

Influence and Information in U.S. Bureaucracy:
How Agencies, Congress, and Interest Groups Use Federal Advisory Committees

by

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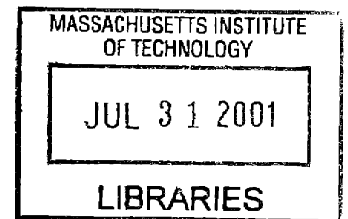
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ABSTRACT

This thesis studies how government in the US gathers and uses information effectively, and the role of federal advisory committees therein. All governments that serve the public interest encounter conflicting needs – on the one hand to gather information to solve important problems, and on the other hand to resist particularistic pressures of special interests both within and outside of government. Many governments choose to reconcile these demands in different ways – through balance of power, direct oversight, and procedural controls, for example – but these control mechanisms are costly. The use of such control mechanisms impacts both the effectiveness of advisory committees as information gathering tools, and how advisory committees are used.

The body of the thesis consists of three papers. The first summarizes the available literature on information transmission and influence in complex environments, especially as they relate to delegation of authority. It categorizes the various bodies of theory and identifies the key lines of difference across these theories. The second paper tests hypotheses about meeting closure, government capture, and committee authorization to ascertain which branches of government are most vulnerable to inappropriate influence. Results weakly predict that committees formed cooperatively by Congress and agencies are most vulnerable to special interests. The third paper uses survey data to test how process controls impact the effectiveness of committees, and concludes that although openness does impair committee effectiveness somewhat, balanced membership strongly enhances effectiveness. To explain this apparent contradiction, it notes how balance requirements and other procedural controls enhance a committee's credibility, and reduce the likelihood that important information is dismissed as 'Cheap Talk'.

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Executive Summary

Questions:

- How do FACs work? How do Congress and agencies use them?
- How does government balance the need for information against the threat of special interest influence in FACs?
- How can we have an informed government that acts in the public interest?

Issues:

- In order to gather the information to make crucial policy decisions, government often cedes too much influence to the interest groups who possess that information.
- Since WWII, the federal government has relied extensively on FACs (committees of outside experts and interest groups) to gather information.

Conclusions:

- The current belief in “capture” and “red-tape” is overly pessimistic about the ability of government to both stay informed and serve the public interest. These doctrines ignore mechanisms like advisory committees.
- The Legislature and Executive design advisory committees with three key features to counter ‘inappropriate influence’: Credibility, Consensus, and Coordination.
- The value of Credibility increases as information becomes more diffuse and complex. Without Credibility, Talk is Cheap, and crucial advice is worthless and ignored.
- Maintaining credibility requires commitment through fair processes:
 - Balanced membership, openness, background checks, record keeping
- Fair processes cost time and money, and yield ‘appropriate’ influence to committees.
- FACs use *more* fair processes when problems are complex, *not less*.

Introduction

Advisory Committees In the Spotlight

Prior to the late 1980s, meetings of FDA drug advisory committees were rather tame affairs, usually attended by a small, professional cadre of scientists, the scientific press, and representatives of the companies involved. In spite of the vast amounts of money and millions of lives that FDA committees directly affected, they remained relatively unstudied, and stayed out of the public's eye. AIDS activists changed all of this in the late 1980s and early 1990s, when they and other forces nudged advisory committees into the political headlines.

The extent of the changes during the 1990s were dramatic. The AIDS advocacy community, led by ACTUP, turned the advisory committee process on its head. Using "guerilla" tactics, they brought members suffering from advanced, debilitating symptoms to the hotel hallways and conference rooms where the meetings were being held.¹ They staged "die-ins" at FDA headquarters, littering themselves on the stone steps as though they were corpses, and shutting down the agency for a day.² Primarily, they criticized the length of FDA approval processes, the limited access to drug trials, and the alleged cruelty of double-blind experiments with placebos. The medical community was shocked by ACTUP – such behavior was unheard of. Nonetheless, the protests did bring change. The drug AZT was approved in an astonishingly short time – only two years.

While FDA accommodated AIDS activists with new policies designed to address their concerns, such as the introduction of parallel track drug approval and an Investigational New Drug (IND) exemption for early marketing, these actions did not shield advisory committees from political pressure. In the early 1990s, meetings of the CDC committee in charge of AIDS drugs were highly attended affairs, drawing in activists, the national press, and even the presence of FDA commissioner David Kessler. In the words of one committee member, these meetings were the "main event" at FDA. Committee members found themselves cast into the spotlight, and their words being quoted (sometimes out of context) in national publications. Committee members often found these tactics intimidating, and they certainly had a profound effect on the outcomes.³

¹ Interview on file with author.

² Smith, James Monroe. *AIDS and Society*. Chapter 7. Prentice Hall, Upper Saddle River, NJ. 1996. ACT UP also staged protests against the Catholic Church for its conservative policies regarding homosexuality and sex education, against corporations for limiting health insurance coverage, against Burroughs-Wellcome for the high price of AZT. In one of the more notorious protests, its members infiltrated the New York Stock Exchange and unfurled a banner reading "Sell Wellcome", resulting in a substantial drop in the stock price on the London exchange the next morning and convincing the company to decrease the price of AZT by 20%.

³ Interview on file with author.

The lesson taught by the AIDS advocacy community did not go unheeded. Other patient advocacy groups saw their success, and imitated it.

“Advocacy groups and public involvement didn't really exist till fifteen to twenty years ago. The effectiveness of the AIDS community severely impressed the other groups. They brought to bear tactics - sometimes controversial ones - which were very effective. They used demonstrations, brought people into congress, stood on street corners, organized walks and marches and music festivals, etc. It was very effective. The cancer community was engaged with cancer research long before AIDS, but AIDS took this involvement to a new level. It taught the groups what they could do. A whole host of groups oriented themselves to building a political base and expressing their interests to Congress.”⁴

The bipartisan commitment to double funding for the NIH during the turn of the millennium was only one manifestation of the new political power of these groups. Yet even though this budgetary increase has been well publicized, few have criticized the influence of patient advocacy organizations. Several prominent theories of regulatory capture and political influence fail to adequately explain this phenomenon, nor do they predict such widespread public approval for a program initiated by special interests. Can it be that despite our many fears to the contrary, democracy has worked?

Perhaps, but as some observers point out, democracy comes at a cost. In this case, the growing influence of advocacy groups has invited others (specifically, the pharmaceutical companies) to join in the parade. The politicization of science by one interest always invites other interests to encroach on the scientific process.⁵ Unfortunately, this politicization threatens the unbiasedness of the advisory committee process that FDA relies upon for credible assessments of the benefits and risks of new drugs, and the effects on these committees is pronounced. Advisory committee meetings have become more complex, without the simple, straightforward adversarial presentations of the old days. These days, the FDA can no longer be counted upon to take the politically costly, conservative view. Companies have developed slick dossiers on each member of the various drug committees – their past voting records, their biases, their academic work, even their political affiliations... These days, the national press often attends crucial advisory committee meetings, and so do stock analysts with their hungry cell-phones.

The odd thing about the Antiviral Drugs Advisory Committees in the 1980s and 1990s is that it's powers never changed; it had always wielded tremendous influence over important decisions. Yet like most of the thousand or so federal advisory committees in existence in the 1980s, the Antiviral Drugs Advisory Committee managed to avoid the spotlight, operating in relative obscurity. Since then, more and more advisory committees have been pushed into the open, serving as focal points for major public debates. But in spite of that, many people still don't know what a federal advisory

⁴ Interview on file with author.

⁵ Jasanoff, Sheila. *The Fifth Branch: Science Advisers As Policymakers*. Cambridge, MA: Harvard University Press, 1990.

committee is. Those that do rarely have any idea how many there are, who uses them, how they are used, and why they are often so controversial.

This thesis originally set out to fill in this gap. Here was an institution in American politics that was clearly understudied, and needed some attention. Along the way, however, it grew into something more. It became a lens for examining the administrative processes as a whole, and how it reacted to an incredibly important and intensifying phenomenon: the conflict between information and influence in bureaucratic politics.

Advisory committees are only one of several mechanisms that the federal government uses to gather information. Others include hiring consultants, hiring permanent federal employees, redirecting existing resources and retraining current employees, conducting surveys and outreach, mandating new reporting requirements ('paperwork'), and reading the morning paper. But advisory committees are truly unique among all of these information gathering mechanisms for three important reasons.

First, advisory committees are limited in number and centrally regulated. The federal government maintains records on every advisory committee used since 1974, with data on all these committees. In recent years, its data collection efforts have grown more sophisticated. Any member of the general public can use the web to access the identities, function, and general meeting information on any advisory committee. All advisory committees are chartered. Thus, we can observe things like membership and interaction between advisory committee members and federal agencies.

Second, we can observe these things in a relatively controlled environment. The rules governing advisory committees and their use are relatively constant across government, with a few exceptions in some specific legislation here and there. This lets us observe how advisory committees are used by different parts of government in different environments. Advisory committees are thus an excellent window into an otherwise dark and mysterious administrative process.

Third, advisory committees serve as focal points from some of the most intense administrative phenomena and conflicts of the modern era. Rarely do we see the conflicts between participatory democracy and technocracy, transparency and closure, rule of law and administrative discretion, and information and influence presented so starkly. Advisory committees are thus a precious learning opportunity. They are in many ways a forerunner of what the administrative process is becoming, and how it is changing. If we can isolate the lessons learned from advisory committees, we may be able to apply them to other areas of the bureaucracy.

But I am getting ahead of myself. I haven't even explained what federal advisory committees are yet.

So what is a federal advisory committee?

Advisory committees are a great topic for dinner parties if you like to hear yourself talk. Whenever I mention them at wedding receptions and dinners, I'm guaranteed to dominate the next five minutes of conversation, or drive everyone to the champagne line. Most people aren't even sure what a federal advisory committee is, even though they may have read about several of them in the newspaper. But after a couple minutes of conversation, examples start popping into their minds, and they suddenly become very interested in either my words or the wine.

Yet even before most people realize what federal advisory committees are, they take it as a matter of faith that these things are somehow important – they certainly sound important. Rather than ask for clarification, they are quite content to let me babble on about a topic I so clearly enjoy discussing, until they can piece together the details by themselves. Since this thesis is not a dinner party, however, I'm going to take a few pages to explain exactly what an advisory committee is before I argue about the politics underlying their use.

Federal advisory committees are everywhere - every major agency in the US federal government uses them. Some agencies, such as the National Endowment for the Arts, are essentially built around advisory committees. Other agencies, like the Department of Defense, maintain sixty of them at a time. Some committees quietly go about their business, like the DNA Advisory Board of the Department of Justice. Other committees, like the National Organic Standards Board (whose proposed rule elicited over 315,000 public comments), serve as foci for intense public debates.⁶ Some committees pass on without ever stirring a breeze. Others, like Teddy Roosevelt's Commission on Public Lands, leave saurian footprints behind that guide our political path for decades to come.

By last count, there were around a thousand advisory committees in existence at the turn of the millennium, but the average person doesn't even know what a federal advisory committee is, let alone the name of even one of them. The extent of influence wielded by these committees remains unknown and unexamined. Even the policy and scientific elites who routinely serve on such committees generally know little of other committees outside their own sub-field of expertise.

Much of this lack of awareness stems from the sheer diversity of boards, panels, and commissions falling under the advisory committee label. When pressed, it is often difficult to find a single linking theme. Consider, for instance, the following handful of committees:

- The Clean Air Act Advisory Committee
- The Federal Advisory Council on Occupational Safety and Health
- The DNA Advisory Board of the Department of Justice
- The Veteran's Advisory Committee for Education

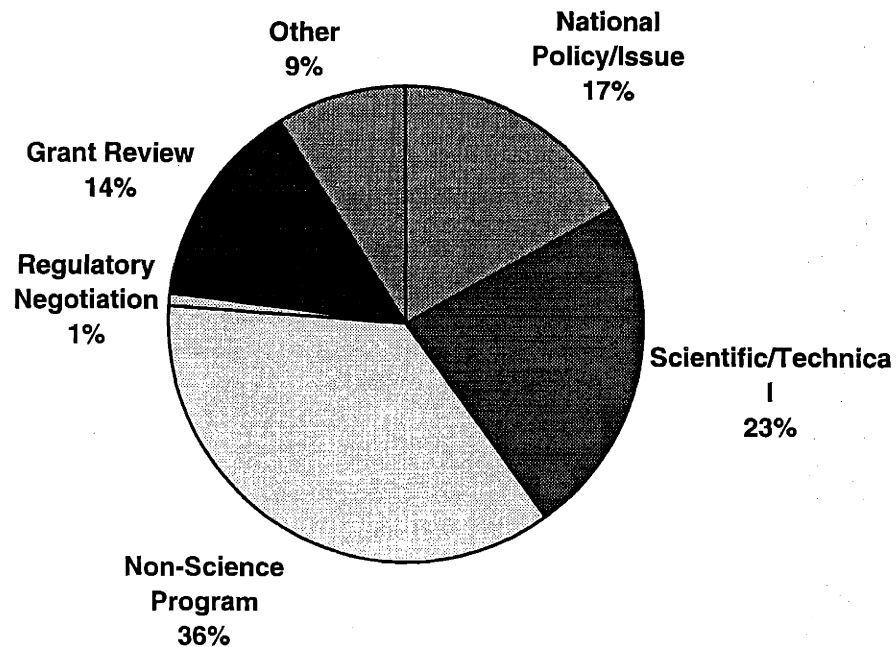
⁶ National Organic Program Overview. <http://www.ams.usda.gov/nop/facts/overview.htm>. The revised 2000 ruling was the result of a ten year process that began with the Organic Foods Production Act of 1990.

- The National Coal Council
- The Small Business Regulatory Fairness Boards
- The FDA Advisory Committee on Anti-Infective Drugs
- Boston Harbor Islands National Recreation Area Advisory Council
- The International Competition Policy Advisory Committee
- The National Council on the Arts
- The Public Advisory Committee for Trademark Affairs
- The Commission on Civil Rights

Given the diversity of committees, it is difficult to even break them into categories. In its Congressionally mandated annual reports, however, the General Services Administration has tried. The GSA produced five categories: National Policy, Scientific or Technical, Non-Science Program Management, Grant Review, and Regulatory Negotiation. This still left 9% of all committees in the 'Other' category. Chart I below shows the distribution of committees in 1998, by type.

But this still doesn't tell us what advisory committees *do*, and that isn't an easy question to answer since advisory committees do a lot of things. Instead, I'll answer a few easier questions first:

Chart I: Advisory Committee Functions, 1998



Question 1: What are advisory committees *supposed* to do?

Answer: Advisory committees gather citizens, experts, and concerned stakeholders together to provide advice to all branches of the government on all manner of issues and topics. In the words of the 1970 Congressional report that contributed to FACA:

“The advisory body creates a contribution by the governed to the Government. It provides a means by which the best brains and experience available in all fields of business, society, government and the professions can be made available to the Federal Government at little cost. Our Government and leaders are continually in need of advice on a variety of problems at all times in their attempts to find answers to the problems of our increasingly diversified and complex society.”⁷

In short, advisory committees are supposed to provide advice, on pretty much anything and everything. They might review an agency’s budget allocation decisions, evaluate the technical feasibility of a new type of airplane, or seek public feedback on the construction of new trails in a national park. However, advisory committees can only advise. They cannot directly act. A well known political doctrine called the Non-Delegation Doctrine prevents Congress from granting private groups direct power to make laws or rules, or to enforce them. Advisory committees can propose, recommend, review, evaluate, and discuss. However, they cannot actually make or enforce law.

Question 2: Who creates advisory committees?

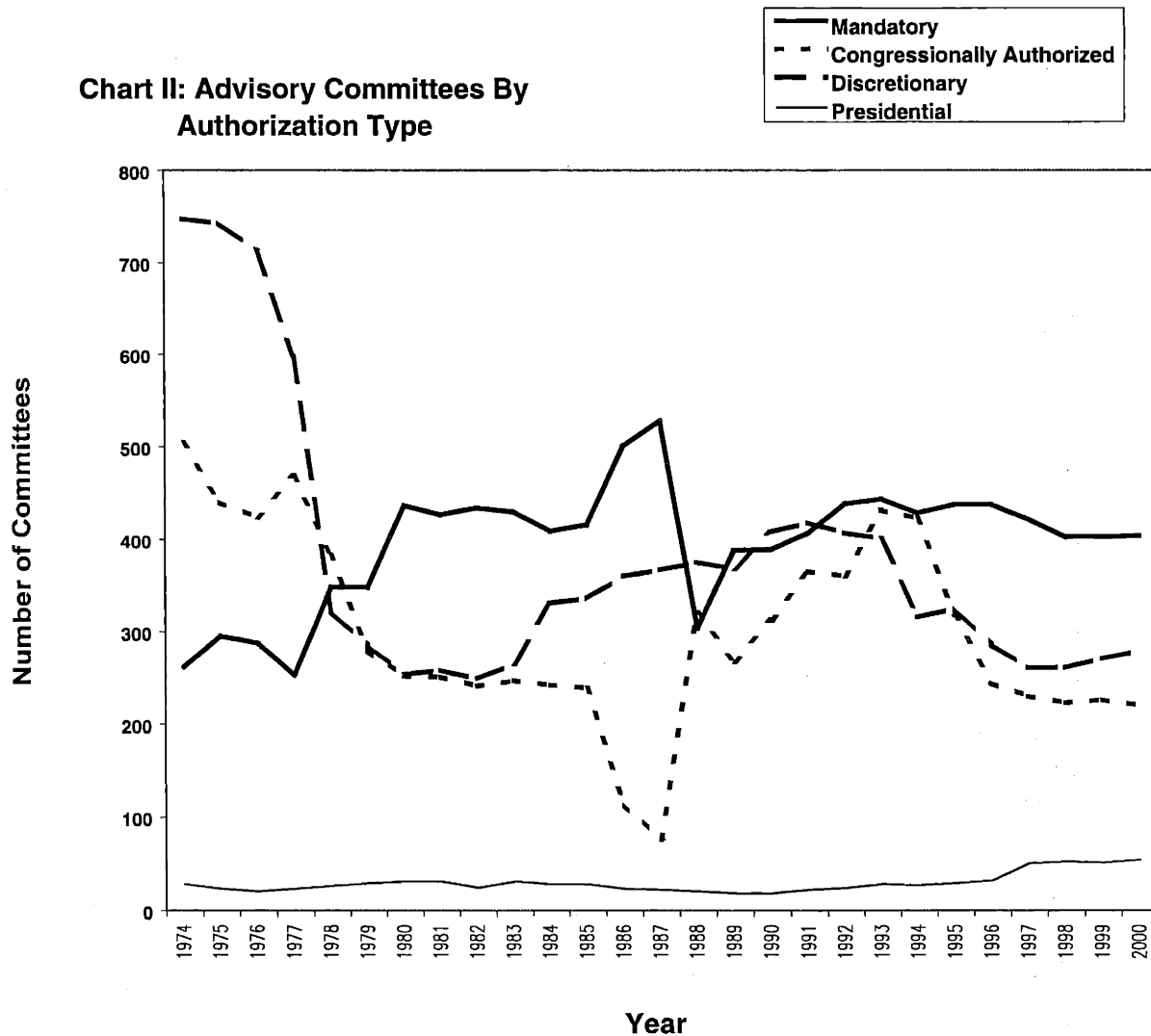
Answer: Congress, the President, federal agencies, or any combination thereof can create an advisory committee. Congress can use legislation to mandate that an agency appoints an advisory committee, and be as specific or as broad as it wishes in its description of the committee’s membership, duties, and budget. If Congress wishes, it can authorized an agency to create advisory committee without actually requiring it to do so, leaving to the agency the decision to appoint the committee or not. Agencies do not need this sort of Congressional authorization, however. An agency can appoint discretionary advisory committees entirely under its own authority, using discretionary funds to support their activity. And the President can of course appoint an advisory committee himself, or direct his staff to do so, and grant it whatever resources or duties he can command.

GSA has broken committees down into four fairly precise categories, based on who created them: Congress alone, an agency alone, an agency with Congressional authorization, or the President. Since 1974, GSA has also tracked the numbers of each type of committee, along with data on the total number of committees. Chart II presents this data. The steep drop off in discretionary committees in the early years reflects the effect of administrative housekeeping activity after the passage of the Federal Advisory

⁷ House Report No. 91-1731, 91st Congress, 2d Session. “The Role and Effectiveness of Federal Advisory Committees.” December 11, 1970.

Committee Act in 1972. The graph displays two interesting features afterwards: First, a strange blip in Congressionally Mandated and Congressionally Authorized committees in 1986-1987, which may be attributed to reporting errors on the part of committee officers.⁸ Second, a sharp drop in discretionary and Congressionally authorized committees in 1993, resulting from Executive Order 12838 (another housekeeping initiative). Generally speaking, however, the high-profile Presidential commissions which most people have heard about constitute no more than 5% of total committees. Other scholars have already studied these committees.⁹ This thesis concerns itself mostly with the other 95% of committees. Historically, about a third of these have been Congressionally mandated, a third Congressionally authorized, and a third appointed solely at the behest of agencies.

Chart II: Advisory Committees By Authorization Type

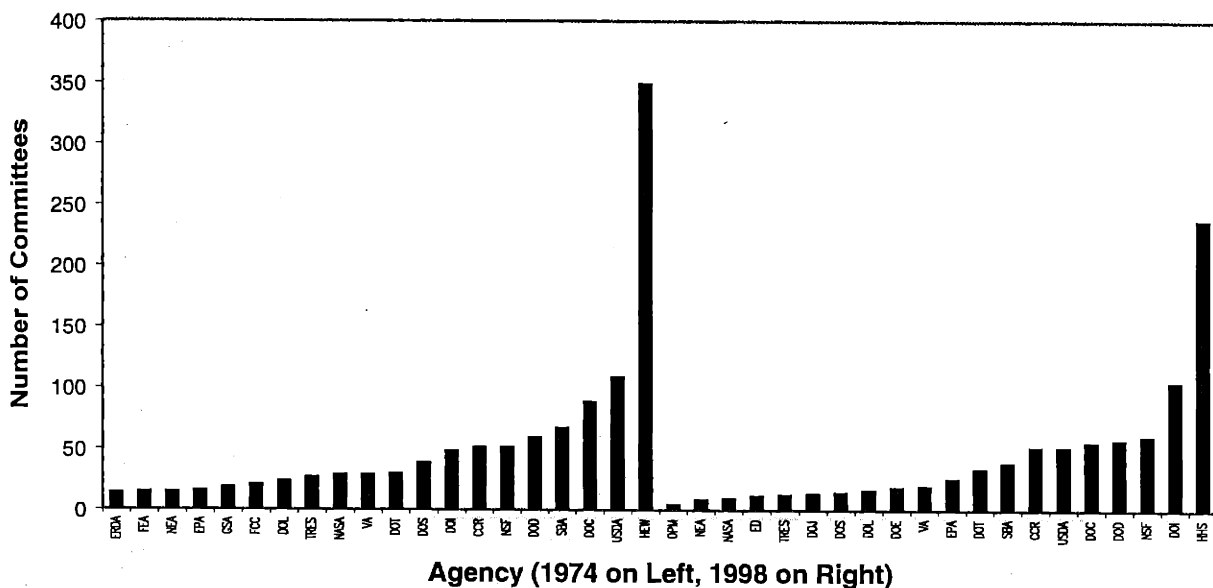


⁸ This explanation was suggested by staff at GSA.

⁹ Wolanin, Thomas. *Presidential Advisory Commissions*. University of Wisconsin Press, Madison, Wisconsin, 1975. Also see Flitner, David Jr. *The Politics of Presidential Commissions: A Public Policy Perspective*. Transnational Publishers, Inc. Dobbs Ferry, NY, 1986.

In addition to being authorized by so many actors, advisory committees exist in every major branch of the federal government, and the breadth of their use has remained relatively constant over the last 20 years. The following graph displays the number of advisory committees in the 20 agencies with the most FACs in 1976 (two years after FACA was implemented) and in 1998 (the most recent year with data). Although the number of committees was reduced slightly due to EO 12838, the order of the list has not changed much.

Chart III: 20 Agencies With The Most Advisory Committees



Question 3: Who serves on advisory committees?

Answer: In the words of a 1971 Congressional Report:

“All members of advisory committees to some degree represent segments of special interests which frequently do not coincide with the interests of the country as a whole.”¹⁰

Technically, of course, anyone can serve on a federal advisory committee. In practice, however, few everyday citizens actually participate. Most of the people who

¹⁰ House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.”

serve tend to have some expertise in the particular issue they are advising on, though some merely bring with them their general knowledge and their own unique viewpoints. A disproportionately large number of academics serve, and among those who aren't academics, many have advanced degrees. Most non-academics who serve represent specific interest groups, organizations, or constituencies, although all members technically serve on advisory committees as individuals and not as representatives of groups.

Chart IV and Chart V below portray two separate estimates of total advisory committee membership. Chart IV uses data from a General Accounting Office survey of 900 committee members in 1997.¹¹ Chart V uses data from a hand-coded count of all 41,257 advisory committee members in 1998. They agree substantially, with some minor variation that can be attributed to sampling error (and perhaps some mild selection bias in the survey and coding error in the hand count). The most striking thing about these charts is the dominance of experts on advisory committees in the last few years – and especially academic and/or research-oriented personnel. Moreover, the ratios are even more pronounced than one might at first guess, because several committee members who come from industry or other interest groups also qualify as experts (scientists, engineers, doctors, and scholars), though even they do not work for organizations whose primary purpose is research or education.

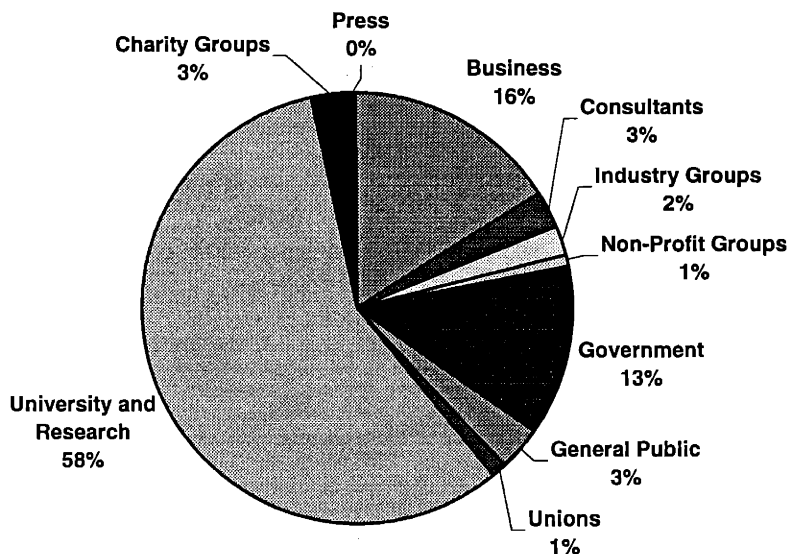


Chart IV: Membership Proportion by Group Category (1998 Hand Count)

¹¹ The potential problems with this data include the fact that only 607 individuals responded to the survey. Although an excellent response rate

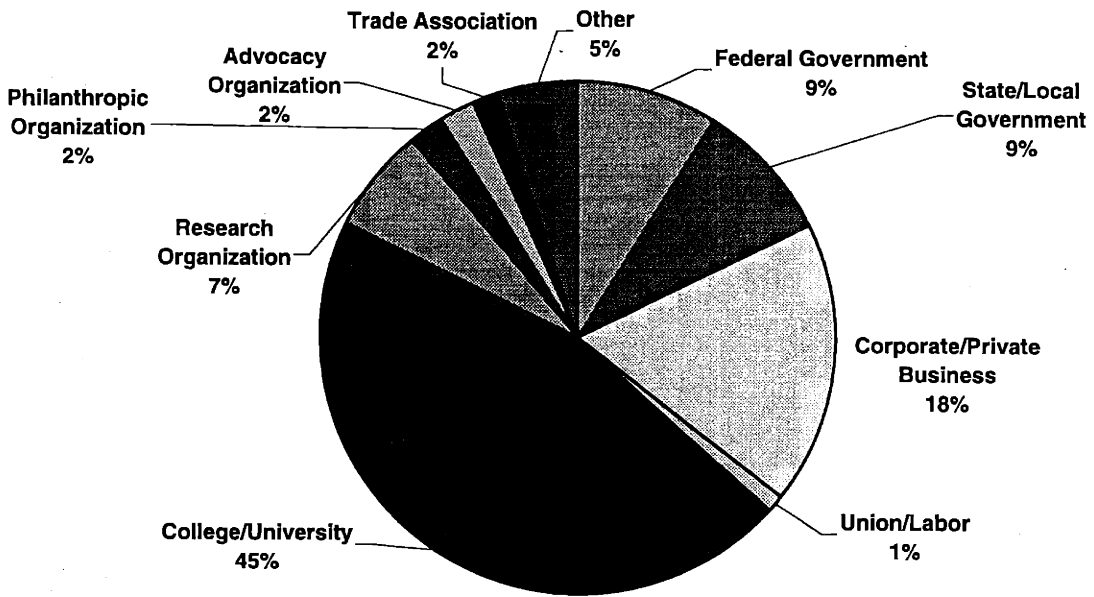


Chart V: Proportion of Members, By Group Type
 (Based on Survey Sample by GAO, Report No. GGD-98-147)

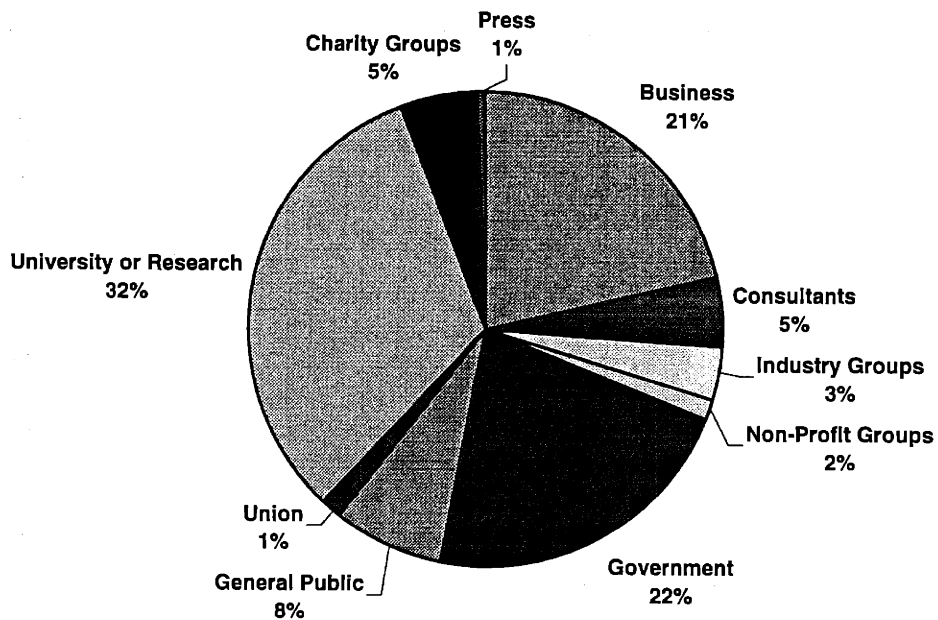


Chart VI: Average Membership Proportion by Committee
 (1998 Hand Count)

Chart VI presents a slightly different picture using data on average committee composition, also drawn from the 1998 hand count. We can see that even though researchers and academics constitute between 52% and 58% of total advisory committee members, they tend to serve on larger committees. Hence, only 32% of an 'average' committee's membership is made up of researchers, even though there are fairly few committees with researchers constituting exactly 32% of the membership.¹² Nonetheless, all three graphs clearly suggest that the distribution of people serving on advisory committees differs substantially from the distribution of people in society at large. FAC members are much more likely to be 'experts' than a randomly chosen US citizen.

In addition to the focus on expertise, another noteworthy feature of advisory committee membership is the presence of organized interests. Only 3% of committee members in 1998 claimed no organizational affiliation (except the geographic region they represented). These 'general public' representatives tended to serve on smaller committees, so that 8% of the members on an average committee expressed no affiliation, but even this is a frighteningly small percentage. The vast majority of members were affiliated with some group that was directly concerned about the activities of the committee – whether it was a business, a university, a philanthropic organization, or a professional organization. This need not imply anything particularly nefarious, since much of the expertise necessary to govern rests with these organized interests. Yet it is cause for concern.

Question 4: How much do advisory committees cost?

Answer: Advisory committees are surprisingly cheap. The cost of maintaining the 40,000 members of the thousand committees in 1998 came to about two hundred million dollars, or about 200,000 dollars per committee, or about 5,000 dollars per member. This mostly includes per-diem costs for travel for members, and the cost to agencies of maintaining support staff. Very few agencies pay their committee members; most pay only for travel expenses associated with attending meetings. Furthermore, most of those members who do receive some payment serve on grant review committees in HHS, NEA, or NEH. The vast majority of advisory committee members do not even receive the nominal payment that jury members receive.

As a percentage of the federal government's total revenue, advisory committees draw very little funding. Compared to other information gathering mechanisms that the federal government can tap, advisory committees are incredibly efficient. Part of the price for this efficiency, however, is that most members of society have neither the time nor inclination to serve on these committees, let alone put in the necessary amount of work to become experts on topics they do not encounter every day. The participation by organized interest groups and recognized experts at least partly results from the lack of financial support offered to committee members.

¹² This can be interpreted in two ways: An average committee has researchers as 30% of its members, or 30% of advisory committees are dominated by researchers.

Chart VII: Committee Reports and CPI Adjusted Cost

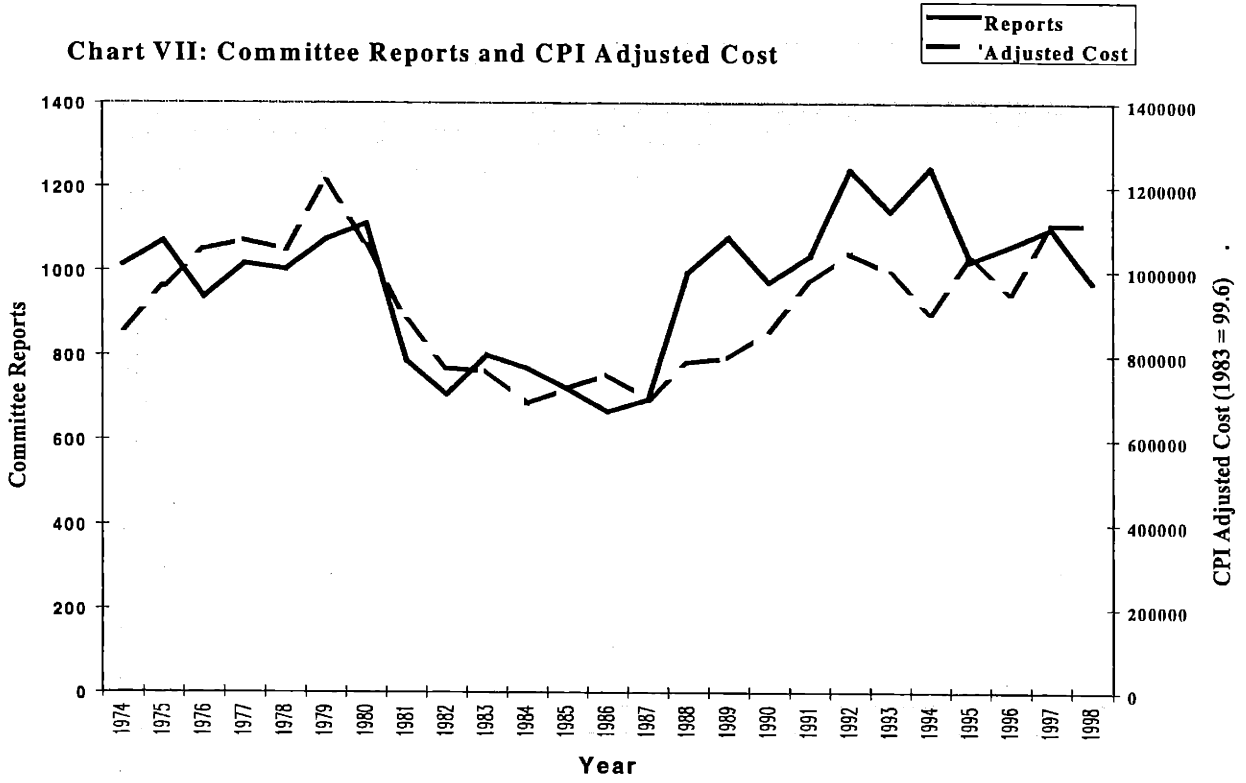


Chart VIII: Committee Membership and Staff Support

Federal Staff Support Years

Question 5: How are advisory committees regulated?

Answer: All advisory committees are regulated under the Federal Advisory Committee Act of 1972 (FACA), as well as the Sunshine Act of 1976 which refines the open meeting requirements. FACA defines what an advisory committee is, charges the executive with overseeing advisory committees, and regulates the use of advisory committees. Since 1977, Executive Order 12,024 (signed by Jimmy Carter) has charged the General Services Administration (GSA) with overseeing FACA, through a new office called the Committee Management Secretariat (CMS).

FACA is a very broad law, and has been very contentious from time to time. Congress enacted it to “establish uniform standards for advisory committees of the executive branch, to monitor their number and activity, and to assure public access to and awareness of their deliberations.”¹³ FACA regulates certain aspects of advisory committees, in line with some general principles of good government. A simple list of these principles and their applications to advisory committees might include:

- **Transparency**, expressed as a mandate for *open meetings and publicly recorded minutes* except in specific circumstances
- **Unbiasedness**, expressed as a mandate for *balanced representation* among social groups, economic interests, and political opinions
- **Participation**, expressed as a mandate that committee *meetings be announced* ahead of time and that agencies make an effort to *inform interested parties* about such meetings
- **Rationality**, expressed as a desire for a *streamlined committee process* and an emphasis on obtaining results (reports and advice) and using them
- **Efficiency**, expressed as a desire to *reduce the cost* of committees, *eliminate redundant committees*, and eliminate obsolete committees
- **Public interestedness**, expressed as a mandate that *agency officials convene and direct committee meetings* themselves, use committees for advice (rather than privatized decision making), and keep the ultimate power to make decisions in their own hands.

FACA is not the final word on advisory committees, however. Advisory committees are also regulated under the Freedom of Information Act (1966 and amendments), the Sunshine Act (1976, which revises the criterion for holding closed meetings), the Privacy Act (1974), and the 1997 FACA revisions (which make additional exemptions for closed meetings in the National Academy of Sciences, but also impose conflict of interest prohibitions on committee members therein). In addition, the executive branch has a hand in regulating advisory committees. Various executive orders over the last twenty five years have sought to manage advisory committees more

¹³ GSA. Annual Report to the President on Federal Advisory Committees: 1983. Page 3.

efficiently and reduce waste. Most recently, Clinton's E.O. 12,838 (in 1993) has sought to reduce the number of discretionary advisory committees by a third and cap the total number there. OMB Circular A-135 (in 1994) sought to establish procedures for agency oversight and review of advisory committees and their operation. And most recently, the Committee Management Secretariat has used its own Interagency Committee on Federal Advisory Committee Management to write a comprehensive rule on advisory committees, which covers details that FACA and other laws did not fill in itself.

Finally, the courts have a significant role in how advisory committees are used and managed. Over the years, the legal framework surrounding advisory committees has been further refined and defined by case law, resulting from over a hundred precedent setting cases relating to advisory committees. In twenty-five years, FACA has racked up an impressive body of precedent setting cases – totaling nearly 100 in all. Twenty of these directly address issues of openness, a dozen address issues of balance, and another thirty address related issues such as when FACA applies and what constitutes an advisory committee.¹⁴ Often, they founder in legal details, as courts seek to render decisions based on technicalities to avoid answering the big questions, but a few cases do address the big questions. These cases interpret the language of FACA and other laws, and they have easily proven as important as anything coming from the executive office of the president.

So Why Are Advisory Committees Important?

It's one thing to know what advisory committees are, and another to understand why they matter. As we mention above, advisory committees have no formal authority. Unlike the lowest ranking member of the professional bureaucracy, they can't actually *do* anything directly. They don't enforce laws, and they don't make them.¹⁵ And yet court battles have been fought over how they behaved, who can sit on them, and what they have said. They have been praised as examples of smart government and disparaged as cesspits of government waste. They have been lauded as one of the most democratic institutions in the federal bureaucracy, and derided as vehicles for special interest influence and tools of government capture.

Sometimes, these disputes have become particularly vicious. Examples of these cases commonly appear on the legal docket: In 1986, an environmental group litigated a DOE decision to exclude public interest groups from a post-Chernobyl nuclear oversight panel of private sector experts.¹⁶ In 1994, the Association of American Physicians and Surgeons filed suit against Hillary Clinton for release of documents from the President's

¹⁴ Committee Management Secretariat website. <http://policyworks.gov/org/main/mc/index-1a.htm>.

¹⁵ There are a couple of exceptions to this, like the regional Fishery Management Councils, which have actual authority over enforcing fishing laws over US territorial waters. The FMCs are authorized by extremely detailed legislation, and are specifically exempt from FACA.

¹⁶ *Natural Resources Defense Council, Inc. v. Herrington*, 637 F.Supp. 116 (D.D.C. 1986). The court ruled that the committee in question was not covered by FACA, and technically was not a federal advisory committee.

Task Force on National Health Care Reform.¹⁷ In 1996, Public Citizen sued the United States Trade Representative over its policy of blanket closure of all trade advisory committees.¹⁸ In 1999, Cargill challenged a National Institute for Occupational Safety and Health decision to use an existing advisory committee to evaluate a scientific study, because 10 of the 15 members were employees or former employees of OSHA, HHS, or EPA.¹⁹ These are only four out of a hundred precedent setting cases, but all four share a single over-riding theme: the link between information and influence.

So many litigants have challenged specific advisory committees because they obviously believe that the information they use and the information they generate is important. This link between information and power is widely recognized. In the preamble to the Freedom of Information Act, we find the words of Madison:

“A popular government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.”²⁰

But Madison speaks only of the need for people to have information in order to control government, and to control their own future. He left it to Max Weber to highlight the critical role of information in bureaucracy, and the bureaucratic use of information to wield power.

“The primary source of the superiority of bureaucratic administration lies in the role of technical knowledge which, through the development of modern technology and business methods in the production of goods, has become completely indispensable.”²¹

With this indispensability comes power: “Bureaucratic administration means fundamentally the exercise of control on the basis of knowledge... This consists on the one hand in technical knowledge... [and] knowledge growing out of experience in the

¹⁷ Association of American Physicians and Surgeons, Inc. v. Clinton, 879 F.Supp. 103 (D.D.C. 1994). (Update to 837 F.Supp. 454). The AAPS obtained the documents, and compelled the attorney general to continue the search for additional documents.

¹⁸ Public Citizen v. Barshefsky, 939 F.Supp. 31 (D.D.C. 1996). The court ruled that USTR had the authority to issue a blanket closure policy under the 1974 Trade Act.

¹⁹ Cargill, Inc. v. U.S., 173 F.3d 323 (5th Cir. 1999) The court ruled that the committee was not subject to ‘inappropriate influence’, and that it was not improperly balanced, even though the fact that two of the committee members were negotiating employment with one of the agencies was ‘troubling’.

²⁰ James Madison. Letter to W. T. Barry, August 4, 1822. Reprinted in The Complete Madison. Ed. By S. Padover. P. 337. 1953. Cited in John Moon, “A Symposium of Critical Legal Study: The Freedom of Information Act: A Fundamental Contradiction.” American University Law Review. Vol. 34. Summer, 1985. This famous quotation appears in literally hundreds of books and articles, including the Congressional documents supporting FOIA.

²¹ Weber, Max. The Theory of Social and Economic Organization. Translated by A.M. Henderson and Talcott Parsons. London: Free Press of Glencoe, 1947. p. 337.

service... While not peculiar to bureaucratic organizations, the concept of 'official secrets' is certainly typical of them... It is the product of a striving for power."²²

Left unchecked by laws and countervailing sources of political power, bureaucracies can wield near-complete control over decisions by exercising near-complete control over information. Yet it is no easy thing for elected politicians to control bureaucratic use of information. Any limit on bureaucratic discretion inevitably creates red tape, which is costly in terms of money, time, and effectiveness. Indeed, political factions sometimes create paperwork requirements or mandate extensive public hearings precisely for this purpose, knowing that additional red tape can slow down and even stop federal programs from working. In other cases, release of information or inclusion of hostile interest groups threatens individual privacy, the stability of financial markets, or state security. For this reason, military bureaucracies have always had more discretion in releasing sensitive information and choosing who contributes to major decisions, and have likewise suffered under a perpetual blanket of suspicion as a result.

Because of this tradeoff between efficiency and control, laws like FACA and FOIA have always had a difficult time charting a safe path between the Scylla of bureaucratic rigidity and the Charybdis of bureaucratic dominance. Negotiating this dangerous passage becomes even more difficult when we consider that *federal* bureaucracies are neither the sole wielders of power in society, nor the sole owners of information. Businesses, universities, and interest groups often sustain their own bureaucracies, with their own proprietary information. Quite frequently, federal agencies require information from other organizations in order to successfully carry out the laws and provide Congress with the information it demands to make new laws. Indeed, Congress often orders federal agencies to gather this information from private actors precisely to help those agencies regulate those same private actors.

Agencies use advisory committees as one way of providing essential information, but they can also use advisory committees for other purposes. For example, to disseminate information to interest groups to help them lobby Congress in favor of the agency's programs. Similarly, Congress can use advisory groups full of private organizations to more effectively monitor and manage federal agencies – sometimes to benefit society at large, but sometimes to benefit the very same interest groups who serve on the committees. Both Congress and agencies can use advisory committees to empower citizens, or they can use them to avoid responsibility for difficult decisions. In short, the information being channeled through advisory committees can be put to any number of uses.

Given the range of possibilities, it's no wonder that FACA has had such a difficult time in the courts in the last two decades. FACA set up very general rules, but left terms like "balance" and "inappropriate influence" basically undefined. It also set forth reasonable exemptions, especially in the case of open meetings and access to committee

²² Weber, Max. The Theory of Social and Economic Organization. Translated by A.M. Henderson and Talcott Parsons. London: Free Press of Glencoe, 1947. p. 339. Please forgive the omissions in this quotation – it faithfully represents Weber's words, without the additional elaboration.

documents. These exemptions are easily defended in the abstract but are difficult to apply in specific cases. Is it any wonder that the courts have had such a difficult time drawing 'bright lines' between appropriate and inappropriate uses of advisory committees?

As political scientists, it would be nice if we had some advice to offer the lawmakers in situations like this. It would be nice if we could answer a few basic questions, such as: What are the proper roles of participation and expertise within advisory committees? How democratic should advisory committees be? Under what conditions are these committees successful? Who is controlling these committees – Congress, interest groups, or the agencies who sponsor them? What are they using these committees for? What should they be used for? And when are these committees being used improperly?

Unfortunately, the advice we do have remains limited and often contradictory. Let us reconsider the case of drug review and the controversy over the anti-AIDS drug AZT. Peltzman, one of the most cited authors who has written on the subject of influence in government, claimed that FDA is costing consumers and firms billions of dollars in deadweight losses from excessively strict rules and enforcement.²³ Then in another article published only a few years later, he argued that regulation is bought and sold in a political market by demanders and suppliers.²⁴ If so, then we should expect to see someone benefiting from this situation. And yet the likeliest beneficiaries, the drug companies, have little representation on FDA drug review boards. Moreover, strict conflict-of-interest rules exclude members with connections to them from discussions and votes when their financial interests are at stake. Finally, the drug companies are among the most vociferous critics of the so-called "drug lag", which costs them billions of dollars in lost revenues as valuable patents expire. Where, then, is regulatory capture? Where was regulatory capture when years of pressure by firms to reduce the drug lag was met with stoic resistance from FDA? Where was regulatory capture when demonstrations by patient groups at advisory committee meetings succeeded where pharmaceutical firms failed? How as it that patient groups spurred FDA (with Congressional approval) to reduce the drug-lag from 34 months in 1987 to 12 months in 1998, apparently benefiting pharmaceutical firms (presumably at the expense of the patient groups themselves)?²⁵

Peltzman's contradictory theories are not alone. Several other major theories in political science make very general conclusions about the nature of politics in the United States. Many of these theories were derived from very specific historic events, such as regulation of the trucking industry in the Great Depression or the management of the Social Security program, and it's a stretch to apply them to all advisory committees at all

²³ Peltzman, Sam. Regulation of Pharmaceutical Innovation: The 1962 Amendments. Washington: American Enterprise Institute for Public Policy Research, 1974.

²⁴ Peltzman, Sam. "Toward a More General Theory of Regulation." Journal of Law and Economics. Vol. 19, p. 211, 1976.

²⁵ CDER Report to the Nation: Improving Public Health Through Human Drugs. U.S. Dept. of Health, FDA, CDER: 1999. Also see FDA Drug Approval: Review Time has Decreased in Recent Years. GAO: October, 1995. [GAO/PEMD-96-1]

times. As James Q. Wilson points out, government does a lot of different things in a lot of different ways.²⁶ There's a big difference between the Renal Drugs Advisory Committee and the Historically Black Colleges and Universities Capital Financing Advisory Board. Yet both of these committees fall under the aegis of FACA, the Federal Advisory Committee Act. Under this law, they are treated similarly. One wonders: is this sensible, or should the law be changed? Strangely, the field of political science has relatively little to say on the topic.

In truth, a quick review of the literature reveals that political science has almost nothing *specific* to say about the use of federal advisory committees at all... in spite of their profound effect on the daily lives of US citizens, their tremendous financial influence, and the controversy that often surrounds their use. Indeed, law reviews have a great deal more to say than political science journals.²⁷ This thesis takes the first step in filling in this intellectual deficit. It attempts to connect and apply theories of political science from scattered sub-disciplines to federal advisory committees, in order to determine which theories of political action apply when, to outline the predictions made by these theories, and to evaluate these theories in light of historical evidence.

Information, Influence, and Effectiveness

The thesis takes as its starting point one of the central conflicts in public administration: that between the need to acquire information for effective governance, and the need to restrain the power that special interest groups and bureaucrats themselves wield through the use of this information.

It was this very dilemma that Congress confronted in drafting FACA. On the one hand, government must act intelligently and be responsive to the people and their needs. On the other hand, it must have the wherewithal to resist the particularistic pressures of powerful interest groups. Conversely, government must have enough independence to resist pressure by special interest groups, but not so much that it can ignore the needs of the people and pursue its own agenda. Every participatory process within a democratic government faces this paradox.

To appreciate how crucial this problem is, consider how many resources the federal government annually devotes to information collection. In 1996, the federal government invested 27 billion dollars to improve its capability to collect data. The percentage of the federal operating budget devoted to information technology has risen

²⁶ Wilson, James Q. Bureaucracy : what government agencies do and why they do it. New York : Basic Books, 1989.

²⁷ Croley, Steven P. and William F. Funk. "The Federal Advisory Committee Act and Good Government." Yale Journal on Regulation. Volume 14, p. 451. Yale University, Spring, 1997.

from 3.5% in 1982 to 6% in 1996.²⁸ In 2001, IT investment totaled 6.8% of the federal discretionary budget, and continues to rise.²⁹

The government's insatiable demand for information has inevitably place huge demands on the general public. According to OMB estimates, direct information collection efforts by federal agencies (i.e. form-filing) cost the *general public* some 7.4 billion man-hours to complete, along with 80 billion dollars in direct costs.³⁰ This does not even begin to count the cost born by the federal agencies themselves in training new personnel, writing forms, sending them out, answering questions, and paying personnel to process this data. Nor does it hope to account for the cost of analyzing that data. Paperwork costs have continued to rise in spite of laws like the Paperwork Reduction Act of 1995, which mandated a 25% reduction in the paperwork burden. Yet in spite (or perhaps because) of this immense effort to gather so much information, most people have very little faith in the ability of government to manage its affairs effectively.

The problem of information has only grown worse as the world grows more complex. The regulatory tasks necessary in the 'new economy' place very high information and coordination demands on federal agencies. Many people believe that agencies have either failed to meet these demands or abused their power, giving rise to a 'crisis of competence' as well as a crisis of confidence.³¹ Thus, the percentage of voters expressing "a great deal of confidence" in the federal bureaucracy has declined from over 40% in 1966 to under 10% in 1996. At the same time, people often perceive few alternatives to federal regulation, which is why their confidence in other institutions such as 'Big Business' has suffered a similar decline.³²

In response to this apparent crisis, many have asked how we can create better performing agencies. Vice President Gore asked that very same question in the National Performance Review in 1993, which under-girded the Clinton Administration's reform efforts. The NPR spent several months and several million dollars trying to answer this question. Among other things, it recommended cutting red tape and creating customer-driven agencies.³³ In other words, running the government more like a private firm.

²⁸ Office of Management and Budget. Information Resources Management Plan of the Federal Government. August, 1996.

²⁹ Discretionary budget data from Office of Management and Budget. Budget of the United States: Fiscal Year 2002. Information Technology data from Office of Management and Budget. Report on Information Technology Spending for the Federal Government for Fiscal Years 2000, 2001, and 2002.

³⁰ Office of Information and Regulatory Affairs. Information Collection Budget of the United States Government: Fiscal Year 2000.

³¹ Sundquist, James L. "The Crisis of Competence in Our National Government." Political Science Quarterly. Vol. 95, No. 2. Summer, 1980. Sundquist traces the 'malaise' of opinion in the U.S. to a lack of competent leadership caused by the disintegration of parties and the lack of a screening mechanism to select competent leaders into the nation's political elite.

³² Harris Poll Data compiled from annual Harris Poll data posted at University of South Carolina, Chapel Hill online statistical database.

³³ The word 'customer' was ubiquitous in the report, and appeared a dozen times in the executive summary alone. Office of the Vice President. National Performance Review. 1993.

As several scholars have pointed out, however, public agencies are far more complicated private firms for several reasons: First, the principal-agent problems that all firms face are exacerbated when agencies report to multiple principals with conflicting goals.³⁴ Second, election cycles shorten the time horizons of elected officials, leading to short-sighted investment of resources by Congress and agencies.³⁵ Third, dominant (super-majority) coalitions deliberately create red tape in order to lock in their policies when they leave office.³⁶ Fourth, agencies do not earn profits. Instead, they measure their performance against a hazy notion of the 'common interest' that differs from person to person.³⁷ Fifth, agencies cannot ignore the externalities of their behavior as easily as private firms.³⁸ Sixth, federal agencies often interact with competing bureaucracies (businesses and interest groups) that deliberately obscure and distort information.³⁹

Against this weight of obstacles, federal agencies have one thing going for them – the power to coerce. Some define this as a legitimate monopoly on the use of force within a territorial boundary.⁴⁰ In the domestic sphere, legal scholars call it 'police power' (the power to enact policies in the 'public interest' without offering compensation). But this power is a double-edged sword. Many of the constraints on agency action exist precisely to prevent individuals or groups from abusing an agency's power, and the very constraints that prevent *abuse* of power also inhibit the efficient (and proper) *use* of power. Scholars have had great difficulty designing institutions that can do the former without also doing the latter.⁴¹

³⁴ Gibbons presents an overview of theories of incentives in organizations (by which he means firms). Gibbons, Robert. "Incentives in Organizations." Journal of Economic Perspectives. 1998, Vol. 12, No. 4, pp. 115. Seminal works in this vein include: Alchian and Demsetz, 1972. Holstrom, 1982. Milgrom and Roberts, 1992. All of these works essentially propose a contract-based, rational actor theory of the firm in which transaction costs (or information costs, or imperfect contracting... which amount to the same thing) prevent optimal contracts from being reached between a principal and an agent. Terry Moe discusses the problems with implementing principal-agent theory directly from economics in his 1984 article, "The New Economics of Organizations" in AJPS, November 1984.

³⁵ Dornbusch, Rudiger and Sebastian Edwards. Macroeconomics of Populism in Latin America. 1991, University of Chicago Press, Chicago and London.

³⁶ Moe, Terry. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." In Oliver E. Williamson, ed. Organization Theory: From Chester Barnard to the Present and Beyond. 1990, Oxford University Press, NYC.

³⁷ James Q. Wilson devotes an entire chapter to 'Beliefs', and the way they affect performance. Wilson notes that "Experience, professionalism, and ideology are likely to have their greatest influence when laws, rules, and circumstances do not precisely define operator tasks." Wilson, Bureaucracy: What Government Agencies Do and Why They Do It. 189, Basic Books, Inc. This is merely an extension of general observations about cognitive behavior describing how dependent people are on 'paradigms' and 'categories' when lacking formal, precise characteristics (like profit) to base decisions on.

³⁸ This should be taken to refer to political accountability, but it may also refer to financial accountability. For instance, public agencies cannot declare bankruptcy to avoid obligations.

³⁹ Laffont and Tirole spend most of a textbook analyzing regulatory models designed to overcome asymmetric information. A Theory of Incentives in Procurement and Regulation. Laffont, Jean-Jacques and Jean Tirole. 1994, MIT Press, Cambridge MA.

⁴⁰ Weber, Max. From Max Weber: Essays in Sociology. Translated by Gerth, Hans Heinrich and C. Wright Mills. New York: Oxford university press, 1946.

⁴¹ In the US, criticism of the federal government often manifests as complaints that the "checks and balances" system of the US Constitution are hindering effective government. In the developing world, scholars are always looking for ways to fix corruption that avoid the pitfalls of excessive bureaucratization

The question, simply put, is: How does one create a government that is responsive to the public interest and the public's needs, but independent from particularistic social pressures? Peter Evans has concisely summarized this paradox in his notion of 'embedded autonomy'. This notion extends beyond the developmental state, where it is more widely recognized. All states encounter dual and opposing needs: First, for close ties to social groups in order to facilitate the implementation of effective policy and the control of government by the people, and second, for isolation from social pressures in order to avoid capture and serve the interest of the country as a whole. "The problem," Evans notes, "is separating the benefits of insulation from the costs of isolation."⁴² Evans seeks an ideal called "embedded autonomy", which is of course an oxymoron.

Nonetheless, Evan's language focuses the spotlight directly on the core of the problem: We want institutions that can remain free of influence from social forces, and yet extract information from society and exert power upon it. If this is really the problem (and not the cycling of political power among social groups or the electoral dysfunctions that currently occupy so much of the political science literature), then we should direct our attention to a very specific part of an agency design. How do we build a good *interface* between the public and the private sector? In other words, how do we encourage the participation of stakeholders without giving away the farm?

The answer to this question in the US, from the Constitution to the Administrative Procedures Act of 1946, has been controlling the *process* of government.⁴³ FACA can thus be seen as just another law in a long line of laws regulating the administrative process. As such, we ask how FACA alters the tradeoff between information and influence, and how it regulates the use (and abuse) of power.

Before answering this question, let us cast our memories back to the good old days of the 1950s, when the field of Public Administration largely took for granted the notion that agencies tried to serve the public interest. In those days, we worried less about controlling agencies and more about training good administrators and giving them the information they needed without compromising their independence.⁴⁴ If we think of special interest groups as the real problem (and not run away bureaucracy), then we might imagine a tradeoff between information and independence.

and monitoring. (J. Tandler and S. Freedheim. "Trust in a Rent-Seeking World." World Development. December, 1994.) These two dilemmas are aspects of the same endemic problems.

⁴² Evans, Peter. Embedded Autonomy. Princeton University Press, 1995.

⁴³ McCubbins, Mathew D., Roger G. Noll and Barry R. Weingast. "Administrative Procedures as an Instrument of Political Control." Journal of Law, Economics, and Organization. 1987. Vol. 3: 243-277. Also see Kerwin, Cornelius. Rulemaking: How Government Agencies Write Law and Make Policy. Washington, D.C.: CQ Press, 1999.

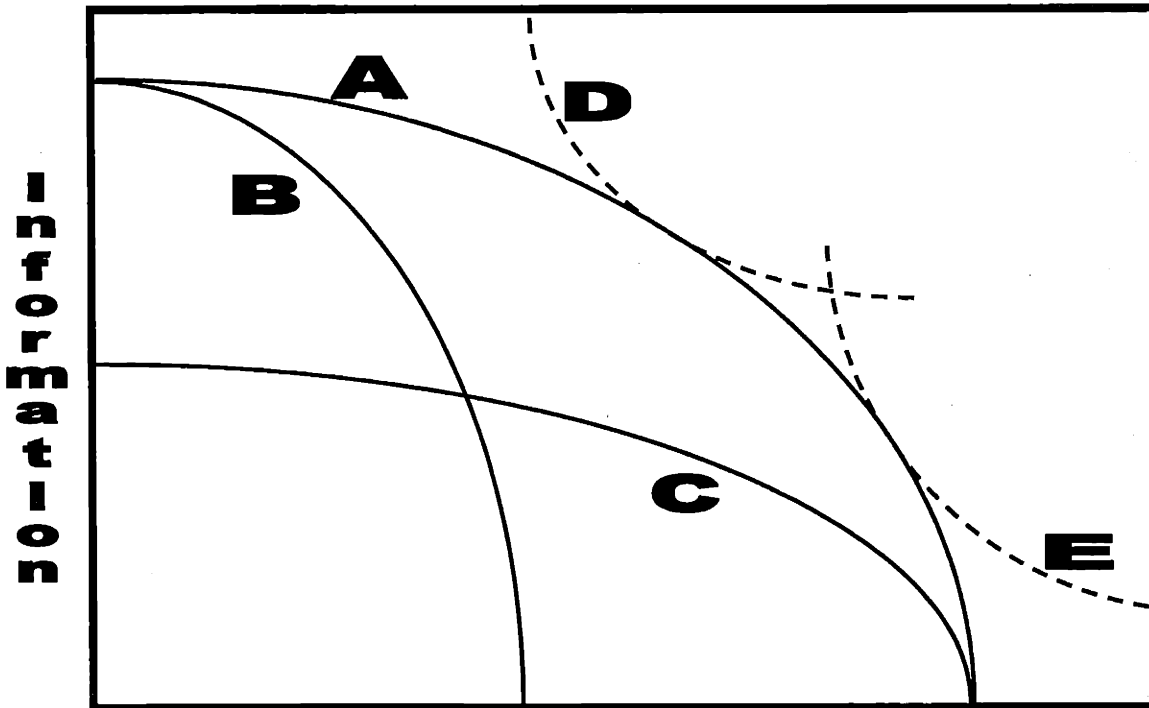
⁴⁴ Herbert Kaufman. The Forest Ranger: A Study in Administrative Behavior. Baltimore: John Hopkins Press, 1960. Also see Selznick, Phillip. TVA and the Grassroots: A Study In the Sociology of Formal Organization. Berkely: UC Press, 1949.

In this fictitious bureaucracy, an administrator who is creating an advisory committee solely for the purpose of information gathering would think twice before chartering it. Since the agency did not pay members of the committee, they clearly served for ulterior purposes. Some served for altruistic reasons, but many also served in order to represent their constituencies. These individuals would not contribute their time and their private information for nothing – they would demand some control over the agency’s output. Nor could the agency easily deny them. Even if it did disagree with the committee’s recommendations or advice, Congress might use the report to interfere with the agency’s operations, or a private group might use the report to challenge an agency’s actions in court. Agencies would therefore need to consider the potential gain from the information harnessed through advisory committees with the potential harm caused by giving special interest groups more influence in government. This decision closely mirrors Congress’ decision to delegate authority to a knowledgeable agency rather than write a regulation by itself.⁴⁵

In the scenario above, agencies face a simple optimization problem. If an economist were to describe it, he would draw an Edgeworth box like the one below. In this box, line A represents an iso-cost curve (production possibility frontier) with decreasing marginal returns. An agency could select any point along the curve – that is any combination of independence and information. It would choose a point that let it reach buy the best package of services for the voting public. The preferences of the public are defined by some utility curve, either B or C for example. In this simple model, the agency would choose a point tangent to some utility curve, depending on how valuable independence was compared to information in the particular case. Line B (alternatively, C) represents an iso-cost curve in which information is relatively cheap (alternately, expensive). Line D represents a utility curve in which information is valuable, while E represents a utility curve in which independence is valuable.

⁴⁵ Bawn, Kathleen. “Political Control Versus Expertise: Congressional Choices About Administrative Procedures.” *American Political Science Review*. March, 1995. Vol. 89: 62-73.

Influence vs. Information in the Public Interest Paradigm



Agency Independence

Iso-Cost Curves (Production Possibility Frontiers): A, B, C

- Range of possibilities an actor can choose from a given set of constraints. Agencies must yield up some control over outcomes in exchange for information.
- **B: Independence is Expensive, Information is Cheap (Competing or Redundant Sources of Information, High Verifiability, Power to Compel Release of Information, Political Cost of Mistakes High because Mistakes Threaten Independence)**
- **C: Independence is Cheap, Information is Expensive (Competing or Redundant Sources of Information, High Verifiability, Power to Compel Release of Information, Political Cost of Mistakes High because Mistakes Threaten Independence)**

Iso-Utility Curves: D, E

- **D: Information is relatively more valuable, Independence is less valuable (Climate is not political, Interests of information providers align with public interest, Issue is complex and mistakes are socially costly)**
- **E: Independence is relatively more valuable, Information is less valuable (Climate is highly political, Interests of information providers differ from public interest, Issue is simple and easily understood, mistakes are easily repaired.)**

Returning back to real life, we can imagine an agency (or Congress) choosing how much independence the agency should have from special interests by controlling the access points through which special interests interact with the agency. An agency might restrict the overall number of advisory committees it appoints, for example. Alternatively, it might impose process controls on advisory committees – such as open meetings, limited membership terms, voting procedures, report guidelines, and so forth. An agency's choices might depend on how desperately it needed information to craft a new policy, or how aggressively special interests opposed the new policy.

Thirty years ago, this would have been an acceptable model of federal advisory committees. Since then, however, we've noticed a number of problems with the public interest model. A partial list of these problems might include the following phenomena:

- Self-Serving Agencies (Run-Away Bureaucracy)
- Principal Agent Problems
- Multiple Principals (House, Senate, and President)
- Multiple Levels of Authority
- Internally Fragmented Bureaucracies
- Competing Bureaucracies
- Coalition Instability
- Institutional Hard-wiring (Procedural Lock-in)
- Voter Information Asymmetries
- Perverse Electoral Incentives and Election Cycles
- Economies of Scope in Agency Action
- Knowledge Barriers to Information Processing
- Fragmented Information
- Socially Constructed Knowledge
- Behavioral (Social) Decision Making

This is a formidable list. Given these many problems with the public interest model of bureaucracy, it would be naïve of us to imagine that vulnerability to influence is always an undesired side effect seeking information. In fact, influence is the *raison d'etat* of many advisory committees. And while several (perhaps most) committees do exist largely to gather information, they have other purposes as well. Advisory committees may be used to lock-in control over agencies by ensconcing dominant coalitions in privileged information gathering positions, to facilitate direct control over agencies by politically powerful groups, and to avoid responsibility for making politically unpopular decisions.

These ulterior motives still do not obviate the information gathering function of advisory committees. Even when Congress or an agency charters an advisory committee primarily to gather information, it may still design the committee to wield influence. A number of observations support this statement. First, the information gathering function, while important, can sometimes be accomplished through other means. Agencies could hire new experts or contract with consultants, conduct internal research, use notice and

comment procedures, conduct formal hearings, or contact experts in the field individually. As one member of the DOC Spectrum Policy Planning Committee commented, “DOC knows pretty well what's going on. This is just another way to keep in touch. Just one of many, and probably not even the most cutting edge one.”⁴⁶ Moreover, these other tools are often less regulated by laws such as FACA, FOIA, and the Sunshine Act, suggesting that Congress and agencies might be getting more than information out of advisory committees. This is not to say that all advisory committees are redundant, merely that agencies might be using advisory committees more frequently than their information gathering function would strictly merit.

Second, the act of gathering prominent experts and members of important interest groups together into the same room to discuss issues has an importance that goes well beyond merely gathering information for an agency's or Congress' sole use. Creating such an organization and tasking it to write an official, public report gives that committee some implicit authority. Indeed, committees can often tie the hands of an agency and Congress, or force them to consider (and possibly even adopt) a policy that they (at least officially) finds distasteful. The EPA, for instance, found itself cornered into adopting a national rule on sulfur content in refined gasoline by an aggressive Clean Air Act Subcommittee on Mobile Sources. The subcommittee compelled EPA to adopt such a measure even though EPA tried to stifle conversation on the topic in committee meetings, the committee had no official authority to issue regulations under the Clean Air Act, and the rule had little initial support in Congress.⁴⁷ Thus, while advisory committees almost always have an information gathering function, this function should be considered within the context of the larger purpose for which the advisory committee was commissioned.

Clearly, the relationship between information and influence becomes vastly more complicated as soon as we leave the public interest paradigm. The challenge to institutional designers is no longer to simply help agencies gather information without bending to interest group pressure. The new challenge is to design administrative processes that can discriminate between types of influence. That is, processes which enhance *good* influence and inhibit *bad* influence. So this becomes the new criteria by which we must evaluate advisory committees and other information gathering mechanisms.

With this view in mind, the delegation or devolution of influence to advisory committees need not be insidious. Indeed, far more often than not, the exercise of influence through advisory committees probably *enhances* democratic representation. According to one member of a Small Business Regulatory Fairness Board, “the committee embodies that [democratic] process... We can't ask the agency to change individual decisions, but we can impact how they might proceed in the future. We might influence how legislation might be crafted or how enforcement policies might be

⁴⁶ Interview on file with author.

⁴⁷ Interview on file with author. The majority of the committee members took the issue to the national press, and forced EPA's hand in spite of staunch opposition by oil refining industry stakeholders who sought (and failed to get) Congressional sanctions on EPA.

developed by providing information on what is now perceived and what has happened in past.”⁴⁸

Indeed, most advisory committee members I spoke with in the course of my research felt that the advisory committee process helps the democratic process far more than it hurts it. A few disagreed, citing reasons that are cause for concern, but those who expressed skepticism about advisory committees tended to express the same skepticism about Congress. Yet both theory and empirical evidence strongly suggest that at least the potential exists to use advisory committees to democratize the administration of government in a way that Congress simply cannot achieve through oversight due to lack of time and expertise.

While an exciting prospect, however, the introduction of democratic processes directly into the administrative state injects problems as well as potential. Suddenly, the study of public administration must not only encompass instrumental questions of efficiency, accuracy, and effectiveness. It must also encompass normative questions of justice, fairness, and liberty. These are the same sorts of questions which have stumped both traditional political philosophers and public choice theorists: How can advisory committees protect the power of the majority without trampling on the right of individual committee members to be heard? How can advisory committees include diverse viewpoints without slowing decision-making to a crawl? How can advisory committees even reach a stable decision in an environment with shifting coalitions of interests? Given these new problems, many may resist efforts to inject democratic processes into public administration. Regardless, the trend appears inexorable.

Returning to the main themes of this thesis, we focus on three key questions as we pursue our analysis of advisory committees:

1. How do advisory committees affect government’s ability to effectively use power without abusing power?
2. How does the interaction between information and influence affect how political actors structure and use advisory committees?
3. And how do advisory committees affect how private groups in society interact with the public bureaucracy?

The following three papers examine both the existing literature in political science and a large amount of empirical information on advisory committees. The literature review paper attempts to categorize the thousand or so advisory committees into a handful of types, and use these categories to predict how advisory committees might behave and how they might be used. The second paper examines several predicted relationships in the observable characteristics of advisory committees, and attempts to test the dominant theories on political capture in political science against the evidence in advisory committees. The third paper examines survey data in order to determine what predicts advisory committee effectiveness, and to attempt to measure the cost of the administrative controls imposed on committees.

⁴⁸ Interview on file with author..

In the end, this thesis hopes to do two things. First, to shed a little light on an otherwise mysterious institution in the US bureaucracy. But just as importantly, it hopes to identify the key characteristics of advisory committees that contribute to their influence, and understand how powerful political actors manipulate these characteristics in order to control and channel that influence. Identifying these characteristics can help us explain existing laws and processes, and ultimately to design better laws and processes – that is, processes that help agencies solicit useful information without subjecting them to ‘inappropriate influence’.

First Paper:

**Federal Advisory Committees
and the Conflict Between
Information and Influence
in American Democracy**

By

Kevin D. Karty

Abstract

Many talented theorists have set forth a great volume of political theory about how institutions in a constitutional democracy should function. An equal number of talented empiricists have assembled a great deal of evidence about how constitutional democracy actually does function. Some authors have even tried to apply the one to the other, but usually only in limited cases. The result, as one might guess, is that some of the theory applies to some of the cases some of the time.⁴⁹ Of course, this begs the question: What theories apply to which cases when? This paper tries to answer that question with regard to federal advisory committees in the United States. It takes stock of the body of modern political theory that addresses issues of public administration and the bureaucracy, and applies the major theories to advisory committees. In doing so, it identifies the background assumptions underlying each theory, and then briefly describes what sort of advisory committees might meet these conditions. With this categorization in mind, I then apply each major political theory to the advisory committee process to predict how we might observe these committees behaving, and how various political agents interact with them.

Introduction

Every major agency in the US Federal Government uses advisory committees. Some agencies, such as the National Endowment for the Arts, are essentially built around advisory committees. Some committees quietly go about their business, while others serve as foci for vitriolic public debates. Some committees pass on without even stirring a breeze, while others leave saurian footprints behind that guide our political path for decades to come. By last count, there were around a thousand advisory committees in existence at the turn of the millennium, but the average person doesn't even know what a federal advisory committee is, let alone the name of even one of them. Even among academics, advisory committees remain an enigma, save for the few which reach the headlines. The extent of influence wielded by these committees and their prolific presence in bureaucratic policy-making remains unknown and unexamined. Among the policy and scientific elites who are routinely asked to serve on such committees, there is considerably more awareness, but even their exposure usually remains limited to committees operating within their own sub-field of expertise.

Perhaps the lack of awareness of the role played by federal advisory committees in policymaking and the administration of the federal government has resulted from the sheer diversity of committees. When pressed, it is often difficult to find a single linking theme. Consider, for instance, the following handful of committees:

⁴⁹ For example, see: Wilson, James Q. Bureaucracy : what government agencies do and why they do it. New York : Basic Books, 1989.

- The Clean Air Act Advisory Committee
- The Federal Advisory Council on Occupational Safety and Health
- The DNA Advisory Board of the Department of Justice
- The Veteran's Advisory Committee for Education
- The National Coal Council
- The Small Business Regulatory Fairness Boards
- The FDA Advisory Committee on Anti-Infective Drugs
- Boston Harbor Islands National Recreation Area Advisory Council
- The International Competition Policy Advisory Committee
- The National Council on the Arts

Any single theory of government would be hard pressed to explain the behavior of all of these committees, let alone the hundreds of other committees not making this list. It comes as little surprise that no one has yet tried. Yet our failure to describe the complexities of this single institution has not stopped us from claiming to understand the bureaucratic process as a whole. Not infrequently, political scientists have claimed explain the entirety of government action with a single theory of political behavior. It is like setting our sights on the Himalayas without even tackling the Appalachians. Yet even when we do have political theories that are adapted to the specific environments in which a particular advisory committee operates, we still may find out political theories wanting.

Let us turn for a moment to the FDA drug review process, about which academics have spilled considerable ink. Embedded in this process are a dozen or so relatively well known advisory committees, FDA drug and medical device review committees. Prior to the late 1980s, meetings of FDA drug advisory committees tended to be rather tame affairs, usually attended by a small, professional subsection of scientists, the scientific press, and representatives of the companies involved. In spite of the vast amounts of money that FDA committees directly affected, they remained relatively unstudied, and stayed out of the public's eye. AIDS activists changed all of this in the late 1980s and early 1990s, and when they and other forces nudged advisory committees into the political headlines. Meanwhile, academics didn't even bat an eye.

The extent of the changes during the 1990s were dramatic. The AIDS advocacy community, led by ACTUP, turned the advisory committee process on its head. Using "guerilla" tactics, they brought members suffering from advanced, debilitating symptoms to the hotel hallways and conference rooms where the meetings were being held.⁵⁰ They staged "die-ins" at FDA headquarters, littering themselves on the stone steps as though they were corpses, and shutting down the agency for a day.⁵¹ Primarily, they criticized

⁵⁰ Interview on file with author.

⁵¹ Smith, James Monroe. *AIDS and Society*. Chapter 7. Prentice Hall, Upper Saddle River, NJ. 1996. ACT UP also staged protests against the Catholic Church for its conservative policies regarding homosexuality and sex education, against corporations for limiting health insurance coverage, against Burroughs-Wellcome for the high price of AZT. In one of the more notorious protests, its members infiltrated the New York Stock Exchange and unfurled a banner reading "Sell Wellcome", resulting in a substantial drop in the stock price on the London exchange the next morning and convincing the company to decrease the price of AZT by 20%.

the length of FDA approval processes, the limited access to drug trials, and the alleged cruelty of double-blind experiments with placebos. The medical community was shocked by ACTUP – such behavior was unheard of. Nonetheless, the protests did bring change. The drug AZT, for instance, was approved in an astonishingly short time – only two years.

While FDA accommodated AIDS activists with new policies designed to address their concerns, such as the introduction of parallel track drug approval and an Investigational New Drug (IND) exemption for early marketing, these actions did not shield advisory committees from political pressure. In the early 1990s, meetings of the CDC committee in charge of AIDS drugs were highly attended affairs, drawing activists, the national press, and even the presence of FDA commissioner David Kessler. In the words of one committee member, these meetings were the “main event” at FDA. Committee members found themselves cast into the spotlight, and their words being quoted (sometimes out of context) in national publications. Committee members often found these tactics intimidating, and they certainly had a profound effect on the outcomes.⁵²

The lesson taught by the AIDS advocacy community did not go unheeded. Other patient advocacy groups saw their success, and imitated it.

“Advocacy groups and public involvement didn't really exist till fifteen to twenty years ago. The effectiveness of the AIDS community severely impressed the other groups. They brought to bear tactics - sometimes controversial ones - which were very effective. They used demonstrations, brought people into congress, stood on street corners, organized walks and marches and music festivals, etc. It was very effective. The cancer community was engaged with cancer research long before AIDS, but AIDS took this involvement to a new level. It taught the groups what they could do. A whole host of groups oriented themselves to building a political base and expressing their interests to Congress.”⁵³

The bipartisan commitment to double funding for the NIH during the turn of the millenium was only one manifestation of the new political power of these groups. Yet even though this budgetary increase has been well publicized, few have criticized the influence of patient advocacy organizations. Several prominent theories of regulatory capture and political influence fail to adequately explain this phenomenon, nor do they predict such widespread public approval for a program initiated by special interests. Can it be that despite our many fears to the contrary, democracy has worked?

Perhaps, but as some observers point out, democracy comes at a cost. In this case, the growing influence of advocacy groups has invited others (specifically, the pharmaceutical companies) to join in the parade. The politicization of science by one

⁵² Interview on file with author.

⁵³ Interview on file with author.

interest always invites other interests to encroach on the scientific process.⁵⁴ Unfortunately, this politicization threatens the unbiasedness of the advisory committee process that FDA relies upon for credible assessments of the benefits and risks of new drugs, and the effects on these committees is pronounced. Advisory committee meetings have become more complex, without the simple, straightforward adversarial presentations of the old days. These days, the FDA can no longer be counted upon to take the politically costly, conservative view. Companies have developed slick dossiers on each member of the various drug committees – their past voting records, their biases, their academic work, even their political affiliations... These days, the national press often attends crucial meetings, and so do stock analysts with their hungry cell-phones.

As political scientists, it would be nice if we had some advice to offer in situations like this. It would be nice if we could answer a few basic questions, such as: What are the proper roles of participation and expertise within advisory committees? How democratic should advisory committees be? Under what conditions are these committees successful? Who is controlling these committees – Congress, interest groups, or the agencies who sponsor them? What are they using these committees for? What should they be used for? And when are these committees being used improperly?

Unfortunately, the advice we do have remains limited and often contradictory. Peltzman, one of the most cited authors who has written on the subject, claimed that FDA is costing consumers and firms billions of dollars in deadweight losses from excessively strict rules and enforcement.⁵⁵ Then in another article published only a few years later, he argued that regulation is bought and sold in a political market by demanders and suppliers.⁵⁶ If so, then we should expect to see someone benefiting from this situation. And yet the likeliest beneficiaries, the drug companies, have little representation on FDA drug review boards. Moreover, strict conflict-of-interest rules exclude members with connections to them from discussions and votes when their financial interests are at stake. Finally, the drug companies are among the most vociferous critics of the so-called “drug lag”, which costs them billions of dollars in lost revenues as valuable patents expire. Where, then, is regulatory capture? Moreover, where was regulatory capture when pressure and publicity from patient groups spurred FDA (with Congressional approval) to reduce the drug-lag from 34 months in 1987 to 12 months in 1998, apparently benefiting pharmaceutical firms (presumably at the expense of the patient groups themselves)?⁵⁷

Peltzman is not alone. Several other major theories in political science make very general conclusions about the nature of politics in the United States. Many of these theories were derived from very specific historic events, such as regulation of the

⁵⁴ Jasanoff, Shiela. The Fifth Branch: Science Advisers As Policymakers. Cambridge, MA: Harvard University Press, 1990.

⁵⁵ Peltzman, Sam. Regulation of Pharmaceutical Innovation: The 1962 Amendments. Washington: American Enterprise Institute for Public Policy Research, 1974.

⁵⁶ Peltzman, Sam. “Toward a More General Theory of Regulation.” Journal of Law and Economics. Vol. 19, p. 211, 1976.

⁵⁷ CDER Report to the Nation: Improving Public Health Through Human Drugs. U.S. Dept. of Health, FDA, CDER: 1999. Also see FDA Drug Approval: Review Time has Decreased in Recent Years. GAO: October, 1995. [GAO/PEMD-96-1]

trucking industry in the Great Depression or the management of the Social Security program, and it's a stretch to apply them to all advisory committees at all times. As James Q. Wilson points out, government does a lot of different things in a lot of different ways.⁵⁸ There's a big difference between the Renal Drugs Advisory Committee and the Historically Black Colleges and Universities Capital Financing Advisory Board. Yet both of these committees fall under the aegis of FACA, the Federal Advisory Committee Act. Under this law, they are treated similarly. One wonders: is this sensible, or should the law be changed? Strangely, the field of political science has relatively little to say on the topic.

In truth, a quick review of the literature reveals that political science has almost nothing *specific* to say about the use of federal advisory committees at all... in spite of their profound effect on the daily lives of US citizens, their tremendous financial influence, and the controversy that often surrounds their use. Indeed, law reviews have a great deal more to say than political science journals.⁵⁹ This paper takes the first step in filling in this intellectual deficit. It attempts to connect and apply theories of political science from scattered subdisciplines to federal advisory committees, in order to determine which theories of political action apply when, and to outline the predictions made by these theories so that future work may begin to test them.

Brief Historical Background

It is difficult to turn to an analysis of advisory committees without at least a cursory notion of where they came from, and how they arrived on the political scene. In their modern form, advisory committees are a recent phenomenon. Unlike other elements of the Weberian bureaucracy, they did not develop slowly over the course of several centuries. Instead, they arrived quite abruptly, appearing in answer to equally sudden needs.

The roots of the modern advisory committee probably begin with presidential advisory committees. Nominally, presidential committees have existed since the very beginning of the U.S. government. One of the first known committees dates back to George Washington, who convened it to seek a peaceful solution to the Whiskey Rebellion. Although this committee failed (and may even have been expected to fail),⁶⁰ various presidents down the years have made use of committees and panels for a wide variety of purposes. Their popularity waxed and waned with different presidential incumbents, rarely having much of an impact throughout the 19th century. Frequently,

⁵⁸ Wilson, James Q. *Bureaucracy : what government agencies do and why they do it*. New York : Basic Books, 1989.

⁵⁹ Croley, Steven P. and William F. Funk. "The Federal Advisory Committee Act and Good Government." *Yale Journal on Regulation*. Volume 14, p. 451. Yale University, Spring, 1997.

⁶⁰ Flitner, David Jr. *The Politics of Presidential Commissions: A Public Policy Perspective*. Transnational Publishers, Inc. Dobbs Ferry, NY, 1986.ss

Congress challenged the president's right to appoint commissions, with virtually every holder of that office defending the right of the president to independently seek advice. Yet it was not until Theodore Roosevelt in the early 20th century that presidents began to use advisory committees with sustained frequency. In particular, Roosevelt's Commissions on Public Lands, Inland Waterways, Country Life, and National Conservation publicized and informed the debate on protecting national lands, and thereby helped build the foundations underlying the National Park Service.⁶¹ Since the first Roosevelt, commissions became more accepted and more commonplace. A few even wielded considerable influence – for example, the Brownlow Commission of 1937, which is famous for designing the structure of the modern presidency, and advocating it with the war cry, "The President needs help!"⁶²

Yet these were all high-profile, ad hoc, temporary committees. The emergence of low-level policy and administrative advisory committees in their present form began much later. To some degree, the agency-level advisory committee was the culmination of a long movement towards a permanent bureaucracy of expertise, which gained acceptance in the United States only after several prolonged bouts of Civil Service Reform. Predictably, the story of Civil Service Reform also is long and complicated. Most scholars point to the Pendleton Act of 1883 as the beginning of Civil Service Reform, but a more complete picture might break the reform movement down into four phases: government by a small, educated elite (George Washington to Andrew Jackson), the Spoils System (Andrew Jackson until the Pendleton Act of 1883), the Progressive Era (Pendleton Act until the Great Depression), and the modern era (which begins either in the New Deal or in WWII and extends until the present).⁶³ It wasn't really until the fourth phase of Civil Service Reform, during the New Deal, that the concerns of building loyalty and the corrupting influence of the spoils system began to fade before the spectre of massive poverty and deprivation, and the progressive concern with designing efficient bureaucracies began to dominate concerns about mitigating corruption.⁶⁴ Nonetheless, a strong conservative movement opposed the Progressive initiative to modernize the bureaucracy, and resisted the growing influence of 'administrative government.' This countermovement reached its pinnacle in the Non-Delegation Doctrine⁶⁵, and in the passage of the Walter-Logan Bill of 1933, which was vetoed by Franklin Roosevelt as

⁶¹ Wolanin, Thomas. Presidential Advisory Commissions. University of Wisconsin Press, Madison, Wisconsin, 1975.

⁶² President's Commission on Administrative Management. Report of the Committee With Studies of Administrative Management in the Federal Government. 1937. Among other things, the Brownlow Commission is also famous for using the phrase "headless fourth branch" to describe the myriad independent agencies which proliferated at that time without any guidance from the executive branch.

⁶³ Schultz, David A. and Robert Maranto. The Politics of Civil Service Reform. Peter Lang Publishing, Inc. 1998, NYC.

⁶⁴ The trade-off between bureaucratic authority and integrity in government is more widely recognized in the development literature. See, for instance: Bunkar, Stephen G. Underdeveloping the Amazon: Extraction, Unequal Exchange, and the Failure of the Modern State. Chicago: University of Chicago Press, 1985.

⁶⁵ Schechter Poultry Corporation vs. United States, 1935 and Carter vs. Carter Coal, 1935

“the work of lawyers ‘who desire to have all processes of government conducted through lawsuits.’”⁶⁶

The advent of World War II, and the tremendous and highly publicized success of the managed war economy that ended both the Great Depression and the Nazi threat, temporarily squelched resistance to administrative government and transformed advisory committees into a permanent fixture. Although the War Materials Board is probably the best known advisory committee of that era, there were literally thousands of smaller boards and committees that were instituted to help the government manage the needs of the war economy. The apparent success of these efforts, illustrated by the fact that the US controlled over half of the world's GNP by 1945 and was turning out war material at an incredible rate, seemed to prove the success of this new model of government-private sector cooperation.⁶⁷ Most of the advisory committees created during the war were disbanded during the general dismantling of the US war machine, but much of the administrative infrastructure was left in place and even built up during the years of the Cold War that followed.

The Great Depression and Post-War years marked a phenomenal growth in the reach, size, and legitimacy of the US federal administration. Between 1932 and 1945, the US saw the greatest increase in the amount of expenditures and the number of employees it had ever seen, in both absolute and proportional terms. There were more non-military federal employees in 1940 than today, even though the US population has nearly doubled since then. One year after the war, the administrative state gained formal legitimacy with the passage of the Administrative Procedures Act in 1946, laying the foundation for the administrative rulemaking process that has since been referred to as the Constitution of administrative law.⁶⁸ In addition, the US public expressed great faith in the competence and integrity of the federal bureaucracy - after all, it had won the war. The advisory committee process shared the same fortunes as the rest of the bureaucracy, earning its place in the modern federal government.

Nonetheless, undercurrents of criticism of advisory committees persisted and eventually resurfaced. Throughout the 1950s and 1960s, the advisory committee process sprawled across the government like a many-headed hydra.⁶⁹ Yet advisory committees didn't become a serious issue until 1957, when the Department of Treasury alleged that advisory committees were being used to facilitate collusion among large corporations.

⁶⁶ “Symposium on the 50th Anniversary of the APA: The Administrative Procedure Act and Regulatory Reform: A Reconciliation.” Steven P. Croley. The American University Administrative Law Journal. Volume 10, Spring 19996. Page 35. Citing Message from the President of the United States Returning without Approval the Bill H.R. 6324, 76th Congress, 3d Session.

⁶⁷ Soon after Pearl Harbor, Roosevelt came forth with a seemingly absurd demand of producing 60,000 planes, 45,000 tanks, 20,000 aircraft guns, and 8 million tons of shipping within a year. Although initial mobilization efforts generated some ridiculous stories of bottlenecks in the first year of the war, the U.S. economy was soon exceeding these demands by a considerable margin. Janeway, Eliot. The Struggle For Survival. Weybright and Talley, Inc. NYC: 1951.

⁶⁸ “The Administrative Procedure Act: A Living and Responsive Law.” Alan Morrison. Virginia Law Review. Vol. 72, 1986. Page 253.

⁶⁹ Cite this quote – From Congressional Hearings?

Congress conducted an investigation, and was troubled by the "veil of secrecy" surrounding these committees. It expressed two concerns: First, that committees were being improperly used by agencies to solicit support among the public for their programs. Second, that narrow special interest groups which dominated some committees were using these committees as a means to directly control the regulatory process, at the expense of the general public. The Department of Justice proscribed certain principles for committees to abide by, but these were neither enforced nor was their application even monitored. By the early 1960s, Congress itself was prepared to act, but Bureau of the Budget (predecessor to the OMB) promised to deal with the problem through administrative means. Ten years later, however, OMB failed to follow through and Congress again took notice of abuse within the advisory committee process in 1970. Led by Senator Metzenbaum, the Senate Subcommittee on Intergovernmental Affairs of the Committee on Government Operations first began inquiries into the advisory committee process, and was soon followed by the corresponding committee in the House. After many hearings, multiple legislative proposals, and much deliberation about wasteful duplication of effort, secrecy, and special interest influence, Congress passed the Federal Advisory Committee Act in 1972.⁷⁰

FACA created a new administrative body to oversee advisory committees, and set forth several principles for managing them. Among these principles are:

- **Transparency**, expressed as a mandate for open meetings and publicly recorded minutes except in specific circumstances
- **Unbiasedness**, expressed as a mandate for balanced representation among social groups, economic interests, and political opinions
- **Participation**, expressed as a mandate that committee meetings be announced ahead of time and that agencies make an effort to inform interested parties about such meetings
- **Rationality**, expressed as a desire for a streamlined committee process and an emphasis on obtaining results (reports and advice) and using them
- **Efficiency**, expressed as a desire to reduce the cost of committees, eliminate redundant committees, and eliminate obsolete committees
- **Public interestedness**, expressed as a mandate that agency officials convene and direct committee meetings themselves, use committees for advice (rather than privatized decision making), and keep the ultimate power to make decisions in their own hands.

When the first FACA-mandated counting of advisory committees was taken in 1974, over 1400 committees were identified. Over a hundred more were identified over the next couple years, during which GSA had its hands full simply gathering the names of the existing advisory committees and the identities of their members. By the late 1970s, however, the number of advisory committees had been reduced to about a thousand through committee mergers and the termination of defunct committees, and the

⁷⁰ For a more complete account of the story behind FACA's passage, see Markham, Jerry W. "The Federal Advisory Committee Act." University of Pittsburgh Law Review. Vol. 35, p. 557, 1974.

committee structure began to settle into its current form. Since then, the number of committees has waxed and waned slightly as one administration allowed their use to proliferate, and the next administration 'cleaned house' and reduced their number. In general, however, the total number of FACA committees has remained at around a thousand until the present day.

Influence and Information

At the simplest level, advisory committees exist to provide information and advice to those in power. As one 1970 Congressional report noted:

“The advisory body creates a contribution by the governed to the Government. It provides a means by which the best brains and experience available in all fields of business, society, government and the professions can be made available to the Federal Government at little cost. Our Government and leaders are continually in need of advice on a variety of problems at all times in their attempts to find answers to the problems of our increasingly diversified and complex society.”⁷¹

What's more, advisory committees obtain much of this information for a cost that is largely nominal; by and large, Congress found advisory committees very cost effective, except in a few cases. But if this were the end of the story, FACA would have been a much shorter and less controversial law. In this less-than-ideal world, however, there's no such thing as a free lunch.

Much of the information that Congress did not pay for with dollars was paid for with other currency – influence. Although several (perhaps even most) advisory committee members serve for at least partially altruistic reasons, no one denies the ideological and in many cases economic interests of committee members who serve on these committees. As Congress itself noted,

“All members of advisory committees to some degree represent segments of special interests which frequently do not coincide with the interests of the country as a whole.”⁷²

Congress confronted a classic dilemma in drafting FACA. On the one hand, government must act intelligently and be responsive to the people and their needs. On the other hand, it must have the wherewithal to resist the particularistic pressures of powerful interest groups. Every participatory process within a democratic government faces this paradox. Government seeks an elusive goal that Peter Evans has called 'embedded autonomy' – which is of course an oxymoron.

⁷¹ House Report No. 91-1731, 91st Congress, 2d Session. “The Role and Effectiveness of Federal Advisory Committees.” December 11, 1970.

⁷² House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.”

Governments therefore face a tradeoff between gathering crucial information and ceding influence to groups that may misuse it. In the context of advisory committees, this tradeoff can be very acute. Advisory committees offer advice and information affecting policies whose monetary costs far exceed the two hundred million dollars required to support all one thousand committees in the year 2000.

In a way, the tradeoff between information and influence is part of a larger problem – controlling the use of power. The question, at its simplest, is this: *How does one design a government to allow the efficient and effective use of power, while preventing the illegitimate abuse of power?*⁷³ If one errs too much in one direction, one ends up with tyranny. If one errs too much in the other direction, one has gridlock and a crisis of red tape. The answer to this question in the US, from the Constitution to the Administrative Procedures Act of 1946, has been controlling the *process* of government. FACA can thus be seen as just another law in a long line of laws regulating the administrative process. As such, we ask how FACA alters the tradeoff between information and influence, and how it regulates the use (and abuse) of power.

Recognizing this tradeoff between information and influence, it would still be naïve of us to imagine that yielding up influence was always an unpleasant side-effect of gathering information. Influence is sometimes the primary reason for their existence of many committees. While several (perhaps most) committees do exist largely to gather information, they have other purposes as well. Advisory committees may be used to lock-in control over agencies by ensconcing dominant coalitions in privileged information gathering positions, to facilitate direct control over agencies by politically powerful groups, and to avoid responsibility for making politically unpopular decisions.

Even when advisory committees appear to exist primarily to gather information, they may still be intentionally given an influence function. A number of observations support this statement. First, the information gathering function, while important, can sometimes be accomplished through other means. Agencies could hire new experts or contract with consultants, conduct internal research, use notice and comment procedures, conduct formal hearings, or contact experts in the field individually. As one member of the DOC Spectrum Policy Planning Committee commented, “DOC knows pretty well what's going on. This is just another way to keep in touch. Just one of many, and probably not even the most cutting edge one.”⁷⁴ This is not to say that all advisory committees are redundant, merely that agencies usually do have options available to them. Second, many of the information gathering tools agencies have at their disposal are not as heavily regulated by laws such as FACA, FOIA, and the Sunshine Act. Given the resistance of agencies to unnecessary oversight, one wonders why the agency would choose the FACA route when others are available. Finally, the act of gathering prominent experts and members of important interest groups together into the same room to discuss issues has an importance that goes well beyond merely gathering information for an agency's or Congress' sole use. Creating such an organization and tasking it to

⁷³ This is the second great question of modern political science. The first great question, of course, asks how a liberal society decides what it wants to do in the first place.

⁷⁴ Interview on file with author.

write an official, public report gives that committee some implicit authority. Indeed, committees can often tie the hands of an agency and Congress, or force them to consider (and possibly even adopt) a policy that they (at least officially) finds distasteful. The EPA, for instance, found itself cornered into adopting a national rule on sulfur content in refined gasoline by an aggressive Clean Air Act Subcommittee on Mobile Sources. The subcommittee compelled EPA to adopt such a measure even though EPA tried to stifle conversation on the topic in committee meetings, the committee had no official authority to issue regulations under the Clean Air Act, and the rule had little initial support in Congress.⁷⁵ Thus, while advisory committees almost always have an information gathering function, this function should be considered within the context of the larger purpose for which the advisory committee was commissioned.

The delegation or devolution of influence to advisory committees should not in all cases be treated with skepticism and concern. Indeed, far more often than not, the exercise of influence through advisory committees probably *enhances* democratic representation. According to one member of a Small Business Regulatory Fairness Board, “the committee embodies that process... We can't ask the agency to change individual decisions, but we can impact how they might proceed in the future. We might influence how legislation might be crafted or how enforcement policies might be developed by providing information on what is now perceived and what has happened in past.”⁷⁶

Indeed, most advisory committee members I spoke with felt that the advisory committee process probably helps and almost never hurts the democratic process. A few disagreed, citing reasons that are cause for concern, although those who expressed skepticism about advisory committees tended to express the same skepticism about Congress. Yet both theory and empirical evidence strongly suggest that at least the potential exists to use advisory committees to bring the democratic process into the administration of government in a way that Congress simply cannot achieve due to lack of time and expertise. While an exciting prospect, however, the introduction of democratic processes into the administrative state raises that other great dilemma of modern political science: *Given effective instruments of government, how does a liberal democratic society decide what government ought to do?*⁷⁷ In the remainder of this paper, I examine how the various modern theories of bureaucracy would answer both of these questions in the case of advisory committees.

- How do advisory committees affect government's ability to effectively use power without falling prey to abuses of power?
- And how do advisory committees affect the abilities of society and its members to choose how to wield that power?

⁷⁵Interview on file with author. The majority of the committee members took the issue to the national press, and forced EPA's hand in spite of staunch opposition by oil refining industry stakeholders who sought (and failed to get) Congressional sanctions on EPA.

⁷⁶ Interview on file with author.

⁷⁷ Here, we of course mean liberal in the Lockean sense – that is, a society dedicated to preserving individual freedoms.

Not surprisingly, these are two very big questions, and they come a lot of history and political experience attached. In answering these questions, most modern political theories begin with a certain set of assumptions. For instance, capture theory posits several ‘truths’ about human and social behavior: that society consists of selfish individuals, that individuals participate in government only for personal advantage, that concentrate interest groups wield disproportionate political power, and that various transaction cost (or, equivalently, informational costs) prohibit perfect monitoring of political processes. From this baseline, capture theory would then go on to make predictions about a whole host of advisory committee properties: transparency in meetings, balance of membership, purpose, strategic uses, and so forth. To really grasp the explanatory power of capture theory, we therefore need a basic grounding in its underlying assumptions. Thus, before moving to dominant questions and theories in the modern literature, we first review (with extreme brevity) a few now-classical debates so that we can better grasp the issues at stake. Those who feel comfortable with these classical debates can feel free to skim this section of the paper, or even skip it entirely.

FACA and Seven Great Political Debates

FACA did not emerge from a vacuum. The ideals and goals which it expresses carry a lot of political baggage, making it very difficult to discuss advisory committees and the political theories attempting to explain them without briefly discussing these principles, and the debates surrounding them. Most of these debates have roots that extend back several centuries, and in some cases millennia. All of these debates raise fundamental questions about the role of influence and information in democracy, and how these two forces interact.

We do not here propose to answer these debates, though it is our hope that advisory committees in the United States may help shed a little light on some of them, in their own small way. However, the terminology we use in discussing the political theory that does directly apply to advisory committees requires some understanding of these debates. Sadly, this terminology (like the principles embodied in FACA) comes with a lot of baggage. For those already familiar with this theory, we suggest they skim the remainder of the introduction and move directly to the discussion of theory. For everyone else, the remainder of the introduction tries to briefly sketch these debates and their bearing on advisory committees.

Five Process Debates

Classic Liberalism vs. Interest Group Liberalism

According to Locke’s fictional account of the origins of government, individuals enter into civil society from the state of nature by agreeing to a binding social contract that outlines a structure of government. They do so to secure themselves and their

property, and to better exploit the benefits of free exchange. Locke received his most famous adaptation to American political theory in the Federalist Papers. In particular, Federalist No. 10 (attributed to Madison), directly addresses the nature of group influence. Individuals, Madison asserted, possess many goals, interests, and ideals, and thus belong to many groups. Individuals therefore moderate their viewpoints as they reconcile the conflicts created by the multiple roles they play within their own lives. Madison therefore has little fear of placing the reigns of power in the hands of the general public (that is, property-owning white males), save for one: faction. Factions, writes Madison, lie at the root of all political evils in a democracy. Factions enable groups to disenfranchise other groups, and wield public power toward all manner of immoral ends.

Madison hoped that political parties and other factions would not grow to dominate the American political system. His hopes were dashed soon after the immensely popular George Washington stepped down and allowed lesser men to try to fill his shoes. The reality of political parties quickly came to dominate pure individualism, with even Thomas Jefferson succumbing to the necessity of working through the party apparatus. Political parties have therefore dominated the American political scene since the very first years of the republic. Indeed, nearly two hundred years passed before Theodore Lowi issued his dire warning that interest groups had come to dominate the political process, posing a threat to the foundations of democracy.

Even though Lowi's warning was not exactly new, Lowi did point out that organized groups had certainly come to play a larger role in American politics than they once had, and thus that individuals played less of a role in the political process. The discrepancy between the influence of individuals and that of groups had grown larger than ever – so large that the political system simply did not interact with people as individuals, but as members of groups. Politicians no longer even thought about policies as harming or benefitting people, but rather as harming or benefitting the political groups that claimed to represent them.

At first glance, there is no particular reason why participation through interest groups is any more problematic than individual participation in government, especially if the influence of the different groups is relatively balanced.⁷⁸ Even modernized contractarian theories of governments tend to require an “overlapping consensus” only on the processes of government and a handful of basic needs and inalienable rights.⁷⁹ Such theories say little about group participation in liberal societies, though some writers have taken up this question.⁸⁰

Yet many scholars maintain that reality differs from simple contractarian approaches to government. They observe that in the reality of modern society, the

⁷⁸ Dahl, Robert. *Who governs? Democracy and Power in an American City*. New Haven: Yale University Press, 1962. Dahl wrote several other books also propounding similar themes. Throughout, he often conceived of democracy as polyarchy – a political system in which many groups wield power in a relatively balanced political landscape.

⁷⁹ Rawls, John. *Political Liberalism*. New York : Columbia University Press, 1993.

⁸⁰ Cohen, Joshua. *Associations and Democracy*. New York : Verso, 1995.

domination of public discourse and political behavior by groups has a subtly harmful effect on society and political outcomes. First, it polarizes the public into separate camps, heightening discord and pushing people toward extremes rather than pulling them to the center. It also tends to place dedicated leaders (those with more extreme viewpoints) at the helms of single-issue organizations. Individual participation, on the other hand, fosters a more deliberative approach to solving conflicts that encourages people to take into account the many different ways in which a single policy may impact their lives and the lives of their neighbors.⁸¹ Second, interest group liberalism predicates participation not on the principle of one-man-one vote, but instead on the resources that groups can marshal toward lobbying and campaign-contributions. This tends to advantage groups that are more compact (smaller, with members that are more individually wealthy) over broad-based groups with diffuse interests⁸², and also tends to draw more attention from groups with clearly defined financial interests.⁸³

These two battling images of liberalism make very different claims about the reality of public participation in the context of advisory committees. Classical liberalism views these committees as simply another way to solicit advice from members of the public, contending that participation in such a forum should have a moderating effect that helps people rise above their own narrow viewpoints. Recently, this notion has received a renaissance under the guise of “Civic Republicanism”, a theory of participation that has received a great deal more attention in the legal literature than in the political science literature.⁸⁴ In essence, Civic Republicanism attributes people with the ability to step outside of themselves when debating matters of public import. It sets lofty standards for public discussion – standards that in many ways parallel those set by Rawls, Madison, and others who wrote in the liberal democratic tradition.

Interest group liberalism sees advisory committees very differently, arguing that most individuals lack the resources and motivation to sit on highly specialized advisory committees. Instead, these committees serve as vehicles of influence for interest groups who doggedly pursue their own (narrow) goals.⁸⁵ In wielding their political power, interest groups coalesce into corporate entities (businesses, non-profit corporations, and other groups) whose leaders lack the diversity of views, opinions, and experiences of individual members. It is these dedicated, politically savvy, single-minded leaders who end up sitting on advisory committees – not common members. Thus, according to interest group liberalism, advisory committees become a mechanism for bargaining

⁸¹ Reich, Robert B. “Public Administration and Public Deliberation.” *Yale Law Journal*. Vol. 94, p. 1617, June, 1985.

⁸² Olson, Mancur. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press, 1965.

⁸³ Peltzman, Sam. “Toward a More General Theory of Regulation.” *Journal of Law and Economics*. Vol. 19, p. 211, 1976.

⁸⁴ Reich, Robert B. “Public Administration and Public Deliberation.” *Yale Law Journal*. Vol. 94, p. 1617, June, 1985. Also see Steven P. Croley. “Theories of Regulation: Incorporating the Administrative Process.” *Columbia Law Review*. 1998, V. 98, p. 1.

⁸⁵ Aurelia, Laurie. “The Federal Advisory Committee Act and Its Failure to Work Effectively in the Environmental Context.” *Boston College Environmental Affairs Law Review*. Vol. 23, 1995.

between powerful groups instead of a way of informing government and persuading it to make decisions that are in the public interest.⁸⁶

The evidence on participation in advisory committees is quite mixed, with many subtle shades of “group membership”. In the Trademark Affairs Committee (before it was overhauled by Congress), the committee was specifically constituted with organizations as members. Yet even then, committee members brought in a diversity of viewpoints. “There was a guy from the Georgia bar, but also in the legal department at Coca Cola. Also probably a member of a couple other organizations. So he could say, this is what I believe, and people knew he was coming from several different groups. They would say, this is from an individual active in these other organizations.”⁸⁷ The Trademark Affairs Committee was a rarity in that it gave specific groups access rights; more frequently, committee members would sit on the committee as individuals, though everyone was quite aware of the constituencies they represented. Yet even in these cases, members often sought to take a broader viewpoint than that of their sponsoring organization. Said one member of the Advisory Committee on Occupational Safety and Health, “When I was appointed, I worked for Occidental. I was put on it as the management representative, but shortly afterwards I started my own company to do safety consulting... I was a safety and health professional, went to college to be one, graduate and started to work in safety, and was in safety all of my career. I work for management and industry, but I always felt like I work for everyone. I don't like to see people get hurt... In the community where I grew up and where I started working, I knew everyone - and their brothers, mothers, and kids. I knew these people, and they weren't just faces. I wasn't there just for a job, I was keeping them from getting hurt. But I also felt an obligation to the company, to make sure they weren't getting ripped off and that the company got the best options to keep people from getting hurt. Yah, I was put there by industry or the VPPA, and OSHA selected me as management, but I try to represent everybody.”⁸⁸

Clearly, the nature of participation in the wider political process and within advisory committees is quite complex. Yet modern political theories often rely on fairly strict assumptions about the nature of political participation when making predictions about how government functions. In applying these theories to advisory committees, we must therefore remember to ask whether the presence or absence of features predicted by interest group liberalism (or individual liberalism) tell us anything about which theories apply in which committees? For instance, does interest group liberalism (as opposed to individual liberalism) change the political environment in which committees operate? Does it change the types of people constituting the committee? What about the way the committee deliberates? More generally, what effect does group membership have, and how should we build our public institutions to deal with it?

⁸⁶ Funk, William. “Regulatory Negotiation and the Subversion of the Public Interest.” *Duke Law Journal*, Vol. 46, p. 1351. April 1997.

⁸⁷ Interview on file with author.

⁸⁸ Interview on file with author.

Participatory Democracy vs. Technocracy

It is tempting to use the presence of 'experts' on the committee as an indicator of the committee's *fairness*. After all, should not the choice to appoint independent experts to a committee instead of lobbyists and trade group officers hint at whose interests the committee is attempting to serve? Intuitively, we tend to shy away from including interested parties if we hope to achieve a fair outcome. Unfortunately, this tendency runs directly counter to another important principle of government – participation.

The advisory committee is not the rare in American democracy where the principles of expertise and participation sometimes conflict. Consider the jury system, an old and hallowed institution with roots that stretch back through our very Constitution to the beginnings of Common Law in Britain. How can juries (or even judges) deal with technical material or complex issues? Upon what basis should judges and juries overturn an agency's decision, or compel an agency to take action to comply with a Congressional law? Should the judge merely require the agency to fulfill a set of formal processes? Must the agency merely demonstrate a clearly thought out rationale for its decision, even if the court disagrees with the technical merits of that decision? How far does administrative discretion go, and should judges and juries second-guess the technical decisions made by agencies?

The advisory committee is special, however. It is a rare example of an institution in American government that strives to enhance *both* participation *and* the use of expertise in public administration. It is rare because these two virtues often work against each other, creating considerable tension for many committees. In the case of the AIDS committee, for instance, grass roots patient groups complained that the academics and scientists who sat on the committee were not sufficiently attentive to their real interests, and instead cared more about using drug tests on patients to conduct high quality science. Scientists, for their part, complained that (at least at first) the average AIDS sufferer lacked the knowledge to meaningfully participate in highly technical discussions about the toxicity and effectiveness of experimental drugs.

Even in committees that are designed to seek input from the general public, like the Clean Air Act Advisory Committee, members admit that there is a high bar for participation. When I asked one member whether expertise was necessary to participate effectively, he answered, "Yes, I think so. That's why I have [my technical expert] going to some of these meetings." Were there drawbacks to this dependence on expertise? Yes again. "We have quite a few clean air experts there, and maybe we should have even more, but the trouble is that sometimes they're such an expert and they are so deeply embedded in their area that they have a tough time seeing the forest for the trees. One of the troubles with the regulatory process is that it's been highly 'expertised'. They might solve the air problem, but then create a water problem or a solid waste problem in the process. It's important to get a broader view, but we also need the experts somewhere in the process too."⁸⁹

⁸⁹ Interview on file with author.

Unlike other debates over the type of democracy that exists in the US, the technocracy debate raises the concern that public participation of all types is in jeopardy. Society, argue some folks, has grown increasingly complex, and the technical knowledge necessary to regulate it effectively has increased commensurately. For proof of this, we might look at the increasing specialization of the labor market. In the world economy at the turn of the millenium, individual citizens sought jobs across a spectrum of 12,750 separate job classifications, with 40 new job types being added each year.⁹⁰ They struggled to secure these jobs in an international economy that boasted 1,170 recognized major industry classifications, a number that was more than double the number of old SIC codes prior to the NAICS revisions to internationalize them.⁹¹ Long gone are the days when a 'Prince' could learn most of what he needed to know about ruling from a notoriously slim, pithy book.⁹² The response to this need for information and expertise has been a burgeoning cadre of policy analysts and experts who exist to provide neutral competence to those with the authority to make decisions. By their own admission, they are not politicians. Their job is providing "technical advice", not "selling the program."⁹³

In reality, claim many scholars, the dichotomy between politics and analysis is blurred everywhere.⁹⁴ The problem, as Meltsner identifies, is that analysis always implies advice.⁹⁵ Any policy analysis "would be incomplete without alternatives."⁹⁶ Alone this would not be a problem, save that the inevitable personal biases and prejudices of the expert invariably work their way into the expert's advice.⁹⁷ "Neutral" competence is a myth – it simply does not exist. Hence, elected and politically appointed (non-expert) officials find themselves relying on this biased advice for major decisions, which effectively grants experts considerable political power. As Max Weber eloquently wrote, "Under normal conditions, the power position of a fully developed bureaucracy is always overtowering. The 'political master' finds himself in the position of the 'dilettante' who

⁹⁰ U.S. Department of Labor. Dictionary of Occupational Titles: 4th Edition, Revised. The annual rate of increase averages the increase in the number of job classifications between the 3rd edition (published in 1977) and the 4th. It might be worth noting that in 1993, a Canadian agency counted 25,000 occupational titles. Human Resource Development Canada. National Occupational Classification. Published by Canada Communication Group, Ottawa, Ontario, K1A 0S9.

⁹¹ This number is drawn from the 4 digit NAICS codes, which represented the merger of the Canadian, Mexican, and US industry classification systems. Of the 1170 NAICS codes, 710 had no SIC counterparts!

⁹² Machiavelli, Niccolo. The Prince. Chicago : University of Chicago Press, 1985.

⁹³ Meltsner, Arnold J. Policy Analysts in the Bureaucracy. Berkeley: UC Press, 1976. Meltsner identifies 3 types of analysts, the technician, the politician, and the entrepreneur. Here Meltsner quotes one OEO analyst whom he classifies as a technician – an expert who draws a clear line between analysis and politics.

⁹⁴ Ibid. The politician and the entrepreneur do not strive to uphold the barrier between neutral advice and policy advocacy.

⁹⁵ Ibid. pp. 50 – 80.

⁹⁶ Ibid. Page 3.

⁹⁷ Jasanoff, Shiela. The Fifth Branch: Science Advisers as Policymakers. Cambridge, Mass. : Harvard University Press, 1990. Jasanoff argues that scientific advisors engage in politics through "boundary setting" behavior, trying to frame scientific truths to advance their own political viewpoints. She borrows from an intellectual tradition which probably receives its strongest statement by Thomas Kuhn. The Structure of Scientific Revolutions. Chicago: University of Chicago Press, 1970.

stands opposite the 'expert,' facing the trained official who stands with the management of administration."⁹⁸

Not everyone has reacted with hostility to the idea of experts holding the reigns of power. If the problem of special interest influence in Congress has grown to epic proportions, they might ask, why are elected officials any more worthy of our trust to execute the public's will than Congress, or even the president? Defenders of technocracy might point to the popularity and success of Alan Greenspan as chairman of the Federal Reserve Board (which, by the way, was granted a specific exemption from the Federal Advisory Committee Act). These modern-day defenders of technocracy stand in esteemed historical company. Over the years, many famous philosophers have advocated in favor of granting power to non-elected experts. The list begins with Plato and his Guardians, extends through such capable thinkers as Marcus Aurelius and Edmund Burke, and reaches its peak in the vision of the 'positivist' state that is illustrated in the writings of Saint-Simon and Comte.

As respected as these thinkers might have been in their day, they were also very undemocratic in their beliefs and public lives, arguing that specially trained rulers often know better than the people themselves what is best for them. This sort of 'paternalist' justification for placing power in the hands of experts has been widely discredited in America.⁹⁹ The power of our belief in our ability to govern ourselves has been ensconced in the American notion of liberty, which is fundamentally negative.¹⁰⁰ Indeed, we believe so strongly in this principle that we hold to it even when we think that the experts in whom we place our confidence are acting altruistically. This sort of contradictory behavior extends beyond lay people. Many of the experts sitting on advisory committees also express strong democratic beliefs, even though they sometimes find democratic processes slow and frustrating.¹⁰¹

Yet in spite of our commitment to broad participation in the US, our dependence on experts is probably increasing. Moreover, argue some scholars, the so-called politics of expertise has been gaining legitimacy in the United States over the years.¹⁰² The slow march of technocracy began to gain popular support, so the argument goes, with the Progressive movement, which was "essentially a response to a number of long term structural and ideological changes that accompanied rapid industrialization," and gave rise to an "organizational revolution" in politics and the economy.¹⁰³ Technocracy gained high profile advocates in the personalities of Theodore Roosevelt, Woodrow Wilson, and ultimately in Franklin Roosevelt, who is famed for putting together his Brain

⁹⁸ Weber, Max. "Essay on Bureaucracy." *From Max Weber: Essays in Sociology*. Ed. By Gerth, Hans Heinrich and C. Wright Mills. New York: Oxford Univ. Press, 1946.

⁹⁹ No single event makes this case more strongly than the fall of the Soviet Union.

¹⁰⁰ Berlin, Isaiah. "Two Concepts of Liberty." Berlin contrasts negative liberty, the freedom 'from' external control over our actions, with positive liberty, the freedom 'to' act without suffering the corrupting influences of our baser impulses.

¹⁰¹ Interviews on file with author.

¹⁰² Fischer, Frank. *Technocracy and the Politics of Expertise*. London: Sage Publications, 1990.

¹⁰³ *Ibid.* Page 77. Citing Kenneth Boulding, *The Organizational Revolution*. Chicago: Quadrangle, 1968. Also James Burnham, *The Managerial Revolution*. New York: John Day, 1941.

Trust tackle the problems of the Great Depression. After World War II, technocracy gained even greater momentum with the elaboration of Frederick Taylor's "Scientific Management" principles¹⁰⁴ and John Kenneth Galbraith's "New Industrial State"¹⁰⁵, both of which drew on the work of such earlier luminaries as Thorstein Veblen and John Maynard Keynes.

At the same time that the Progressive movement pushed for the application of scientific management principles to the economy, Progressives also pushed for the depoliticization of the bureaucracy. Fed up with the corrupting influence of the spoils system upon the federal bureaucracy, progressives sought to replace political favor with professional competence as the major criteria in gaining a federal job. Beginning with the Pendleton Act in 1883, they largely succeeded. Civil Service Reform changed many things, including two things that concern us here: First, it protected experts from the abuse of political power, thus securing them (somewhat) against punishment meted out for delivering politically inconvenient advice. Second, it created a new interest group – the public employees themselves.¹⁰⁶ Some would even argue that it created an entirely new economic class, the technocrat, along with its own ideology and values.¹⁰⁷ So encompassing were these values that they (allegedly) approached the status of a religion.¹⁰⁸

The core of the 'religion of technocracy' argument was that technocracy had mutated from a system of means to a system of ends. In developing measures of efficiency and effectiveness, the technocrat was forced to explicitly measure the social good he was trying to optimize. Sometimes, this required choosing from several equally valid measures, each of which carried implications about the agency's mission.¹⁰⁹ Measuring the social good thus effectively gave value to certain social goals and devalued other social goals, all the while claiming to "depoliticize" politics.¹¹⁰ Often, the actual result was the politicization of expertise and anger at bureaucracies for making decisions that violated deeply held beliefs.¹¹¹

In spite of their best efforts, advisory committees often find themselves thrust into the center of the technocracy/democracy debate. Even when this debate is not highly publicized, all advisory committees still confront tradeoffs between the values of

¹⁰⁴ Taylor, Frederick Winslow. *Scientific Management*. New York: Harper, 1947.

¹⁰⁵ Galbraith, John Kenneth. *The New Industrial State*. Boston: Houghton Mifflin, 1967.

¹⁰⁶ Johnson, Ronald N. and Gary D. Libecap. *The Federal Civil Service System and the Problem of Bureaucracy: The Economics and Politics of Institutional Change*. Chicago: University of Chicago Press, 1994.

¹⁰⁷ Fischer, Frank. *Technocracy and the Politics of Expertise*. London: Sage Publications, 1990.

¹⁰⁸ Lapp, Ralph E. *The New Priesthood*. New York: Harper and Row, 1965.

¹⁰⁹ National Research Council. *Understanding Risk: Informing Decisions in a Democratic Society*. Page 50. Washington D.C.: National Academy Press, 1996. The NRC cites nine ways of measuring mortality from toxicity.

¹¹⁰ Fischer. See especially Chapter 7.

¹¹¹ NRC, citing the Atomic Energy Commission decision to conduct radiation experiments on uninformed subjects. For a more recent controversy, see "National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells." NIH, August 25, 2000. @ <http://www.nih.gov/news/stemcell/stemcellguidelines.htm>

expertise and participation. This results directly from the types of problems and issues that committees tend to address.

If we consider the types of information needed by agencies and Congress, we can break them down along two axes, into four simple categories. The vertical axis describes the degree to which information is *diffuse* or *concentrated* within society. Diffuse information is broadly spread and widely fragmented, often possessed by different and competing individuals or social groups. Concentrated information is focused into a few individuals, groups, or institutions. The horizontal axis describes the amount of knowledge required to access and use the information. The more knowledge required, the higher the barrier that average citizens must overcome to understand the issue.

Table I: Information Concentration and Knowledge Barriers

	Low Knowledge Barrier	High Knowledge Barrier
Diffuse Information	Cell 1: Participatory Committees	Cell 3: Composite (??) Committees
Concentrated Information	Cell 2: Philosopher Kings and CEOs	Cell 4: Expert Committees

In the simplest of all possible worlds, all information would be concentrated in one place and easy to understand (Cell 2). This is Plato's world of the philosopher kings, in which one person (or a handful of people) can easily manage the important affairs of a nation without recourse to specialized experts or public opinion surveys. The leaders (whether kings, Presidents, or CEOs) can simply know all that there is to know about all things (either because the world is a simple place, or because everything can be derived from first principles or religious truths). Thus, the leaders are experts in all things. The Presidency as originally conceived in the US Constitution appears to have been written with this image of an executive branch in mind.

The committees in cells 1 and 4 both exemplify two ways in which the world can grow more complicated. These two cells describe the traditional examples of participatory and expert advisory committees. Participatory committees use diverse participation to gather as many viewpoints and as much input as possible – processing the information is of secondary concern. The parties are usually more concerned about bargaining to find a mutually acceptable solution than about understanding the range of solutions. The principles underlying participatory committees are identical to those underlying the founding-fathers' conception of how Congress might work – a body of educated, citizen-statesmen coming together to debate over issues of mutual concern and come to some sort of conclusion.

Expert committees are built on precisely the opposite principles. They use highly trained specialists to process information that is already concentrated into a handful of elite institutions or agencies, and are often at least as concerned with searching for new solutions or predicting the impact of current proposals than with bargaining among different stakeholders. Expert committees exemplify the administrative state. In its heyday, this was the sort of government that the old Soviet Union strove for, from the politburo on down. (How much of this goal it achieved is quite another issue.)

While traditional Participatory and Expert committees still exist, one can argue that the increasing fragmentation and specialization of society have tended to force more and more committees into cell 3, which represents the highest level of complexity. These Composite committees strive to gather and use information that is both diffused broadly in society and requires high levels of expertise to understand. Sadly, these two needs create conflicting demands upon the committee. Solving and/or reconciling this conflict remains an unsolved puzzle, and one that any good theory of modern bureaucracy needs to address.

The participation/expertise controversy has far-reaching implications, not only for the sanctity of the democratic process, but also for policy outcomes. For example, the use of experts on a committee can serve to create a knowledge barrier to mask the influence of powerful actors, or it can serve to strengthen the objectivity of an inquiry. Administrative scholars thus care deeply about this dichotomy in so far as it beats on the capture theory/public interest debate (summarized below). In the debate over efficiency in government, the use of experts on advisory committee to enhance the effectiveness of policies and programs may be either hampered or enhanced by public participation and input, creating both pitfalls and potential for bureaucratic oversight. In both debates, advisory committees provide an excellent lens to examine these types of questions.

Exclusive Coalitions (Factions) vs. Consensual Decision-Making

Considerable controversy has raged over the last thirty years over how voting coalitions form in majority rule systems. Buchanan and Tullock¹¹², Riker¹¹³, and others¹¹⁴ presented arguments in the 1960s and 1970s that voting patterns in a majority rule system tend to break down along Minimum Winning Coalitions. That is, a coalition of 50% + 1 voters will band together to seize all of the pie for themselves and distribute it accordingly. Other authors have showed that this mathematical result only obtains under very precise conditions about the preferences of voters and the interaction between them.¹¹⁵ And of course, yet more authors have argued precisely the opposite viewpoint, that coalitions tend to be universalistic and inclusive due to log-rolling effects, risk

¹¹² Buchanan, James and Gordon Tullock. The Calculus of Consent. Ann Arbor: University of Michigan Press, 1962.

¹¹³ Riker, William H. The Theory of Political Coalitions. New Haven: Yale University Press, 1962. Also see Riker, William H. and Peter Ordeshook. An Introduction to Positive Political Theory. Englewood Cliffs: Prentice Hall, 1973.

¹¹⁴ Shepsle, Kenneth A. "On The Size of Winning Coalitions." APSR. Vol. 68, June, 1974, pp. 505-518.

¹¹⁵ Hardin, Russel. "Hollow Victory: The Minimum Winning Coalition." APSR. Vol. 70, No. 4., (Dec., 1976), pp. 1202-1214.

aversion, and uncertainty.¹¹⁶ Empirically, the consensus in the literature has been that distributive coalitions in the real world (which for many scholars means in the U.S. Congress) are rare, and that logrolling and inclusiveness tend to be the norm,¹¹⁷ although there are exceptions to this empirical regularity.¹¹⁸

Most of the arguments about MWCs have been written to apply to Congress or a similar voting body. Unsurprisingly, however, many of the arguments that surface in the context of Congress reappear in the context of advisory committees. Although nothing in FACA, and often nothing in specific mandates from Congress or an agency, compels advisory committees to adopt a norm of majority voting, many advisory committees nonetheless do. Indeed, some resort to classical parliamentary rules because they are widely accepted by most people on the committee. One committee I studied used Robert's Rules of Order simply for "lack of anything else" to use.¹¹⁹ In other cases, the majority rule in committee votes is mandated by a committee's sponsoring agency, as in the case of FDA drug approval committees.¹²⁰ In a handful of rare cases, voting procedures are mandated by Congress in the committee's authorizing legislation. By my own classification of authorizing legislation for committees existing in 1998, only 5% of all committees had any mention of voting procedure in the law.¹²¹ But in any case, most committees end up adopting the majority rule standard even when it isn't required, making the MWC arguments particularly poignant. However, many (perhaps even most) committees do not appear to enforce the majority rule standard, which presents a challenge to the theory of MWCs.

According to the theory of Minimum Winning Coalitions, in a majority rule voting structure members would frequently rely on MWCs to push through desirable policy. This would tend to be even more true in conditions that are 'zero-sum' (where one side's gain comes at another side's loss), when committee members are well informed about likely outcomes, and when committee members are pursuing clear, specific, rational goals. Other theories, however, dispute this prediction.

¹¹⁶ Barry R. Weingast "A Rational Choice Perspective on Congressional Norms." *AJPS*, Vol. 23, No. 2. (May, 1979), pp. 245-262. Also see Shepsle, Kenneth A. and Barry R. Weingast. "Political Preferences for the Pork Barrel: A Generalization." *AJPS*, Vol. 25, No. 1. (Feb., 1981), pp. 96-111.

¹¹⁷ Ferejohn, John F. *Pork Barrel Politics*. Stanford: Stanford University Press, 1974. Also see Fenno, Richard. *Power of the Purse*. Boston: Little, Brown and Company, 1966. Murray, Richard W. and Donald S. Lutz. "Redistricting Decisions in the American States: A Test of the Minimal Winning Coalition Hypothesis." *AJPS*, Vol. 18, No. 2. (May, 1974), pp. 233-255.

¹¹⁸ Rohde, David W. "A Theory of the Formation of Opinion Coalitions in the U.S. Supreme Court." In Richard G. Niemi and Herbert F. Weisberg, eds. *Probability Models of Collective Decision-Making*. Columbus: Charles Merrill, 1972.

¹¹⁹ Interview on file with author.

¹²⁰ FDA committee meeting minutes, for instance, record the actual votes cast in favor or against major recommendations. Often, these are unanimous or nearly so. FDA has issued a policy statement on advisory committees, indicating that FDA can determine for each individual committee how many members constitute a quorum and specifying precisely who can and cannot vote. See Guidance for Industry – Advisory Committees: Implementing Section 120 of the Food and Drug Administration Modernization Act of 1997. FDA, October, 1998. By law, however, FDA need not adopt the committee's recommendations, though it must act on them in some manner within 90 days.

¹²¹ Data on file with the author.

The theories opposing Minimum Winning Coalition Theory tend to break down into three camps. The first relies on the Madisonian vision of democracy discussed above, and contends that people simply wouldn't form coalitions. This view requires that individuals are atomistic and vote truthfully (not strategically) – in other words that there are no factions. It also ignores the issue of preference cycling described by Arrow's Impossibility Theorem.¹²²

The second set of theories opposing MWCs contends that the original rational choice modelers of majority voting institutions failed to adequately include certain features of rational actors – such as risk aversity – that would cause them to develop norms and preferences for universalism. Introducing these features causes actors to maximize ex-ante expectations,¹²³ or to implement institutional rules to protect against distributive coalitions.¹²⁴ These 'rules' need not even be formalized, and can easily evolve along a tit-for-tat pattern as described by Axelrod.¹²⁵

The third set of theories opposing Minimum Winning Coalition formation abandons the individualist/rationalist approach, and relies instead on the social properties of group interaction. They argue that group discussions fundamentally change how people view themselves in relation to the group. When confronted face-to-face with other people, individuals are more amenable to compromise and less disposed to selfish, purely re-distributive behavior (except perhaps in the harshest, most competitive environments). This social approach to decision making has been incorporated into various theories of political behavior – Consociational Democracy by Lijphart,¹²⁶ Deliberative Democracy by Maas,¹²⁷ Associational Democracy by Cohen and Rogers,¹²⁸ and Civic Republicanism by Reich and others.¹²⁹

There is an important distinction here between the second and third justifications for inclusive voting behavior. The rational choice approach to inclusive decision making rules mirrors the universalist doctrine espoused by Buchanan and Tullock, in which voting rules are designed to require as much unanimity as is feasible given the decision

¹²² Arrow, Kenneth J. Social Choice and Individual Values. New York: Wiley, 1963. [Reprinted from 1951 edition] Arrow's Theorem elaborates on Condorcet's Paradox, and proves that in a majority rule institution with 3 or more voters, it is possible to construct sets of options in which each option is perceived by a majority of voters as inferior to at least one other option. Hence, there is cycling: $A > B > C > A$.

¹²³ Weingast, Barry R. "A Rational Choice Perspective on Congressional Norms." AJPS, Vol. 23, No. 2. (May, 1979), pp. 245-262.

¹²⁴ Groseclose, Tim and James M. Snyder, Jr. "Buying Supermajorities." APSR, Vol. 90, No. 2. (Jun., 1996), pp. 303-315.

¹²⁵ Axelrod, Robert. The Evolution of Cooperation. New York: Basic Books, 1984.

¹²⁶ Lijphart, Arendt. "Consociational Democracy." World Politics, Vol. 21, No. 2. (Jan., 1969), pp. 207-225.

¹²⁷ Maas, Arthur. Congress and the Common Good. New York: Basic Books, 1983.

¹²⁸ Cohen, Joshua and Joel Roger. Associations and Democracy. Ed. By Erik Olin Wright. New York: Verso, 1995.

¹²⁹ Reich, Robert B. "Public Administration and Public Deliberation." Yale Law Journal. Vol. 94, p. 1617, June, 1985.

making costs of getting more people to agree.¹³⁰ Buchanan and Tullock's argument differs significantly from 'deliberative democracy' explanation that rely on non-rational, behavioral phenomenon. First, deliberative approaches need not rely on formal exchanges or threats of retaliation. Individuals extend consideration to others without specific intent to maximize gains, induce reciprocity, or defend against opposing MWCs – although these benefits may be among the ultimate results. Second, deliberative approaches have aspects in common with both bargaining and voting. Unlike in bargaining, where everyone must agree before a deal is struck, and unlike in voting, where you need a hard and fast percentage to agree, deliberative approaches predict that groups will strive to recognize and maximize the net good to the group, somehow taking such values as property rights, choice, and responsibility into account along the way. As we observe in several advisory committees, majority coalitions in deliberative forums will often delay decisions in an attempt to win over more people, but at some point they will declare that enough is enough and pass a resolution, hoping they have done as much for the losing majority as possible. The point at which the group stops trying to reach unanimity, however, is fuzzy and undefined. One committee member, in describing how his/her committee did business, told me:

“Well, we did the whole thing very democratically. We met, set up by laws. I think we used a 60% vote rule for the bylaws. I don't recall. We had voting rules, and required quorum to be present to vote. We had a lot of open discussion. It worked fairly well. But if you ask, was there any coercion? No. There was none. We never forced people to go along with anything they disagreed with. Most decisions were by consensus, but not 100% consensus. There were some votes that were 9 to 3, or 10 to 2. There were no votes that barely passed. As far as the standards were concerned, there was a clear consensus.”¹³¹

Another member of the same committee described the process as creating “consensus standards, using a formalized mechanism.”¹³² Describing the process in more detail, he/she said, “We would vote by majority if an issue wasn't easily resolved. But most votes came close to unanimous, though there were a few straw votes taken by the chair with close to a 55-45 split. Then the chair would delay the issue for more discussion or take a vote to table the issue to wait for more information. We strove very hard for consensus, but in the end each person was probably a little bit dissatisfied.”

This committee was not unusual. Almost all committee members I spoke with spoke very strongly of the need for consensus, suggesting that Minimum Winning Coalitions were not a common tactic. This may have been partly for the reasons outlined above, and also partly because the committees rarely made important decisions themselves. Rather, they provided advice to those in power. As such, consensus enhanced the value of that advice. “When the committee can reach consensus, which

¹³⁰ Calculus of Consent. The problem with complete unanimity, of course, is that each individual has veto power over the group's decisions, and can hold up the process.

¹³¹ Interview on file with author.

¹³² Interview on file with author.

happens pretty often, that advice is very useful. Giving advice from a 6-5 vote is not useful.”¹³³

Advisory committees offer an important example of non-Congressional decision making bodies at work in the federal government. Above, we discuss the logic behind coalition-voting and the counter arguments, but it is important to recognize that this debate has a strong moral component to it as well. In many ways, the deliberative approach to decision-making has an ethical component to it, with an underlying conception of fairness that guides the actions of a group’s members. It may not be Rousseau’s General Will, argue proponents of deliberative democracy, but it is far more than the nasty, short, and brutish world of Hobbes.¹³⁴

We should try to keep this ethical perspective in mind when we later apply our modern theories of political action to explain the use of advisory committees. These modern (often formal) theories make predictions about the likelihood of observing distribution coalitions forming in advisory committees. The theories adopt only an instrumental approach, which has its uses – they help us identify those conditions under committees might behave as distributive or deliberative bodies. But we care about all of this because knowing the factors that contribute to deliberative decision making can help us build better, fairer advisory committees.

Open vs. Closed Government

In 1957, when Congress first took up the issue of advisory committees, a Congressional report stated: “...*under the veil of secrecy which now surrounds the activities of these groups, it is possible and entirely probable that some of them are established not for the primary purpose of giving advice.*”¹³⁵ Their primary purpose, the report strongly hinted, was to lobby agencies and to facilitate collusion among competing firms. Congress clearly perceived a relationship between opaque committee meetings and corrupt practices in government, and a large portion of FACA addresses this issue. But as with so many other issues, the debate over openness in government did not begin with advisory committees, and has important implications for all aspects of government.

Many people today take FOIA and the Sunshine Act for granted. They should not. A quick glance at history, and especially the history of other nations, might help build some appreciation for just how revolutionary it was, and still is. Many countries with equally strong democratic traditions trailed the US for several decades in their commitment to open government. At the turn of the millennia, only a handful of countries possessed broad legal rights of information disclosure: Canada (1983), Australia (1982), Ireland (1997), New Zealand (1982), Israel (1998), and Japan (1999).

¹³³ Interview on file with author.

¹³⁴ For an interesting discussion of Rousseau’s General Will as it relates to voting issues, see: Estlund, David M., Jeremy Waldron, Bernard Grofman, and Scott L. Feld. “Democratic Theory and the Public Interest: Condorcet and Rousseau Revisited.” *American Political Science Review*. Vol. 86, No. 2. (Jun., 1992), pp. 369-380.

¹³⁵ House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.” Emphasis added.

South Africa and Great Britain just passed formal legislation in the year 2000, in January and April, respectively.¹³⁶

In retrospect, we often tend to think of the wave of “good government” legislation spanning the years 1966 (FOIA) through 1976 (The Sunshine Act) as a reaction to the abuses of secrecy perpetrated by Nixon in the Watergate Scandal. But of course, Nixon came much later than 1966, and the doctrine of executive privilege had been around nearly since the beginning of the country.¹³⁷ Moreover, if Congress’ anger at executive privilege was the single core issue, one would not expect to observe President Johnson signing the bill into law on July 4 of 1966, with high words of praise (albeit, after a long and bitter resistance).¹³⁸ Indeed, even though Sundquist includes a section entitled “Lifting the Shrouds of Secrecy” in his famous book on Congress-Presidential relations, he never even mentions FOIA, let alone relates it to executive privilege.¹³⁹ Other scholars connect Congress’ anger at executive privilege to FOIA, but only as one of several forces converging to bring the bill to the fore, including law reformers, good government advocates, and the press.¹⁴⁰ All of this suggests that the popular myths may not be entirely complete.

Another major line of argument contends that FOIA emerged out of anger by common Americans at secret Cold War agendas and atrocities, but the data also does not support this supposition. It was not until the years 1964-1966, right as FOIA was being passed after years of debate in Congress, that national ‘confidence in institution’ polls began to report steep drops in public confidence in American governmental institutions.¹⁴¹ The most famous incident of Cold War disillusionment, the printing of the Pentagon Papers, did not happen until 1971, and would not in fact have been permitted

¹³⁶ In the case of Britain, the FOIA formalized a *Code of Practice* established by the government in 1994. See Relyea, “Business, Trade Secrets, and Information Access Policy Developments in Other Countries: An Overview.” *Administrative Law Review*. Vol. 34., p. 315, 1982. For more recent information, see <http://www.comlaw.utas.edu.au/law/active/index.html>.

¹³⁷ Cox, Archibald. “Executive Privilege.” *University of Pennsylvania Law Review*. Vol. 122, p. 1383, 1974.

¹³⁸ “This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull the curtains of secrecy around decisions which can be revealed without injury to the public interest.” Cited in Wald, Patricia. “The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values.” *Emory Law Journal*. Vol 33, p. 649, Summer, 1984. In fairness to the doctrine of executive privilege, a number of press editorials helped convince Johnson to sign the bill, and he did extract certain concessions from Congress in the bill’s final version. See Relyea, Harold. “The Freedom of Information Act in America: A Profile.” In Roley, Tom, Ed. *Access to Government Records: International Perspectives and Trends*. Sweden: Studentlitteratur, 1986.

¹³⁹ Sundquist, James. *The Decline and Resurgence of Congress*. Washington, D.C.: Brookings Institution, 1981.

¹⁴⁰ Relyea, Harold. “The Freedom of Information Act in America: A Profile.” In Roley, Tom, Ed. *Access to Government Records: International Perspectives and Trends*. Sweden: Studentlitteratur, 1986.

¹⁴¹ Harris Poll Data compiled from annual data posted at University of South Carolina, Chapel Hill online statistical database. The percent of people expressing a “great deal of confidence” in the bureaucracy fell from 40% in 1966 to 10% in 1996, with most of the decrease coming in the late 1960s and early 1970s. National Election Data going back to 1951 supports this trend.

but for the existence of FOIA.¹⁴² In fact, many Americans had come to accept and even romanticize the culture of secrecy that emerged out of the Manhattan Project, J. Edgar Hoover's FBI, and other World War II and Cold War institutions,¹⁴³ and they seemed quite happy with the federal government leaving them innocent about some of the dirtier aspects of the Cold War. As some have observed, cloak-and-dagger aspects of crime enforcement and national security in the Cold War enshrouded itself in a cloak of mystery and built up a rather popular mystique with the American public.¹⁴⁴

In fact, the true origins of the FOIA were rather complex. One law scholar traces FOIA's immediate origin to a study by the New York Herald Tribune in 1953, then follows it through a prolonged and unusually intense series of Congressional hearings conducted by Congressman Moss, covering 5 years and generating 33 volumes of combined transcripts and hearings.¹⁴⁵ Moreover, he finds that the legal concept of a judicially enforceable *right* to information began with a Northwestern University journalism professor, and describes how bar groups and other advocates joined with journalists to push for a new law. All of this led up to Senator Edward Long taking up the fight in 1963, and helping push through the final legislation.

Others tell different stories. For instance, another pair of law scholars traces the beginnings of FOIA to Congress' reaction against Truman's expression of executive privilege in EO 10,290, and Eisenhower's expansion of the privilege.¹⁴⁶ As the size and complexity of the federal bureaucracy increased, so did its penchant for secrecy.¹⁴⁷ Congress reacted quite early to the challenge, beginning with simultaneous hearings on the revision of Section 3 of the Administrative Procedures Act in 1957.¹⁴⁸ Both committees used surveys and questionnaires of members of the executive branch, and uncovered disturbing results about the frequency of information withholding and the extent of the legal foundation for such activity. In 1958, Congress passed a law amending Section 3 of APA to limit its use to authorize withholding of records, but this failed to address the problem. FOIA, which followed on these initial efforts, was not

¹⁴² When the first ones were published in the New York Times, the others were held up on court order until the papers won the FOIA case in court. *New York Times Co. v. United States*, 403 U.S. 713 (1971).

¹⁴³ Rourke, Rancis E. "The United States." In *Government Secrecy in Democracies*. Ed. By Itzhak Galnoor. NYC: NYU Press, 1977.

¹⁴⁴ Powers, Richard. "One G-Man's Family: Popular Entertainment Formulas and J. Edgar Hoover's F.B.I." *American Quarterly*, Vol. 30, No. 4. (Autumn, 1978), pp. 471-492.

¹⁴⁵ O'Reilly, James T. "Federal Information Disclosure: Procedures, Forms, and the Law." 21.05, at 2S-106 (1977 & Supp. 1986).

¹⁴⁶ Braverman, Burt A. and Frances J. Chetwynd. *Information Law: Freedom of Information, Privacy, Open Meetings, Other Access Laws*. New York: Practising Law Institute, 1985.

¹⁴⁷ Between 1929 and 1939, the executive refused Congressional requests for information only 3 times. Between 1945 and 1952, 15 times. Between 1955 and 1960, 75 times. Kramer and Marcuse. "Executive Privilege: A Study of the Period 1953-1960." *George Washington Law Review*. Vol. 29, P. 623, 1929. Cited in Braverman, Burt A. and Frances J. Chetwynd. *Information Law: Freedom of Information, Privacy, Open Meetings, Other Access Laws*. New York: Practising Law Institute, 1985.

¹⁴⁸ The House Government Operations Committee's Special Subcommittee on Government Information was Chaired by John E. Moss (D, CA). The Senate Judiciary Committee's Subcommittee on Constitutional Rights was chaired by Thomas Hennings, Jr. (D, MO).

a “hasty compromise”, but instead a “careful, step-by-step attempt to whittle away at the information barriers.”¹⁴⁹

While FOIA did not directly emerge from a crisis, it was strengthened by the crises and events that followed. With the first case in 1967, the courts adopted a pro-disclosure attitude. Nonetheless, Congress and others encountered great difficulty changing the secrecy-prone bureaucracy, and a Congressional report indicated that FOIA was having little success.¹⁵⁰ Congress almost immediately began studying ways to strengthen FOIA, and various Congressmen submitted new bills in 1972. These bills received extensive debate over the following year due to the Watergate investigations, and one was ultimately passed into law in 1974, over the Veto of President Ford. FOIA was amended again in 1976 along with the Sunshine Act to open up records of governmental meetings, and yet again in 1986 in response to the Iran-Contra Affair.

The history of FOIA bears description because it is tempting to portray FACA entirely as a response by Congress to the abuses of the Nixon administration. However, FACA is a lizard next to the dinosaur of FOIA, and the easy arguments clearly fail to explain FOIA. This strongly suggests that the openness requirements of FACA, like those of FOIA, have much deeper roots in American culture and politics than just Congress’ frustration with executive privilege or disillusionment with the Cold War.

And in fact, the United States has always had a preoccupation with openness in government that exceeded the commitment to openness in other countries.¹⁵¹ This dates back at least to the founding fathers, who wrote ubiquitously about the importance of an informed, watchful electorate. In the over-quoted words of James Madison, “A popular government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.”¹⁵² And yet, we must wonder at these strong words from Madison and other founding fathers when the very Constitution of the United States was written in secret, and the Senate regularly closed its meetings to the general public until 1794.

Given the long history of openness in the United States, we might be tempted to trace this tradition back to England, as we do with so many of our democratic institutions.

¹⁴⁹ Letter from Samuel Archibald to the editor of Editor and Publisher. July 21, 1960. Quoted in Braverman, Burt A. and Frances J. Chetwynd. Information Law: Freedom of Information, Privacy, Open Meetings, Other Access Laws. New York: Practising Law Institute, 1985.

¹⁵⁰ House of Representatives Report Number 1419, 92nd Congress, Second Session (1972). Cited in Braverman, Burt A. and Frances J. Chetwynd. Information Law: Freedom of Information, Privacy, Open Meetings, Other Access Laws. New York: Practising Law Institute, 1985.

¹⁵¹ Rourke, Francis E. “Secrecy in American Bureaucracy.” Political Science Quarterly. Vol. 72, December 1957.

¹⁵² James Madison. Letter to W. T. Barry, August 4, 1822. Reprinted in The Complete Madison. Ed. By S. Padover. P. 337. 1953. Cited in John Moon, “A Symposium of Critical Legal Study: The Freedom of Information Act: A Fundamental Contradiction.” American University Law Review. Vol. 34. Summer, 1985. This famous quotation appears in literally hundreds of books and articles, including the Congressional documents supporting FOIA.

Evidence seems to support this notion: after all, the first three countries to follow the US lead in passing an FOIA were Canada, Australia, and New Zealand. Strangely, however, England was not a model of open government prior to the 1990s, as the English themselves point out. One English Supreme Court Justice of that period wrote about the “tradition of secrecy which pervades English public administration,” citing the words of a scholar who claimed that “England is about as secretive as a state can be and still qualify as a democracy.”¹⁵³ The English tradition of secrecy should not be at all surprising, however. English bureaucracy stood in good company in Europe over the years, where professional bureaucracies with authority deriving from party-controlled parliaments enjoyed considerable autonomy, and (some say) often misused it.¹⁵⁴ Given England’s sketchy past, it seems more likely that it the US (rather than Britain) led the way. The other English speaking countries followed when they realized that “the sky did not fall” in the years following 1966.¹⁵⁵

The tradition of openness in the United States was thus unique from the start, and strengthened over time. Long after Madison, President Wilson took up the cause, writing: “Everybody knows that corruption thrives in secret places, and avoids public places... Government must... be absolutely public in everything that affects it.”¹⁵⁶ Around the same time, Justice Brandeis wrote: “Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.”¹⁵⁷ Numerous others have said less memorable words.

All of these famous opinions point to opacity in government as a tool that facilitates misuse of power and influence – either by private interests outside of government or by the government officeholders themselves. In the past few decades, a number of modern theories have made this link more explicit and sought to identify the chain of causality. One popular group of theories recognize that information asymmetry between special interests and the mass public is a key requirement for the existence of regulatory capture.¹⁵⁸ Closure of government processes, and especially such events as advisory committee meetings, encourages capture by special interests.

¹⁵³ Justice Michael Kirby, Supreme Court of New South Wales. “FOI – and the Coming Counter-Reformation.” In Tom Riley, ed. Access to Government Records: International Perspectives and Trends. Sweden: Studentlitteratur, 1986.

¹⁵⁴ Woodrow Wilson commonly blamed government secrecy in Europe for the horrors of World War I.

¹⁵⁵ Justice Michael Kirby, Supreme Court of New South Wales. “FOI – and the Coming Counter-Reformation.” In Tom Riley, ed. Access to Government Records: International Perspectives and Trends. Sweden: Studentlitteratur, 1986.

¹⁵⁶ Wilson, Woodrow. The New Freedom. Ed. By William E. Leuchtenburg. NY: Prentice-Hall, 1961. Cited in Rourke, Francis E. “Introduction: Secrecy and the ‘Issue Attention Cycle’.” In Itzak Galnoor, Ed. Government Secrecy in Democracies. NYC: NYU Press, 1977. Also in . NY: Doubleday, Page, and Co., 1913. (Should I cite the original author here, or not bother?)

¹⁵⁷ Louis Brandeis, *Other People’s Money* 67 (1933). Cited in Kathy Bradley, “Do You Feel the Sunshine? Government in the Sunshine Act: Its objectives, Goals, and Effect on the FCC and You.” Federal Communications Law Journal. P. 473, February 1997.

¹⁵⁸ Olson, Mancur. The Logic of Collective Action: Public Goods and the Theory of Groups. Cambridge, MA: Harvard University Press, 1965.

With all of the sentiment against closure of government processes, it certainly appears likely that meeting closure does encourage special interest influence. However, opening every advisory committee meeting to the public also poses a threat to the public interest. Congress essentially recognized this claim in passing recent legislation to extend special permission to the NAS to conduct committee meetings behind closed doors, essentially entrusting non-agency experts to (effectively) make decisions that are exempt from public review.¹⁵⁹ This is the sort of action that some champions of elite public interest administration, like Edmund Burke, would approve of, and others, like Woodrow Wilson, would (seem to) disapprove of.

Yet in spite of appearances, it is hard to automatically equate closed meetings with either agency capture or technocracy. In spite of the considerable rhetoric favoring “government in a fish bowl,” the case for open government is not always clear cut. FOIA therefore includes several exemptions that most people find reasonable; they derive primarily from concern for national security, criminal investigations, trade secrets, and privacy.¹⁶⁰ FACA and the Sunshine Act, however, are more stringent than FOIA, and specifically regulate committee meetings. These two laws require that even when possible FOIA exemptions exist, an agency justify closure of administrative meetings. Furthermore, they place the burden of proof on the agency to justify such action.

The burden on agencies for closing meetings seems to be quite high – so high that some scholars have argued that openness requirements should be relaxed for advisory committees, not strengthened. FACA and the Sunshine Act, they contend, are particularly onerous. In cases where meetings include a negotiating function, for example, one legal scholar finds four arguments for open meetings and four against them.¹⁶¹ In favor of open meetings, he notes that open meetings strengthen the hand of weaker public interest groups, prevent intentional and inadvertent exclusion of important advice, fulfill the public’s right to know and enhance the committee’s legitimacy, and allow interested groups to participate in the development of a forming consensus before it congeals. In favor of closed meetings, he argues that open meetings discourage compromise by highlighting the process of making concessions, discourage the use of potentially important confidential information in discussions, discourage free expression by allowing words spoken casually to be used against the speaker, and encourage participants to grandstand for constituencies by staking out extreme positions. Another

¹⁵⁹ Congress did impose some limits on the NAS, including more stringent membership-disclosure requirements and conflict-of-interest clauses than appear in FACA. See Federal Advisory Committee Act Amendments of 1997.

¹⁶⁰ For example, see: Halstuk, Martin E. “Blurred Vision: How Supreme Court FOIA Opinions on Invasion of Privacy Have Missed the Target of Legislative Intent.” Communication Law and Policy. Vol. 4, Winter 1999. Also Hughes, Michael H. “Cia V. Sims: Supreme Court Deference to Agency Interpretation of FOIA Exemption 3.” Catholic University Law Review. Vol. 35, Fall, 1985. In the political science literature, see: Theoharis, Athan. “FBI Wiretapping: A Case Study of Bureaucratic Autonomy.” Political Science Quarterly, Vol. 107, No. 1. (Spring, 1992), pp. 101-122. Also see: Clark, Duncan L. and Edward L. Neveleff. “Secrecy, Foreign Intelligence, and Civil Liberties: Has the Population Swung Too Far?” Political Science Quarterly, Vol. 99, No. 3. (Autumn, 1984), pp. 493-513.

¹⁶¹ Faure, David. “The Federal Advisory Committee Act: Balanced Representation and Open Meetings in Conflict with Dispute Resolution.” Ohio State Journal on Dispute Resolution. Vol. 11, 1996. Faure’s sources included articles by Phillip Harter, Robert Reich, and Perritt & Wilkinson.

scholar adds a few more arguments against open meetings, including a loss of collegiality among committee members, the possibility that important meetings will simply not be held rather than be held publicly, and the tendency for the chairman and the staff to dominate committees that lack free expression of opinions by members.¹⁶²

Taken together, these arguments present a formidable challenge to the notion that openness always serves the public interest. Yet even with this caveat, the presence of closed meetings in an advisory committee remains an important observable in the committee process for several reasons. First, even when good reasons for closure may exist, it is still likely that closed meetings will exhibit a higher proportion of improper behavior than open meetings simply because improper behavior is more difficult in open meeting settings. Society may be willing to tolerate this improper behavior in exchange for certain benefits, but it certainly does not endorse them. Closure, therefore, could be taken as a weak predictor of 'capture' in advisory committees. Second, the closure or non-closure of committee meetings strongly suggests the sort of activities that are being conducted by these committees. Open meetings should tend to be more participatory, while closed meetings should tend to be more technical. Third, the difficulty of operating in an open meeting environment may change how committees function, and we presume that committees of certain types and those within certain environments would be forced to adapt more than others. That is to say, dissatisfaction of committee members with openness indicates the presence of certain advisory committee features which are interesting and useful to know. Meeting closure therefore figures as a prominent observable in many of the modern theories of political behavior that we discuss below.

Rational Utility-Maximizing Bureaucrat vs. Altruistic Bureaucrat

Niskanen's image of the rational, income-maximizing, turf-defending bureaucrat has defined much of the political science literature on bureaucracy in the past thirty years. Although hardly new,¹⁶³ Niskanen presented an integrated (and mathematically modeled) picture of a rational bureaucrat whose concern for promotions and higher pay determine the properties of the bureau which he manages. From this single characteristic, and the allegedly monopolistic role that agencies play in providing services to Congress, everything else flows – oversized bureaus, lazy bureaucrats, low quality production, and so forth.

Some authors have challenged the specifics of Niskanen's model, arguing that personal income maximization does not always result in bureaucratic oversupply.¹⁶⁴

¹⁶² Bradley, Kathy. "Do You Feel the Sunshine? Government in the Sunshine Act: Its Objectives, Goals, and Effect on the FCC and You." *Federal Communications Law Journal*. Vol. 49, February, 1997.

¹⁶³ Holden, Matthew Jr. "Imperialism' in the Bureaucracy." *APSR*, Vol. 60, Dec. 1966. Reprinted in Rourke, Francis E. *Bureaucratic Power in National Politics*. 3rd Edition. Boston: Little, Brown and Company, 1978. Also see Tullock, Gordon. *The Politics of Bureaucracy*. Washington D. C.: Public Affairs Press, 1965.

¹⁶⁴ John A. C. Conybeare. "Bureaucracy, Monopoly, and Competition: A Critical Analysis of the Budget-Maximizing Model of Bureaucracy." *American Journal of Political Science*, Vol. 28, No. 3. (Aug., 1984), pp. 479-502. Also Jonathan Bendor, Serge Taylor, Roland Van Gaalen. "Bureaucratic Expertise versus

Other scholars, including many who preceded Niskanen, have argued that bureaucrats are motivated by many aims, only one of which is personal income, and several of which were ideological or altruistic.¹⁶⁵ Even some accounts of imperialist bureaucracy admit that bureaucrats may maximize budgets not for purely personal gain, but to better pursue ideological goals that require the survival of the agency and the support of major constituencies.¹⁶⁶ Some scholars have even taken a stance directly opposed to Niskanen, arguing that bureaucrats may actually be rewarded for visibly cutting a bureau's size,¹⁶⁷ in the same way that kamikaze CEOs are garnished with golden parachutes for rapidly downsizing corporations. In short, although most studies do concur that most bureaus seek to expand their budgets most of the time, data linking this to bureaucratic self-interest remains sparse, and the debate rages on about the real motivations of bureaucrats.¹⁶⁸

The outcome of this debate has clear implications for the use of advisory committees, many of which are appointed, monitored, staffed, and even created by high level bureaucrats. If bureaucrats are rational utility maximizers who care about income and personal power, one would expect them to use advisory committees to pursue these aims. For instance, administrators might use committees to make important contacts in the private sector with which to seek new jobs, to encourage firms to lobby in favor of the agency in Congress, and to neutralize political opponents. Congress, of course, would seek to discourage such uses by making it difficult to use advisory committees to form links with private groups and by using advisory committees to help private groups monitor agency action and an agency's budgetary expenditures. If agency administrators were ideological and altruistic, they would tend to use advisory committees to pursue their own political agenda, and we would tend to observe advisory committees with memberships and advice favoring the position of the agency head. And of course, Congress would try to head off this behavior by being very specific about the composition of advisory committees. Finally, if agency heads simply used advisory committees to pursue 'unbiased' objectives, they would tend to appoint committees designed to efficiently gather, debate, and perhaps disseminate as much useful information as possible.

Legislative Authority: A Model of Deception and Monitoring in Budgeting." *APSR*. Vol. 79, No. 4. (Dec., 1985), pp. 1041-1060.

¹⁶⁵ Herbert Kaufman. *The Forest Ranger: A Study in Administrative Behavior*. Baltimore: John Hopkins Press, 1960. Also see Wilson, James Q. *James Q. Wilson. Bureaucracy. (Mission, etc.)*

¹⁶⁶ Simon, Herbert A., Donald W. Smithburg, and Victor A. Thompson. "The Struggle For Organizational Survival." Adapted and reprinted in Rourke, Francis E. *Bureaucratic Power in National Politics*. 3rd Edition. Boston: Little, Brown and Company, 1978. Also see Selznick, Phillip. *TVA and the Grassroots: A Study In the Sociology of Formal Organization*. Berkely: UC Press, 1949. Also see Laffont, Jacques and Jean Tirole. "The Politics of Government Decision-Making: A Theory of Regulatory Capture." *Quarterly Journal of Economics*, Vol. 106, No. 4. (Nov., 1991), pp. 1089-1127.

¹⁶⁷ Lynn, Laurence E. Jr. "The Budget Maximizing Bureaucrat: Is There a Case?" in Blais, Andre and Stephane Dion, Ed. *The Budget-Maximizing Bureaucrat: Appraisals and Evidence*. Pittsburgh: University of Pittsburgh Press, 1991.

¹⁶⁸ Blais, Andre and Stephane Dion, Ed. *The Budget-Maximizing Bureaucrat: Appraisals and Evidence*. Pittsburgh: University of Pittsburgh Press, 1991.

Unfortunately, these tendencies are not always so sharp, and are prone to break down. For instance, both altruistic and maximizing bureaucrats need to maintain support for the agency – one for income and the other for altruistic reasons – so both might use advisory committees to enlist support in the broader community. Yet even in these blurry cases, the altruist would sometimes trade an agency’s organizational needs for policy goals that favor (his vision of) the public interest, so he might be more likely to use advisory committees as a vehicle to neutralize negative feedback for unpopular (but necessary) regulatory actions rather than to curry support in Congress. A Niskanenesque bureaucrat, by contrast, would avoid unpopular regulatory actions in the first place, since he can reap no personal benefit from them. In addition, the altruistic bureaucrat would always care more about the information gathering role of advisory committees than an income-maximizing bureaucrat, since pursuing his own altruistic goals still requires the agency to act efficiently and effectively. Thus, committees run by altruistic bureaucrats should generally demand more work from a wide array of members of the committee, rather than merely soliciting opinions from or offering information to favored groups. Committees run by income maximizing bureaucrats should see little information gathering, and more network formation.

Clearly, the debate over the motivations of bureaucrats has strong implications for political theories that seek to explain the use of advisory committees, and like the other debates it helps us identify qualities of advisory committees that we can use to test these other theories. Also, this debate bears heavily on the outcome debates over bureaucratic efficiency and agency capture. However, there are many steps between the maximizing bureaucrat (if one accepts this notion) and lazy, inefficient, captured bureaucracies – and each step makes strong assumptions about the relationship of the agency to Congress, the enforceability and observability of deals, the power of special interests in and outside Congress, the motivation of Congressmen, and the ability of Congress and the President to oversee the bureaucracy. This is true with all five of the administrative process debates which we have so far discussed – although they tend to support certain conclusions about the efficiency and public interestedness of government, they are not in themselves sufficient to advance any one outcome. Thus, we must treat issues of bureaucratic outcomes separately from issues of bureaucratic processes as we seek to understand how the government uses advisory committees.

Two Outcome Debates

The outcome debates touch upon the two key tradeoffs that all designers of governmental processes must consider – that between influence and information, and that between the efficient use of power and the improper abuse of power. The effect of inefficient institutions that are riddled with special interest influence is to set the standard for government intervention higher. The potential gain of any intervention, for either social or economic purposes, must be weighed against the likely costs to society caused by special interest influence and inefficient bureaucracy. The worse the problems of special interests and inefficiency, the higher we must set the bar to justify intervention in important social problems. Anyone who cares about using government efficiently and

effectively to provide key services and enforce crucial laws should also therefore care about two things: First, constantly seeking to improve government processes, as reformists have been trying to do for centuries, and second, accurately judging how vulnerable bureaucracies are to these twin evils. For if we overestimate government's vulnerability to inefficiency and special interest influence, we may under use bureaucracy, but if we underestimate government's vulnerability, we may overuse bureaucracy. Assessing the effectiveness of advisory committees thus requires at least a passing familiarity with the arguments on both sides of these debates.

Public Interest Administration vs. Capture Theory

It is surely a coincidence that Congress was conducting hearings that led to FACA in precisely the same year that Stigler was writing his seminal 1971 article spelling out the argument for capture theory. And being a coincidence, it is certainly an irony that Congressional reformers claimed to write FACA largely to repair problems in the committee process that made it vulnerable to influence by special interests. But Capture Theory has always tended toward irony. For instance, capture theory has proven tremendously influential among political scientists and lawyers even though they tend to be more liberal than the average voter. In addition, capture theory gained most of its notoriety even while the most egregious instances of 'regulation for the regulated', such as trucking, railroads, airlines, and telephony services, were being dismantled.

Like other authors whose names are associated with major theories, Stigler did not invent the notion of bureaucratic capture. The immediate roots of capture theory stretch back to at least 1957, when Downs published a famous argument contending that political behavior was not motivated by ideological interests or different parties pursuing their views of the public good, but rather by simple economic gain.¹⁶⁹ Again by coincidence, this was the same year that Congress undertook its first investigation of advisory committee, and expressed grave doubts about its use.

Although Downs preceded Stigler by several years, Stigler's 1971 article in the *Bell Journal of Economics* is more notorious.¹⁷⁰ It stated, very bluntly and directly, that regulation was acquired by and served the interests of the regulated, as we've noted earlier. Although Tullock made similar claims in 1965,¹⁷¹ Stigler made the argument very sharply. Stigler argued that Congress specifically designed bureaucracies to regulate in a manner benefiting narrow private interest groups at the expense of the general public. Regulation was essentially distributive. Peltzman and Posner further elaborated on Stigler's argument, contending that regulation was the outcome of forces demanding

¹⁶⁹ Downs, Anthony. *An Economic Theory of Democracy*. New York: Harper, 1957.

¹⁷⁰ Stigler, George. "The Theory of Economic Regulation." *Bell Journal of Economics and Management Science*. Spring, 1971.

¹⁷¹ Tullock, Gordon. *The Politics of Bureaucracy*. Washington: Public Affairs Press, 1965.

regulation (competing private interests) and forces supplying regulation (Congress and the bureaucracy).¹⁷²

The theory of capture as spelled out by Stigler rested on several assumptions about the political process.¹⁷³ First, people tend to participate through groups, not as individuals. Second, narrow, compact groups tended to dominate policy outcomes due to the inherent advantage of fewer numbers in resolving collective action dilemmas.¹⁷⁴ Third, Congressmen are motivated by re-election. Fourth, Congressmen need as many resources as they can acquire to successfully achieve reelection. Fifth, Congress does have control over the bureaucracy, and designs it according to its own needs (regardless of interference by altruistic bureaucrats). Assuming all of these things (many of which are contentious), Congress can then trade favorable regulation for campaign financing and other election resources.

We shall call this Stiglerian capture theory. There is, however, another brand of capture theory which relies on special interest influence within bureaucracies, rather than within Congress. This brand of capture theory actually predates Stigler's article by a decade or two, and received its most famous treatment by Bernstein in 1955.¹⁷⁵ Bernstein argued that regulatory agencies were being used for purposes other than Congress had intended. In this version of Capture theory, agencies found it advantageous to sell services to special interest groups in exchange for favors. These favors might include future employment for administrators or support for agency programs in Congress. Bernstein's critique proved rather timely with respect to advisory committees, for only two years later (in 1957) a Congressional report wrote:

“...the advisory committee system as it now operates may be channeled into a convenient and effective source of support for established programs or policies or those contemplated by the Government administrators. *Under the ostensible objective of seeking advice and counsel, the real purpose may be in many instances to enlist support of the regulated in the process of regulation.*”¹⁷⁶

Like Stiglerian capture theory, Bernstein's agency-centered capture theory has several requisite assumptions, the first two of which are the same as in Stiglerian theory: group participation and dominance by special interests. But in agency-capture theory,

¹⁷² Peltzman, Sam. “Toward a More General Theory of Regulation.” Journal of Law, Economics, and Organization. Vol. 19, 1976. Posner, Richard A. “Theories of Regulation.” Bell Journal of Economics and Management Science. Vol. 5, 1974.

¹⁷³ Other authors discuss this chain of arguments, so we limit ourselves here to a brief overview. For a more thorough outline, see Levine, Michael E. & Jennifer L. Forrence. “Regulatory Capture, Public Interest, and the Public Agenda: Toward A Synthesis.” Journal of Law and Economic Organization. Vol. 167, pp. 193-94, 1990 (special issue).

¹⁷⁴ Olson, Mancur. The Logic of Collective Action: Public Goods and the Theory of Groups. Cambridge, MA: Harvard University Press, 1965.

¹⁷⁵ Bernstein, M. Regulating Business by Independent Commission. Princeton, N.J. Princeton University Press, 1955. Also see Huntington, S. “The Marasmus of the ICC: The Commission, the Railroads, and the Public Interest.” Yale Law Review. 1952, pp 467-509.

¹⁷⁶ House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.” Emphasis added.

agencies have considerable autonomy vis-à-vis Congress (enough to evade discipline by altruistic Congressmen), and administrators are (or at least act like) selfish utility-maximizers who gain from expanding their agencies.¹⁷⁷

In between these two versions of capture theory lies yet a third sort of capture theory - that of iron triangles,¹⁷⁸ political subsystems,¹⁷⁹ or clientele groups.¹⁸⁰ Whatever the name, the theory of iron triangles also assumes that individuals participate in politics through groups and that special interests dominate policy, but it does not portray either Congress or the bureaucracy as dominant. Rather, they are in it together, and they cooperate to sell regulatory services to special interest groups.

All three versions of capture make strong predictions detailing how advisory committees might be used – predictions that differ from those made by both democratic and technocratic public-interest theories of regulation. For instance, all three capture theories might predict that federal advisory committees are dominated by special interests, have unbalanced membership, use closed meetings to keep information out of the hands of the press and public, use technical requirements to limit rather than enhance participation, and engage in the formation of distributive coalitions within the committee (as well as outside of it). However, the three different versions of capture theory differ sharply over who creates and uses these committees. Moreover, they do not by themselves take into account the particular administrative structure in the US, which may cause agencies, Congress, and interests to use advisory committees strategically. Thus, the actual set of characteristics one would expect to observe in ‘captured’ advisory committees varies considerably depending on just how private interests exert their influence, how they are being used strategically, and the nature of the interests involved.

Like capture theory, Public Interest theory comes in different types, most of which we have discussed above under the process controversies. Public interest theory can be either liberal or elitist. Liberal theories divide down the Madison vs. Lowi debate (e.g. types of liberalism), while elitist theories tend to place their faith in the superior abilities, morality, and/or technical expertise of administrators. Not surprisingly, different types of public interest theory generate different predictions about the likely use of advisory committees, and the likely traits that such committees would exhibit. We must therefore pay considerable attention to which version of Public Interest theory we are considering when spelling out the predictions of specific, modern theories that seek to explain and/or characterize advisory committees.

¹⁷⁷ Niskanen, William. Bureaucracy and Representative Government. Chicago: Aldine and Atherton, 1971.

¹⁷⁸ Davidson, Roger H. “Breaking Up Those ‘Cozy Triangles’: An Impossible Dream?” In Legislative Reform and Public Policy. Edited by Peters, John G. and Susan Welch. Praeger, 1977. New York. Also see Ripley, Randall B. and Grace A. Franklin. Congress, the Bureaucracy, and Public Policy. The Dorsey Press, 1976. Homewood, IL.

¹⁷⁹ Freeman, J. Leiper. The Political Process: Executive Bureau-Legislative Committee Relations. Random House, 1955. New York.

¹⁸⁰ Aberbach, Joel D. and Bert A. Rockman. “Bureaucrats and Clientele Groups: A View From Capitol Hill.” American Journal of Political Science. November, 1978.

Efficient Government vs. Inefficient Government

Although the openness and balanced membership requirements of FACA generally receive the most attention, Congress was at least as concerned with the financial costs of what it perceived to be a “hydra-like” advisory committee system.¹⁸¹ One of the primary functions of the act was obtaining an accurate counting of advisory committees and creating an oversight mechanism to merge redundant committees and eliminate those whose time had expired. Within the first three years after the act was passed, the number of existing committees decreased from over 1,400 to about a thousand. Apart from the housekeeping functions of FACA, however, its regulations on the establishment of advisory committees and the conduct of meetings largely increased the administrative cost of using such committees.

For the purposes of this book, we divide sources of government inefficiency into two categories. The first includes those sources of inefficiency which affect large, old, private firms – principal agent problems, bureaucratic inertia, weak budget constraints, etc. In other words, all of the arguments that can be accommodated within the hierarchies vs. markets literature and which apply to businesses as well as public sector organizations.¹⁸² The second includes those sources of inefficiency unique to government. In this second category fall all of those rules and laws designed to constrain the government’s defining characteristic – the power to coerce. Thus, it includes: balance of powers,¹⁸³ electoral cycles and embedded constituencies,¹⁸⁴ fuzzy and conflicting measures of success,¹⁸⁵ and Constitutional and legal rights. Most laws designed to improve the administration of government address both types of inefficiency, but since this is a book on politics and not organizational operations, it primarily considers the latter.

Fortunately, the arguments about efficiency in government often derive from one of the other debates we have already discussed, making further discussion of them redundant. Moreover, both sides of the debate are well represented in today’s government. In 1993, for instance, Al Gore’s National Performance Review blamed the excessive Red Tape in government on a monitoring system that encouraged mediocrity rather than risk-taking, and was pre-occupied with avoiding scandal.¹⁸⁶ On the other side

¹⁸¹ ???

¹⁸² For an excellent summary of these arguments see: Gibbons, Robert. “Why Organizations Are Such a Mess (And What An Economist Might Do About It.” March 23, 2000. Unpublished Paper. Available at <http://web.mit.edu/rgibbons/www/>.

¹⁸³ Montesquieu, Charles de Secondat, baron de. The Spirit of the Laws. New York: Hafner Publishing Company, 1949.

¹⁸⁴ Moe, Terry. “The Politics of Structural Choice: Toward a Theory of Public Bureaucracy.” In Oliver E. Williamson, ed. Organization Theory: From Chester Barnard to the Present and Beyond. 1990, Oxford University Press, NYC.

¹⁸⁵ Wilson found that bureaucratic culture and success was often related to how one defined the agency’s mission. Wilson, James Q. Bureaucracy: What Government Agencies Do and Why They Do It. New York: Basic Books, Inc., 1989.

¹⁸⁶ “In Washington’s highly politicized world, the greatest risk is not that a program will perform poorly, but that a scandal will erupt. Scandals are front-page news, while routine failure is ignored. Hence control system after control system is piled up to minimize the risk of scandal. The budget system, the personnel

of the issue, such diverse groups as the ACLU and the Heritage Foundation continually lobby for tighter restrictions on government authority. This debate will clearly not be resolved in this book, and so it limits its focus to a handful of questions relating to efficiency in advisory committees. It asks: Under what conditions are advisory committees efficient and effective? How great of a burden to process constraints place on advisory committee effectiveness. When are process constraints necessary and useful, and when are they unnecessary and harmful? Finally, what implications does the efficient or inefficient use of advisory committees in particular circumstance have for assessing the value of our modern-day theories of political action?

Modern Theories of Influence and Information in Bureaucracy

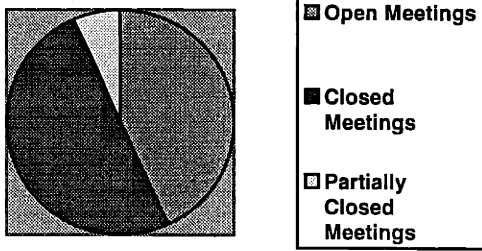
Advisory Committees At the End of the Second Millennium

In 1998, after a determined effort by the Clinton administration to reduce the number of discretionary committees (those not mandated by Congress), there were 939 FACA committees in existence. These were distributed among 50 different agencies ranging from major departments to single-committee, independent offices. The sheer magnitude of the committee structure is astounding. Over 41,000 people served on advisory committees in that year, logging nearly 6,000 meetings, generating nearly a thousand reports, and consuming 180 million dollars in funding. The most well known of these committees – the presidential commissions – accounted for only 52 of the total number of committees (an extraordinarily large number compared to previous administrations). These presidential commissions generally addressed broad and important themes.¹⁸⁷ The remaining 887 committees, however, generally addressed narrower issues and supplied their input to administrative policy makers rather than the Office of the President. Until recently, roughly a third of the non-presidential committees were created solely by agency discretion, a third were mandated by Congress, and a third were authorized (but not mandated) by Congress. In the last few years, the portion mandated by Congress has increased as agencies strove to reduce the number of discretionary committees under Executive Order 12838, which was issued by President Clinton in February of 1993, soon after entering office. Most committees, since World War II, were continuing committees that served for a prolonged period – only 30 were temporary, ad hoc committees in 1998. Functionally, these committees were created for a wide variety of purposes, as displayed on the Committee Function chart below.

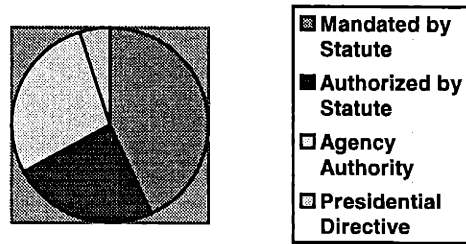
rules, the procurement process, the inspectors general--all are designed to prevent the tiniest misstep. We assume that we can't trust employees to make decisions, so we spell out in precise detail how they must do virtually everything, then audit them to ensure that they have obeyed every rule. The slightest deviation prompts new regulations and even more audits." Office of the Vice President. National Performance Review: Introduction. 1993.

¹⁸⁷ Wolanin, Thomas. Presidential Advisory Commissions. University of Wisconsin Press, Madison, Wisconsin, 1975.

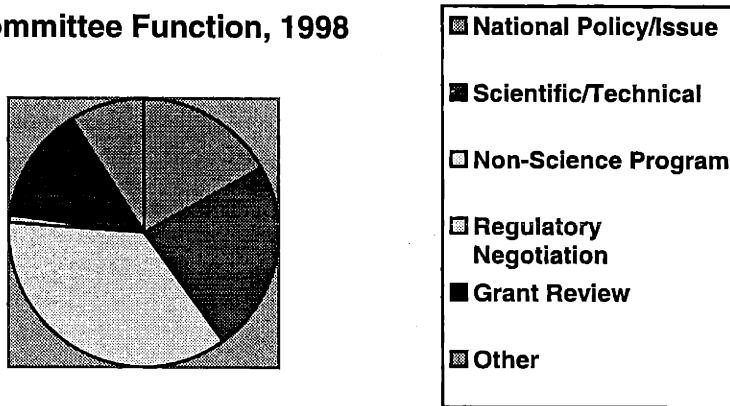
Open vs. Closed Meetings, 1998



Committee Establishment Authority, 1998



Committee Function, 1998



The upshot of all of this is that modern day federal advisory committees are tremendously diverse, a fact that poses serious challenges to any single theory which tries to explain them all. Nonetheless, all advisory committees do share certain characteristics. It pays to consider these similarities before we turn to their differences.

First, all federal advisory committees incorporate some individuals who are not federal employees. Committees solely consisting of federal employees do not necessarily fall under the aegis of the Federal Advisory Committee Act of 1972.

Second, advisory committees ostensibly exist to provide advice. That is, their nominal purpose is to solicit information and advice from private individuals to facilitate good policymaking and the effective management of administrative programs.

Third, most federal committees which do use outside experts fall under the aegis of FACA.¹⁸⁸

Having said this, the differences between committees often far outweigh their similarities. For instance, the Boston Harbor National Park Commission appears to have a very different function than the NASA Space Science Advisory Board. But does it really? On closer inspection, just how different is helping NASA build a meaningful space program from helping the National Park Service build a meaningful recreational area? Perhaps, in fact, the Space Sciences Board has more in common with the Boston Harbor Commission than it does with other science committees, such as the NTIA Spectrum Planning and Policy Advisory Committee?

In order to truly make sense of the differences between advisory committees, we must first have a clear sense of the *ways in which they can differ*. What are the fundamental properties and characteristics of advisory committees that determine who uses them, how they function, and the nature of their output? These are difficult questions, but fortunately we do not approach them empty-handed. Here we can seek guidance from the many political theories that have been developed elsewhere. But rather than simply applying them in a piecemeal, ad hoc manner, we attempt to structure these theories in a useful manner. We do so with an eye toward explaining how advisory committees operate and why they exist, and we hope to use this theoretical exercise to help structure the broader literature on bureaucratic politics.

Our first task is to identify the key assumptions underlying the modern political theories, and then to identify the *major axes along which these assumptions differ*. The characteristics of advisory committees should also differ along these axes, allowing us to match specific types of advisory committees to specific sets of theories. We can then use these sets of theories to predict how corresponding advisory committees should behave. Once we have built our typology, we can attempt to categorize important theories according to this design.

Structuring the body of theory available in the political science discipline is no easy task. Theories are typically organized into schools of thought – the Chicago School, the Lowi School, the Stiglerian School, etc... Thus, to help in this task, we categorize the literature by using seminal authors to represent schools of thought.

Structuring the Theory

¹⁸⁸ A few such committees are made exempt by specific laws, and we do not have a full accounting of them as we do the committees falling under FACA, but most such committees are not exempt. There is one exception, the National Academy of Science committees (which includes the National Research Council committees). Until 1997, these committees were treated as non-governmental, since NAS is technically an independent group (though largely supported by federal money). In 1997, following a lawsuit that ruled that NAS committees were subject to FACA, Congress acted to grant NAS a special exemption to the open meeting clause, and to compensate for this it imposed conflict-of-interest restrictions on members.

Unlike the overarching debates presented in the introduction, recent political theory in the field of American Politics addresses a handful of very specific, often very technical questions. Much of the literature focuses on formal modeling of voting procedures, delegation of authority, and asymmetric information. Moreover, much of the literature remains scattered and patchy, addressing narrow problems without any attempt to relate such problems to other problems in the field.

Since no one has really written substantially on advisory committees in American Politics, the subject remains undefined and lacks an integrated set of theories to describe their behavior. Rather than build this set of theories from scratch, we borrow it from other subjects – specifically, theories about Congress, Congressional committees, and the bureaucracy. Rather than apply these narrow theories to all advisory committees all of the time, this chapter establishes eight categories of theory. Likewise, it parses advisory committees into these same eight categories, thus matching each type of advisory committee to the theories which try to explain them.

The eight types of committee are divided easily along three axes: the committee's purpose, the level of conflict within its issue environment, and the technical difficulty of its task. Our typology is not perfect however. In some cases, multiple theories with similar assumptions fall into a single category, with each one making claims about how such committees should behave. This suggests an intriguing set of tests: In cases where multiple theories claim to explain a single type of committee, we each theory's conflicting predictions so that we can test these competing hypotheses against each other.

Three Axes: Committee Purpose, Type of Advice, and Social Conflict

Committee Purpose: Monitoring vs. Policy Initiation

Monitoring committees are created by a principal to mitigate problems inherent to the *principal-agent* relationship. *Policy Initiation* committees are created to analyze issues, frame ideas, set agendas, and propose new actions. The monitoring/initiation dichotomy is often blurred Congress sends directs an advisory committee to both make proposals to an agency and to review an agency's policies and use of funds. Thus, for example, the dozen or so boards of regents and overseers of the various military colleges and schools serve both functions, particularly in iterated decision-making processes with several cycles of proposals and reviews.

It is important when considering this axis to think hard about who is the principal and who is the agent in a given advisory committee. Depending on the theoretical framework, the principal could be either the general public, a subset of the general public, a coalition of interest groups, Congress, the President, or even the head of a bureau. Most of this paper portrays Congress as the chief principal; changing the principal can and

sometimes does introduce new bodies of theory and new predictions. We try to point out such instances when they occur.

Type of Advice: Participation vs. Expertise:

Participatory committees *solicit input* from members of the public, including general members, stakeholders, and interest groups. *Expert* committees solicit *scientific or technical advice* (expertise) from those with exceptional knowledge in a field. Individuals concerned about this axis include writers who fear the over-democratization of science on one end, and those who fear a government of technocrats on the other.

Back in our discussion of the technocracy/democracy debate, we identified the dichotomy between participatory and expert committees with particular assumptions about the nature of information. Participatory committees tend to seek diffuse, easily assimilated information, which expert committees seek concentrated, complex information. I argued earlier that the trend toward information that is both diffuse and complex has worn away at the dichotomy underlying this axis. Thus, we will observe an increasing number of hybrid committees – committees that both provide highly technical advice and seek to include diverse viewpoints and opinions from stakeholders.

Nature of Environment: High Conflict vs. Low Conflict:

This axis refers to the inherent conflict of interest among stakeholders and interest groups concerned with the general terrain of the issue involved. By underlying conflict, we mean the divisions that are defined and/or anticipated prior to the creation of the committee, as well as the capacity of interested stakeholders to channel and organize their political influence. High conflict committees have stark differences between the preferences of stakeholders, clear notions of the costs and benefits of specific policies, opposing organized groups, and tend to be distributive in nature (one group's gain comes at the expense of another group). Low conflict committees have broad agreement on the goals of the committee and tend to focus on the production of common goods instead of distributing a finite pie. Low conflict committees may sustain greater levels of conflict over time as specificity brings greater awareness of the distribution of costs and benefits, however the underlying environment remains low-conflict. Likewise, high conflict committees may reach collusive arrangements that dampen much of the conflict within the committee, but the underlying environment remains high conflict.

**Eight Types of Federal Advisory Committees...
And the Theories That Try To Explain Them**

	Monitoring/PA problems (McNollgast)	Policy Initiation (Delegation) (Kiewett and McCubbins??)
Participation (Lowi)	<p align="center">Fire Alarm Committees</p> <p><i>Low Conflict:</i> McCubbins and Schwartz</p>	<p align="center">Coordinating Committees and Deliberative Committees vs. Capture Committees</p> <p><i>Low Conflict:</i> Wildavsky (Complexity of Joint Action); Arthur Maas (Deliberative Democracy); Stigler (Congressional Capture); Gordon (Iron Triangles); Freeman, 1955 (Subsystems); DOJ/Selznick (Agency Capture)</p>
	<p align="center">False Alarm (Embedded Control) Committees (Change to Embedded Monitoring Committees?)</p> <p><i>High Conflict:</i> Terry Moe</p>	<p align="center">Structural Capture vs. Structural Equilibrium vs. Abdication Committees vs. Corporatist Committees vs. Agenda Setting Committees</p> <p><i>High Conflict:</i> Moe (Structural Capture), DeFiguerido/Spiller (Structural Equilibrium), Fiorina (Abdication hypothesis); Schmitter (Corporatism); Shepsle (Agenda Setting)</p>
Expertise (Weber)	<p align="center">Police Patrol Committees</p> <p><i>Low Conflict:</i> Niskanen (Maximizing Bureaucrat); Crozier (Power Maximizing); McCubbins and Schwartz (Police Patrols)</p>	<p align="center">Informative Committees</p> <p><i>Low Conflict:</i> Krehheil (Informative Committees)</p>
	<p align="center">Issue Claiming Committees</p> <p><i>High Conflict:</i> Downs (Run-Away Bureaucracy), Allison Model II and III</p>	<p align="center">Boundary Work Committees</p> <p><i>High Conflict:</i> Jasanoff (boundary work, infringement of politics into science)</p>

High Conflict: Olson
Low Conflict: Madison, Locke

It is easiest to think about this chart if we take each category to be a Weberian ideal type, and let the axes defining these categories be discreet. Most theories in the political science literature typically assume extreme circumstances anyway. Since this probably does not reflect reality, however, the reader should take these categories as with a grain of salt: most committees probably fall in between one or more of the categories.

The Principal Agent Problem: Monitoring Committees

The monitoring/delegation axis has recently received a lot of attention from scholars, and so we discuss this axis first. We begin with the theories on the *left hand side* of the chart, which emphasize the role of committees in mitigating problems caused by the principal-agent dilemma, and run down the list.¹⁸⁹ In this capacity, advisory committees might be lumped with other aspects of the administrative process that are used to limit the discretion available to agencies in formulating policy and implementing Congressional legislation.¹⁹⁰ This is the essence of an influential argument made by McNollgast in the early 1980s, which sees administrative process as a tool to facilitate administrative control by political principals (usually Congress) over agencies.

“...because policy is controlled by participants in administrative processes, political officials can use procedures to control policy without bearing costs themselves, or even having to know what policy is likely to emerge.”¹⁹¹

This is a tall order – the notion that Congress can get what it wants without even knowing what it wants or putting forth any effort. Theoretically speaking, the McNollgast hypothesis makes very broad claims. First, it discusses two different ways of securing Congressional control – direct mechanisms and indirect mechanisms. Second, it considers political control by two principals – Congress, and the dominant coalition. Not surprisingly, the McNollgast hypothesis is really two separate hypotheses, a fact that comes to light when considering how it applies to the specific case of advisory committees.

The first hypothesis argues that administrative procedures facilitate *direct* control by ‘stacking the deck’ in favor of specific policies, but this hypothesis is somewhat disingenuous. Using process controls to ‘stack the deck’ either requires Congress to directly legislate over policy outcomes, or to abdicate power to a dominant coalition of interest groups in society. Consider:

One way of ‘stacking the deck’ is simply writing the policy (or a range of policies) into law – in other words by controlling the *outcome*. However, such direct limits on the outcome say very little about the use of administrative *process*. Directly legislating about policy outcomes is not about process control; it’s about controlling the *preferences* of agencies.¹⁹² This can be done by manipulating the costs and benefits to

¹⁸⁹ Balla, Steven J. and Wright, John R. “Can Advisory Committees Facilitate Congressional Oversight of the Bureaucracy?” Unpublished Paper. George Washington University. 1999.

¹⁹⁰ McCubbins, Mathew D., Roger G. Noll and Barry R. Weingast. “Administrative Procedures as an Instrument of Political Control.” Journal of Law, Economics, and Organization. 1987. Vol. 3: 243-277.

¹⁹¹ McCubbins, Mathew D., Roger G. Noll and Barry R. Weingast. “Administrative Procedures as an Instrument of Political Control.” Journal of Law, Economics, and Organization. 1987. Vol. 3: 243-277.

¹⁹² Bawn, Kathleen. “Political Control Versus Expertise: Congressional Choices About Administrative Procedures.” American Political Science Review. March, 1995. Vol. 89: 62-73.

agencies of engaging in certain policies, such as by imposing time delays on the promulgation of new environmental standards or requiring cost-benefit analyses for OSHA regulations. Yet, argue many scholars, the purpose of these laws wasn't to enable Congressional control, but merely to hinder agency action altogether.

The alternative method of *direct* control almost invariably requires some abdication of power to private groups. Consider the case of advisory committees. Federal advisory committees are highly constrained by FACA, a procedural law of just the sort McNollgast try to explain. Yet advisory committees have remarkably little formal authority to constrain agency behavior. Indeed, by law they have no formal power other than voicing opinions and (usually) writing reports – reports that the agency is, under the Non-Delegation Doctrine, not compelled to follow. The only requirement that the agencies even take the report into account resides in the Administrative Procedures Act, which bans agencies from promulgating “arbitrary and capricious” rules.¹⁹³ Unfortunately, the courts have given this clause different meanings over the years, with different implications for the role of judicial review. These interpretations have varied all the way from the “toothless” rational basis test that preceded APA,¹⁹⁴ to the highly deferential “reasonable interpretation” test of the Chevron doctrine,¹⁹⁵ to the recent and slightly more interventionist Overton Park doctrine requiring a closely reasoned administrative record demonstrating how the agency reached its decision.¹⁹⁶ But overall, the courts tend to grant a lot of deference to agency rationale.

Assuming that the arbitrary-and-capricious standard has some bite (a point under contention),¹⁹⁷ one must question whether decentralized judicial enforcement of highly technical decisions facilitates *direct Congressional* control over agencies. Once issues enter the courts, Congress rarely has much to say about them unless it can muster the will to pass a new law specifically overturning a court's decision. By and large, judicial enforcement would seem to facilitate control over agencies by the constituent groups who serve on advisory committees rather than by Congress. This looks far more like a form of abdication than control.¹⁹⁸ In other words, judicial control does not stack the deck in favor of specific policies. Rather, “...political actors stack the deck in favor of constituents who are the intended beneficiaries of the bargains struck by the coalition which created the agency.”¹⁹⁹ This sort of decentralized control, therefore, is really a way of ceding control to someone else. It tends to minimize the actual influence of

¹⁹³ 5 U.S.C. 706 (2) (A)

¹⁹⁴ *Pacific States Box & Basket Co. v. White*, 296 U.S. 176, 185-86 (1935); Cited in Young, Gordon G. “Judicial Review of Informal Agency Action on the Fiftieth Anniversary of the APA: The Alleged Demise and Actual Status of Overton Park's Requirement of Judicial Review ‘On The Record’” American University Administrative Law Journal. Vol. 10. Spring, 1996.

¹⁹⁵ *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-45 (1984).

¹⁹⁶ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415-17 (1971)

¹⁹⁷ *Pacific States Box & Basket Co. v. White*, 296 U.S. 176, 185-86 (1935); Cited in Young, Gordon G. “Judicial Review of Informal Agency Action on the Fiftieth Anniversary of the APA: The Alleged Demise and Actual Status of Overton Park's Requirement of Judicial Review ‘On The Record’” American University Administrative Law Journal. Vol. 10. Spring, 1996.

¹⁹⁸ Argument made by Croley, unpublished paper.

¹⁹⁹ McCubbins, Mathew D., Roger G. Noll and Barry R. Weingast. “Administrative Procedures as an Instrument of Political Control.” Journal of Law, Economics, and Organization. 1987. Vol. 3: 243-277.

Congress, and portrays the dominant coalition as the true principal trying to oversee the agency.

McNollgast's second hypothesis makes the somewhat more limited and plausible claim that administrative procedures can simplify and enhance Congress' traditional control functions – oversight and budgeting. In other words, administrative procedures assist with Congressional monitoring by helping supply Congress with information that it can then use to discipline recalcitrant agencies. This version of the administrative control hypothesis *does* keep control squarely in the hands of Congress, but it does so at the cost of giving up some claims about the flexibility and desirability of strong administrative procedures. First, the monitoring mechanism does not exert *direct* control; rather, it exerts *indirect* control by releasing (or threatening to release) important information to Congress that may cause Congress to discipline the agent.²⁰⁰ Second, Congress must still exert some effort to use this information. Third, generating this information has a cost – paid for either by the agency or by external monitors.

The distinction between the two types of control expressed in McNollgast's theory has strong implications for the design of administrative instruments. In the case of advisory committees, this dichotomy gives rise to committees with two distinct types of purposes. According to the first hypothesis, advisory committees enfranchise certain interest groups and viewpoints, providing them with a direct role in helping initiate and develop administrative policy. We will lump this with the set of theories on the *right hand side* of the eight cell table, and address it later. This is less a theory of monitoring than a theory of delegation. According to the second hypothesis – the Monitoring hypothesis – advisory committees supply Congress (or some other principal) with information to better monitor and discipline agencies. These are the committees that make up the left hand side of our chart, and we now take a look at them.

Cell 1: Advisory Committees as Fire Alarms

In thinking about monitoring mechanisms, McCubbins and Schwartz offer the metaphor of fire alarms, which is easily adapted to advisory committees.²⁰¹ In contrast with the directed, coordinated oversight typical of 'police-patrol' monitoring mechanisms, fire alarm mechanisms only ring when something goes wrong. For instance, a broad-based constituency can serve as a fire alarm by complaining whenever an agency doesn't meet its goals, possibly offering a more efficient means of monitoring an agency than reviewing its budget, interrogating its personnel, and requiring the agency to keep statistics about its performance. Indeed, advisory committees seem uniquely suited for fire alarm oversight, since they directly involve users of the agency's output. Compelling an agency to form an advisory committee can be thought of as a small subsidy to those users willing to provide information to Congress about an agency's

²⁰⁰ See for example Epstein, D. and O'halloran, S. "A Theory of Strategic Oversight – Congress, Lobbyists, and the Bureaucracy." *Journal of Law, Economics, and Organization*. Vol. 11, October 1995.

²⁰¹ McCubbins, Mathew and Thomas Schwartz. "Congressional Oversight Overlooked: Police Patrols vs. Fire Alarms." *American Journal of Political Science*. 1984. Vol. 28: 165-179.

performance – the same way that FOIA rules subsidize ‘public interest’ users of agency information by offering them free copies of federal documents.

Although fire-alarms make a convincing metaphor, the simple fire-alarm model rests on certain assumptions that are not immediately obvious. Perhaps most importantly, it assumes that agencies are being employed by a single principal whose identity and preferences do not change over time. Relaxing these constraints invites the possibility that advisory committees might be used as *biased* monitoring mechanisms, only reporting information to Congress when it advantages a particular coalition. Terry Moe has adopted this position quite forcefully.²⁰² The fire alarms argument also assumes that the subjects and beneficiaries of (or in a less democratic world, the stakeholders in) the agency’s policies have the resources, expertise, and interests necessary to participate meaningfully in advisory committees.

According to the fire-alarm theory of oversight, ‘fire-alarm’ committees should have the following traits:

Hypothesis 1: Fire alarm committees should be mandated by the political principal, which is usually Congress. Discretionary and Congressionally authorized committees are unlikely to serve primarily as fire-alarm committees, though they may serve that function secondarily (to the dismay of the agencies which cooperated in creating them).

Hypothesis 2: Membership on fire alarm committees would be balanced among diverse interests in order to induce committee members not to withhold private information. In principal-agent games with multiple monitors, principals can extract more information from monitors when they have divergent interests.²⁰³ Since Congress is maximizing its *own* interests, rather than that of any single coalition, it always benefits from having more information. Moreover, fire alarm committees should include members of and/or representing concerned groups, rather than non-stakeholders with technical qualifications (neutral experts). In other words, participants should be “consumers” of the agency’s services. Fire alarm committees exist to measure what the agency is producing, not to ascertain how it is operating

Hypothesis 3: Fire alarm committees cede relatively little influence to committee members. Balanced membership implies that Congress will receive virtually all of the private information held by committee members. Thus, committee members cannot use the threat of revealing information to Congress to influence agency policy – Congress will learn the information one way or another. Interest groups seeking to influence the agency must work through Congress, but they must also serve on committees to

²⁰² Moe, Terry. “The New Economics of Organization.” American Journal of Political Science. 1984. pp. 739-777.

²⁰³ Gilligan, Thomas W. and Keith Krehbiel. “Asymmetric Information and Legislative Rules with a Heterogeneous Committee.” American Journal of Political Science. Vol. 33, No. 2, May 1989, Pp. 459-490. Also see de Figueiredo, Rui J. P. Jr., Pable Spiller, and Santiago Urbiztondo. “An Information Perspective on Administrative Procedures.” Journal of Law, Economics, and Organization. 1999, Vol. 15, No. 1, Pp. 283-305.

counterbalance opposing groups, even though service may be costly and offer no positive rewards.

Hypothesis 4: Congress should have a preference for open meetings in fire alarm committees. Open meetings facilitate the committee's monitoring function, and also allow Congress to use committees as a barometer of public interest in and concern about particular issues.

Hypothesis 5: Open meetings should improve the effectiveness of the committee from the principal's perspective, and certainly should not harm it from the perspective of committee members. Since the committee does not exist to engage in bargaining or work with highly sensitive information, openness has fewer drawbacks in fire alarm committees than in other types of committees.

Hypothesis 6: Fire alarm committees should receive relatively little staff and administrative support since they are able to assess the relevant information mostly without agency help, and assembling this information should require less support from the agency than other committees need.

Hypothesis 7: Since fire alarm committees exist primarily to provide information, and have relatively little influence, voting style is likely to be a non-issue. Without the ability to make key decisions, voting should be consensual and committees should be relatively willing to accommodate divergent opinions in final reports.

Hypothesis 8: Since fire alarm committees have relatively little influence over policy outcomes once a committee's advice goes to the principal, members should feel ambivalently about the effectiveness of the committee.

Cell 2: Advisory Committees as False Alarm (Embedded Control) Mechanisms

In the McCubbins and Schwartz model, Congress remains firmly in charge at all times. Terry Moe presents a case where this is not true. Moe's argument assumes that changing administrative structure is costly, that dominant coalitions within Congress rationally expect to lose control of Congress from time to time, that administrative processes can be used to control policy outcomes, and that the conflict of interest between different coalitions is acute. To successfully apply Moe's theories to advisory committees requires an additional assumption: that information costs within policy-making circles are high.

In this environment, a dominant coalition that expects to lose control over the legislature will 'lock-in' its policy preferences even at the expense of creating inefficiency. Thus, Congress uses committees less to report information to itself, and more to prevent a rival coalition from undoing its work when its own supporting coalition loses power. Although the so-called 'embedded inefficiency' argument has come under

criticism of late,²⁰⁴ it still retains considerable credence in the field and has been used as a justification for restricting government involvement in a wide range of social activities.

The Moe argument envisions committees that are hardwired to favor dominant coalitions. It is, in short, a variation of conventional capture theory, in which capture is embedded in institutional mechanisms. Advisory committees that fit Moe's vision would be designed in such a way as to empower only the favored coalition with private information, and to allow that coalition to report that information to Congress only when it works to its advantage. Thus, an interest that controls an advisory committee could choose *not* to report private information when Congress is controlled by its enemies, particularly if that information is detrimental to its interests. In this version of Moe's argument, the advisory committee has no official policy-making role. It only has private information which it can use or not use at its discretion.

Although a powerful theoretical model, Moe's predictions have recently come under attack by rational choice theorists emphasizing the repeated game nature of creating institutions. In particular, DeFigueiredo and Spiller have argued that in governments where coalitions frequently gain and lose control of government, opposing coalitions will restrict themselves from using inefficient mechanisms to lock-in policy preferences.²⁰⁵ Rather than suffer repeated losses from using costly procedural control mechanisms to cancel out other costly procedural control mechanisms created by opposing coalitions, both sides will agree to an enforceable arrangement that restricts the use of the worst forms of structural control. In this case, Congress would commit to institutional arrangements precisely like FACA, and we would observe participatory monitoring committees in high-conflict environments acting more like Fire-Alarm committees and less like False Alarm committees.

In the absence of such enforceable high-level equilibriums, Moe's theory offers the following hypotheses about advisory committees:

Hypothesis 1: False Alarm advisory committees should be mandated by Congress. Agencies have little incentive to cooperate in giving someone else control over their output.

Hypothesis 2: False Alarm committees should have a membership drawn from the dominant faction in Congress. First, the dominant coalition will not wish information harming its own position to be revealed to an hostile Congress. Second, without formal or informal authority, the only way an advisory committee can influence an agency is by threatening to reveal private information. If the committee's membership is balanced, this threat is meaningless since all of the information will be revealed anyway. Moreover, the dominant coalition will try to prevent neutral experts from serving, preferring biased experts instead. Generally, the authorizing principal will reserve membership on the committee for the interested stakeholders he represents.

²⁰⁴ de Figueiredo, Rui J. P. Jr., Pable Spiller. Embedded inefficiency is irrational in situations with frequent changes in power. CITE?

²⁰⁵ de Figueiredo, Rui J. P. Jr., Pable Spiller. CITE?

Hypothesis 3: False Alarm committees cede a lot of influence to advisory committees by subsidizing their efforts to gather private information about the agency and its output, and allowing these committees to use this information at their discretion.

Hypothesis 4: False Alarm committees should have closed meetings to prevent revelation of information to opposing factions and hostile Congresses.

Hypothesis 5: Open meetings should impair the effectiveness of False Alarm committees, since they are 'effective' in so far as they lock in the preferences of the dominant faction that created them.

Hypothesis 6: False Alarm committees should receive little staff and administrative support since members are able to assess the relevant information mostly without agency help. In general, members prefer to rely on the support provided by their own interest groups, rather than risk leaking sensitive information.

Hypothesis 7: False Alarm committees face a quandary in determining voting procedures. The very existence of such committees implies a divisive voting procedure in the broader political arena. However, within these committees the emergence of internal factions threatens to undermine the power of the committee – its ability to withhold private information. If the threat to take information outside of the committee were credible, potential intra-committee losers could force a somewhat more inclusive decision-making process. Alternatively, if such committees were to demonstrate distributive coalition forming behavior outside the committee and consensus building behavior within the committee, this might support a class-based theory of behavior, similar to that described in theories of political elitism.²⁰⁶

Hypothesis 8: Members of these committees should be fairly satisfied with their performance, since the committees essentially serve their interests and wield substantial influence over policy outcomes.

Cell 3: Advisory Committees as Police Patrols

Although offering very different predictions about the likely uses of advisory committees, both the Fire-Alarm model and the embedded inefficiency model assume that monitoring is a participatory exercise. The information about an agency's performance is broadly fragmented in society and can be efficiently gathered in an advisory committee setting. Gathering this type of information does not require any unique expertise on the part of the committee members. But in many other cases, the average consumers of an agency's output lack the resources or expertise to analyze that output.²⁰⁷ In other cases, Congress may be less concerned about optimizing a fixed

²⁰⁶ Useem, Michael. The Inner Circle : Large Corporations and the Rise of Business Political Activity in the U.S. and U.K. New York : Oxford University Press, 1984.

²⁰⁷ Tirole, Jean. The Theory of Industrial Organization. Cambridge, MA: The MIT Press, 1988.

budget, and more concerned about producing a specified output as efficiently as possible.²⁰⁸ In short, the fire alarm model and the embedded inefficiency model are entirely demand based – they ask whether a particular constituency thinks an agency is producing what they believe they want. They neglect situations in which the outcomes are either easily observable without advisory committees or are unobservable even with advisory committees, but in which the internal process of producing those outcomes can be observed by advisory committees. These latter situations are addressed by classical theories of budget oversight.

In the world of a budget-maximizing bureaucrat, like that painted by Niskanen,²⁰⁹ or of a power-maximizing bureaucrat, like that painted by Crozier,²¹⁰ or of a slack-maximizing bureaucrat, like that painted by Bengt and Holstrom,²¹¹ information about the product of an agency is often less damaging to the agency than information about its internal operations. In the words of the National Performance Review, “In Washington's highly politicized world, the greatest risk is not that a program will perform poorly, but that a scandal will erupt. Scandals are front-page news, while routine failure is ignored. Hence control system after control system is piled up to minimize the risk of scandal. The budget system, the personnel rules, the procurement process, the inspectors general—all are designed to prevent the tiniest misstep. We assume that we can't trust employees to make decisions, so we spell out in precise detail how they must do virtually everything, then audit them to ensure that they have obeyed every rule. The slightest deviation prompts new regulations and even more audits.”²¹²

Fortunately for the bureaucrat, information about internal operations is also harder to come by than information about output. Indeed, Congress has several efficient (from its perspective) mechanisms for gaining information about an agency's output. It can mandate that agencies measure their output in a way that is not easily falsified. It can solicit advice directly from organizations that monitor the agency's output, such as interest groups. It can even obtain the information directly from constituents through casework. However, Congress has fewer mechanisms for obtaining information about an agency's internal workings – it can either order an investigation by the GAO or a similar bureaucratic entity, or it can conduct the investigation by itself at considerable cost in time and resources. Advisory committees offer a third option, akin to the ‘Police Patrol’ method of oversight described by McCubbins and Schwartz, save that Congress can use advisory committees to solicit *outside help* in investigating the agencies.

The underlying differences between Police-Patrol (Niskanen) committees and the False Alarm (Moe) and Fire-Alarm (McCubbins and Schwartz) committees rest on a very important assumption about the nature of information in the political environment. In the False Alarm and Fire-Alarm cases, information is costly to obtain because it is

²⁰⁸ In essence, this is the difference between optimizing, which economists recognize as the difference between Marshallian and Hicksian demand. Kreps, David M. A Course in Microeconomic Theory. Princeton, NJ: Princeton University Press, 1990.

²⁰⁹ Niskanen, William. Bureaucracy and Representative Government. Chicago: Aldine and Atherton, 1971.

²¹⁰ Crozier, Michael. The Bureaucratic Phenomenon. Chicago: University of Chicago Press, 1964.

²¹¹ Cite monitoring piece.

²¹² Office of the Vice President. National Performance Review: Introduction. 1993.

fragmented among *consumers* of the agency's output. Gathering that information takes effort, and advisory committees either subsidize that effort or enhance its efficiency. But information may be costly to obtain for another reason, because it requires expertise to process – expertise that Niskanen tells us is scarce and carefully guarded. For instance, knowing that a B-2 bomber costs 2 billion dollars per copy to procure really tells us little about the value of the B-2 program in securing US national interests. In order to make that judgement, we would need several other pieces of information: What is the B-2 really capable of? How easily is its stealth technology defeated? In what capacities is it useful? How much should a single plane cost to manufacture in an efficient plant? Answering these questions requires significant knowledge of warfare, US security interests, radar and the properties of advanced materials, manufacturing techniques, and so forth. Unfortunately, the specialized nature of the modern economy tends to fragment knowledge as well as information, and it often leaves these fragments in the hands of individuals or groups who have an interest in the policy outcome. Advisory committees offer a way of assembling this scarce expertise in one place, balancing the influence of various interests, and applying expert knowledge to summarize a huge volume of complex information into smaller bits of information that are easily interpretable and directly relevant for Congress. Advisory committees in this environment tend to fall more into the 'Police Patrol' category than the 'Fire Alarm' category, save that the policemen are often highly trained scientists, engineers, and administrators.

The Police Patrol theory offers the following hypotheses about advisory committees:

Hypothesis 1: Police patrol advisory committees should be mandated by Congress. Agencies have little incentive to reveal information about their internal workings to outsiders.

Hypothesis 2: Police patrol committees should include neutral experts as members whenever possible. When neutral experts are unavailable, the principal will assemble a collection of experts on the committee that is balanced in terms of interests and viewpoints in order to elicit as much information as possible from the committee. Principals will also strive to include other agents (such as competing agencies) on police patrol committees, to balance the influence of an agency's own personnel.

Hypothesis 3: Individual members of Police Patrol committees effectively wield little political power, even when experts have interests in an agency's outcome, because they have no formal authority and no private information. They have no private information because the presence of members of competing interests on the committee requires interested experts to truthfully report their information in order to counter information released by others.

Hypothesis 4: Police Patrol committees should have open meetings to elicit more information and prevent information from being hidden. However, since much of the technical analysis done by these committees requires sensitive information involving security interests, proprietary knowledge, and/or privacy issues, Police Patrol Committees

may be compelled to close meetings from time to time. In these cases, Police Patrol Committees should demonstrate a desire to open committees when the discussion permits, and close only part of the meeting when necessary.

Hypothesis 5: Open meetings should not impair the effectiveness of these committees, since their purpose is to discover and reveal information, not to facilitate bargaining or brainstorming about program development. However, open meetings are unlikely to significantly improve committee effectiveness since the topics under debate are often too technical to allow for meaningful public participation.

Hypothesis 6: Police Patrol committees should demand considerable staff and administrative support since they are required to analyze a great deal of complex information. The more support they have, the more effective they should be, but also the more control they give up to agencies over the outcome.

Hypothesis 7: Police Patrol committees should allow for a consensual decision making process, when decisions are even required. Generally, the committee should try to accommodate differing opinions to present the most complete picture of the agency's internal workings that it can.

Hypothesis 8: Members of these committees should view committee participation as work, and are more likely to serve for personal or professional reasons than to support the interests of a particular social group. They are likely to feel ambivalently about their committee's effectiveness, since they have relatively little political influence over the policy choices that will be made with the information they generate.

Cell 4: 'Turf-War' Committees: Advisory Committees as Issue Claiming Institutions

Clearly, Niskanen's portrait of the budget maximizing bureaucrat offers another compelling explanation for the use of advisory committees by Congress. Yet the police-patrol model it supports suffers from the same simplistic view of the political environment that afflicts the fire-alarm model. In Niskanen's world, bureaucracies tend to behave as monolithic entities. Top level bureaucrats emphasize maximizing aggregate surplus for the organization, and the role of advisory committees in overseeing bureaus is to extract the true underlying supply function of the agency in order to minimize bureaucratic surplus. Yet just as Moe argues that adding multiple, conflicting coalitions to the fire-alarm model changes the picture, other authors warn us of the pitfalls of assuming away conflict within bureaus. Anthony Downs, for instance, presents an image of big bureaucracies that are cobbled together from smaller, competing bureaucracies, in which any attempt to control one complex organization engenders yet another complex organization.²¹³ Agents lower in the hierarchy have strong incentives to distort both the information they present to their superiors and the orders they receive. Agencies squabble amongst themselves over turf, build loyalty by homogenizing their membership,

²¹³ Downs, Anthony. *Inside Bureaucracy*. Boston: Little and Brown, 1967.

and reduce complex problems to simpler ones that are easier to routinize. This vision of a largely dysfunctional bureaucracy suggests a view of policy outcomes that are more dependent bureaucratic infighting than on either the will of Congress, the interests of a dominant social coalition, or the interests of the agency as a whole. Allison's Model II provides an example of how intra-agency conflict might affect policy outcomes, as applied to the case of the Cuban Missile Crisis.²¹⁴

In Downs' and Allison's world, advisory committees still see use as fire alarms and police patrols, save that such bureau heads may themselves appoint these committees to gain an alternate source of information that is (hopefully) independent of the stakeholders *within* the agency. The use of outside experts frees the bureau chief and Congress from dependence on *internal* expertise in determining how to conduct a program, where to invest, what are the likely outcomes of future plans, etc. Bluntly put, outside experts offer Presidential appointees a modicum of independence from career bureaucrats. In so far as bureaus are technical entities that provide the expertise that Congress lacks, a bureau chief (or Congressman) needs outside experts to the total dependence Weber described nearly a century ago. Unfortunately, bureau heads are loathe to overuse advisory committees for this purpose, since information gathered by such committees might find its way into the hands of critics and Congressional overseers.

But Downs and Allison go beyond the traditional fire-alarm metaphor. They see advisory committees as vehicles for staking out turf, by laying down a claim to emerging issues. In other words, advisory committees define debates in ways that create demand for an agency's services. This function runs counter to other advisory committee functions, in which the principal uses committees to control an agent. Here, agents use committees to compete against other agencies. Unlike policy initiation committees, the motivation behind 'Turf-War' committees still emerges from the principal agent structure of the government, and agencies still seek to increase their budgets and maximize their independence from Congress. However, Turf-War committees face competition from each other and from the status quo, and can use committees to generate credible information about their capabilities and the demand for their services – information that would not be credible if it was internally generated.

'Turf-War' advisory committees are particularly valuable (both to the agent *and* to the principal) where two or more agencies have overlapping authority, and agencies must compete against one another. Matthew Holden discusses such an instance in a 1966 article of some fame, citing the example of the Mines Department's creation of the Mine Drainage Research Committee to seize regulatory authority over mine water discharges from the Sanitary Water Board.²¹⁵ In such a case, agents can use committees to influence the principal's uninformed allocation of resources among several agencies. While sounding negative and selfish, 'Turf-War' committees may actually serve a valuable

²¹⁴ Allison, Graham T. "Conceptual Models and the Cuban Missile Crisis." American Political Science Review. 1969, Vol. 63, No. 3: Pp. 689-718.

²¹⁵ Holden, Matthew Jr. "'Imperialism' in the Bureaucracy." APSR, Vol. 60, Dec. 1966. Reprinted in Rourke, Francis E. Bureaucratic Power in National Politics. 3rd Edition. Boston: Little, Brown and Company, 1978.

purpose to the principal, as the competition between agencies may force the revelation of an agency's private information about a problem and/or suggest new options for dealing with it, in the same way that bidding in an auction reveals information.²¹⁶

Down's and Allison's theories offer the following hypotheses about 'Turf-War' advisory committees:

Hypothesis 1: Issue claiming advisory committees may be created by Congress, an agency, or a combination of the two. Agencies are more likely to create such committees when they are being used to stake out new turf, rather than to defend existing turf, largely because the defense of existing turf gives the committee access to an agency's private information.

Hypothesis 2: Although issue claiming advisory committees may include some members of interest groups supporting an agency's claim to an issue, they are also more likely than other types of committees to include experts. In addition, an agency will desire to bias the committee in its favor, but will fear to stack the committee with biased members because this will impair its value.²¹⁷ Agencies thus face a tradeoff between guaranteeing favorable advice from a committee, and giving the committee enough credibility to influence Congress' beliefs and opinions. Agencies are unlikely to include employees of competing agencies in their committees, however, since they can only offer information hostile to the sponsoring agency's goals.

Hypothesis 3: Members of issue claiming committees wield some limited political power, deriving from their ability to reveal information favorable or unfavorable to the agency. The agency's purposeful selection of committee members suggests a committee design that may not automatically reveal all information discovered by the committee. Members may thus find themselves in a position to reveal or withhold information that forwards their own personal policy preferences, or to trade information to an agency or Congress in exchange for other rewards.

Hypothesis 4: Creators of issue claiming committees face the same tradeoff in choosing to have open or closed meetings as they do in choosing membership. Open meetings enhances credibility, but risks revelation of information that is harmful to the committee's sponsor. Committee sponsor's may have some leeway, however, as the technical nature of the issues may offer excuses to close the meetings – such as security concerns, proprietary information, or privacy issues.

Hypothesis 5: Open meetings should not impair the effectiveness of issue claiming committees that are designed to yield balanced results, since the committee's purpose is

²¹⁶ A single principal selecting a single proposal from among several agents is essentially a monopsony, and is easily modeled as an auction.

²¹⁷ Simple mathematical models can demonstrate that when information can be confirmed and an agency is even slightly risk averse, Congress' inferences about the truth when the agency does not reveal information will often be worse for the agency than the truth. In cases where information cannot be confirmed, cheap talk from the agent has little ability to influence principal's beliefs.

to discover and reveal information, not to facilitate bargaining or brainstorming about program development. However, open meetings are unlikely to significantly improve committee effectiveness since the topics under debate are often too technical to allow for meaningful public participation.

Hypothesis 6: Issue claiming committees should demand considerable staff and administrative support since they are required to analyze a great deal of complex information, and present a convincing case. The more support they have, the more effective they should be, but also the more control they give up to agencies over the outcome.

Hypothesis 7: Issue claiming committees should allow for a consensual decisionmaking process, when decisions are even required. Generally, the committee should try to accommodate differing opinions. Even if the majority disagrees with a minority opinion, it is far easier to accommodate that opinion in most cases than to risk discrediting the committee's position when a disgruntled, vocal dissenter opposes a committee's advice.

Hypothesis 8: Members of issue claiming committees should view committee participation as work, and are more likely to serve for personal or professional reasons than to support the interests of a particular social group. If participating as neutral experts, they may feel ambivalently about their committee's effectiveness, since they have relatively little political influence over the policy choices that will be made with the information they generate, nor would they care which agency gains control over the issue. If biased in favor of the agency, members may have a slightly higher opinion of the committee itself, but are likely to see Congress ignoring their 'cheap talk', knowing it is biased.

Monitoring Committees: A Brief Summary

Our brief review of the major bodies of principal-agent style theory suggests four types of environments in which these committees might operate, and thus four types of committees. In two environments, those suggested by the 'Fire-Alarm' and 'Police-Patrol' models, the principal and the agent are homogenous and monolithic, with stable preferences and little internal conflict. The other two environments, illustrated by Terry Moe and Anthony Downs, portray fragmented principals and agents who are thus subject to changing preferences and internal conflict. The introduction of internal conflict into either the principal or the agent clearly affects predictions generated by the principal agent framework about the use of advisory committees.

We could also split the four types of Monitoring committees along the Participation/Expertise axis. The expert committees include Police-Patrol committees and Turf-War committees; Fire-Alarm committees and False Alarm committees, on the other hand, tend to solicit information from interested participants and stakeholders who are affected by an agency's actions. Again, these two pairs of theories clearly make very different predictions about how advisory committees would be used. When information

requires expertise to successfully interpret, principals form committees of experts to analyze complex information and offer credible advice to help the principal discipline recalcitrant or fractured agencies, and choose how to allocate resources to competing bureaucracies. When information is fragmented among several (possibly competing) stakeholders, principals form participatory committees to gather and report information in order to keep agencies in line with Congress' (or the dominant coalition's) interests.

Theories of Delegation: Policy Initiation Committees

The four types of monitoring committees cover the left half of the eight cell chart, which include those committees that are designed to produce information about an agency to facilitate oversight. While this explanation of advisory committees sounds compelling, we have good reason to expect that principal-agent style arguments explain less than half of the total number of advisory committees. Specifically, we expect most monitoring committees to be mandated by Congress, since agencies have little incentive to cooperate in revealing information about their output and internal workings. Oversight committees of the Allison or Downs type – those which are used by top level agency executives to monitor sub-bureaucracies – would be limited to the largest, most complex, and most far flung agencies (such as the DOD). Moreover, even these agencies would hesitate to use them since they could prove more of a vulnerability than an asset. Turf War committees, also predicted by Downs' theory of competing bureaus, would primarily be limited to emergent issues that are not clearly bounded by an existing agency's domain. Thus, monitoring committees are most likely to be mandated by Congress. However, in 1998, only 43% (an historically high proportion) of all committees were mandated by Congress. The rest were created by agencies or the president, or merely authorized by statute and left to agencies to implement at their discretion. Moreover, of the 43% of committees that were mandated by Congress, we have good reason to suppose that many of them were not for the purpose of oversight, as we shall soon discuss.

This strongly suggests that many – perhaps even most – advisory committees are designed to fulfill some function other than pure monitoring. In particular, some committees are formed to help an agency create policy, rather than merely observe and report what policy is being created. We call these committees policy initiation committees.

Some theorists may doubt the importance of this distinction. A number of mathematical models make strong claims about the use of monitoring in principal agent relationships, noting that sufficient information about an agent's behavior will permit Congress to exercise perfect control over an agency.²¹⁸ So if monitoring will do, why

²¹⁸ Holmstrom, Bengt. "Moral Hazard and Observability." *Bell Journal of Economics*. 1979, Vol. 10, Pp. 74-91. For a more complete discussion of the importance of information in oversight, see Paul Milgrom and John Roberts. "Chapter 6: Moral Hazard and Performance Incentives." *Economics, Organization and Management*. Englewood Cliffs, New Jersey: Prentice Hall, 1992. For an up to date technical discussion of

delegate actual power? This mathematical result neglects the time and effort Congress must expend to analyze the reports of advisory committees, discipline agencies, and choose from among several possible policies. Moreover, it ignores the fact that Congress (and the President) are not their own masters, but in turn serve other principals – such as interest groups and the general public. This permits Congress to lessen its workload by directly allocating authority to groups. As always, the cost of such delegation (as with all delegation), is the loss of control to the individuals or groups that Congress chooses to empower.

Several authors have attempted to explain why Congress or another principal would delegate the role of policy initiation to someone else, rather than undertaking that responsibility itself. Kiewiet and McCubbins, for example, identify three types of Congressional delegation: delegation from Congress to the President, delegation from Congress to an agency, and delegation from Congress to a subcommittee of its own members.²¹⁹

The presidential delegation literature offers one of the more compelling delegation arguments, but can it be applied to advisory committees? Does Congress (and/or an agency) delegate some of its authority to initiate policy to a committee for the same reasons that Congress delegates the authority to the President? While tempting, the logic underlying this comparison is weak. Consider for instance one of the most famous cases of Congressional preference for presidential leadership, the Budget and Accounting Act of 1921. Sundquist suggests several plausible reasons contributing to the Budget and Accounting Act of 1921, including the President's position as a representative of all of the people, his ability to act as a central clearinghouse of issues and information, his ability to apply efficient principles of management his greater speed of decision making and action, and his role as 'energizer' and 'innovator'.²²⁰ Sadly, these explanations for delegation to the President have a tough time making the transition to advisory committees. Most FACA committees are not in a centralized position in government, do not have a clear mandate directly from the people, do not deliberate or act with great speed, and are composed of members who have many other responsibilities and can only contribute a small portion of their time to an advisory committee's task.

If the logic of delegating to the president doesn't apply directly to advisory committees, what of the logic of delegating to agencies? The case for delegating policy-making (as opposed to merely policy *executing*) functions to agencies generally rests with the agency's superior expertise and administrative capacity, two virtues which are

the mathematical foundations of the problem, see Bernard Salanie. "Chapter 5: Moral Hazard." The Economics of Contracts. Cambridge, MA: The MIT Press, 1997.

²¹⁹ Kiewiet, D. Roderick and Matthew McCubbins. The Logic of Delegation: Congressional Parties and the Appropriations Process. Chicago: University of Chicago Press, 1991.

²²⁰ Sundquist, James L. The Decline and Resurgence of Congress. The Brookings Institution. Washington D.C. 1981. On the idea of efficient management, Sundquist cites several Congressional acts. On the President's role as a 'clearinghouse of information', he cites Neustadt, Richard. "Growth of Central Clearance." American Political Science Review. 1954, Pp. 670-671. On the President's role as an 'energizer', he cites Dahl, Robert. Pluralist Democracy in the United States: Conflict and Consent. Chicago: Rand McNally, 1967, p. 103.

commonly acceded to bureaucracy. These virtues probably received their strongest statement by Max Weber, who identified six fundamental characteristics of the ideal-type bureaucracy: hierarchy, impersonal authority, written rules, achievement-based promotion, specialization and division of labor, and efficiency.²²¹ Advisory committees are not very hierarchical, are not at all impersonal, are not particularly bound by written rules, have no real promotion system, are not ideal structures for dividing labor, and are rarely efficient (although they do use volunteer labor). While certain characteristics of these committees might duplicate the purpose of some of Weber's principles, advisory committees lack many of the qualities that make them ideal for bureaucratic delegation.²²² Indeed, FACA committees certainly do not possess any of these qualities to a greater degree than the agencies themselves, so why would Congress choose to delegate to a committee for Weberian reasons when it can delegate to the agency instead? Moreover, why would an agency itself create an advisory committee to help it initiate new policy?

The third type of delegation, that of Congress to subcommittees composed of its own members, suggests yet other reasons for delegating tasks to advisory committees. Specifically, Congress is too large, diverse, and unspecialized to make decisions by itself. Each of these problems suggests a separate reason for forming Congressional subcommittees. Congress resorts to logrolling subcommittees in order to overcome the burden of its own size, by granting individual members authority over the policy domains they are most interested in.²²³ Congress resorts to agenda setting committees to overcome the problem of coalition instability caused by preference cycling.²²⁴ Finally, Congress resorts to informational committees to induce committee members to invest scarce time and resources in identifying superior policies by yielding some control over those policies to concerned Congressmen.²²⁵ Certainly some of these tendencies appear to be reflected in delegation to advisory committees – the agenda-setting role and the informational roles especially. However the logrolling function simply has no place in delegation to advisory committees, since committee members simply are not members of Congress, and usually are engaged in such a narrow task that broad pork-barrel exchanges are not possible. Thus, even though lessons can be learned from this example, delegating to advisory committees still appears to have some fundamental characteristics that the committee-delegation literature fails to address.

The inadequacy of these three types of delegation in fitting the pattern of advisory committees suggests that delegation to advisory committees constitutes a *fourth type of delegation*, one which has both similarities to and differences from the previous three

²²¹ Weber, Max. *From Max Weber: Essays in Sociology*. New York: Oxford University Press, 1958.

²²² For instance, members may be drawn from specialized fields and the mandate of the committee can be laid out very narrowly (though advisory committees, like juries, are known to overstep their bounds and stretch the limits of their mandate, as several of the interviews demonstrate).

²²³ Riker, William H. *A Theory of Political Coalitions*. Westport, CT: Greenwood Press, 1962. Also see David Mayhew. *Congress: The Electoral Connection*. New Haven: Yale University Press, 1974.

²²⁴ Kenneth A. Shepsle. "Institutional Arrangements and Equilibrium in Multidimensional Voting Models." *American Journal of Political Science*. Vol. 23, No. 1. (Feb., 1979), pp. 27-59.

²²⁵ Krehbiel, Keith. *Information and Legislative Organization*. Ann Arbor: University of Michigan Press, 1991.

types. This fundamental difference between delegation to advisory committees and other types of delegation in the US government prompts our attempts to better understand when and how this sort of delegation is used.

Considering that at least four possible principals (Congress, the general public, the agency, and the President) have a role in delegating tasks to advisory committees, the logic of policy-initiating delegation is quite complex. Indeed, even the simplest delegation model with two principals (Congress and the President) can require several additional simplifying assumptions to gain tractable results.²²⁶ Four principals complicates matters so completely that rational modeling becomes an exercise in drawing up assumptions. Thus, the following theoretical structure has a largely empirical basis, and as much for the sake of consistency as for the sake of accuracy, looks at committees in the same four environmental niches as we considered in our review of monitoring committees. The empirical focus seems appropriate, as many of the theories explaining policy-initiating delegation overlap. Thus, unlike with the principal-agent cells, modern scholarship has generated multiple bodies of theory that attempt to explain the same environmental niche. The discussion below struggles to explain why these theories yield different predictions, and to specify the predictions precisely enough to test competing theories against each other.

Cell 5: Coordinating Committees, Deliberative Democracy Committees, and Capture Committees

One might wonder what purpose participatory policy-initiating advisory committees can serve in a low conflict environments with broad agreement over the goals; Wildavsky offers one possible answer. The business of writing good policy and building good programs, Wildavsky argues, is simply very complicated. Even if it doesn't require a great deal of expertise or technical sophistication, it can run into repeated holdups. Wildavsky demonstrates this using the example of an Economic Development Agency port construction project in Oakland, citing 30 major decision points and seventy total agreements that delayed the project for at least four years and drove up the costs enormously, in spite of broad agreement on the ultimate purpose of the project.²²⁷ Wildavsky offers seven reasons for this breakdown, generally describing how issues move from low conflict environments to high conflict environments as they become more specific.²²⁸

Wildavsky's complexity argument provides a rational, efficiency-oriented argument for inviting interests to participate in the formulation of policy. Advisory committees serve as a coordination mechanisms, helping agencies conduct "reality

²²⁶ Randy L. Calvert, Mathew D. McCubbins, and Barry R. Weingast. "A Theory of Political Control and Agency Discretion." *American Journal of Political Science*. August, 1989. Vol. 33, No. 3.

²²⁷ Pressman, Jeffrey L. and Aaron Wildavsky. *Implementation: How Great Expectations In Washington are dashed in Oakland*. Especially chapter 5, "The Complexity of Joint Action." University of California Press, Berkeley, 1973.

²²⁸ Interestingly, this conflicts with Wildavsky's general assertion that politicians prefer to negotiate over specific issues, thereby avoiding larger and broader questions of overall policy and ideology.

checks” to make sure their proposals, ideas, and needs are not too far off kilter.²²⁹ Bringing up issues in an advisory committee, indicate several committee members, helps the agency clear up potential problems before they become serious issues. Agencies can thus speed up the introduction of new policy and avoid challenges to their policies in other forums, like the court system, where conflicts may take years to resolve. Coordinating committees can also avoid challenges in the press and criticism by Congress by getting interests to bring up objections to new policies and programs early on, and addressing their concerns before the agencies issues a preliminary rule.

One could go further than the Wildavsky argument, however, and argue that in environments with broad agreement on goals, advisory committees do more than coordinate. They also deliberate, inviting stakeholders to participate more fully in the democratic process. This has four purposes – first, the reality check mentioned above. Information from stakeholders helps agencies build better policies. Second, input from stakeholders gives those stakeholders influence into the policy process. For instance, allowing tobacco farmers to help decide issues of allocating inspectors to various areas might generate a better overall program than if the agency made the allocation all by itself. Third, allowing individuals the freedom to express their viewpoints in a public forum can itself abate opposition, perhaps by convincing affected stakeholders and citizens that an agency has considered their ideas and has compelling reasons for choosing a course of action. “Even if we don’t agree, it’s healthy to have all the views expressed,” says one committee member.²³⁰ “There is value in letting people speak their peace even if this won’t change the consensus,” says another.²³¹ In other words, democracy and free expression have value for their own sake, even if they don’t change the results. Fourth, something special happens when you get a bunch of people with conflicting viewpoints and a shared goal in a room. The people band together to overcome obstacles, and the committee becomes something more than the sum of its parts.

Arthur Maas described something very much like low-conflict, participatory advisory committees when he described his notion of deliberative democracy.²³² The public interest, argued Maas, is best achieved by incorporating the broadest view available into the decision-making process. The electorate, as the broadest possible group, should therefore retain as much popular control as is feasible. Recognizing the realistic difficulties of direct democracy, however, Maas conceded that transaction cost problems often demanded the executive to take the lead in policy-making, and the Congress to monitor and oversee its activities. Technically, advisory committees are part of the executive branch, and they do indeed help initiate policy as well as oversee it. However, they remain deliberative bodies, part of whose purpose is to discuss issues and represent the interests of stakeholders. Thus, advisory committees offer a sort of middle ground between the executive and the legislature that would appeal strongly to Maas, especially since they directly involve members of the public.

²²⁹ Interview on file with author.

²³⁰ Interview on file with author.

²³¹ Interview on file with author.

²³² Maas, Arthur. Congress and the Common Good. New York: Basic Books, 1983.

Maas' theory of deliberative democracy does not work against Wildavsky's notion of the burden imposed by complexity. Rather, they work together, suggesting that deliberative/coordinating advisory committees would tackle issues in which: many stakeholders are involved, conflicts of interest between them are potentially reconcilable (or at least the overall goals are reconcilable), information is diffused among the many interests, interests are organized enough to send representatives (and/or unorganized interests can be represented by individuals without organizational support), issues are complex but not necessarily technical, and potential policies require considerable coordination among these stakeholders. Thus, Maas and Wildavsky offer a very positive view of advisory committees.

Wildavsky and Maas make the following predictions about advisory committees:

Hypothesis 1: Coordinating and deliberative democracy advisory committees may be created by Congress, an agency, or a combination of the two; however there is little reason for Congress to mandate their existence since agencies are unlikely to oppose using them.

Hypothesis 2: Coordinating and deliberative democracy advisory committees should include a broad-based membership. Wildavsky predicts the inclusion of all stakeholders with the potential to hold up a new program or policy. Maas concurs, but also predicts that committees should include important viewpoints even if they are not well organized into stakeholder groups.

Hypothesis 3: Members of coordinating and deliberative democracy committees wield considerable influence, though they rarely wield formal political power. Instead, their legitimacy as a vehicle of public sentiment gives them their authority.

Hypothesis 4: Congress and agencies should both prefer open committee meetings.

Hypothesis 5: In some limited cases, openness may hinder the workings of coordination committees when stakeholders must engage in bargaining, but the widespread agreement on goals should allow participants to overcome this minor obstacle. In deliberative democracy committees, openness should enhance committee effectiveness by improving public input, guaranteeing legitimacy, hindering corruption, and encouraging public discourse. In cases where the issues are somewhat technical, the efforts of stakeholders and other public representatives to learn the issues will also improve discourse in the long run.

Hypothesis 6: Coordinating and deliberative democracy committees should demand relatively little staff and administrative support, since the participants in the committees should be willing and able to do the work by themselves. Agency participation, however, should never hinder a committee's success.

Hypothesis 7: Coordinating and deliberative democracy committees should use consensual decisionmaking processes. Generally, the committee should try to accommodate differing opinions, and work out mutually acceptable solutions rather than risk additional hold-ups in the courts or elsewhere in the political process. In deliberative democracy committees, participants should even be willing to accept considerable costs in the pursuit of a common understanding or goal.

Hypothesis 8: Members of coordinating and deliberative democracy committees should serve for a wide variety of reasons, and should feel that their committee is generally effective (even if it is sometimes slow to reach decisions). Members of deliberative democracy committees are especially likely to serve for altruistic reasons.

A number of scholars and critics of government would take issue with the rosy picture of advisory committees that one finds in the Maas and Wildavsky portraits. Instead, beginning from many of the same basic assumptions, they offer a strikingly different interpretation of advisory committees that rests on Olson's notion of compact interests. Collectively, scholars have labeled their arguments as 'capture theory'. But in fact, capture theory comes in three flavors, although all of them depend on Olsonian compact groups to make their cases.

The first and most popular view of capture theory, which we call Congressional capture theory, suggests that concentrated interests (especially certain business lobbies) completely dominate the legislature through propaganda-like control of information and access. Thus, an issue area that is conflict-ridden within society exhibits broad agreement *within Congress itself*. The most notorious representative of this viewpoint, Stigler, argues that capture of government policies and programs emerges *directly out of Congress*, from the laws themselves. "...as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit." Those interests which are organized and wealthy enough to pay the "costs of obtaining legislation" get it.²³³

Another version of capture theory observes special interest influence percolating up through agencies, rather than Congress. Proponents of this brand of capture theory would find encouragement in the words of the 1957 Congressional report on advisory committees: "*Under the ostensible objective of seeking advice and counsel, the real purpose [of these committees] may be in many instances to enlist support of the regulated in the process of regulation.*"²³⁴ In other words, agencies create advisory committees to solicit help from private interests in lobbying in favor of the agency. In exchange, the agency provides the private interests with favorable regulation. This view of capture actually emerges more from Niskanen than from Stigler, for it imagines the Congress as the guardian of the public interest rather than the servitor of private interests. Agencies are the source of harm, and Congress must prevent bureaucracies from using advisory

²³³ Stigler, George. "The Theory of Economic Regulation." *Bell Journal of Economics and Management Science*. Spring, 1971.

²³⁴ House Report No. 85-576, 85th Congress, 1st session. "Amending the Administrative Expenses Act of 1946, and For Other Purposes." Emphasis added.

committees to build support for the agency's programs and policies, and to strengthen the agency's grip on Congress itself.

The third brand of capture theory posits an even more egregious case, in which bureaucratic and congressional capture go hand in hand. In the area of defense procurement, this relationship has been depicted as an 'Iron-Triangle' between Congress, the agency, and industry.²³⁵ Defense contractors make large profits selling expensive equipment to an agency, the agency grows in size and influence, and Congressmen feather their nest with contributions from firms. Long before the term Iron Triangle was invented, however, political scientists had begun to study the nature of similar arrangements outside of defense contracting, which they called policy subsystems or sub-governments.²³⁶ Subsystems are hardly new. They emerged even in ancient Rome, when senators would seek official concessions granting an effective monopoly over rights to build fleets or provision armies. In the context of advisory committees, however, subsystems are particularly insidious. The inclusion of industry officials in formulating regulation allows interests to directly orchestrate the activities of the agency, especially if advisory meetings are closed to the public.

These three versions of capture theory generate similar, but slightly different, sets of hypotheses about advisory committees:

Hypothesis 1: Congressional capture predicts that Congress will create advisory committees. Bureaucratic capture predicts that agencies will create advisory committees. Finally, "Iron Triangle Theory" predicts that both will create captured advisory committees, often by jointly authorizing them.

Hypothesis 2: Capture Committees will have thoroughly biased representation. Since the principal who created the committee does not care about biased advice, there is no worry about the loss in credibility caused by biased membership.

Hypothesis 3: Members of Capture Committees wield considerable political power both inside and outside the committee, but we would never see the committee directly opposing other political actors or outside interests. The advisory committee process merely helps the dominant interests to wield power more efficiently and effectively by coordinating action and overseeing the agency.

Hypothesis 4: Creators of Capture Committees will generally prefer closed meetings, seeking to limit control over policy outcomes to the compact interest groups directly involved. Publicity can only harm their interests by allowing those with more limited resources to participate in the process.

²³⁵ Gordon, Adams. The Politics of Defense Contracting: The Iron Triangle. New Brunswick, NJ: Transaction Books, 1981.

²³⁶ Freeman, John Leiper. The Political Process: Executive Bureau-Legislative Committee Relations. NY: Random House, 1963, 1955.

Hypothesis 5: Open meetings ruin the effectiveness of Capture Committees, at least from the perspective of their members and creators. Members already have all the relevant information they care about, and can only lose by ceding influence or information to outsiders.

Hypothesis 6: Capture Committees do not need much staff support to be effective, but they may nonetheless draw considerable staff support as an effective subsidy to the special interests participating on the committee. Capture Committees created by agencies should prefer staff support and agency participation more than those created by Congress, since staff support translates into greater agency influence within the committee.

Hypothesis 7: Capture Committees should allow for a consensual decision-making process; within the committee, the formal political process is replaced by bargaining between compact interests whose goals are broadly consonant, in that they depend on the government to help facilitate collusion and extract rents from the unorganized and uninformed public.

Hypothesis 8: Members of Capture Committees serve on advisory committees to represent the interests of their employers or special interest groups, not for altruistic or patriotic reasons.

Cell 6: Structural Capture Committees, Structural Equilibrium Committees, Casework Generating Committees, Quasi-Corporatist Committees, and Agenda Setting Committees

At the simplest level, all five of the theories of political behavior within this cell are theories of abdication. Each one predicts, in its own way, that Congress or an agency gives up authority over an issue because it does not want it. In other theories of delegation, Congress and agencies delegates because it lacks the time, expertise, or resources to make policy by itself. Nonetheless, in delegating, Congress and agencies try to retain as much control in their own hands as possible. In abdication theories, Congress and agencies do not want to retain control, and often specifically design mechanisms to shield the policy-making process from their own influence.²³⁷

The abdication hypothesis, in its simplest form, predicts that when issues are difficult to understand and/or highly controversial, Congress will seek to foist crucial decisions off upon someone else, while retaining popular, profitable, or easy decisions for itself. Although one might consider it strange to imagine any institution of government giving up power – certainly the founding fathers would find it strange since the constitution depends on the desire for power to balance and check the desire for power – history does provide some famous examples. For instance, Sundquist considers the 1921 Budget Act, which assigned budget-proposing (and cutting) responsibility to the President, a form of

²³⁷ Croley, Steven P. Public Interest Regulation. Unpublished Work.

abdication.²³⁸ The political costs among the public of a poorly coordinated budget and the immense internal costs of negotiating any budget (let alone a well coordinated one) were simply not worth paying. Thus, Congress forced the responsibility upon the President, who many commentators argued was better prepared to deal with it.

Even Structural Choice theory, which also predicts False Alarm committees in cell 2, appears in this cell in the guise of an abdication theory. For clarity, we call this variant *Structural Capture*, and we call the committees predicted by it 'Lock-In' committees. Unlike the version of Structural Choice theory described in cell 2, Structural Capture theory is *not* a principal agent theory. Instead, it resembles capture theory in that it downplays the independent status of Congress, which is a tool of special interests. Principal-agent interpretations of Structural Choice theory retain an important role for Congress as an independent principal that keeps ultimate power in its own hands and uses its monopoly on legislation to extract rents from the dominant coalition.²³⁹ Special interests must therefore continue to work through Congress, and members of advisory committees only wield power *indirectly* by revealing or threatening to reveal information to Congress. They do not exert direct control over agency outcomes. 'Lock-in' committees, as we will see, do wield direct control over agency outcomes.

In addition, Structural Capture theory differs from the standard capture theories described in cell 5. In standard capture theory, the dominant coalition has a persistent advantage, and thus finds itself in (for all intents and purposes) a low conflict environment. In Structural Capture theory, the dominant coalition only has a strategic advantage, forcing it to lock in control with costly administrative procedures. The underlying environment remains conflictual, however. Because of this underlying conflict, Structural Capture theory envisions sticky administrative procedures that allow earlier dominant coalitions to lock-in political control of the current dominant coalition, and impair the control of future dominant coalitions.

Unfortunately, Structural Capture theory runs into a road block when trying to explain advisory committees. Since advisory committees (by law) have no real formal power, their influence comes either from access to private information (as in the principal-agent model of Structural Choice), the influence of their members in the current Congress (as in the various capture theories), or from the credibility of their advice. We have already discussed False Alarm committees in Cell 2 and Capture Committees in cell 5. Without private information or friends in the current Congress, Structural Capture committees can only wield influence if they have credibility. But then we ask, whence comes their credibility? They are biased by design, and everyone knows it. With this in mind, the spectre of Structural Capture committees wielding *direct* power appears more phantom than flesh. Nevertheless, Structural Capture theory does not change its

²³⁸ Sundquist, James L. The Decline and Resurgence of Congress. The Brookings Institution. Washington D.C. 1981.

²³⁹ The most vocal proponent of Structural Choice theory, Terry Moe, is a little unclear on just how much independent power Congress wields. This could be because there are really two brands of Structural Choice theory: a principal-agent version, and an abdication version. See Moe, Terry M. "The Politics of Bureaucratic Structure," in John Chubb and Paul Peterson, eds. Can the Government Govern? Washington, DC: The Brookings Institution, 1989, Pp. 267-329.

predictions merely because rules like the Non-Delegation Doctrine, FACA, and the Civil Service Acts exist. Rather, Structural Capture theory predicts that special interests would eliminate these constraints on their influence, or at least find ways around them.

Structural Capture theory predicts 'Lock-In' committees, and makes the following predictions about them:

Hypothesis 1: Structural Capture theory predicts that Congress, as an agent of the dominant coalition, will create Lock-In advisory committees.

Hypothesis 2: Lock-In committees will have thoroughly biased representation. Since the principal who created the committee does not care about biased advice, there is no worry that biased membership will cause a loss in credibility. Once again, this leaves open the question of where this type of committee gains its power over policy outcomes once the dominant coalition loses power.

Hypothesis 3: Members of Lock-In committees would seem to wield considerable political power both inside and outside the committee so long as the dominant coalition retains power. When the dominant coalition loses power, the theory would predict that the advisory committee would continue to wield some power over policy outcomes, although the mechanisms through which the committee exerts this power are uncertain.

Hypothesis 4: Creators of Lock-In committee will generally prefer closed meetings, seeking to limit control over policy outcomes to the compact interest groups directly involved. Publicity can only harm their interests by allowing groups with limited resources to participate in the process.

Hypothesis 5: Open meetings ruin the effectiveness of Lock-In committees, at least from the perspective of their members and creators. Members already have all the relevant information they care about, and can only lose by ceding any influence or information to outsiders.

Hypothesis 6: Lock-In committees do not need much staff support to be effective, and but they may nonetheless draw considerable staff support as an effective subsidy to the special interests with membership on the committee. However, Lock-In committees would tend to resist any agency participation in the committee process that cedes influence to the agency, and so may prefer minimal staff support as a result.

Hypothesis 7: Lock-In committees face the same quandary in determining voting procedures that False Alarm committees face. The very existence of such committees implies divisive voting practices in the broader political arena, yet within these committees the emergence of internal factions threatens to paralyze the committee. Unlike in False Alarm committees, individual members gain little leverage by threatening to release private information, since private information is not the source of the committee's power. Without this or another source of leverage, the same distributive coalition theory that predicts the existence of Lock-In committees might also predict their

internal paralysis. Alternatively, if such committees were to demonstrate distributive coalition forming behavior outside the committee and consensus building behavior within the committee, this would again support a class-based theory of behavior, similar to that described in theories of political elitism.²⁴⁰

Hypothesis 8: Members of Lock-In committees serve on advisory committees to represent the interests of their employers or special interest groups.

Although Structural Choice and Structural Capture theories portray the administrative structure as a tool of special interests and a cause of bureaucratic inefficiency, a recent set of arguments (or perhaps more accurately, a revival of an older tradition) argues just the opposite. Administrative structure, contends this new viewpoint, is not often used by Congress to lock in the influence of favored special interests. Instead, Congress designs administrative processes in order to free agencies from the excessively politicized pressures that special interest groups apply to Congress itself, and to level the playing field between compact interest groups and other stakeholders.²⁴¹ Procedures like open meetings, balanced membership, public reports, opportunities for comment, evidentiary standards, formal hearings, notice in the Federal Register, court review, and agency requirements to address public comments hinder a dominant coalition from pushing through its agenda – they certainly do not help it. In other words, administrative procedures are a convenient commitment device that enables Congress to free itself from the tyranny of special interests, so that Congressmen can pursue goals closer to the public interest.

At first glance, this argument seems utterly irreconcilable with Structural Capture theory, yet this is not so. Recent work by DeFiguerido and Spiller, for instance, show that in a repeated game model where power frequently alternates between two different coalitions, both will commit to avoid using inefficient structural controls if their opponents do likewise.²⁴² The result parallels Axelrod's work on repeated prisoner's dilemma games.²⁴³ If the shadow of the future is long enough (in other words, if the discount rate is low and the dominant coalition stands a reasonable chance of losing power), mutual cooperation becomes a sustainable equilibrium that both sides prefer to mutual defection. Cooperation in this game consists of creating a set of rules limiting the ability of special interests and their Congressional coalitions from muddling in policy. Instead, Congress abdicates much of its power to agencies that operate in a formal, legalistic manner that (allegedly) reduces the influence of groups with greater economic resources. If the shadow of the future is too short, however, opposing coalitions within Congress and society will default to using procedures as tools of Structural Capture, which is merely the mutual defection result of the same game.

²⁴⁰ Useem, Michael. The Inner Circle : Large Corporations and the Rise of Business Political Activity in the U.S. and U.K. New York : Oxford University Press, 1984.

²⁴¹ Croley, Steven P. Public Interest Regulation. Unpublished Work.

²⁴² DeFiguerido and Spiller. 2000.

²⁴³ Axelrod, Robert. The Evolution of Cooperation. New York: Basic Books, 1984. Axelrod's results have been demonstrated in numerous other environments, such as relational contracting practices in business.

In an environment where the shadow of the future is long enough to secure a sustainable and mutually beneficial equilibrium for two or more opposing coalitions, Structural Choice generates a very different set of predictions than when the shadow of the future is short and coalitions cannot engage in cooperation. Indeed, the difference in predictions is so profound that Structural Choice becomes a different theory altogether. For convenience, we label this variant theory Structural Equilibrium, and we call those committees predicted by this theory 'Lock-Open' committees.

Structural equilibrium theory makes the following predictions about 'Lock-Open' committees:

Hypothesis 1: Structural Equilibrium theory predicts that Congress, an agency, or a combination of the two will create advisory committees for reasons other than locking in policy preferences. When Congress creates advisory committees, it will commit itself to locking the committees open, and avoiding onerous procedural burdens that significantly impair governmental efficiency.

Hypothesis 2: Lock-Open committees will have relatively unbiased representation, and legal rules will strive to guarantee this. In addition to avoiding inefficiency resulting from biased control, the attention focused on committee balance enhances the committee's credibility, and hence its power.

Hypothesis 3: Members of Lock-Open committees wield considerable political power both inside and outside the committee, regardless of which coalition is dominant. This power comes in two forms - first, through Congress via the interest groups that send members to the advisory committee, and second, through the credibility and legitimacy that emerges from the committee's position as a lawful and balanced vehicle for interest representation. In essence, the advisory committee becomes a vehicle for power sharing, efficient interest representation, and negotiation between special interests and stakeholders, not policy lock-in.

Hypothesis 4: Creators of Lock-Open committees may commit themselves to open meetings in order to prevent their adversaries (and themselves) from 'cheating'. However, if both opposing coalitions fear a loss of information and power to unorganized groups not represented by either coalition, they may prefer to allow closed meetings and put their faith in committee balance to defend their respective goals. In this case, Lock-Open committees may come to resemble Iron-Triangle committees, where the real opponent becomes the general public rather than other organized coalitions.

Hypothesis 5: Members of Lock-Open committees typically dislike open meetings, given the potential for outsiders to interfere with meetings. They would view open meetings as a necessary evil to guarantee that the committee is not being used to favor one of the opposing coalitions.

Hypothesis 6: Lock-Open committees do not need much staff support to be effective, and but they may nonetheless draw considerable staff support as an effective subsidy to the special interests with membership on the committee. Unless the agency has interests of its own that conflict with those of any major coalitions that are represented on the committee, members of Lock-Open committees would welcome input from the agency.

Hypothesis 7: Creators of Lock-Open committees would try to commit themselves to inclusive, consensual voting procedures in order to prevent the committee from engaging in distributive voting practices that may harm any of the included interests. The inclusiveness of such procedures would tend to enhance the committee's credibility when it does reach a decision, but would severely limit the scope of issues on which the committee could reach decisions due to the consensus requirements. The committee's reports would thus tend to be rather weak and watered down, and often inconsequential, even if (or perhaps because) individual stakeholders feel very strongly on the issues the committee is addressing. Individual stakeholders are not willing to make small sacrifices in the name of the bigger picture without promise of side payments or future compensation.

Hypothesis 8: Members of Lock-Open committees serve in order to represent the interests of their employers or special interest groups. Although they may behave like members of Deliberative Democracy committees from time to time, they do so only due to pluralistic pressures, not any sense of civic membership.

In contrast with the complexity of the Structural Choice theories of delegation, the theories of abdication spelled out by such authors as Fiorina present a simpler (although equally pessimistic) explanation for delegation.²⁴⁴ Taken at its strongest, Fiorina's theory of abdication not only predicts that Congress would seek to avoid responsibility for making unpopular decisions by forcing them upon the President or upon agencies, but that it would deliberately compel such agencies to create hassles for private citizens. This would force citizens to seek individual assistance from their Congressman, thus helping him build popularity and personal loyalty among his constituency. Of course, this personal loyalty to individual Congressmen would come at the expense of dislike for the executive branch, but Congress has little reason to concern itself with this.

The strong version of Fiorina's abdication hypothesis has a difficult time making the leap from agency delegation to advisory committee delegation. Agencies have direct power over citizens, including power over interest groups and voting constituencies. Advisory committees do not act directly upon the constituency – they merely recommend new policies, so they cannot burden private actors in red tape and force them into the waiting arms of Congressmen. Moreover, advisory committees generally include representatives of all the dominant, organized stakeholders (except in the 'embedded inefficiency' world of Moe), who according to Lowi *are* the voting constituencies for

²⁴⁴ Fiorina, Morris P. Congress, Keystone of the Washington Establishment. New Haven: Yale University Press, 1977.

most intents and purposes.²⁴⁵ Thus, delegating to a committee of interest group representatives is very much like delegating authority *back* to the constituencies which elected Congress in the first place. But then, why would a committee of interest group representatives harm its own interests? In order for the strong version of the Fiorina hypothesis to work, an advisory committee would have to be dominated by only a subset of groups that have a stake in the policy outcome, leaving at least some voting interest groups excluded – thus forcing these excluded groups to turn to Congress. But if the losing interest groups have enough power to influence policymaking through Congress because they cannot achieve representation in advisory committees, then one must ask how they failed to gain representation in advisory committees in the first place. Indeed, one would imagine that most organized voting groups manage to gain access to those policymaking venues dealing with issues they care intensely about, though this remains an empirical issue which is hotly debated.²⁴⁶

Leaving the strong version of the Fiorina hypothesis aside due to its difficulty making the transition from agency-delegation to the advisory committee setting, we instead turn to a slightly weaker version of Fiorina's hypothesis. That is, Congress, the President, and/or an agency head will appoint an advisory committee to avoid making a decision on a specific problem, to delay making a decision, or to seek a scapegoat upon which to lay the blame in case of failure. Advisory committees are a convenient way of grandstanding by claiming to be "doing something" about a problem, which actually just lays responsibility for solving an unsolvable problem upon the leaders of interest groups who most vociferously criticize the politician.

The (weak) version of Fiorina's abdication hypothesis makes the following predictions about advisory committees:

Hypothesis 1: Abdication theory predicts that Congress, an agency, or a combination of the two will create advisory committees in order to avoid addressing important problems. They will do so when potential solutions are highly unpopular or require the politician to distribute costs among antagonistic interest groups.

Hypothesis 2: Abdication committees will have generally balanced representation, in that anyone who really wants to be on the committee can find their way onto it. Such committees will not, of course, include general members of the public who are not members of an interest and organized group.

Hypothesis 3: Members of Abdication committees wield considerable political power, but tend to be so divisive that they rarely manage to use this power. This power comes in

²⁴⁵ Lowi, Theodore. *The End of Liberalism: The Second Republic of the United States*. New York: Norton, 1979.

²⁴⁶ Two classic statements are Dahl, Robert B. *Who Governs?* New Haven, Yale University Press, 1962. And Mills, C. Wright. *The Power Elite*. New York: Oxford University Press, 1956. This debate has gone back and forth over the years, and has only increased in intensity since the expansion of legal standing, allowing public interest and broadly representative groups to litigate on issues of communal concern. See Stewart, Richard B. "The Reformation of American Administrative Law." *Harvard Law Review*. 1975, