ABSTRACT

Administrative institutions often have important implications for the allocation of scarce resources. To some extent, therefore, they reflect the interests of those who have a stake in policy implementation. Although scholars have devoted increased attention to this fact, current theories that seek to explain bureaucratic structure as a reflection of politics are severely limited in range. In addition, they provide little insight as to the kinds of interests that underlie specific institutional arrangements. Future research should seek to identify contextual variables that condition institutional choice within the administrative process.

Scholars have shown a heightened interest in the political sources of bureaucratic structure. Thus, although it is hardly new, the idea that organizational arrangements and procedures within the administrative process reflect the interests of those who stand to be affected by policy implementation has been given much more explicit attention. Rational choice theorists have been especially ambitious in developing this thesis.

In this article I will describe and then critique perspectives that view administrative design as an instrument of political control. Leading efforts to theorize about the systemic role of bureaucratic structure will be limited in two broad respects. The more obvious is that the determinants of institutional choice are much more varied than economic models suggest. The contractual metaphor employed by such explanations, in which structure is intertwined with the goals of specific programs, cannot be applied to many if not most constraints on public administration. A more damning criticism of rational-choice theory is that, even where they are valid, its assumptions about the relationship between delegated authority and program design provide little insight concerning the implications of particular structural choices for particular types of interests. Notwithstanding its pretensions...
to scientific explicitness and logical rigor, neoinstitutionalism has merely contributed to an already confused body of plausible but conflicting proverbs. The limitations of efforts to develop a coherent theory of bureaucratic structure suggest that we can gain a better understanding of the subject by identifying contextual factors that shape the motives and preferences of political actors.

INTRODUCTION

The terms institution and structure are as ambiguous as they are trendy. As it is used here, bureaucratic structure refers to the formal, constitutional dimensions of public administration. It includes internal arrangements, such as administrative procedures and personnel systems, that help to define an agency’s institutional embodiment of purpose. It also includes terms of oversight and accountability, opportunities for outside participation, and other legal arrangements that help to define the relationship between an agency and its policy-making environment. These two types of constraints often are intertwined. For example, most administrative procedures both derive their force from and facilitate judicial review of administrative decisions.

Many scholars have explained bureaucratic structure as a reflection of normative theory. Such efforts often begin from the premise that although it is necessary in the interest of governmental effectiveness, bureaucracy poses a "crisis of legitimacy" for American government (Freedman 1978). Delegated authority bears an uneasy relationship to the constitutional principles of representative democracy and separation of powers, and it is frequently alleged to be problematic in terms of other defining characteristics of American political culture as well.1 As an effort to mitigate these problems, we impose institutional constraints to promote desired process values in policy implementation in lieu of specific substantive directives.

Efforts to explain administrative structure in terms of ideas typically stress the importance of doctrines that have dominated thinking about bureaucracy and its proper role in government during particular eras. Herbert Kaufman’s (1956) insightful analysis traces personnel systems, agency types, and a variety of other structural variables within the administrative process to the cyclical ebb and flow in popularity of executive leadership, representativeness, and neutral competence as alternative doctrines that have competed with one another throughout our history. In a more recent work, Richard Harris and Sidney Milkis (1987) explain the structure of regulatory policy implementation as the accumulated residue of the Progressives’ emphasis on separating administration from politics, the New Deal’s emphasis

1Such as antiintellectualism and a strong belief in the free market and individual self-reliance.

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on expertise and management, and the New Left's emphasis on empowerment through public participation in agency decisions.

The idealist perspective is especially prevalent among law scholars. In a highly influential article, Charles Reich (1964) accounts for the expansion of procedural due process (as well as substantive rights) to new areas of agency adjudication as the result of a fundamental reconceptualization of the concept of property. Lawyers also have given a good deal of attention to the structure of administrative policy making. Richard Stewart's (1975) explanation for the expansion of standing during the 1960s and 1970s stresses the courts' realization that public administration is a political rather than a technical process and that it should therefore accommodate all relevant interests. In another widely cited work, Colin Diver (1981) explains recent trends in administrative law as a search for comprehensive rationality.

The apparent incompatibility of these latter two explanations suggests an important limitation of the idealist approach, for one can easily identify structures created during any time period that seem to reflect contradictory normative premises about administration (West 1985). By the same token, many institutional forms transcend the eras with which they are normally associated. If the independent commission was an artifact of the Progressives' belief in neutral competence, for example, why were we still creating such bodies in the 1960s and 1970s? Conversely, why were some of the regulatory agencies created during the Progressive Era placed in the executive branch? Why do advisory committees and other mechanisms that were designed to facilitate outside participation in agency decision making date well back into the nineteenth century if the politics/administration dichotomy was not abandoned until after the New Deal?

To say that structural choices have not always been informed by coherent normative theories of public administration is not necessarily to say that ideas are unimportant. Although it is genuine and perhaps understandable, our ambivalence about administrative values is consistent with the alternative proposition that normative doctrine merely serves to rationalize institutional decisions that reflect underlying political forces. Given that it can have important implications for substantive policy, the structure of program implementation may reflect the self-interested motives of those who stand to be affected by what agencies do.

