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GROUP CONCENTRATION AND THE DELEGATION OF LEGISLATIVE  
AUTHORITY

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### INTRODUCTION

The conference mandate specifies that the papers should demonstrate the possible contributions social science disciplines other than economics can make to the study of regulatory policy making. That seems an innocent enough request in the case of psychology and anthropology, but perhaps less so in the case of law and political science. These latter disciplines already possess large literatures on the subject of regulation. Thus, our mandate would seem to imply that these literatures amount to less of a contribution than their size might suggest. The lawyers can speak for themselves --- they always do --- but what about political science?

Having explored the political science literature on regulation in recent years, it appears to me that political scientists too often overlook their discipline's comparative advantages. When it comes to describing the consequences of regulation economists have an edge (though political scientists pay relatively greater homage to distributional gods), and when it comes to description of the ongoing regulatory process, lawyers versed in administrative law, sociologists knowledgeable in the ways of organizations, and journalists steeped in context, all have a specific strength on which to build. Granted, political scientists can and do learn economics, law, sociology and journalism, but what special strength do political scientists have,

especially if they reject -- as some do -- the notion that the larger political system exerts a systematic and significant influence on regulation? What is the distinctive contribution professional political scientists, qua political scientists, can make to the study of regulation?

The answer, I think, is pretty obvious. When economists evaluate the outcomes of a regulatory program they are judging the ultimate consequences of choices made by elected officials who authorized the program. When lawyers, sociologists, journalists and others observe the operation of the regulatory process they are viewing behavior undertaken within the constraints imposed by the elected officials who set that process in motion. From a political science standpoint, the first question in the study of regulation should ask why we have a policy at all -- an inquiry typically undertaken in blow-by-blow descriptive fashion. And once the existence question is addressed, the obvious and perhaps more interesting corollary arises: why does the policy take the form that it does? Under what conditions do legislators delegate to administrators rather than rely on judicial enforcement of statute law (the Act to Regulate Commerce of 1887 is a watershed). A shrug of the shoulders and a sigh that "It's all so complex nowadays" falls short of an adequate scientific explanation. Under what conditions do legislators adopt specific mandates (e.g. parts of the Clean Air and Clean Water Acts) rather than vague and platitudinous wish lists (e.g. the Communications Act of 1934)? This is the concern which Lowi

(1979) has eloquently articulated. Under what conditions do legislators opt for command and control (Schulz, 1977) policy instruments rather than conceivable alternatives which have superior efficiency properties? Frustrated economists criticize such perceived nonoptimal choices. Questions like these suggest a natural political science focus on regulatory origin which in turn suggests a focus on legislatures, for regulatory origin is in great part a legislative game.

This paper takes an initial stab at the delegation question. What incentives lead legislators to delegate not only the administration but even the formulation of public policy to unelected officials? A variety of considerations are relevant, but my focus will be on political (rather than managerial) incentives to delegate. The next section of the paper develops a simple framework in which the later discussion can be conducted.

#### THEORETICAL FRAMEWORK

In analyzing legislative calculations I will build on Shepsle's and Weingast's (1980) discussion of legislator objectives in a single member district system. Their model postulates that a legislator attempts to maximize his probability of re-election, which is assumed to be a monotonically increasing function of the district net benefits function:

$$N_j(x) = b_{1j}(x) + c_{1j}(x) - c_{2j}(x) - t_j T(x) \quad (1)$$

$N_j(x)$  represents the net benefits to district  $j$  from a government activity, project or program carried out at a level,  $x$ , where  $x$  is a vector of characteristics describing the policy.  $b_j(x)$  summarizes the benefits of the government activity to district  $j$ , while  $c_{1j}(x)$  summarizes direct program expenditures in district  $j$ . Note that the legislator regards these as benefits, i.e.  $c_1$  costs appear with a plus sign in the net benefit function. Direct program expenditures in other districts, of course, are regarded as costs. These accrue in a total tax bill,  $T(x)$ , of which district  $j$  pays a share,  $t_j$ . Finally,  $c_{2j}$  represent the external or indirect costs of a program (e.g. compliance costs, higher prices). All benefits and costs are present-value discounted.

The preceding formulation is a generalization of analyses of distributive (i.e. particularized) policy making (Florina, 1981; Weingast, Shepsle, and Johnson, 1981). Distributive policy is a special case in which  $c_{2j}$  costs are regarded as zero by the legislator. Shepsle and Weingast (1980) suggest that regulatory policy might be treated as a special case in which the legislator regards public expenditure costs as negligible (Green and Nader, 1973; Weidenbaum, 1980), thus reducing (1) to the following simple formulation:

$$N_j(x) = b_j(x) - c_{2j}(x) \quad (2)$$

If the benefit function is assumed to increase with the components of  $x$  at a marginally decreasing rate while the cost function increases at

a marginally increasing rate, then (2) will be single peaked. Moreover, if  $x$  is taken to be a scalar measure of government involvement, then Black's median dominance theorem yields a majority rule equilibrium in the legislature, namely the median of the individual legislators' maxima,  $\text{med max}_j N_j(x)$ . At equilibrium, marginal benefits equal marginal costs for the median legislator, and if the net benefits functions are normalized so that the net benefits of the status quo are zero, then  $b_j(x) \geq c_j(x)$  for a majority of the legislators. Though the assumption of a scalar  $x$  is very helpful in the search for legislative equilibrium, it is not necessary for an analysis of the induced preferences of individual legislators.

