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When Ambition Checks Ambition

Bureaucratic Trustees and the Separation of Powers

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A credible commitment to property rights and contract enforcement contributes to sustained economic growth. Credible commitment suffers when private interests collude with government to secure private gain over the public interest. The Madisonian separation of powers system was designed to hinder this kind of private gain by political factions. In this article, the authors ask what role public agencies play in promoting credible commitment, arguing that principal-agency theory is suspect from the Federalist viewpoint, which assumed that elected officials are self-serving in ways that can harm the public good. They offer an alternative approach called trustee theory. Trustees sometimes can best serve principals by *not* being responsive to the principals' interests, especially when the principals' pursuit of self-interest threatens the public interest in the long run. The authors then discuss constraints that limit trustee discretion, so that they themselves do not become a primary cause of weakened credible commitment.

Keywords: *credible commitment; bureaucratic autonomy; agency theory; moral hazard*

The same rule which teaches the propriety of a partition between the various branches of power teaches likewise that this partition ought to be so contrived as to render the one independent of the other. To what purpose separate the executive or the judiciary from the legislative, if both the executive and the judiciary are so constituted as to be at the absolute devotion of the legislative? Such a separation must be merely nominal and incapable of producing the ends for which it was established. It is one thing to be subordinate to the laws, and another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government.

Federalist Paper 71

For more than a century, the U.S. economy has experienced sustained periods of economic growth. What role has the U.S. government played in this economic expansion?

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Contemporary research emphasizes the importance of clear property rights and strict contract enforcement in encouraging investment and growth (North, 1981). In nations where property rights are defined by shifting political coalitions, or in which courts are responsive to the blandishments of political elites, investment is discouraged and economic growth stagnates.

As North and Weingast (1989) argued, governments have to be strong enough to intervene in the economy to protect property and enforce contracts. However, every government that is strong enough to do so is also strong enough to violate contracts in the interest of those with political power or to redefine property rights favorably for those in power. Elites with political power can always form coalitions with economic actors that could benefit from legal cartelization, government contracts, or the protection of corrupt courts. In every political system, those with political power are pressured by lobbyists with ideas about how they can use political power to make money to benefit themselves while often harming the broader welfare of society and ignoring growth in the economy. All too common examples include accelerating lumber activities in tropical forests (Ross, 2001), giving a contract to a contractor other than the lowest competent bidder, subsidizing certain agricultural crops (Krueger, 1990), or creating barriers to entry for the competitors to politically favored firms (De Soto, 1989). We can call the incentive to participate in such schemes *political moral hazard*. Political moral hazard discourages investment by those who do not have the political connections to insure themselves against it (Miller, 2000).

In recent years, some scholars have come to see constitutional constraints on political moral hazard as a major source of protection for property rights and thus of encouragement for economic growth. North and Weingast (1989) argue that the strengthening of Parliament during the Glorious Revolution and the creation of the Bank of England shortly thereafter provided investors a remarkable degree of assurance that their wealth would not automatically become the target of political elites, as it was under the Stuarts. This assurance resulted in a reduction in the interest rate as investors saw less risk and spurred the Industrial Revolution.

From this perspective, the Madisonian system of separation of powers can be seen to be directly linked to the economic expansion of the United States. Madison saw the inevitability of ambitious, self-seeking politicians. He argued that they are ever ready to combine with others in “factions” that seek their own interests over the public interest. His argument in defense of the new Constitution was that separation of powers made it harder (though not impossible!) for factions to have sufficient political power to get their way.

Madison’s position is a familiar one, but in this article we ask a question that it was not possible for Madison to ask: What role does the bureaucracy play in the separation of powers and credible commitment to property rights and contract enforcement? In the centuries since the founding of the country, the executive branch has grown enormously in size and scope. In many countries, the bureaucracy is a tool to further enhance private gain over the common benefit for the society. Our interest is in whether the bureaucracy is an inhibitor or instrument of political moral hazard. In seeking to answer this question, we discuss and critique what has become a dominant perspective in the political science literature—*agency theory*. We then offer an alternative perspective that we call *trustee theory*. To put it as briefly as possible, agency theory has as a premise that the primary problem with regard to public agencies is making the agent responsive to elected officials, through incentives.

Trustee theory, on the other hand, is based on the notion that agency officials can best serve the public interest in the long run by insulating a policy domain from the political moral hazard. We further argue that this difference in perspective is of significant importance because the different perspectives imply quite different things about optimal recruitment, training, socialization, and bureaucratic structure.

We argue that trustee theory is capable of explaining many important nuances of the American political system that must appear as anomalies from the perspective of agency theory—including the systematic delegation of authority to professional bureaucracies in substantive areas that impinge on property rights and contract enforcement. We also ask what constraints limit trustees in the exercise of their discretion, so that we may hope that they do not themselves become a primary source of corruption (as indeed they are in many political systems). We end by arguing that bureaucracies are of course different from one area of policy to another and from one country to another but that one important difference between bureaucracies is the extent to which they serve as “agencies” or “trustees” to political officials.

Agency Theory

Agency theory was developed in economics in the 1970s to address the appropriate contract between an agent and a principal in an economic exchange. It was concerned with such issues as the appropriate contract between automobile driver (agent) and insurance company (Stokey & Zeckhauser, 1974) or the appropriate contract between tenant farmer (agent) and land owner (Stiglitz, 1974). These and other cases share certain key characteristics. The agent would like to be provided with insurance against a bad outcome—the farmer in the form of compensation that does not drop drastically in the case of a bad crop year, the driver in the form of complete insurance coverage in the case of an accident. The driver can take actions that make an accident more or less likely, but the insurance company cannot detect whether those actions are being taken. The tenant farmer can work harder or shirk more, raising or lowering the likelihood of a good crop, but again the landowner cannot easily monitor the farmer’s efforts. The insurance company and the landowner are worried about the possibility that the agent will not take the care that he or she should (i.e., he or she will drive more recklessly or work less hard) if provided with full risk coverage. As a result, the principal’s most advantageous contract will force the agent to bear a portion of the risk; the driver will be forced to carry a deductible, the tenant farmer will be compensated by a share of the crop. In both cases, economists concluded, it is not necessary to monitor the *hidden actions* of the agents; the use of incentives based on the *observed outcome* can largely overcome the problem of moral hazard,¹ getting the tenant farmer and the automobile driver to act in ways that are consistent with the *preferences of the principal*.

In generalizing these results, economists pointed out that the applicability of the principal-agent theory included a large number of settings in which one side—the principal—has nominal authority but an information deficit, whereas the other party—the agent—is nominally subordinate but has an information advantage (Harris & Raviv, 1979; Holmstrom, 1979; Shavell, 1979). The lesson learned, it was believed, was that close monitoring and hierarchical coercion could be largely dispensed with if the appropriate incentives were in

place. In effect, the correct incentives could import the “Invisible Hand” from the world of competitive markets to the inside of the hierarchical organization; the appropriate incentive contract allowed the agent to make self-interested choices that nevertheless worked in the interests of the principal.

Agency Theory and Congressional Oversight

With a research agenda that straddled economic theory and legislative politics, Barry Weingast (1984) was in a position to see the immediate applicability of agency theory to congressional oversight of bureaucracies. Students of public administration had argued that the absence of vigilant oversight by congressional committees implied a lack of control (Dodd & Schott, 1979; Rourke, 1984; Wilson, 1975). Bureaucratic autonomy must be rampant because, apparently, no one was watching what bureaucrats were actually doing, and appropriations kept coming with little interruption in the form of congressional sanctions. As Weingast correctly observed, principal-agency theory demonstrated that the absence of massive monitoring and frequent punishments could nevertheless be quite consistent with congressional control *through incentives*. If agency officials know that bad outcomes for constituencies implied bad consequences for the official, then the officials (as rational agents) would choose the actions that Congress would want from them—and avoid the negative incentives. Discretion in the implementation of legislation was not a problem if agency officials could be convinced to use their expertise in the interests of the elected officials who created the bureaucratic incentives.

It is worth observing that Weingast (1984) regarded the effectiveness of congressional control as going far beyond legislation to the details of implementation. Members of Congress would struggle to be appointed to key positions on oversight committees precisely to have an impact on the discretionary actions that legislative delegation of authority allowed agency officials. The cases that Weingast studied included the Federal Trade Commission and the Securities and Exchange Commission (SEC). In both cases, legislation gave agency officials significant authority to make decisions in case after case. The evidence gathered by Weingast suggested that as the ideology of key congressional oversight committees and committee chairs changed, the pattern of decisions by officials changed as well. Agency officials were evidently making decisions consistent with the preferences of their congressional overseers, rendering it unnecessary for Congress to undertake costly actions and (in equilibrium) without having to inflict punishments for the agency defiance that just was not there.

This reconceptualization of the role of bureaucracy as agent of elected officials has been enormously important to the study of bureaucracy. There is no doubt that it has advanced the cause of the scientific study of public administration (McCubbins, Noll, & Weingast, 1987; McCubbins & Schwartz, 1984). It made it impossible to sustain soft and comfortable assumptions about bureaucracy—that Congressional oversight is completely ineffectual, for instance. It generated new interest in the Administrative Procedures Act, in the appointment process, in mechanisms of congressional control, and in the role of incentives—topics that were previously downplayed. It gave rise to elegant models of congressional delegation (Bendor, Glazer, & Hammond, 2001; Epstein & O’Halloran, 1999). Most important, it created rigorous new standards for what constitutes a theory and the relationship between theory and empirical testing.

We agree that principal-agency theory is also a convincing explanation for the behavior of a range of bureaucratic agencies in the executive branch. In the U.S. Department of Defense, the procurement process seems to be immensely sensitive to the sensibilities of key members of Congress and their constituencies. A classic example of this is Representative Trent Lott, who, as Republican majority leader, advocated a ship that would serve as a platform for helicopters in an amphibious assault. The ship was built in the shipyards in his home state of Mississippi, despite widespread belief that the ship had very little value and was primarily a pork barrel project (Schmitt, 1998). The Corps of Engineers is frequently cited as a “powerful” agency. However, its power seems to be derivative from Congress. That is, its proposals are unstoppable in Congress precisely because it has already anticipated exactly what Congress wants for its constituents (Ferejohn, 1986). This relationship seems to be an extraordinary example of principal-agency theory. The U.S. Department of Agriculture is another agency for which Congress seems to have provided the appropriate incentives. The Department of Agriculture frankly thinks of itself as a “constituency service” agency. It protects and distributes services and subsidies with enthusiasm. The underlying reason is clearly the strength of the constituency in Congress and the positioning of key members of Congress on the appropriate committees. The net result is a public agency that works tirelessly on projects that redound to the electoral benefit of members of Congress, as argued by Weingast.

The Dark Side of Principal-Agency Theory

Defense contracts, agricultural subsidies, pork-barrel projects—we would argue that these policy outcomes are clearly the result of agency officials acting responsively to the interests of congressional masters. But we also notice a pattern: These are three of the policy arenas most frequently cited as examples of “government failure.” The sugar program is repeatedly referred to by economists as the government policy that produces the fewest benefits for special interests at the greatest cost to consumers and the environment (Krueger, 1990). Other agricultural subsidies may have less unfavorable cost-benefit ratios but are only different in regard to the scale of the inefficiency. The weapons procurement system is periodically castigated for waste and inefficiency. Even worse, devotion to the interests of key weapons contractors (and their legislative allies) apparently causes the Defense Department sometimes to send military into harm’s way with deficient weapons systems (Mayer, 1995). And “pork-barrel politics” has become a popular synonym for misuse of tax dollars.

It is not the purpose of this article to rehearse the well-understood reasons why congressional reelection goals lead to a devotion to constituency service and how the legislative practices of logrolling, together with legislative institutions such as the committee system, create political pressures supporting inefficient and destructive policies. It is sufficient to point out that, when the motivation for inefficiency comes from Congress, agency officials’ devotion to the interests of key committee members and other powerful elected officials is simply the means by which these policies are implemented. It is also important to note that all of these policies are examples of exactly the kind of “faction” that Madison was hoping to discourage with the separation-of-powers institutions.

Responsiveness of the bureaucracy to congressional interests is not a guarantee of good outcomes. If congressional actions and impulses are misconceived, bureaucratic

responsiveness only empowers political moral hazard. Economic growth, for example, is ultimately discouraged by the policies in each of these arenas. Consider the controversy about the Abrams tank or the B-1 bomber. To the extent that economic success for weapons contractors results from political support from key members of Congress rather than effective performance in a competitive market, then distortions can occur in the input markets. Labor, capital, and land may all be inefficiently priced as a result of misallocation of funds in faulty systems. The same is true, even on a global scale, as a result of agricultural subsidies. These subsidies are widely regarded as a major obstacle to efficiency in international trade. Because the price of grazing land is kept artificially low on public lands, land that is more efficiently used for other purposes is forced into cattle production. Import barriers to cheap foreign sugar encourage investors to try to grow sugar cane in marginal conditions in Florida, with enormous environmental costs in the Everglades. At the same time, nations that can grow sugar more productively are denied the U.S. market, forcing laborers into unemployment and depriving those nations of the opportunity for economic growth.

We claim that, when legislative representation of public interests is skewed or imperfect, perfect accountability of bureaucrats to elected officials merely enhances the problem. Furthermore, this has been implicitly recognized in several policy areas, resulting in a surprising variety of bureaucratic agencies in the U.S. executive branch and a variety of ways in which they relate to elected public officials. In particular, we offer the model of the *bureaucratic trustee*. In the spirit of Madison, we argue that the bureaucratic trustee can serve the American polity by serving as an obstacle, rather than a conduit, for the morally hazardous preferences of politicians.

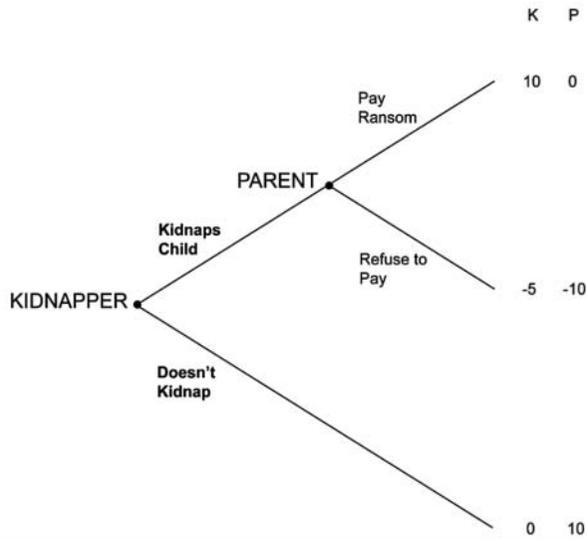
The Trustee

For principal-agency theory, responsiveness of the agent to the preferences of the principal is the goal, and manipulation of incentives is the means to achieve that goal. We have argued that principal-agency theory has little to offer the problem of moral hazard on the part of the principal—political elites with opportunities to manipulate the bureaucratic implementation of policy for their own electoral or financial gain. However, trustee theory, we argue, does give us leverage and a completely different perspective on the problem of legislative oversight of bureaucracy.

Moral Hazard and Credible Commitment

To illustrate this idea, we rely on an old idea by Thomas Schelling (1960)—credible commitment. It is our contention that the problem identified by Schelling is distinct from the problem identified by principal-agency theory and that much of what we observe in public administration is more understandable in terms of Schelling's ideas than in the principal-agency perspective. To illustrate Schelling's idea, consider a wealthy mother who is concerned about news reports of kidnapping. She realizes that, because of her wealth, her child is at risk. This is illustrated in Figure 1. A kidnapper knows that once the child is kidnapped, her preferences are such that her only choice is to pay a ransom. A viable solution is to hire

Figure 1
Credible Commitment: Kidnapper Game



a trustee. The trustee is, like the agent in principal-agency theory, someone to whom authority is delegated by a principal.

However, we use the term *trustee* to differentiate a Schelling-style delegation from principal-agency theory. The difference is that the trustee is useful only to the extent that he or she has *different* preferences than the parent. If the trustee loves the children as much as the mother does, then the trustee is worthless. The trustee is useful only to the mother insofar as he or she is committed to denying a kidnapper's request for ransom and resisting the mother's urgent demands in that event. That is, the trustee must not act on the parent's most compelling and overriding preference to protect her child from a kidnapper.

Notice the distinction between the trustee, as formulated here, and the agent, in principal-agency theory. As is commonly understood, the agent is to act in the interests of the principal. The trustee, however, can only serve to avert the possibility of kidnapping by *denying* those interests. Furthermore, the delegation of authority to the trustee must be inviolable. The mother may not be able to come to the trustee, in the event of a kidnapping, and change the terms of the trust arrangement so that she is required to, rather than prohibited from, paying a ransom. Although principal-agency theory affirms that the structure of the relationship must be elastic to the principal's wishes, Schelling's trustee theory stipulates quite the opposite; any suspicion that the mother can redefine the relationship in response to changing conditions is counterproductive.²

Principal-agency theory commonly prescribes that selection of a like-minded agent reduces agency costs and minimizes problems in the principal-agency relationship. However, the case of the trustee is quite the opposite. Selecting a loving uncle or close friend to be the trustee would be just as problematic as leaving money in the hands of the mother because the uncle could be presumed to be just as vulnerable to a kidnapper's

demands. The trustee (unlike an agent) is useful only to the extent that he or she acts on *different preferences* than the principal (parent) and only to the extent that authority over the parent's wealth has been visibly, credibly, and irrevocably handed to the trustee. In other words, the parent's hands must be tied by the delegation process. Ultimately, of course, the agent and the trustee relationships are both created to serve the interests of the principal. But there is enough of a distinction in *how* the principal is served to be fully aware of all the implications.

Credible Commitment and Military Strategy

Writing 2 years before the Cuban missile crisis, Schelling (1960) was concerned with making nuclear deterrence believable. In a simple game-tree version of the problem, the Soviet Union can either invade Europe or not. In response to a Soviet invasion, the United States can either use its nuclear weapons or not. The problem is that the latter course of action would result in the worst case for the United States (as well as for the Soviet Union). For that reason, the Soviet Union can use backward induction to conclude that self-interest would prevent the United States from using its nuclear deterrent. The subgame perfect equilibrium of the game is for the Soviet Union to invade and for the U.S. to acquiesce. Nuclear deterrence, in the hands of any reasonable individual, is a hollow threat—and an invasion of Europe is to be expected.

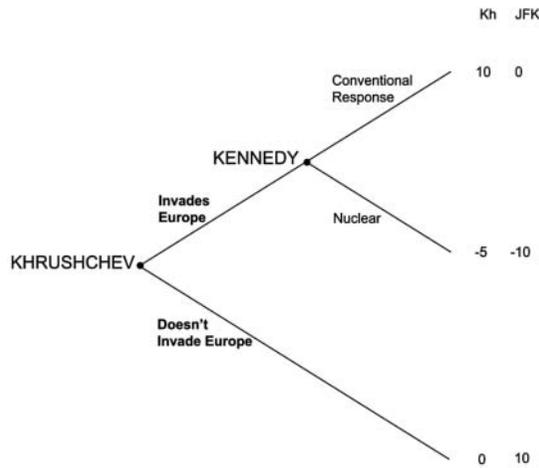
Although the presentation is vastly oversimplified, it portrays the heart of a very troubling problem that concerned not only Schelling but also key members of the armed forces and the Kennedy administration: the self-interest of a rational United States can discourage the actual use of a deterrent and therefore *encourage* a Soviet invasion of Europe.

What is the solution to this problem? The solution that Schelling proposed was to hire an agent—but (again) not an agent who would be familiar to the economic theory of agency. Schelling's agent must have *entirely different preferences than those of the principal*—in particular, a willingness to use nuclear weapons and thereby engender nuclear holocaust. But finding such a person is only half the solution. The *agent must be insulated from pressure from the principal*, so that the principal's last-minute (postinvasion) attempts to prevent the agent from wreaking global havoc are powerless. The useful agent must be out of the principal's control and must prefer mutual annihilation to acquiescence.

A person with the right preferences was in fact the chairman of the Joint Chiefs of Staff at that time, Curtis ("Boom-boom") LeMay, who was a fan—or a fanatic—on the subject of nuclear weapons. (Later, when George Wallace made LeMay his vice presidential candidate during the 1968 presidential campaign, LeMay embarrassed Wallace [!] with his cheerful enthusiasm for nuclear war [Carter, 1995]. Wallace had to send LeMay off to speak to NRA clubs in places such as Idaho for most of the campaign.)

During the Cuban Missile Crisis, LeMay's voice was the most insistent on an air attack, presumably ending in a nuclear exchange. After the end of the crisis, when Khrushchev had backed down and the missiles were on their way back to the Soviet Union, LeMay argued for an air strike against Cuba anyhow. While Kennedy was experiencing enormous relief at the termination of the immediate threat of nuclear annihilation, LeMay was demanding exactly the nuclear exchange that Kennedy had been working so hard to avoid. From the

Figure 2
Credible Commitment: Foreign Policy Game



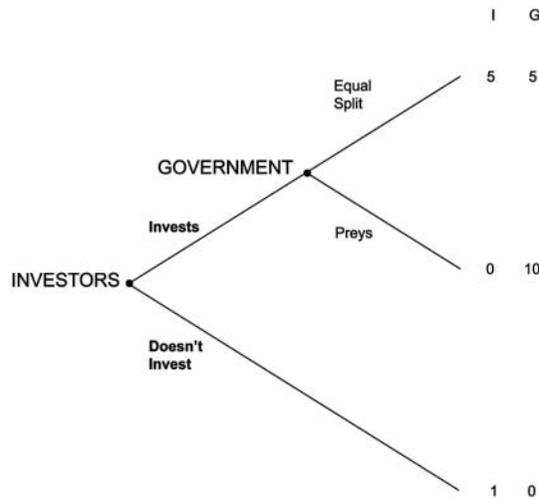
standpoint of principal-agency theory, it was insanity for Kennedy to keep an agent with such strikingly different preferences and possibly enough autonomy to bring on the crisis that Kennedy was trying to avoid. But that merely shows the theoretical limitations of canonical principal-agency theory.

From Schelling's standpoint, LeMay's usefulness was precisely that he had preferences that were perverse enough, and authority sufficient, to make the U.S. use of nuclear weapons a credible threat. The Soviet Union had enough intelligence to know that LeMay and other hardliners were arguing for the use of nuclear weapons during the crisis. They also knew that civilian control of the military was a question, not a certainty. This knowledge made the Kennedy bargaining posture (blockade followed by threat of attack) more effective with Khrushchev and induced him to withdraw the missiles. As Schelling (1960) said,

The sophisticated negotiator [Kennedy] may find it difficult to seem as obstinate as a truly obstinate man [LeMay]. If a man knocks at a door and says that he will stab himself on the porch unless given \$10, he is more likely to get the \$10 if his eyes are bloodshot. (p. 22)

The point is that this problem is not comprehensible in terms of conventional principal-agency theory, which has the sole avowed purpose of finding incentives that align the agent's actions with the principal's preferences and eliminate shirking. For Schelling, the problem is finding someone with the appropriate nonaligned preferences; but having perverse incentives is not enough. The principal must convincingly give up some of his or her control to the agent with the bloodshot eyes. To be credible, the use of such an agent must involve "some voluntary but irreversible sacrifice of freedom of choice" by the principal (Schelling, 1960, p. 22). In this view of military bureaucracy, the agent's responsiveness to the principal would paradoxically destroy the agent's value to the principal (see Figure 2).

Figure 3
Credible Commitment: Investors Game



In the case of nuclear deterrence, credible commitment through delegation plays a role even when the principal has laudable and reasonable preferences. Credible commitment becomes even more desirable when the principal himself or herself is plagued by moral hazard—preferences that when acted on diminish social efficiency.

In principal-agency theory, only the agent can exhibit “moral hazard” because the formal responsibility is strictly unidirectional—from the agent to the principal. The phrase *principal’s moral hazard* makes no sense in the original formulation because the principal’s proclivity to follow his or her own interests is presumed to be natural and legitimate. However, from the perspective of the overall efficiency of the relationship between principal and agent, it is possible for the principal’s pursuit of his or her own self-interest to be inefficient and therefore ultimately self-destructive.

The Investors-Ruler Game

Consider a game between an investor and a ruler. The investor has \$1 worth of gold, hidden in his or her mattress, and the ruler has nothing. He or she can either take the gold from the mattress to invest it in the ruler’s economy or not. If he or she does invest it, the investment generates \$10 worth of benefit. The ruler can either steal the \$10, leaving the investor with nothing, or tax the investor \$5, leaving the investor with \$5. In the backward induction equilibrium of the game, the investor, anticipating that the ruler will choose \$10 over \$5, leaves the gold in his or her mattress. The problem is that the equilibrium of the game is Pareto suboptimal: Both investor and ruler are worse off than if the ruler could be counted on to constrain his or her self-interest (see Figure 3).

This is an example in which moral hazard resides with the ruler; the ruler’s self-interest is itself the problem. The fact that the ruler has the power and the motive to exploit the investor

deters investment; and this ultimately harms the ruler as well as the investor. The ruler has need of a trustee who can be counted on *not* to act on the ruler's self-interest; the claim is that this is a systematic and fundamental problem in politics and that the most important role of the bureaucratic agent is to constrain the self-interest of ruling political elites.

The ruler-investor game is a game-theoretic version of the problem analyzed by North and Weingast (1989). Using the example of the predatory behavior of the Stuart kings, they argue that the inefficient equilibrium was maintained consistently throughout the era of the Stuarts and was indeed illustrative of a problem with all forms of authoritarian government. The Stuarts opportunistically redefined property rights and contract enforcement with their control over judicial appointments, their use of the power to establish and protect monopolies, and their ability to tax those with wealth through more or less coerced loans.

The outcome in which the investor invests and the government chooses an "equal split" is preferred by both players to the one-shot Nash equilibrium. Because it is Pareto preferred, the problem could be resolved by cooperation arising from repeated play of the game. In an infinitely repeated game, the long-term promise of cooperative gains (\$5 for each, in each period), together with the threat by each side of retaliation against noncooperation, could sustain the cooperative outcome. In such a case, delegation would not be necessary.

However, repeated play has its own problems. The first problem is that one side (say, the government) may be too oriented toward short-term payoffs. This would be especially true in the case of instability in the ruling elites. If this were the case, or even if the investor simply suspected that the government was impatient, then the cooperative equilibrium would collapse. More generally, the folk theorem demonstrates that there are many possible equilibria to the repeated game—including mutual noncooperation (Miller, 1992, pp. 199-205). Settling on one, beneficial equilibrium requires perfect coordination: Each player has to know that the other player knows that both know that they are playing strategies consistent with a chosen equilibrium, and no other. Any imperfection in their shared common knowledge could again lead to collapse.

These problems do not affect the delegation solution: If the government delegates the "equal split" or "prey" decision to an appropriately rewarded, autonomous trustee, then there are no coordination problems because of multiple equilibria and no problems because of short-term time horizons. The appropriate incentives for the trustee are, of course, that the trustee must *not* have preferences aligned with those of the government; the trustee must prefer an equal split outcome to the "prey" outcome. And like the parent in the kidnapping problem, the ruler must not be able to call back the authority of the trustee when times are bad and a one shot \$10 reward for preying seems particularly attractive. In other words, the ruler must be credibly constrained by the authority of the disinterested trustee and constrained so visibly that investors and entrepreneurs know that if they enter into a contract, their contractual rights will be enforced by an independent judiciary, supported by an independent parliament.

North and Weingast correctly place a great deal of emphasis on the role of parliament in constraining the ruler. As they note in their article, with the Glorious Revolution of 1688, parliament was able to gain control of taxation, sale of the king's lands, the judiciary, and government borrowing. But this degree of parliamentary control raises several other questions. The first question is, given the same powers as the king, why shouldn't parliament succumb to the same predatory temptations?

And in fact, parliament did give in to the same temptations, at least to some extent. Like the king, they found it advantageous to license monopolies, thereby sharing in the monopoly profits generated by effectively outlawing competition. Adam Smith's *Wealth of Nations* can be seen as an indictment of the predatory practices of mercantilist 18th century England. The foremost example was that of the sugar lords of the British West Indies, who used their wealth to maintain a regime that virtually guaranteed them monopoly rents.

Stasavage (2003) offers an insightful book arguing that, as long as parliament was governed by a Tory coalition, it was (like the Stuart kings) not credibly committed to protection of the property rights of economic actors, and this was observable in the interest rate. Only when a Whig coalition was in power, and able to serve as a blocking coalition protecting the sanctity of the government's commitment to bond repayment, did the interest rates decrease. In other words, it is not the existence of democratic institutions that controls moral hazard in the political system—but the existence of mutually blocking veto players.

Central Banking

As simple as this model of credible commitment is, it corresponds in several ways to our best understanding of the political economy of central banking (Jensen, 1997). Elected officials will always find advantage in providing public expenditures, tax cuts, and other benefits to the organized constituents with a stake in those decisions. These benefits, however, generate inflationary tendencies. Investors and other economic agents adjust their actions accordingly, and eventually such governmental actions generate inflation with little impact on unemployment. A government that campaigned on promises not to provide such inflationary shocks would not be believed. Credible constraint of the government is the key to controlling inflation.

The governments that are so constrained are those that have tied their hands by creating independent central banks. Studies have shown that independent central banks have an impact on lowering the inflation rate (Franzese, 1999). The central bank's credibility is enhanced when private economic actors perceive that the bank's decisions are irrevocable. In contrast, if private actors perceive that partisan administrations influence the decisions of the central bank, then the credibility of a nominally independent bank is undermined.

Even if the government creates a central bank and grants it independence, could it not take back the authority it handed the central bank at a later point—for example, prior to an election in which it wanted to gain favor by inflationary policies? The answer is that of course it could; the credibility of the bank's independence depends on the obstacles in the path of politicians hoping to reclaim that authority.

The primary such obstacle is the existence of multiple “veto points” within the government, preferably in the hands of opposing political interests, all of which must act in concert to reclaim the delegated authority of the central bank. Investors perceive the Fed as independent of the political ambitions of politicians precisely because it takes the joint action of *both* chambers of Congress and the president to reverse its decisions—and joint action is not likely, given their distinct goals and the likelihood of strategic behavior by the Fed chairman (Keefer & Stasavage, 2003). From the perspective of credible commitment, the loss of control implied by its multiplicity of principals is not an efficiency loss, as argued by the original advocates of congressional control. On the contrary, *the loss of political control is the prerequisite for effective performance* of the Fed's function.

The importance to the Fed of its perceived independence is illustrated by an episode reported in Woodward (2000). In August 1989, Bush Office of Management and Budget director Richard Darman appeared on *Meet the Press* and said he feared the Fed “may have been a little bit too tight. If we do have a recession, I think it will be because they erred on the side of caution.” Greenspan was furious. As Woodward summarizes Greenspan’s concern,

Public bashing by the president’s top economic advisers would only encourage the opposite of what they wanted, forcing the Fed to assert its independence and *delay* lowering interest rates. . . . The Fed’s interest rate policy had to be credible. A particular Fed funds rate had to be seen by the markets as the best rate for the economy, not as an artificially low rate influenced by political pressure. (Woodward, 2000, p. 30)

This is an extreme form of the Schelling trustee argument; not only are the politico or principals the threat to the bank or trustee’s effectiveness, the very *expression of the principal’s interests* is a danger that must be met by a visible demonstration of noncompliance.

Keefer and Stasavage (2003), among others (Lohmann, 1992; P. Mosher, 1999), extend this argument in a broad, cross-national study of interest rates. They argue that it is only when central banks have received a delegation of power, and when banks’ autonomy is guaranteed by multiple political actors with conflicting preferences, that banks are able to effectively maintain low interest rates. Politicians are like the mother worried about kidnapping; they are best served by having their hands tied.

The need for credible commitment to property rights and contract enforcement is generally recognized as a prerequisite of economic development in a given society (North & Weingast, 1989). Our central claim is that the essential feature of credible commitment is delegation of substantial decision authority to public agencies. Governments are credibly committed to property rights and the rule of law *only when* investors believe that a group of professional officials (making and enforcing rules) are insulated from political control and delegated with the authority to make key decisions affecting property rights and contract enforcement. That is, if the relationship between Congress and the Federal Reserve Board is like a principal-agency relationship, then we would want the Federal Reserve Board to be responsive to the electoral interests of members of Congress; anything that can align the interests of the board with those of Congress is a good thing.

But if the Fed acts as a Schelling-style “trustee” of Congress’s interests, then anything that causes the Fed to make decisions in a way that is responsive to the electoral interests of Congress is in fact subversive of the true role of the trustee. A Fed chairman who promises to serve the reelection interests of his political masters in Congress and the White House would, of course, be a disaster on Wall Street. One of the Fed chairman’s primary jobs is to convince the public that the appearance of insulation is matched by reality. The Fed chairman has to be ready to control inflation with stringent measures, even (and especially) when those actions endanger the dearest reelection aspirations of his political masters (Knott, 1986).

We are going to claim that this is true, not just for the Fed but for a variety of other bureaucracies. Indeed, we regard the “trustee” role of bureaucracies to be the role that distinguishes the unique difference between agencies such as the Fed, in which the agency contribution is contingent on strict autonomy from elected officials, from agencies such as the Corps of Engineers, in which the agency’s contribution is contingent on sensitive responsiveness to the electoral and other ambitions of elected officials.

The National Labor Relations Board (NLRB)

The NLRB is another agency whose actions help guarantee property rights and allow for the stable negotiation of contracts. The creation and performance of the NLRB illustrates the possibility that antagonistic interests represented in Congress, fighting over a contentious issue, may nevertheless be able to use a bureaucratic solution as a form of “fair division.” That is, both sides can agree on a procedure, embedded in a public agency, even in a setting where both sides view the policy area as a zero-sum game of perfect conflict.

Throughout the first four decades of the 20th century, labor policy was increasingly violent and disruptive. Both business and labor suffered, employees had no rights in their job that employers or the courts had to honor, and they often engaged in disruptive wildcat strikes or sabotage that disrupted business profits. Politicians sought political advantage in the uncertain labor situation. A particular governor might be more sympathetic to labor, whereas his successor might well use the National Guard to help employers put down a strike.

The Great Depression brought the situation to a crisis, with the passage of the National Labor Relations Act and creation of the NLRB by a strongly partisan Democratic coalition. But as Terry Moe (1985, 1987) indicates in his excellent account of the NLRB, the replacement of a Republican coalition by a Democratic coalition was not conducive to labor peace and stability. Rather, the Republicans did everything they could for some years to undo labor’s gains. Despite this conflict, Moe (1987) notes, “the political world of labor-management relations was nevertheless about to undergo a transformation. Peace would replace conflict” (p. 244).

It was only when each side recognized that the other could not be vanquished that they reached an accommodation. “Stalemate encouraged a reordering of priorities, and the groups were less disposed to petition their political allies in Congress for action” (Moe, 1987, p. 244). The accommodation was to redesign the NLRB as a neutral agency, constrained by a Weberian legal-rational procedure that limited the self-interested actions of any of the officials involved. The focus of interest group politics shifted to presidential appointments, with each side determined to counterbalance the effect of the opposition. “What kinds of people do business and labor look for? The established pattern, rationally based on the realities of power politics, is that the groups largely restrict themselves to moderates acceptable (asymmetrically) to both sides” (Moe, 1987, p. 259). The result was the institutionalization of moderation on the board itself, and this furthered the protection of professionalism within the staff of the NLRB.

As F. C. Mosher (1982, chap. 5) has noted, one of the foremost drives of any profession is autonomy with regard to accreditation and personnel decisions. This meant that no one, including the president and the board, had a great deal of political leverage over the increasingly self-defined labor-law professionals within the NLRB, which limited the amount of traditional “responsiveness” of the agency’s staff—but that was not entirely a bad thing. Each side—labor and business—could be assured that day-to-day decisions were not going to be influenced by the lobbyists of the other side but would instead be made in accordance with increasingly well-defined legal-technical criteria. Both sides were able to spend their time, energy, and resources in activities other than lobbying Congress, the president, or staff.