This perspective is reinforced by the observation that popular ideas are frequently indistinguishable from political forces. It is somewhat arbitrary whether one chooses to describe the emphasis on participation and administrative responsiveness in

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the 1960s and 1970s as a product of doctrinal changes or of the growing power of so-called public interest groups in American government.

The fashionable assertion that scholars neglected the politics of institutional choice until recently is especially inaccurate as an indictment of public administration and administrative law. It is fair to say, however, that political scientists have shown a more explicit and more self-consciously theoretical interest in the subject over the past decade. This is particularly true of rational choice theorists, who have appropriated as their own the idea that politics shapes institutions and have sought to develop broad propositions about the systemic role of administrative procedures and organizational arrangements. The following sections describe and evaluate the most influential of these explanations.

Bureaucratic Structure as a Means of Political Control

Recent efforts to develop a political theory of structural choice emphasize the uncertainty that attends delegated authority. Those who make and influence policy cannot anticipate the specific issues that will arise in the administrative process, nor can they accurately predict the preferences of bureaucrats or (relatedly) the changing fortunes of different groups that might seek to shape program implementation. In response to this dilemma, political actors choose administrative institutions that will perpetuate their interests in the future. Beyond these assumptions, however, scholars have arrived at very different conclusions concerning the determinants and effects of bureaucratic structure. Some focus on group interests as sources of structural choice while others emphasize the motives of institutional actors.

Bureaucratic Structure and Group Interests

Much of the analysis in political science since the Second World War has sought to explain government action in terms of group pressures. In its pure form, this perspective assumes that institutions play a passive role in the political process, registering and perhaps helping to reconcile competing claims on scarce resources. The significance of structural choice lies in its policy effects under group theory. By establishing lines of accountability and authority, participatory rights, criteria that are relevant in policy deliberations, speed of government action, and other rules of the game, institutional arrangements in the administrative process—as elsewhere—work to the advantage of some and to the disadvantage of others. As such, they often emerge from the same cauldron as substantive policy.
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The assumption that agencies are transmission belts for external forces has allowed many scholars to ignore administrative structure in favor of inputs and outputs. Nevertheless, one easily can find applications of the pluralist perspective to organizational decisions, such as the placement of a function within one department or another, or within an independent or executive-branch agency (Seidman 1980; Holden 1966; Kaufman 1969; Meier 1980). Lawyers and political scientists have also long been aware of the political causes and effects of administrative procedures. This perspective has been applied to a variety of issues, including the choice between rule making and adjudication (Bernstein 1955; Cary 1967; Wright 1972; Wilson 1975), the rigor of due process requirements (Hamilton 1972; West 1985), and the provision of participatory opportunities in agency decision making (Schwartz 1982).

Terry Moe (1989 and 1990) has described the relationship between interest groups and bureaucratic structure in a more systematic way than traditional pluralist theory provides. Moe justifies his emphasis on interest groups as the primary actors in institutional politics by noting that whereas members of the general public (and even well-informed voters) know little about the implications of administrative procedures and organizational arrangements, groups are highly attentive to issues of program design:

Interest groups take an active part in the politics of structural choice, and politicians have strong incentives to be sensitive to their interests and demands. If we want to explain where public bureaucracy comes from and what it looks like, it does not make much sense to start with politicians as the prime movers. We should start with the groups and then try to understand their relationships with politicians. The groups are the prime movers in the politics of structural choice (1990, 130).

Although the president and the bureaucracy, itself, may assert their own independent interests in the process of structural choice, Moe views Congress as an institution dominated by short-term electoral incentives. As such, it acts as little more than a conduit for group preferences. Moe argues that this realization should provide the starting point for any effort to explain bureaucratic structure.

Moe’s analysis proceeds from a consideration of transaction cost economics and its applicability to public bureaucracies. Unlike the formation of a private-sector organization, in which the replacement of a market by a hierarchy is Pareto optimal for those who enter into the agreement, government organizations and the programs they implement normally impose costs as well

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as benefits on society. Given this, given the substantive effects of institutional choices, and given the need to accommodate conflicting interests within our system of fragmented powers, program design often embodies multiple and competing—as opposed to hierarchical—objectives. Even program beneficiaries may prefer administrative inefficiencies that mitigate uncertainty by insulating agencies from changing political influences. Although the resulting thesis that bureaucracy "is not designed to be efficient" is hardly original, Moe contributes to discourse by explicitly framing structural decisions in terms of the struggle between those who stand to benefit and those who stand to suffer from faithful and aggressive program implementation and also by attempting to categorize the institutional preferences of these two groups.

Bureaucratic Structure and Legislative Interests

If many scholars focus on group interests as sources of administrative structure, others stress the powers and motives of governmental actors. The most influential of these perspectives view bureaucratic design as an instrument for achieving legislative goals. Indeed, so-called congressional-dominance theorists have led the way in the development of a general theory of structural choice. Their arguments are appealing because many important dimensions of administrative organization and procedure derive from statutory law and because of the popularity of the more general belief that the defining characteristics of American government can be traced to the incentives of legislators.

Students of Congress long have emphasized the connection between the growth of the administrative state and the increased security and attractiveness of a legislative career (Fiorina 1977). In an early extension of this idea to the issue of regulatory design, Morris Fiorina (1982) explains the choice between the delegation of authority to an agency and judicial enforcement of a specific statutory standard as a function of legislator preference orderings that are tied to constituent interests. Under his model, individual congressmen and senators prefer the former alternative when the opportunities to blame an agency for the costs of regulation exceed the foregone opportunities to claim credit for regulatory benefits.

