Agency Design and Postlegislative Influence over the Bureaucracy

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Extending transaction cost theories of agency design, the author develops a theory about why congressional coalitions vary the difficulty of influencing the policy decisions of bureaucratic agencies. He assesses the theory by examining the transaction costs that congressional coalitions imposed on actors seeking to influence agency decisions in landmark laws enacted by the U.S. Congress from 1947 to 1992. The findings stress the need to consider policy disagreement between congressional coalitions and both congressional committees and the president, as well as policy agreement between committees and the president, in understanding how difficult congressional coalitions make it to influence agencies' policy decisions.

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Recent research on policy making in separation of powers systems employs transaction cost theories to explain why lawmakers delegate policy authority to the bureaucracy and try to influence how this authority is used by agencies. On one hand, legislative coalitions would like to influence agencies' policy choices in the future, leading coalitions to design structures that lower the transaction costs of influencing agencies (Lewis 2003; Wood and Bohte 2004). On the other hand, coalitions do not want their opponents to influence agencies because, if they do, policy outcomes will "drift" from the coalition's intent (Horn and Shepsle 1989). Therefore, lawmakers raise the transaction costs of influencing agencies when they have policy disagreements with actors in a position to influence agencies in the future (Epstein and O'Halloran 1999; Huber and Shipan 2002; Huber, Shipan, and Pfahler 2001; Lewis 2003; Moe 1989; Potoski 1999; Wood and Bohte 2004).

A major finding of this research is that legislative coalitions make it harder to influence agencies' decisions as policy disagreement between coalitions and the relevant chief executive increases (Epstein and O'Halloran 1999; Huber and Shipan 2002; Huber, Shipan, and Pfahler 2001; Lewis 2003; Wood and Bohte 2004). In Huber and Shipan's (2002) term, chief executives are "privileged actors" (hereafter PAs) in that they are well situated to influence the policy decisions delegated to agencies. Therefore, a legislative coalition that disagrees with the chief executive about a policy matter, and delegates authority to an agency to decide what policy will be on that matter, realizes that it has potentially empowered the chief executive to undermine its political and policy priorities. However, legislative coalitions take measures to reduce these advantages by, for example, creating agencies as independent commissions that are less susceptible to postlegislative influence (Lewis 2003; Wood and Bohte 2004). In doing so, coalitions insulate agencies from influence, raising the transaction costs that a hostile chief executive must pay to influence agencies, limiting the chief executive's ability to undermine coalitional priorities.

Chief executives, however, are not the only PAs well situated to exert postlegislative influence. At the national level in the United States, research on congressional oversight emphasizes that congressional committees influence agencies under their jurisdictions. In early research, Ogul (1976, 183) concluded that "almost all legislative oversight is conducted by the standing committees." Arnold (1979, 100) analyzed Congress's influence over the agencies' allocational decisions, emphasizing committee members' ability to influence these choices. In his comprehensive study of oversight, Aberbach (1990) stressed the

active role played by committees in collecting intelligence through oversight hearings (p. 35) and informal communication between committee staff and bureaucrats (pp. 83-86). What is more, committees do not merely investigate bureaucratic transgressions "fire alarm–style" when they are alerted to them by interest groups (McCubbins and Schwartz 1984). Rather, committees also "use an impressive array of oversight techniques" to monitor agencies proactively through "well-developed information network[s]" (Aberbach 1990, 194). In total, this effort has a "significant effect on agency behavior" (Aberbach 1990, 195). Bawn (1997) also provided theoretical and empirical support for viewing committees as PAs, showing that committee members prefer oversight compared to ex ante strategies to influence agencies under their committees' jurisdictions. Finally, Shipan (2004) found that committees influence agency behavior conditionally, depending on the policy preferences of agencies relative to those of the committee overseeing them and the committee's parent chamber.

When delegating, therefore, a congressional coalition risks not only that the president, but also that committees, will undermine the coalitions' political and policy goals. This suggests that explanations of why legislative coalitions limit influence over agencies' policy decisions—that rely solely on legislative-executive policy conflict—are incomplete. In this article, I incorporate additional aspects of the legislative and policy-making processes, including that congressional committees possess leverage over agencies, to develop a theory of why lawmaking coalitions make it hard/easy to influence agencies' policy decisions. Additionally, I test predictions emerging from this theory by examining the degree to which congressional coalitions try to limit postlegislative influence over policy decisions delegated to agencies in a sample of landmark laws passed by the U.S. Congress from 1947 to 1992.

Agency Design and Multiple Privileged Actors

Research on political control of the bureaucracy stresses that agencies' policy decisions depend on the interplay of numerous actors. In particular, Shipan's (2004) analysis of policy outputs by the Food and Drug Administration showed that the agency was responsive to the congressional actor, for example, the jurisdictionally relevant committee, whose policy priorities would be embodied in a new law overturning the agency's policy decision. If no law overturning the agency's decision could have been passed, however, the agency was able to implement its ideal policy. Similarly, Whitford (2005) showed that important policy outputs of the Environmental Protection Agency during the 1980s were responsive to a "tug of war" between the president and Congress. Hazardous waste policies were initially responsive to the priorities of congressional majorities in the 1970s. However, in the early to mid-1980s, President Reagan undercut Congress's goals by compelling the agency to pursue his priorities. Subsequently, Congress enacted a new law governing how the agency exercised its authority, scaling back some of President Reagan's policy priorities (Whitford 2005).

These studies make clear that policy outcomes are the product of complicated and repeated interactions between PAs and congressional majorities. Therefore, when congressional coalitions delegate, they should be expected to consider how well policy outcomes engendered by this interaction will represent their priorities. Based on the literature on political control of the bureaucracy, this expectation should be governed by two considerations.

First, coalitions should be expected to raise the transaction costs of influencing agencies when the oversight activities of PAs can be expected to undermine coalitional policy priorities. When considering whether oversight will undermine their priorities, coalitions must consider that both the president and congressional committees can influence agencies' policy choices. This assumption is consistent with literature showing that agencies respond to presidential influence (Rothenberg 1994; Wood 1988, 1990; Wood and Waterman 1994) and the literature on congressional oversight cited above. Therefore, as disagreement between coalitions and both the president and the relevant committees increases, coalitions should be expected to increase the transaction costs of influencing agencies.

