With Strings Attached: Statutory Delegations of Authority to the Executive Branch

While research on the influence of divided government upon legislative outputs is available, relatively little identifies the effects of divided government on legislative control of bureaucratic discretion. Some suggest that inter-branch conflict between the President and Congress leads legislators to seek to retain legislative control over the bureaucracy. As a result, periods of divided government increase statutory control and reduce agency autonomy. Close examination of statutes creating each federal agency between 1946 and 1997 reveal that divided government increases specificity of statutory control. In addition, the particular type of divided government involving split partisan control between the chambers of Congress fosters greater specific statutory control when new government agencies are created.

Two major crosscutting currents are evident in twentieth-century American politics. On the one hand, the period witnessed such a substantial increase in the delegation of policy-making authority and responsibility to the executive branch that it has been called the “administrative century” (Frederickson 1999). On the other hand, divided partisan control of the presidency, House, and Senate has been a frequent and salient reality, particularly in the post–World War II era. Both the emergence of an administrative state and the failure to achieve responsible party government have had enormous consequences for the operation of democracy in the United States. Not surprisingly, both political control of the newly emergent administrative state and the political causes and ramifications of divided government have been long-standing targets of research for scholars of American politics.

While there is a large and broad literature on the consequences of divided government (see, e.g., Binder 1999; Mayhew 2005), only a small subset of that literature focuses on the linkage between divided government and legislative delegation of authority to the executive. At the state level, divided governments have been shown to broaden executive authority with longer, more detailed, and more constraining statutes than unified governments (Huber, Shian, and Pfahler 2001). At the federal level, statutes that expand executive discretion are more likely under unified government, and statutes that restrict executive discretion are more likely under divided government (Epstein and O’Halloran 1996). Participants in a divided government are not as trusting of one another as those in a unified government, even as they all continue to hand the reins of power to the executive.

In looking at the statutes by which Congress delegates to the executive branch, it is perhaps surprising that scholars have not focused on the creation of new federal agencies. Certainly, there is a dynamic component to delegation, but the most significant and far-reaching change in executive authority occurs when a new agency is created. Research on the “structure and process thesis” (McCubbins, Noll, and Weingast 1987, 1989) places the initial statutory frameworks for agencies at the center of the research question, and such statutes have been scrutinized since the days of Robert E. Cushman (1941) and Marver H. Bernstein (1955).

Previous attempts to look at a connection between the statutory constraints of agencies and divided government have examined only statutes passed after the agency’s creation in specific policy areas such as Medicaid (Huber, Shian, and Pfahler 2001) or trade (Epstein and O’Halloran 1996). These studies have exploited variation in statutory constraints either longitudinally (Epstein and O’Halloran 1996) or cross-sectionally across the U.S. states (Huber, Shian, and Pfahler 2001). We examine the charter statutes for each federal agency created since 1946, and thus exploit cross-sectional variation of a different sort: differences in the specificity of delegation that Congress provides to the various and many federal agencies that were created in the second half of the twentieth century. One other study has adopted this approach (Lewis 2003), but it restricts its attention to one facet of delegation: limits on agency head selection. The
more direct constraints on executive discretion contained in statutes remains unexplored (Lewis 2003, 165).

Our examination of the guiding statutes of federal agencies leads us to conclude that divided governments delegate authority to the executive with significantly more detailed and constraining statutes than unified governments. In demonstrating this pattern, we use the number of words in an agency's guiding statute as a proxy for the degree of specificity of statutory control by Congress. This is an established approach to the measurement problem (Huber, Shipan, and Pfahler 2001). Our results at the federal level are consistent with many findings that divided government leads to changes in the kinds of statutes on which Congress and the president can agree.

Perhaps because of the idealization of responsible party government, observers of American politics tend to consider unified government (single-party control of all the institutions of government) as the polar opposite of pure divided government (in which one party controls the executive and the other party controls the legislature). Split chamber control, or quasi-divided government (in which the executive's party holds a majority in one of the legislative chambers), often is seen as an intermediate condition, with consequences that fall between unified and pure divided government.