Subsequent applications of the congressional-dominance perspective have sought to explain how legislators control what bureaucracy does after it has received a grant of policy-making authority. Legislators arguably possess substantial rewards and sanctions with which they can influence the behavior of

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bureaucrats who implement their programs. Budgetary authority, confirmation powers, hearings, the ability to amend enabling statutes, and various other tools commonly associated with oversight are obviously important to this end. Scholars also have begun to examine the formal institutional features of programs as strategic instruments of legislative control.

An analogy to private-sector relationships has provided the connection between administrative structure and congressional goals. Principal-agent theory emphasizes the uncertainty and problems of accountability stemming from asymmetries of information that characterize congressional-bureaucratic relations, from changing political environments, and from the tendency of agencies to pursue their own agendas. Just as employers rely on contractual obligations to ensure that employees carry out their objectives, so the legislative coalitions responsible for the passage of programs impose constraints on bureaucracy that will minimize shirking (the possibility that an agency will pursue goals that differ from those of Congress) and slippage (institutionally induced biases that may otherwise cause agency policy to diverge from congressional preferences) in the implementation of policy. Legislators confront these problems through ex ante as well as ex post controls. The former include choices concerning the scope or domain of delegated authority and the instruments and procedures for carrying out policy; the latter consist of monitoring provisions and of rewards and sanctions that can be used by legislators directly to shape implementation decisions (McCubbins and Page 1987).

Works by Mathew McCubbins, Roger Noll, and Barry Weingast (1987 and 1989) elaborate on these two strategies that link bureaucratic structure to legislative needs. Some institutional arrangements facilitate the role that affected interests play in alerting politicians to controversial actions being contemplated by the bureaucracy. Included here as devices such as notice-and-comment requirements for rule making, legislative vetoes, and provisions that open up agency records for public scrutiny. Given that comprehensive oversight is infeasible, instituting a system of "fire alarms" is a rational strategy for allocating limited resources to those administrative policy areas that involve conflict and that are therefore most salient to elected officials (also see McCubbins and Schwartz 1984). These mechanisms enable legislators to monitor the actions of bureaucrats who may not share their preferences. Fire alarms also permit legislators to assess constituent and interest-group demands so that they may respond to important issues of administrative policy in politically expedient ways (Horn and Shepsle 1989).

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A second function performed by administrative institutions from a principal-agent standpoint is to stack the deck in favor of an existing set of legislative interests. McCubbins, Noll, and Weingast argue that the delegation of authority stems in large part from uncertainty about the particular choices agencies will confront. The dilemma this creates from the legislature's perspective is that the exercise of bureaucratic discretion in such areas might produce policies inimical to the interests of members of the coalition responsible for the program's passage. The uncertainty associated with uncontrolled agency discretion thus leads congressmen to impose standards of justification and judicial review and opportunities for participation and influence in agency decision making that favor the winning coalition's constituents.

It would be misleading to imply that all congressionally centered models view bureaucratic structure as a perfect means of control. For instance, some recent work has focused on contextual factors that determine the degree to which legislators are able or willing to promote their interests through institutional constraints. Kathleen Bawn (1995) argues that legislators typically must balance their desire to control agencies through deck stacking with the need to allow bureaucrats the investigative and policy-making flexibility that will allow them to address the technical dimensions of issues in an effective way. Delegation occurs to the extent that gains from agency expertise outweigh the losses from potential agency drift. Given this, it is a function of the political and technical context surrounding policy implementation. As Bawn notes:

A legislative coalition's choice of agency independence, made through the choice of procedures, depends on technical uncertainty about policy consequences, as well as uncertainty about the political environment. (p. 71)

Notwithstanding such modifications, a common denominator of legislative models is the assumption that bureaucratic structure bears an instrumental relationship to preexisting congressional objectives. Winning coalitions often do not articulate clear preferences on specific policy issues under principal-agent theory because such issues cannot be anticipated, not because legislators lack the will to resolve conflicting interests. Original intent thus is present in the vague political sense that the enactment of a statute represents the victory of a coalition formed around agreement on a given distribution of policy costs and benefits (for my want of a better phrase) among its members. As such, it provides the basis for the subsequent choice of institutional constraints on the exercise of bureaucratic discretion.

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This conception of coalitional goals and the nature of delegated authority provides the basis for asserting the existence of distinctive legislative interests. By the same token, it is what differentiates principal-agent models from explanations that stress the primacy of group interests (in at least an abstract if not empirically distinguishable sense). Legislative intent does not necessarily exist under pluralist theory or under Moe's analysis. Rather, a deal may be struck to address an issue in vague terms, allowing conflict to be resolved as agencies react to particular issues. Thus the structural features and expressed programmatic goals that constrain the administrative process under the interest-group model jointly define the bargain that allows enactment of legislation.