Second, the degree to which PAs share policy priorities will also influence the volume of transaction costs imposed by coalitions. For example, if the president wants an agency to make a policy decision that it objects to, the president may threaten to cut the amount of money authorized to fund the agency in the next reauthorization bill if the agency does not comply. The agency, though, may be able to turn to the committee with jurisdiction over it for cover. If the committee objects to the president's demand, it may be willing to use its leverage over the reauthorization process to stop the president from punishing the agency. However, if the president and committee are in relative agreement about

Figure 1
The Distribution of Privileged Actors and Postlegislative Influence
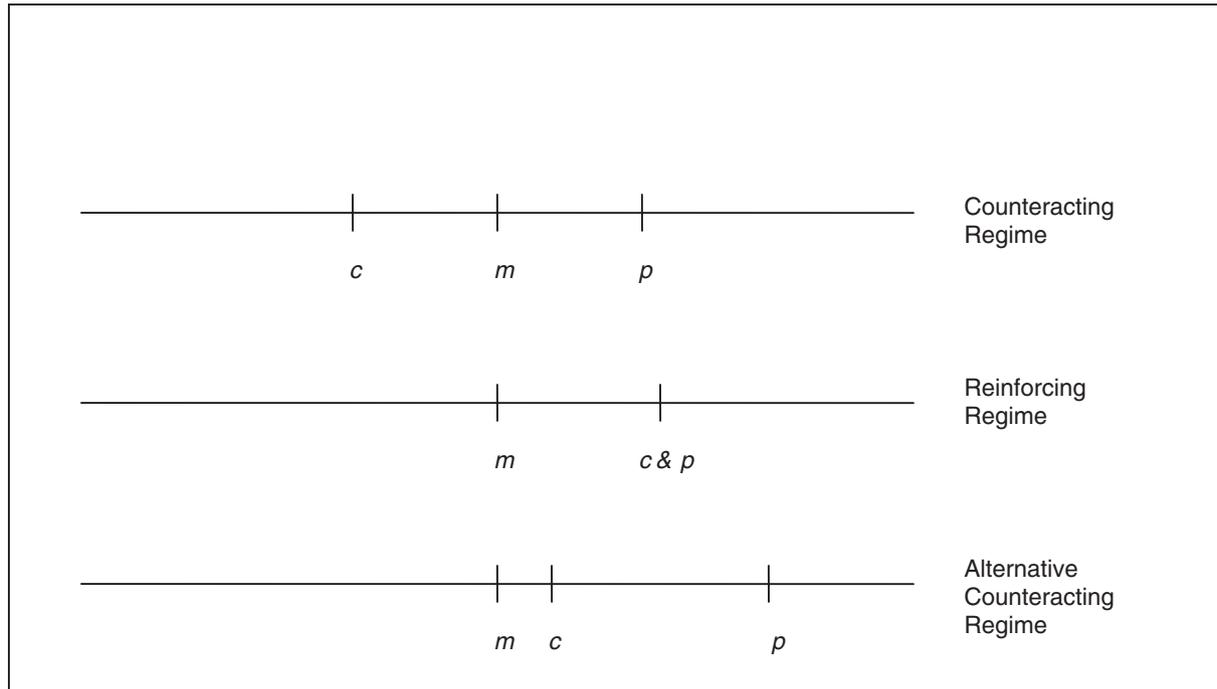
what policy should look like, the agency will not be able to resist a unified president-committee front.

Before proceeding, it is worth noting that, as policy disagreement between coalitions and PAs increases, coalitions have an additional incentive to increase the transaction costs that PAs must pay to influence agencies. This incentive is due to the difficulty coalitions face in overturning agency decisions that PAs like but that coalitions dislike. As Ferejohn and Shipan (1990); McCubbins, Noll, and Weingast (1989); and Shipan (2004) have emphasized, PAs can veto the coalition's attempts to overturn policies created by agency decisions. If the relevant committee prefers the agency's decision to the policy that the coalition would enact, the committee will gatekeep the new bill, preventing the coalition from overturning the decision. Such gatekeeping will certainly occur if the committee instructed the agency to make the decision in the first place by exercising postlegislative influence. Hence, policy disagreement between coalitions and PAs not only means that PAs will instruct agencies to make policies that PAs desire but coalitions abhor—it also means that PAs will block coalitions' efforts to overturn such policies.

With these features in mind, congressional coalitions will increase the transaction costs of influencing agencies as they expect that their priorities will be undermined by PAs' oversight efforts to greater degrees. By inspecting Figure 1, in which the ideal

policy priorities of a legislative chamber (m), a committee (c) with jurisdiction over an agency and the president (p) are depicted and assumed to be single-peaked and symmetrical, one can observe these circumstances. In the Reinforcing Regime, both PAs are on the same side of the chamber and their priorities are identical. In the Counteracting Regime, $c < m < p$. Importantly, policy disagreement between the chamber median and the PAs, or "chamber-PA disagreement," in these regimes is identical. The president and the committee are assumed to pressure agencies to make policy choices consistent with their priorities. Since the PAs are in agreement in the Reinforcing Regime, the agency cannot resist PA influence and policy will respond to the committee and president's priorities. Additionally, since the agency's decision is likely to be closer to the committee's ideal policy than the chamber's ideal policy, the committee will gatekeep any new legislation to overturn the decision and move it to the chamber's ideal point (Ferejohn and Shipan 1990; Shipan 2004). Given these circumstances, the chamber should be expected to impose high transaction costs on the PAs to make it difficult for them to exercise influence over agency decisions in the Reinforcing Regime.

In the Counteracting Regime, however, the committee and president have relatively different priorities. As a result, the agency's policy decisions will not be forced into a small interval distant from the chamber

(even though chamber-PA disagreement is the same as in the Reinforcing Regime). Additionally, if the agency responds to the president and renders a policy that is sufficiently distant from the committee's ideal policy, the committee can be expected to introduce new legislation, allowing the chamber to enact its ideal policy by using an open rule to consider and amend the committee's bill (Ferejohn and Shipan 1990).

