J O I N T C E N T E R
AEI-BROOKINGS JOINT CENTER FOR REGULATORY STUDIES

Delegation and Positive-Sum Bureaucracies*

Alan E. Wiseman†

Working Paper 07-05

February 2007

* An earlier version of this paper was presented at the 2007 Annual Meeting of the Southern Political Science Association, January 4-7, New Orleans, LA. The author thanks Steve Balla, Larry Baum, Jan Box-Steffensmeier, Ethan Bueno de Mesquita, Daniel Carpenter, Jerry Ellig, Sean Gailmard, Johanna Goertz, Robert Hahn, Stuart Jordan, Keith Krehbiel, Dean Lacy, David Lewis, Forrest Maltzman, Kathleen McGraw, Adam Meirowitz, Monika Nalepa, John Patty, Jesse Richman, Matthew Stephenson, Michael Ting, Craig Volden, Herb Weisberg, Jack Wright, and seminar participants in the Ohio State Department of Political Science RAP workshop for helpful comments on this project.
† Department of Political Science, The Ohio State University, 2140 Derby Hall, 154 N. Oval Mall, Columbus, Ohio, 43210-1373 (wiseman.69@osu.edu).

J O I N T C E N T E R

AEI-BROOKINGS JOINT CENTER FOR REGULATORY STUDIES

In order to promote public understanding of the impact of regulations on consumers, business, and government, the American Enterprise Institute and the Brookings Institution established the AEI-Brookings Joint Center for Regulatory Studies. The Joint Center's primary purpose is to hold lawmakers and regulators more accountable by providing thoughtful, objective analysis of relevant laws and regulations. Over the past three decades, AEI and Brookings have generated an impressive body of research on regulation. The Joint Center builds on this solid foundation, evaluating the economic impact of laws and regulations and offering constructive suggestions for reforms to enhance productivity and welfare. The views expressed in Joint Center publications are those of the authors and do not necessarily reflect the views of the Joint Center.

All AEI-Brookings Joint Center publications can be found at www.aei-brookings.org

Executive Summary

I develop a formal model of bureaucratic policymaking to investigate why a legislature would choose to delegate authority to a bureaucratic agency whose actions can be controlled, *ex post*, by an executive with divergent policy preferences. Because the executive and legislature might find different policies to be salient to their constituencies, I demonstrate that executive review of agency rulemaking can benefit both branches of government, relative to legislative delegation without the possibility of such review. In trying to undermine the impacts of executive oversight, agencies propose policies that could benefit the legislature were the executive to choose not to intervene in agency policymaking. Likewise, if the executive does intervene, executive review allows him to implement a policy more desirable than absent such review. This joint-desirability of executive review is more likely when legislative and executive policy preferences are relatively aligned, and when legislative and agency policy preferences are relatively divergent. The broader social welfare consequences of executive review depend on the relative effectiveness of the executive's oversight of agency policymaking. These results provide insight for why mediating lawmaking institutions such as the Office of Information and Regulatory Analysis (OIRA) continue to survive in a separation of powers system despite their potential to advantage one branch of government at the expense of the other.

Delegation and Positive-Sum Bureaucracies

Alan E. Wiseman

> *The Office of Management and Budget is probably the most powerful agency in the federal government. Because of the Office's carefully maintained low profile, however, the public is generally unaware of OMB's influence on federal policy. A wide array of powers has made OMB an influential, near omnipresent force within the executive branch.* (Olson 1984, 5)

> *The word most often used to describe the office to which Professor Graham has been nominated—the Office of Information and Regulatory Affairs—is "obscure." Few are aware of OIRA, or of just how powerful the position of "regulatory czar" really is. But this office—this senior White House staff position—exercises enormous authority over every major federal regulation that the government has under consideration.*

--Prepared Statement of Senator Richard Durbin (D-IL) at confirmation hearing of John D. Graham to be the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget. May 17, 2001.

1. Introduction

One of the most fundamental and enduring conflicts in American politics is waged between the legislative and executive branches of national government, over which entity should control policymaking. With the growth of the American administrative state over the past 200 years, this conflict has increasingly been played out in the federal bureaucracy. Scholars who study the bureaucracy in relation to Congress (e.g., McCubbins, Noll, and Weingast 1987, 1989; Weingast and Moran 1983) and the presidency (e.g., Moe 1985, 1989) typically focus on how one branch or the other controls the bureaucracy and its policy outputs. Implicit in this scholarship is the notion that whichever branch controls the bureaucracy gains an advantage by imposing its policy interests on the other. Bureaucratic policymaking, in other words, is seen as an extension of a zero-sum contest, in that what one branch gains the other loses.

In contrast to this approach, I argue that bureaucratic agencies can be understood and explained better by viewing them as rationally designed institutions that allow both branches of government to efficiently represent different and competing constituency interests. Bureaucracy, in other words, is better conceptualized as the result of a positive-sum game between the

legislative and executive branches. This perspective has very different implications for our understanding of the creation, evolution, and survival of bureaucratic agencies. Under the zero-sum approach, evidence of control by one branch implies defeat and failure by the other, which in turn implies that the losing branch will attempt to reorganize the bureaucracy. The positive-sum approach, in contrast, implies that bureaucratic organizations, because they can efficiently serve the competing interests of both branches, will be far more stable and enduring.

I advance this argument by developing a formal model of legislative delegation and agency policymaking where agency actions are subject to review by an executive whose preferences diverge from the legislature. To illustrate the implications of this theory, I focus on a substantively important agency in the federal government: the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). Since 1981, all executive (non-independent) agencies have been required to receive OIRA approval for their rules before they are published in the Federal Register, which has ostensibly provided the President with substantial control over agency policymaking. Scholars and pundits have generally agreed that OIRA favors the President over Congress, and some have argued that Congress would prefer to abolish OIRA altogether. Given this apparent conflict, one wonders how and why OIRA review continues to be a vital part of contemporary American policymaking? The theory developed below answers this question by demonstrating how an apparently coercive institution such as OIRA can actually be valuable to both branches of government by simultaneously representing their competing interests.

While several influential works in delegation and agency policymaking (e.g., Bendor and Meirowitz 2004, Epstein and O'Halloran 1999) demonstrate the potential for bureaucratic institutions to benefit both the executive and legislature, these benefits generally follow from the informational expertise that bureaucracies presumably provide. While these explanations are quite plausible, for several reasons considered below, these models do not accurately characterize certain aspects of contemporary administrative policymaking. In what follows, I advance a new perspective that accounts for these features by analyzing a model where there is no uncertainty regarding the relationships between policies and outcomes, and demonstrate that even without the potential for informational benefits, a potentially coercive institution such as OIRA can *still* provide benefits to both branches of government.

More specifically, I analyze a policymaking environment where actors are uncertain, *ex ante*, about whether particular policy choices will be salient to their interests, *ex post*. Because there is a possibility that the Executive will find a given policy to be salient, leading to OIRA oversight, a strategic agency will try to undermine the effects of OIRA review by proposing policies that deviate from its interests and generally favor the legislature over the executive. Hence, when OIRA does not intervene, the agency's legislature-friendly policy will be enacted, making the legislature better off than what would occur if OIRA did not exist (whereby the agency's policies would be more reflective of the agency's policy interests). Similarly, if OIRA does intervene, it will move policy away from the legislature towards the executive's interests, making the executive clearly better off than if OIRA intervention was not possible. Depending on how often the legislative and executive find the same policies salient to their constituencies, *ex post*, OIRA intervention can actually benefit both branches of government. This finding stands in stark contrast to literature and casual observation which argues that executive review unambiguously benefits the President at the expense of Congress.

The fact that an apparently coercive institution can be shown to benefit both the President and Congress raises broad questions about the appropriateness of conventional zero-sum characterizations of executive-legislative-agency politics. These conclusions are particularly relevant in light of recent developments in state politics where governors have begun establishing state-level counterparts to OIRA (Teske 2004, 208-215), as well as the recent proliferation of analogous institutions in several OECD countries (OECD 2003).

In the next sections, I provide a brief introduction to the history and process of OIRA review, and consider how this institution is relevant to the prevailing body of scholarship on delegation, rulemaking, and presidential policymaking. I then present a formal model of *delegation with competing oversight* and note the empirical implications that follow from such a model. Finally, I conclude with a summary of findings and a discussion of further empirical and theoretical extensions to this work.

2. OIRA History and Process

OIRA review, also known as executive review or executive clearance, is a pervasive feature of contemporary agency policymaking. While agencies have been creating more (and more detailed) rules over the past twenty-five years, publishing nearly 8,000 in the beginning of

the Bush Administration in 1989 to more than 35,000 rules in the beginning of the current Bush Administration in 2001 (Kerwin 2003, 20), presidential intervention through OIRA has increased immensely.[1] Whereas less than 10% of agency rules were changed before publication in the Federal Register following OIRA intervention in 1981 (Croley 2003, 848-849), nearly 70% of rules were either changed following OIRA review or entirely withdrawn by the submitting agency in 2001 (Kerwin 2003, 226).

While executive review has its precedents in the Nixon, Ford and Carter Administrations, its current incarnation effectively began in the Reagan Administration in fall 1981, with the enactment of Executive Order 12291.[2] As originally promulgated, EO 12291 required all federal agencies, other than independent regulatory agencies, to submit drafts of proposed and final rules to the Director of the Office of Management and Budget (OMB) before publication in the Federal Register. Furthermore, all "major rules," defined as those that were likely to impose an annual cost greater than $100 million on the U.S. economy, to impose major costs on consumers or particular geographic regions, or to have a significant negative impact on various aspects of market competition, would have to be accompanied by a regulatory impact analysis statement.[3] The Office of Information and Regulatory Affairs (OIRA), which had been created under the Paperwork Reduction Act of 1980 and located within the OMB, would review proposed rules to determine whether they were costs-justified, and generally comported with the Administration's regulatory priorities. If OIRA did not agree with the content of the rule as submitted, it was sent back to the agency for further analysis, and the agency was *de facto* compelled to acquiesce to OIRA's demands before the rule could be published in the Federal Register.[4]

EO 12866, which was promulgated under the Clinton Administration in 1993 on the precedents of the Reagan Administration, dictates the terms of contemporary OIRA review, whereby agencies are required to submit any rule regarded as "significant" regulatory action

---

[1] These aggregate statistics mask substantial variation. In the last year of the Clinton Administration between 24,000 rules and nearly 18,000 proposed rules were published in the Federal Register (Kerwin 2003, 19-20).