The Other Branches

The fact that most efforts to describe the systemic role of bureaucratic structure focus on choices made by Congress may be attributable to "technical" considerations. As Moe and Wilson observe:

On methodological grounds, [rational choice theorists] find legislators easier to deal with. One reason is that legislators vote, which means that the modeling technology of social choice can be relied upon to generate theories of their behavior. Another is that much of what legislators do is motivated by a very simple goal: reelection. (1994, 1-2)

In reality, however, the president and the courts also have substantial prerogatives to shape the structure of public administration, unilaterally in some cases and in conjunction with Congress in others. Although the roles of the other two branches have considerably less attention than that of the legislature, they have not been ignored.

The President. Presidents can obviously influence bureaucratic structure through the legislative process. In addition, chief executives have a variety of unilateral powers in personnel administration, budgeting, legislative clearance, and other areas that they can use to help define both the character of administration and their own managerial prerogatives. A notable development in this regard has been the institution of centralized regulatory clearance under recent administrations. These programs have required agencies to justify some or all of their rules on the basis of economic analysis and to submit their proposals to OMB (or another entity within the Executive Office) for review.

Although a good deal has been written about the administrative presidency, scholars have given little systematic attention

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to the executive’s role in shaping bureaucratic structure. In an effort to redress this oversight, Moe and Scott Wilson (1994) have identified institutional characteristics of the presidency that transcend the idiosyncratic political orientations and management styles of individual incumbents. The centerpiece of their analysis is a popular set of assumptions about executive motives elaborated by Moe in an earlier work (1985). The authors contend that executives are primarily driven, not by narrow constituent pressures and electoral incentives but by the realization that history will judge them on the basis of their leadership. Given this, they prefer institutional arrangements that facilitate centralized, coordinative control over the bureaucracy and the governmental process in general pursuant to a broad national policy agenda:

Presidents pursue interests that are often incompatible with, and indeed threatening to, the interests of most other major players. Their heterogeneous national constituency leads them to think in grander terms about social problems and the public interest, and to resist specialized appeals. Reelection, moreover, does not loom as large in their calculations (and in the second term, of course, it is not a factor at all). They are more fundamentally concerned with governance... As a result, they are the only players in the politics of structural choice who are motivated to seek a unified, coordinated, centrally directed bureaucratic system. They want a bureaucracy they can control from the top. (Moe and Wilson 1994, 11)

From a normative standpoint, Moe and Wilson view the president’s institutional preferences as a healthy counterpoise to the irrational structures produced by group politics.

The Courts. Many constraints on agency discretion also derive from the courts’ changing interpretations of constitutional and statutory requirements. For example, the expansion of standing has permitted a broader range of affected interests to participate in administrative proceedings and to challenge agency actions. The erosion of the so-called privileges doctrine has extended the constitutional protection of adjudicatory due process to nonregulatory actions, such as administrative decisions to deny welfare benefits or fire government employees. The replacement of the arbitrary or capricious standard of review with the requirement that administrative rules survive a hard look has compelled agencies to justify their actions on the basis of a record.

Courts do not respond to constituent demands in a direct way. Nor is there a readily apparent linkage between bureaucratic structure and judicial self-interest. These facts no doubt explain why positive theorists have given little attention to judicially imposed constraints on public administration. With the caveat that normative theory seldom can be disentangled from the

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changing needs of society, doctrinal considerations of good government undoubtedly weigh heavily in the procedural choices made by the courts.

Judges do not make decisions in a political vacuum, however, and they are frequently alleged to have their own preferences on substantive policy issues. In one of the few efforts to explain judicially imposed constraints within a rational-choice framework of political control, Linda Cohen and Matthew Spitzer (1994) argue that the Supreme Court's changing posture concerning the hard look doctrine has been a function of the orientations of other actors. Thus, the 1984 Chevron case, which signaled a desire for greater judicial deference to the regulatory bureaucracy, could be explained as an effort by a conservative Supreme Court to limit the influence of a liberal Congress and liberal circuit court judges over a more conservative executive branch. By the same token, the authors allege that the Court has reversed its position on substantive review as the executive has become more liberal and Congress more conservative in the late 1980s and the 1990s.

ASSESSING CURRENT PERSPECTIVES: LIMITATIONS AND QUESTIONS

Just how accurate the premises of rational-choice theory are or how accurate they need to be raises important empirical and philosophical issues that will not soon be resolved. Do politicians really seek to cope with uncertainty through strategically calculated institutional choices? Are legislators motivated predominantly by the desire to be reelected? To what extent are presidents driven to rationalize the bureaucracy pursuant to broad national interests? Is it even necessary that such base assumptions be true, or is it sufficient that they provide accurate or even just intellectually stimulating explanations?

Without addressing these broad issues, one can identify two general weaknesses of neoinstitutional models as explanations for bureaucratic structure. First, their scope is severely restricted. Although they are typically presented as general theories, their assumptions preclude the consideration of many of the most important procedural and organizational choices that shape policy implementation. They cannot readily account for structural features that derive from sources other than Congress. Even with regard to legislative constraints, their contractual logic evinces a highly restrictive view of delegated authority and its relationship to structural choice.

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If neoinstitutional explanations only suffered from these deficiencies, they still might be defended as interesting ways to look at important dimensions of the administrative process. This may explain their continued popularity in the wake of such observations. Yet a more critical if generally unappreciated weakness of rational-choice approaches is that, even insofar as their premises about the reasons for delegation and the sources of structural choice are true, such a priori assumptions offer little insight about the institutional preferences of specific types of actors. This is illustrated by a variety of contradictory assertions among and within the works of leading scholars.