Therefore, compared to the Reinforcing Regime, the chamber should be expected to impose lower transaction costs on PA influence over the agency. To be clear, this expectation is not due to policy disagreement between the chamber and the PAs alone: disagreement is identical in these regimes. Rather, the level of intra-PA disagreement across the regimes conditions the effect of chamber-PA disagreement on transaction costs that are imposed.

This perspective does not rely on the committee being located on the opposite side of the floor from the president. Suppose that the committee and president's priorities are both located to the right of the chamber's priorities, as in the Alternative Counteracting Regime in Figure 1. Here, total chamber-PA disagreement is also identical to that in the Reinforcing Regime. Comparing these regimes, the chamber is still expected to impose higher transaction costs in the Reinforcing Regime. This expectation results because intra-PA disagreement in the Alternative Counteracting Regime is greater than in the Reinforcing Regime. As a result, the agency faces less pressure to make policy consistently with both PAs' priorities. At the same time, the chamber should be expected to impose higher transaction costs in the Alternative Counteracting Regime than the Counteracting Regime, because the PAs experience greater policy disagreement in the latter.

In summary, this conditional theory of transaction costs imposed on PAs stresses that disagreement between a coalition (the chamber in Figure 1) that controls whether a law passes and the PAs affects the transaction costs of exerting postlegislative influence. However, this influence is conditional. Higher levels of policy conflict between legislative coalitions and PAs should lead to higher transaction costs of influencing agencies—but only for sufficiently low levels of intra-PA disagreement.[1]

Analyzing the Transaction Costs of Postlegislative Influence

To assess this perspective, I employed a data source used profitably by scholars to study interbranch policy making: Mayhew's (1991) list of landmark laws. For example, Epstein and O'Halloran (1999) mined this source to analyze the amount of discretion ceded to executive agencies. Following these authors, I obtained the *Congressional Quarterly Almanac* summaries of the 257 landmark laws that they analyzed to assess the theory described above.[2]

To measure how high coalitions established the costs of influencing agencies, I disaggregated each law's provisions by policy jurisdiction. Laws sometimes overlap committee jurisdictions. For example, the Omnibus Budget Reconciliation Act of 1990 legislated in health care, agriculture, education, and other areas. Taking laws as the unit of analysis would have required (improperly) coding all provisions in this act as falling within one House/Senate committee's jurisdiction. Therefore, the unit of analysis is the law-policy jurisdiction pair. Pairs were identified using the steps described in Part I of the Methodological Appendix.[3] A single jurisdiction was present in all but 11 of the 257 of the laws. Since there were 36 law-policy jurisdiction pairs in these 11 laws, 293 jurisdictions emerged. In 43 jurisdictions, though, no provisions delegated authority, leaving 250 law-policy jurisdictions to analyze.[4]

To measure the transaction costs of influencing agency policies, I examined Epstein and O'Halloran (1999), who identified constraints that legislative coalitions imposed on agencies from 1947 to 1992. These constraints reduced agencies' discretion. Additionally, these constraints also varied how easily PAs influenced agencies. For example, requiring agencies to obtain the president's approval before their decisions take effect constrains the agency and enables presidential influence. On the other hand, requiring an agency to adhere to a rule-making requirement, such as forbidding the consideration of how much it costs an industry to adhere to a regulation, both constrains the agency and limits PA influence. In this scenario, a PA may want the agency to minimize an industry's costs. To do so, the PA could instruct the agency—through means as formal as an executive order or informal as a phone call—to issue such a regulation. But if the agency is forbidden from considering costs by law, then this door of PA influence is at worst closed and at best harder to squeeze through. The PA will have to find another, more burdensome, strategy—with higher transaction costs— to foster the outcome it desires.

In measuring how much PA influence was limited through constraints, only constraints identified by Epstein and O'Halloran (1999) that limited influence

over agency decisions by PAs (rather than opened the door for such influence) were employed.[5] For each law-policy jurisdiction, I utilize the *Congressional Quarterly Almanac*'s summary of the provisions within each law to count the number of provisions delegating authority to agencies and the number of provisions attaching constraints that limited postlegislative influence of agencies. Part II of the Methodological Appendix describes the rules employed to code provisions and presents intercoder reliability diagnostics demonstrating that these measures are reliable.

One way to measure how much postlegislative influence was circumscribed would be to count the number of provisions that limited interference with agencies' decisions. However, this would not account for the volume of authority delegated: ten constraints that limit postlegislative influence when two hundred provisions delegate authority limit influence less than one provision that limits postlegislative influence when one provision delegates authority. As such, a count precludes valid measurement of the limitation of postlegislative influence. Therefore, the dependent variable employed below is the ratio of the number of provisions with constraints that limited postlegislative influence to the number of provisions delegating authority to agencies. Table 1 indicates that there was a mean of 0.47 constraints that limited postlegislative influence over agencies per 1 delegation of authority in this sample. Additionally, the standard deviation for the denominator, the number of provisions that delegated authority, is 15.33 (not provided in Table 1). In the discussion of the findings below, I refer to the influence of the independent variables by considering the additional number of provisions that limit PA influence for an extra 15 provisions delegating authority (roughly a standard deviation increase in the dependent variable's denominator).

First-dimension common space coordinates (CSCs) were employed to create variables measuring chamber-PA disagreement and intra-PA disagreement. CSCs measure the policy preferences of members of Congress and the president in terms of how liberal/conservative they are on economic issues (ranging from −1, *most liberal*, to 1, *most conservative*) so that their preferences are comparable across time and space (Poole 1998). To calculate intra-PA disagreement, I identified the (House or Senate) committee in the law-policy jurisdiction whose median

CSC was farthest from the president. Intra-PA disagreement was calculated as the absolute distance between the CSCs of the president and this "farthest committee" (*fc*): $|fc—p|$.[6] When this variable equals 0, the PAs have identical policy priorities; however, as the variable increases in value, the PAs' priorities diverge. The smaller this value, the harder it is for agencies to resist PA influence, making it likely that agency decisions promote policies within the interval between their ideal policy priorities. Although this variable is an important part of testing the perspective outlined above, there is no prediction about its relationship to the dependent variable; rather, it conditions the expected effect of chamber-PA disagreement on the dependent variable.