[2] United States General Accounting Office (2003, 19-25) provides a detailed history of the development of OIRA review. Only certain highlights are considered here.

[3] EO 12291 required that all major rules be submitted to the Director of OMB 60 days prior to publication of notice in the Federal Register, and 30 days prior to their final publication. Non-"major" rules were also required to be submitted to OMB, but only 10 days prior to the publication of notice, and their final publication.

[4] As noted by Olson (1984, 43), EO 12291 did not endow OMB with veto power over an agency rule, but the Order provided "that the agency 'shall … refrain from publishing' its rule 'until the agency has responded to the [OMB] Director's views, and incorporated those views and the agency's response in the rulemaking file.'"

(United States General Accounting Office 2003, 23) to OIRA.[5] Similar to the Reagan Executive Order, the term "significant" pertains to any rule that is likely to have a sizeable negative impact (greater than $100 million annually) on the economy, to create contradictions or other inconsistencies with existing law or regulatory practices, or to potentially run counter to the regulatory mission of the Administration.[6] Hence, while not explicitly requiring review for all agency rules, EO 12866 affords the Administration a good deal of latitude with which to influence the regulatory process.[7]

Under EO 12866, an agency must submit a proposed rule for review to OIRA before the "notice of proposed rulemaking" is published in the Federal Register. OIRA review is supposed to occur within 90 calendar days following submission, and barring OIRA objection, the proposed rule is then published in the Federal Register. Following publication, the rule undergoes the conventional notice and comment period as required by the Administrative Procedure Act (APA) wherein various public and private sector stakeholders correspond with the agency to convey their preferences about the rule, which will presumably be addressed in the agency's final version of the rule. Following the notice and comment period, the agency adopts a final rule, which must then be submitted to OIRA for a second round of review. At this stage, OIRA can either conclude that the rule is "consistent with the principles of the executive order," or return it to the agency for "further consideration" (United States General Accounting Office 2003, 31). While OIRA does not have *de jure* authority to disapprove draft rules, EO 12866 does require this explicit review process, and hence, rules that are sent back to agencies for "further consideration" are typically either withdrawn by the agency or revised by the agency to comport with OIRA concerns.[8]

Numerous case studies have clearly illustrated how OIRA intervention has had significant substantive impacts on rules. Bruff (1985, 570) for example, discusses how OIRA

---

[5] In establishing EO 12866, the Clinton administration revoked the earlier EO 12291, as well as EO 12498, which was established in 1985 and required agencies to submit a statement of their regulatory priorities to the Director of the OMB each year, noting how the agency's goals and priorities were consistent with the Administration's goals.

[6] Because only significant rules were required to be submitted for clearance, it should be no surprise that the workload of OIRA fell substantially following the enactment of EO 12866, from 2000-3000 rules reviewed each year to 500-700 rules reviewed per year (United States General Accounting Office 2003, 24).

[7] EO 12866 provided for several other measures, including transparency requirements during regulatory review. For example, OIRA is now required to document communications between OIRA and external parties during the review process. Agencies are also required to submit annual regulatory plans to OIRA.

[8] Less than 3 percent of rules are coded as "returned" to agencies, meaning that they were returned and not subsequently altered to comport with OIRA review (United States General Accounting Office 2003, fn 3).

intervened in OSHA's rulemaking proceedings for the regulation of ethylene oxide, a potentially carcinogenic cleansing agent used for sterilizing medical instruments. In response to a court mandate that it issue standards by June 15, 1984, OSHA sent a rule to OIRA for review on June 13 that established a permanent exposure limit (PEL) and a short term exposure limit (STEL) for ethylene oxide at one part per million, and ten parts per million, respectively. OIRA quickly responded to OSHA, stating that the STEL was not cost effective, and was also not supported by the relevant medical data. In response to this review, OSHA issued a rule on June 15 that was stripped of all references to the STEL, despite the court's mandate to issue a rule providing for permanent and short-term exposure limits.

Similarly, at a 1986 Senate oversight hearing on OIRA, Deborah Berkowitz, of the AFL-CIO, testified that OIRA had consistently stifled OSHA's six-year effort to establish safety standards to prevent grain dust explosions in grain elevators (United States Government Printing Office 1986, 2-4). Berkowitz argued that, in response to a 1982 National Academy of Science study that determined that nearly 80% of U.S. grain elevators were ripe for explosions due to grain dust buildups, OSHA began a 10-month long rulemaking proceeding. After sending a rule to OIRA in 1983, the review process lasted eight months, and culminated in OIRA mandating that OSHA effectively exempt smaller elevators from increased sweeping requirements. Moreover, to ensure that the rule would comply with OIRA review, OSHA's final rule exempted 10,415 of the 11,200 operating grain elevators in the United States from dust control provisions.

While these examples demonstrate that OIRA intervention has real policy influence over final rules, it is reasonable to suggest that the final policies promulgated following OIRA intervention are still entirely consistent with the preferences of Congress, and that no obvious conflict exists. Perhaps OIRA review merely alters policies within the bounds of discretion (e.g., Epstein and O'Halloran 1999) that Congress typically provides to agencies. Consideration of other instances of OIRA intervention, however, suggests that executive clearance can induce policy changes that are entirely counter to congressional intent. On this point, Heizerling (2006) documents OIRA intervention in the EPA's recent rulemaking over water intake structures at existing power plant (the "Phase II rule").

Based on section 316(b) of the Clean Water Act, the Phase II rule was intended to limit the large number of fish that were killed by water intakes used for cooling machinery at power plants. When the EPA originally submitted the Phase II rule to OIRA in 2001, the rule required

the largest power plants to employ closed-cycle recirculating cooling, which had been deemed the most effective technology available for addressing the fish problem (Heizerling 2006, 108). Despite the explicit mandate of the Clean Water Act that environmental rules be based on the best technological standards available for controlling pollution, OIRA removed the closed-cycle recirculating cooling requirement, and inserted a "compliance alternative" whereby facilities would be allowed to ignore the regulations if they were not cost effective. According to Heizerling (2006, 110), substituting a cost-benefit criterion for technology based regulation clearly contradicts the plain meaning of the Clean Water Act (as established in *Weyerhaeuser Co v. Costle* 1978), and is inconsistent with congressional intent. Hence, it appears that OIRA intervention can clearly influence the substantive content of rules, which may even go beyond the bounds of congressionally-authorized agency discretion.

3. Existing Research

On its face, OIRA intervention could be interpreted as being coercive in that it "allows the president and his agents to monitor and influence the substance of individual regulations" (Cooper and West 1988, 871). Hence, executive review might undermine the administrative safeguards that were created under the Administrative Procedure Act (Cooper and West 1988, 873); and as a result, agency decisions will benefit the interests of the president, and be "based on considerations relating to political goals and incentives rather than considerations relating to the substantive implications or requirements of statute" (Cooper and West 1988, 882).

While the above examples provide anecdotal support for such arguments, it is not entirely clear whether such broad claims regarding the presidential usurpation of agency authority, and the policy consequences of OIRA intervention, are entirely accurate.[9] First, from a theoretical perspective, the prevailing scholarship on delegation and bureaucratic policymaking offers little insight on the role of OIRA, for the simple fact that these theories typically consider relations between one principal and one agent, without the prospect for *ex post* oversight by a competing principal.[10] Epstein and O'Halloran (1994, 1999), for example, model legislative delegation to

[9] Jordan (2006), for example, argues that OIRA review allows the President to maintain preference alignment between himself and his appointees, rather than a means with which to implement *ex post* rule changes.

[10] See Bendor, Glazer, and Hammond (2001), and Huber and Shipan (2000) for recent reviews of the delegation literature in political science. Recent work by Gailmard and Patty (2006) deviates from this conventional framework, in modeling information transmission and agency policymaking in a separation of powers system.

an agency that unilaterally makes policy, subject to a bound of discretion afforded to them by the legislature, where agency and executive preferences are perfectly aligned. Given that OIRA changes a substantial portion of agency rules, however, it is questionable whether the preference-alignment assumption is appropriate. My model builds on this point in analyzing a policy environment where the agency, legislature, and executive have competing policy interests; and hence, the executive has an obvious incentive to engage in *ex post* oversight through OIRA.[11]

McCubbins, Noll and Weingast's (1987, 1989) work on administrative procedures does consider the potential effects of preference divergence among the President, the agency, and the legislature, yet they, too, do not explicitly account for the possibility of *ex post* executive control in a way that is reflective of OIRA intervention. While Kiewiet and McCubbins briefly consider OIRA intervention in their work on the appropriations process, and even suggest (1991, 182) that Congress "appears to have achieved some sort of working relationship with OIRA and its regulatory review activities," the rationale for congressional acquiescence is not transparent. More generally, it is not obvious why Congress might accept, or even prefer, OIRA intervention compared to the policy choices of an unconstrained agency.

Second, while scholars of administrative policymaking have made recent advances in understanding how different practices such as regulatory negotiation (e.g, Balla and Wright 2003; Coglianese 1997), advisory committee participation (e.g, Balla and Wright 2001; Petracca 1986), or the expansion of informal communications with agencies (e.g., Balla 2004/2005) have influenced the development of rules, surprisingly little attention has been devoted to OIRA. Instead, most research considering agency oversight has focused on the role of the courts following the publication of the rule (e.g, Eskridge and Ferejohn 1992; McNollGast 1994), rather than the actions of the executive and OIRA prior to publication.[12] Analyses of legislative oversight of the bureaucracy (e.g., Bawn 1997) have generally neglected OIRA review altogether, even though it can effectively undermine whatever oversight tools the legislature devises. While Kerwin (2003, 224-238) considers OIRA's role in policymaking, similar to Cooper and West (1988), he argues that OIRA generally benefits the President over the

[11] Analysis of models wherein the executive possesses veto authority over agency actions (e.g., Volden 2002a, 2002b) have identified how the potential for *ex post* control can influence the initial delegation decision.

[12] Bueno de Mesquita and Stephenson (forthcoming), however, consider a model wherein an agency creates policy that is subject to veto by a reviewing agency such as OIRA, which bases its decision on the expected quality of the proposed regulations.

