

John Ferejohn and Charles Shipan, “Congressional Influence on Bureaucracy”

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1 Citation

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2 Abstract

Ferejohn and Shipan introduce a game theoretic model of sequential statutory policymaking, in which an administrative agency implements a regulatory policy and three actors - court, legislature, and executive - are then allowed to sequentially respond by not acting or overturning the agency decision in favor of an alternative policy. The authors find that the agency has substantial policymaking discretion in the simplified case where the only other actor is the legislature. However, the introduction of an executive veto and judicial review decrease the strategic discretion of the agency and increase legislative influence over the bureaucracy.

3 Preliminaries

Ferejohn and Shipan focus on statutory policymaking, wherein a status quo prevails unless the legislature implements some alternative. In this environment, the role of an administrative agency or a president is to propose alternatives to either the status quo or to legislative action, though the legislature has final say. Shipan and Volden focus in particular on agency policymaking, for “if regulatory policy-making [where law is initiated by the legislature] seems to be a most natural application of our model, we see agency policy-making as the ordinary or routine decision-making practice throughout modern government ... it seems likely that a model of administrative action that puts agency actions at the front is more relevant for explaining government action most of the time” (Ferejohn and Shipan 1990: 3). It is in the domain of agency policymaking that administrative agencies have an important strategic advantage: They are the *first movers* in a sequential policymaking game. But they are not unconstrained, as their model shows.

4 The Model I: Setup

In Ferejohn and Shipan’s model, there are five actors: An agency, a legislature, a legislative committee, a court, and an executive. The legislature is assumed to be a unicameral body that delegates the supervision of the agency to a committee with the authority to initiate legislation changing the policy from the agency proposal; if such a proposal emerges from committee, it is considered “open rule,” meaning that it may be freely amended on the floor; the resulting legislation is implemented unless the executive vetoes it (Ibid: 5-6). Furthermore, there is a court with statutory review powers - that is, a court with the authority to review agency actions and strike them down before the legislature takes action. Hence the sequence works as follows:

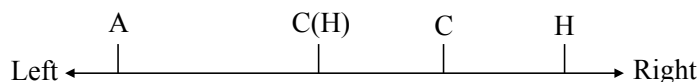
- (1) *Agency implements policy* →
- (2) *Court upholds/strikes down policy* →
- (3) *Legislative committee decides whether to initiate overriding legislation* →
- (4) [*assuming committee introduces legislation*] *legislature deliberates, amends, & votes on proposal*

Ferejohn and Shipan truncate the game at step (4) for simplicity by assuming that the legislature will take into account the executive’s preferences and will hence not pass a bill that will be vetoed.

Ferejohn and Shipan then assume that we can arrange the preferences of the foregoing actors in a unidimensional policy space, as modeled in Figure 1 (I arbitrarily label the space a left-right spectrum to facilitate interpretation). The actor’s preferences are monotonic, in the sense that an actor prefers a policy closer to their ideal point to one that is farther from their ideal point. The authors assume perfect information and an unwillingness on the part of the actors to have their proposal overturned.

To run a series of comparative statics, the authors fix the preferences of three of the actors such that the agency’s ideal point, A , lies to the left of the legislative committee’s ideal point, C , which lies to the left of the median legislator’s ideal point, H . In this setup, $C(H)$ comprises the policy that renders the committee indifferent vis-a-vis the full legislature’s prospective alternative.

Figure 1: *The Sequential Policymaking Game in Euclidean Space*



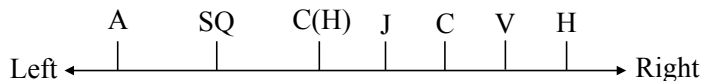
In the setup of Figure 1, which has yet to introduce an executive and a judicial actor, the agency will adopt policy $C(H)$. This is because if it adopts a policy to the left of $C(H)$, then the committee will prefer to introduce legislation that ultimately produces a policy matching the medial legislator’s ideal point, H . This is because the committee would prefer H to any outcome to the left of $C(H)$. But what this game essentially means is that the agency has a strategic, agenda-setting advantage: By being the first mover, it can adopt a policy that is most proximate to its ideal point while avoiding legislative override. The equilibrium will thus be a policy the legislature would not have adopted if it had been the first mover.

What ends up mattering in this game, however, is the location of the status-quo, SQ . Ferejohn and Shipan consider three scenarios where the location of the status-quo in the left-right dimension is varied. Since these analyses are very complicated, I will only focus on what they term “scenario 1,” where the status quo is to the left of $C(H)$. As it turns out, all of the key implications of their model can nonetheless be derived from this scenario.