Chamber-PA disagreement was measured in two ways. First, chamber-PA disagreement was calculated by identifying the (House or Senate) floor whose median CSC was farthest from the president's CSC. Then, the absolute distance between the median CSC of this "farthest floor" (*ff*) and the president's CSC was calculated. The basis for identifying the chamber with the "farthest floor" is that it will suffer more than the other chamber if the president is successful in getting an agency to render policy decisions on or near his ideal policy. Therefore, even if the other chamber is in relatively close agreement with the president, the "farthest floor" should insist on raising the transaction costs of influencing agencies as a condition for enactment of a policy. Next, the absolute distance between the "farthest floor" and the "closest committee" (*cc*) to the president was calculated. The basis for calculating this disagreement is that the "closest committee" to the president has gatekeeping power over whether a new law that would overturn an agency's decision is introduced. Suppose the "closest committee" is the House committee. The Senate committee could represent the "farthest floor's" priorities perfectly. However, if the House committee refuses to refer a new bill, the offensive policy will persist. Therefore, the "closest committee" to the president decides whether, and to what degree, an offensive agency policy decision will be reeled back toward the floor with the most to lose. This first Chamber-PA disagreement variable is measured as

Chamber-PA Disagreement 1 = $|ff − p| + |ff − cc|$.

A second indicator of chamber-PA disagreement takes into consideration policy disagreement between both chambers of Congress and the PAs, rather than

Table 1
Summary Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Provisions limiting privileged actor (PA) influence per delegation of authority	.470	.394	0	2.000
Chamber-PA disagreement 1 (Farthest Floor-Committee Pair + Farthest Floor-President Pair)	.507	.125	.190	.814
Chamber-PA disagreement 2 (House–Farthest Committee + Senate–Farthest Committee + House-President + Senate-President)	.993	.259	.408	1.674
Intra-PA disagreement	.334	.170	.012	.707
Chamber-PA Disagreement 1 × Intra-PA Disagreement	.186	.120	.004	.549
Chamber-PA Disagreement 2 × Intra-PA Disagreement	.365	.244	.008	1.099
Clear Pivots?	.288	.454	0	1
Average seat share of majority party	58.560	4.744	50.993	67.908
Regulatory policy	.428	.496	0	1
Distributive policy	.416	.494	0	1
Redistributive policy	.200	.401	0	1
Cabinet or executive agency	.748	.435	0	1
Independent commission	.108	.311	0	1
Government corporation	.048	.214	0	1

assuming that the chamber farthest from the President dictates the limitation of PA influence. The variable is calculated as follows:

$$\text{Chamber-PA Disagreement 2: } |h-p| + |h-cc| + |s-p| + |s-cc|,$$

where h and s refer to the median House and Senate CSCs, respectively.

Finally, the chamber-PA disagreement variables are interacted with intra-PA disagreement. To support the conditional theory articulated above, the base coefficient for chamber-PA disagreement (which indicates the effect of chamber-PA disagreement when intra-PA disagreement equals zero) should be positively and significantly related to the dependent variable. Additionally, since chamber-PA disagreement should prompt fewer limitations on postlegislative influence when intra-PA disagreement is high compared to when intra-PA disagreement is low, the interaction term should be negatively and significantly related to the dependent variable. What is truly crucial to the theory, though, since there is a different coefficient for chamber-PA disagreement for each value of intra-PA disagreement, is that the chamber-PA coefficients should also be positive and significant at low levels of intra-PA disagreement (not just at zero intra-PA disagreement). These conditional coefficients, and their significance, are explored graphically below.

The analysis also controls for other factors that may affect the dependent variable. In democracies, lawmaking majorities worry that they will lose control of the lawmaking process. This political uncertainty should lead lawmakers to raise the transaction costs of influencing agencies, undermining the ability of future majorities—which may be hostile to the present majority's goals—to exert postlegislative influence (Moe 1989; Lewis 2003; Wood and Bohte 2004). To account for such hedging, a variable measuring the average share of seats held by the majority party in the House and Senate is included in the analysis and is expected to be negatively and significantly related to the dependent variable.[7] Additionally, when opponents of legislation can block a bill's passage, they can force its supporters—as a condition for passage—to allow for revisiting policy decisions with agencies at a later date (Moe 1989; Wood and Bohte 2004). To control for this reality, a dummy variable, expected to be negatively related to the dependent variable, is included that takes the value of 1 when legislation did not have enough support to clear a filibuster in the Senate and a presidential veto in the House; 0 otherwise.[8] It is also necessary to control for how much agencies are insulated structurally. Structural insulation forces PAs to pay higher transaction costs to exert influence (Lewis 2003; Wood and Bohte 2004). Therefore, constraints that make postlegislative influence over agencies harder to achieve may be less necessary when agencies are insulated, that is, already protected from postlegislative influence. A set of dummy variables measures the insulation of agencies. First, agencies in the cabinet are coded as 1; 0 otherwise. Second, independent commissions are coded 1; 0 otherwise. Finally,

government corporations are coded 1; 0 otherwise. The reference category is agencies positioned within the Executive Office of the President (EOP). Each of these variables indicates greater isolation than in the EOP and are expected to be negatively and significantly related to the dependent variable.[9] The type of authority delegated to agencies is also controlled for. The provision of regulatory authority entails giving agencies lawmaking power (Kerwin 2003) that cannot be rescinded without a new law. Agencies whose authority entails providing funds for the execution of programs, however, rely on annual appropriations and hence possess the incentive to listen to elected officials who control funding levels. Given the relative difficulty of controlling regulatory agencies, lawmakers should be expected to apply more constraints to delegations of authority to them. Delegation of regulatory authority to agencies is controlled for with a dummy variable (1 if such authority was delegated; 0 otherwise) with the expectation that this variable will be positively related to the dependent variable Additionally, delegation of distributive and redistributive authority is controlled for by including two dummy variables in the model assuming the value of 1 if such authority is delegated; 0 otherwise, with the expectation that coefficients for these variables will be negatively related to the dependent variable, since it is easier to influence such agencies in the future.[10] Since the dependent variable measuring constraints limiting postlegislative influence is continuous, the models presented below are estimated with ordinary least squares (OLS).[11] Table 1 provides summary statistics of all of the variables.

