

# Political Control of Administrative Officials

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Elected officials cannot make all policy decisions themselves. Simple limits on time suggest that, in all but the tiniest governments, they must delegate some of their decisionmaking authority to administrative officials. Although elected officials delegate such authority out of necessity, they generally seek ways to monitor and control how bureaucrats exercise this authority. Their aim is to ensure that administrative decisions remain as close as possible to those which they would otherwise make themselves. Of course, monitoring and influencing bureaucrats' behavior also takes time and resources. The same limits on time which necessitate delegation in the first place also severely restrict the ability of elected officials to monitor and control administrative decisions.

All of these statements apply equally to elected executives and elected legislators. Each delegates authority to administrative officials and then seeks ways to control what they do with that authority. There is a large literature on how executives monitor and control their subordinates' behavior. Much of the literature on public administration, for example, deals with these issues, as does the broader literature on public and private management. At least conceptually the issues remain relatively simple when one confines one's attention to the executive branch, because a hierarchical form of organization suggests who are the superiors and who the subordinates for every type of decision.

The issues become considerably more complex when one begins to think

about legislative oversight of bureaucracy. One might, for example, conceive of a legislature as similar to a board of directors, exercising broad oversight responsibilities over both senior executives and general policy, but devoting little attention to the day-to-day activities of subordinate employees. Alternatively, one might think of legislative oversight as something that can occur at any level within the administrative hierarchy and over all types of decisions. The problems multiply when one recalls that Congress rarely speaks with a single voice. Legislative oversight could refer to everything from the formal acts of Congress, passed by majorities in each house and signed by the president, to the actions of individual committees, subcommittees, or legislators. Finally, one should ask which of various legislative intents do bureaucrats heed. Do bureaucrats attempt to discover and follow the original intent of the congressional majorities that created a program? Do they follow the preferences expressed at the time a program is reauthorized? Or do they anticipate where today's majorities might stand on the same issues if Congress reconsidered a program?

Congress has various techniques for attempting to influence administrative decisions. First, there are several statutory techniques (Harris: 15–45). Congress can use the original legislation authorizing a program to specify quite precisely how an agency is to administer the program under every imaginable condition. Alternatively, Congress can write very general legislation in the first instance, and then use subsequent reauthorization bills to provide even more precise specification for how an agency should act. The annual appropriations process provides yet another instrument for control (Fenno; Wildavsky). Congress can use appropriations as both carrot and stick—providing additional funds for bureaucrats who produce pleasing decisions and withholding funds for those who do not. Finally, Congress can insert very precise prohibitions in appropriations bills that forbid agencies from spending any money to study or implement various options.

Second, Congress can employ various nonstatutory techniques for achieving the same ends (Kirst; Arnold). Congressional committees hold extensive public hearings to inquire about past, present, and future decisions. They can use the same hearings to communicate congressional views about how administrative officials should adjust their decisions to accommodate congressional preferences. Congressional committees also issue detailed reports that critique past decisions and specify how agencies ought to decide future cases. Most agencies treat the provisions in such committee reports, and especially those in the reports of appropriations subcommittees, just as seriously as they do statutory provisions. From here on, I shall refer to the entire collection of statutory and nonstatutory techniques as *traditional forms of control*.

McCubbins, Noll, and Weingast (1987) argue that *administrative rules and procedures* provide an alternative route for controlling bureaucratic

decisionmaking. Such procedures serve to increase the flow of information between agencies, affected parties, and Congress. The Administrative Procedures Act of 1946, for example, requires that all agencies provide notice of proposed policies, invite comments and participation from all interested parties, and weigh carefully all evidence submitted to them. The Freedom of Information Act of 1966 requires that agencies open their records to the public. Together these two acts permit interested parties to watch and participate in agency decisionmaking and to appeal unfavorable decisions to the courts and Congress. In essence, such administrative rules and procedures force agencies to hear and consider the full range of policy preferences that Congress itself would hear if it had retained jurisdiction over these decisions.

These rules and procedures do not treat all interests equally. As in most other political forums, groups that can purchase expert legal and political representation enjoy disproportionate influence over administrative decisions. McCubbins, Noll, and Weingast suggest that Congress can disrupt these patterns of influence by changing the way interests are represented. One way is to require that each administrative agency first conduct studies to identify how poorly articulated interests are affected by all proposals on its agenda, and that an agency then incorporate those findings into its decisionmaking process along with all the other interests that are more formally represented. This is the logic behind both the environmental impact statement and cost-benefit analysis, as well as behind various proposed impact statements that would assess the consequences of administrative decisions for small business, consumers, the family, or other poorly organized interests in society. Alternatively, Congress can require administrative agencies to provide funding for groups that otherwise might not participate effectively in administrative hearings.

McCubbins, Noll, and Weingast argue convincingly that administrative rules and procedures provide an alternative route for influencing administrative behavior. Unfortunately, they give us all little sense of how administrative rules and procedures compare with traditional forms of control. At a minimum we should want to know whether administrative procedures are more or less effective than traditional forms for maintaining political control. Are they more or less durable? Which kinds of interests are most advantaged by particular forms of control? How should one select from the various possible forms of control to achieve particular ends?

How do traditional forms of control compare with administrative rules and procedures? In general, traditional forms concentrate influence within a few congressional committees, whereas administrative rules and procedures are far less committee-centered. Congressional hearings, reports, and other nonstatutory techniques are essentially committee activities. None require any action on the floor, and none provide opportunities for those who are not on the relevant committees to intervene. Statutory tech-

niques, such as authorization, reauthorization, and appropriations bills, also concentrate influence within committees, both because committees have the power of the first draft and because of their enormous informational advantages. Committees are held in check by the need to secure floor approval for all such bills, but their influence can still be substantial. They are especially influential for matters that are relatively trivial within a legislative setting and yet very important to an agency, such as the detailed provisions defining an agency's responsibilities, mandate, jurisdiction, and funding. Traditional forms of control permit quite precise intervention in agency decisionmaking. Legislative and appropriations committees can use both their statutory and nonstatutory techniques to instruct an agency to do one thing or refrain from doing another. They can also change their instructions drastically from year to year, responding to shifts in either public opinion or in the composition of the committees themselves.

Administrative rules and procedures tend to be less committee-centered, less precise as a control mechanism, and far more enduring. They are less committee-centered because many of them are written broadly to affect all or most agencies, rather than tailored to fit particular agencies that are overseen by particular subcommittees. The Administrative Procedures Act, the Freedom of Information Act, and the National Environmental Policy Act (which created the environmental impact statement) are all examples of procedural innovations with very broad impacts. Such procedures are also relatively enduring. To be sure such procedures can be changed from time to time, but each change requires an act of Congress. Unlike appropriations bills which are annual events in legislative life, and thus ideal vehicles for conveying changing instructions to administrative agencies, most procedural acts endure for many years without amendment or revision. It also follows that administrative rules and procedures can convey only the most general messages to administrative agencies, unlike the precise instructions that are possible for traditional forms of control.

These broad differences between traditional forms of control and administrative rules and procedures should not obscure all the interesting differences within each of the categories. Context can be very important. The appropriations process, for example, tends to be more effective as a control mechanism when an appropriations subcommittee is filled with critics of a program rather than with program advocates (Schick:415-40). Critics can far more credibly threaten to restrict funding if an agency fails to follow instructions than advocates ever can. Agency administrators know that program advocates are reluctant to impose cuts no matter what the provocation, whereas critics are often eager to punish agencies, even for relatively minor infractions. It would also be a mistake to think of all administrative rules and procedures as equally enduring. Many programs that provided consumer advocates within agencies, for example, lasted less than a decade, as compared with the Administrative Rules and Procedures Act that has survived relatively intact into its fifth decade.

Some administrative rules and procedures have succeeded in altering how agencies conduct their business and in forcing administrative officials to incorporate new values into their decisions. Others have had little impact. The Army Corps of Engineers, for example, must conduct two separate analyses of its projects: a cost-benefit analysis and an environmental impact statement. On the surface, the two requirements appear similar. One requires that the corps consider the efficiency of each project, while the other demands that it analyze the environmental consequences. Although the corps devotes substantial time and resources to each study, most observers suggest that the cost-benefit analyses have not affected outcomes significantly whereas the environmental impact statements have. The reasons why such similar requirements have had dissimilar consequences are very revealing and help one to understand better the impact of administrative rules and procedures on agency decisionmaking.

The environmental impact statement has been relatively successful in changing the way agencies conduct their business. One reason is that it applies to all federal agencies. If it happened to apply to only a single agency, one could easily imagine the agency, its principal clients, and its oversight committees conspiring together to weaken the procedures. Environmental groups would be at a relative disadvantage in preventing this because they would repeatedly have to defend these procedural safeguards in a relatively hostile forum where other values usually triumph. Instead the environmental impact statement is universally applicable to all agencies. This allows a coalition of environmental interest groups and friendly congressional committees to stand together and protect the procedural safeguards from attack. A second advantage of the environmental impact statement is that the analytic costs are born by the agencies themselves. These costs would be far too large for environmental groups to bear on their own, yet they are relatively minor from the point of view of these agencies. After completing the analyses, agencies must share the results with local, state, and federal agencies and with other interested parties. In a sense, the National Environmental Policy Act requires federal agencies to do research that others can then use against them. Environmental groups, other governmental agencies, and private citizens can challenge both the analyses and the subsequent agency decisions, and if that fails they can appeal to the president, Congress, or courts for relief. Clearly, the requirement that agencies analyze the environmental consequences of their actions has a broad supporting coalition that protects the requirement from the combined resistance of administrative agencies and their constituencies. As a consequence, agencies such as the Army Corps of Engineers have been forced to alter their decisionmaking processes and adjust their actual decisions.

Since passing the Flood Control Act of 1936, Congress has required the Army Corps of Engineers to perform a cost-benefit analysis for each proposed construction project. No waterways project may be constructed un-

less the estimated benefits exceed the estimated costs. Despite this statutory prohibition, most observers agree that the corps continues to approve and construct inefficient projects for which the benefits do not exceed the costs (Ferejohn: 25–68). Why does a requirement so similar to the environmental impact statement produce no discernible change in agency behavior? One difference is that the whole process is supervised by the two subcommittees in Congress that are in charge of promoting waterways construction. The Army Corps and these two oversight subcommittees have a common interest in approving waterways projects, and both are willing to overestimate benefits and underestimate costs to achieve that end. A second difference is that there are no powerful interest groups to champion the cause of efficiency against the combined forces of the corps, their congressional overseers, and their beneficiaries. Only the president and the Office of Management and Budget regularly challenge this iron triangle, and their challenges regularly fail.

Another approach to changing administrative behavior is to require that an agency subsidize groups that otherwise would not actively or effectively participate in agency decisionmaking. Consumer groups are a favorite target for such subsidies because they are very poorly funded compared to producer groups. Congress created many public intervenor programs a decade ago when the consumer movement was at its height. Many of these programs no longer exist. Each was vulnerable because the funds were line items in the budgets of agencies that were unfriendly hosts. The agencies did little to champion the programs before budget examiners or congressional committees. Most were probably quite willing to accept budgetary savings in these accounts. Business groups went one step further and campaigned actively against the whole enterprise. Congress first cut the budgets for these programs and eventually terminated several of them. These programs might have been more enduring if Congress had created a single small agency to represent consumer interests before other federal agencies. Alternatively it might have created an agency to disburse funds to consumer groups. Either approach would have created a single focal point for the consumer movement that would have been easier to defend against the inevitable attacks from business groups. The example of the Legal Services Corporation, which has survived six years of attacks from the Reagan administration, suggests how much easier it is to defend a single agency rather than dozens of little advocacy accounts in dozens of hostile agencies.

I began this essay by differentiating between statutory and nonstatutory techniques—two varieties of traditional forms of control. It is now clear that we must also differentiate between two types of administrative rules and procedures. First, there are *broad procedural rules* that open up the administrative process to outside forces. Such innovations as the Administrative Procedures Act and the Freedom of Information Act serve to ensure both that administrative officials are aware of the whole range of political

forces that regularly affect congressional behavior and that affected parties are as aware of what happens within administrative agencies as they are about what happens within Congress. Essentially these innovations make administrative rulemaking more like congressional lawmaking. Second, there are *policy-specific procedural innovations* which are designed to advance interests that otherwise might be ignored. Such innovations as the environmental impact statement and federal funding of consumer advocates were not intended to be policy neutral but rather to change the balance of political forces impinging on administrative officials.

Taken individually, each of these four techniques does influence administrative decisions. The joint effects, however, are even greater than the sum of the individual effects. Although broad procedural rules do open up the administrative process to outside political forces, they are even more effective when backed up by statutory and nonstatutory techniques of control. These provide the teeth that bear down upon those administrative officials who fail to respond to these outside forces. Nonstatutory techniques also have quite powerful individual effects on administrative officials, but the effects are multiplied when administrators believe that legislators can deliver statutory sanctions if they ignore legislators' nonstatutory suggestions.

It is easy to argue that each of these techniques affects administrative behavior. It is not so easy to predict exactly which interests in society would be advantaged by specific techniques. That is surely true for the broad procedural rules which merely open up the administrative process to normal political forces. Eventually one might be able to predict the consequences of such broad procedural rules on administrative decisions, but only if one could first predict how these normal political forces affect other complex decisionmaking processes, such as those which take place in Congress. It is equally difficult to predict the consequences of policy-specific procedural innovations. One should never judge a law by its title. Creating something called cost-benefit analysis does not necessarily produce efficient choices. Requiring an environmental impact statement does not by itself protect the environment. Funding consumer advocates does not automatically change administrative decisions. Even if funding consumer advocates happens to change those decisions in the short term, it can also create a political backlash which eventually destroys the public funding and puts consumer interests even further behind.

McCubbins, Noll, and Weingast are correct in their assertion that administrative rules and procedures provide an alternative route for affecting administrative behavior. They do not, however, provide the theoretical apparatus for understanding what consequences follow from choosing specific procedural reforms. The simple argument of this brief essay is that procedural reforms do not operate in a political vacuum. One cannot begin to understand how a specific procedural reform might operate without first

knowing something about the policy area in which it is to be applied, the distribution of interests within that policy area, and the degree to which those interests are organized. These are the forces which affect legislative and bureaucratic behavior in the first instance, and they also affect the nature and extent of legislative-bureaucratic interaction.

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