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## CAUGHT IN THE MIDDLE: THE PRESIDENT, CONGRESS, AND THE POLITICAL-BUREAUCRATIC SYSTEM



*Barry R. Weingast*

**A**MERICA IS GOVERNED BY A VAST FEDERAL BUREAUCRACY that makes policy decisions across a remarkable range of policy issues, including clean air, consumer protection, worker rights, social security, foreign policy, and protection from terrorism. The rise of the administrative state—government by bureaucracy—poses many questions for a democracy. How can 536 elected officials hope to influence tens of thousands of programs, each with many options, run by over a million bureaucrats supported by many million more contract workers? Are bureaucratic policy decisions in any sense responsive to the interests of the public?

Many provide negative answers to these questions, for example, arguing that bureaucrats are “unelected representatives” who make policy without being responsive to citizens or their political principals, Congress and the president. Others argue that the bureaucracy is uncontrollable and runaway.<sup>1</sup> Dodd and Schott, for example, argue that in many respects, the federal bureaucracy is “a prodigal child. Although born of congressional intent, it has taken on a life of its own and has matured to a point where its muscle and brawn can be turned against its creator.”<sup>2</sup>

Further, multiple and contradictory public perceptions exist about the bureaucracy. Perhaps the most common is that the bureaucracy is an overblown source of fat, living off the people that the agencies are nominally charged with serving. A second is that the president, qua chief executive, controls the bureaucracy.

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The federal bureaucracy is embedded in the American separation of powers system, implying a complex set of political relationships that I call the political-bureaucratic system. This system shapes bureaucratic behavior and policy making. In a real sense, the bureaucracy is "caught in the middle" between Congress and the president. Although the executive departments and agencies are lodged within the executive branch, they are not under the full control of the president. They are also influenced by Congress, through the legislative, appropriations, and the oversight processes. While the agencies are largely created and funded by Congress, they are not handmaidens of the legislature. In short, the bureaucracy has multiple principals (or masters), and the architecture of America's political institutions explains why this is so. In the words of Aberbach and Rockman, bureaucrats are lodged "in the web of politics."

The purpose of this chapter is to explain the logic of the political-bureaucratic system, including why the bureaucracy chooses one policy instead of another. In the process, it answers the above questions, explaining the sense in which elected officials control the bureaucracy. It will also explore various normative questions, such as how well this system works and what are its biases.

To begin, it is useful to ask why elected officials find it at all necessary to delegate authority to the executive agencies to make and carry out policy (the two often occur together, since operations and policy are, in practice, commonly intertwined). Delegation occurs because citizen demands on the government are so large and varied that elected officials alone cannot address them all. First and foremost, delegation economizes on the resources, time, and effort of elected officials. Additionally, many policy decisions require the development of expertise and specialized knowledge. Elected officials cannot develop these capabilities across so many different areas, and so they delegate these tasks to administrative agencies. All modern governments delegate to bureaucracies, whether the communist government of the former Soviet Union, a wide array of past and present authoritarian governments, or democratic governments. Bureaucracies are simply necessary to get done the wide range of the modern state's activities.

Still, not all policies are delegated. Historically, Congress has decided the projects built by the Corps of Engineers,<sup>4</sup> yet it does not decide the acceptable level of impurities in drinking water. What determines the degree of delegation? The literature about delegation provides an important principle about delegation: political officials know something about what they want to achieve—say clean air or a safe workplace—but they do not know the details of how to implement those goals. The uncertainty principle holds that, as the political officials' uncertainty increases relative to that of experts, they will delegate more discretion to the bureaucracy.<sup>5</sup>

Yet this reason for delegation—when elected officials do not have the expertise to make the desired policy decisions—creates a potential problem: delegation creates the risk of decisions that are unresponsive to elected officials'

interests and thus to interests of the public they represent. This problem is known as the political "control problem": how do elected officials in a democratic system delegate authority to a bureaucracy while ensuring that it remains responsive to them and, more generally, to the public?<sup>6</sup> This defines the control problem.

Delegation raises three separate impediments to bureaucratic control by elected officials. First, delegation creates the information problem noted above: that bureaucrats become the experts in their policy domain and can potentially use their information to serve their own goals rather than those of elected officials. Second, the "multiple principal" problem arises because bureaucrats serve not one master, but several in the form of the president, the House of Representatives, and the Senate; therefore, control of bureaucrats is problematic. These different actors typically have conflicting goals, implying that corrective legislation is difficult to the extent that the agency deviates from its legislative mandate in a way desired by one of these principals. Third, today's elected officials face the political turnover problem, the notion that others are likely to hold power in the future who will have different goals and who will attempt to alter an agency's policy. The risk of turnover means that today's officials will seek ways of locking in their policies by placing impediments to future policy changes.

Each of these problems is difficult, and in combination, they seem almost insurmountable. Yet, over the two centuries of the republic, elected officials have evolved a complex system for mitigating these control problems. Indeed, officials possess a range of tools for dealing with agencies, including using structure and process to constrain agency decision making and to bias it in favor of certain outcomes. In addition, elected officials possess a range of *ex post* reactions (those that occur after an agency has acted). Because bureaucrats seek to avoid adverse *ex post* reactions, these reactions provide bureaucrats with *ex ante* incentives (that is, those in place before an agency has acted) to serve the interests of elected officials.

In important respects, we get exactly the bureaucracy that elected officials desire.<sup>7</sup> These officials have resolved the control problem to a considerable extent. And yet the result is a peculiar political-bureaucratic system with considerable biases and problems. As a product of the American constitutional system, bureaucratic policy making reflects the flaws of the larger system.

This chapter will first build the tools to understand the political logic of the administrative state and then will turn to the larger questions about what type of system this is. The essay proceeds as follows. Section 2 discusses the importance of compromise for the goals of legislation. Section 3 explores the three problems of bureaucratic control. Section 4 explains the logic of the administrative state. Section 5 briefly mentions the evolution of this system over the past few decades. Section 6 then turns to the implications of this perspective for the larger issues.

### Legislation *Qua* Cor

All legislation is the product of craftsmen's design, members of Congress' mind about a given problem. Moreover, only must legislation attain major president's signature (subject to the rules and procedures imply a narrow legislation to pass, including relevant Senate filibuster (granting a minority House Rules Committee, and so president and many different legislative compromise from others.

The fact of multiple-veto environment often faces "gridlock"; for it to be passed.<sup>8</sup> Further, it implies that control the design of legislation; quo as other players simply hold them, mean that a wide variety of many different legislators and they possess the opportunity to veto narrow constituency, often in a narrow purpose.

This form of political compromise—such as clean air, corporate security—with a consistent purpose to pursue it. Instead, agencies are low complex procedures, and so whose logic is not determined by

The savings and loan bailout, savings and loans (S&Ls), from institutions officially called with financial problems among most other industries, these firm banking is special in several senses mechanisms, one piece of which their savings when banks failed and insured deposit insurance, guaranteed bank deposits. This system works in time; the regulators used their financial another bank to purchase or merge problems simultaneously, this can

they represent. This problem is why do elected officials in a democracy while ensuring that it remains public? This defines the control agents to bureaucratic control by information problem noted above: policy domain and can potentially rather than those of elected officials arises because bureaucrats serve of the president, the House of control of bureaucrats is problematic. goals, implying that corrective agency deviates from its legislative principals. Third, today's elected officials that others are likely to hold and who will attempt to alter that today's officials will seek ways to future policy changes. combination, they seem almost of the republic, elected officials; these control problems. Indeed, with agencies, including using decision making and to bias it in and officials possess a range of executive has acted). Because bureaucratic reactions provide bureaucratic place before an agency has acted) bureaucracy that elected officials control problem to a considerable bureaucratic system with constitutional American constitutional system, the larger system.

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### *Legislation Qua Compromise: Inconsistent Objectives*

All legislation is the product of compromise among competing interests. Per the framers' design, members of Congress and the president rarely think with one mind about a given problem. Moreover, by design, legislation is hard to pass. Not only must legislation attain majorities in both Houses of Congress as well as the president's signature (subject to the veto-override provisions), but congressional rules and procedures imply a number of other veto gates that must be opened for legislation to pass, including relevant committees with policy jurisdiction, the Senate filibuster (granting a minority the ability to hold up legislation), the House Rules Committee, and so on. These rules and procedures imply that the president and many different legislators can hold up policy, and many use this to force compromise from others.

The fact of multiple-veto opportunities implies that the national government often faces "gridlock"; for large numbers of policy areas, no legislation can be passed.<sup>8</sup> Further, it implies that no single person in the legislative process can control the design of legislation; attempting to do so will just maintain the status quo as other players simply hold up the legislation. Multiple veto opportunities, then, mean that a wide variety of provisions must be added in order to get so many different legislators and the president to go along. Too often, players who possess the opportunity to veto legislation hold out for provisions that satisfy a narrow constituency, often in a manner that is inconsistent with the overall act's purpose.

This form of political compromise means that few major acts pursue an objective—such as clean air, consumer safety, occupational health, or homeland security—with a consistent purpose and with an efficient bureaucracy designed to pursue it. Instead, agencies are typically given vague mandates, required to follow complex procedures, and subjected to a considerable range of restrictions whose logic is not determined by the policy objective.

The savings and loan bailout in 1989 provides an illustration.<sup>9</sup> Prior to this legislation, savings and loans (S&Ls) were a separate category of banks that differed from institutions officially called banks.<sup>10</sup> A flawed regulatory system, combined with financial problems among savings and loans, led to exploding S&L debt. In most other industries, these firms would have been forced out of business. But banking is special in several senses, largely because of the complex web of regulatory mechanisms, one piece of which is deposit insurance. Because so many people lost their savings when banks failed during the Great Depression, the government created deposit insurance, guaranteeing that it would bail out ailing banks and insure bank deposits. This system worked fine when only a few banks failed at any given time; the regulators used their funds to take over the bank, infuse cash, and find another bank to purchase or merge with the ailing bank. When many banks have problems simultaneously, this can become quite expensive.

The huge rise in interest rates created immense problems for the savings and loan industry in the mid-1980s. Because their deposits were short-term, they rose with interest rates; but because interest on their assets—by design, disproportionately home loans—rose only slowly, a great many S&Ls faced financial problems simultaneously. These financial problems would continue to mount quickly unless ailing banks were closed or taken over by the regulators and infused with new cash. Economists in 1985 estimated the problem at \$12 billion. Too many ailing banks caused the system to run out of funds. Lack of funds implied that the problem was that the regulatory system could not take over ailing banks, allowing ailing savings and loans to keep their doors open despite losing more and more money.<sup>11</sup>

Members of Congress first proposed legislation in 1986 to infuse the system with cash and stop its mounting losses. But representatives of constituency interests that sought other goals held up the legislation in both the House and the Senate. Representatives in the House used this legislation to pass new housing benefits, while senators used it to pass new banking regulations having nothing to do with the savings and loan problem. Although the House and Senate each passed a version of the legislation to resolve the growing S&L crisis, they failed to pass legislation because they could not reconcile their differences on the issues added on. This failure delayed the first infusion of new cash into the industry by a year, allowing losses to mount.

In 1987 Congress did pass legislation. But it was not until the problem got considerably larger—then estimated to be over \$100 billion—that Congress passed a serious bailout bill in 1989. Amazingly, despite the immense expense, here too congressional interests used this bill to pursue other goals—such as housing and urban development—thereby significantly increasing the bailout's cost. Because Congress failed to deal swiftly with this problem, it mushroomed to 30 times the figure in 1985, well over \$300 billion.

Environmental laws provide another illustration.<sup>12</sup> The overall purpose of the Clean Air Act of 1970 was to provide the basis for achieving and maintaining clean air by regulating sources of pollution, such as businesses and motor vehicles. One issue on which the House, Senate, and president differed was whether areas that were above the minimal regulatory levels would have to remain at those high levels—that is, prevent significant deterioration in air quality—or if they would be allowed to increase pollution levels as long as they remained above the minimum standards. In the end, the latter view won out. Although the legislation provided for some elements of clean air, it allowed significant deterioration in regions above the minimal standards.

As another illustration, consider the landmark 1964 Civil Rights Act.<sup>13</sup> The principal purpose was redressing racial discrimination, especially in the South, where racism was institutionalized through the so-called "Jim Crow" system. White southerners in Congress sought to protect their system by fight-

ing the legislation with every r had long used various congressi to prevent any significant civil debate," the filibuster and the str ical event in passing the 1964 A all of congressional history.

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ing the legislation with every means available. In previous years, southerners had long used various congressional procedures, such as the Senate filibuster, to prevent any significant civil rights legislation. Often called the "longest debate," the filibuster and the struggle to overcome it were the principal political event in passing the 1964 Act;<sup>14</sup> it remains one of the central dramas in all of congressional history.

To break the filibuster—at that time, requiring two-thirds of all Senators—necessitated that civil rights supporters among northern Democrats gain the support of most Republicans. Although in 1964 there were some liberal and moderate Republicans, most were conservative and opposed increasing national government regulation of the economy. Interestingly, their support was in part garnered by mitigating the impact of the act on the North, clearly inconsistent with the overall goals of eliminating racial discrimination. Through a large series of small amendments, the Republicans slowly focused the legislation on the official, *de jure* system of discrimination throughout the South.

Finally, consider homeland security.<sup>15</sup> The overall purpose of these measures passed in the wake of the attacks of September 11, 2001, is to protect the country against terrorism. The legislation pursuing this objective also adds considerable new pork barrel spending, much of which is only peripherally related to security. Moreover, by casting the homeland security net as widely as possible, the president has used the umbrella of security to centralize and reorganize a remarkably wide range of agencies whose mandates only tangentially deal with security.<sup>16</sup> The president has been able to reorient many of these agencies away from their social mandates (which he disapproves) in favor of providing tasks related to security. And as with the savings and loan example, this legislation contains several provisions having little to do with homeland security. For example, the legislation contained retroactive liability protection for the pharmaceutical industry, effectively disrupting a series of recent class action suits. It also extended liability protection to the companies that provide airport screening. Finally, the legislation establishes a new homeland security research center, designating fifteen criteria, for which the only qualifying institution is Texas A&M University.

### Conclusion

To summarize, the complexities of the legislative process means that the policy goals of each agency are complex and not straightforward. The multiple vetoes inherent in the legislative process empower representatives favoring a wide range of interest groups and constituencies, and they use their legislative power to insist that the legislation contain benefits for them, often at the expense of the legislation's overall goals. Because no one interest can prevail, legislation typically includes pieces attempting to pursue different and often inconsistent goals.

### *Three Impediments to Bureaucratic Control*

Three fundamental problems plague political officials in their attempts to control the bureaucracy: the information problem, the multiple principal problem, and the political turnover problem.

#### *The Information Problem*

The sheer size and complexity of modern governmental bureaucracy make it difficult for political officials to have a command of what the bureaucracy is doing, let alone have the ability to guide each bureaucracy in its various policy choices. Thousands of different agencies exist, most of which deal with multiple problems, each with a wide range of policy options. Most of these problems are complex, requiring expertise just to understand what options are available, let alone which is best for America. Many scholars have concluded that the sheer complexity alone makes oversight and control impossible.<sup>17</sup> Clarkson and Muris, for example, argue with respect to the Federal Trade Commission (FTC):

The ability of Congress to monitor individual FTC activities is effectively limited. Yet . . . even with its most effective tools, Congress can redirect resources into or away from specific programs only after detailed analysis at the level beyond the institutional competence of Congress except on an, at most, occasional project. . . . Oversight and ad hoc monitoring seldom influence Commission activities.<sup>18</sup>

The scope of the bureaucracy and its complex tasks make it difficult for political officials and their staffs to master all that government agencies are doing.

Scope and complexity alone are not the sole aspects of the information problem. These problems combine with another: The agents (political appointees and career bureaucrats who run the agency) may have preferences about the policies within their jurisdiction that differ significantly from those of their political principals. Agency expertise combines with the agency's potentially different preferences to create massive problems for political officials who are, by definition, not experts in these policies. Put simply, experts can potentially use their knowledge to bias policy decisions in ways that are difficult for their political principals to monitor.

For example, suppose bureaucrats at the Environmental Protection Agency (EPA) are pro-environment. This policy bias might lead them to avoid evaluating certain options not favored by environmentalists, such as incentive-based or market-based policies; or, such evaluations may be conducted in a way that biases choice away from these options, which are branded as unworkable or too expensive.

The very task of the bureaucracy to become experts makes an agency's strategic use of its expertise difficult to combat. Worse still, students of bureau-

cracy argue that elected officials uncertainty over policy.<sup>19</sup> Greater expertise, making delegation more make such investments. This implies that the information prob

#### *The Multiple Principal Problem*

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cracy argue that elected officials are more likely to delegate the greater the uncertainty over policy.<sup>19</sup> Greater policy uncertainty implies greater returns to expertise, making delegation more attractive to elected officials who cannot make such investments. This motivation for delegation, however, necessarily implies that the information problem is inherent in delegation.

### *The Multiple Principal Problem*

The president and members of Congress typically disagree about policy. This implies they also differ in their evaluation of an agency's performance and hence in the directions they would like to see the agency alter its policy.

As noted in the previous section, the legislation that creates a new bureaucracy, delegates a new task to a bureaucracy, or modifies an existing mandate is necessarily a compromise among the House, the Senate, and the president. In general, each sought something different for this bureaucracy, and none got it that way. The legislation instead represents a compromise among the goals of these three sets of actors. Each agency therefore has multiple principals, each with its own preferences.

The policy disagreements among a bureaucracy's political principals create another control problem. Suppose the agency decides to deviate from the policy mandated in the legislation, for example, by moving in the direction preferred by the president. In principle, political officials could pass a new law forcing the agent to move back to the original mandate, but the president has no incentive to agree to it since the agency's deviation makes him or her better off. Moreover, this same logic holds if the agency moves in the direction preferred by Congress and away from that of the president.

The difficulty with passing new legislation creates the possibility of agency drift—the ability of the agency to move policy away from the original legislation.<sup>20</sup> As long as the agency moves in a way that makes at least one of these principal actors—the House, the Senate, or the president—better off, then corrective legislation cannot take place.

Agency drift creates a dilemma for political officials, for it means that the agency, not they, picks the policy. Although one principal is better off *ex post*, it is the bureaucracy, not political officials, who choose which. All three sets of actors are therefore better off if they can devise a way to prevent agency drift.

The multiple principal problem varies with political circumstances. Divided government (when each of the two parties holds at least one of the House, Senate, and presidency) generally implies large divergence of policy preferences, and hence greater potential for agency drift. United government (when one party holds all three) generally means less disagreement. Yet even with united government, the degree of disagreement varies with administrations. At present, for example, there seems to be a relatively high degree of common interest between President Bush and the Republican-dominated Congress, but there was



much less during the Carter administration, when Democrats controlled the presidency and the Congress.

### *The Political Turnover Problem*

No group of politicians has a lock on political power.<sup>21</sup> Elections, changing public opinion, and changing political fortunes imply political change. With these changes come political turnover which brings to power new political officials whose preferences diverge from those of their predecessors (studies show that preference change among members of Congress arises far more from membership turnover than from existing members changing their minds).<sup>22</sup>

New political officials with policy preferences that differ from their predecessors will use all available tools to influence bureaucratic policy in directions they prefer. By definition, this implies moving policy away from that of their predecessors. Political turnover therefore raises the problem of political drift, the notion that political officials with new preferences will seek to move agency policies away from those set by their predecessors.<sup>23</sup>

Political drift creates a problem for today's political officials who want to insulate their policies from it. This problem means that today's political officials will seek ways to raise the costs to future politicians of meddling with the bureaucracy so as to change its course.<sup>24</sup> In particular, they will seek ways to lock in their policies and insulate them from the influence of future political officials.

### *Implications*

Political officials seeking to control the bureaucracy face three separate problems. Each one alone is difficult, but in combination, they imply massive problems for monitoring and control of agency policy making by political officials. Without solutions to these problems, elected officials cannot ensure that the bureaucracy implements the policies they design.

### *The Political-Bureaucratic System's Solution to the Control Problems*

Although elected officials face multiple impediments to control of the bureaucracy, all is not hopeless. Before examining how elected officials mitigate or solve the control problem, some general theoretical propositions are in order.

First, as Banks and I theorize, in areas where elected officials view control over policy as critical, yet they cannot expect to control an agency, they are far less likely to create it in the first place: after all, if control is critical but problematic, the enacting coalition cannot ensure the agency will implement the desired policies.<sup>25</sup>

This principle has two implications. First, Congress will fail to address some policies because members of Congress cannot solve the control problem. Second, if elected officials could not in general solve the control problem, the

federal bureaucracy and hence the smaller. Put another way, a necessary condition for elected officials to control government in the twentieth century is that they be able to control elected officials devised means to control the bureaucracy.

The second and more important implication is that the number of tools and procedures available to elected officials to control government is a function of the political environment. Consider the political environment when an agency is created. If the political environment is such that interest groups to present a major interest groups helping to prevent the agency from being created, then the agency will be created. My third proposition is that the political environment is that which determines the number of tools and procedures available to elected officials to control government in the twentieth century.

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### *Political Tools for the Control Problem*

Ideally, elected officials seek to control the bureaucracy through time, effort, and resources. The political environment is such that elected officials create an incentive system for elected officials to control government in the twentieth century.

"Fire alarm" oversight is a type of oversight in which some members of Congress sound an alarm to members of Congress about a problem in the bureaucracy. This type of oversight is an important part of the political environment in which elected officials create an incentive system for elected officials to control government in the twentieth century.

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when Democrats controlled the political power.<sup>21</sup> Elections, changing rules imply political change. With changes to power new political officials and their predecessors (studies show Congress arises far more from members changing their minds).<sup>22</sup> Changes that differ from their predecessors' bureaucratic policy in directions of policy away from that of their predecessors will seek to move agencies in directions that differ from theirs.<sup>23</sup> Political officials who want to ensure that today's political officials are not politicians of meddling with the particular, they will seek ways to lock in the influence of future political officials.

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### From the Control Problems

Elements to control of the bureaucracy, elected officials mitigate or solve problems are in order. Elected officials view control to control an agency, they are far from critical but problem-solving will implement the desired

Congress will fail to address some not solve the control problem. To solve the control problem, the

federal bureaucracy and hence the national government would be considerably smaller. Put another way, a necessary condition for the growth of the national government in the twentieth century and especially since the early 1960s, is that elected officials devised means to control the bureaucracy.

The second and more important proposition is that political officials have a number of tools and procedures with which they can influence bureaucratic agency choice. Consider the problem of agency drift. Agency drift is especially problematic when an agency is able to conspire with a set of constituents or interest groups to present a movement in policy as a fait accompli, with the interest groups helping to prevent elected officials from reacting.

My third proposition is that underlying the multiple principal problem is the notion that coalitions in American politics are ephemeral; they are difficult if not impossible to form again in the future. The key for the enacting coalition, then, is to create a set of *ex ante* procedures that make it difficult for an agency to drift away from the desired policy. We have already discussed the uncertainty principle; often, elected officials do not know the precise policies they want. Yet they typically do know what mix of interest groups and constituents they seek to benefit. The decision of what mix of interests to foster underlies the passage of all legislation.

### Political Tools for the Control Problem

Ideally, elected officials seek means of control that do not require their own time, effort, and resources. They do so through a mix of incentives and constraints. Consider first the problem of incentives. To the extent that political officials create an incentive system based on *ex post* consequences, they provide agency decision makers with *ex ante* incentives to follow the interests of political officials.

"Fire alarm" oversight is oversight triggered in response to a constituent sounding an alarm to members of Congress that something is going wrong with some bureaucracy. This type of oversight differs from "police patrol" oversight in which congressional committees plan in advance to investigate an agency. Fire alarm oversight is an important aspect of bureaucratic control.<sup>24</sup> I have emphasized the problem of thousands of agencies, each with dozens or more decisions, with each decision complex and with multiple options. Viewed from this perspective, the task of overseeing and controlling the bureaucracy seems impossible—even with 10,000 staff, Congress simply cannot do it. In one sense, this is correct. Members of Congress simply cannot effectively monitor all that happens in the bureaucracy. Even so, studies of oversight emphasize that members of Congress do develop expertise in the areas of their committee's jurisdiction and, further, that they do conduct considerable oversight.<sup>25</sup>

But in another sense, the question of whether elected officials actively oversee the bureaucracy is not the key question: to some extent, they do not have to

know. Elected officials need not be the principal monitors of agencies, if their constituencies are. Constituencies have the biggest incentives to monitor an agency and they typically have close ties to their elected officials.

The success of *ex post* incentives for agencies depends critically on fire alarm oversight. Political officials simply cannot investigate all agencies each year. Let alone solve the information problem that led to delegation in the first place. They therefore rely critically on their constituents to sound fire alarms when something is going wrong. These alarms bring the attention and action of political officials when needed. Of course, something going "wrong" here has a deep political meaning rather than an objective one—it is "wrong" in the sense of whom elected officials seek to benefit. The main conclusion is this: if the consequences of fire alarm-triggered reactions are sufficient, then agency decision makers will seek to avoid them, and hence do the bidding of political officials.

Another avenue of influence concerns unilateral action by the president, for example, through issuing executive orders, national security directives, and executive agreements.<sup>28</sup> Executive orders allow the president to issue directives to particular agencies and to all agencies at once. Moreover, these orders have become more common over time. Executive orders can reorganize an agency or policy area, including subjugating bureaus to others. These orders can also force the entire bureaucracy to take certain actions. They have been used to affect policies as diverse as ordering nondiscrimination by the government, the handling of national emergencies, wetlands regulation, government-owned corporations, and government procurement. Moreover, every president since Richard Nixon has used executive orders as a means of forcing agencies to consider additional aspects of their proposed regulations, thus slowing down the process of new regulations. In perhaps one of the more dramatic bureaucratic moves by a president, Nixon used an executive order to create the Environmental Protection Agency (EPA). Unilateral action provides the president with a means of forcing agencies to adjust both their procedures and their policy choices.

The political tools available to elected officials for mitigating agency drift fall into two categories. *Ex ante* constraints are those in place at the time of an agency's creation or that were put in place in the agency's enabling legislation. These constraints affect an agency's decisions in predictable ways, for example, by preventing it from taking certain actions or making some types of actions more difficult for the agency than others. *Ex post* controls are those actions and reactions that occur after an agency makes its decision. To the extent that agency officials anticipate likely reactions, they affect agency decisions.

### *Ex Ante Constraints*

When formulated properly, *ex ante* constraints influence an agency's decision making in ways desired by the enacted coalition. These constraints make it less likely that an agency will deviate from the policies desired by that coalition.

