from their opponents, Shipan should never expect to observe a veto. He should nonetheless expect that the president having this power significantly alters the game.
16. Shepsle notes that B is likely to be on the SP side of the triangle, since the president appoints agency heads with Senate approval. This implies that the House has the most to lose from bureaucratic drift.

References