Congress; and he focuses little systematic attention to the policy impacts of executive clearance.[13]

Kerwin's arguments are echoed by scholars of the "administrative presidency" (e.g., Nathan 1983, Moe 1985, Waterman 1989) who have characterized OIRA's continued existence as one more example of the rise of presidential control over contemporary policymaking (Cooper 2002, 93-95; Howell 2003). Moreover, Moe and Wilson (1994, 34-30) and Moe and Howell (1998, 168) have argued that Congress would strictly prefer to abolish OIRA, but cannot because "collective action problems" prevent Congress from coordinating the diverse preferences of its members towards a unified goal. While such arguments seem plausible, they do not comport well with a substantial body of legislative scholarship (e.g., Cox and McCubbins 2005; Krehbiel 1996) that illustrates how Congress makes resolute choices based on the preferences of certain pivotal members.

Third, while administrative law scholars have considered the impacts of OIRA review on policymaking to varying degrees, they have arrived at decidedly mixed opinions with respect to its positive and normative consequences. DeMuth and Ginsburg (1994) and Seidenfeld (1994) have argued that OIRA review benefits society because the president is in the best position, institutionally speaking, to evaluate regulations based on the merits. In contrast, Bruff (1989) and Strauss and Sunstein (1986) have argued that prevailing procedures should be altered to enhance the efficiency and benefits of regulatory review. Finally, Elliot (1994), Morrison (1986), and Shapiro (1994) have claimed that OIRA review undermines the intentions of Congress, biases policy outcomes in favor of the president, and degrades the quality of regulatory policy. Croley's (2003) large-sample study of OIRA review uncovers several findings that could be interpreted to support a variety of these perspectives.

While existing scholarship offers little in terms of definitive answers, consensus appears to have been reached regarding certain features of OIRA. First, over the past twenty-five years, OIRA has become a central player in administrative policymaking in the United States, inducing changes in nearly 70% of the agency rules it reviews. Second, OIRA intervention generally appears to benefit the President at the expense of competing interests, particularly Congress.

[13] Balla, Deets and Maltzman (2005), demonstrate how *ex parte* communication with OIRA during regulatory review influences the length of OIRA review time, as well as the possibility that rules are altered. These authors note that their findings do not clearly demonstrate who stands to gain or lose from such delays and alterations. Hence, it is not obvious that the President, and the interests that he favors, generically benefit from OIRA review.

Third, Congress would presumably like to abolish OIRA, but is unable to do so because of legislative coordination problems. Fourth, OIRA review could benefit different constituencies, depending on which theoretical perspective is embraced.

Accepting these preliminaries leads to several questions. First, while OIRA obviously engages agencies during the rulemaking process, how does OIRA intervention map into policy outputs? Second, does OIRA intervention truly benefit the President at the expense of congressional interests? Third, would Congress truly prefer to abolish OIRA but cannot due to collective action problems? Fourth, how can one evaluate the normative claims that OIRA intervention leads to rules that significantly deviate from legislative intent and decrease social welfare? The theory presented below provides a first step towards answering these questions.

4. A Theory of Agency Policymaking with Competing Principals

The model developed here, referred to as the *delegation with competing oversight game*, involves a legislature that delegates policymaking authority to an agency, which then makes policy that is subject to OIRA review. I assume that actors have preferences over policies, which are influenced by the political ramifications of the policies finally implemented. More specifically, I assume that the legislature and executive have well-defined policy preferences, yet they do not know at the time a policy is proposed whether it will be deemed important to their constituents, *ex post*, which would presumably induce them to *care* about it. This uncertainty over political salience could arise because actors do not have perfect information about their constituencies' policy priorities, or more generally, whether their constituencies will be attentive to certain policy debates. For example, while a conservative President might strongly suspect that social conservatives will be interested in how the FDA regulates pharmaceuticals such as RU-486, he/she does not know with certainty, *ex ante*, how intense their reaction to proposed regulations will be, and what kind of presidential response it will warrant. Likewise, for policies more innocuous than regulating RU-486 (e.g., the regulation of ethylene oxide), the executive's expectations about constituent reaction are likely less certain. The uncertainty about the political ramifications of policies provides for certain circumstances under which both Congress and the President will strictly prefer the institution of OIRA review to a world in which OIRA review did not exist.

In equilibrium, OIRA only intervenes when an agency's proposed rule is revealed to be salient to the Executive's interests after it is proposed. If OIRA intervenes, it alters an agency's proposed rule so that it is more reflective of presidential preferences than was the initial proposal. Alternatively, if it does not intervene, the agency's rule stands as proposed and is promulgated into law. This potential for OIRA review induces the agency to strategically propose policies that diverge from its ideal point and actually favor Congress over the Executive, to effectively limit the range of OIRA's influence, if it were to intervene. The magnitude of the policy divergence between the agency's proposed rule and congressional preferences depends on the probability of OIRA intervention. Hence, in certain situations the agency proposes policies that are relatively close to Congress, and revealed to be politically salient to congressional interests, yet are not altered by OIRA. In other situations, agency policies are altered by OIRA, yet those policies are not salient to Congress, and hence it doesn't mind OIRA intervention. Finally, in certain cases agency policies are altered by OIRA and both branches of government find the policies salient to their interests, creating an obvious conflict. Despite this potential for conflict, the institution of executive clearance may still make both actors strictly better off than what would occur if OIRA did not exist, depending on the relationship between the Executive and congressional preferences, and their expectations over policy salience.

Preliminary developments

Before moving on, it is worthwhile to explore the implications of assuming that the executive and the agency have different policy preferences. Given this simple assumption, the potential for the agency to account strategically for OIRA intervention in its initial policy proposal can be easily identified. For the purposes of illustration, suppose that agency rulemaking can be represented as a very simple two-period, complete and perfect information game between two players, an Agency with ideal point A, and OIRA, with ideal point E.[14] Assume that both actors' ideal points are defined over one dimension (E and $A \in R^1$), and assume that the agency is located to the left of OIRA ($A < E$).

In period 1, the Agency selects a policy $a \in \mathrm{R}^1$, and in the second period, OIRA observes the policy chosen by the Agency, and if it decides to do so, changes policy subject to a cost. Because agencies are located in the executive branch, one might interpret OIRA's costs as

[14] E stands for the ideal point of the Executive, which OIRA is assumed to represent. This is a simplifying assumption given that the OIRA Administrator is nominated by the President and is subject to Senate confirmation.

reflecting the political costs it incurs from overriding its own administration's policy. Alternatively OIRA's costs could also reflect the time and effort that OIRA staffers devote to determining alternative policy options to the Agency's proposal, which faces lower costs as a policy specialist.[15] The actors' preferences are defined over the final policy implemented, x, which is either the Agency's proposed policy, $x = a$, or the policy proposed by OIRA, as well as the costs they must pay to change policy (in the case of OIRA). More specifically, assume that the Agency's and OIRA's preferences can be represented by the following utility functions:

$$U_A(x) = -(A - x)^2$$

$$U_E(x) = -(E - x)^2 - c(a - x)^2$$

where $c > 0$ represents the cost OIRA faces from moving policy away from where the agency proposed.[16] Given this parsimonious set-up, what expectations do we have regarding the initial policies proposed by the Agency, and the final policy implemented following OIRA review?

A straightforward application of backwards induction yields the equilibrium agency proposal and final policy, a^* and $x^*(a^*)$, for this model. In the last period, having been proposed a by the Agency, OIRA will choose $x^*(a)$ to maximize its utility. Application of the calculus reveals that $x^*(a) = \frac{E + ca}{1 + c}$.[17] In other words, for any agency proposal, OIRA will choose x so that it is somewhere in between its ideal point and the agency proposal, depending on how costly it is to move policy. When costs are very low ($c = 0$), OIRA can move the policy to its ideal point, and as c increases, the final policy is closer to the Agency proposal. Because the Agency knows that for any policy it proposes, $x^*(a)$ will be the final policy implemented, it will chose a^* to maximize its *ex ante* utility: $U_A(x(a)) = -(A - (\frac{E + ca}{1 + c}))^2$. Analysis reveals that

[15] Olson (1984, 14) notes how the EPA consistently complained about having to educate OMB staff about the details of particular rulemakings in the early 1980s. Unlike substantive policy agencies that have considerable staff resources, OIRA is currently staffed by 55 FTEs (United States General Accounting Office 2003, 60).

[16] Costs to the Executive might increase in the scope of policy change for several reasons. If costs reflect political costs, they should be larger for more significant policy changes, to correspond to more substantial public signals of dissention within the Executive branch. Alternatively, if costs reflect labor costs, the level of analysis undertaken by OIRA is likely to be strictly greater to warrant larger changes, than that required for marginal changes from the agency's policy proposal.

[17] This expression is obtained by taking the first derivative of $U_E(x)$ with respect to x, setting it equal to zero, and solving for x*. That is, $\frac{\partial U_E(x)}{\partial x} = 2(E - x) + 2c(a - x) \Rightarrow x^*(a) = \frac{E + ca}{1 + c}$.

$a^* = \frac{A(1+c)-E}{c} \Rightarrow x^*(a) = A$.[18] In other words, faced with the prospect of *ex post* review by OIRA, the Agency will propose a policy to the left of its ideal point, knowing that OIRA will move the policy as far towards E as possible, subject to the cost it must pay, which will yield a final policy at the Agency's ideal point. Figure 1 illustrates the equilibrium of this model, where $A = 2$, $E = 3$, and $c = 1$. Under this specification the initial Agency proposal is at $a^* = 1$, which generates a final policy located exactly at the Agency's ideal point ($x^*(a^*) = 2$).

[Figure 1 about here]

This simple model clearly demonstrates how the sequential nature of policymaking and executive review, given actors' preference divergence, provides the Agency with an incentive to propose policies that effectively lessen the influence of OIRA intervention. The broader model developed below builds on this insight by incorporating the legislature as an additional player, and considering a policy environment in which OIRA review does not occur with certainty.

Players and preferences

The actors in this model consist of a Legislature with ideal point L, a substantive policy Agency with ideal point A, and an agency that engages in executive oversight (OIRA) with ideal point E. Similar to the baseline model above, I assume that all actors' ideal points, L, E, and $A \in R^1$, and that $L < A < E$. In other words, I explicitly assume that the Agency is located somewhere in between the Legislature and OIRA.[19] Without loss of generality, I assume that $L = 0$. All actors' preferences are defined over the final policy implemented, as well as any costs they must incur to influence the location of the policy, and whether a particular policy is politically salient to their interests. That is, I explicitly assume that certain policies are, *ex post*, more salient to the actors' interests than other policies. As noted above, these variations in salience might reflect

[18] The quantity a* is obtained by taking the first derivative of $U_A(x(a))$ with respect to a, setting it equal to zero, and solving for a^*, where $x = x^*$, as derived above, in $U_A(x)$. That is,
$\frac{\partial U_A(x(a))}{\partial a} = 2Ac - \frac{2c(E+ca)}{(1+c)} \Rightarrow a^* = \frac{A(1+c)-E}{c}$.

[19] This assumption is reasonable given that agency heads are proposed by the president and confirmed by the Senate, and hence they are likely located somewhere between these two actors' ideal points. One might also be interested in analyzing cases wherein the Agency was located to the right or the left of both the Legislature and OIRA, perhaps because of entrenched civil servants. I focus on the case where the Legislature and OIRA have divergent preferences, however, because it is the most difficult scenario to establish how OIRA intervention may be pareto improving for *both* actors.

external constituency considerations, random shocks by nature, or other concerns that are not modeled here.

More formally, the Legislature's preferences are defined over the final policy outcome and any costs it must incur to create policy, and can be represented by the following utility function:

$U_L(x,k) = -\lambda(L-x)^2 - k$,

where $x \in R^1$ is the final policy outcome, $k \geq 0$ is the cost that it must incur if it chooses not to delegate to the agency and rather make policy itself, and $\lambda \in \{0, 1\}$, which is determined stochastically, identifies whether the policy under consideration is politically salient to the Legislature. Hence, while the Legislature generically prefers policies that are located closer to its ideal point, some policies will be revealed to be not politically salient ($\lambda = 0$), so that the Legislature will be indifferent between a variety of policies, including those that are far away from its ideal point.[20]

The Agency's preferences are defined over the final policy outcome, and can be represented by the following utility function:

$U_A(x) = -(A-x)^2$.

Unlike the Legislature, this specification implies that the agency considers all policies salient, which could be interpreted as the agency responding to its legislative mandate to create policy, or the fact that agencies are generally issue-specific in their focus.

Finally, OIRA's preferences are defined over the final policy outcome, the political salience of policies, and how costly it is to alter the substantive agency's policy proposal. More formally, OIRA's preferences can be represented by the following form:

$U_E(x) = -\varepsilon(E-x)^2 - c(a-x)^2$,

where a is the Agency's proposal, x is the final policy chosen by OIRA, $c \geq 1$, and $\varepsilon \in \{0, 1\}$, which is determined stochastically.[21] Hence, conditional on OIRA learning that a policy is

[20] While this is admittedly a very stylized way to denote that the Legislature cares more about some policies than others, similar results would follow from allowing λ to take on values between zero and 1.

[21] The assumption that $c \geq 1$ is not necessary for derivation of the equilibrium, but facilitates a parsimonious presentation of the comparative statics, which would be somewhat cumbersome for certain cases when $c \in (0,1)$.

politically salient ($\varepsilon = 1$), its utility is determined by how far the final policy (x) is located from its ideal point (E), as well as how far the final policy is from the Agency's proposal (a).[22]

Sequence of play

The delegation with competing oversight game begins in stage 1 with Nature jointly determining whether a policy under consideration is salient to OIRA and/or the Legislature with the following probabilities: with probability p_1, the policy is salient to both OIRA and the Legislature ($\varepsilon = 1$, $\lambda = 1$), with probability p_2, the policy is salient to OIRA, but not the Legislature ($\varepsilon = 1$, $\lambda = 0$), and with probability p_3, the policy is salient to the Legislature, but not OIRA ($\varepsilon = 0$, $\lambda = 1$), where $\sum_{i=1}^{3} p_i = 1$.[23] To reinforce a point above, this probability distribution represents fact that, *ex ante*, actors might not have perfect information regarding their constituencies' priorities. After explicit policies are proposed, however, actors likely receive information from their constituencies which might induce them to care about the policies in question (i.e., McCubbins and Schwartz 1984).

In stage 2 the Legislature makes a legislation decision, $l = (d, x_L)$ consisting of a delegation decision ($d \in \{1, 0\}$) for whether or not to cede policymaking authority to a substantive Agency, and a policy decision $x_L \in \{\varnothing, R^1\}$. I consider a very coarse delegation mechanism, whereby if the Legislature delegates authority to the Agency ($d = 1$), the Agency has complete discretion over where to set policy. Alternatively, if it does not delegate to the Agency ($d = 0$), the Legislature decides where to set policy, $x_L \in R^1$, subject to paying a fixed cost, $k \geq 0$. If the Legislature chooses not to delegate to the agency and create policy internally, Nature's move is then revealed (regarding policy salience), the game ends, and payoffs are disbursed. In stage 3, assuming that delegation has occurred, the Agency chooses a policy $a \in R^1$, which will potentially be subject to OIRA review. Finally, in Stage 4, OIRA observes the Agency proposal

[22] One might also consider an extension wherein the Agency suffers a similar cost if OIRA intervenes and changes policy. Analysis of such a model yields substantively similar results to the model developed here, so long as the marginal cost incurred by OIRA is greater than that incurred by the Agency.

[23] A more general model can be analyzed in an analogous manner that assumes with probability $p_4 \geq 0$ the policy is salient to neither actor ($\varepsilon = 0$, $\lambda = 0$), where $\sum_{i=1}^{4} p_i = 1$. The current model disregards this option, given that it seems unlikely that there exist any policies for which no constituency of the executive or legislature would express sufficient concern for either actor to take notice.

and ascertains whether the policy area is politically salient to its interests, and then chooses a final policy, $x_E \in R^1$.[24]

For the purposes of analysis, I assume that $p_2 = p_3 = p$. That is, the probability that the Nature reveals that a policy is salient to Legislature but not to OIRA is equal to the probability that the opposite ensues. Put simply, p characterizes *ex post* divergent preferences, while $p_1 = 1-2p$ characterizes *ex post* aligned preferences.[25] The equilibrium concept is subgame perfect Nash where I assume that in the case of indifference, the Legislature delegates to the Agency, and Figure 2 presents the extensive game form.

[Figure 2 about here]

5. Results

The equilibrium to this game can be deduced by employing backwards induction. Building on the results of the simple two-player model of policymaking above, it is obvious that if the Legislature delegates to the Agency, then conditional on the policy being salient to OIRA, (ε = 1), OIRA will set $x^*(a) = \dfrac{E + ca}{1 + c}$ for any Agency policy, a. Because it is common knowledge that OIRA will select $x^*(a)$ if it learns that the policy is salient, the Agency will choose a policy, a, that maximizes its expected utility, which is influenced by the probability of OIRA intervention. More formally, the agency will choose a policy, a, that maximizes the following function:

$$EU_A(a) = -(1-p)(x_E{}^*(a) - A)^2 - p(A-a)^2 .$$

Applying the calculus yields the optimal policy chosen by the agency:

$$a^* = \frac{Ap + Ac(1+p+c) - Ec(1-p)}{c^2 + p + 2cp} .$$

[24] One might question whether OIRA intervention is really tantamount to a simple veto over agency policy proposals (as in Bueno de Mesquita and Stephenson 2006), or policy alterations as modeled here. The current modeling choice seems appropriate in light of the examples noted above, and numerous other documented cases of OIRA intervention (e.g., O'Connor (1988, 196), Olson (1984) Percival (2001, 994)) wherein OIRA dictated to agency officials what changes were required in order to secure its approval.

[25] This restriction is not crucial for deriving and characterizing equilibria, and the qualitative properties of the final policies enacted under delegation are identical to a more general model (where $p_2 \neq p_3$). Employing this assumption, however, is useful in facilitating the derivation of comparative statics analysis on the critical value of p, such that the legislature would strictly prefer the existence of OIRA, to delegating without OIRA oversight.

In light of what will occur under delegation, the Legislature considers the following: if it creates policy internally, it can promulgate its ideal policy, but must pay cost *k*. If it delegates to the Agency, however, the Legislature might end up with *a** (which could be quite favorable to its interests) with probability *p*, but it could end up with *x**(*a**) (which could be quite undesirable), if the policy is revealed to be salient to the Executive with probability (1-*p*). Given these tradeoffs, the Legislature makes its delegation decision based on the costs it faces from making policy internally, in comparison to the expected final policy that corresponds to delegation. Proposition 1 characterizes the equilibrium of this game. (Proofs of all results are in the appendix.)

Proposition 1: *The subgame perfect Nash equilibrium to the delegation with competing oversight game is defined as an optimal legislation decision by the Legislature, an optimal agency policy proposal, and an optimal oversight decision by OIRA as follows*:

$$l^*(\bullet) = \begin{cases} (0,0) \text{ if } k < k^* \\ (1,0) \text{ if } k \geq k^* \end{cases}$$

$$a^*(\bullet) = \frac{pA + Ac(1+p+c) - Ec(1-p)}{c^2 + p + 2pc}$$

$$x^*_E(\bullet) = \begin{cases} \dfrac{Ac(p+c) + pE(1+c)}{c^2 + p + 2pc} \text{ if } \varepsilon = 1 \\ a \text{ if } \varepsilon = 0 \end{cases}$$

$$\text{where } k^* = (1-2p)\left(\frac{Ac(p+c) + pE(1+c)}{c^2 + p + 2pc}\right)^2 + p\left(\frac{pA + Ac(1+p+c) - Ec(1-p)}{c^2 + p + 2pc}\right)^2.$$

Hence, the Legislature bases its initial delegation decision on how the costs of internal policymaking compare to its expected utility if policy is outsourced to an Agency. The expected utility from delegation, in turn, depends on the probability that the Executive learns that a policy is salient, which would induce OIRA intervention following agency policymaking, as well as the probability that the policy is not salient to the Executive, resulting in the Agency's proposed policy. In all cases following delegation, the Agency's proposed policy is closer to Legislature's ideal point than the promulgated policy following OIRA intervention.

Figure 3 illustrates the equilibrium Agency and OIRA proposals, *a** and *x**(*a**), respectively, for the case where $L = 0$, $A = 2$, $E = 3$, $c = 1$, and $p = \frac{1}{3}$. In other words, one-third of the time the policy is revealed to be salient to the Legislature but not the Executive, one-third

of the time the opposite holds, and one-third of the time the policy is revealed to be salient to both actors, *ex post*.

[Figure 3 about here]

In comparing Figure 3 to Figure 1, it is clear that when the Agency is uncertain about the potential for OIRA intervention, it no longer proposes a policy that substantially deviates from its ideal point, such as $a^* = 1$. Instead, it proposes a policy closer to its ideal point because it knows with a certain probability ($p = \frac{1}{3}$) OIRA will not intervene, and a^* will become the final policy. Of course, because OIRA intervention might occur (with probability $(1-p) = \frac{2}{3}$), the Agency proposal still deviates from the Agency's ideal point, favoring the Legislature, to ensure that any $x^*(a^*)$ chosen by OIRA will be relatively favorable to Agency interests. Given these tradeoffs and the assumptions above, the equilibrium Agency proposal will be $a^* = \frac{5}{3}$, which will induce $x^*(a^*) = \frac{7}{3}$ if OIRA intervenes; and the Legislature will delegate to the Agency, given the potential for OIRA oversight, if $k \geq \frac{41}{9}$.

Will the legislature ever want the possibility of OIRA intervention?

Consideration of Proposition 1 provides us with insight as to why the Legislature might prefer OIRA intervention to a situation in which there was no executive clearance. The above results imply that delegation will occur whenever it is too costly to create policy internally ($k \geq k^*$). Suppose however, that the Legislature had a choice of playing a similar delegation game, where it chose whether to delegate to an Agency, and if delegation occurred, the Agency created policy unilaterally and the game ended. Without the prospect of executive oversight, the Agency would obviously propose a policy at its ideal point ($a^* = A$), and the Legislature would only delegate when the costs from creating policy internally were greater than the distributive policy loss it experienced by outsourcing policymaking authority to the agency, or whenever $k \geq$

A^2.[26] Comparing A^2 to the boundary on k in Proposition 1 above, one sees that depending on the values of p, delegation occurs in the delegation with competing oversight game for a wider range of cases than if executive oversight is not possible (i.e., $k^* < A^2$). This intuition is stated more formally in the following proposition.

Proposition 2: *In the delegation with oversight game, there exists an ex post preference divergence probability cutpoint, p*, such that for $p \geq p^*$, the Legislature would prefer to delegate to an agency with the possibility of OIRA intervention, and for $p < p^*$, the Legislature would strictly prefer to delegate to an Agency without the possibility of OIRA intervention.*

Because the possibility of OIRA intervention induces the Agency to propose policies that are closer to the Legislature than it would if oversight did *not* occur with certainty, the Legislature will strictly prefer the institutional arrangement modeled here to one in which OIRA did not exist, depending on the correlation between λ and ε. In the starkest case, suppose that $p = .5$, meaning that every policy the legislature found salient OIRA did not find salient, and the opposite held true as well. In such a situation, the Legislature would strictly prefer delegating with the possibility of *ex post* oversight to a world in which delegation occurred without the possibility of OIRA intervention. Every policy the Legislature found salient would be located closer to its ideal point than the Agency's ideal point, A, and every policy that OIRA decided to change would be a policy that the Legislature effectively did not care about.

Hence, even though OIRA appears to be a coercive institution that generally favors presidential interests, its existence can actually allow both branches of government to realize benefits that would not exist if lawmaking occurred without its mediating influence. As a result, each branch has clear incentives to maintain its institutional protection in the existing separation-of-powers system.[27] The following Result identifies how this crucial level of preference divergence p^* varies in response to the parameters of the model.

Result 1: *Based on comparative statics over p*, the Legislature is, ceteris paribus, more likely to prefer OIRA review to delegation without OIRA when*

---

[26] If the legislature created policy internally, it would set policy at its ideal point and pay cost k, yielding utility equal to: $-(0-0)^2 - k = k$. In contrast if the Legislature delegated to the agency, the agency would set policy at its ideal point, and the Legislature's utility will be: $-(0-A)^2 = -(A)^2$. Hence, the Legislature will delegate whenever: $-k < -A^2 \Rightarrow k > A^2$.

[27] It is worthwhile to note that this insight emerges from analysis of a one-shot game between the Legislature, Agency and Executive, and is not an artifact of repeated-play interactions between these actors, as commonly invoked to support similar theoretical phenomenon.

i) *it has relatively similar policy preferences (ideal points) with the Executive,*

ii) *it has relatively different policy preferences (ideal points) from the Agency, and*

iii) *the Executive's costs of policy change are high (low), and when the Agency and Legislature have relatively different (similar) ideal points.*

Taken together, Result 1 characterizes the conditions under which the Legislature is more or less likely to prefer the institution of executive clearance. In explicating this result, we might begin by characterizing the expected policy following delegation subject to OIRA review as

$$\tilde{x} = (1-p)(x^*(a^*)) + (p)(a^*) = \frac{Ac(2p+c) + pE(1-p) + p^2 A}{c^2 + p + 2pc}.$$

Inspection reveals that as the Executive moves further away from the Legislature, so too, does the expected policy implemented. Hence, the Legislature is more likely to favor OIRA review, *ceteris paribus*, when OIRA (i.e., the Executive) and the Legislature have similar policy preferences. Analogously, the Legislature would be more likely to delegate policymaking authority to agencies subject to OIRA review, in contrast to independent agencies, when government is unified, rather than divided. Consistent with this implication, Kiewiet and McCubbins' observe (1991, 181) that during the divided government years of the Reagan administration, congressional Democrats consistently tried to subvert OIRA review by simply writing agency rules into law—that is, creating policy internally, in the context of this model.

As the Agency moves farther away from the Legislature, the Legislature is more likely to prefer OIRA review because executive clearance induces the Agency to propose policies that are, *ceteris paribus*, more Legislature-friendly that what it would propose in the absence of OIRA. The fact that these agency proposals might be moved to $x^*(a)$ if OIRA intervenes is not problematic, so long as the Agency is sufficiently far away from the Legislature's ideal point to make the possibility of OIRA intervention worthwhile in comparison to a world in which all policies were located at A with certainty. For a similar rationale, when the Agency and Legislature are relatively close to each other, the Legislature is less likely to prefer the possibility of OIRA intervention as intervention becomes more costly (c increases), yet this relationship reverses when the Agency is relatively close to OIRA. Because increases in OIRA's marginal costs generally cause final policies (either the Agency's proposal or OIRA's policy) to be located closer to the Agency, the Legislature is less likely to prefer OIRA when the Agency and

Legislature's ideal points are relatively similar and OIRA faces high costs.[28] For some critical value of *A*, however, the potential policy gains that follows from delegation with OIRA are so great, that even as OIRA's costs increase, leading to final policies generally closer to the Agency, the Legislature will still prefer the possibility of OIRA intervention given that sometimes the final policy implemented will deviate from the Agency towards the Legislature.[29]

How might Congress want to support OIRA?

Having identified why Congress might clearly want to delegate to agencies subject to OIRA review even if OIRA might change policies in ways that are undesirable to Congress, one might ask how OIRA intervention or constraints on OIRA can influence social welfare. Though not modeled here, Congress establishes OIRA's budget through the appropriations process which presumably influences OIRA's costs, and the effectiveness of OIRA review. Scholars (e.g., Shane 1995) have noted how Congress has historically leveraged appropriations to induce changes in OIRA review processes. Implicit in these accounts is the notion that influencing OIRA's budget can lead to policy outcomes that more appropriately reflect the interests of the American polity. The results below explore these possibilities.

Proposition 3: *The expected policy enacted following delegation moves closer to Congress as OIRA's costs increase.*

As noted above, increasing OIRA's costs has two impacts in regards to policy. First, the equilibrium Agency proposal becomes more pro-Executive, which intuitively occurs because the Agency knows that OIRA will be constrained in its ability to move the proposal, and hence, offers more right-leaning policies. Second, conditional on learning that a policy is salient, OIRA's equilibrium policy becomes more pro-Legislature, because even though the Agency has proposed a more OIRA-friendly policy, OIRA has less resources with which to enact policy change. While these marginal effects go in opposite directions, inspection reveals that the marginal impact of costs on OIRA's optimal policy, weighed by the *ex ante* probability that OIRA learns that the policy is salient (1-*p*), is greater in magnitude than the marginal impact of costs, weighed by the *ex ante* probability of OIRA not intervening (*p*), on the Agency's optimal

[28] Comparative statics analysis on the equilibrium policies in Proposition 1 reveals that:
$\frac{\partial a^*}{\partial c} = \frac{(c^2 - p)(E - A)(1-p)}{(c^2 + p + 2pc)^2} > 0$ and $\frac{\partial x^*(a^*)}{\partial c} = \frac{(A-E)(c^2 + 2c + p)p}{(c^2 + p + 2pc)^2} < 0$.

[29] The non-monotonic relationship between c and p^* follows from the Legislature's risk-aversion, but is not an artifact of the quadratic utility specification.

proposal. Hence, as OIRA's costs increase, the expected policy enacted following delegation becomes more left-leaning, favoring the Legislature. In light of this finding, one would suspect that the Legislature would strictly prefer to increase OIRA's costs, which would induce more left-leaning policies. The following Proposition reveals that this is not always the case.

Proposition 4: *The expected utility of OIRA is decreasing in its costs, while the expected utility of the Agency is increasing in OIRA's costs. Ceteris paribus, the Legislature's expected utility is*

i) increasing (decreasing) in OIRA's costs when the Agency is relatively close to (far from) the Legislature,

ii) increasing (decreasing) in OIRA's costs when the Executive is relatively far from (close to) the Legislature, and

iii) increasing (decreasing) in OIRA's costs for lower (higher) values of c.

Because increases in OIRA's costs induce leftward movements in the expected final policy implemented, it is unsurprising that marginal increases in OIRA's costs correspond to increases and decreases in the utilities of the Agency and OIRA, respectively. The impact of OIRA's costs on the Legislature's expected utility, however, profoundly depends on the actors' preference alignment and the baseline level of *c*, which influences both the Agency's proposals and OIRA's oversight capabilities. For example (and consistent with the results above), when the Agency and the Legislature are closely aligned, the Legislature would prefer that OIRA's costs be higher, because even though they will induce policies that are relatively close to the Agency, the policy divergence between the Legislature and Agency is trivial. Alternatively, when the Agency gets sufficiently far away from the Legislature, it prefers smaller costs, as they induce the Agency to overcompensate in its initial proposal and propose policies that are relatively close to the Legislature; so that even if OIRA subsequently changes these policies, they will still be located somewhere reasonably close to the Agency's ideal point. The logic is similar in regards to the preferences of the Executive.