Findings

Table 2 presents the OLS estimates of the effect of these variables on the use of constraints on agency authority that also limited PA influence over agencies in the sample of landmark laws. In model 1, I estimate the effects of chamber-PA disagreement—measured using the chamber median farthest from the president—and intra-PA disagreement without the interaction term. The results show that there is a positive and significant association between chamber-PA disagreement and the degree to which postlegislative influence of agencies was limited. This provides preliminary evidence that legislative coalitions worry about the how PAs influence agencies' policy decisions, though the conditional theory is not tested. Additionally, the intra-PA disagreement coefficient is negative and significant. This finding suggests that, as

PAs disagree, and they are less capable of presenting a unified front to agencies, coalitions worry about them less, imposing fewer transaction costs to postlegislative influence over agencies. Of course, this should only matter when there is sufficient policy disagreement between legislative coalitions and PAs.

Model 2 presents estimates allowing one to assess the conditional effect of chamber-PA disagreement (measuring chamber-PA disagreement with the first variable described above) on the limitation of postlegislative influence. Consistent with the conditional theory, the base coefficient for chamber-PA disagreement is positively and significantly associated with the use of constraints that make it difficult for PAs to influence agencies' policy choices. Of course, this coefficient only informs one about the relationship between chamber-PA disagreement and the dependent variable when intra-PA disagreement is zero—a rare condition. Chamber-PA disagreement should also be positively and significantly associated with the dependent variable at low, but nonzero, levels of intra-PA disagreement.

To assess the conditional relationship in more detail, Figure 2 graphs the coefficient for Chamber-PA disagreement across the range of intra-PA disagreement observed in the sample of landmark laws (on the horizontal axis), indicating both the size of the coefficient (on the graph's vertical axis) and whether there is a significant relationship (the presence of a solid line).[12] The figure shows that, at the mean value of intra-PA disagreement, chamber-PA disagreement is positively associated with the limitation of postlegislative influence; however, this association is not statistically significant. Once the intra-PA disagreement drops slightly below its mean, however, the positive and significant association predicted is observed. Additionally, as intra-PA disagreement decreases (shifts left on the horizontal axis) the magnitude of the influence of chamber-PA disagreement on the limitation of postlegislative influence increases.

To provide a sense of the substantive effect predicted by model 2, Table 3 displays the expected increase in the number of provisions limiting postlegislative influence per 15 provisions that delegate authority across levels of chamber-PA disagreement and intra-PA disagreement. The table makes clear that, for each level of chamber-PA disagreement, as intra-PA disagreement shrinks, the number of provisions that limit PA influence over agencies' decisions increases. The predicted increase is relatively small at or a standard deviation above the mean level of intra-PA disagreement and the predication is not based on a significant association. However, once intra-PA

Table 2
Ordinary Least Squares (OLS) Estimates of the Use of Ex Ante Procedures
That Limit Privileged Actor Influence over Agencies

Variable	Model 1	Model 2	Model 3	Model 4
Chamber-PA disagreement 1	0.819**	1.554***		
	(.447)	(.652)		
Chamber-PA disagreement 2			0.267	0.644**
			(.226)	(.359)
Intra-PA disagreement	–0.091	1.281	–0.105	1.046
	(.269)	(.952)	(.299)	(.905)
Floor-PA Disagreement 1 × Intra-PA Disagreement		–2.562*		
		(1.655)		
Floor-PA Disagreement 2 × Intra-PA Disagreement				–1.162*
				(.863)
Average seat share of majority party	–0.078**	–0.076**	–0.052*	–0.064*
	(.040)	(.040)	(.039)	(.040)
Clear Pivots? (1 = yes)	0.017	0.012	0.022	0.018
	(.070)	(.070)	(.070)	(.070)
Cabinet or executive agency (1 = yes)	0.013	0.004	0.017	0.013
	(.102)	(.101)	(.102)	(.102)
Independent commission (1 = yes)	–0.137	–0.124	–0.126	–0.108
	(.138)	(.138)	(.140)	(.140)
Government corporation (1 = yes)	0.016	0.000	0.017	0.008
	(.164)	(.163)	(.165)	(.165)
Regulatory policy authority delegated (1 = yes)	–0.011	–0.030	–0.017	–0.031
	(.081)	(.081)	(.081)	(.081)
Distributive policy authority delegated (1 = yes)	0.180	0.177	0.169	0.164
	(.079)	(.079)	(.079)	(.079)
Redistributive policy authority delegated (1 = yes)	0.103	0.090	0.112	0.100
	(.093)	(.093)	(.093)	(.093)
Constant	4.662	4.200	3.321	3.704
	(2.161)	(2.173)	(2.027)	(2.042)
N	250	250	250	250
F-statistic	2.15****	2.16****	2.11****	2.11****
R-squared	.471	.477	.466	.471
Adjusted R-squared	.252	.256	.244	.247

Note: Estimates for 11 bill dummy variables, 22 congressional session dummy variables and 35 House-Senate committee jurisdiction pair dummy variables are not presented.
*$p < .1$. **$p < .05$. ***$p < .01$. ****$p < .001$ (one-tailed tests).

disagreement drops to half a standard deviation below its mean, the association attains significance and the magnitude of the increase in provisions limiting influence over agencies' decisions increases. At even a half a standard deviation below the mean of intra-PA disagreement, the magnitude of the effect is substantively large, resulting in 5.25 provisions limiting postlegislative influence for an increase in 15 provisions that delegate authority when chamber-PA disagreement is a standard deviation below its mean. This effect increases to almost 7 and more than 8.5 provisions limiting postlegislative influence when chamber-PA disagreement is at its mean and is a standard deviation above its mean, respectively.