The Administrative Procedure Act and interpreted in a wide variety of ways. Procedures by which agencies make decisions are designed to satisfy the due process requirements of the Constitution. Amendments to the Constitution, "arbitrary" nor "capricious."

Specifically, the APA (as amended)

- An agency cannot simply announce its decision. Instead, it must give "notice" of its decision.
- The agency must solicit and communicate their views.
- Agencies must allow "participation" in the decision-making process.
- The agency must explain its decision.
- The agency must execute its decision in a rational manner.
- *Ex parte* contacts (those outside the agency and any interested parties) are prohibited.
- Agency procedures and decisions must be subject to review under the Information Act (FOIA) (GITSA), which require disclosure of records and available.

Each of these procedures has a purpose. They are designed to provide a fair hearing and satisfies basic fairness requirements. If an agency cannot provide a fair hearing, then its decisions are arbitrary and invalid. It is both the duty of the agency to collect information of interested parties, it both deny and provide information of interested parties.

Each of these procedures also has a purpose. First, they are designed to provide a fair hearing and satisfies basic fairness requirements. First, they are designed to provide a fair hearing and satisfies basic fairness requirements. First, they are designed to provide a fair hearing and satisfies basic fairness requirements. First, they are designed to provide a fair hearing and satisfies basic fairness requirements.

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The Administrative Procedure Act (APA) of 1946, as amended by other legislation and interpreted in a wide range of court cases, lays out a set of general procedures by which agencies must make their decisions.<sup>20</sup> These procedures are designed to satisfy the due process clauses of the Fifth and Fourteenth Amendments to the Constitution and require that agency actions be neither "arbitrary" nor "capricious."

Specifically, the APA (as amended and interpreted) requires:

- An agency cannot simply announce a new policy without warning. Instead, it must give "notice" that it will consider an issue.
- The agency must solicit "comments," allowing all interested parties to communicate their views.
- Agencies must allow "participation" in the decision-making processes.
- The agency must explicitly deal with all the evidence presented to it and must provide a rational link between the evidence and its decisions.
- The agency must execute these procedures without prejudice or bias in favor of any policy.
- *Ex parte* contacts (those outside official procedures) between the agency and any interested parties are prohibited.
- Agency procedures and decisions are subject to the Freedom of Information Act (FOIA) and the Government in the Sunshine Act (GITSA), which require that all agency evidence and procedures be open and available.

Each of these procedures has a direct rationale in due process rights of individuals and satisfies basic fairness criteria. If an agency exhibits prejudice before hearing the evidence, then this is evidence that the official proceedings are a charade. If an agency cannot provide a rationale for its decisions based on all the evidence, then its decisions are arbitrary and capricious. If it prohibits participation of interested parties, it both denies basic rights of interested parties and risks failing to collect information of direct relevance to its decisions.

Each of these procedures also has a profound political implication relevant for the control problem. First and foremost, procedural due process of this sort ensures that all major policy decisions are conducted in the open and, further, that they take time, sometimes a long time. Openness and deliberateness (if not outright delay) prevent agencies from presenting political officials with fait accompli policy changes that are engineered in secret between the agency and a set of interests that differs from those that political officials sought to benefit. These procedures ensure advance warning of important policy changes, both to political officials and to their constituents. This allows constituents to monitor agency proceedings and to activate fire alarms if necessary.

Second, the constraints on participation ensure that the agency collects all the politically relevant information necessary for political officials should their

attention be required: Who are the interested parties? How are they affected? How do they feel about the proposed agency decisions? What are the alternatives that the agency failed to consider or choose?

These procedures have several political advantages for elected officials. They ensure that agencies collect all this information in the normal course of their operation. By making this information publicly available, these procedures ensure that the constituents of elected officials have all the information they need, and can pull fire alarms or take an agency to court when necessary. Finally, they ensure that, should the time and energy of political officials be necessary, these officials and their staffs have all the relevant information.

Third, the entire set of procedures—notice, comment, participation, rational decision making—provide elected officials with numerous opportunities along the way to signal dissatisfaction to an agency if agency proceedings appear to be going in a direction not favored by these officials. This allows agency decision makers to gauge the likely political reaction to their decisions, in particular, letting them know when to expect a costly political reaction.

Fourth, these procedures work as a gauge of political interest and controversy, providing elected officials with the political information they need to know before intervening. Finally, the courts play a central role in enforcing these procedures. For example, any evidence of *ex parte* contact between an agency and an interested party provides courts with easy grounds for reversing an agency decision. The same outcome is inevitable if an agency fails to observe the procedures prescribed for it in the laws it administers or that it has created for itself. Because this reversal forces an agency to start the proceeding over, it is very costly. Of course, enfranchising the courts allows them to exercise a degree of policy discretion.<sup>30</sup>

For example, reflecting the Reagan administration's antigovernment, anti-economic regulation views, new administrators in several agencies simply announced that they were rescinding a regulation recently promulgated by their predecessors. This change in policy, announced by new agency leaders, failed to follow the agency procedures and was thus reversed by the courts as arbitrary and capricious.<sup>31</sup>

In short, these procedures greatly reduce an agency's information advantage over its political sponsors and constituents. Further, these procedures greatly increase the efficacy of *ex post* sanctions. The incentive effect of swifter and more accurately applied sanctions causes bureaucrats to be more reluctant to deviate from the policy preferences of their political overseers. In short, administrative procedures have political implications aimed at mitigating the control problem.<sup>32</sup>

In addition to the general procedural prescriptions imposed by the APA (as amended and interpreted) on virtually all administrative agencies, enabling legislation for new agencies or new mandates for existing agencies have often

imposed a wide range of procedural effects.

"DECK STACKING." Political of the deck" in favor of specific coalition the bargain struck by the coalition often assigns the burden of original regulation of airline control the agency protected incumbent to charge lower prices. Potentially entry would not harm existing lower prices as a means of capital intent to harm, thus making it in Deregulation Act of 1978, seeking reversed this burden by regulatory not consistent "with public concern and consumers.

The Toxic Substance Control originally proposed in 1971, this for chemicals paralleling that of regulation of drugs. Before market must first prove that it is both safe the manufacturer. The original on chemical firms, requiring that tion in the market. This proposal the regulatory mechanism to allowing a brief notification period, ban or restrict the chemical. Vastly reduced had manufacturers been a:

Various regulatory areas proved to be underrepresented in the provision in this category. A great many regulations to ease the regulatory burdens businesses. Similarly, at one time, presentation of consumer groups, National Highway Traffic Safety Produce Safety Commission, Commission.<sup>33</sup>

The advent of Environmental illustration. As a political force, only slowly in the mid- to late

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Administration's antigovernment, trators in several agencies simply on recently promulgated by their by new agency leaders, failed to sed by the courts as arbitrary and

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imposed a wide range of procedures in specific policy areas designed to have political effects.

"DECK STACKING." Political officials design many specific procedures to "stack the deck" in favor of specific constituents who are the intended beneficiaries of the bargain struck by the coalition that created the agency. For example, legislation often assigns the burden of proof. This allocation dramatically affects decisions by biasing decisions against the party that bears the burden. Under the original regulation of airline competition by the Civil Aeronautics Board (CAB), the agency protected incumbent firms from competitive entry by firms wishing to charge lower prices. Potential entrants held the burden of proof that their entry would not harm existing air carriers. Since they sought entry to charge lower prices as a means of capturing business, entry provided direct proof of intent to harm, thus making it impossible to gain permission to enter. The Airline Deregulation Act of 1978, seeking to increase competition in the airline industry, reversed this burden by requiring the CAB to authorize entry unless it was not consistent "with public convenience and necessity," benefiting new entrants and consumers.

The Toxic Substance Control Act (TSCA) provides another illustration. As originally proposed in 1971, this bill would have created a regulatory mechanism for chemicals paralleling that of the Food and Drug Administration's (FDA) regulation of drugs. Before marketing a new drug, pharmaceutical manufacturers must first prove that it is both safe and efficacious; the burden of proof lies with the manufacturer. The original proposal of TSCA assigned the burden of proof on chemical firms, requiring that they prove their product safe prior to introduction in the market. This proposal would not pass, so the proponents weakened the regulatory mechanism to allow firms to market a new chemical unless, during a brief notification period, the EPA moved to promulgate a test rule or to ban or restrict the chemical. Vastly fewer new chemicals would have been introduced had manufacturers been assigned the burden to prove their products safe.

Various regulatory areas provide for subsidized participation of groups likely to be underrepresented in the process. Small businesses and consumers often fall in this category. A great many regulatory agencies, for example, have special provisions to ease the regulatory burden and ease the cost of participation of small businesses. Similarly, at one time, eleven different agencies had funds for representation of consumer groups, including the Federal Trade Commission, the National Highway Traffic Safety Administration, the EPA, the Consumer Product Safety Commission, the CAB, and the Nuclear Regulatory Commission.<sup>33</sup>

The advent of Environmental Impact Statements (EIS) provides another illustration. As a political force, the environmental movement gained ground only slowly in the mid- to late 1960s, then growing enormously in 1969 and

1970. These years witnessed the creation of the Environmental Protection Agency (EPA) as well as the National Environmental Protection Act (NEPA) and the Clean Air Act. A major problem for environmentalists concerned how to improve the quality of the government's decisions concerning the environment. NEPA provided one answer, by forcing all governmental agencies whose decisions affected the environment to fill out EISs. Along with EISs came a range of procedures of how to do them, including the notice, comment, and participation.