Mayhew, for example, discounts the distinction between pure and quasi-divided government. From his perspective, “for lawmaking purposes, 1981–86 is formally just like any other divided time” (2005, 5). While purely theoretical, McCubbins and Page (1987) very specifically posit that divided government involving split-chamber control leads to greater delegation to the executive with more specific controls than divided government involving unified chambers. Huber, Shipan, and Pfahler (2001) distinguish between pure and quasi-divided government but find that, as an empirical matter, pure divided government is the condition largely responsible for their findings. McCubbins (1991) and Binder (1999) are rare exceptions to the literature on this score, in that they identify divisions within and across the congressional chambers as the real culprits in the budgetary failure and statutory deadlock that we see under divided government. Whereas most scholars emphasize the consequences of legislative-executive conflict in divided government, McCubbins and Binder emphasize the largely Congress-centric aspects.

In fact, the strongest evidence in favor of our conclusion about the consequence of divided government comes from the statutes passed when the two chambers of Congress were held by opposing parties. Because virtually all of the process of writing and amending statutes is conducted by and among legislators, it should not be surprising to find that conflict between the chambers is especially important in affecting the content of legislation. But scholars of Congress and the presidency would reach precisely the opposite conclusion if they relied on Huber, Shipan, and Pfahler’s (2001) examination of state-level Medicaid statutes; Epstein and O’Halloran’s (1996) analysis of federal trade statutes is not informative on this point.

Across the full range of delegations to the executive evident in charter statutes of all postwar federal agencies, the tendency of divided government to generate more specific statutory constraints on agencies is real. Thus, our results bolster existing studies that conflict with Mayhew’s (2005) assertion that divided government does not have an effect on legislative outputs. Our results particularly emphasize split control of the legislature as a determinant of legislative production, and therefore buttress McCubbins’s (1991) and Binder’s (1999) very reasonable expectation that interchamber conflict will be a particularly important component of the divided government experience, when it is present.

Data
We examine every statute that created a federal agency between 1946 and 1997, as identified in Lewis’s Administrative Agency Insulation Data Set.1 Agencies created by executive order, reorganization plans, cabinet secretary orders, presidential directives, presidential letters, cabinet secretary directives, administrative orders, or memos were eliminated from the study because the process and outcome of such documents does not involve coordination of the executive and legislative branches. After applying this filter, 190 agencies were identified as created by federal statute between 1946 and 1997. The Lewis data set also identifies the legislation that created each agency using the Statutes at Large reference system. The text of each agency's guiding statute subsequently was obtained through Westlaw.

Variables and Hypotheses

Dependent Variable
The dependent variable for this research adopts the operationalization of Huber, Shipan, and Pfahler (2001). The dependent variable, which seeks to measure statutory control and agency discretion, is the number of words in the guiding statute of each agency created in the post–World War II era. It is natural to expect that agencies that have longer guiding statutes would have less discretion. Conversely, agencies created with shorter charter statutes would enjoy a greater degree of policy discretion.

Although not an ideal measure, a word count of charter legislation for agencies is a useful indicator of statutory constraint. hjk
of this proxy among state Medicaid statutes. At the federal level, consider the striking differences between the statutes that created the National Highway Safety Agency (NHSA, Public Law 89-564, 1966) and the National Highway Traffic Safety Administration (NHTSA, Public Law 91-605, 1970). The NHSA was created by a 4,000-word statute in 1966; the NHTSA was created by a statute slightly short of 18,000 words long in 1970. The NHTSA statute is both broader and more specific than the NHSA statute.