These relationships hold when measuring chamber-PA disagreement using both congressional chambers rather than merely the chamber whose median CSC is farthest from the president's CSC. Model 3 of Table 2 assesses whether measuring chamber-PA disagreement in this way suggests that there is an additive relationship between chamber-PA disagreement and the limitation of postlegislative influence. Although the coefficient for chamber-PA disagreement is positive, it is not significant. However, the conditional theory does not expect that it should be. Turning to model 4 of Table 2, which includes an interaction between this measurement of chamber-PA disagreement and intra-PA disagreement, the base coefficient for chamber-PA disagreement is positively and significantly related to the limitation of postlegislative influence—as is predicted by the conditional theory. The estimates from model 4 were used to conduct analyses identical to

Figure 2
The Conditional Effect of Floor–Privileged Actor (PA) Disagreement
on the Use of Constraints Limiting Influence over Agencies' Policy Decisions
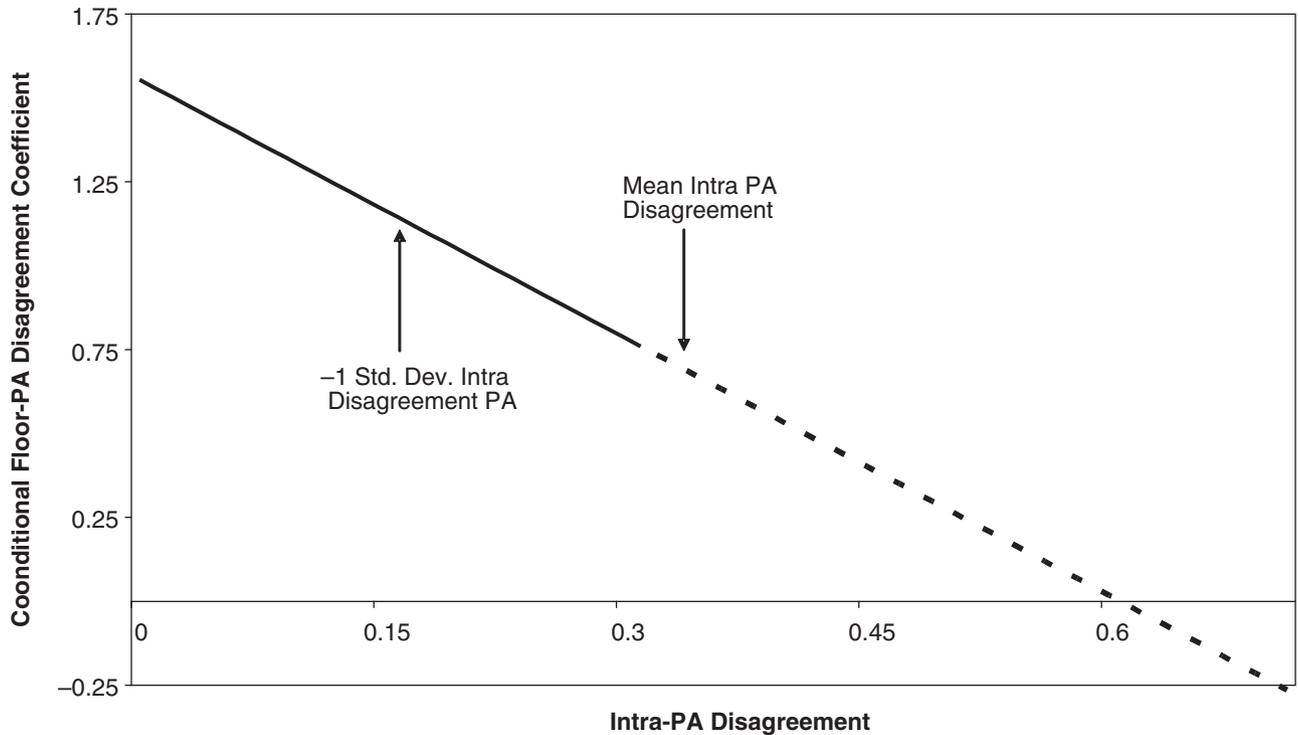
Note: Coefficients on the solid line indicate a significant relationship (one-tailed tests) between chamber-PA disagreement and constraints limiting postlegislative influence.

those presented in Figure 2 and Table 3. Not presented to conserve space, these analyses yield similar results. Finally, as predicted, the interaction term for chamber-PA disagreement and intra-PA disagreement is negatively and significantly related to the dependent variable in models 2 and 4.[13] In summary, these findings support the conditional theory that policy disagreement between legislative coalitions and PAs lead coalitions to limit PAs' opportunities to influence agencies' policy decisions—as long as intra-PA disagreement is sufficiently small.[14]

The findings from the control variables are similar across the four models. In model 1, the negative and significant coefficient for the average seat share of the majority party variable supports the perspective that coalitions consider how likely it is they will lose control of the legislative process when creating the terms under which agencies make policy. For example, this variable's coefficient indicates that, for an increase of 15 provisions delegating authority to agencies, there would be roughly 5.5 fewer constraints that limit influence over agencies per delegation of authority in 1963 when the Democrats

controlled an average of 63.22 percent of congressional seats than in 1950 when the Democrats controlled an average of 58.42 percent seats (the 4.80 percent difference in seat share between 1950 and 1963 is approximately one standard deviation of this variable). This finding is mirrored in models 2 through 4, though the variable is only significant at $p < .1$ in models 3 and 4.

The findings do not support the perspective that the need to compromise reduces the use of constraints that block access to agencies' decisions. The variable measuring whether the law delegating authority had sufficient support to overcome the antimajoritarian hurdles of congressional lawmaking is neither significant nor of the correct sign. This pattern holds for the variables controlling for the insulation of agencies. Only the coefficient for independent commissions is negative; however, it is not significant.

Regarding the variables controlling for type of authority delegated to agencies, the coefficient for regulatory policy is neither significant nor correctly signed in any of the models in Table 2. Additionally, the coefficient for distributive policy, expected to be

Table 3
The Predicted Number of Provisions Limiting Influence over Agencies' Policy Decisions Due to Floor–Privileged Actor (PA) Disagreement for Fifteen Additional Delegations of Authority

Intra-PA Disagreement	(.38) –1 Std. Dev. Floor-PA Disagreement	(.51) Mean Floor-PA Disagreement	(.63) +1 Std. Dev. Floor-PA Disagreement
.42 (+ 0.5 std. dev.)	2.75	3.65	4.56
.33 (mean)	4.00	5.31	6.62
.25 (–0.5 std. dev.)	**5.25**	**6.97**	**8.68**
.16 (–1 std. dev.)	**6.50**	**8.62**	**10.75**
.08 (–1.5 std. dev.)	**7.75**	**10.28**	**12.81**

Note: To repeat the point in the main text, an increase in 15 policy delegations to agencies is an increase of roughly one standard deviation of the number of delegations to agencies in the sample of landmark laws. The entries in bold represent predicted increases in the number of provisions limiting agency authority that are calculated from significant coefficients (coefficients on the solid portion of the line in Figure 2).

negative, is positively associated with the use of constraints limiting access to agencies' decisions—and would have been significantly so if the expectation for the coefficient had been positive—in each model. This variable was expected to be negatively signed on the grounds that it is easier for legislative coalitions to influence agencies at a later date, lessening the need to constrain agencies' authority. Instead, the coefficients in models 1 through 4 predict an increase of roughly 2.5 provisions that constrain agencies' authority in a way that limits postlegislative influence for an extra 15 provisions delegating authority to agencies. Thought of from another perspective, though, this finding makes sense. I return to this finding in the discussion below. Finally, the control variable for the delegation of redistributive policy authority is neither negatively nor significantly related to the dependent variable.

Discussion and Conclusion

Studies on agency design and the discretion agencies receive to make policy (Epstein and O'Halloran 1999; Huber and Shipan 2002; Lewis 2003; Potoski 1999; Wood and Bohte 2004) have followed Huber and Shipan's (2000) advice to "examine the factors underlying variation in institutional choices for political control." In doing so, these studies reveal how lawmaking coalitions pursue and protect their political and policy priorities given the need to delegate to the bureaucracy. This study's findings reveal a nuance not previously appreciated by this literature.

First, lawmakers do not focus exclusively on the chief executive. Rather, lawmakers also focus on committees that possess jurisdiction over agencies to which authority is delegated. This focus makes sense given literature showing that committees can influence agencies' policy choices (Aberbach 1990; Ogul 1976; Weingast and Moran 1983; Shipan 2004). Second, in constraining the capacity of PAs to influence agencies, lawmakers do not merely consider how much their policy priorities diverge from those of PAs. Instead, the volume of disagreement between lawmaking coalitions and PAs leads to higher transaction costs of exercising postlegislative influence over agencies conditionally upon intra-PA disagreement. When PAs disagree with lawmaking coalitions and agree with one another, then lawmakers make it more difficult for PAs to direct policy making by agencies. This theory, and the findings that support it, are consistent with recent research on political influence over agencies establishing that the ability of committees, congressional chambers, and the president to influence agencies depends on the distribution of these actors' policy priorities (Shipan 2004). It is also consistent with research demonstrating that these actors react to one another's actions to influence agencies (Whitford 2005) and evidence that the U.S. House makes committee appointments with the intent of counteracting the president's attempts to influence agencies (Epstein and O'Halloran 2001). To be clear, however, though prior research has stressed that political influence over agencies should be conditional, no prior research has developed an explanation of why the design of policy delegation to the bureaucracy should be conditional or provided evidence to this effect.

To be sure, these findings are limited to the U.S. Congress's delegation of authority to agencies in landmark laws that cover the period of this study. In this respect, the study is similar to prior research on discretion ceded to agencies that focus on a sample of

delegation or a single policy area (Epstein and O'Halloran 1999; Huber and Shipan 2002; Huber, Shipan, and Pfahler 2001; Potoski 1999). The findings should be interpreted with care, however, with respect to the degree to which they are used to understand policy making across other institutional settings. In particular, these findings suggest that the conditional theory applies to legislatures whose committees possess the capacity to engage in effective oversight of agencies. Legislatures whose committees lack this capacity may not consider their committees a threat to the policy decisions intended by laws. The implication of this observation for understanding delegation by state legislatures is clear: legislatures with high levels of professionalism should be expected to consider the priorities of their committees when considering how expensively to price postlegislative influence over state agencies; legislatures with low levels of professionalism should only consider the governor's priorities. A goal of future research should be to assess this expectation empirically.

Another contribution of this study is to assess the effect of the type of policy authority delegated to agencies on the package of constraints employed, something that prior studies of discretion and agency design have not controlled for. Although no connection between the delegation of regulatory or redistributive policy and constraints was found, the findings show a positive and significant association between the delegation of distributive policy authority and the use of constraints. Of course, this finding was contrary to the expectation that distributive authority would be accompanied by fewer constraints. The basis of this expectation, though, was that, since distributive authority involves the allocation of funds by agencies, it is something that is easier for lawmakers to control in the future. Therefore, lawmakers were expected to impose fewer constraints on agency authority. However, thought of from another perspective, the observed positive association makes sense. In delegating distributive authority, lawmakers are expected to foster reelection goals (Stein and Bickers 1995). In assigning authority to make such policy to the bureaucracy, then, lawmakers risk that agencies will make decisions that do not foster the reelection goals intended by the law. Given this consideration, it makes sense that lawmakers would guard against this possibility by attaching a greater volume of constraints, accounting for the positive and significant coefficients for the distributive authority variable in Table 2. Of course, the basis for including variables tapping the type of policy authority delegated was to

guard against the possibility that, by failing to account for type of authority delegated, the coefficients for the variables measuring chamber-PA disagreement, intra-PA disagreement, and their interaction would be biased. Since this analysis was not designed with the intent of investigating the influence of policy type on discretion afforded to agencies, this finding should be regarded as suggestive and should be a subject for future research.

These findings also evince continuity with prior findings on agency design related to the role of political uncertainty on the degree to which agency authority is constrained. Lewis (2003) and Wood and Bohte (2004) showed that lawmaking coalitions are more likely to create structures that make it difficult to influence agencies' policy choices in the future when political conditions indicate that their opponents will control the White House and/or Congress. Likewise, the negative and significant coefficients for the average majority seat share variables in Table 2 indicate that, when the majority party is less (more) concerned with losing control over the lawmaking process, it attaches more (less) constraints to policy delegations. This finding, then, harmonizes with prior studies showing that short-term calculations about partisan control over political institutions affect how much discretion agencies receive to make policy.

In summary, this study calls the attention of scholars who study interbranch policy making to the conditional effect of policy conflict between lawmaking coalitions and PAs on the design of postlegislative influence over agencies. This research, therefore, constitutes a step in understanding how institutional features of the lawmaking process affect policy making. Questions remain, however. To what degree do some PAs possess advantages over others in influencing agencies? To the extent that some circumstances give the president an advantage over committees when it comes to influencing agencies, then legislative coalitions should be expected to be concerned that disagreement with the president will undermine their priorities to a greater degree than disagreement with the relevant committee(s). As a result, disagreement with the president will affect how much coalitions limit postlegislative influence to a greater degree than disagreement with committees. Identifying and measuring these circumstances, as well as developing a theoretical understanding of how the relative influence of each PA influences how legislative coalitions structure postlegislative policy making, should be a priority for future research.

Notes

1. It bears emphasis that this theory assumes that committee and presidential influence over agencies is equal. In practice, this will not always be the case. As the degree to which one privileged actor (PA) has more influence over an agency than another, the theory's prediction becomes less useful. Therefore, in addition to the analyses presented below, I conducted analyses to assess whether coalition-president disagreement mattered more in cases when there are good theoretical reasons to believe the president's influence over agencies should be large than in instances when there are good theoretical reasons to think that the president will not be able to exert such influence. This possibility is investigated later in the article (see note 13).

2. Although this study employs the same source as Epstein and O'Halloran (1999), its focus is substantially different. Whereas Epstein and O'Halloran examined discretion (the volume of policy decisions turned over to the bureaucracy relative to all of the policy decisions authorized in a law), this analysis probes how difficult it is for political actors to influence the decisions left in agencies' hands.

3. To conserve space, this appendix is available online at http://www.personal.kent.edu/~jmacdon1.

4. Since there were no delegations in these jurisdictions, there could be no manipulation of the costs of influencing agencies' decisions. Hence, these observations provide no leverage on the hypotheses. One might argue that, in delegating no authority to an agency, the legislative coalition made it impossible for PAs to exert postlegislative influence over policy decisions; and therefore, the analysis should include these observations on these grounds. Delegation occurs, however, for many reasons, including that the legislative coalitions do not know how to produce the policy ends they desire. Therefore, in cases of zero delegation, it is not going to be the case that no delegation occurred in order to prevent PAs from influencing agencies. Rather, there will be no delegation because of the nature of the policy area, for example, it was sufficiently simple to allow for policy making by the legislature. Having noted this, the analyses presented in Table 2 were run using a Heckman selection model in which the dependent variable for selection was whether any authority was delegated; no changes to the findings reported below occurred. In other words, the estimates presented below do not suffer from selection bias.

5. I consider "rule-making requirements," "spending limits," "compensation requirements," and "exemptions" to be constraints on agency authority that limit the ability of PAs to influence agency decisions. Each type of constraint circumscribes agency authority and, in doing so, limits PA influence over agencies. Spending limits imposed by laws, for example, must be obeyed even if a PA disagrees with them. Other constraints identified by Epstein and O'Halloran (1999) empower PAs to influence agency decisions, force agencies to make their plans known before they take effect and thereby allow PAs to mobilize in opposition to agency decisions, and/or provide PAs with leverage to influence agencies after their decisions have taken effect.

6. I also calculated intra-PA disagreement as (1) the absolute value of the distance between the president and the committee whose median common space coordinate (CSC) was closest (the "closest committee") to the president; and (2) the standard deviation of the CSCs of the president, House committee, and Senate committee. Using these alternative measurement strategies did

not affect the findings presented below. Chamber-PA disagreement was also measured by summing the absolute distance between the chambers and all of the PAs:

$$
\begin{aligned}
&\mid h - hc \mid + \mid h - sc \mid + \mid h - p \mid + \mid h - hc \mid \\
&\quad + \mid h - sc \mid + \mid h - p \mid,
\end{aligned}
$$

where hc references to the House committee and sc refers to the Senate committee. No changes in the findings occurred.

7. The variable equals [(percentage of House seats) + (percentage of Senate seats)]/2. From 1981 to 1986, when control was split between chambers, I considered the Democratic party to be the majority party since it held a higher percentage of seats in the House than the Republicans held in the Senate.

8. To conform to changes in Senate rules, the filibuster hurdle was a two-thirds majority prior to 1975 and a three-fifths majority beginning in 1975. To construct this measure, conference votes were employed because such votes are on whether to adopt the measure that is sent to the president. When conference roll calls were not available because of voice votes, I employed the original votes to send the bills to conference. Finally, if legislation was passed only by voice votes, laws were coded as having cleared these hurdles.

9. Data on many agencies was obtained from David Lewis's Web site at http://www.princeton.edu/~dlewis/. Data on agencies receiving authority that are not included in Lewis's data were obtained from various sources, including fact sheets published by agencies and *CQ Abstract*'s coverage of the landmark laws delegating authority to agencies. In instances in which more than one agency received authority, the variable coding is based on the agency that was most isolated structurally from the political process.

10. The substance of policy authority delegated to agencies is based on Meier's (2000) description of regulatory, distributive and redistributive policies. See Part III of the online appendix for a description of how this variable was created and an intercoder reliability analysis demonstrating its reliability.

11. Additionally, thirty-five dummy variables are included controlling for the House-Senate committee pair that possessed jurisdiction over each law-policy jurisdiction, twenty-one dummy variables controlled for the congressional session, and eleven dummy variables controlled for whether jurisdictions were contained within the same bills. These dummies account for possible nonindependence between observations within the same jurisdiction, congressional session, and law. These estimates are not presented in the tables; full results are available from the author.

12. The conditional coefficients, standard errors and t-statistics were calculated using the equations provided by Friedrich (1982). Calculations are available from the author upon request.

13. Including a dummy variable controlling for the presence of divided government in these specifications does not affect the results.

14. An analysis was conducted to assess whether chamber-presidential disagreement affected the dependent variable on its own under circumstances in which presidential influence over agencies is particularly likely. One circumstance likely to condition the influence of the president over agencies is agency location within the government (Lewis 2003; Wood and Bohte 2004). Agencies within the Executive Office of the President (EOP) and the cabinet are more likely to be responsive to the president than independent commissions. Therefore, a dummy variable indicating

that an agency was an independent commission was interacted with congressional-presidential disagreement (measured by CSCs). If legislative coalitions worry more about the president's influence over agencies in the cabinet and EOP than independent commissions, the base coefficient for congressional-presidential disagreement should be positively and significantly related to the limitation of PA influence. This expectation was not supported by the analysis. The results of these analyses are available from the author upon request.

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