NEPA therefore enfranchised new environmental interests to participate in a wide range of agency proceedings, affording them opportunities not only to have their views heard, but also to impose costs on agencies through delay. Because delay is costly, the new EIS affected many agencies' strategy: one way to avoid long delays imposed by environmentalist suits was to take greater account of their interests in agency decisions.

Nuclear power regulation illustrates the effect of the new EIS procedures. NEPA granted environmentalists important new procedural tools with which to influence agency decision making.<sup>34</sup> Before building a nuclear power plant—that is, a plant using nuclear power to generate electricity—electric power providers had first to gain approval to construct and then to operate a nuclear power plant. The complexities and dangers of nuclear power combined with a complex regulatory process to make this process very expensive and time consuming. The environmentalists intervened in many proposed plants, seeking to improve the environmental quality of the design and operation or to halt the process altogether. Linda R. Cohen shows that, although the environmentalists lost virtually all their contentions, they were able to impose substantial delay, which raised the costs of nuclear power sufficiently that utilities simply stopped ordering these types of plants.<sup>35</sup> The EIS process gave environmentalists an important new forum in which to raise more questions about the design and therefore to impose further delays. The nuclear power case illustrates how Congress successfully used the EIS procedure to afford environmentalists a range of regulatory procedures.

Another form of procedure commonly used in legislation concerns agenda control, that is, affecting an agency's ability to control what policies it considers. If the coalition producing a statute reflects a diversity of conflicting interests, then the statute will often seek to mirror these pressures before the agency. Thus, the enabling legislation may charge an agency with benefiting a constituency, but subject to constraints that are influenced by another constituency. For example, Congress charged the Occupational Safety and Health Administration (OSHA) with regulating the workplace to benefit labor. Yet it also placed constraints on OSHA that limited the agency's ability to control its agenda: prior to writing a health regulation, OSHA needed what the legislation termed a "criteria document." These documents were to be produced by another new agency,

the National Institute of Occupa be located in another Cabinet d the Department of Labor and Health, Education, and Welfare). ferent set of political pressures, it than if it were simply a bureau lo Jonathan Macey observes the politics in their design decisions a single agency or to separate these ulation of various financial mark strictly separating banks from sec separate agencies for each of the and loan, and securities firms all fi in any of these other categories. an agency devoted solely to that i important factor in surface trans] with railroad regulation by the In As Macey argues, the differ agencies was entirely predictable lated by its own agency, came to l agency's decisions and hence the trucking and railroad interests be different segments of the indust mechanisms. By controlling the elected officials can directly affec

#### INSTITUTIONALIZED PRESIDENCY

favor of Congress; this instituti process and in the oversight pr resources, however. As Terry Moe tions and capabilities.<sup>36</sup> Citizens l person in charge; and yet the pr expectations, in large part becau and because the bureaucracy is sc for a more detailed discussion of

In the face of this mismatch enhance their power, in part thro ing those parts of the federal stru the White House Office, the Exec Management and Budget.

Moe has questioned why the the White House, than on the gov





the latter are the policy experts, while the former are generalists, typically without a level of policy expertise that matches that of the bureaucracy. Moe's answer fits with the information problem above: the bureaucracy may have greater expertise, but it lacks loyalty to the president. Regarding the information problem: because most bureaucrats' goals differ from those of the president, they have a strategic incentive to manipulate the information provided to the chief executive. Presidents end up relying on those close to them because those advisors are loyal; in particular, their preferences closely match those of the president they serve, so the president does not have to worry about manipulation. According to Moe, presidents willingly trade off knowledge and expertise for action that is compatible with their goals.

The main implication is that modern presidents, though in varying degrees, have sought, through use of the White House-controlled offices and a strategy of placing loyalist political appointees in key agencies (see below), to build up the institutional portion of the bureaucracy most loyal to them, allowing them to develop policy independent of the career bureaucracy and to guide it to implement this policy.

**APPOINTMENTS.** Finally, another category of *ex ante* controls is the appointment of senior agency officials. The president is clearly the most visible actor in the appointments process, but recent studies show the significant influence of Congress.<sup>38</sup> The Senate, which must approve the president's nominees, is particularly influential. Because a nomination rejection is very costly to the nominee, it becomes costly to the president. Not only is a rejection a source of embarrassment, it makes many potential nominees for future positions more reluctant to let their names be put forward.

We should also distinguish between the president's appointees to the White House Office (WHO) and those to the executive branch more generally. Loyalty to the president is far more characteristic of members of the WHO. The Congress has much less influence here: these are the president's people, and most of these appointments do not require Senate confirmation. The president's influence is less certain over appointments to the executive branch beyond the White House. First, the Senate must confirm hundreds of these appointments. Second, many political appointees to agencies reflect a political exchange, whether explicit or implicit. The electoral support of particular interest groups may be assured when the president appoints an agency leader sympathetic to their interests. Practically, the role of Congress and interest groups means that, although leaders of agencies reflect the president's overall priorities, a great many may diverge from the president in their policy concerns. (A main component of the "administrative presidency strategy" described by Richard Nathan and by several authors in this volume, is the appointment of administration "loyalists" to top positions in the agencies and is part of an

effort by several recent presidents diverge from the president's priorities. This divergence of interest also hinders unity and policy especially with the president. The to congressional influence.

#### Ex Post Controls

*Ex post* controls are means bureaucratic decisions. As noted important for agency decision ma

**LEGISLATION.** Legislation can decision-making procedures. If a elected officials, legislation can c rection typically adversely affects that put them at risk of legislative

The force of new legislation circumstances under which it is feasible occasionally. Nonetheless, as John of legislation is sometimes sufficient because no one knows in advance legislation. Because there is some will take corrective action to fore

**OVERSIGHT.** An important means is official oversight—investigation. Oversight includes many types, it occur every few years; and oversight alarm.<sup>42</sup> Moreover, Congress concern both the Office of Management Accountability Office (GAO), for oversee, investigate, and otherwise respectively. Studies show that over in which members of Congress have their policy preferences directly communicated. The existence of periodic every agency know that, every few and evaluation. This process typical various political constituencies to see it. Moreover, as Aberbach insight hearings is a signal of inter

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effort by several recent presidents to counter this tendency for appointees to diverge from the president's priorities.)<sup>40</sup>

This divergence of interest between the president and many agency heads also hinders unity and policy coordination within the executive branch and especially with the president. The lack of unity also opens the executive branch to congressional influence.

#### Ex Post Controls

*Ex post* controls are means by which elected officials react after the fact to bureaucratic decisions. As noted above, to the extent that these reactions are predictable, they set up an *ex ante* incentive system. A wide variety of reactions are important for agency decision making.

LEGISLATION. Legislation can dramatically modify an agency's mandate and decision-making procedures. If an agency moves in a direction not desired by elected officials, legislation can correct this problem. Moreover, legislative redirection typically adversely affects the agency, so agencies seek to avoid situations that put them at risk of legislative correction.

The force of new legislation makes it a powerful tool. Yet, as noted, the circumstances under which it is feasible are rare. Legislation is therefore used only occasionally. Nonetheless, as John Ferejohn and Charles Shipan show, the threat of legislation is sometimes sufficient to force an agency to adjust.<sup>41</sup> This occurs because no one knows in advance how hard members of Congress will push the legislation. Because there is some chance that legislation will pass, many agencies will take corrective action to forestall action.

OVERSIGHT. An important means available to both Congress and the president is official oversight—investigations into agency process and decision making. Oversight includes many types, including periodic audit-like investigations that occur every few years; and oversight in response to a political problem or fire alarm.<sup>42</sup> Moreover, Congress conducts oversight directly through hearings, while both the Office of Management and Budget (OMB) and the Government Accountability Office (GAO, formerly called the General Accounting Office) oversee, investigate, and otherwise watch agencies for the president and Congress respectively. Studies show that oversight is not random, but most common in areas in which members of Congress have policies they seek to advocate or in which their policy preferences directly conflict with those of the executive branch.<sup>43</sup>

The existence of periodic audit-like oversight means that bureaucrats in every agency know that, every few years, they will be subject to public scrutiny and evaluation. This process typically includes the ability of affected parties and various political constituencies to provide their input and signal problems as they see it. Moreover, as Aberbach emphasizes, members of Congress holding oversight hearings is a signal of interest.<sup>44</sup> Not only does this force the agency to

defend its actions in public, but the signal suggests that congressional meddling might follow if the agency fails to take account of congressional interests. This forum gives political officials the opportunity to make life difficult for the agency. Corrective legislation may be impossible, but sustained, intense hearings and accompanying tasks (such as answering in great detail a series of questions about actions) impose immense burdens on agencies and their leaders.<sup>45</sup>

The typical political appointee to an agency serves on the order of two years. Many come from the private sector, seeking to enhance their reputations and their professional standing. Successful public service allows an appointee to move up both the private and public employment hierarchies. The intense political scrutiny of prolonged oversight can be quite dangerous for political appointees because it attracts political attention, often quite negative and therefore associating the appointee with trouble rather than success. Further, sustained oversight takes an appointee away from policy duties, making the appointee much less likely to succeed in accomplishing his or her political goals. A prolonged congressional investigation may prevent an appointee from accomplishing any goals while in Washington. Aberbach and Rockman report for example, that political appointees report considerable "micromanagement" by both the OMB and Congress.<sup>46</sup>

Seen as a form of harassment, *ex post* oversight provides political appointees with incentives to avoid actions that trigger the close scrutiny of fire-alarm oversight. This in turn implies that agency leaders will seek to avoid decisions that cause constituents to pull fire alarms. Put differently, the best way for political appointees to avoid harassment from prolonged investigations is to serve constituents of elected officials.

**APPROPRIATIONS.** Agency budgets are formulated through a complex congressional appropriations process that has long been a source of influence on bureaucratic decision making.<sup>47</sup> Congress and the president regularly reward programs that they favor with expanding budgets and punish those they dislike with contracting or slowly expanding budgets. Similarly, presidents use the OMB to cut programs they do not favor.

Elected officials can also earmark funds for specific activities; they can also insert provisions that prevent an agency from spending any money on other activities. For example, as Congress turned more conservative regarding the consumer protection activities of the Federal Trade Commission (FTC) in the late 1970s and 1980s, it used the appropriations process to prohibit the commission from spending any funds on several of its ongoing investigations.

Here too, anticipated budgetary reactions provide *ex ante* incentives. Ambitious agency leaders who seek to make a name for themselves as successful innovators must not only avoid the disfavor that impels elected officials to block their initiatives, but also must garner their active support through budget increases. Because elected officials reward those agencies that serve their political

interests, systematic budgetary incentives to serve elected officials. Of course, all this works best if Congress is willing to compromise concerning what it logs together, seeking to benefit at loggerheads, seeking to benefit it is with the gridlock implied. Budgets must be passed every year to arrive at working compromise. One aspect of the process Congress engage in negotiation: up something in areas they care areas they care more about.

To summarize, the force of the powerful set of tools for elected officials what agencies do. By definition cannot know in sufficient detail to specify in advance what bureau

### Conclusions

Because problems of bureaucratic evolution have evolved a complex political bureaucratic policy making. Elections including general procedures (such as procedures in enabling legislative stack the deck in favor of particular post controls are also useful. This oversight, the appropriations process, bureaucratic policy choice is respected. This section has emphasized policy. Other types of agencies Social Security Administration, and the Department of Defense. Difficulties, yet in each case, elected officials political tools used in these contexts and outcomes are similar.

### Evolution of the Political

This section will briefly explore the bureaucratic system: the rise of the partisan and polarized Congress.

gests that congressional meddling out of congressional interests. This is why to make life difficult for the president, but sustained, intense hearings and great detail a series of questions are asked of agency leaders.<sup>45</sup>

It serves on the order of two years. It enhances their reputations and their ability to move up the ladder. It allows an appointee to move up the ladder. The intense political scrutiny for political appointees because it is not their own and therefore associating the name with the president, sustained oversight takes an appointee much less likely to succeed. A prolonged congressional investigation accomplishing any goals while in office. For example, that political appointees are not in the OMB and Congress.<sup>46</sup>

It provides political appointees with a close scrutiny of fire-alarm oversight. It will seek to avoid decisions that are not the best way for political appointees. Instead, investigations is to serve con-

ducted through a complex congressional process. It is a source of influence on the president regularly reward programs and punish those they dislike with confirmation. Presidents use the OMB to cut

specific activities; they can also spend any money on other things. A conservative regarding the confirmation Commission (FTC) in the late 1970s to prohibit the commission from investigating.

They provide *ex ante* incentives. They name for themselves as successful. They impel elected officials to block active support through budget agencies that serve their political

interests, systematic budgetary increases and decreases provide leaders with incentives to serve elected officials' constituents.

Of course, all this works best when Congress and the president have a working compromise concerning which interests they seek to benefit. When they are at loggerheads, seeking to benefit different constituencies in an agency's environment, this process works less well. Yet even there, the process is not as crippling as it is with the gridlock implied by the difficulty of passing new legislation. Budgets must be passed every year, and this has forced Congress and the president to arrive at working compromises for budgetary decisions when they disagree. One aspect of the process of compromise is that the president and Congress engage in negotiation and exchange, whereby they each agree to give up something in areas they care less about in exchange for greater control in areas they care more about.

To summarize, the force of this subsection is that *ex post* reactions provide a powerful set of tools for elected officials to control agency decision making and what agencies do. By definition of the delegation motivation, elected officials cannot know in sufficient detail how to direct bureaucratic decisions and hence to specify in advance what bureaucrats should do to serve their interests.

### Conclusions

Because problems of bureaucratic compliance are ubiquitous, elected officials have evolved a complex political-bureaucratic system to help them control bureaucratic policy making. Elected officials utilize a range of *ex ante* controls, including general procedures (such as those contained in the APA) and specific procedures in enabling legislation. Often times, this legislation is designed to stack the deck in favor of particular interests and against others. A variety of *ex post* controls are also useful. These include traditional oversight, fire alarm oversight, the appropriations process, and unilateral presidential action. In a real sense, bureaucratic policy choice is responsive to the interests of elected officials.<sup>48</sup>

This section has emphasized political control in the context of regulatory policy. Other types of agencies exist, including service agencies, such as the Social Security Administration, and procurement agencies, such as those within the Department of Defense. Different agency settings have different types of politics, yet in each case, elected officials face a similar control problem. The mix of political tools used in these contexts often differs from regulation, but the goals and outcomes are similar.

### Evolution of the Political-Bureaucratic System, 1980-Present

This section will briefly explore the evolution of two aspects of the political-bureaucratic system: the rise of extremists in politics, and the rise of a more partisan and polarized Congress.



the last several decades is the rise of a single issue. When V. O. Key and others wrote about interest groups, they had in mind agriculture.<sup>49</sup> These groups were required to compromise in order to operate. As the government has changed over the last fifty years, active interest groups have come from the periphery toward the center.

Important in politics and politics are generated by interests who feel they tend to be toward the end of the spectrum. Especially that of elected officials, who debate particular issues tend to be more extreme, as Morris Fiorina terms them in the so-called "culture wars" — two hostile political camps within the system rewards active interests. Agencies; to develop close connections and the parties; and to sound fire and fury to be influential in politics, the bureaucratic system will serve the

rate the increasing polarization in the mid-twentieth century, parties are more homogeneous. Congress may today be more heterogeneous (if not get along) within the system and homogenization, there is more coordination between the agencies. For the political-bureaucratic system of the president. This appears to be the case of the president. This appears to be the case of Homeland Security, where Bush has a major reorganization of the government away from their traditional man-

dates toward homeland security. Similarly, Bush seems reasonably successful in his faith-based initiative, having a surprisingly wide range of agencies reach out to church-related groups.

### Implications

While exploring these two issues in detail is beyond the scope of this chapter, they both indicate some changes in the nature of the performance of the political-bureaucratic system. Both seem to be related, and to indicate that there are fewer moderates among elected officials and the active interests. To the extent that active groups and elected officials have become more extreme relative to the population, it means that policies are less likely to serve the average citizen.

### Conclusions and Broader Implications

Elected officials delegate authority for two reasons: delegation allows them to economize their own time and resources, and many policy areas require the development of specialized knowledge, expertise, and information collection that is simply beyond the officials' reach. Both motivations for delegation, but especially the second, mean that elected officials cannot know in sufficient detail how to direct bureaucratic decisions and hence to specify in advance what an agency should do to serve their interests. If elected officials had to direct bureaucrats to get what they wanted, the task would be hopeless.

Instead, elected officials have created a political-bureaucratic system that controls agency decision making through other means. First, the committee system implies that members of Congress specialize by subject area, and many gain considerable policy expertise over the years; so, too, do the relevant congressional staff. Periodic oversight hearings provide a means for the official assessment of agency performance, including the reauthorization process.<sup>50</sup>

Second, elected officials shift much of the effort and resources involved in monitoring agencies to constituents and the courts. Constituents have both the incentives and the means to monitor agency proceedings. Courts ensure that agencies follow prescribed procedures and constraints required by due process, the APA, and in various enabling statutes.

Third, structure and process, enforced by the courts, provide each agency with a range of *ex ante* constraints and incentives. Elected officials use these tools to stack the deck in favor of some interests and against others.

Fourth, the fire-alarm mechanism holds the threat of bringing intense congressional scrutiny of an agency. This attention has two separate effects. It typically conveys information to the agency about the direction officials would like the agency to take. More importantly, most bureaucrats seek to avoid this form of scrutiny and harassment, and the best way to do this is to serve the interests who hold the power to direct Congress's attention.



es that serve elected officials' con- of serving elected officials' con- lose that do not. *Ex post* reactions, werciful set of tools for elected offi- n making is that these tools com- ling a vast array of different pro- is of thousands of policy areas. tical interests do not prosper.

of the political-bureaucratic sys- with which this chapter opened. of those whom the bureaucracy ollable?

the bureaucracies are not uncon- range of tools to reign in agencies formational advantage established cy greatly advantages the bureau- t these officials possess a range of vantage established by delegating

tions combine to address all three blem of agency drift and the pre- sent elected officials with policy cedures in the APA and in various dings must be open, and that they event agency surprise attacks and r all agency activity. If an agency on, fire alarm oversight holds the and punish those agencies that fail icipation of this reaction provides ortant political constituents.

ple principal actor" problem that om using corrective legislation to hese officials often disagree about manipulate them. As long as the re House, the Senate, or the pres- move the agency back to the sta- ibility at the time of creating the ipulation less likely, officials use a incentives to create an expected

balance among competing interests that members of the enacting coalition seek to benefit. *Ex ante* constraints are designed to mirror the political environment facing the enacting coalition and to stack the deck in favor of particular interests and to disadvantage others.

Third, these tools also address the political turnover problem by blunting the influence of future officials. Again, structure and process enacted into legislation advantage some constituents over others and raise the costs to future officials of using pressure to alter an agency's policies. Because political officials of previous eras have used structure and process to prevent agency drift, they also reduce the flexibility of future elected officials. Indeed, today's officials are likely to feel frustrated at their lack of control over the bureaucracy.

In short, bureaucracies are not out of control. Although bureaucrats "pull the levers" of policy making, they are not solely or even primarily responsible for choosing which levers to pull. The political-bureaucratic system ensures that agencies are responsive to the interests of elected officials.

But this responsiveness to elected officials raises a deeper question: What type of control does this system imply? In particular, does the political-bureau- cratic system result in good public policy? This question is harder to answer—the system has both positive and negative aspects. On the positive side, we have seen that the administrative state is not a collection of runaway, uncontrollable bureaucracies. The political-bureaucratic system allows the government to deal with thousands of different policy issues every day, and with a notable degree of responsiveness to elected officials' interests and hence to their constituents. The bureaucracy provides America with the type of policies negotiated by elected officials acting within the American constitutional system.

Nonetheless, all is not well with the bureaucracy—the system exhibits a range of serious flaws. For one, the bureaucracy produces policy piecemeal rather than in a coordinated fashion. Both Fiorina and Moe make similar arguments about this problem, which Fiorina calls the "mismatch of incentives and capabilities."<sup>53</sup> The president has the incentive to create coordinated control over the bureaucracy, but lacks the means. Congress has the means of coordinated con- trol, but not the incentive. The goals of the presidents, based on the incentive to serve national constituencies, imply that they prefer centralized control of the bureaucracy, a bureaucracy they can direct and shape according to their policy interests. Members of Congress, elected from small constituencies within the nation, prefer decentralized control by committee and subcommittee. Yet even the president's incentive to coordinate the bureaucracy has limits. The need to assemble electoral coalitions push the president to serve a wide range of con- stituencies, many of which are as narrow as those served by members of Congress.

Moe also observes that in some areas, interest groups are so dominant that they can affect the fate of many elected officials.<sup>54</sup> In such cases, elected officials



are likely to use their power to ensure that the relevant bureaucratic agency is highly focused on serving that organized group's interest. He offers the example of teachers' unions. More broadly, the system is clearly designed to favor active and organized interests. In some cases, these interests may be diffuse, as in Social Security recipients. But in a great many cases in modern America, this means that narrowly defined special interest groups have more influence than the general public.

The result is a set of policy decisions that, area by area, focus on a balance of political constituencies, many emphasizing more narrow congressional constituencies, others emphasizing larger presidential ones. Fire-alarm oversight reflects active monitoring of agencies by constituents. Unfortunately, this process necessarily biases policy in favor of active groups and away from the public who, even when the total stakes are large, typically have low per capita stakes and therefore do not pay attention. Indeed, studies of regulatory agency policy have, for over half a century, emphasized their service to various interest groups, often the interests they nominally regulate for the benefit of the public.<sup>57</sup>

In a real sense, bureaucracies are caught in the middle of a complex political system, with a tug of war between Congress and the president. The logic of the political-bureaucratic system forces agencies to pay attention to their masters, and that often means serving narrow constituencies with the capability of monitoring agencies at the expense of ignoring larger constituencies—such as the public at large—who do not have the incentive of capabilities of monitoring an agency and sounding fire alarms. As Fiorina concludes:

When we see a public agency spending inordinate amounts of public funds to pave over certain congressional districts, we are not observing an out of control agency. We are observing an agency that is paying off the members of Congress who nurture it. The federal agencies exist in a symbiotic relationship with the congressional committees and subcommittees to which they report. Of course, not everything an agency does is of concern to its set of relevant members. It purchases freedom in such areas by playing ball in the areas that are of concern. So part of the agency may be genuinely out of control, but Congress wants it that way. It is a necessary cost of maintaining a bureaucracy sufficiently unconstrained (in law and by its nominal leaders) that it is permeable to congressional influence.<sup>58</sup>

In a similar vein, Averbach and Rockman argue that if the bureaucracy is full of contradictions and inconsistencies, the fault lies with its masters.<sup>59</sup> The separation of powers system, the congressional committee system, and a fragmented system of active interest groups all push toward a bureaucratic system that serves political constituencies, often quite narrow ones and often at the public's expense.

An important aspect of being a system is simply not capable of solving vetoes and holdups implies that forcing legislation. Many of these is the legislation that affects their result is that virtually all legislative most legislation contains provisions that serve the interests of the group. Moe takes this argument further, arguing that the system is merely inefficient but in fact is designed to be effective. The bias reflects the interests, strategies, and power.<sup>60</sup> As we have seen, the political system often cripples the agency's ability to solve the problems it seeks to solve.

Moe takes this argument further, arguing that the system is merely inefficient but in fact is designed to be effective. The bias reflects the interests, strategies, and power.<sup>60</sup> As we have seen, the political system often cripples the agency's ability to solve the problems it seeks to solve. For example, consider the pressure for OSHA. Organized labor has a broad mandate, unconstrained by the Department of Labor (where organized labor had insufficient support, proponents had to go to Richard Nixon, a proponent of a more active role for the agency through a structure and agenda which set part of its agenda. Enforcement of each state could create its own agency, many aspects of enforcement would be forced on OSHA to adopt a range of its own regulations. As Moe concludes, "create authority to 'create confidence points. No one was in charge, and weak."<sup>62</sup> Economists studying OSHA find it costly and burdensome. It does not cost less than necessary.<sup>63</sup>

Another aspect of inefficiency is the system's strategies to mitigate the problems. By design, administrative procedures are slow and ponderous. The political system that prevents agency failure accomplishes this by forcing agencies to spend more time to monitor agencies, sound fire officials if the need arises. Yet it is addressing problems that need immediate

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gue that if the bureaucracy is full of ies with its masters.<sup>59</sup> The separation ee system, and a fragmented system reaucratic system that serves politi- nd often at the public's expense.

An important aspect of being caught in the middle is that the legislative sys- tem is simply not capable of solving problems efficiently. The system of multiple vetoes and holdups implies that too many different interests are involved in pro- ducing legislation. Many of these interests care solely about a narrow portion of the legislation that affects their constituents rather than the larger whole. The result is that virtually all legislation fails to address problems directly and that most legislation contains provisions that are inconsistent with the overall legisla- tive purpose or that seriously compromise the ability of the legislation to address the problems it seeks to solve.

Moe takes this argument further by arguing that the bureaucracy is not merely inefficient but in fact is designed to fail. "American public bureaucracy is not designed to be effective. The bureaucracy arises out of politics, and its design reflects the interests, strategies, and compromises of those who exercise political power."<sup>60</sup> As we have seen, the political compromises necessary to produce legis- lation often cripple the agency's ability to address its goals.