The deficiencies of existing explanations underscore the futility of any attempt to develop a neat, general theory of institutional choice within the administrative process. If positive theory claims too much, however, its limitations also suggest variables and unanswered questions that can lead to a better understanding of the determinants of bureaucratic structure.

The Uses and Limits of Deck Stacking

The contractual metaphor of deck stacking is what differentiates the leading neoinstitutional perspectives from the more general premise, implicit or explicit in earlier work, that structure results from self-interested behavior. This is an appealing notion, the logic of which might explain why procedural controls over agencies are more stringent for some programs than for others. For example, one would expect to find fewer structural constraints on agency discretion in policy environments characterized by relatively stable and harmonious relationships among the participants. Under such conditions, the control to be gained from deck stacking may not outweigh the accompanying losses to constituents in terms of less-effective administration. This plausibly accounts for the fact that due process and other procedural controls tend to be less burdensome in distributive than in regulatory administration. To reiterate Bawn’s (1995) argument, moreover, the costs in effectiveness that result from structural constraints may also be related directly to the technical complexity of administration, although this would not generally seem to explain the fact that procedural constraints are most prevalent in regulatory areas.

The assumption that structure reflects preexisting coalitional goals is nonetheless problematic as a basis for a general theory of institutional choice. Some design features contained in enabling statutes apply to delegations of authority that are so broad that it would have been impossible for legislators or their constituents to anticipate who would be affected by policy implementation or in

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what ways. For example, the Federal Trade Commission has been placed outside the executive branch and its actions have been constrained by a variety of procedural requirements, despite the open-endedness of its mandate to "prevent unfair or deceptive practices in or affecting commerce." Although congressionally centered explanations emphasize the need for political actors to cope with uncertainty, it is an uncertainty resulting from the possibility that bureaucrats may deviate from known political preferences rather than from the possibility that agencies may move into issue areas where the costs and benefits of government intervention have not been defined.

The equation of structure with the political forces surrounding program enactment is limited in a more categorical sense because many externally imposed constraints on public administration are generic. Thus, for example, the Administrative Procedure Act (APA), the National Environmental Protection Act (NEPA), the Paperwork Reduction Act, the various statutes and executive orders that control personnel administration within the federal bureaucracy, and presidential requirements that establish regulatory review all impose procedural and other kinds of controls on policy implementation that cut across agencies and policy areas. It is instructive that most illustrations of deck stacking are taken from areas of social regulation, where conflict is unusually high and where designer statutes are unusually common (and where scholarly interest has been unusually intense).

This is not to deny that generally applicable requirements often have been shaped by politics. Broad coalitions of interests played prominent roles in the passage of the APA and NEPA, for example, and are currently at work in the struggle over regulatory reform legislation in the 105th Congress (Blachly and Oatman 1946; Davis 1975). Yet it is difficult to reconcile such macro-level group politics with the assumption that administrative institutions derive from the substantive interests and conditions of uncertainty associated with the administration of particular policies. The APA automatically applied to many programs that had been in existence for years and that had been created with few if any procedural constraints in most cases. Conversely, legislators no doubt had some appreciation of the fact that the APA would shape the implementation of many statutes and affect many resultant interests that could not be contemplated in 1946.

The failure of contractual models to explain generally applicable constraints raises important issues that have received little if any attention. Is the use of deck stacking as a means of ex ante control only possible when predictable sets of interests are likely to react to agency initiatives in a predictable way from

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one administrative decision to the next? If so, where do the initiatives for generic constraints come from? Given that the political implications of generic constraints often cannot be anticipated, why are politicians often satisfied with such requirements in lieu of the more precise controls afforded by program-specific design? Conversely, under what circumstances are deck-stacking requirements likely to supersede generic constraints?

The Proverbs of Institutional Choice

A second general limitation of neoinstitutional models is that they provide little insight about the preferences of particular types of interests. It would be unfair to reserve this indictment solely for rational choice theory; a broader reading of the literature in political science and administrative law reveals an array of intuitively appealing but inconsistent propositions about the political determinants and effects of bureaucratic structure. It is fair to say that, by merely recasting in economic terms the proposition that politics shapes institutions, deductive models fail to address the most difficult issues that confront a better understanding of administrative design. Instead, they have added substantially to the confusion.

Oversight, Deck Stacking, and Legislative Interests. An important issue raised by congressionally centered approaches derives from their assertion that both deck stacking and oversight are means by which legislators ensure that administrative agents will not stray from the preferences of winning legislative coalitions—and those of the constituents they represent (McCubbins and Page 1987; McCubbins, Noll, and Weingast 1987 and 1989). The problem with this thesis is that the set of interests institutionalized in deck stacking is only consistent with the preferences that inform oversight if winning coalitions remain static. If the political environment and composition of Congress change, as is normally the case, then legislative review of policy implementation will undermine original political intent. Curiously, earlier work by Weingast and Moran (1983) demonstrates this point. By the same token, the judicially enforced participatory rights, decision-making criteria, and other constraints embodied in deck stacking will necessarily subvert the interests of what would otherwise be winning coalitions at a later time (Mashaw 1990; Hill and Brazier 1991).