From the perspective of the agency officials themselves, it was clear that partisanship was not a good career move. A partisan official (and bureaucracy) would inevitably be the target of some future political coalition in Congress. It was far safer and more sensible for the NLRB enthusiastically to wrap itself in all the trappings and mythology of a court system, dispensing even-handed justice. And that is what the NLRB did. It was aided by social norms in the White House and Congress that resulted in balanced and relatively moderate bipartisan appointments to the board (Moe, 1987). Even more important was the molding of the staff in the image of a profession: the newly created profession of labor law. The body of NLRB decisions defined the corpus of a labor law that had not previously existed but that absorbed and neutralized the historic labor battles in Congress.

As Moe aptly points out, a professionalized bureaucracy, pursuing a constraining administrative procedure with strict neutrality, and headed by a scrupulously bipartisan commission, was a compromise with which both sides could live. Professionalization allowed both sides to make economic decisions and engage in long-range planning with a high degree of certainty about the nature of the rules of the game.

Indeed, it is hard to imagine that the postwar U.S. economy could have performed as magnificently as it did if the economy had been wracked by labor strife of the magnitude of the depression. Both labor and business have benefited by clarifying labor's rights: the right to organize, the right to a safe work environment, the right to use the courts to enforce negotiated contracts. By taking labor off the partisan agenda, it allowed both corporations and unions to plan for (and invest in) the future in the confidence that everyone's rights would be largely protected by the enhanced legal system that was the NLRB. As Moe (1987) points out, it was only with the reimposition of a partisan agenda with the Reagan appointments to the NLRB that the credible commitment to a stable set of labor institutions and property rights was thrown into doubt. The Reagan episode underlines the threat that temporary electoral and legislative coalitions play in the professional and bureaucratic support for credible commitment.

The Securities and Exchange Commission (SEC)

From its formation in the New Deal until the late 1990s, investors believed that SEC oversight of the auditing profession guaranteed objective data on which to base their investment strategies. The SEC had a reputation for being autonomous from elected political officials: The chair of powerful Senate committees could not call up SEC staff and pass along a lobbyist's request for a change in an accounting procedure. The SEC provided a venue for lobbyists to be heard, but it was in the context of a neutral, judicial process (Khademian, 1992). The respect given to regulatory agencies is largely correlated with its demonstrated responsiveness to professional norms and standards rather than its responsiveness to Congress. The SEC was highly esteemed for many years as one of the most professional agencies *because* its members were more responsive to the profession than they were to Congress (Khademian, 1992).

The latest problems with the SEC came when Congress failed to give the professional SEC the deference it had normally given it. The former chairman of the SEC, Arthur Levitt, sought in the late 1990s and early in 2000 to impose strict disclosure requirements on investment firms and to prevent financial companies, such as Arthur Anderson, from providing both

consulting and auditing services to the same firm. His proposals, however, were rejected by the congressional committees overseeing the financial system and were opposed by the major investment and financial firms. Congress acted on Levitt's proposals only *after* the collapse of the Enron Corporation, the massive financial mismanagement at WorldCom, and a general public outcry over illegal and destructive financial practices. The bills passed by Congress reflected the earlier recommendations by the SEC for greater disclosure, avoidance of conflicts of interest, and the creation of oversight boards (Levitt, 2002).

We do not conclude from the SEC case that the public agencies should rely solely on professionalism and expertise and be unaccountable to other major political institutions or the public. This example makes the point that professionalism and expertise can play a very important role in representing the public's interest. Few would want the SEC to be run with the same degree of oversight and control as the Department of Agriculture. The special role of bureaucracy, however, operates under legal, auditing, and other constraints that impose other values on the actions and policies implemented by the bureaucracy.

As it turned out, the basis of competition for consulting services included favorably biased financial statements and audits. In the wake of the Anderson–Enron scandal, investors were shaken in their belief that the SEC was in a position to protect the neutrality of the financial reporting system. One source (Feaster, 2002) reported in the *New York Times* a multi-trillion-dollar decrease in aggregate equity prices as a result of investor uncertainty caused by the auditing crisis. The only proposed solution was to try to restore the SEC's former autonomy and professionalism in administering the auditing procedure. As with the Fed, the SEC was perceived to play a more productive role as a trustee—insulated from political pressures—than as an agent. The imposition of congressional influence undermined the autonomy necessary for the SEC to play the role of trustee; the result of congressional imposition of its will was disaster around the corner.

Representative Bureaucracy

Looking at regulatory agencies such as the Fed, the SEC, or the NLRB, it is hard to resist the claim that public officials, too, are capable of serving as representatives of the public welfare, apart from the pressures they feel from elected officials. In *To Run a Constitution*, Rohr (1986) argues that there is grounding for this idea in the political thought of the Founding Fathers. The Federalists were in possession of a revolutionary idea that differentiated them from the Anti-Federalists: that sovereignty is held not in the states or even in Congress as representative of the people but in the people themselves. This insight dislodged Congress from a privileged position.

The object of the choice of the sovereign people is not a group of legislators who will carry out their will. What the people have chosen is a constitutional order which balances the powers they have delegated to three equal branches. (Rohr, 1986, p. 79)

Unelected officers in the executive branch have an equal constitutional status as elected officers. Rohr quotes Wood (1969), who said that because “the Federalists were equating representation with the mere flow of authority, every officer would be in some way a representative of the people” (p. 547). The people are best served not by empowering the

U.S. Congress as the sole representatives but by a “balance” of representatives, each checking the other. In this view, agency officials play a role as more than agents but as autonomous parts of the constitutional balance.

Constraints on Trustees

If trustees constrain the ambitions of elected officials in the interest of credible commitment, what constrains trustees? What keeps agency officials themselves from extracting rents? Clearly, an unconstrained Fed would be just as much of a threat to the climate of economic investment as handing monetary policy over to the Stuart kings or a logrolling committee of reelection-oriented members of Congress. No one can doubt that there is any number of economic interests who would be willing to pay large amounts of money for influence at the Fed. So why should we believe that the Fed is more immune to moral hazard than members of Congress, for example? Administration must be constrained by *something*; otherwise, insulation can be equated with capriciousness. What is it that constrains agency officials?

Ultimately, of course, delegation in a democracy can always be called back, even in a system of separation of powers. If Congress and the president agree that the Fed is out of control, they can revoke its charter—and that threat inevitably appears during any prolonged period of recession or inflation. But such a threat is correctly regarded as only a coarse constraint on agency decision making. Within the broad constraints of policy disagreement among Democrats and Republicans, House, Senate, and president, and their diverse interest group constituencies, the Fed has an inevitable degree of some discretion. It is the bureaucratic use of this discretionary policy with which we are concerned.

The answers to this question are embedded in the nature of modern professional administration itself. In examining the safeguards against moral hazard at the Fed, we come up with a list of characteristics that are definitional for a modern agency. In other words, it is plausible to think that public agencies, with their strengths and attendant weaknesses, are the organizational answer to the question, how can we guarantee honesty and predictability in a key decision-making organization?