For example, the NHSA was directed to develop general highway safety standards and programs. The NHTSA was similarly directed, but Congress specifically highlighted some of the elements of such standards and programs when creating the agency in 1970, such as bridge reconstruction and replacement, railway crossings, support for mass transit, and right-of-way acquisitions. By contrast, a study of alcohol consumption and highway safety was the only specifically enumerated element of the NHSA mandate. The 1966 law required the NHSA to transmit four reports to Congress annually, while the 1970 law required 11 annual reports and provided many more instructions about the expected contents of the NHTSA reports. Budget authority for the NHSA was provided in the 1966 statute in 453 words, while the detailed budget authorization and limitations on use of funds to NHTSA in 1970 runs almost four times as long (1,670 words). The more detailed budget authorization was more limiting to the NHTSA, illustrated by the fact that funds for the training of federal, state, and local highway employees were earmarked in the 1970 statute for a National Highway Institute, while it had been left generically within the NHSA budget authorization in the 1966 statute. Both the NHSA and NHTSA were to be headed by Senate-confirmed appointees, but Congress’s reach at the NHTSA was deeper in that a Senate confirmation requirement was established for a deputy administrator.

Independent Variables

The primary independent variable for the purpose of this study is the presence or absence of divided government during the year in which the agency statute was enacted. Divided government is included as a simple dummy variable, coded 1 for the presence of divided government in any form when the guiding statute was passed and 0 for the absence of divided government (unified government).

As table 1 reports, the data available are spread equally between periods of unified and divided government, though the instances of quasi-divided government constitute only a small portion of the divided government experiences. Agency statutes created under divided government make up about 56 percent of the sample (N = 106), while statutes created under unified government make up about 44 percent of the sample (N = 84).

While researchers within bureaucratic politics disagree as to who controls the bureaucracy, all agree on one thing—both the president and Congress seek to maintain their influence over the bureaucracy. This tug-of-war creates a situation in which each branch seeks to gain an edge over the other. A Congress of the opposite party of the president is especially motivated to maintain control over federal agencies and avoid tipping the balance of power in favor of the executive. If the president’s party also controls one of the legislative chambers, the remaining chamber retains a statutory blocking position, and it may be especially inspired to “hardwire” its position of power into agency policies by virtue of detailed statutory protections against future changes in policy. As Moe points out, oftentimes legislators want to “remove important types of political decisions from future political control” (1989, 274). Both facets of divided government may prompt legislators to write more specific statutes when creating administrative agencies. In this way, it becomes difficult for the president or future legislators to shift agency policy. As a result of the political struggle between Congress and the president, as well as between the two chambers, we would expect,

\[ H_2: \text{Divided governments create longer guiding statutes for executive agencies than unified governments.} \]

McCubbins and Page (1987) address how a particular type of divided government (split-chamber control, or quasi-divided government) may influence the manner in which authority is statutorily delegated to the executive. In their view, division within the legislature leads to more extensive delegation of authority to the executive and the provision of a wider array of policy tools to the executive. It also leads to the enactment of stricter controls on the procedures that agencies employ and greater demands for reports from the agency to Congress. They do not explicitly state as much, but we note that expansion of the scope of authority, provision of additional policy instruments, erection of procedural hurdles, and requirements for more detailed reporting all necessitate longer and more detailed statutes.

As an empirical matter, McCubbins (1991) finds that quasi-divided government was particularly important in driving the expansion of the executive, at least in terms of the federal budget. On the other hand, Binder (1999) finds that pure divided government has a greater impact on legislative gridlock than quasi-divided government, generally speaking. While Huber, Shipan, and Pfahler (2001) find that state legislatures are more likely to make use of statutory controls when legislative control is split, the difference is not significant among the 1995 state Medicaid statutes that they examined.