The practical tension between oversight and deck stacking is evident from a cursory knowledge of administrative law. On the one hand, the effectiveness of most procedural constraints on the bureaucracy requires that agency decision making not be compromised by extrinsic political influences. For example,

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congressional intervention undermines a statute’s due process requirements to the extent that it introduces arguments or other pressures for action that are not tested through adversary proceedings and that are not made a part of the record that judges use to review administrative action. On the other hand, the need to preserve the integrity of due process may be used by the courts as a basis to impose limitations on ex parte communications from legislators, as well as from lobbyists, the executive office, and other entities outside the formal decision-making process. The more demanding the administrative procedures, the less judges have been willing to tolerate legislative efforts to influence agency decisions directly.4

Accepting the initial premise of the congressional-dominance model, deck stacking and oversight both may be rational strategies for gaining reelection. In the first instance, legislators may succumb to immediate pressures from groups they cannot afford to alienate. In the second instance, they may institute mechanisms, such as temporary authorizations or legal forms of the legislative veto, that allow them to intervene in the administrative process in response to whatever groups happen to be most powerful in the future. The problem that remains is to identify when each of these conflicting strategies will be adopted by rational legislators. It may be, for example, that oversight is more popular under circumstances that are not conducive to effective deck stacking, such as the need to allow for bureaucratic flexibility or uncertainty about the kinds of interests that will be affected by administration.

The Preferences of Winners and Losers. The literature yields similar paradoxes regarding the implications of specific deck-stacking and oversight arrangements for specific kinds of constituents. Indeed, it is striking how little agreement there is among both traditional and rational-choice scholars about the institutional preferences of those who are affected by program implementation.

Perhaps the most basic structural choice in the administrative process concerns the form of agency action. Although bureaucrats carry out their mandates in a variety of ways, a critical choice in many contexts is whether to develop policy incrementally through case-by-case adjudication or whether to create policy in a quasi-legislative manner by promulgating rules. At least two logical arguments link the latter course with the interests of those whose behavior will be constrained by program implementation. Many theorists have argued that business firms and other organizations are motivated to eliminate or reduce uncertainty in their environments (Thompson 1967). Consistent

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*The Administrative Procedure Act prohibits ex parte communications having to do with the substance of those adjudicatory decisions governed by its formal, trial-like requirements. (Congressmen and executive officials can inquire about the progress of such proceedings.) Although precedent has not been entirely consistent on the subject, the courts have generally held that ex parte contacts are also inappropriate in rule-making proceedings governed by statutory requirements that decisions be based on a record. Perhaps the leading precedent in this area is Sierra Club v. Costle, 657 F.2d 298 (D.C. Cir. 1981).
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with this assumption, Kenneth Davis (1969) and others assert that regulated interests typically prefer that agencies issue rules as an administrative approach that allows them to plan and invest with greater confidence. James Q. Wilson (1975) offers the related argument that regulated groups favor rule making over adjudication because the arbitrariness of case-by-case discretion gives bureaucrats more power over them.

In contrast to these propositions, other scholars argue that those who bear the costs of regulation naturally oppose the use of rule making. The explicitness and visibility of policy codified in rules and the broader participatory opportunities afforded by the rule-making process are arguably appealing as ways for program beneficiaries to hold agencies accountable for the faithful execution of their mandates. Rule making also is equated frequently with more aggressive action in a regulatory context, and many feel that this explains its expanded use during the 1970s. The issuance of rules in lieu of ad hoc policy development arguably became more popular as a function of growing demands for regulation, coupled with the perception that agencies’ over-reliance on adjudication was a symptom of their capture by regulated interests (West 1985). Indeed, it typically was required by most of the new statutes enacted to protect consumers, the environment, and health and safety.

Another basic dimension of bureaucratic structure concerns the degree to which agency decisions will be constrained by elements of due process such as adversary hearings, decision making on the record, and rigorous judicial review. Obviously, the more stringent the procedures and the burden of proof, the more difficult it is for an agency to impose regulatory sanctions or to deny individual benefits. In this regard, the extension of quasi-judicial constraints to administrative policy making often has been attributed to pressures by industry groups that wish to impede the implementation of regulatory programs. Based on an extensive study of such requirements, Robert Hamilton notes that a person adversely affected in some way by a proposed rule may find little solace in the opportunity to submit written comment. . . . On the other hand, agency personnel and others desiring a prompt implementation of a regulatory program . . . suggest that formal procedures are proposed to create delay in rulemaking rather than to improve the end-product of the rulemaking process. Congress becomes the battleground for these opposing views when a new statute granting rulemaking authority is being considered. To a surprising extent, Congress has become sympathetic to the fears expressed by persons who may be subject to regulation under a broad grant of rulemaking authority (1972, 1314).

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Moe (1989, 138) makes the same point in observing that program opponents "push for cumbersome, heavily judicialized decision processes."