From a formal standpoint (2) is so simple as to appear trivial. From a substantive standpoint, however, (2) implicitly makes a number of nontrivial presumptions. First is the aforementioned district orientation: legislators evaluate government policies solely in terms of benefit and cost incidences on their districts. This assumption is probably more accurate than not, though the increasing geographic mobility of campaign resources introduces some slippage. Second, (2) assumes a retrospective voting electorate. The incumbent's probability of re-election depends not on his position vis-à-vis a challenger, but on the actual delivery of benefits to the district. Given information levels in national elections (Florina, 1982), this assumption too, appears to be more accurate than not. Third, (2) assumes that legislators maximize issue-by-issue, which would seem to imply a considerable degree of issue independence or

separability. While in many cases the latter does not hold, in view of legislator uncertainty about the future shape of the agenda (Florina, 1974, pp. 81-83), legislators proceed one issue at a time anyway. Finally, (2) is an "objective" calculation; it summarizes the actual benefits and costs of government activity (discounted, but by constituents, not the legislator). In reality, benefits and costs are rarely fully and/or symmetrically perceived. In the distributive arena, from which the model arose, the assumption is reasonable because of the tangible nature of government programs. When we move to the regulatory arena, however, particularly the newer regulation, the costs and benefits of government programs are far more difficult to identify, let alone attribute.

Two general classes of factors would produce less than perfect perception and attribution of programmatic effects. The first is characteristics of the effects themselves -- what is their nature and to whom do they accrue? The second is characteristics of the program -- the process by which effects are produced affects how they are ultimately attributed. The body of this paper takes one factor from each class and analyzes its effects via further modifications of (2). From the first class we take group concentration, and from the second we take delegation of legislative power. Is there any relationship between the two?

#### GROUP CONCENTRATION

The first modification of (2) involves recognition that the

benefits and costs of government programs are not perfectly perceived. Indeed, legislators spend considerable time and effort trying to enhance perceptions of program benefits (Mayhew, 1974). Thus, the legislator would begin with a net benefits function which takes account of the probabilities with which changes in district welfare (i.e. net political benefits) will be associated with government programs:

$$N_j(x) = p_j b_j(x) - q_j c_j(x) \quad (3)$$

$$\text{where } 0 \leq p_j, q_j \leq 1$$

Consider two classes of benefits, one of which comes in the form of official U.S. Treasury checks, the second of which comes in the form of cleaner air. Other things equal, the first entails a much higher  $p$  than the second. Similarly, consider two costs, one of which comes in the form of a draft notice, the second of which comes in the form of a .01% increase in the inflation rate. Other things equal (hard to imagine in this case) the first entails a much higher  $q$  than the second. The probabilities in question may reflect a variety of factors other than the form of the benefits and costs, but I assume that the legislator takes all relevant variables into account (including his own ability to affect  $p$  and  $q$ ) and forms estimates which obey the laws of probability. <sup>1</sup>

The second necessary modification of (2) reflects the fact that a legislator knows that he generally will not be held solely

accountable for the perceived net benefits. He can appropriate credit for a share,  $a_j$ , less than the full perceived benefits, and will suffer blame for a share,  $s_j$ , less than the full perceived costs. The magnitudes of these shares will reflect a variety of factors, including the legislator's party, committee positions, perceived reputation, and so forth, but generally speaking, the "bigger" the issue, the less accountable is an individual representative for the perceived benefits and costs. <sup>2</sup> When modified for anticipated success in claiming credit and shifting blame (3) becomes (4):

$$N_j(x) = a_j p_j b_j(x) - s_j q_j c_j(x) \tag{4}$$

$$\text{where } 0 \leq a_j, s_j \leq 1$$

Call (4) the politically relevant net benefits function. Initially, I will not treat  $x$  as variable. Instead assume that  $x$  has been exogenously specified by the executive, party leaders, an interest group or some other actor with agenda power. Then, in deciding whether or not to support  $x$  the rank and file legislator will calculate the politically relevant net benefits and support  $x$  if (4) is positive, i.e. if

$$\frac{a_j p_j}{s_j q_j} > \frac{c_j(x)}{b_j(x)} \tag{4'}$$

the legislator will support the proposed policy.

Thus, (2) is a special case of (4) in which information is perfect ( $p = q = 1$ ) or at least symmetric ( $p = q$ ), and political responsibility is total ( $a = s = 1$ ) or again, symmetric ( $a = s$ ). As mentioned, where benefits and costs are very tangible, and where the individual legislator carries the ball as in the distributive arena (Ferejohn, 1974), the special case may be approximated. But (4) is a more realistic formulation when we examine government programs more complicated than cement-pouring.

From the standpoint of government efficiency the implications of (4) are discouraging. Weingast, Shepsle, and Johnson (1981) have demonstrated that an assembly of district representatives would be exceedingly unlikely to choose a policy efficient in the standard sense of equation of marginal social benefits and costs. Condition (4') above suggests how district representatives could favor programs not efficient even in the weak sense of benefits in excess of costs. If the legislator believes that the benefits of the program are more visible than the costs ( $p > q$ ), and/or that he can claim credit for a program's benefits while evading responsibility for its costs ( $a > s$ ), he will favor programs whose costs to his district exceed benefits. Consider the following consequences of various  $p/q$  and  $a/s$  ratios:

	p/q					
a/s	1.00	1.50	2.00	2.50	3.00	3.00
1.00	1.00	1.50	2.00	2.50	3.00	3.00
1.50	1.50	2.25	3.00	3.75	4.50	4.50
2.00	2.00	3.00	4.00	5.00	6.00	6.00

The table entries show the maximum cost/benefit ratios for which a legislator would support a policy under the specified conditions. Thus, if a legislator believes that program benefits are twice as likely to be noticed as program costs, and that he could claim credit for a portion of the benefits twice as great as the costs for which he would bear responsibility, then he would be willing to support a program whose costs to his district were four times as great as the benefits. Mayhew (1974) has discussed the Congressional penchant for programs whose benefits are highlighted and costs hidden, and also Congressional procedures for claiming credits and evading costs, so there is reason to believe that legislative "sins of commission" as described above occur with some frequency.

Of course, an even-handed treatment should note that opposing asymmetries produce inefficiencies of the opposite nature. Consider the following examples:

				p/q
.25	.06	.13	.19	.25
.50	.13	.25	.38	.50
.75	.19	.38	.56	.75
1.00	.25	.50	.75	1.00

These examples show how legislative "sins of omission" occur. If a legislator believes that the benefits of a program are only half as visible as the costs and that he is twice as likely to bear responsibility for the costs as receive credit for the benefits, then

he would decline to support a program whose benefits to his district were not at least four times greater than its costs.<sup>3</sup> Under those conditions the politically relevant net benefits of a program whose cost/benefit ratio was only one-third would be negative.