For example, consider the problem of regulating occupational health and safety by OSHA.<sup>61</sup> Organized labor sought a powerful, streamlined agency with a broad mandate, unconstrained by procedures, and located within the Department of Labor (where organized labor has significant influence). Yet such an agency had insufficient support within Congress to pass. In order to gain greater support, proponents had to compromise this vision. Moreover, President Richard Nixon, a proponent of a constrained OSHA, sought to place limits on the agency through a structure and process that placed significant burdens on the agency. As noted above, the agency was burdened with dealing with NIOSH, which set part of its agenda. Enforcement was to be federalized in the sense that each state could create its own agency to enforce the national law, thus taking many aspects of enforcement out of OSHA's hands. In many areas, the legislation forced OSHA to adopt a range of industry consensus standards rather than devise its own regulations. As Moe concludes, structural constraints combined with divided authority to "create confusion, lack of coordination, and multiple veto points. No one was in charge, and the secretary of labor, in particular, was kept weak."<sup>62</sup> Economists studying OSHA consistently show that its regulation is costly and burdensome. It does produce benefits for labor, but at a much higher costs than necessary.<sup>63</sup>

Another aspect of inefficiency arises out of the political-bureaucratic sys- tem's strategies to mitigate the problems of agency drift and of multiple princi- pals. By design, administrative procedures make bureaucratic decision making slow and ponderous. The political advantage of this system to elected officials is that it prevents agency *faits accomplis* by ensuring that constituents have adequate time to monitor agencies, sound fire alarms, and engage the attention of political officials if the need arises. Yet it also means that bureaucracies have difficulty addressing problems that need immediate attention.



item. The bureaucracy is not out of reflects the nature of the American centers of power, and a lack of primarily the chief executive, but is lays an ongoing direct and indirect tic system may ensure that bureau- misiveness to active political con- middle of this system, forced to

ects the larger national interests of r more likely to monitor agencies, ill fire alarms, and make campaign rves their interests more effectively has the greatest incentive to repre- n, the mismatch of incentives and es the president's ability to pursue pursue most vigorously the inter-

tern America, and rightly so. The he political compromises necessari- mean that legislation rarely attacks ically through political compo- goals, that adds complex proce- igned to prevent the agency from rsome procedures necessary both place constraints on agency drift ver.

ch, Daniel Carpenter, Dara Cohen, lockman for helpful conversations.

ine 1970; Dodd and Shott, *Congress r Regulation*, State, 2.

eb of *Politics: Three Decades of the U.S.* ngs Institution, 2000.) anford University Press, 1974.) rrise: Congressional Choices about i: *Political Science* (1995), 89, 62-73; nd Huber and Shipan, *Deliberate*

6. Weingast, "Congressional Bureaucratic System."
7. See Aberbach and Rockman, *Web of Politics*, especially chap. 5; and Fiorina, "Congressional Control of the Bureaucracy."
8. Brady and Volden, *Rewriting Gridlock*; and Krehbiel, *Proxial Politics*.
9. This illustration draws on Romer and Weingast, "Political Foundations of the Thrift Debate."
10. Banks and savings and loans differed in a variety of technical ways, for example, the types of loans they could make, the interest rates they could charge; and banks had the right-to-issue checks.
11. One reason these ailing banks could keep their doors open was that, in the absence of supervision, they raised interest rates on deposits. This attracted more cash in the short run, but increased the S&L's long-term liabilities in a way that could not be sustained.
12. See McNollgast, "Structure and Process, Politics and Policy."
13. This section draws on Rodriguez and Weingast, "Positive Political Theory of Legislative History."
14. Eskridge, Jr., Frickey, and Garrett, *Legislation*; and Whalen and Whalen, *The Longest Debate*.
15. Dara Cohen provided input for this paragraph.
16. Indeed, the homeland security reorganizations is one of the biggest administrative reorganizations in modern times.
17. Wilson, *Politics of Regulation*.
18. Clarkson and Muris, *Federal Trade Commission*, 34.
19. Bawn, "Political Control versus Expertise: Epstein and O'Halloran. *Delegating Powers*; and Huber and Shipan, *Deliberate Discretion*.
20. William N. Eskridge, Jr., and John Ferejohn, "Making the Deal Stick: Enforcing the Original Constitutional Understanding in the Modern Regulatory State," *Journal of Law, Economics and Organization* 8, no. 1 (March 1992); Horn, *Political Economy of Public Administration*; McNollgast, "Administrative Procedures as Instruments of Political Control"; and Murray J. Horn and Kenneth A. Shipley, "Commentary on 'Administrative Arrangements and the Political Control of Agencies': Administrative Process and Organizational Form as Legislative Responses to Agency Costs," *Virginia Law Review* (March 1989), 75, 499-508.
21. Terry M. Moe, "The Politics of Bureaucratic Structure," in John E. Chubb and Paul E. Peterson, eds., *Can the Government Govern?* (Washington, D.C.: The Brookings Institution, 1989).
22. David Brady and Barbara Sinclair, "Building Majorities for Policy Changes in the House of Representatives," *Journal of Politics* 46 (Nov. 1984), 1033-1060.
23. *Ibid.*
24. Moe, "Politics of Bureaucratic Structure"; and Rui J. P. de Figueiredo, Jr., and Richard G. Vanden Bergh, "The Political Economy of State Level Administrative Procedure Acts," *Journal of Law and Economics* 47, no. 2 (2004), 569-588.
25. Banks and Weingast, "Political Control of Bureaucracies."
26. Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols vs. Fire Alarms," *American Journal of Political Science* 28 (1984), 165-179; and Aberbach, *Keeping a Watchful Eye*.

27. Aberbach, *Keeping a Watchful Eye*; and Fenna, *Power of the Purse*.
  28. Terry M. Moe and William Howell, "The Presidential Power of Unilateral Action," *Journal of Law, Economics and Organizations* 15, no. 1 (1999), 132-179; and William Howell, *Power without Persuasion: The Politics of Direct Presidential Action* (Princeton, N.J.: Princeton University Press, 2003).
  29. McNollgast, "Administrative Procedures as Instruments of Political Control," and "The Political Origins of the Administrative Procedure Act."
  30. Studying this problem is beyond the scope of this chapter. See, however, Brian A. Marks, "A Model of Judicial Influence on Congressional Policymaking: *Greve City College v. Bell*," Working Papers in Political Science P-88-7, Hoover Institution; McNollgast, "Structure and Process"; Ferejohn and Shipan, "Congressional Influence on Administrative Agencies."
  31. See, for example, *State Farm Mut. Auto Ins. v. Department of Transportation*, 680 F.2d 206 (D.C. Cir. 1982).
  32. McNollgast, "Administrative Procedures"; and McNollgast, "Political Origins."
  33. McNollgast, "Administrative Procedures."
  34. Linda R. Cohen, "Innovation and Atomic Energy: Nuclear Power Regulation, 1966-Present," *Law and Contemporary Problems* 43 (1979), 67-97; and McNollgast, "Positive and Normative Models of Due Process."
  35. *Ibid.*
  36. Jonathan R. Macey, "Organizational Design and Political Control of Administrative Agencies," *Journal of Law, Economics, and Organization* 8 (1992), 93-119.
  37. See Kiewiet and McCubbins, *Logic of Delegation*, on the appropriations process. See Aberbach, *Keeping a Watchful Eye*; Fiorina, "Congressional Control of the Bureaucracy"; McCubbins and Schwartz, "Congressional Oversight"; and Weingast and Moran, "Bureaucratic Discretion," on oversight.
  38. Moe, "Politicized Presidency."
  39. See, for example, Nolan McCarty, "The Appointments Dilemma," *American Journal of Political Science*, 48, no. 3 (2004), 413-428; and Susan K. Snyder and Barry R. Weingast, "The American System of Shared Powers: The President, Congress, and the NLRB," *Journal of Law, Economics, and Organization* 16 (November 2000), 269-305.
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  41. Ferejohn and Shipan, "Congressional Influence on Administrative Agencies"; and Ferejohn, John A., and Charles R. Shipan, "Congressional Influence on Bureaucracy," *Journal of Law, Economics, and Organization* 6 (1990), 1-20.
  42. Aberbach, *Keeping a Watchful Eye*.
  43. *Ibid.*
  44. *Ibid.*, chap. 9.
  45. Studies of this process emphasize how bureaucrats dread this type of congressional scrutiny (see Aberbach, *Keeping a Watchful Eye*, and Fenna, *Power of the Purse*).
  46. Aberbach and Rockman, *Web of Politics*, 120-121.
  47. Fenna, *Power of the Purse*; Kiewiet and McCubbins, *Logic of Delegation*; Weingast, "Congressional Bureaucratic System."
  48. Aberbach and Rockman, *Web of Politics*.
49. See Key, *Politics, Parties, and Pressure*.
  50. Fiorina, *Culture War*.
  51. Fiorina, *Culture War*, forcefully argued into two very different considerable evidence that although so now than in 1970.
  52. See, e.g., Fiorina, *Culture War*, and Partisanship in Roll Call Voting: *American Journal of Political Science*.
  53. Joel D. Aberbach, "What's Happening?," *Presidency* 29 (Spring 2002), 3-24 be breaking down. Far fewer reauthorized scrutiny and evaluation of this type.
  54. Dodd and Short, *Congress and the Representative Government*, Wilson.
  55. Fiorina, "Congressional Control of the Bureaucracy."
  56. Terry M. Moe, "Political Control of the Bureaucracy," *Presidency* 29 (Spring 2002), 3-24.
  57. See for example, Bernstein, *Regulation and the Private Power and Administrative Discretion*.
  58. Fiorina, "Congressional Control of the Bureaucracy."
  59. Aberbach and Rockman, *Web of Politics*.
  60. Moe, "Politics of Bureaucratic Discretion."
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 id Fenno, *Power of the Pursue*.  
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49. See Key, *Politics, Parties, and Pressure Groups*, part I.  
 50. Fiorina, *Culture War*.  
 51. Fiorina, *Culture War*, forcefully argues that this is a myth. Although elites can be  
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 58. Fiorina, "Congressional Control of the Bureaucracy," 337.  
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