Thus, an alternative specification for divided government may distinguish between the impact of pure divided government and quasi-divided government based on the length of agency guiding statutes. These measures also help draw a distinction between interbranch conflict between Congress and the president, and intrabranch conflicts between the two chambers of Congress. Pure divided government is scored as a simple dummy variable, coded 1 when both houses of the legislature are controlled by the same party and the presidency is controlled by the opposite party, and 0 when any other combination of control exists. Quasi-divided government is scored 1

\[ \text{Quasi-divided} \]

Table 1 Prevalence of Agencies Created under Divided Government (1946–97)

<table>
<thead>
<tr>
<th>Type of Government</th>
<th>Number of Agencies Created</th>
<th>Time Period</th>
</tr>
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<tbody>
<tr>
<td>Quasi-divided</td>
<td>9</td>
<td>1981–86</td>
</tr>
</tbody>
</table>

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when each chamber of Congress is controlled by an opposing party. In the years covered by Lewis's data, only nine statutes that created an executive agency passed under quasi-divided government—all during the same six-year period (1981–86), so there is a risk that parsing divided government will be problematic empirically. But, as we show, the signal from those cases is very strong, so the distinction between pure and quasi-divided government becomes both feasible and instructive. We expect the following:

H1p: Pure divided governments create agencies with longer guiding statutes than unified governments.

H1q: Quasi-divided governments create agencies with longer guiding statutes than unified governments, and the distinction between statutes created by unified and quasi-divided governments is even greater than that between unified and pure divided governments.

Two additional nuances are excluded from our examination of the link between divided government and statutory constraints: the size of congressional majorities and presidential approval. The only study to consider such factors (Lewis 2003) does so at the expense of distinguishing between the House and Senate. Lewis includes sets of two-way and even three-way interactions between divided government, congressional majority strength, and presidential approval, but accomplishes this only by defining divided government as a single summary measure encompassing both pure and quasi-divided government scenarios, and by measuring congressional majority strength only in the House. To properly execute these additional investigations while distinguishing between chambers would require the inclusion of as many as 12 interaction terms, which is not feasible. Therefore, we leave the investigation of the subtleties of presidential approval or majority strength as beyond the scope of our analysis.5

We include several additional variables in our regression model of charter statute specificity because they are potentially collinear factors leading to longer or shorter guiding statutes enacted by Congress. The work of Krause (1996, 1999) and Carpenter (1996) points to the importance of an agency's budget as a constraint. Though these authors focus on the use of the budget as a tool of control, the budget of an agency might serve as a control for the varying scope of authority among different agencies. It is reasonable to suggest that agencies with more employees and larger budgets might require Congress to provide more detail on the structure of the organization, all else being equal. McCubbins suggests that budget dollars flow more freely under divided government, and especially under quasi-divided government (1991, 140). Thus, longer statutes might be only spuriously related to divided government by virtue of larger budgets. The inclusion of a control for the initial budget of the agency serves to remove the spuriousness. The initial budget is measured in real dollars appropriated by Congress for the agency's first fiscal year of existence. Budget figures also are adjusted to 1992 dollars, to compensate for inflation, and scaled in tens of billions in the analysis. Thus, we expect that the larger the initial budget allocation for an agency is in its first year, the more specific the guiding statute should be. The smaller the initial budget allocation for an agency in its first year, the more general the guiding statute should be.

Sunset provisions are another important control in a model of statute length. Laws that specify an automatic expiration for an agency allow Congress to delegate more authority to the agency without as many statutory constraints on the agency's authority. When the sunset date for an agency arrives, Congress can review the agency at that point and determine whether, based on agency performance, it will pass a law that will extend the existence of the agency. Because this period of review is enacted in advance, often this pushes bureaucrats to more closely follow the preferences of Congress, even in the absence of specific statutory instructions. The sunset variable is scored 1 if the guiding statute specifies a specific termination date for the agency, and 0 if the statute does not contain a sunset provision.6 Thus, we would expect that charter statutes containing sunset provisions will be more perfunctory and leave greater discretion to administrators.