It seems likely that all the various social science disciplines have something to say about the variables and conditions which would produce the kinds of asymmetries illustrated above. The one I will focus on is the relative concentration of those who receive the benefits and bear the costs of government programs. There is widespread agreement on the importance of group concentration for public policy formation. Schattschneider (1939), Buchanan and Tullock (1962) and Lowi (1964) consider benefit concentration and cost diffusion to be the hallmark of distributive politics, and in the regulatory realm Stigler (1971), Peltzman (1976), and Wilson (1976, 1980) all identify the distributions of regulatory benefits and burdens as a critical variable. Because the preceding names span a wide range of the methodological and ideological continua, objections arising from such sources should be minimized by focusing on the concentration variable.

When analysts attribute a legislative action to the relative concentration of regulatory burdens and benefits, what precise mechanisms underlie their arguments? Taking the asymmetric cases, concentrated benefits/diffused costs (CB/DC) and diffused benefits/concentrated costs (DB/CC), one could interpret the effects of relative differences in concentration in terms of the asymmetries

previously discussed.<sup>4</sup> A plausible interpretation of legislator support of "special interest" legislation would be that  $p_j > q_j$ , and  $a_j > s_j$ . The per capita stake of the losers is small. Thus, they are relatively less likely to realize their losses from the unfavorable legislation and to recognize any role their representative played in its passage. The members of the special interest, however, have a high per capita stake, a greater incentive to bear information costs -- perhaps enough to invest in a trade association or other formal organization. They are likely both to realize the effects of government actions on their welfare, and to keep tabs on the actions of individual legislators. The expected result? Legislative sins of commission.

In contrast, symmetrical arguments lead to an interpretation of the DB/CC case as  $p_j < q_j$ , and  $a_j < s_j$ . The concentrated and perhaps organized interests who bear the costs are aware of those costs and the legislators who imposed them, whereas the diffused and probably unorganized beneficiaries may not be cognizant of the benefits, let alone who provided them. The expected result is legislative sins of omission.

The discussion thus far has presupposed legislative consideration of a single policy option. Generally, of course, there are a variety of means to the same end. What is most important for our purposes, is that alternative means typically produce different politically relevant net benefit functions. Some will involve clear differences in benefits or costs, as when public policy decrees that

the path to clean water lies in a treatment plant for every community rather than effluent taxes. Or, different alternatives may induce different politically relevant net benefits by producing different  $p, q, a$ , or  $s$  estimates. The costs of clean water, for example, might be smaller but more visible if each household and firm received a monthly effluent tax bill. Other alternatives might serve to lessen the legislator's perceived responsibility for the impacts of a program. One such alternative is delegation of legislative authority to administrative agencies.

#### DELEGATION

Observers who complain about the supposed Congressional penchant for bureaucratic command and control actually confiate two charges -- that inefficient policy instruments are chosen, and that an inefficient or otherwise undesirable bureaucratic mode of implementation and enforcement is adopted. Both charges are important, but I will confine myself to the second, less obvious one.

To the contemporary observer legislative reliance on the administrative process looks very natural. Suggestions that enforcement of public policies should depend on the initiative of the individual litigant seem unnatural, if not silly. It was not always so. Congress fought for more than a decade over proposals to regulate the railroads, and though the short-haul long-haul controversy is better known, the most important issue concerned the method of administering the proposed law. According to Cushman (1941, p. 45):



The first major problem and also the last which confronted those working for the federal regulation of railroads was whether or not a commission should be set up to administer the law. It was generally agreed that federal control had become imperative, but those supporting such control were divided into two camps. The first, led by Judge Reagan of Texas, and chairman of the House Committee on Interstate and Foreign Commerce, demanded drastic regulation by statute to be enforced directly by the Department of Justice and the courts. Reagan was able to carry the House with him to the very last. The other group, headed by Senator Cullom, a former governor of Illinois insisted that federal regulation of railroads should be administered through a commission set up for that purpose. This vital difference of opinion persisted throughout the entire period of discussion and was only adjusted, as we have seen, in conference committee a few weeks before the actual passage of the Act of 1887.

Judge Reagan's "drastic regulation by statute" provided that violators

shall forfeit and pay to the person or persons who may sustain damage thereby a sum equal to three times the amount of the damages so sustained, to be recovered by the person or persons so damaged by suit in any district or circuit court of the United States . . . and the person or persons so offending shall for each offence forfeit and pay a penalty of not less than one thousand dollars . . . one-half of such penalty or penalties . . . to be paid to the informer (Haney, 1910, p. 296).

As the years passed, delegation to administrative agencies may have come to seem more natural, but even if delegation never again created controversy (which is not true), the political decision of 1887 calls for explanation.<sup>5</sup>

Even in the absence of historical evidence of a political choice between administrative and legal-judicial forms of regulation, one could still raise the question, why not attempt to regulate without extensive reliance on bureaucratic entities? Some academic critics of current safety and health regulation argue that careful design of liability law could provide firms with incentives to adopt

safety and health standards which in the long run would be equally beneficial and far less costly than current regulatory approaches. Or to take a less hypothetical example, in the debate over the Civil Rights Act of 1964 the individual v. federal role in enforcement was the subject of much attention. Consider that incentives-based schemes for regulating environmental pollution would probably lessen legislative reliance on the administrative process. Constitutional limitations on legislative delegation of the taxing power would virtually require that Congress set emissions tax levels (probably with the aid of specialized committee staff); the role of administrators would be downgraded to one similar to that of the IRS. One can make cogent arguments against proposals like the foregoing, to be sure, but that is equally true of the existing administrative forms of regulation. Why then, do legislators delegate, or, to foreshadow later discussion, under what conditions do they delegate?

The most common explanation of legislative delegation is complexity. This explanation views delegation as an inevitable feature of modern society. Problems are complex; time and other resources scarce; therefore, delegation. Certainly there is some merit in such arguments, but a little thought suggests that other considerations must be important as well.