The impact of OIRA's costs on the Legislature's expected utility is non-monotonic in that, ceteris paribus, when OIRA's costs are low, the Legislature would strictly prefer to increase OIRA's costs, which will cause the expected final policy to move sharply towards the Legislature from OIRA. For higher baseline costs, however, increasing OIRA's costs has a negligible impact on the expected final policy. While it continues to move slightly towards the Legislature, the Legislature would be better off by decreasing OIRA's costs, which would induce

the Agency to propose more pro-Legislature policies to accommodate for a bureaucratically competent OIRA. Given this non-monotonicity, the welfare effects of changing OIRA's costs are ambiguous. To the extent that the Legislature, the Agency, and the Executive represent different, and collectively exhaustive, sets of constituencies in the American polity, the sum of the actors' expected utilities, might be interpreted as a measure of social welfare. Hence, reforms aimed at constraining OIRA's influence might not lead to general increases in social welfare, as both the Legislature and OIRA may be harmed; and in certain situations social welfare could be enhanced by actually *strengthening* OIRA's oversight capabilities.

6. Empirical Implications and Conclusion

In a separation of powers system, there is an obvious potential for conflict between the legislative and executive branches. As each branch of government develops new institutions to influence the policymaking process, it is natural for scholars and pundits to observe these institutions and practices in action, and comment on how any given decision obviously benefits one branch of government over the other. While such characterizations are straightforward to postulate, they may also be wrong. This paper advances a new perspective by arguing that certain bureaucratic institutions are created and survive, not because they benefit one branch of government at the expense of the other, but because they can efficiently serve the competing interests of *both* branches. The delegation with competing oversight game, which characterizes contemporary rulemaking politics in the presence of OIRA, demonstrates how the possibility of OIRA review generally induces agencies to propose policies that are biased away from the executive towards the legislature. Moreover, because OIRA presumably only intervenes in rulemaking when the policies considered are salient to the executive's political constituencies, executive clearance offers clear opportunities for political gains from trade between the legislative and executive branches.

In certain cases OIRA will change policies to benefit the executive, while leaving other policies unchanged even though they favor the legislature. If the legislature and the executive do not find too many policies salient to their joint interests, *ex post*, OIRA review can actually induce a positive-sum equilibrium in which each of these competing institutions can experience policy gains as a result of the agency's strategic proposal. Contrary to the arguments of many

scholars, the legislature might actually prefer that OIRA be empowered with oversight capacity rather than be hindered by cumbersome procedures and insufficient resources with which to conduct review. The model suggests that the scope of the policy gains experienced by the legislative and executive branches, as well as the locations of proposed and final policies, and the incidence of OIRA intervention, will depend profoundly on the preference divergence among the actors, the probability of political salience to the executive, and the relevant costs that the executive must incur to change policy. This paper therefore confronts the puzzle of why a legislature might prefer ex post review by an executive over direct agency policymaking. Put simply, executive review ensures that bureaucratic policies are responsive to their political principals in ways that could not be obtained if agencies were unconstrained. These results suggest several testable hypotheses.

First, it is clear that the initial decision to delegate should be influenced by the preference divergence between the legislature and the executive, as well as between the legislature and the substantive agency. As noted above, one straightforward hypothesis that follows from the model is that the legislature is more likely to delegate to agencies subject to OIRA review during periods of unified rather than divided government. Other scholars (e.g., Epstein and O'Halloran 1999) have found support for this hypothesis; yet regardless of whether government is unified or divided, Proposition 2 suggests that the legislature is more likely to delegate to agencies subject to OIRA review the more closely aligned they are to the executive, which goes beyond the predictions of existing theories. By analyzing how legislative delegation varies with respect to the agency's level of political insulation, as measured by the portion of the agency that is politicized by the President, one could assess the veracity of this prediction.

Second, with regard to policy outputs, comparative statics analysis on the equilibrium policies identified in Proposition 1 implies that the substantive effects of OIRA intervention should be greatest on those policies that were *a priori* least salient to the executive.[30] One

[30] More specifically, we see that $\frac{\partial x^*(a^*)}{\partial p} = \frac{c^2(E-A)(1+c)}{(c^2+p+2pc)^2} > 0$. The intuition behind this result is as follows: because the Agency views increases in p as relative decreases in the probability that OIRA will intervene, the Agency proposes more right-leaning policies as p increases. Hence, considering p' and p'', where $p' < p''$, the Agency will propose a more OIRA-friendly proposal for $p = p''$ compared to when $p = p'$. Conditional on learning that a policy is salient to its interests ($\varepsilon = 1$) then, OIRA can move the Agency proposal closer to its ideal point for a relatively lower cost when $p = p''$, in comparison to when $p = p'$. As a result, *ceteris paribus*, those policies that are farthest from the Legislature following OIRA intervention should be those policies for which, ironically, the probability of OIRA intervention is lowest.

plausible indicator of policy change following OIRA intervention is the amount of litigation that emerges following publication of the rule in the Federal Register. If OIRA intervention generates a rule that deviates from what would follow from conventional rulemaking proceedings, one would expect that the rule would likely be challenged on the grounds that the rulemaking process was arbitrary and capricious, and/or the rule deviated from the intentions of Congress. Hence, it would be interesting to analyze the relationship between court challenges to rules following OIRA intervention, and the salience of the rule to executive interests.[31]

Third, the fact that certain states have incorporated OIRA-like institutions into their administrative lawmaking processes point to clear opportunities for comparative state research. The results of the model suggest (among other things) that legislatures in those states with OIRA-like institutions should be more likely to delegate to executive agencies under cases of unified government than those states without OIRAs. Consideration of this and related hypotheses can allow scholars to exploit the rich institutional variation that exists among the American states.

Several theoretical extensions to this model are also worth considering. First, one might explore other, more direct means of control that the legislature might exercise over OIRA. While the above model provides a rationale for why the legislature would prefer OIRA intervention, one wonders how the legislature might explicitly limit OIRA intervention in cases where the executive and the legislature have highly correlated salience factors over policies. A natural extension to consider is allowing the legislature to affect OIRA's costs, depending on issue-area. Similarly, one might also incorporate other institutional actors, such as the courts, into the delegation and policymaking process modeled here, to analyze actors' decisionmaking given the possibility of judicial oversight.

Other extensions to this model would explore the robustness of these results to variations in the legislative delegation mechanism, the introduction of uncertainty about the relationship between the policy chosen by the agency and the actual policy consequences that ensue, as well as the introduction of a reversion status quo policy that occurs in the absence of agency policymaking. A final point worth emphasizing is that the positive-sum equilibrium derived here is entirely distributive in nature. In other words, even if there are *no* prospects for informational

[31]More fundamentally, a crucial assumption of the model is that OIRA only intervenes on matters that are found to be politically salient to the executive. One might test the plausibility of this assumption by analyzing how agency rules are changed across and within presidential administrations depending on presidential priorities.

gains following delegation, positive-sum institutions can thrive in separation of powers systems. To the extent that agencies might provide clear informational benefits, one would suspect that the relationships derived in this analysis would be strengthened further. Regardless of what direction is taken, the model developed here provides insight for why apparently contentious political institutions continue to survive and thrive in a contemporary separation of powers system. As states and comparative democracies continue to explore various methods of agency and regulatory oversight, these results should provide insight regarding the likely impacts of these institutions.

References

Balla, Steven J. 2004/2005. "Between Commenting and Negotiation: The Contours of Public Participation in Agency Rulemaking." *I/S: A Journal of Law and Policy for the Information Society*. 1 (1): 59-94.

Balla, Steven J., Jennifer M. Deets, and Forrest Maltzman. 2005. "Outside Participation and OMB Review of Agency Regulations." Paper presented at the 2005 annual meetings of the Association for Public Policy Analysis and Management, Washington, DC, November 3-5.

Balla, Steven J., and John R. Wright. 2001. "Interest Groups, Advisory Committees, and Congressional Control of the Bureaucracy." *American Journal of Political Science*. 45 (4): 799-812.

Balla, Steven J., and John R. Wright. 2003. "Consensual Rule Making and the Time it Takes to Develop Rules." In George A. Krause, and Kenneth J. Meier (eds.) *Politics, Policy, and Organizations: Frontiers in the Scientific Study of Bureaucracy*. (pp. 187-206). Ann Arbor: University of Michigan Press.

Bawn, Kathleen. 1997. "Choosing Strategies to Control the Bureaucracy: Statutory Constraints, Oversight, and the Committee System." *Journal of Law, Economics, and Organization*. 13 (1): 101-126.

Bendor, Jonathan, Amihai Glazer, and Thomas Hammond. 2001. "Theories of Delegation." *Annual Review of Political Science*. 4: 235-69.

Bendor, Johathan, and Adam Meirowitz. 2004. "Spatial Models of Delegation." *American Political Science Review*. 98 (2): 293-310.

Bruff, Harold. 1989. "Presidential Management of Agency Rulemaking." *George Washington Law Review*. 57 (3): 533-595.

Bueno de Mesquita, Ethan, and Matthew C. Stephenson. Forthcoming. "Regulatory Review with Observable and Unobservable Effort." *American Political Science Review*.

Coglianese, Cary. 1997. "Assessing Consensus: The Promise and Performance of Negotiated Rulemaking." *Duke Law Journal*. 46 (6): 1255-1347.

Cooper, Joseph, and William F. West. 1988. "Presidential Power and Republican Government: The Theory and Practice of OMB Review of Agency Rules." *Journal of Politics*. 50 (4): 864-895.

Cooper, Phillip J. 2002. *By Order of the President: The Use and Abuse of Executive Direct Action*. Lawrence, KS: University of Kansas Press.

Cox, Gary W., and Mathew D. McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives*. New York, NY: Cambridge University Press.

Croley, Steven. 2003. "White House Review of Agency Rulemaking: An Empirical Investigation." *University of Chicago Law Review*. Summer. 70 (3): 821-885.

DeMuth, Christopher C., and Douglas H. Ginsburg. 1986. "White House Review of Agency Rulemaking." *Harvard Law Review*. 99 (5): 1075-1088.

Elliott, E. Donald. 1994. "TQ-ing OMB: Or Why Regulatory Review Under Executive Order 12,291 Works Poorly And What President Clinton Should Do About." *Law and Contemporary Problems*. 57 (1-2): 167-184.