Professionalism

Professionalism may be thought of as a socially constructed incentive system that is distinct from, and complementary to, both market and hierarchy (Friedson, 2001, p. 12). It is based on a body of knowledge. The prolonged training in that body of knowledge provides an opportunity for socialization of the trainees. The professional, whether physician, political scientist, or accountant, is part of a social network of people who have differentiated themselves from the rest of the society by that shared training. Each member of a profession anticipates making a life-long career based on his or her good standing in the profession that reinforces his or her orientation toward the other members of the profession. In a healthy profession, the member of the profession is keenly aware that his or her lifelong success is ultimately dependent on his or her reputation with other members of the profession. Indeed, professionalism exists to the extent that its members gain “the power to determine who is

qualified to perform a defined set of tasks, to prevent all others from performing that work, and to control the criteria by which to performance” (Friedson, 2001, p. 12).

The profession, then, is a social institution that is tailor-made to simultaneously empower and constrain professionals. The professional organization resists influence from outsiders, whether in the market or in the state. At the same time, it possesses a powerful set of sanctions operating on the members of the profession. Approval by one’s professional peers, ultimately one’s standing in the field, and the long-run opportunity to pursue a profession through a lifetime career are the sanctions needed to enforce compliance with professional standards. For example, if a political scientist knowingly misrepresents or manipulates the results of a data analysis and is discovered, his or her standing in the profession will be ruined; that knowledge, along with the socialization in graduate school, is the primary sanction protecting the discipline from the charlatans that could drive the value of being a political scientist to zero.

Professionalism is clearly utilized as a substitute for hierarchical control in the case of public agencies. For instance, the creation of the SEC both depended on and supported the standing of the accounting profession—a profession previously at the mercy of firm managers (McCraw, 1984, pp. 188-192). At the same time, the agency defined and nurtured the creation of a new profession—securities law. Like other lawyers, SEC lawyers have a professional interest in the law itself because their knowledge of the law is the foundation of their claim for expertise and commensurate compensation. And like other professionals, they recognize that standing and status of individuals in the profession ultimately depend on the evaluation of their professional abilities by other professionals—not hierarchical superiors in Congress or the White House. This means that the variance in their decision making as a result of political intervention is relatively minimal. A professional orientation leads to exactly what is missing in majority rule decision making: stability and hence predictability. What Moe (1987) says of the NLRB professionals is equally true of SEC lawyers:

Professionals are difficult to control, but their behavior is fairly easy to predict. . . . A professional, if given total autonomy and insulated from external pressures, can be counted upon to behave in a manner characteristic of his type. That is what true professionalism is all about. (p. 259)

The result of empowering professionals in an agency is to lose much hierarchical control over that agency, as documented by F. C. Mosher (1982) in his classic study of professionally dominated agencies such as highway departments (by engineers) and health departments (by public health scientists). But in the case of those agencies that play a key role in defining and enforcing property rights and contractual obligations, the result is that economic actors can make long-term business strategies based on a degree of confidence that the respective rights of different interests will not be altered by political elites intervening for political gain—nor by the professionals themselves.

Transparency Requirements and Watchdogs

Congress has created agencies that monitor public agencies, including the Government Accountability Office (GAO) and the Congressional Budget Office (Aberbach, 1990).

Congress also relies on inspectors general in each of the major agencies. These agencies serve to keep public officials within the limits of the law. It is worthwhile asking whether these agencies enhance the role of the public officials as agents or as trustees of Congress. Clearly, they can be used to reveal whether or not legislative constituencies are performing as desired for the reelection goals of Congress. But neither the GAO nor inspectors general have a reputation as being “captured” by powerful members of Congress. On the contrary, they often have a reputation for professional independence. And they often see their role as enforcing professional independence on public agencies—or protecting public agencies from undue influence from individual legislators.

Monitoring agencies help create a sense of transparency—with agency officials in the goldfish bowl. But transparency not only puts pressure on the goldfish but also protects the goldfish from the cat. A professional public official who seeks autonomy in which to carry out his or her professional activities must regard the goldfish bowl as a form of protection from interference, not an invasion. As such, monitors such as the GAO are as much a check on Congress as they are on the public officials. They serve to keep administrative officials within the limits of the law but help protect them from undue influence of favor-seeking individual legislators.

Rules and Standard Operating Procedures

Yet another constraint operating on trustees is Weberian: “The management of the office follows general rules, which are more or less stable, more or less exhaustive, and which can be learned” (Weber, 1958, p. 198). When we appear at an official’s window with a request based on the obvious desirability of ignoring a rule in our own very special case, the official ignores our special pleading. This is frustrating to us, but agency commitment to “red tape” has the advantage of limiting the exercise of moral hazard. If the official were allowed to sympathetically respond to my special pleading, then he would inevitably be more susceptible to special pleading based on a bribe.

Milgrom and Roberts (1988) make the important point: Chaos results if every decision is open to political influence all the time. In such an environment, everyone would need to spend much of their time and resources trying to influence the next decision or undermine or protect the last decision. Decisions can be made to “stick,” and taken off the agenda, by what they call “bureaucracy.” Arbitrariness is limited by the need to follow standard operating procedure. The Fed Open Market Committee meets at certain times; the composition of the committee is governed by a set of rules, and voting on the committee follows established procedures. And once a decision is made on a given day, it is not open for reanalysis until the next regularly scheduled meeting. The net result is to minimize a “market” response, in which market demand for favorable decisions from Fed officials can meet a ready supply of influence from insiders.

Credible Commitment and Administrative Procedures

We have argued that the distinctive feature of Schelling’s trustees—unresponsiveness to the principal’s short-term interests—is apparent in the creation and behavior of some of the agencies created by Congress. These agencies are created in such a way that they are not

responsive to the short-term interests of Congress but are insulated by such structural features as multimember commissions with long-term, bipartisan appointments.

We argue that administrative procedure can support “trustee-style” design of an agency. As a way to illustrate our argument, imagine that the parent in the Schelling kidnapping example was worried about the trustworthiness of her trustee. Although control over the actions of the trustee would undermine the purpose of the trustee (to deter kidnapping by eliminating the possibility of ransom), certain kinds of mandated procedures might serve as a check on the trustee while maintaining the trustee’s autonomy. For instance, the trustee could be required to be audited once every 3 months. The trustee might be required to alert the parent’s law firm or get the advice of securities analysts before making key investment decisions with the parent’s fortune. These procedural safeguards would remind the trustee of the various responsibilities he or she has toward the parent. The procedural safeguards would not in the least impinge on the trustee’s autonomy to make those discretionary decisions. And in fact, the procedures might very well enhance the conviction on the part of potential kidnapers that it would be impossible to get a ransom paid by the procedurally constrained trustee.

Much the same argument could be made about administrative procedures. Remember that Congress’s ultimate goal is to enhance credible commitment to property rights and contract enforcement, as defined in part by the decisions of key regulatory agencies such as the Fed, the SEC, and the NLRB. However, on any given day, any legislator can think of an implementation decision made by one of those agencies that would enhance the economic prospects of a key constituency. Responsiveness to those constituency demands would undermine the ultimate goal of credible commitment. At the same time, Congress does not want the agency “trustee” to use its delegated power in a tyrannical or corrupt way. During the New Deal, the unprecedented power of the new public agencies threatened the rights of citizens, and these powers were potentially arbitrary enough to render Congress irrelevant.

