

# Whose Ear (or Arm) to Bend? Information Sources and Venue Choice in Policy Making \*

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## Abstract

Important conceptualizations of both interest groups and bureaucratic agencies suggest that these institutions provide legislatures with greater information for use in policy making. Yet little is known about how these information sources interact in the policy process as a whole. In this paper we consider this issue analytically, and develop a model of policy making in which multiple sources of information – from the bureaucracy, an interest group, or a legislature’s own in-house development – can be brought to bear on policy. Lobbyists begin this process by selecting a venue – Congress or a standing bureaucracy – in which to press for a policy change. The main findings of the paper are that self-selection of lobbyists into different policy making venues can be informative per se; that this self-selection can make legislatures willing to delegate more authority to ideologically distinct bureaucratic agents; and that delegation of authority, while it takes advantage of agency expertise, can nevertheless lead to an increase in the legislature’s own in-house information gathering (e.g., hearings). Changes within the Federal Trade Commission during the 1970s are reinterpreted in the context of our model.

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# 1 Introduction

The complexities of policy making in industrialized societies, and the informational demands this complexity places on policy makers, are apparent and well known to observers of the policy process. Indeed, some of the most important and conspicuous institutions we observe in the American policy process – legislative committee structure, bureaucratic agencies, interest group lobbying – have been interpreted and rationalized in the scholarly literature as devices that elected policy makers use to acquire information and expertise, or leverage it for use in policy making. For example, congressional committees as well as interest groups have been cast as providers of information before legislation is enacted.<sup>1</sup> Bureaucratic agencies have been presented as sources of the same kind of policy-relevant expertise, making use of it after the enactment of enabling statutes in standard models of delegation.<sup>2</sup>

In each case the informational view of these institutions has generated an entire literature that has been both interesting and important in understanding the role of different institutions in making policy, and the possibility that the patchwork process they create might nevertheless be reasonably good at reflecting available expertise. On the other hand, what is not clear is how these institutions fit together as information providers in the policy process – not as a series of individual pieces on “Congress and \_\_\_\_\_,” but as an integrated whole.<sup>3</sup> How these institutions interact with each other, or whether their roles in interaction match the functions they play when they are considered in isolated pairs, is potentially important. For example, the ability to infer that greater discretion for administrative agencies implies greater ideological affinity with the legislature (and presumably,

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<sup>1</sup>Gilligan and Krehbiel [1987], [1990] and Krehbiel [1991] present committees as devices for in-house expertise development in legislatures. Austen-Smith [1987], Ainsworth [1993], Ainsworth and Sened [1993], Austen-Smith and Wright [1994], and Kollman [1998] advance related views of informational lobbying, where groups provide information about policy consequences or constituent preferences and salience.

<sup>2</sup>Bawn [1995] and Epstein and O’Halloran [1994], [1999] developed a basic modeling framework for studying discretion, preferences, and expertise in bureaucratic agencies.

<sup>3</sup>Needless to say, there are important paradigms on the interaction of legislatures, agencies, and interest groups in the policy process, notably McCubbins, Noll, and Weingast [1987], [1987]; McCubbins and Schwartz [1984]; and the harried but durable idea of “iron triangles” or subgovernments. But these views do not emphasize the role of all these institutions as simultaneous providers of information to elected policy makers, which is one of our points in this paper.

therefore, greater fidelity to public preferences in administrative policy making) rests on models in which the bureaucracy is the primary source of information available to the legislature.

The information provided when these institutions interact is the issue we address in this paper. We begin our analysis with a lobbyist's choice of whether to seek desired policy outcomes through legislative enactment or agency rules.<sup>4</sup> The reason for this starting point is the pervasive diffusion of policy making authority in the United States across branches of government, a major trend in public policy over the last century.<sup>5</sup> This diffusion means that in many cases, new policy proposals of broad scope can be advanced either by the legislature, or by a bureaucracy with a corps of lawyers skilled in finding the requisite authority in enabling statutes. This diffusion creates a nontrivial "venue choice" problem for lobbyists: the first decision about legislative lobbying for a well-informed interest group in such a world is whether to do it at all, when the bureaucratic venue may be more sanguine about some desired policy change. Rational choice by lobbyists combined with asymmetric information implies that venue choice per se, as distinct from the content of any messages sent to the chosen venue, is potentially informative. One of our purposes is to flesh out when this is true; therefore, while there are many opportunities for information transmission in lobbying, we focus on the information revealed simply by the decision of whom to lobby.

Because of this informative self-selection into venues, the model reveals an interesting insight regarding the legislature's incentive to cede discretion to expert bureaucrats. On top of the policy gains that might be achieved through agency expertise exceeding the legislature's, the legislature has an incentive to delegate discretionary authority in order to achieve informational gains when the legislature itself is lobbied — i.e., precisely when the discretion granted is not used by the bureau on the path of play. The mere existence of an agency with policymaking powers offers in-

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<sup>4</sup>The model and theory presented in this paper could just as easily be viewed as applying to *adjudications* as well as rules, and indeed to the many more subtle, less structured ways in which agencies make policy (e.g., interpretive statements, regulatory compliance reviews, etc.). We focus our substantive discussion upon agency rules for ease of exposition. There are interesting implications in distinguishing between the this and other forms of agency policy making, however. For example, the procedural requirements that an agency must satisfy for other routes to policy making are much less stringent than when implementing policy through rulemaking.

<sup>5</sup>Diffusion across levels of America's federal structure are similarly notable, but not our focus in this paper.

formation about the (state-contingent) preferences of those groups that circumvent the bureaucracy and directly lobby the legislature. This information is helpful in the sense that it allows the legislature to inform and involve itself in the business of specific policymaking in situations when it might not appear valuable, if the venue of the bureaucracy were not available to the interest group. Moreover, for this information to be revealed at all requires that the agency's preferences be distinct from the legislature's (less can be learned in important classes of equilibria if the bureaucrat's preferences perfectly match the legislature's), giving the legislature an incentive to drive an ideological wedge between it and the bureaucracy. This rationale for preference divergence only holds up if the agency in question can actually be lobbied, an observable implication to which we return later in the paper in discussing the Federal Trade Commission.

This result is in contrast to the “ally principle,”<sup>6</sup> that legislatures will prefer delegating to agents with policy preferences “close” to their own over agents with preferences “further away” — one of the more robust results in recent theoretical advances in delegation (especially Epstein and O'Halloran [1994], [1999] and Bendor and Meirowitz [2004]). Another important result in this literature is that a legislature will delegate more authority to expert bureaucrats when the legislature is relatively less informed about the consequences of policy. In other words, in the standard framework, policy expertise in the bureaucracy is a substitute for policy expertise in the legislature. This result also fails in interesting cases in our model. This occurs when lobbyists bypass the bureaucratic venue and lobby the legislature in a set of states of the world over which the legislature's utility is relatively sensitive. Legislative lobbying in such an equilibrium essentially signals the importance of “doings things right” to the legislature, causing it to invest in information and make informed policy — even though an expert bureaucrat also has the authority and information to make it by assumption. The reason this lobbying is informative is that the group could have chosen a different venue but did not. Therefore without the possibility of bureaucratic policy making,

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<sup>6</sup>Cf. Bendor and Meirowitz [2004], not to be confused with the result of the same name in the theoretical lobbying literature.

separation of interest group types by venue would not be as informative, and legislative lobbying would not provide a clear signal of sensitivity to the state.

In short, the interaction of multiple institutions in the policy process has important implications for the informational roles they each can play in that process, and therefore how we interpret their existence and structure — both positively and normatively. The rest of our argument is organized as follows. Section 2 lays out the theoretical model and characterizes results in terms of different classes of equilibria that may result. Section 3 analyzes some examples and intuition of key findings on the effect of these multiple information sources on political control of bureaucracy. Section 4 interprets several notable changes in the Federal Trade Commission in the 1970s in light of the model. Section 5 concludes.

## 2 Theory

In our model, there are three players: a group  $G$ , a bureaucrat  $B$ , and a legislator  $L$ . The set of players is  $N = \{G, B, L\}$ . The space of possible policies is denoted by  $X$ . In addition, there is a set of states,  $S$ . The state is assumed to be realized according to a distribution with cumulative distribution function  $F$  and probability density (or mass, if  $S$  is finite) function  $f$  possessing full support on  $S$ . Each players' payoffs depend on both states and policies. In particular, the payoff of player  $i$  is denoted by  $u_i : X \times S \rightarrow \mathbf{R}$ . We assume that both  $X$  and  $S$  are metric spaces, and that, for a given state  $s$ , each player  $i$ 's preferences are single-peaked in the sense that there exists a unique policy  $x_i^*(s)$  such that  $u_i(x_i^*(s), s) \geq u_i(x, s)$  for all policies  $x$  in  $X$ . We refer to this policy as player  $i$ 's *conditional ideal point*. We also assume that there is a status quo policy  $y$  in effect at the start of the game.

We assume that while  $G$  and  $B$  know the state  $s$ ,  $L$  can find out the state only by incurring an exogenously fixed cost  $c \geq 0$ .<sup>7</sup> We take this approach in order to make the implications of

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<sup>7</sup>This is in contrast to recent theoretical work by Sloof [1998] in which the bureaucracy can be informed about the true state of nature by the lobbyist, and the bureaucracy has a greater degree of information than does the legislature

asymmetric information more transparent. In an attempt to retain the link between the model and the intended application, we sometimes refer to the choice by the legislature to incurring the cost as choosing to “hold hearings.”

Upon realization of the state  $s$  according to  $F$ , the group chooses whether to lobby the bureaucrat, the legislator, or neither. If the group chooses to lobby the bureaucrat, the bureaucrat must choose a policy in  $X$  based on her knowledge of  $s$ , and the game concludes.<sup>8</sup> If the group lobbies the legislator, then the legislator must choose whether to incur the cost  $c$  to find out the true state. Following this decision, the legislator updates its beliefs and chooses any policy in  $X$ , and the game concludes. If the group lobbies neither  $B$  nor  $L$ , the status quo  $y$  remains in force and the game concludes. The informational structure and payoff functions of all of the players are assumed to be common knowledge. The game form is displayed in Figure 1.

It is worth commenting on several aspects of the extensive form. First, neither  $B$  nor  $L$  can change the status quo policy  $y$  unless  $G$  requests review of the policy in that venue. While this sort of “activational lobbying” might seem at first glance to sacrifice too much realism for simplicity, we believe that it accurately reflects the reality of many policy areas as well as satisfying a type of external consistency. In particular, this is consistent with the presumption that the legislature should have no reason to suspect that an alternative policy is better than the status quo unless it receives some signal of a change in the state of the world. Otherwise, why wouldn’t the legislature have changed the status quo policy earlier? Our conceptualization of lobbying is informational in the sense that the lobbyist’s behavior provides one such signal.<sup>9</sup> Of course, legislatures certainly can change preferences or beliefs, and subsequently policy, without lobbyist intervention; these are simply branches of a larger extensive form policy making game that are beyond the scope of this paper. Second, it is possible to analyze an extensive form with less initiative power for  $G$ , by

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about the motivations of the lobbyist.

<sup>8</sup>That is, for simplicity, we examine the case where the bureaucrat is given full discretion by the legislature.

<sup>9</sup>Moreover, much of the intuition for the key findings is valid if there is more informational content to lobbying, such as a declaration of the lobbyist’s private information. Therefore, we prefer the more minimal interpretation of lobbying, as it conveys the aspects of lobbying necessary for the results to hold.

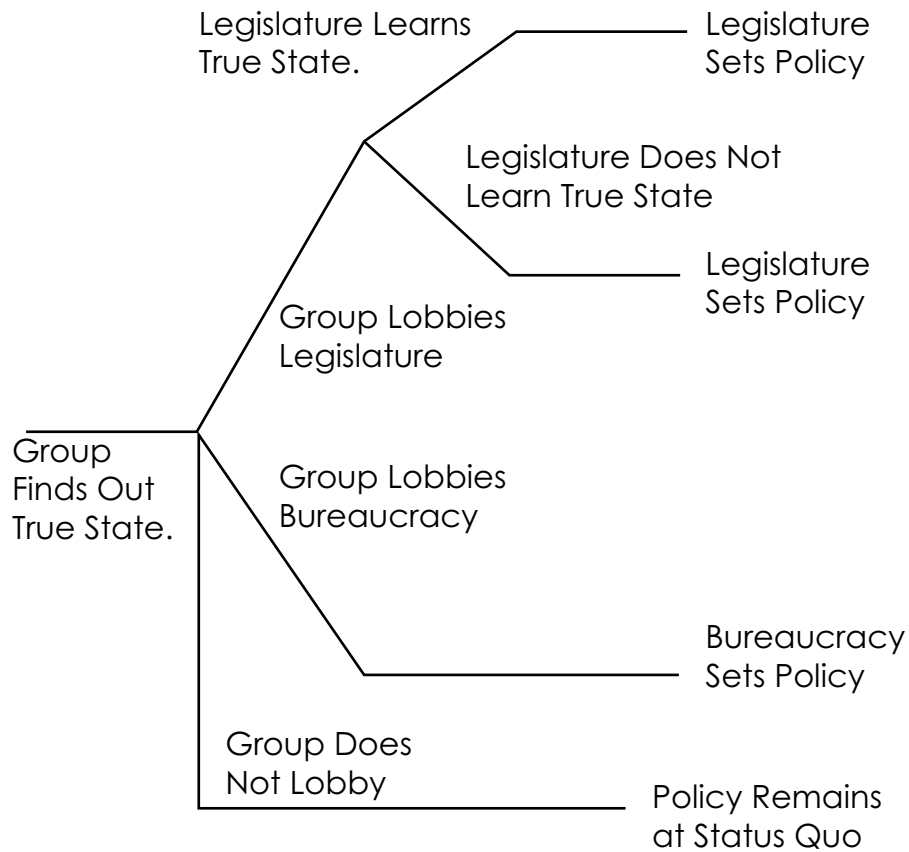


Figure 1: A Model of Policy Making and Venue Choice

assuming that  $L$  may alter  $y$  in case  $G$  elects not to lobby. This changes the expression of sorting conditions in the equilibria below, but does not overturn any key intuition. Third, a natural question is what happens if the group can lobby in both venues. This would require specification of which venue actually has authority if both are “activated,” and the legislature seems like a reasonable choice based on constitutional supremacy. But in that case lobbying both venues really amounts to lobbying the legislature in our framework.<sup>10</sup>

Our notion of equilibrium is perfect Bayesian equilibrium (PBE). Accordingly, the players have beliefs about each others’ strategies as well as the true state  $s$  along all possible paths of the game

<sup>10</sup>Another natural question then is why a group would ever lobby both venues. This would seem to suggest uncertainty about which if either venue will actually act on policy if activated. Such uncertainty seems important but is qualitatively distinct from the issues of informativeness of venue choice and bureaucratic control that we analyze in this paper.

tree. Each players' beliefs about the others' strategies are required to be correct along any path of play that is reached with positive probability in a PBE. The key use of the beliefs in our model is by  $L$ , who must infer the states  $s$  in which the group approaches her instead of the bureaucrat. These beliefs determine whether  $L$  should incur the cost of obtaining knowledge of the true state  $s$  and, if not, what policy it should set. In a PBE, these beliefs will depend on the strategies chosen by the group and the bureaucrat and, hence, will depend on both  $F$  and the status quo policy,  $y$ .

The strategy of  $L$  is then a probability of gathering information,  $p_L$ , and a mapping  $\sigma_L$  from  $0 \cup S$  into probability distributions over  $X$ . In particular,  $L$  chooses a possibly mixed strategy over the space of possible policies based on whether it incurred the cost to find out the state,  $s$ . Let  $\sigma_L(0)$  represent the strategy of  $L$  when it does not procure the information. For all states  $s$ ,  $\sigma_L(s)$  represents the probability distribution over  $X$  conditional on  $L$  procuring the information in state  $s$ . The strategy of the bureaucrat is simply a mapping,  $\sigma_B$  from  $S$  into probability distributions over  $X$ . The strategy of the group is a mapping  $\sigma_G$  from  $S$  into  $\Delta$ , where  $\Delta$  is the 2 dimensional simplex – the space of triples of nonnegative real numbers that sum to 1. Thus for any state  $s$ ,  $\sigma_G(s) = (\sigma_G^1(s), \sigma_G^2(s), \sigma_G^3(s))$ , representing the probability with which the group will lobby the legislator, lobby the bureaucrat, and lobby neither, respectively, conditional on the realization of the state,  $s$ .

Conditional upon the group lobbying the legislator, the legislator's beliefs are a probability distribution over  $S$ , denoted by  $\mu$ . We do not deal with the other players' beliefs, as they will place probability one on the true state  $s$  in any PBE, given our assumed informational structure.

The group's expected utility, conditional on the realized state  $s$ , is

$$v_G(\sigma, s) = \sigma_G^1(s) [p_L (\int_X u_G(z, s) \sigma_L(z, s) dz + (1 - p_L) \int_X u_G(z, s) \sigma_L(z|0) dz) + \sigma_G^2(s) \int_X u_G(z, s) \sigma_B(z, s) dz + \sigma_G^3(s) u_G(y, s)]$$



The bureaucrat's expected utility, conditional on being lobbied by the group, is

$$v_B(\sigma, s|a_G = B) = \int_X u_B(z, s)\sigma_B(z, s)dz$$

The legislator's expected utility, conditional on being lobbied by the group, choosing to pay the cost  $c$  and finding out the true state  $s$ , is

$$v_L(1, \sigma_L(s), \sigma_G, \sigma_B|a_G = L) = \int_X u_L(z, s)\sigma_L(z, s)dz - c$$

The legislator's expected utility, conditional on being lobbied by the group and choosing not to procure information, is

$$v_L(0, \sigma_L(0), \sigma_G, \sigma_B|a_G = L) = \int_S \int_X u_L(z, t)\mu_L(t)\sigma_L(z|0)dzdt$$

## 2.1 Equilibrium

We are now in a position to define a perfect Bayesian equilibrium of this game. We denote the set of probability distributions over  $X$  by  $\mathcal{P}(X)$ .

**Definition 1** A perfect Bayesian equilibrium (PBE) is a strategy profile  $(\sigma^*, p_L^*)$  and posterior beliefs  $\mu$  such that

- $\forall s, \sigma_G^*(s) \in \arg \max_{\alpha \in \Delta} v_G(\alpha, \sigma_{-G}, s)$
- $\forall s, \sigma_B^*(s) \in \arg \max_{\beta \in \mathcal{P}(X)} v_B(\beta, \sigma_{-B}, s)$
- $\forall s, \sigma_L^*(s) \in \arg \max_{\gamma \in \mathcal{P}(X)} v_L(1, \gamma, \sigma_G, \sigma_B|a_G = L)$
- $\sigma_L^*(0) \in \arg \max_{\delta \in \mathcal{P}(X)} v_L(0, \delta, \sigma_G, \sigma_B|a_G = L)$

- $p_L \in \arg \max_{\rho \in [0,1]} \rho \int_S v_L(1, \sigma | a_G = L) \mu(s) ds + (1 - \rho) v_0(0, \sigma | a_G = L)$
  - If  $\int_S f(t) \sigma_G^1(s) dt > 0$ , then  $\mu_L(s) = \frac{f(s) \sigma_G^1(s)}{\int_S f(t) \sigma_G^1(t) dt}$ .
- Otherwise  $\mu$  is any probability distribution on  $S$ .

For the rest of the paper, we assume that  $u_L(x, s)$  is a strictly concave function of  $x$  for all  $s \in S$ . This assumption is consistent with many models of delegation in political settings and implies that equilibrium values of  $\sigma_L(z|0)$  will be degenerate distributions (i.e., pick out some policy, denoted by  $\tilde{x}_L$ , with probability 1). This assumption simplifies the exposition greatly.

Equilibrium values of  $\sigma_L(s)$  are straightforward – given that the legislator knows the state, she just picks her most preferred policy, given  $s$ . The interesting parts of the legislator’s problem are the probability of buying information,  $p$ , and the choice of policy when the state is not known with certainty:  $\sigma_L(0)$ . These elements of the legislator’s strategy determine the lobbyist’s incentives. Similarly, the equilibrium values of  $\sigma_B(s)$  are straightforward: the bureaucrat simply implements its most preferred policy,  $x_B^*(s)$ , if lobbied by the group.

The logic of any equilibrium strategy for the group is simple. Given the strategies of the bureaucrat and the legislator, if lobbying either the bureaucrat or the legislator will result in a policy that makes the group at least as well off as the status quo policy, then the group should lobby the one whose policy will result in the group being most well off.

The following conditions summarize the conditions for lobbying and who will be lobbied in any perfect Bayesian equilibrium. We denote the equilibrium strategy of player  $i \in \{L, B, G\}$  by  $\sigma_i^*$  and the equilibrium probability of monitoring by the legislator by  $p_L^*$ . The group’s behavior in any PBE is

- $u_G(y, s) \geq \max[p_L^* u_G(x_L^*(s), s) + (1 - p_L^*) u_G(\tilde{x}_L, s), u_G(x_B^*(s), s)]$   
Group does not lobby
- $p_L^* u_G(x_L^*(s), s) + (1 - p_L^*) u_G(\tilde{x}_L, s) \geq \max[u_G(y, s), u_G(x_B^*(s), s)]$   
Group lobbies legislature

- $u_G(x_B^*(s), s) \geq \max[u_G(y, s), p_L^* u_G(x_L^*(s), s) + (1 - p_L^*) u_G(\tilde{x}_L, s)]$

Group lobbies bureaucrat

It follows immediately that, in any PBE, the legislator will choose  $p_L^* \in (0, 1)$  only if

$$\int_S (u_L(x_L^*(s), s) - c) \mu(s) ds \leq \max_{\tilde{x} \in X} \int_S (u_L(\tilde{x}, s)) \mu(s) ds \quad (1)$$

Equation 1 implicitly defines two regions of strict preference – one in which the legislator realizes that incurring the cost of discerning the true state is not offset by the gains from being able to impose her most preferred policy with probability 1 and another in which the legislator realizes that the gains from being informed outweigh the costs of becoming informed. Given our assumption that  $u_L$  is strictly concave, this second case is more likely if the groups that lobby the legislature<sup>11</sup> are sufficiently heterogeneous. In substantive terms, we should expect hearings to be held when the expected benefits from choosing the optimal policy outweigh the costs of holding hearings. Conversely, equilibria in cases in which the legislature’s preferences are weak compared to the cost of holding hearings will be characterized by the legislature setting policy without holding hearings when lobbied. We discuss each of these cases below in more detail, as well as the knife-edge case of indifference by the legislature.

The immediate question, then, is which groups will lobby the legislature. Given that an informed legislature must choose its most preferred policy in equilibrium and an uninformed legislature can not condition its choice on the true state, the answer to this question depends on whether the legislature incurs the cost to gather information regarding the true state,  $s$ . We now present the analysis of this model in three parts, corresponding to the legislature always incurring the cost (i.e.,  $p_L^* = 1$ ), mixing ( $p_L^* \in (0, 1)$ ), and never incurring the cost ( $p_L^* = 0$ ). We refer to these as “perfect monitoring,” “incomplete monitoring,” and “no monitoring,” respectively.

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<sup>11</sup>This set of groups may be represented as the subset of  $S$ ,  $S_L$ , that leads to the group lobbying the legislature (i.e.,  $\Lambda_L = \{s \in S : \sigma_G^1(s) > 0\}$ ).

## 2.2 Perfect Monitoring

If the legislature always learns the true state, then the groups that lobby the legislature will be only those groups who prefer the legislature's conditional ideal point to both the conditional ideal point of the bureaucrat and the status quo. We refer to equilibria in which the legislature always learns the true state as perfect monitoring PBE (PM-PBE). The following proposition summarizes the behavior of the lobbyist in such equilibria.

**Proposition 1** *Consider a perfect Bayesian equilibrium,  $(\sigma^*, p_L^*)$ , with  $p_L^* = 1$  and supporting posterior beliefs  $\mu$ . The lobbyist's strategy,  $\sigma_G^*$ , satisfies the following condition:*

$$\sigma_G^{*1}(s) > 0 \Rightarrow \begin{cases} u_G(x_L^*(s), s) \geq u_G(y, s) \text{ and} \\ u_G(x_L^*(s), s) \geq u_G(x_B^*(s), s) \end{cases},$$

and the following conditions are both satisfied:

$$\begin{aligned} \int_S u_L(x_L^*(s), s)\mu(s)ds - c &\geq \int_S u_L(y, s)\mu(s)ds \text{ and} \\ \int_S u_L(x_L^*(s), s)\mu(s)ds - c &\geq \int_S u_L(\tilde{x}_L, s)\mu(s)ds. \end{aligned}$$

Simply put, perfect monitoring will only occur if the groups that lobby (this may be an empty set) generally indicate that the legislature can greatly increase its own payoff relative to (1) the status quo, and (2) any policy chosen in ignorance of the true state. Substantively, this implies that the legislature will have an incentive to hold hearings whenever the set of groups that lobby the legislature do not allow the legislature to pin down the true state and when lobbyists' desires to change the status quo coincide strongly enough with the legislature's desires to change it as well. In other words, while the status quo may generally be suboptimal from the legislature's perspective, neglecting the information gathering cost  $c$ , lobbying will result in monitoring only when lobbying generally (i.e., in expectation) indicates that the status quo is suboptimal "enough"

to justify the costs of information gathering. Simultaneously, in a PM-PBE, the array of groups that support the rational procurement of information by the legislature in a PM-PBE must each prefer the legislature's conditional ideal policy to both the status quo and the conditional ideal policy of the bureaucrat.

The bureaucrat plays a subtle role in this analysis. In particular,  $B$  affects the legislature's decision to gather information or not through the selection effect that induces on the group's behavior. In other words, the bureaucracy's preferences affect venue choice by determining which groups lobby the legislature. Given that the lobbyist chose not to lobby the bureaucracy, the legislature is able to infer something about the true state of nature, since the lobbyist must prefer the policy that the legislature will choose.<sup>12</sup>

To support perfect monitoring equilibria, the agency must be lobbied by the group in enough states of nature that the legislature considers unimportant – otherwise, the legislature may not be able to justify the decision to hold hearings. This set of states of nature is an increasing function of the cost of holding hearings, *ceteris paribus*. In other words, perfect monitoring equilibria are harder to support when the cost of holding hearings is high and such equilibria may require that the group lobbies the agency when the legislature's preferences over policy are weak. Feature 4 is related to the support of perfect monitoring equilibria. Namely, when the agency is a perfect agent for the legislature (*i.e.*, the agency's preferences are identical to the legislature's), there is no strict incentive for the group to choose one venue over the other in a perfect monitoring equilibrium. Thus, supporting the hearing decision of the legislature can require a delicate sorting by the group of the states of nature – a sorting for which there is no strict incentive at any given point in time.

Roughly speaking, perfect monitoring is supported in equilibrium only if an appropriate *sorting condition* is satisfied. The sorting condition states that the groups who lobby the legislature repre-

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<sup>12</sup>Strictly speaking, this conclusion is true if the legislature and bureaucrat are each using a pure strategy in the equilibrium under consideration. Otherwise, the legislature may choose a policy that is less preferred by the lobbyist than one that may have been chosen by the bureaucrat. In this case, the legislature can only infer that the expected value of the legislature's strategy to the lobbyist is greater than the expected value of the bureaucrat's strategy. This is, of course, still informative in many settings.

sent a state of nature offering a significant increase in the legislature’s payoff by implementation of the legislature’s ideal policy “more often” than they represent a state in which the legislature’s potential gain from altering policy does not justify the cost of holding hearings. Satisfaction of the sorting condition (and hence, perfect monitoring by the legislature) is made easier in the presence of venue choice because the group can lobby the agency in situations when the legislature does not have enough incentive to make informed policy.