Epstein, David, and Sharyn O'Halloran. 1994. "Administrative Procedures, Information, and Agency Discretion." *American Journal of Political Science*. 38 (3): 697-722.

Epstein, David, and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*. Cambridge: Cambridge University Press.

Eskridge, William N., Jr., and John Ferejohn. 1992. "Making the Deal Stick: Enforcing the Original Constitutional Structure of Lawmaking in the Modern Regulatory State." *Journal of Law, Economics, and Organization*. 8 (1): 165-189.

Gailmard, Sean and John W. Patty. 2006. "Separation of Powers, Information and Bureaucratic Structure." Paper presented at the 2006 Annual Meetings of the American Political Science Association, Philadelphia, PA.

Heinzerling, Lisa. 2006. "Statutory Interpretation in the Era of OIRA." *Fordham Urban Law Journal*. 33: 101-120.

Howell, William G. 2003. *Power Without Persuasion: The Politics of Direct Presidential Action*. Princeton: Princeton University Press.

Huber, John D., and Charles R. Shipan. 2000. "The Costs of Control: Legislators, Agencies, and Transaction Costs." *Legislative Studies Quarterly*. 25 (1): 25-52.

Jordan, Stuart V. 2006. "OIRA Review of Agency Rules and Presidential Control of Policy: An Empirical Test." Unpublished Manuscript, Princeton University.

Kerwin, Cornelius M. 2003. *Rulemaking: How Government Agencies Write Law and Make Policy*. Washington, DC: CQ Press.

Kiewiet, D. Roderick, and Mathew D. McCubbins. 1991. *The Logic of Delegation: Congressional Parties and the Appropriations Process*. Chicago: University of Chicago Press.

Krehbiel, Keith. 1996. Pivotal *Politics: A Theory of U.S. Lawmaking*. Chicago: University of Chicago Press.

McCubbins, Mathew D., Roger G. Noll, and Barry R. Weingast. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics, and Organization*. 3(2): 243-277.

McCubbins, Mathew D., Roger G. Noll, and Barry R. Weingast. 1989. "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies." *Virginia Law Review*. 75 (2): 431-482.

McNollGast. 1994. "Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation." *Law and Contemporary Problems*. 57 (1): 3-37.

McCubbins, Mathew D., and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science*. 28 (1): 165-179.

Moe, Terry M. 1985. "The Politicized Presidency." In John E. Chubb and Paul E. Peterson, eds., *The New Direction in American Politics*. (pp. 235-272). Washington, DC: Brookings Institution.

Moe, Terry M. 1989. "The Politics of Bureaucratic Structure." In John E. Chubb and Paul E. Peterson (eds). *Can the Government Govern?* (pp. 267-329). Washington, DC: Brookings Institution Press.

Moe, Terry M., and Scott A. Wilson. 1994. "Presidents and the Politics of Structure." *Law and Contemporary Problems*. 57 (2): 1-44.

Moe, Terry M., and William G. Howell. 1999. "The Presidential Power of Unilateral Action." *Journal of Law, Economics, and Organization*. 15(1): 132-179.

Morrison, Alan B. 1986. "OMB Interference with Agency Rulemaking: The Wrong Way to Write a Regulation." *Harvard Law Review*. 99 (5): 1059-1074.

Nathan, Richard. 1983. *The Administrative Presidency*. New York: John Wiley and Sons.

O'Connor, Kathleen. 1988. "OMB Involvement in FDA Drug Regulations: Regulating the Regulators." *Catholic University Law Review*. 38: 175-212.

OECD. 2003. "Regulatory Performance: Ex Post Evaluation of Regulatory Policies." Paris.

Olson, Erik D. 1984. "The Quiet Shift of Power: Office of Management and Budget Supervision of Environmental Protection Agency Rulemaking Under Executive Order 12,291." *Virginia Journal of Natural Resources Law*. 4: 1-80.

Percival, Robert V. 2001. "Presidential Management of the Administrative State: The Not-So-Unitary Executive." *Duke Law Journal*. 51: 963-1014.

Petracca, Mark P. 1986. "Federal Advisory Committees, Interest Groups, and the Administrative State." *Congress and the Presidency*. 13 (1): 83-114.

Seidenfeld, Mark. 1994. "A Big Picture Approach to Presidential Influence on Agency Policymaking." *Iowa Law Review*. 80: 1-50.

Shane, Peter M. 1995. "Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking." *Arkansas Law Review*. 48: 160-214.

Shapiro, Sidney A. 1994. "Political Oversight and the Deterioration of Regulatory Policy." *Administrative Law Review*. 46 (1): 1-40.

Strauss, Peter L. and Cass R. Sunstein. 1986. "The Role of the President and OMB in Informal Rulemaking." *Administrative Law Review*. 38 (2): 181-207.

Teske, Paul. 2004. *Regulation in the States*. Washington, DC: Brookings Institution Press.

United States General Accounting Office. 2003. Rulemaking: OMB's Role in Review of Agencies' Draft Rules and the Transparency of Those Reviews. www.gao.gov/new.items/d03929.pdf.

United States Government Printing Office. 1986. Oversight of the Office of Management and Budget Regulatory Review and Planning Process. Hearing Before the Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs, United States Senate. (January 28, 1986).

Volden, Craig. 2002a. "A Formal Model of the Politics of Delegation in a Separation of Powers System." *American Journal of Political Science*. 46(1): 111-133.

Volden, Craig. 2002b. "Delegating Power to Bureaucracies: Evidence from the States." *Journal of Law, Economics, and Organization*. 18(1): 187-220.

Waterman, Richard W. 1989. *Presidential Influence and the Administrative State*. Knoxville: University of Tennessee Press.

Weingast, Barry R., and Mark J. Moran. 1983. "Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission." *Journal of Political Economy*. 91 (5): 765-800.

Appendix

Proof of Proposition 1:

The equilibrium of this game is established by backwards induction. Upon realizing that policy under consideration is salient to its interests ($\gamma = 1$), OIRA will choose x^* to maximize its utility:

$$\underset{x}{\text{ArgMax}}\, U_E(x) = -(E-x)^2 - c(x-a)^2 .$$

Differentiating $U_E(x)$ with respect to x and setting the first order condition equal to zero yields:

$\frac{\partial U_E(x)}{\partial x} = 2(E-x) - 2c(x-a) = 0 \Rightarrow x^*(a) = \frac{E+ca}{1+c}$, which is the optimal policy, $x^*(a)$, implemented by OIRA, in the event that it chooses to alter a.

In the previous stage, upon being delegated policymaking authority, the Agency will choose the a^* that maximizes its expected utility, which is based on the probability that OIRA deems the policy salient and chooses to move it to $x^*(a)$:

$$\underset{a}{\text{ArgMax}}\, \text{E}U_A(x) = -(1-2p)(x^*(a)-A)^2 - p(x^*(a)-A)^2 - p(A-a)^2$$

$$= -(1-p)(x^*(a)-A)^2 - p(A-a)^2.$$

Differentiating $EU_A(x)$ with respect to a, and setting the first order condition equal to zero yields:

$$\frac{\partial EU_A(x)}{\partial a} = \frac{2(Ac(1+c+p) - Ec(1-p) - a(c^2+p+2pc) + pA)}{(1+c)^2} = 0$$

$$\Rightarrow \frac{pA + Ac(1+p+c) - Ec(1-p)}{c^2+p+2pc} = a^*,$$ which is the optimal agency policy proposal, and will induce an optimal OIRA policy of $x^*(a) = \frac{Ac(p+c) + pE(1+c)}{c^2+p+2pc}$ in the case of OIRA intervention.

Finally, the legislature's equilibrium delegation and policy choice is based on its consideration of its expected utility following from delegation in comparison to its utility if it creates policy internally. If the legislature decides to create policy internally, it will incur cost k, and it is obvious that it will choose to set policy at its ideal point, yielding utility equal to:

$$EU_L(\text{no delegation}) = -(1-2p)(L-L)^2 - p(L-L)^2 - p(0) - k = -(1-p)(0-0)^2 - p(0) - k = -k.$$

Alternatively, if the legislature chooses to delegate to the agency, given the possibility of ex post

intervention by OIRA, its expected utility is equal to:

$$EU_L(\text{delegation}) = -(1-2p)(0-x^*(a))^2 - p(0)(0-x^*(a))^2 - p(0-a^*)^2$$

$$= -(1-2p)(\frac{Ac(p+c)+pE(1+c)}{c^2+p+2pc})^2 - p(\frac{pA+Ac(1+p+c)-Ec(1-p)}{c^2+p+2pc})^2.$$

Hence, the legislature will choose to delegate to the agency, even with the prospect of OIRA intervention

whenever: $(1-2p)(\frac{Ac(p+c)+pE(1+c)}{c^2+p+2pc})^2 + p(\frac{pA+Ac(1+p+c)-Ec(1-p)}{c^2+p+2pc})^2 < k = k^*$, and will choose to create policy internally whenever $k < k^*$

Proof of Proposition 2

To prove Proposition 2, it is sufficient to identify the critical value of *p*, such that the Legislature is indifferent between delegating to an agency that is subject to OIRA review, and delegating to an agency that sets policy without any *ex post* oversight. If the Legislature were to delegate to an agency not subject to OIRA review, that agency would obviously set all policy equal it its ideal point, A. Hence, the expected utility of the legislature under delegation without OIRA would be:

$$EU_L(\text{del., no OIRA}) = -(1-2p)(L-A)^2 - p(L-A)^2 - p(0) = -(1-p)A^2.$$

In contrast, as noted above, if the Legislature were to delegate to an agency that was subject to OIRA review, its expected utility would be equal to:

$$EU_L(\text{del., OIRA}) = -(1-2p)(\frac{Ac(p+c)+pE(1+c)}{c^2+p+2pc})^2 - p(\frac{pA+Ac(1+p+c)-Ec(1-p)}{c^2+p+2pc})^2.$$

Hence, setting these two expressions equal to one other, one can identify the critical value of p, whereby the legislature would be indifferent between delegating to an agency that is subject to OIRA oversight or not:

$$EU_L(\text{del., no OIRA}) = EU_L(\text{del., OIRA})$$

$$\Rightarrow -(1-p)A^2 = -(1-2p)(\frac{Ac(p+c)+pE(1+c)}{c^2+p+2pc})^2 - p(\frac{pA+Ac(1+p+c)-Ec(1-p)}{c^2+p+2pc})^2.$$

Solving the above expression for p^* yields three roots: $p^* \in \{p_A, 0, p_B\}$. Analysis demonstrates that $p_A < 0$, hence, the relevant solution which defines the critical $p^* = p_B$:

$$p^* = -\frac{1}{2}(\frac{Ec(c-2)+Ac(2c^2+3c-2)-(E+A)}{Ec(4+c)+Ac(6+3c)+2(E+A)} -$$

$$\frac{\sqrt{EA(20c^3+16c^2+4c^4+8c+2)+A^2(13c^4+12c^6+8c^3+6c^2+4c+1)+E^2(5c^4+12c^3+10c^2+4c+1)}}{Ec(4+c)+Ac(6+3c)+2(E+A)})$$

Proof of Result 1

To prove Result 1, it is sufficient to identify the signs of the first derivatives of p^* with respect to the variables of interest. Analysis reveals that:

$$\frac{\partial p^*}{\partial E} > 0, \frac{\partial p^*}{\partial A} < 0, \text{and } \frac{\partial p^*}{\partial c} > 0 \text{ for } c \le \bar{c} \text{ and } \frac{\partial p^*}{\partial c} < 0 \text{ for } c > \bar{c}.$$

(Complete presentations of the relevant first-order conditions and $\bar{c}$ are omitted for space considerations.)

Proof of Proposition 3

To prove Proposition 3, it is sufficient to identify the sign of the first derivative of the expected policy, $\tilde{x}$ with respect to c.

Given that $\tilde{x} = (1-p)(x^*(a^*)) + (p)(a^*) = \dfrac{Ac(2p+c) + pE(1-p) + p^2 A}{c^2 + p + 2pc}$,

$$\frac{\partial \tilde{x}}{\partial c} = \frac{2p(A-E)(p+c)(1-p)}{(c^2 + p + 2pc)^2} < 0.$$

Proof of Proposition 4

To prove Proposition 4, it is sufficient to identify the sign of the first derivative of the expected utilities of the Agency, OIRA, and the Legislature.

For the Agency, $EU_A = \dfrac{p(p-1)(A-E)^2}{c^2 + p + 2pc}$. Hence, $\dfrac{\partial EU_A}{\partial c} = \dfrac{2p(A-E)^2(c - pc + p - p^2)}{(c^2 + p + 2pc)^2} < 0$.

For OIRA, $EU_E = \dfrac{c(c-1)(p-1)((E-A)(c+p))^2}{(c^2 + p + 2pc)^2}$. Hence,

$$\frac{\partial EU_E}{\partial c} = \frac{(p-1)(c+p)(E-A)(2pc^3 + c^3 + 5pc^2 - 3pc + 4p^2c - p^2)}{(c^2 + p + 2pc)^3} < 0.$$

For the Legislature,

$$EU_L = -(1-2p)\frac{(pE(1+c)^2 + Ac(c + c^2 + pc + p))^2}{(1+c)^2(c^2 + p + 2pc)^2} - p\frac{(A(c + c^2 + pc + p) + Ec(p-1))^2}{(c^2 + p + 2pc)^2}.$$

Hence, $\dfrac{\partial EU_L}{\partial c} = \dfrac{E^2\alpha + EA\beta + A^2\gamma}{(c^2 + p + 2pc)^3}$, where

$\alpha = \{pc(3(p^2 - c + 2pc) + c^2(1+p) + p - 1) + c^3 + 2p^3\}$, $\beta = \{pc(c^2(2+c) - 2p) - p^3\}$, and

$\gamma = \{pc(3(c - (p+c)^2) - c^2(c+p) + p + 1) + c^3 + p^2(1+p)\}$.

Inspection reveals that this derivative has several inflection points across the relevant domain

that constitutes the parameter range under consideration. More specifically:

$\frac{\partial EU_L}{\partial c} < 0$ when $E \in (A, E^*)$, and $\frac{\partial EU_L}{\partial c} > 0$ when $E > E^*$, where

$$E^* = -\frac{pc(p(3p-1)+c(c^2+3c-3)+pc(6+c)-p-1)+p^2(p-1)+c^3}{pc(p(2p+1)+c(c-3)+pc(6+c)+p-1)+p^2(2p-1)-c^3}.$$

$\frac{\partial EU_L}{\partial c} > 0$ when $A \in (0, A^*)$, and $\frac{\partial EU_L}{\partial c} < 0$ when $A \in (A^*, E)$, where

$$A^* = -\frac{pc(p(1+3p)+c(c-3)+pc(6+c)-1)+p^2(2p-1)-c^3}{pc(3(p+c)^2+c(c^2+pc-3)-p-1)+p^2(p-1)+c^3}.$$

Finally, $\frac{\partial EU_L}{\partial c} > 0$ when $c \in (1, c^*)$, and $\frac{\partial EU_L}{\partial c} < 0$ when c > c^*, where c* is determined by setting $\frac{\partial EU_L}{\partial c}$ equal to 0 and solving for c (explicit form not presented here for sake of parsimony).

Figure 1: Equilibria of Agency Policymaking with *Ex Post* Control Game

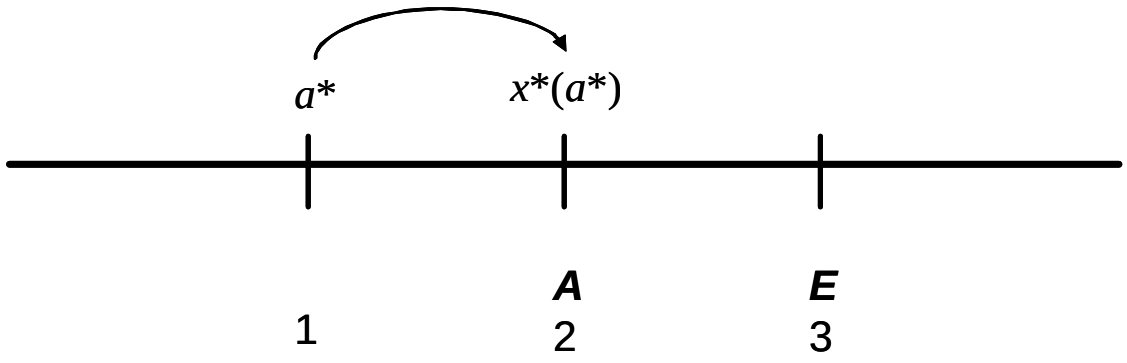

Figure 2: Model of Delegation and Agency Policymaking with *Ex Post* Executive Control

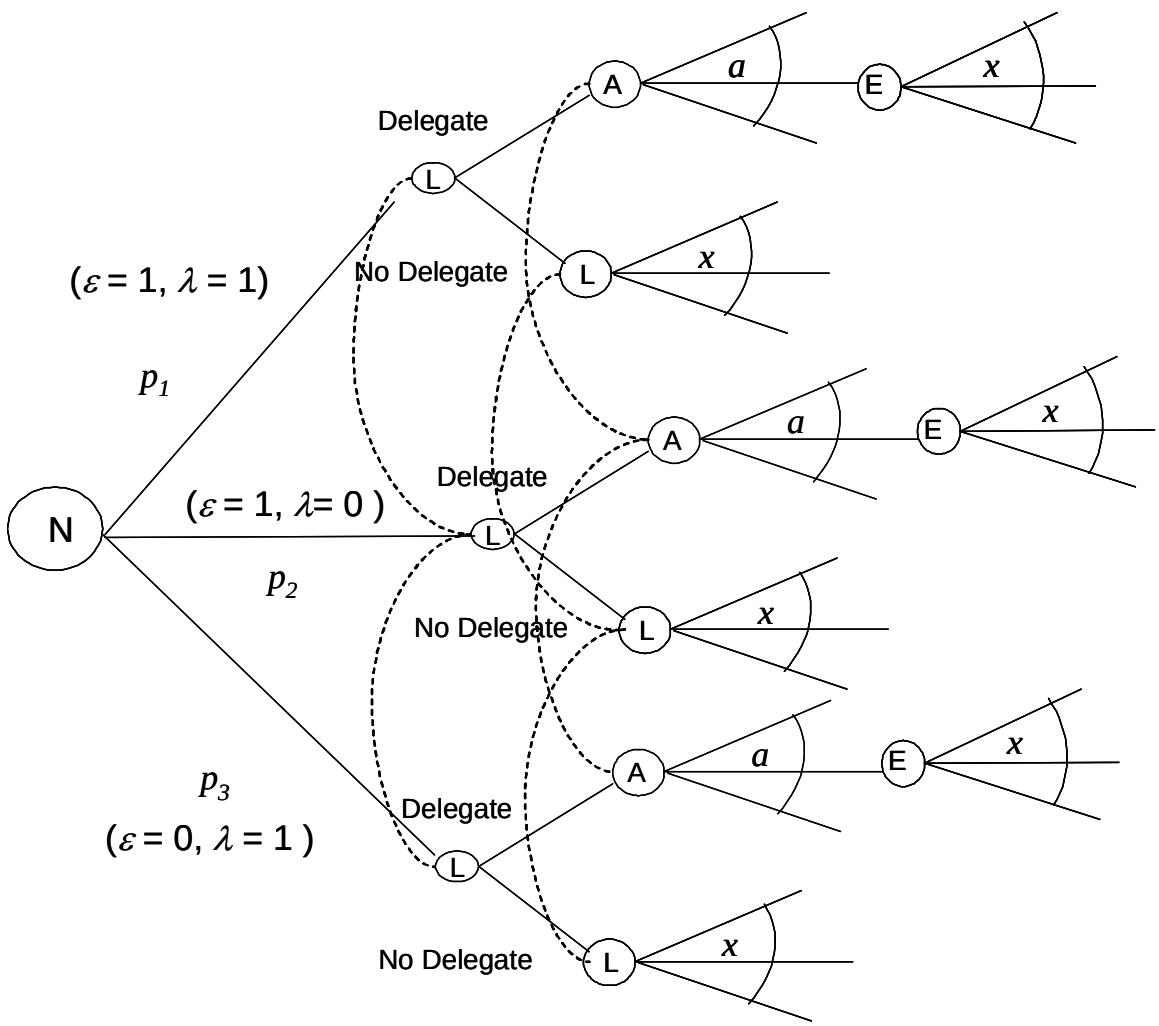

Figure 3: Equilibria in Delegation with Competing Oversight Game