Arguably, the length of a charter statute is partly a function of the type of organization that is being created. Certainly, scholars recognize marked differences between independent agencies (including regulatory boards and commissions), cabinet-level departments, advisory committees, and government corporations.7 The creation of a new cabinet-level department is the most high-profile sort of legislation, and delegates authority to agencies most closely under the control of the executive; therefore, such statutes might be expected to be more lengthy. Independent regulatory commissions are traditionally conceived and practically run as extensions of Congress with significant insulation from the White House, so charter statutes for such agencies might be significantly shorter, all else being equal. Because government corporations are likely to head off in directions dictated by the market, in spite of opposition from elected officials, statutes creating such agencies might also exhibit more detailed constraints up front.

All told, we constructed dummy indicators for each type of agency and treat their inclusion as fixed effect controls (leaving independent regulatory commissions as the baseline category in the specification). Thus, we expect that executive agencies, whose leadership serves at the pleasure of the president, are created with more specific charter statutes relative to agencies created as independent regulatory boards or commissions, and that the creation of a government corporation involves more specific agency statutes than the creation of an independent regulatory board or commission.

Any consideration of the kinds of statutes created by Congress ought to take into account the 1975 congressional reforms. The rule changes implemented at the beginning of the 94th Congress led to significant alterations in committee and floor practices. As Bach and Smith (1988) note, 1975 capped a period of explosion of amendment activity and participation by the rank-and-file in the House of Representatives. Part of this shift came in response to changes in recorded voting; a second contributor was House reforms to its committee system that handed more bill management responsibilities to younger and less experienced subcommittee members. In creating “subcommittee government” (Davidson 1981), the 1975 reforms reacted to and tended to exacerbate the trend toward giving the floor a greater role in shaping legislation. And, as Ogul (1981) has suggested and Bawn (1997) has demonstrated, formal statutory control of agencies is typically favored by non-committee members, while committee members prefer informal means. It is natural to
expect that these changes in Congress led to longer statutes with greater specificity. Thus, a 1975 Reform variable, scored 1 for all statutes passed by the 94th Congress or thereafter and 0 for prior statutes, is included in the analysis. We expect that when post-1975 Congresses created new agencies, they did so with longer statutes.

We also control for the U.S. Supreme Court’s ruling in Immigration and Naturalization Services v. Chadha (1983). Before the Chadha ruling, Congress often made use of the legislative veto, which allowed members to veto the actions of administrative agencies by way of resolution. The use of the legislative veto allowed members to delegate more authority to agencies while maintaining the ability to rein in the exercise of that discretion, in specific instances. One would expect Congress to resort to lengthier statutes and more specific agency controls after legislative veto provisions became unavailable to them. Hence, it is important to include a variable to indicate whether the presence of a legislative veto affects the level of specificity in an agency’s guiding statute. The variable is scored 1 for all agencies created after the Chadha decision, and 0 otherwise. We expect that when statutes were passed to create agencies after 1983, they were longer.

Huber and Shipan’s (2002) work on state agencies asserts that in order to properly analyze agency discretion through a word count variable, analysis must be conducted within the confines of a particular policy area. The primary reason for this assertion is that different policy areas, by default, might require longer statutes than others. To control for this potential problem, we include controls for three policy areas: foreign, social, and economic policy. This typology was utilized in Lewis’s (2002) data and derives from the work of Clausen (1973). Foreign policy, social policy, and economic policy each are scored 1 when an agency falls into that policy category and 0 otherwise. We leave agencies that handle general policies as our baseline category.

Finally, it is important to include an additional control for any potential (and perhaps uninteresting) trend toward longer statutes that may be evident in congressional productivity. The inclusion of a trend ensures that the 1975 and 1983 measures correctly estimate the impacts of those important institutional changes, and ensures that any trends in any of the other independent variables do not contaminate the estimate of their impact on statute length. As a result, a simple countervariable for the Congress number that passed the charter statute for the agency is included in the specification. We expect that later Congresses created longer and more detailed delegations of authority to the executive.

**Method**

Because the dependent variable in this case is nearly continuous, it may seem that ordinary least squares regression would be adequate. However, ordinary least squares residuals depart significantly from normality, based on a Jarque-Bera test. They exhibit significant skew ($p < .001$) as a result of the lower boundary on the dependent variable. Instead, an event count model is more appropriate for this dependent variable. After all, as a count of the number of words in each statute, the dependent variable is an event count. Figure 1 clearly illustrates that exponential character of the distribution for the dependent variable. Further scrutiny demonstrates that a negative binomial model is the correct statistical treatment.

**Results**

The results from two models are presented in table 2. The first column of table 2 presents the results of a model oriented around divided government as a legislative–executive phenomenon. The second column of table 2 presents the results of a model recognizing the distinctions in divided government between legislative–executive divisions and interchamber divisions.
The primary independent variable for model 1, divided government, affects the dependent variable in the expected direction with a positive coefficient and confirms hypothesis 1. After controlling for all other relevant factors, divided government, as shown in column 1 of table 2, has a large positive and statistically significant effect on the number of words in a given agency’s guiding statute. The coefficient for the variable demonstrates that divided governments create new agencies in the executive branch with statutes that are 48 percent longer than those crafted by unified governments, all else being equal. Given that the average number of words creating any agency is 23,899 words, this is a predicted 11,471-word increase in the size of an average law.

The second column of table 2 presents an alternative specification using measures of pure and quasi-divided government instead of the more generic and encompassing measure of divided government from model 1. The results demonstrate that the initial estimation obscures an important distinction. Pure divided government remains statistically significant, and the estimated effect of pure divided government is within the same general range as the estimate of the effect of generic divided government contained in model 1. Periods of pure divided government increase the average number of words in an agency’s guiding statute by 38 percent. But quasi-divided government is even more strikingly significant and important in driving legislative specificity. The coefficient for quasi-divided government achieves statistical significance at the .01 level and has the largest impact of any variable in this specification. The presence of quasi-divided government leads to a 181 percent increase in the number of words relative to unified government. Thus, when partisan control of the legislative chambers is split, the statutes they produce to delegate authority to the executive are almost three times as long. As Moe points out, “legislative victory of any consequence almost always requires compromise” (1989, 275). These compromises might come in the form of less detailed statutes, but the evidence clearly suggests the contrary—that circumstances of greater political conflict among legislative participants lead to longer and more detailed statutes.

Larger agencies, as indicated by larger initial budgets, are not associated with longer guiding statutes, according to the results in both model 1 and 2. Not only does the coefficient move in an unexpected direction, but also the effect of the coefficient is statistically indistinguishable from zero in either model. The established literature on bureaucratic budgets emphasizes the signaling aspects of incremental adjustments to existing budgets (Carpenter 1996). The pattern seen here does not contradict these findings because there is no dynamic component to our analysis. We only assert that the initial budget of an agency is unrelated to the degree of specific instructions initially handed to a new agency.

Like the budgetary prediction, the hypothesis that agencies created with an automatic sunset will be generated by less specific statutes also has a dynamic element, and is not borne out in this static analysis. The variable for the inclusion of a sunset provision in the guiding statute of the agency fails to achieve statistical significance at the .05 level in both models 1 and 2. Evidently, members of Congress do not view sunset provisions as a means of controlling the agency in a way that would offset the need for specific constraints on the agency at the outset. Even though some agencies are created with an automatic expiration date, the opportunity to renew (and perhaps revamp) the agency will arise for a potentially different majority coalition. Because this is the case, members may seek to outline agency functions more clearly even in spite of the inclusion of a sunset provision. Alternatively, because agencies created with sunset provisions only have a limited amount of time to achieve their goals, members of Congress may want to more clearly outline the goals, responsibilities, and functions of the agency in order to guarantee the agency achieves its congressionally determined mission.

The hypothesis that the creation of cabinet-level agencies or government corporations will be attended by more specific instructions and constraints is not supported by the analysis. Neither coefficient is statistically distinguishable from zero or from one another. These results fail to support Moe’s (1989) assertion that the type of organization created affects how Congress views discretion.

There is some evidence that agencies created to address social policy are chartered with longer statutes that provide more detailed instructions limiting their discretion. The coefficient for social policy is statistically significant in the generic divided government model, indicating that social policy statutes are significantly longer than the baseline generic category of statutes. But in both models, Wald tests confirm that social policy statutes are significantly longer than either those of foreign policy or monetary policy (∼.05 for all four tests). Thus, charter statutes for social policy agencies such as the Office of Community Services (297,242 words) or the Office of National Drug Control Policy (166,373 words) tend to be longer with more detailed instructions, all else being equal.

The results for the congressional reforms of 1975 support our hypothesis in both models. These internal congressional reforms, associated with subcommittee government, increase the specificity of delegation to new executive agencies. As Bach and Smith (1988) note, the 1975 reforms were intended to give more power to subcommittees and their members, and they resulted in more entrepreneurial activity by members of the House. Sinclair (1989) shows that a similar move toward universalism and increased activism of the rank-and-file occurred in that period in the U.S. Senate. Thus, we can envision a post-1975 Congress that has had to satisfy the demands and political needs of more members. As a result, legislation increased in size and complexity to accommodate the varied political demands of members. Based on the coefficients in the second column, legislation passed beginning with the 94th Congress was 84 percent longer. Delegations of new authority to the executive since 1975 have been more detailed and specific, to the tune of more than 20,000 words, all else being equal. The results in the first model are even stronger.

The Supreme Court’s 1983 ruling in Chadha is associated with a substantial impact on subsequent legislation. The results for Chadha have the second-strongest impact of all variables on the length of guiding statutes, demonstrating that statutes written after the landmark decision are 102 percent longer, based on the results in column 2. This means that the average post-Chadha statute creating an agency is a little more than twice as long.

Finally, the measure for the effect of the passage of time on the average length of a guiding statute is minimal, and the coefficient for a
linear trend is insignificant. If the 1975 and 1983 shocks are omitted from the specification, none of the other conclusions is affected, but the linear time trend becomes highly significant. Once the 1975 and 1983 factors are accounted for, there is no remaining significant trend toward longer statutes. That is, delegating statutes have increased over time, but not inexorably. The trend toward longer statutes has come instead in two very clear shocks to the system.

Conclusion

While Mayhew’s (2005) study found that divided government has no impact on one facet of congressional output (the passage of important legislation), the results of our study bolster many existing studies that provide evidence to the contrary. Divided governments produce more specific statutes when authorizing the creation of new agencies than unified governments. If a federal agency is created under unified government, clientele groups tend to be rewarded with an agency that is less bound by statutory controls and more able to serve the needs of clients.

Readers who believe that divided government is a consciously crafted outcome of the electorate may find solace in the fact that divided government and interbranch conflict in Congress lead to less discretion for administrative agencies. But the starkest evidence of this pattern appears to be specific to the legislative branch. Our more careful discrimination between different types of divided government shows that the specificity of agency statutes is more heavily influenced by interbranch congressional conflict than by interbranch legislative-executive conflict. It appears that executive involvement in the statutory process is, in the grand scheme of things, relatively less important in determining legislative outputs.

It might seem that the frequent creation of new federal agencies in twentieth-century U.S. politics amounts to an abdication of authority from the legislative branch to the “headless fourth branch of government.” This perceived shift in power raises concerns about democratic governance because when a larger share of policy decisions are made by bureaucrats, the possibilities for electoral accountability seem stunted. But there has been significant variation in the degree of discretion granted by Congress to the executive, and discretion has been significantly less open-ended during divided governments. There are ways to limit a bureaucracy, and those governments in greatest disagreement about policy goals have established the most thorough bureaucratic limits.