In the years following the Great Depression and World War II, Congress fiercely debated the New Deal administrative orthodoxy that agencies should be coordinated and directed by the president (Shepherd, 1996). The eventual passage of the Administrative Procedure Act (APA) in 1946 reflected the growing congressional view that agencies refine legislation through their extensive rule-making powers and thus should be designated as extensions of Congress. To facilitate continuous supervision of agencies, the APA was accompanied by the Legislative Reorganization Act in 1947, which aligned the committee structure more closely with agency areas of responsibility (Rosenbloom, 2000, pp. 23-103; Rosenbloom & Kravchuk, 2005, pp. 50-53).

The APA helped protect citizens from bureaucratic abuse, as was its intent, by requiring notice of rule making, requiring opportunities for citizens to comment, mandating the gathering of evidence, and generally requiring procedural justice in agency decision making. McCubbins et al. (1987) argue that the APA creates a minimal level of transparency that assists Congress in keeping track of agency decisions: “The entire proceeding is public and the rules against *ex parte* contact protect against secret deals between the agency and some constituency it might seek to mobilize against Congress” (p. 258). However, a transparent process can cut two ways. For an agency official, the wonderful thing about mandated rules of behavior is that they provide an automatic and indestructible defense against external

assaults from legislators or other politicians. The existence of approved bureaucratic routines is in fact a road map for officials who would feel threatened by a hostile political environment. When called before Congress to justify an action, an official can always defend his or her behavior by demonstrating that he or she was just following standard operating procedures, which ideally were imposed by Congress itself. Warwick (1975, p. 127) describes in his detailed analysis of the State Department how officials “demand” formal rules and standard operating procedures as guides to difficult choices and protection from congressional critics. An official who follows procedures created by the APA gives himself or herself a “buffer” against political uncertainty and recrimination. Warwick points out that the result of this is stable, conforming behavior, which is not a bad outcome in agencies that are concerned with maintaining a credible commitment to a given specification of property rights.

Hill and Brazier (1991) argue that the congressional control of agency decisions by specification of procedure is never complete and only increases when the legislative intent itself is vague and ambiguous. Furthermore, the courts have come to legitimize agency discretion. In the *Chevron* decision (*Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 1984), the Supreme Court defended the right of the Environmental Protection Agency to specify the meaning of ambiguous terms such as *stationary source* of pollution.

Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency. (p. 8434)

Senator Pat McCarran called the APA “a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated” by administrative agencies (quoted in Rosenbloom & O’Leary, 1997, p. 298). It allowed the grants of discretionary authority and adjudicatory power to be implemented in the spirit of congressional legislation, not based solely on the hierarchical executive authority of the presidency or out of subservience to the special interest ambitions of members of Congress. Although McCubbins et al. (1987) argue that the APA has served as an instrument of “political control,” it may more accurately be thought of as a means of insulating agency professionals from the more parochial interests of both Congress and the president.

Conclusion

Admittedly, some agencies are the focal points of reelection interest by members of Congress and have been designed to be permeable to those interests. Many members of Congress see agricultural policy, defense contracts, and pork barrel as central to their political ambitions and have structured the relations between their committees and these agencies so as to advance those ambitions. However, members of Congress are less likely to run reelection campaigns based on their proposed ability to manipulate monetary policy as shaped by the FED or to determine the outcome of a particular NLRB decision.

Consider the difference between the Department of Agriculture and the Fed. No member of Congress expects to be held solely responsible by the public for the inflation rate; the Fed facilitates each legislator’s reelection chances by being at the wrong end of finger

pointing during inflationary or recessionary periods—and House incumbent reelection rates are not affected by economic bad times. But individual legislators on the agriculture committees *are* going to suffer constituency wrath if particular farm price support programs are lost to them. These legislators collectively expect a much higher degree of responsiveness from the Department of Agriculture than they do from the Fed, and they get it. They closely manage a system of incentives to ensure that Ag officials serve their parochial reelection goals. The economic cost to the nation of Agriculture's subservience to parochial interests is impressive, but not of the same order of magnitude that would result if the Fed, the SEC, or the NLRB were similarly subsumed into legislative reelection interests.

For good reason, the Fed, the SEC, and the NLRB have been structured as trustees, rather than agents, of congressional will. The day-to-day flow of decisions from these agencies determines in large part the degree to which investors can contract for capital and labor with confidence about future enforcement of contractual obligations and security in property rights. These agencies are bound by the law as passed by Congress, but not to the interests of members of Congress or even to powerful coalitions of legislators and interest groups. With these agencies, reelection goals are best served not by *more* control over them but by *less*. With the cession of policy authority to the professionals of a delegated agency, legislators can affect key staffing decisions at the margins, engage in symbolic (but relatively ineffective) lobbying on behalf of constituents who oppose particular decisions, monitor that the procedures of the agency are as required by law, and (worst-case scenario) use the agency as a scapegoat when things go bad. But this still leaves bureaucratic trustees with sufficient authority to implement policies that are stable and consistent.

The agencies that are primarily responsible for defining property rights and contractual obligations, therefore, have been structured quite differently than those agencies that are designed to serve a particular constituency or interest group. This has served the best interests of the U.S. economic growth. Indeed, it is hard to imagine how the economic boom in the United States in the latter half of the 20th century could have been sustained without the clear specification of investor rights, labor rights, managerial rights, and independent monetary policy that were the products of these independent agencies.

Our fear is that the justification for professional autonomy on the part of regulatory agencies has been confused by the broad strokes of principal-agency theory, which has advanced the same goal of close accountability for agencies of all sorts. Hedge and Johnson (2002) present evidence that during the Republican Revolution following the 1994 elections, regulatory agencies were quite responsive to short-term congressional preferences, even without the passage of new statutory authority. In their analysis, Hedge and Johnson point to the importance of "the larger drama of national politics, most notably the ongoing struggle between Congress and the president" (pp. 349-350). In 1994, the presidency of Bill Clinton was substantially weakened and failed to act as a check on the ascendancy of Congress. After the 2000 election, checks and balances weakened further with the end of divided government. Recent developments, including the appointment of Bush administration "gatekeepers" in each of the regulatory agencies, have threatened to further erode the independence of these agencies (Pear, 2007). Professionalism is not a magic bullet that gives public agencies immunity from political onslaughts. We regard it as essential to understand the role that agency officials, as trustees, can play in the credible commitment of the state to stable, transparent contract enforcement.

In policy areas where constituency pressures are one sided and intense, members of Congress have maintained congressional dominance over agency behavior. In many other policy areas, politicians have acceded to a system of shared powers with the courts, the president, and professional agency officials. These delegations of authority have enhanced democratic accountability and the efficient production of public goods. The resilience of the American political system is based not on congressional dominance or the administrative presidency but on a complex system of Madisonian checks and balances, which collectively make public agencies subordinate to the laws, not dependent on lawmakers.

Notes

1. The more risk-averse the agent, the less efficient is the use of incentives to motivate the agent.
2. Elster (1985) has a one-person version of the commitment problem, in which an individual constrains himself or herself (e.g., by having himself or herself tied to the mast) out of an awareness that his or her future preferences will change (e.g., the Sirens will cause him or her to want to jump into the sea). The difference is that our credible commitment problem arises from strategic interaction between two players, not a change in preferences for one player. The parent wants to commit to not paying a ransom simply because of the effect that this commitment will have on the other player—the kidnapper.

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