In the first place, where is it shown that the complexity of public problems has grown faster than the capacities of elected officials to deal with them? The amateur legislators of the nineteenth century spent four to five months per year in Washington

spend full time on the job and are served by approximately 25,000 staff employees. Consider too that the justification (though not the explanation) for the transformation of the Congress into first, committee government, and then subcommittee government, was the purported specialized expertise such a division of labor would foster. Perhaps increases in resources and expertise have not kept pace with the increasing complexity of social and economic problems, but the case is not *prima facie* obvious.

Furthermore, Congress has delegated selectively, not across the board. And complexity is not the key variable. As Jaffe (1973, pp. 1189-1190) observes, "The monumental detail of the tax code suggests that Congress can, and does legislate with great specificity when it regards a matter as sufficiently important." This is not to deny any role for the IRS, but Congress does not pass tax bills stating that the IRS should set tax rates for the "public interest, convenience, and necessity."<sup>6</sup> There are any number of seemingly complex issues regarding which Congress has chosen to legislate. Where the incentive exists, legislators choose to deal with complexity and find the time and resources to do it.

A second reason to doubt the complexity explanation of delegation arises from an honest look at the ability of the administrative system to deal with complexity. "How could we possibly expect Congress to draw up standards for literally thousands of dangerous substances; delegation to an agency is obviously necessary." But has delegation solved the problem? TOSCA authorizes EPA to

regulate more than 50,000 potentially hazardous substances. Thus far, EPA has managed to address an average of less than one chemical per year of effort.<sup>7</sup> Is it not conceivable that augmented Congressional staffs could deal with complex issues equally competently and perhaps considerably faster than executive or independent agencies?<sup>8</sup>

Nor is it obvious that the traditional legal system is incapable of handling modern complex problems. Specialized courts already exist, and speaking generally of delegation to administrative agencies, Posner (1977, p. 480) argues

The idea was that Congress could not deal efficiently with the technical, particularistic, rapidly changing problems of a complex modern industry such as railroading....But this is an unconvincing explanation for the creation of the independent agencies. The regulation of railroads and of other industries that have been brought under the administrative process could just as well have been delegated to the courts, whose traditional province is precisely to formulate rules governing relatively technical economic activity, using (as we have seen) neutral, apolitical criteria such as efficiency. One can argue that the case method constrains the rulemaking effectiveness of the courts, but since the agencies have with rare exceptions relied exclusively on the case method as their legislative technique the argument provides little basis for preferring agencies to courts.

In short, the objective complexity of a public policy matter is far from a sufficient explanation for broad delegations of legislative authority.

A second explanation of delegation focuses not so much on legislative minimization of decision-making costs as on the quality of the resulting decisions. This is the old public administration model of the nonpolitical administrative process. According to this venerable view the administrative process has certain inherent

advantages over judicial enforcement of legislative enactments.

First, administration is conducted by nonpolitical officials who carry out the policy as intended by Congress. In contrast, dependence on the legal system entails delays, prohibitive expenses, inconsistency of legal interpretation across jurisdictions, and so forth. Secondly, the administrative process is more flexible than the legal process. Rather than embed public policy into law the Congress can state its general intent and allow the agency to fine tune the law to fit changing economic, social and technological conditions. Third, the complexity argument again, administration is conducted by experts who will do a job superior to nonexpert legislators and judges.

Whatever the merits of such arguments at one time, there is little in our overall historical experience which justifies the benign view of administrative regulation presupposed by the good government model. Such arguments still provide rhetorical ammunition on occasion, but it is doubtful that many serious observers regard them as the principal explanation for legislative delegation.

In its essential respects the complexity argument holds that delegation to administrators minimizes legislative decision costs, where the costs in question are "politically neutral" --- time, patience, staffers, and other resources. A number of observers, however, see in delegation an opportunity for legislators to minimize political costs. Woll comments (1977, p. 173):

A major reason for the power of the bureaucracy in policy formulation is the frequent lack of congressional incentives to adhere to the Schecter rule and establish explicit standards for

administrative action. This is particularly true in the regulatory realm, an area involving political conflict that legislators often wish to avoid. Congress is always willing to deal rhetorically with problems requiring regulation and with the area of regulatory reform but real decisions on the part of the legislature will undoubtedly raise the ire of powerful pressure groups on one side or the other that are affected by government regulation.

By charging an agency with implementation of the regulatory mandate, legislators not only avoid the time and trouble of making specific decisions, they also avoid or at least disguise their responsibility for the consequences of the decisions ultimately made. In terms of the model developed earlier, delegation affects legislators' estimates of  $a$  and  $s$ . Delegation of legislative authority to administrators shifts the responsibility for the costs and benefits public policies produce.

The remainder of this paper applies the legislative calculus developed earlier to the "shift the responsibility" theory of delegation. In order to focus clearly on the factor of diminished responsibility a number of *ceteris paribus* assumptions will be made. Policy instruments will be held constant so that the simple fact of delegation does not alter the association of benefits and costs with government activities (estimates of  $p$  and  $q$ ), nor the actual benefits and costs themselves. I assume that delegation only places added political daylight between the legislators and those who feel the incidence of legislative actions. In other words, delegation does not change the actual policy  $x$  that is adopted; rather, legislators agree with Mayhew (1974, p. 135) that "there is every reason to believe

that the regulatory agencies do what Congress wants them to do." Thus, for the present time I am skirting the principal concern of Professor Lowi, delegation without standards, which allows the law to be brokered, bargained and otherwise continuously transformed by administrators. Shifting legislative responsibility to administrators may well have an effect on the ultimate benefits and costs of the program, but for now I ignore that complication.<sup>9</sup>