The impacts of divided government that many scholars have documented in legislative activities have a ripple effect that extends into the bureaucracy. In those periods when voters seemed to vacillate between the major parties, elected officials have not so willingly handed over the reins of power to unelected bureaucrats.

We conclude by noting that although our analysis does not examine the actual decisions of agencies as they exercise their discretion, future studies of such behavior might profit by considering the discretionary context within which an agency’s mandate was created.

Those bureaucracies created by pure (or especially by quasi-) divided governments are typically operating within a significantly more restrictive structure and process.

Notes

2. The indicators and determinants of legislative control over agencies created through non-statutory means are likely to be quite distinct from the political model that we have presented. The vast majority of agencies (170 out of 207) created through non-statutory means are born of secretarial orders, and thus require no formal negotiation with Congress. That being said, note that roughly half of all agencies were created under divided government, and that portion holds true regardless of whether one examines nonstatutory or statutorily created agencies. Therefore, there is no obvious evidence that creation of agencies by executive action substitutes for legislative creation in a way that causes problems for our inferences.
3. The word count only includes the initial charter of an agency. Future amendments to the initial charter are not included in the word count. In the rare instances in which a single statute created multiple agencies, each agency appears as a separate observation, and the word count for the statute is divided by the total number of agencies created.
4. These figures are based on words counts of each section of each law for which the word “appropriation” appears in the margins.
5. For that matter, our analysis does not investigate the additional subtleties of conflict between oversight committees and subcommittees, or of conflict involving clientele groups. Investigation of such factors within our data design would make it infeasible to clearly assess the differences between pure and quasi-divided government, by requiring large numbers of interaction terms.
6. Alternative methods of coding the sunset variable are possible, given that statutes occasionally specify a possible termination date without necessarily providing for an automatic expiration of authority. For example, a few statutes granted the president the authority to affix a termination date to the agency, following his signing of the act. Coding such statutes as exhibiting an intermediate level of “sunsetting” or lumping such statutes together with statutes containing clear and automatic sunsets proved unnecessary and inappropriate based on our statistical analyses.
7. This typology is borrowed from Meier (2000).
8. It should be noted that there are additional structural differences between independent agencies (those independent of a cabinet level department) and independent regulatory boards and commissions, whose independence denotes protection from removal by the president. We found no statistical basis for distinguishing between independent agencies such as the Environmental Protection Agency from cabinet-level agencies such as the U.S. Department of Education.
9. This variable also might be thought of as a “Watergate” variable, in that it measures the impact on tightened control from Congress over the executive branch in the aftermath of the events following the Watergate scandal. Either way, this variable assists in measuring the impact of the post-1974 period on statutory delegation to the executive.
10. The reported results present only a linear time trend control because nonlinear specifications can be statistically rejected.
11. A likelihood ratio test allows us to reject the parsimonious Poisson model in favor of the overdispersed negative binomial model (p < .001).
12. A Wald test confirms that the coefficient for quasi-divided government is significantly larger than the coefficient for pure divided government (p < .05).
13. We recognize a concern for endogeneity with respect to controls for the budget, structural features, and sunset provisions. While endogeneity is certainly a problem worth considering, the exclusion of multicollinear factors tends to bias the coefficients upward. By retaining these factors in our model, our results on the primary independent variables of divided government are conservative. We ran a separate model that excluded these factors and obtained similar results for our key independent variables.

14. One additional concern with respect to the budget variable is that observations with extreme values may skew the results presented. To adjust for this potential problem, we logged the values of the budget variable and ran a permutation of the results presented here. Results for this model were similar to the results presented here, and the logged budget variable failed to achieve statistical significance.

15. For both models, a squared trend variable fails to achieve statistical significance ($p = .978$ for model 1, and $.328$ for model 2). This demonstrates that a linear characterization of the relationship is appropriate.

References