Conversely, other scholars claim that judicialized constraints on policy making are favored by those who stand to benefit from programs. One argument to this effect is that by ensuring the viability of public comment and by publicizing the bases for agency actions, formal due process furnishes effective opportunities for program beneficiaries to hold agencies accountable to legislative intent. As such, it is viewed as a hedge against the possibility that regulators will become "captured" by industry groups (Harris and Milkis 1987;McCubbins, Noll, and Weingast 1987 and 1989). Similarly, by objectifying administrative action on the basis of a record that is subject to judicial review, due process may render it more difficult for opponents of faithful and aggressive implementation to subvert program goals through their influence over political actors. Apparently contradicting himself, Moe argues that "currently advantaged groups" favor the "judicialization of agency decision making as a way of insulating policy choices from outside interference" (1989, 137). Finally, Jonathan Macey (1992) contends that the "diffuse, poorly organized interest groups" who benefit from regulation prefer the delay imposed by due process requirements. Given their limited resources, they would otherwise not be able to monitor agencies’ policy proposals and would thus be at a greater disadvantage in their competition with industry groups.

Similar inconsistencies beset efforts to understand the ramifications of institutional arrangements that facilitate political oversight of administration. Moe argues that program beneficiaries tend to favor the placement of administrative organizations outside of the executive branch. Faced with uncertainty in changing political environments, members of winning coalitions seek to secure their gains by insulating policy implementation from the influence of the president. For the same reason, Moe believes that program beneficiaries oppose devices, such as the legislative veto and temporary authorizations, that enhance Congress’s ability to monitor and influence bureaucratic action at the behest of those who stand to suffer from effective program implementation. As he notes, "currently advantaged" groups oppose formal provisions that enhance political oversight and involvement. The legislative veto, for example, is bad [for them] because it gives opponents a direct mechanism for reversing agency decisions. Sunset provisions . . . are also dangerous because they also give opponents opportunities to overturn the group’s legislative achievements. (1989, 137)

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Yet other scholars have arrived at very different conclusions from these. For example, Marver Bernstein (1955) argues that the ostensible beneficiaries of regulatory programs suffer from the creation of independent commissions. Because producer groups enjoy greater political staying power (by virtue of their superior organization and the intensity of their commitment), and because the executive arguably transcends group politics, the removal of administrative functions from presidential control arguably facilitates the subversion of regulatory goals by special interests that are opposed to aggressive action. Indeed, this interpretation seems to be consistent with Moe's characterization of the administrative presidency as being motivated by broad national concerns. Moreover, an influential group of scholars views congressional oversight not as a means of undermining program goals but as a means by which legislators ensure that bureaucrats faithfully comply with program intent (McCubbins and Schwartz 1984; McCubbins and Page 1987; McCubbins, Noll, and Weingast 1987 and 1989; Bawn 1995).

Confusion surrounding the political implications of specific structural choices is no doubt partly a result of overly enthusiastic thesis building. This also probably explains why scholars have shown little awareness of the striking contradictions outlined above. In any case, conflicting propositions about the political determinants of institutional choice suggest the need for focused research. One strategy might be to apply an aggregative, quantitative approach. Most structural dimensions can be categorized in a straightforward way, and surrogate measures are available for independent variables such as the level of political conflict and uncertainty that surrounds program enactment. One might use the narrowness of legislative majorities as a measure of the strength of program opponents, for example.

To some extent, however, conflicting accounts of the politics of administrative design may be attributable to the fact that the costs and benefits associated with particular institutional arrangements are context specific. Insofar as this is true, the problem that remains is to determine who prefers what kinds of structures under what circumstances. In the case of due-process constraints on agency policy making, for example, it may be that the clarity of an agency's mandate—and thus the ease with which administrators can prove that they are following statutory intent—conditions the trade-off between the accountability it affords to program beneficiaries and the opportunities for delay it affords to program opponents.
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The Prerogatives of Bureaucracy and the Issue of Control

A final limitation of most neoinstitutional models is that they ignore the prerogatives of bureaucracy itself. Agencies often are given broad latitude by Congress and the courts to choose between rule making and adjudication, and administrators frequently have substantial discretion in fashioning the procedures that govern these two types of action. Although the Administrative Procedure Act and other statutes prescribe general formats to guide quasi-judicial and quasi-legislative functions, such constraints apply almost exclusively to regulatory administration. Even in regulatory areas, agencies may choose to carry out their mandates through devices such as informal adjudication and interpretive rules that are not usually subject to externally imposed procedural constraints.

Beyond these limitations, externally imposed constraints on agency discretion normally affect only the last stages of the administrative process. Their application is limited primarily to what Herbert Simon (1976) refers to as the "alternative testing" stage of policy development, and not to "agenda setting" and "alternative formulation." With a few exceptions, Congress and the courts have not imposed constraints on decisions such as the selection of cases to prosecute, the settlement of disputes without resort to formal adjudication, the designation of issues that might warrant rule making, and the formulation of policy proposals. These earlier determinations are obviously critical in establishing the direction of program implementation. Sometimes they are made in an ad hoc manner, but sometimes they are constrained by elaborate agency procedures. In the latter regard, for example, some regulatory agencies have established detailed internal SOPs coordinating the input of various internal and external actors in the formulation of proposed rules.