#### GROUP CONCENTRATION AND SHIFTING THE RESPONSIBILITY

Whereas earlier the hypothetical legislator was deciding whether to support a particular policy, we now permit the legislator to choose between alternative means of implementing the policy. Define two conditional net benefits functions, one conditioned on a broad delegation of policy to an administrative agency (D), and one conditioned on a narrow delegation to a housekeeping agency or, as in the previously cited Reagan bill, no delegation to an agency at all (L):

$$N_j(x) | D = a_j^d p_j b_j(x) - s_j^d q_j c_j(x) \quad (5a)$$

$$N_j(x) | L = a_j^l p_j b_j(x) - s_j^l q_j c_j(x) \quad (5b)$$

The shift the responsibility (SR) assumptions are as follows:

$$a_j^l > a_j^d, \quad s_j^l > s_j^d$$

That is, the legislator believes that a broad delegation lessens his perceived responsibility for the ultimate costs of the program more than a narrow delegation (recall how quickly protest centered on Congress after the FDA acted to ban saccharin under the Delaney clause). The narrower the delegation the less able is the legislator to claim that the agency (or court) acted in violation of his understanding of the law. On the other hand, a broad delegation will also lessen the legislator's ability to claim credit more than a narrow delegation, because the perception of the agency as an independent actor responsible for its own decisions will be stronger. Thus, there will be a trade-off between a legislator's loss in ability to claim credit and gain in ability to shift blame, and his attitude toward delegation will hinge on the trade-off. The legislator will prefer the broad delegation if (5a) is greater than (5b) which implies

$$\frac{s_j^l - s_j^d}{a_j^l - a_j^d} \cdot \frac{q_j}{p_j} > \frac{b_j(x)}{c_j(x)} \quad (5')$$

The comparative statics of (5') are intuitively plausible. Ceteris paribus, legislator preferences for delegation increase with the costs of the policy, the probability of associating those costs with government policy (q), the probability of being held accountable for the costs of a non-delegated policy ( $s_j^l$ ) and the ability to claim credit for the benefits of a delegated policy ( $a_j^d$ ). Conversely, legislator preferences for delegation decline with the benefits of the policy, the probability of associating those benefits with government

policy (p), the ability to claim credit for the benefits of a non-delegated policy ( $a_j^1$ ), and the probability of being held accountable for the costs of a delegated policy ( $s_j^d$ ).

Consider again our two cases, CB/DC and DB/CC. Their defining characteristics are now

$$CB/DC: p > q, a_j^1 > s_j^1, a_j^d > s_j^d$$

$$DB/CC: p < q, a_j^1 < s_j^1, a_j^d < s_j^d$$

These defining characteristics and the SR assumptions imply that

$$CB/DC: a_j^1 > s_j^1, a_j^d > s_j^d$$

$$DB/CC: s_j^1 > a_j^1, s_j^d > a_j^d$$

While these incomplete rankings insure that the lhs of (5') is positive, they do not contain enough information to determine whether the ratio of accountability differences is greater than, equal to, or less than one. In the absence of any information, assume that the slippages in ability to claim credit and ability to shift costs are equal, i.e. the ratio of differences equals one. Then in the CB/DC case a sufficient condition for the legislator to prefer narrow delegation is that  $b_j(x) \geq c_j(x)$ . In Figure 1 all (b,c) combinations

below the 45 degree line through the origin would produce preferences for narrow delegation. Some (b,c) combinations above the line would result in narrow delegation preferences as well, with the area of narrow delegation preferences getting larger as the disparity between p and q increases ( $p > q$ ). An illustrative example ( $p = 4q$ ) appears in the figure.

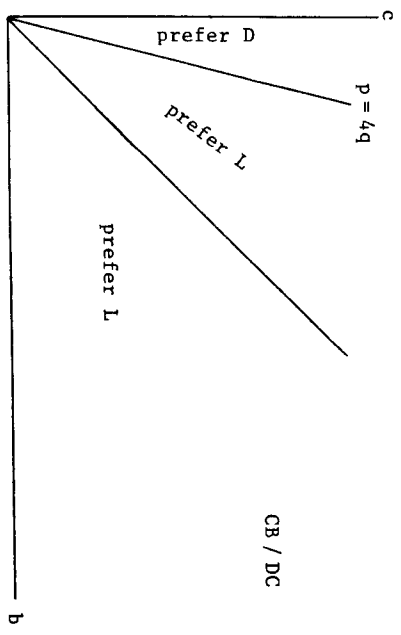


FIGURE 1

In contrast, the DB/CC case yields a sufficient condition for broad delegation preferences of  $b_j(x) \leq c_j(x)$ . In Figure 2 all (b,c) combinations above the 45 degree line are guaranteed to produce delegation preferences. Some below the line may do so as well, with the area of delegation preferences increasing with the disparity between p and q ( $p < q$ ). An illustrative example ( $p = q/4$ ) appears in the figure.

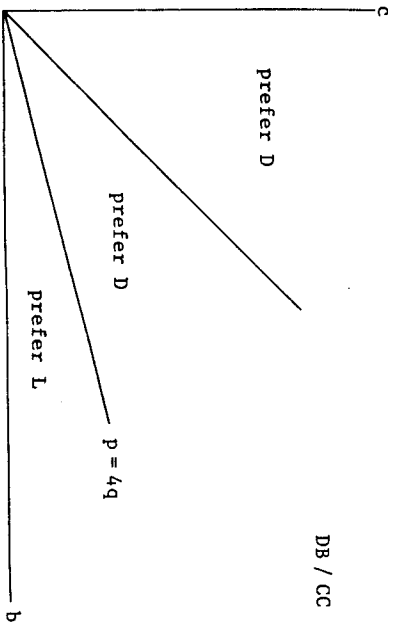


FIGURE 2

If the ratio of accountability differences is not unity, the preceding sufficient conditions would be correspondingly affected, but I think that probable departures from unity would only reinforce the pictures conveyed by the figures. In the CB/DC case  $s_j^1$  is already very low; given its lower bound of zero the possible  $(s_j^1 - s_j^d)$  slippage is sharply limited. Thus, the ratio of slippages is more likely than not to be less than one, which implies (because  $p > q$ ) that  $b_j(x) \geq c_j(x)$  is a stronger sufficient condition than in the case just analyzed. Conversely, in the DB/CC case  $a_j^1$  is already low so the possible  $(a_j^1 - a_j^d)$  slippage is limited. The ratio of slippages is more likely than not to be greater than one which in turn implies (because  $q > p$ ) that  $b_j(x) \leq c_j(x)$  is a stronger condition than in the case where the ratio is unity. Admittedly, this argument falls short of a rigorous demonstration, but I think it persuasive enough to conclude that figures 1 and 2 portray the general qualitative

implications of the model. How well these general implications comport with what seems to be the case in the real world is another matter.

My mentor and discussant taught us that an important feature of worthwhile theory is that it suggest non-obvious hypotheses (to the best of my recollection, however, he never taught us how to deal with the unfortunate fact that non-obvious hypotheses are more likely to be wrong than obvious ones). Thus, I am pleased to point out that some of the implications of the preceding analysis are at least initially non-obvious. Moreover, I will make a good faith argument that they are accurate as well.

Let us begin with the non-obvious implications. The general conclusion suggested by the analysis summarized in figures 1 and 2 is that ceteris paribus those legislators whose districts are the greatest objective beneficiaries of government policy are those most likely to favor non-delegated policies. It is the representatives of loser districts and the more marginal winners who support delegation. The logic here is straightforward; winners have greater benefits for which to claim credit and/or smaller costs to evade than losers. Thus, delegation of policy implementation may be a compromise big winners make in order to gain support from less enthusiastic colleagues. If so, there is a general suggestion that the greater the use of delegation the less universal (geographically) the net benefits of a policy (if more than a majority of districts were greatly benefitted, delegation would be more likely to be

rejected). This does not necessarily imply that delegation entails increased inefficiency (a few districts might have huge benefit cost ratios and the rest close to unitary ones), but delegation would seem to be a general accompaniment of net benefits not generally distributed across legislative districts.

A second implication is somewhat less obvious. Figures 1 and 2 suggest that other things equal delegation preferences are less likely in the CB/DC case than in the opposite DB/CC case. This seems to fly in the face of the prevailing wisdom which holds that the older regulatory agencies with their vague mandates benefit specific industries at the expense of the general consumer, while the newer agencies with their relatively more specific mandates are attempts to benefit the average consumer, worker, citizen, etc. at the expense of specific industries. Thus, the facts seem to be that greater use of delegation occurs in the CB/DC case than in the DB/CC case. We could accept the facts and take the coward's way out by suggesting that other things were not equal, but let us instead take a closer look at the facts.

The preceding objection is based on an examination of regulatory programs, narrowly defined. It compares the extent of delegation within a narrow range of policies. When the range is expanded the objection loses force. The most extreme example of a CB/DC policy which I have been able to think of is the Price Anderson Act, which limits private liability for nuclear accidents to 60 million dollars. This law benefits a particular industry and spreads

the potential costs over a goodly number of generations of American, Mexican, and Canadian nationals, and it is a clear law, written in black and white, not a regulation promulgated by the old AEC.

What is the quintessential example of "special interest legislation?" Most political scientists would probably suggest either special tax provisions or industry specific subsidies. The tax code contains thousands of the former, many of which benefit nothing so broad as a whole industry; rather they provide "relief" for specific firms and even individuals. These provisions are matters of law, not simple IRS rulings. Similarly, subsidy programs confer quite specific benefits and impose extremely general costs, and the Congress itself sets levels and eligibility requirements. Here too, the administrative agencies play more of a housekeeping role.

Finally, consider many examples of state regulation -- occupational licensure, liquor regulation, etc. These are universally agreed to be examples of state-sponsored cartelization of industries. I hesitate to advance nation-wide conclusions here, but in the states with which I am familiar the law was typically quite specific. Those who wish to alter the status quo lobby the legislature, not the relevant state agency or commission.

In sum, when we consider a broad range of CB/DC policies we find numerous policies based on clear legislative enactments rather than broad delegations. This perspective in turn throws a very different light on the broad delegations bestowed on the older economic regulatory agencies. Perhaps at origin they were DB/CC as

the traditional accounts suggest. Dismissing such accounts as polyanianish has been popular in recent years (e.g. Kolko, 1965; Stigler, 1971), but maybe the revisionists are too quick. I am not arguing that the enactment of diffused benefit legislation should be equated with the public interest model, nor denying that capture may occur sometime after the initial enactment of legislation. But if the legislator calculus developed in this paper seems plausible, the extensive delegations of authority to the older regulatory agencies suggest that at least in the beginning legislators were not obviously ripping off their constituents for the benefit of the capitalists, but were instead seeking re-election by benefitting a broad range of constituents.

A third set of implications concerns trends in delegation over time. The literature suggests a gradual increase in legislative propensity to delegate, at least from 1887 to approximately 1970, with something of a reversal in the past decade. The legislator calculus we have developed could accommodate such facts (if they are facts) in several ways. First, if most of regulatory history were CB/DC, contrary to the discussion of the preceding paragraph, then delegation would become more likely if  $q$  increased. More and better information about the diffused costs of regulation, increased organization of diffused interests, more political entrepreneurship in behalf of diffused interests, and so forth would cause a general increase in  $q$  estimates and expand the region of delegation preferences in figure 1. Alternatively, and consistent with the discussion of the preceding

paragraph, the rise in delegation could reflect increased legislative efforts in behalf of diffused interests, that is, increased activity in the DB/CC arena.

If the latter suggestion were the case, then narrower delegations of recent Congresses submit to a simple explanation. Increasing organization of diffused beneficiaries --- as exemplified by the rise of "public interest" groups --- would naturally result in increased legislator  $p$  estimates. This would contract the area of delegation preferences in figure 2.

I hasten to emphasize that the preceding empirical interpretations are meant as no more than suggestive. Multiple theoretical interpretations of the same purported fact bring home the point that research which would permit a clean meeting between theory and reality does not currently exist. For example, the distribution of benefits and costs is a critical indicator of what theoretical world to apply, but there are great disagreements surrounding attempts to measure even aggregate benefits and costs let alone their distribution in states and congressional districts.<sup>10</sup> Moreover, given reasonable discount rates, the benefits and costs in question must be those accruing in the immediate aftermath of regulatory origin. Whom the ICC was benefitting in the 1950s has little relevance to legislative decisions in 1887.