5 The Model II: The Impact of Judicial Review and Executive Veto

Ferejohn and Shipan proceed to show how the introduction of judicial review and an executive veto end up constraining the agency’s discretion, and hence lessening its first mover advantage. They do so via a series of comparative statics exercises. Let us illustrate this using scenario 1, where the status quo is to the left of $C(H)$. Consider, first, a case where the committee, C , is to the left of the executive. As it turns out, in this case the executive’s veto power is irrelevant, and the agency will introduce policy $C(H)$. This scenario is modeled in Figure 2:

Figure 2: *SQ is to the left of $C(H)$, the executive is to the right of C , and the court is to the left of C*

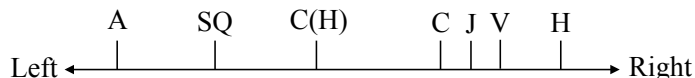


Where J is the court’s ideal point, SQ is the status quo, and V is the president’s ideal point. In this case, the presidential veto is irrelevant because the president will prefer $C(H)$ to the status quo. The agency will introduce $C(H)$ because if it introduces a policy to the left of $C(H)$ then the committee will introduce legislation to override the agency and the outcome will then be H , which is worse from the agency’s standpoint than $C(H)$. Assuming that the court’s preferences are equal to, or to the left of, C , then the court will also not overturn the agency’s decision, as it would prefer $C(H)$ to the status-quo or to H - the prospective

legislative outcome if the court overruled the agency's policy. In, short, in Figure 2 the equilibrium outcome is $C(H)$, which is introduced by the agency and is neither overruled by the court or the legislative committee.

If, on the other hand, the court's ideal point is to the right of C , it will strike down the agency's decision. This is because this allows the legislature to act to change the status quo, and the court would prefer any outcome that the legislature concludes to $C(H)$ (the legislature would adopt policy H , since the president prefers H to the status quo). Knowing this, the agency will have to implement a policy to the right of $C(H)$ to avoid being overridden. This scenario is captured in Figure 3:

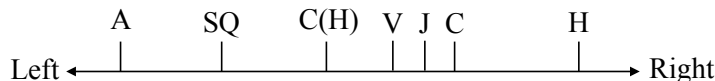
Figure 3: SQ is to the left of $C(H)$, the executive is to the right of C , and the court is to the right of C



In short, *the introduction of judicial review either does not alter the agency's policymaking discretion or it forces the agency to be more responsive to legislative preferences.*

Now, let us consider the case where the committee, C , is to the right of the executive and the court. To see this, consider Figure 4:

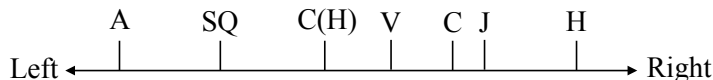
Figure 4: SQ is to the left of $C(H)$ and both the executive and the court are to the left of C



As we can see in the above figure, if the agency proposes $C(H)$, then the court will not overrule the agency policy because it prefers it to the status quo. However, the committee will introduce legislation, because it knows that the full legislature will adopt a legislative proposal that renders the president indifferent vis-a-vis $C(H)$, and this outcome is closer to the committee's ideal point than is $C(H)$ (in fact, in Figure 4 this appears to be the committee's own ideal point). Knowing this, then the agency will have to adopt a policy to the right of $C(H)$. Hence the introduction of an executive veto forces the agency to adopt a policy to the right of $C(H)$. To see this, remove the executive, V , from Figure 4. If this were the case, the agency would introduce $C(H)$, which would leave the committee indifferent between $C(H)$ and H , and it would consequently not overturn the agency's decision - $C(H)$ would then become the new equilibrium.

Next, consider a case where the only difference compared to Figure 4 is that the court is now to the right of C . This is captured by Figure 5:

Figure 5: SQ is to the left of $C(H)$, the executive is to the left of C , and the court is to the right of C



In this case, the court will strike down an agency policy of $C(H)$. This is because it knows that the legislature would then be able to adopt a policy that renders the president indifferent with $C(H)$, which would be C , or the committee's ideal point, in this case. Since C is preferable to the court than $C(H)$, then it is in the court's interest to strike down an agency proposal of $C(H)$. Knowing this, the agency will once again have to introduce a policy to the right of $C(H)$ to avoid being overridden.

In other words, *the introduction of an executive veto either has no impact on the agency's policymaking discretion or it can force the agency to adopt a policy aligned more closely to congressional preferences.*

6 Conclusion

As the foregoing exercises in comparative statics show, "in all of these cases, the effect of introducing judicial review is either to leave the outcome unchanged or shift it toward the chamber median. In this respect, the court increases the responsiveness of the agency to the chamber. Thus, even if the institution of judicial review is backward-looking, its effect can be to increase the responsiveness of the policy outcome to the current Congress" (Ibid: 11). Furthermore, the effect of the executive veto is also to not affect the policymaking game or to serve as a "binding constraint in agency policy choice" (Ibid: 18). In short, the introduction of judicial review or the executive veto is to increase the likelihood that administrative agencies will have to enact policies more congruent with legislative preferences than would otherwise be possible. Executive vetoes and judicial review, then, actually increase legislative influence over the bureaucracy.