It is often unclear whether rational choice theorists are claiming that administrative institutions are effective means of constraining agency performance, or whether administrative institutions can be explained primarily in such terms. In either case, bureaucratic structure is obviously not an instrument for political control insofar as it results from agency discretion. To the contrary, it may be a means by which agencies insulate themselves from external interference. Although relatively little has been written on this subject, several authorities have argued that regulatory agencies often prefer adjudication over rule making as a way to avoid policy commitments within conflictual and potentially unstable political environments. Instances in which the use of rule making has led Congress or the Executive to intervene in agency affairs at the behest of powerful interests support this

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*Exceptions to this include devices such as legally enforceable petitioning rights and formal opportunities for affected interests to participate in policy formulation such as those provided by mandatory consultation with advisory committees and negotiated rule making. Although mechanisms such as these are important, they are not the norm and often have limited effects where they do exist. One reason for the general reluctance to constrain such actions is that they do not have a direct bearing on people's rights and interests. Another is simply that executive decisions such as those that allocate scarce organizational resources among competing needs are best informed by bureaucratic knowledge. As the Supreme Court put it in Heckler v. Chaney (1985) "... an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise." 470 U.S. 821.
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thesis (Cary 1967; Wright 1972; West 1985). Structural choices made by bureaucrats may also be used to counteract other, externally imposed constraints. For example, Robert Hamilton (1972) argues that the imposition of formal due process on rule making has caused agencies to pursue their mandates through alternative devices, such as informal adjudication. Others note that centralized executive review of agency rule making has sometimes induced agencies to pursue a similar strategy (Bruff 1989).

Although the subject has not been addressed by scholars in a direct way, one should hasten to add that blanket generalizations about agencies' preferences are unwarranted in most cases. Here, too, structural choice is apt to be context specific. While agencies often prefer case-by-case adjudication as a way to insulate themselves from outside interference, for example, they may prefer rule making as a more expedient way to accomplish their objectives when they are pressured to regulate aggressively (Breyer and Stewart 1979). While agencies sometimes prefer to develop proposed rules unilaterally in order to pursue their own visions of technically sound policy, they sometimes encourage early participation in their decision-making processes as a way to defuse potential opposition from powerful constituencies. While agencies often prefer informal policy-making procedures because of their expediency and flexibility, they may sometimes prefer formal due process as a way to legitimize their actions or as a way to identify potentially troublesome issues (Ferejohn 1987).

These and doubtless other choices between particular forms and procedures in policy implementation involve trade-offs that are conditioned by the environment in which agencies operate. This should not be surprising; indeed, it is consistent with the fact that "bureaucratic power" has remained such a fuzzy and poorly understood concept. When do agencies cultivate power by insulating their application of expertise from outside influence, for example, and when do they cultivate power by catering to clientele groups and politicians? In this regard, an examination of agencies’ institutional preferences under different circumstances might well provide a focus for gaining a better understanding not only of bureaucratic structure but of the motives and strategies that bureaucrats bring to bear as political actors.

CONCLUSION

Rational choice theorists are seldom modest when they evaluate what they do. Even as a prelude to criticizing their brethren, for example, Moe and Scott Wilson state:

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Over the past decade or so, rational choice theory has begun to transform the study of U.S. political institutions. The key to its success is methodological. What it offers, above all else, is a distinctively economic way of exploring a whole range of institutional issues—from government organization to political control to performance and accountability—that political scientists have long approached in less productive ways. As the movement for a new institutionalism has swept political analysis, rational choice has taken the lead in challenging the past and charting new paths for the future. (1994, 1)

In fact, neoinstitutionalists have explored the dynamics of structural choice more thoroughly than had any previous scholars and in so doing, they have identified important elements of reality that suggest variables that would not have come to light under more traditional, descriptive analyses. Under what circumstances do legislators stack the deck for the implementation of individual programs, for example, and when do they prefer generally applicable constraints, or none at all, on agency discretion? What conditions the trade-off between autopilot controls and oversight?

Yet the paths for future research suggested by economic perspectives derive primarily from their deficiencies as general explanations. Contractual models are supported by a highly selective set of illustrations and do not apply to most structural choices within the administrative process. As evinced by their frequent contradictions, moreover, economic explanations stop short of addressing the most important issues that confront a better understanding of structural politics. The fact that neo-institutional analyses are so poorly thought out in these respects renders their condescension toward so-called less productive approaches especially galling.

The sources of bureaucratic structure are sufficiently complex that a coherent, elegant explanation for bureaucratic structure is probably no less chimerical than is the quest for a general theory of politics. Different institutions derive from different actors, whose strategic preferences are defined by the specific technical and political environments of program implementation. The design of public administration also may simply result from the inertia of past decisions. Yet to recognize the messiness of reality is not to abandon the search for a better understanding of the determinants and effects of institutional choice within the administrative process. Rather, it suggests the need for more modest research that focuses on the contextual factors that define the motives and structural preferences of different political actors.

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Political scientists should not lose sight of the connection between bureaucratic structure and normative theory. Although structure is often motivated by self-interest, this should not obscure the significance of doctrine as a source of institutional choice. In a complementary and perhaps more important sense, it should not be allowed to obscure the interconnection between normative and empirical analysis in addressing issues of intelligent institutional design. Thus, a danger posed by an exclusive focus on realpolitik as the source of bureaucratic structure is that it may inhibit critical examination of the values that institutional arrangements within the administrative process are supposed to promote in light of their actual effects.

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