#### FURTHER ANALYSIS

Thus far we have taken  $x$ , the policy in question as a given.



This might correspond to the constrained floor stage of a parliamentary regime, or the Congress operating under a closed rule. Suppose  $x$  is variable, however, a policy subject to amendment by legislators seeking to maximize their politically relevant net benefits. It will greatly simplify matters here to return to the original Shepsle-Weingast assumption of a scalar  $x$ . The legislator maximizes his net benefits by choosing  $x$  so that

$$a_j p_j b_j' - s_j q_j c_j' = 0$$

which implies that

$$\frac{a_j p_j}{s_j q_j} = \frac{c_j'}{b_j'} \quad (6)$$

In the CB/DC case, ( $p > q$ ) and ( $a > s$ ) imply that ( $c_j' > b_j'$ ). Given the properties of  $b_j(x)$  (increasing at a decreasing rate) and  $c_j(x)$  (increasing at an increasing rate), this implies that the legislator maximizes his politically relevant net benefits function by choosing an  $x$  which is greater than that which would equate marginal benefits and costs. Conversely, in the DB/CC case, ( $p < q$ ) and ( $a < s$ ) imply that ( $c_j' < b_j'$ ), which given the properties of  $b_j(x)$  and  $c_j(x)$  imply that the legislator chooses an  $x$  smaller than that which would equate marginal benefits and costs. Thus, allowing legislators to amend the levels,  $x$ , at which government policies would be carried out reinforces the earlier analysis of legislative sins of commission and omission.

How will delegation affect the legislator maximization

process? Unpredictably, it turns out. Maximizing  $N_j(x)/D$  and  $N_j(x)/L$  results in (6a) and (6b) respectively:

$$D: \quad \frac{a_j}{s_j} \cdot \frac{p_j}{q_j} = \frac{c_j'}{b_j'} \quad (6a)$$

$$L: \quad \frac{a_j}{s_j} \cdot \frac{p_j}{q_j} = \frac{c_j'}{b_j'} \quad (6b)$$

If the lhs of (6a) is ( $>$ ) that of (6b), the properties of  $c_j(x)$  and  $b_j(x)$  insure that the  $x^*$  which maximizes  $N_j(x)/D$  is ( $>$ ) the  $x^{**}$  which maximizes  $N_j(x)/L$ . The lhs of (6a) is greater than the lhs of (6b) if

$$\frac{a_j^d}{s_j^d} > \frac{a_j^l}{s_j^l} \quad (7)$$

Nothing in the shift the responsibility assumptions or the defining characteristics of the CB/DC and DB/CC cases implies that (7) be true or false, or provides any reasonable suggestion about the likelihood it holds or not. Thus, in this simple model the option to delegate has no systematic effect on a legislator's preference for the scope of the policy.<sup>11</sup>

And what of the ultimate question, the existence and description of a legislative equilibrium? Even with the assumption of a scalar  $x$ , if legislators are free to choose both the level of  $x$  and

the extent of delegation, there is little prospect of an equilibrium (McKelvey, 1979). If we place various restrictions on the amendment process (e.g. Fiorina, 1982, pp.28-30) an equilibrium will exist, though it is still difficult to describe that equilibrium without making specific assumptions about functional forms. And, of course the equilibrium will vary with the process assumptions made in the analysis. This is an unfortunate situation, my only defense being that it plagues all political science theoretical efforts at this time, not just the preceding analysis.

#### TOWARD SOCIAL RELEVANCE

To address once again the conference mandate, the authors were asked to relate their reported or proposed research to "pertinent questions of regulatory policy," and to suggest "examples of research projects that would be useful to undertake (with reasons related to possible applications.)" The temptation is to deal rather perfunctorily with such charges, irrelevance being almost a point of pride to some political scientists, but while what follows is brief, it has the merit of sincerity.

Our society is currently engaged in a widespread and multifaceted debate about the desirability of the existing regulatory order. Critics charge that present day regulation results in unaccountable bureaucrats serving a variety of particularistic interests (including their own) by imposing major inefficiencies on the national economy. One need not accept such a wholesale

condemnation of the existing order to recognize that there is much room for improvement. But to whom do we look to for that improvement? Do we demand that our judges revitalize the delegation doctrine (Aranson, Gellhorn, and Robinson, 1981)? Even if they were so inclined, that would be to risk confrontation with powerful political interests in and out of government, as well as to leave citizens to deal with problems and dangers nullified legislation was intended to address. Moreover, many of the critics of the existing order would include judges in their blanket indictment; unlimited delegation maximizes the discretionary power of judges who may in turn use that power to further interests with which they sympathize -- often, the critics charge, the interests of the regulators.

I suppose that power-hungry bureaucrats are not unheard of, and that more than a few judges allow personal preferences to color their judicial decisions, but I would not direct policy proposals toward reform of either the bureaucracy or the judiciary. We might as well put first things first. The simple fact is that regulatory programs are created and maintained by democratically elected legislators. Those who believe that the existing order is too bureaucratic, too coercive, too discretionary, or what-not must deal with the fact that the people's representatives allow that order to persist. Either the evaluations of the critics are not widely shared by the electorate (a possibility that probably deserves more consideration than it gets), or our understanding of the incentives facing legislators is not adequate, or of course, both. These are the

questions I think research proposals should address.