This analysis also sheds light on the responsiveness of a legislature to lobbyists. Clearly, the legislature is lobbied in a PM-PBE only if the lobbyist suspects that the group and the legislature share a commonality of interest (greater than the commonality of interest between the group and the bureaucrat), namely that they both prefer some alternative policy to the status quo, given the true state. Policy changes that occur as a result of lobbying and the ensuing hearings should please the lobbyist not because the legislature is “captured” by the lobbyist. Rather, a rational lobbyist asks for hearings only when he or she expects that the legislature’s most preferred policy will make the lobbyist better off than the status quo. In other words, legislative hearings should result in policy changes and these changes do not necessarily represent legislative hand-outs to the lobbyist.

### 2.3 Occasional Monitoring

In a PBE with the legislature utilizing a mixed strategy, she randomly decides to incur the cost with probability  $p_L^* \in (0, 1)$ . We refer to such an equilibrium as an occasional monitoring PBE, or OM-PBE. As mentioned earlier, the legislature will only do so in equilibrium if the conditional expected utility of imposing the optimal policy in the absence of information is equal to the conditional expected utility of imposing the optimal policy with perfect information (e.g.,  $-c$ ). Formally,

**Proposition 2** *In any OM-PBE, the following condition must be satisfied:*

$$\max_{\tilde{x} \in X} \int_S u_L(\tilde{x}, s) \mu(s) ds = \int_S u_L(x_L^*(s), s) \mu(s) ds.$$

Obviously, this equality is difficult to satisfy in the sense that it will generally require a delicate balancing of the lobbyist's lobbying behavior.<sup>13</sup> Moreover, holding  $c$  constant, satisfaction of this equality is made more difficult when the legislature's preferences are highly sensitive to  $s$ . Put another way, mixed strategy equilibria are less plausible when the legislature cares a great deal about "getting it right." It seems far-fetched that legislators are indifferent between acquiring expertise and setting policy blindly when lobbied by an interest group. If this supposition is true, then the lobbyist is never surprised by the legislature's decision to acquire expertise or not. In other words, legislators must be indifferent about holding hearings in order for a random decision to hold/not hold hearings to be a best response by the legislature. As long as legislators are not indifferent, an interest group that lobbies the legislature will correctly forecast the amount of attention paid to the interest group by the legislature upon being lobbied.

## 2.4 No Monitoring

We have considered equilibria in which the legislature finds out the true state  $s$  with positive probability. In such equilibria, there is generally a degree of concordance between the preferences of the legislature and any group that chooses to lobby it. This general tendency is of course driven by the fact that, in equilibrium, the group recognizes that the legislature will impose its own conditional ideal policy if it decides to find out the true state. What if the legislature's equilibrium strategy is to never find out the true state (i.e.,  $p_L^* = 0$ )? We now consider this final type of PBE, which we refer to as no monitoring PBE (NM-PBE).

In a NM-PBE, the legislature's strategy is simply a distribution over  $X$ . By the assumption that  $u_L$  is strictly concave, any best response is a degenerate distribution (i.e., a pure strategy). Thus, the set of NM-PBE can be divided into two types, one of which involves the legislature employing a "conservative" strategy in which no hearings are held and the status quo is upheld, and the

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<sup>13</sup>While mixing lacks some credibility in this instance, the story behind a mixed legislative strategy is (as always) more compelling once one recognizes that the randomization by the legislator could be accomplished by external signals.

second of which involves the legislature changing policy unilaterally without holding hearings to some policy other than status quo. We analyze these types of equilibria in order, since they are substantively different. Lobbying the legislature is ineffective in the first case but not in the second.

*In general*,  $L$  will not be able to respond to the exact state of nature in either type of NM-PBE, but there are exceptions to this. In particular, when the group lobbies the legislature if and only if a specific state of nature occurs, or in a set of states over which the legislature's induced ideal policy is constant, then legislative information acquisition is unnecessary in equilibrium because venue choice per se is perfectly informative. This is a very special case, however, and so we do not analyze it further. But it does highlight another potential informational advantage offered to the legislature by the group's venue choice.

We now consider the two types of NM-PBE's in turn.

**Unresponsive Legislature.** In the first type of NM-PBE,  $\tilde{x}_L^* = y$ : having been lobbied but not acquiring information beyond that conveyed by lobbying, the legislature does nothing. Such equilibria could involve the group never lobbying the legislature on the path of play, preferring to lobby the bureaucracy or not at all. Lobbying the legislature is completely ineffective in such an equilibrium. In a NM-PBE in which  $\tilde{x}_L^* = y$ , the group will never strictly prefer lobbying the legislature to not lobbying at all, so if there exists any such NM-PBE  $(\sigma^*, 0)$  in which  $\sigma_G^{*1}(s') > 0$  for some  $s'$ , there also exists an NM-PBE  $(\hat{\sigma}^*, 0)$  in which the strategies are identical, with the exception that  $\hat{\sigma}_G^{*1}(s') = 0$  and  $\hat{\sigma}_G^{*3}(s') = \sigma_G^{*3}(s') + \sigma_G^{*1}(s')$ . Supposing that lobbying the legislature is costlier than not lobbying at all (which seems highly plausible if beyond a strict reading of the model), then there exist no NM-PBE in which the group lobbies the legislature (i.e.,  $\exists s \in S$  such that  $\sigma_G^{*1}(s) > 0$ ) and the legislature does nothing ( $\tilde{x}_L^* = y$ ). Simply put, costly lobbying will not be observed in equilibrium unless the lobbyist expects a change in policy to result from the lobbying.<sup>14</sup>

The plausibility of such equilibria depends upon the legislature's incentives. The legislature

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<sup>14</sup>Though the change need not come from direct legislative action: lobbying the legislature may serve as a means of advertising the group's resources, influencing judicial or agency decisions, or maintain a reputation for use with future legislatures and/or policy decisions.



must suspect that “many” of the lobbyists who lobby the legislature in equilibrium signal states of nature in which the conditional expected utility of  $y$  is not low enough to justify the cost of holding hearings *and* that  $y$  is the policy that maximizes the legislature’s expected utility, conditional upon being lobbied in equilibrium. In other words, the legislature believes that being lobbied is just “business as usual” and offers no new information.

**Responsive Legislature.** The more interesting NM-PBE involve the legislature altering policy from the status quo  $y$  upon being lobbied:  $\tilde{x}_L^* \neq y$ . Here the simple fact that the legislature is lobbied conveys enough information to induce it to change the status quo (contrast this with the information lobbying offers in a PM-PBE: there  $L$  learns that its preferences are sensitive enough to  $s$  that it should acquire expertise). By considering the legislature’s beliefs and best responses in any NM-PBE, it follows that the legislature must obtain at least as great a conditional expected utility from the  $\tilde{x}_L^*$  as from the status quo:

$$\int_S u_L(\tilde{x}_L^*, s)\mu(s)ds > \int_S u_L(y, s)\mu(s)ds.$$

Thus, in substantively interesting NM-PBE there are at most two classes of groups from the legislature’s perspective: those who lobby the legislature and those who lobby the bureaucracy or don’t lobby at all. The (possibly empty) class of groups that lobby the legislature are effectively sending a signal that implies that the legislature, in expectation, would prefer to change the status quo. This is informative lobbying in its most minimal form. It obviously allows for an “informational” form of free-riding, and this is what prevents the legislature from being able to respond to the exact state  $s$  in general in such an equilibrium. Specifically, while the legislature prefers the new policy  $\tilde{x}_L^*$  to the status quo conditional upon being lobbied in such a PBE, this preference is only in expectation. Frequently in such equilibria, the legislature may have a strict preference for the status quo *ex post* and still implement  $\tilde{x}_L^*$ . States for which this is true are examples of types of groups that free ride on the groups for which this is not the case.

Policy changes resulting from lobbying and not requiring information acquisition by  $L$  are of a “fire alarm” variety: the legislature has a set policy that it implements whenever lobbied in such an equilibrium. Furthermore, the groups that lobby the legislature in such equilibria may be of two classes: groups who lobby the legislature when this pre-programmed response is in the legislature’s *ex post* interest, and those that lobby despite the policy making  $L$  worse off *ex post*. The set of the first of these two types (the legislature’s “allies”) must be nonempty for this type of equilibria to be observed.

Legislative action that follows without expertise acquisition by  $L$  can only be supported when the legislature has a credible belief that it is likely being lobbied by an “ally,” though this does not eliminate the possibility that other groups may free ride on the allies’ behaviors. The result also implies that, if the legislature does not hold hearings and changes the policy without additional information, the lobbyist should not be surprised by the policy chosen by the legislature *in equilibrium*. Again, failure of predictions to be correct can only be supported in mixed strategy equilibria, which we have ruled out for reasons described above.

Intuitively, the legislature changing policy without hearings is supportable in equilibrium only so long as a policy exists that is relatively “free ride-proof” in the sense that few groups lobby the legislature (knowing that they will receive this policy) when the legislature does not benefit from the policy change. In other words, a policy can be supported as a blind policy change in equilibrium only if the conditional likelihood that the legislature will like this policy if the group does is sufficiently high.<sup>15</sup>

### 3 Analysis

In this section, we examine the effect of the expert bureaucrat on the acquisition of expertise by the legislature, and the applicability of the ally principle (Bendor and Meirowitz [2004]) within our

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<sup>15</sup>Actually, the point is more subtle than this, because the legislature must recognize that the agency might be offering a “better deal” to some groups in this case.

model. The discussion is centered around two (related) examples, which we now present.

### 3.1 Congressional Hearings

The first example is concerned with the frequency of Congressional hearings or information acquisition, as a function of whether Congress has delegated authority to an agency.

**Example 1 (Congressional Hearings)** Suppose that  $X = \Re$  (i.e., policy choices are real numbers), with status quo  $y = 0$ . The set of states of nature is  $S = \{-2, -1, 1, 2\}$  and the legislature's cost of procuring information is  $c = 2$ . The legislature's utility function is given by  $u_L(x, s) = -(x - 0.9s)^2$ , the interest group's is given by  $u_G(x, s) = -(x - s)^2$ , and the bureaucracy's is given by  $u_B(x, s) = -(x - s/|s|)^2$ . Each agent's state-conditional ideal point and the probability of each state of nature is listed in Table 1. We now examine the (unique) perfect

$s$	$x_L^*(s)$	$x_G^*(s)$	$x_B^*(s)$	$f(s)$
-2	-1.8	-2	-1	0.1
-1	-0.9	-1	-1	0.4
1	0.9	1	1	0.4
2	1.8	2	1	0.1

Table 1: Conditional Ideal Points and Distribution of States of Nature

monitoring equilibrium when the agency can be lobbied by the group (that is, when delegation has occurred).

The agency will implement its state-conditioned ideal policy whenever it is lobbied. Accordingly, suppose that the group will lobby the bureaucrat if the state of nature is either 1 or  $-1$  and lobby the legislature otherwise (if the state of nature is  $-2$  or  $2$ ). It can be verified that the group's decision to lobby the agency when  $s \in \{-1, 1\}$  is a best response (the agency and the group have identical preferences in these states of nature). Given this strategy by the group, the legislature's optimal behavior is to hold hearings when lobbied and then choose its state-conditioned ideal policy. To see this, note that if the interest group lobbies the legislature if and only if the state is either 2

or  $-2$ , then the legislature has an incentive to procure information. This is because the legislature's optimal policy choice without holding hearings is the status quo  $y = 0$ . However, the conditional expected utility of not holding hearings and choosing policy equal to 0 is  $-3.24$ . The conditional expected utility of holding hearings and then choosing the legislature's state-conditioned ideal policy is  $-2$ . Thus, the legislature should procure information if it is lobbied when the state is either 2 or  $-2$ . Finally, it can be verified that the group's strategy as described above is a best response to the strategies of the agency and the legislature. Thus, this is a perfect monitoring equilibrium. Note that the legislature is lobbied, and hence holds hearings, 20% of the time in this equilibrium.

We now examine a modified version of the game in which the group is unable to lobby the agency (*i.e.*, delegation has not occurred). If the bureaucrat cannot be lobbied (*i.e.*, delegation did not occur) then, in any equilibrium<sup>16</sup> involving lobbying by the interest group, the legislature never holds hearings. If the legislature did acquire information when lobbied, the interest group would have a strict incentive to lobby the legislature in all states. This is because in every state, an informed legislature would alter the policy in such a way as to increase the group's payoff. However, the increase in the legislature's payoffs from informed policy making is not sufficient to compensate it for the cost of holding hearings. To see this, note that the legislature's expected utility of not holding hearings and not changing the policy if lobbied is  $-1.296$ , whereas its expected utility if hearings are held and the legislature's state-conditioned ideal policy is implemented is  $-2$ . Accordingly, without delegation, hearings are never held in this example.

To conclude the example, note that the legislature's *ex ante* expected utility of the legislature in the perfect monitoring equilibrium described first is  $0.4 * 2 * (-0.01) + 2 * 0.1 * (-2) = -0.408$  and the legislature's *ex ante* expected utility without delegation is  $0.4 * 2 * (-0.81) + 2 * 0.1 * (-3.24) = -1.296$ . Thus, delegation increases the legislature's expected payoff in this example as well as increasing the frequency of hearings (hearings held 0% of the time without delegation and 20% of the time after delegation has occurred). The legislature complements policy expertise in in the

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<sup>16</sup>In this example, and throughout the paper, we focus attention on pure strategy equilibria.

bureaucracy by developing more policy expertise of its own. △

In this example the legislature gains from delegation, provided the groups sort themselves in an informative fashion (the sorting condition discussed in Section 2.2). This demonstrates the potentially large effects of issue networks and alliances among interest groups within a policy area. In particular, coordination of lobbying activities across groups can drastically affect the legislature's incentive to become informed. If some groups over-lobby the legislature by requesting hearings when the legislature's preferences are not highly sensitive to the exact policy chosen, then the legislature (and the groups as well) may pay the price when the exact choice of policy is very important. Part of the sorting condition is that groups must not "cry wolf" to the legislature too often for a perfect monitoring equilibrium to be sustained.

The separation of interest group types in Example 1 offers a natural substantive interpretation. If we think of the difference between the utility of the status quo and the legislature's conditional ideal point as a measure of the importance of the proposed policy changes, then in this equilibrium the legislature ends up holding hearings about important policy changes and the agency deals with less important ones. Interestingly, this results in equilibrium rather than from a restriction in the extensive form – say by limiting the scope of agency policy changes to be more marginal while allowing the legislature's to be more sweeping, or subjecting agency policy choices to ex post legislative review. In the extensive form both the legislature and the agency have access to the same set of alternative policies. Nevertheless, the more synoptic policy changes are handled by the legislature in equilibrium while the smaller scale ones are left to the agency, because of the greater cost it must incur to inform itself about the link between policy choices and outcomes.

Interestingly, in equilibrium the legislature actually develops *more* policy expertise in the presence of the expert agency than if the agency had not been created. This point is relevant to the use of the frequency of oversight hearings as a measure of the effort exerted by the legislature to assert control over the bureaucracy. In this example, delegation can "cause" increased legislative action within the agency's jurisdiction. This increase is actually a desired result of increased agency

discretion.

### 3.2 The Ally Principle

The previous subsection discussed the occurrence and role of congressional hearings within our theory. We now turn to the second example and consider what the theory says regarding the ally principle of bureaucratic discretion (cf. Bendor and Meirowitz 2004). This result, which asserts that legislatures delegate less authority to bureaucracies the more their policy preferences diverge, has been the foundation for much recent theoretical and empirical work on delegation and discretion.

**Example 2 (Ally Principle)** This example extends Example 1 by adding an alternative agency – the question considered is whether the legislature prefers an agency with more similar preferences to its own or one with more divergent preferences. To do this, we consider two possible agencies, denoted by  $B$  and  $B'$ , respectively, and list the state-conditioned ideal points and probability of each state in Table 2. Note that the legislature prefers the ideal policies of the second agency,  $B'$ ,

$s$	$x_L^*(s)$	$x_G^*(s)$	$x_B^*(s)$	$x_{B'}^*(s)$	$f(s)$
-2	-1.8	-2	-1	-1	0.1
-1	-0.9	-1	-1	-0.89	0.4
1	0.9	1	1	0.89	0.4
2	1.8	2	1	1	0.1

Table 2: Conditional Ideal Points and Distribution of States of Nature

to those of the first agency,  $B$ . If the legislature were to choose one of the two agencies to have dictatorial control over policymaking, the optimal choice would be  $B'$ . (Thus, this example speaks to the role played by the lack of abdication in legislative delegation.)

We consider the legislature's *ex ante* expected utility in two cases: (1) when the agency's preferences are given for  $B$  and (2) when the agency's preferences are given for  $B'$ . The perfect monitoring equilibrium for the first case (where the agency's preferences are given by  $x_B^*(s)$  in

Table 2) is described in Example 1. Therefore, we proceed to the second case. In this case it can be seen that, if the legislature always acquires information when lobbied, then the group's optimal strategy is to lobby the legislature in all states of nature and never lobby the bureaucracy. Just as in the discussion in Example 1, a perfect monitoring equilibrium cannot exist if the agency's preferences are given by  $B'$ . Thus, the legislature can strictly increase its payoff by delegating to an agency with preferences less similar to its own than to one with more closely aligned preferences.

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In order to link the role of hearings and the ally principle, note that the increase in hearings held in Example 1 is strict and occurs exactly *because* the agency is sometimes lobbied by the interest group. In both Examples 1 and 2, the legislature can increase its payoff by delegating authority to an agency whose preferences differ from its own. Without this divergence of preferences, the interest groups would have no incentive to sort themselves and support the legislature's monitoring decision.

This highlights the importance of abdication as well as delegation in the ally principle. If the legislature can truly constrain its own authority in the sense of surrendering its rights to make policy, then the ally principle will once again hold – authority is best surrendered to one's clone. This insight is more than a technical point: this means of bringing the Congressional delegation problem back in line with the ally principle has been explicitly prohibited by the U.S. Supreme Court in what is known as the *non-delegation doctrine*. Essentially, Congress is constitutionally bound not to abdicate its policymaking powers to an unelected body. Therefore, the theory presented here recognizes an institutional arrangement that is not only theoretically and substantively important – it is also empirically valid.

## 4 The Federal Trade Commission

In this section, we present a brief analysis of the Federal Trade Commission, particularly its revitalization and eventual reform in the 1970s and 1980s.<sup>17</sup> The purpose of this section is to relate the experiences of the Commission, Congress, and public interest groups to our model and attempt to show how the model presented here aids in our understanding of the development of relations between Congress and the bureaucracy. To summarize, after a long period of comparative latency, the FTC's policy making authority was expanded while its "ideological distance" from Congress increased. These two events, at odds under the ally principle, are reconciled in our model *provided* that sufficient scope for lobbying the bureaucracy exists. Following the first two developments, this is exactly what Congress took steps to ensure.

The Federal Trade Commission was created as an independent regulatory commission in 1914 in an attempt to enforce antitrust law through the regulation of incipient monopolies. Largely confined to case-by-case policymaking through the 1960s, the Commission was charged with policing unfair and deceptive trade practices (including a charge to protect consumers' rights as well as those of competitors) with the passage of the Wheeler-Lea Act in 1938. The FTC inherited the power to regulate deceptive advertising as a compromise between consumer advocates (who wanted the Food and Drug Administration to hold the authority to regulate advertising) and industry interests (who did not want the FDA to hold the authority, but were generally not opposed to the idea of regulation otherwise). The FTC remained largely a case-by-case policymaking agency until the late 1960s. After the passage of the APA in 1946, the FTC promulgated policy mostly through adjudications against specific firms. In 1969, however, two reports (one written by a group of volunteers organized by Ralph Nader and the other commissioned by the American Bar Association (ABA)) leveled several criticisms at the FTC, the primary one being that the Commission was unable or unwilling to enforce its statutes. In addition, the leadership of the Commission was

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<sup>17</sup>Much more depth can be found in the excellent discussions of the FTC in Chapter 5 of Harris and Milkis [1989] and throughout Fritschler and Hoefler [1995].



depicted as the mediocre product of a patronage system benefitting southern congressmen (Harris and Milkis [1989], p.164). Both reports called upon the FTC to fulfill the role that had been assigned to it, namely consumer protection.

Following the reports' publications, President Nixon endorsed the ABA's report's findings and called for a "reactivation and revitalization of the FTC" (*Public Papers of the Presidents*, 1969, 887, cited in Harris and Milkis [1989], p. 167). The actions that followed – for example, the firing by Casper Weinberger (then a chairman of the Commission) of eighteen of the Commission's 31 attorneys – represented an attempt to create an agency with preferences that were known and distinct from the preferences then apparently holding sway in Congress. Note that this is not a struggle between the executive and legislative branches, however: Congress *could* have blocked these moves but did not move to do so. In addition, Congress could have achieved the policy outcomes desired by the new appointees in the absence of the reorganization as well though presumably only at significant cost in the form of hearings and debate. Finally, several Congressmen perceived electoral advantage to flow from being seen as a consumer's advocate, or at the very least electoral risk was perceived to stem from actively opposing the American consumer.

Following the shuffle at the FTC, the Commission entered a period of decidedly activist policymaking. Initially, the Commission began more vigorously pursuing enforcement of its statutory mandate through adjudications, but eventually began issuing industry-wide trade regulation rules. Regulatory rules are far more effective than adjudications affecting one or a few firms in terms of implementing social and economic policy. Thus, the FTC effectively broadened its own discretionary powers between 1969 and 1977.

The FTC's expansion from case-by-case enforcement of its mandate to more sweeping regulatory rulemaking was furthered by the fact that a "beat cop" image of the FTC was unsatisfactory to members of not only the consumer's movement, but members of Congress as well. Some found case-by-case enforcement to be potentially arbitrary and capricious (a concern which could have been dealt with, in theory at least, under the Administrative Procedure Act) while others, more in

line with the present discussion, seemed to recognize that rulemaking would result in systematic policy that could help define the role of the FTC with regard to individuals' and firms' interests. Describing adjudicatory policymaking as capricious and ineffective is equivalent to stating that the FTC's role in policymaking made it impossible to infer whether lobbying it would be effective. Indeed, the effectiveness of lobbying an agency whose policymaking is confined to individual and particular cases is presumably far lower than that of lobbying an agency that promulgates policy through regulatory rules. In effect, an adjudicatory agency does not effectively serve the informational purpose of the agency in our model – groups seeking adjudications rarely (if ever) approached Congress for redress prior to the revitalization, and groups seeking broader reforms would not find lobbying the FTC effective until the Commission undertook rulemaking as a means of making policy.

The turning point in the FTC's adoption of rulemaking occurred in 1971, when the Commission issued a rule requiring that accurate octane levels be posted on gasoline pumps. The Commission's authority to issue such an industry-wide rule was challenged in court, with the FTC eventually winning judicial endorsement of its rulemaking authority in *National Petroleum Refiners Association v. FTC*.<sup>18</sup> This authority was soon endorsed by Congress with the passage of the Magnusson-Moss Act of 1975. The Act not only solidified the FTC's policymaking powers with regard to consumer protection and antitrust matters, it also imposed fairly explicit reporting and procedural requirements that the Commission has to satisfy when seeking to implement policy through rulemaking. For example, the Commission is required, above and beyond the "notice and comment" requirements imposed by the Administrative Procedure Act, to publicize and provide specific reasons for proposed rules, and allow interested parties to file written reports (including data, opinions, and statements of support or opposition) with the Commission. Additionally, all material submitted to the FTC regarding proposed rules was required to be made public (Ellis [1981], p. 162, cited in Harris and Milkis [1989], p. 173). In general, the opportunity for public participation at the FTC

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<sup>18</sup>*National Petroleum Refiners Association v. FTC*, 482 F 2d 672, D.C. Circuit, 1973.

was expanded greatly, above what had previously been the case as well as above what was required of many other agencies whose public participation requirements were limited to those stated in the APA.

In terms of our model, this expansion of lobbying channels in the bureaucracy is a corollary of the expansion of FTC activism in the first place. The creation by Congress of another policy making venue with distinct preferences and essentially independent ability to initiate policy makes no sense *unless* that venue can be lobbied. When that venue is approached by lobbyists, it responds (given legal constraints and administrative structures (McCubbins, Noll, and Weingast [1987], [1987], as well as less formal pressures from repeated interaction). And when it is bypassed by lobbyists, an inference can be made about the urgency of the issue at hand or the appropriate policy response. With the passage of Magnusson-Moss, Congress not only explicitly endorsed the FTC's authority to service interested parties but also enhanced the signal relayed by such groups' participation in the FTC's rulemaking process. In return for effectively granting legislative authority to the FTC, Congress extracted an informational gain that could (and would) be used to its advantage when approached regarding consumer protection and antitrust issues in the future. Bringing this point even more to forefront was the Act's authorization of an "intervenor funding program" that provided financial aid to groups that wished to participate in the rulemaking process. This program was described as a buttress against the possibility of the FTC becoming "captured" by the industries it was charged with policing. However, both the electoral environment and the environment within the Commission itself when the Act was passed (1975) makes the possibility of its being captured by industry interests seem remote at best. Rather, the intervenor funding program seems more correctly analyzed as a means by which Congress provided a strict incentive for the FTC's "clients" – public interest groups – to lobby the Commission rather than the Congress whenever appropriate. Furthermore, the size of the program in terms of total expenditures was trivial, with the vast majority of the funds going to a few highly pro-consumer groups. The benefits of this program, however, were potentially huge, as it essentially let Congress get back to the business

of things other than consumer legislation, most of which at the time dealt with issues involving distributed gains and concentrated costs such as advertising on children's television.

## 5 Discussion and Conclusion

In this paper, we have analyzed the interaction of multiple institutional actors with policy-relevant information (or the potential to acquire it). Our argument is that when these institutions all interact with one another, there are important implications for the informational roles they play in the policy process — and therefore our interpretation of the form they take. For example, when venue choice by an informed lobbyist is possible because of diffuse policy making authority, a legislature may actually have an incentive to delegate to an agent whose preferences do not perfectly reflect its own. The reason is that it can make legislative lobbying more informative, when it happens. Moreover, delegation to an expert bureaucracy, which presumably would have some roots in the desire to leverage its informational advantage, can nevertheless lead the legislature to acquire more information itself.

In addition, supposing that the bureaucracy has lower costs of procuring information (or, more generally, lower costs of “doing things right”), the legislature can service many types of groups more efficiently because the bureaucracy exists. In particular, the legislature may not have very strong (or perhaps any) preference between different policies *most* of the time. Without the bureaucracy as a venue, groups lobbying the legislature in this case would get uninformed policymaking from the legislature. With the inclusion of the bureaucracy, the groups can partially distinguish themselves at no cost to the legislature. In these cases, the legislature holds hearings about important issues and the bureaucracy deals with less important ones. This feature emerges in equilibrium; it is not imposed by a restriction on the set of issues the bureaucracy can address (by assumption it is the same as that for the legislature). Even allowing for the fact that the bureaucracy may become “captured” by some or all lobbyists that approach it, the increased ability of the legislature to deal

with important, allied lobbyists can result in an indirect increase in the legislature's well-being. This dynamic is similar, in some respects, to a monopolist who offers differentiated products so that heterogeneous consumers can self-select and reduce the time the monopolist must spend fashioning specialized goods for low demand consumers. Optimal delegation involves a bureaucracy that is efficiently serving the interests of interest groups that the legislature does not consider important enough relative to the costs of policymaking on those issues, in terms of time taken from other issues.

The model also raises the point that legislative delegation can be desirable not only because the agency to whom authority is delegated may be more expert than the legislature itself, but also because voluntary sorting by lobbyists can increase the incentive for the legislature to acquire information and make better-informed policy choices when it is lobbied.

There are several directions in which our model could be extended. Perhaps the most important shortcoming of the present model is the absence of an explicit role of the executive. Clearly the environment in which the bureaucracy operates is highly complex, involving many different stimuli that operate at different speeds and with differing effects on a variety of possible bureaucratic responses. Our model incorporates a stylized version of a single stimulus – namely, lobbying by an interest group – in an attempt to highlight the informational role that delegation can serve above and beyond possible direct informational advantages of the agent to whom authority is delegated.

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