The point of view in this paper is that legislators delegate not primarily in the good-intentioned hope that the experts will make better decisions, nor in the innocent and understandable attempt to minimize the costs of making decisions. Rather, delegation is to a significant degree a political decision. To be sure, there are a variety of political reasons to delegate, only one of which --- shifting responsibility --- has been examined here. Elsewhere (Fiorina, 1982b) I have surveyed some of these, but they deserve a great deal more attention, and there are undoubtedly numerous other political considerations which others could produce after giving the question some thought. So, the analysis in this paper is an example, at best. It is intended to demonstrate possibilities rather than to produce firm conclusions. I am not certain, for example, that (4) is yet rich enough as a model of the legislator's calculus. Nor am I fully comfortable about examining the responsibility shifting potential of delegation in complete separation from the policy transforming potential. The latter may be more critical, or it may be that the interaction between the two provides a strong political basis for delegation. Finally, analyses based on the preferences of individual legislators rather than the predicted decision of the entire legislature are clearly second-best. But given the restricted ability of our formal models to specify legislative equilibria, it is uncertain how soon and how closely we can approach the best.

What I am satisfied with is the likelihood that reasonably

simple models can produce relatively general statements about various patterns, trends, and other regularities in the politics of regulation. The reader may not agree with the statements made herein, but if not, I urge him to do better. If some political scientists are motivated to do so, this paper will have succeeded; but if political scientists continue to argue that it all depends on some critical incident or personality, then the conference organizers will continue to ask what political science has to say about their concerns.

## FOOTNOTES

1. To elaborate, I assume that at the time of his decision the legislator treats  $p$  and  $q$  as fixed. At least four major real world factors would affect estimates of  $p$  and  $q$ . These are (1) the form which benefits and costs take, as noted in the text; (2) the characteristics of those who feel the incidence of program consequences (eg. education levels, organizational features); (3) the efforts of political opponents to enhance perceptions of program costs; (4) the legislator's own efforts to heighten perceptions of program benefits. Considerations (3) and (4) make the point that recognition of program benefits and costs hinges on strategic behavior as well as on given characteristics of public policies and those they affect. Thus, prior to the decision stage in a legislature we would expect policy advocates and opponents to attempt to influence their colleagues'  $p$  and  $q$  estimates. By the decision stage, however — the focus of this analysis — I assume that legislators have incorporated (though not necessarily accurately) behavioral expectations into their calculations.
2. Again, at the time of decision I assume that  $a$  and  $s$  estimates are fixed. Also as before, I assume that they incorporate both objective factors and strategic expectations. Examples of objective factors which would serve to magnify attributions of

- responsibility would be (1) membership in the legislative majority party; (2) membership on a legislative committee with jurisdiction over the policy at issue; 3) high seniority, leadership position, or other indications of heavyweight status. Examples of strategic expectations would include (4) efforts of the political opposition to associate the legislator with program costs and discount his association with program benefits; and (5) the legislator's own efforts to associate himself with benefits and costs in just the opposite manner. In addition, the independent efforts of legislative colleagues to claim credit and avoid blame might affect a legislator's perceived responsibility, i.e. such efforts would be externalities for him.
3. The public choice branch of political economy would probably discount the empirical significance of asymmetries of the second class in favor of the stylized fact that real world legislatures traffic primarily in "special interest" legislation. In contrast, the political science literature contains observations which suggest the importance of asymmetries of the second class. Consider, for example, Wilson's (1974, p. 139) contention that individuals are more sensitive to threatened deprivations than to promised gains ( $p < q?$ ), and Fiorina's (1974, p. 38-39) presumption of an ungrateful electorate — one which is more likely to remember who does what to them than who does what for them ( $a < s?$ ) Actually, the political science wisdom and the public choice stylized fact are mutually consistent. If the

former were accurate, legislative sins of omission would be quite prevalent, but by their nature they tend to be unobserved. The situation is reminiscent of the decisions v. nondescriptions argument, so I should probably say no more.

4. The tentative language of the paragraph in the text reflects the fact that "concentration" and "diffusion" are ordinary language terms which take on fairly rich meanings in the literature. Wilson (1974) adopts these exact terms using concentration to refer to a cost or benefit "...specific to a certain sector of society conscious of its special identity..." (p. 140), and "high per capita" benefits or costs conferred "...on a small, organizable sector of society ..." (p. 158). This is contrasted with diffusion as costs or benefits falling "... on a large, diverse group with no sense of special identity and no established patterns of interaction." (p. 140), and "low per capita" benefits or costs imposed "...on a large, hard-to-organize segment of society ..." (p. 158). Peltzman (1976) also refers to group size and per capita stakes. Based on my reading of the literature I think that the defining assumptions made in the text below are consistent with the manner in which various authors have used the terms, concentrated and diffused, but the reader should bear in mind that these are my partial interpretations of the arguments of a heterogeneous group of writers.

5. In the past the court system was viewed as a more natural organ for the administration of public policy than it is today. For a fascinating history of judicial administration of government programs in the old Northwest Territory, see Brisbin, 1981.

6. There is good reason to believe that the Courts would strike down any broad delegation of the power to tax (Aranson, Gellhorn, and Robinson, 1981). Nevertheless, the Congress shows little tendency even to probe the limits of delegation in this area.

7. Mendelhoff (1981) discusses this and other failures of presently constituted administrative regulation in the health and safety area.

8. One of Wilson's (1980) reviewers, FTC official Robert Reich (1980, p. 37) regards such a proposal as practical, though he rejects what he believes to be its implications:

If there is no single, non-political truth called the public interest -- or none that regulatory agencies are capable of discovering -- why not rid ourselves of these old bureaucracies and reassign their responsibilities to Congress? Congressional staffs are already so large . . . that most agency staffs could be added on almost unnoticed. Their recommendations for regulations could be fed up to elected representatives following the same route as complicated pieces of proposed legislation. In short, if the line between politics and administration is a charade, why not obliterate it?

9. Elsewhere (Florina, 1982b) I have proposed that possible agency transformation of legislative enactments could be examined with

the aid of an uncertainty model which views legislators as choosing among policy lotteries with specified characteristics.

10. See for example the continuing debate over measuring the welfare effects of transportation regulation contained in Spann and Erickson, (1970), Zerbe (1980), and Braeutigam and Noil (1981).
11. In an earlier paper (Piorina, 1982b) I analyzed a special case of the SR model in which a condition like (7) always held. Thus, in that special case the option to delegate increased each representative's preferred level of regulation.

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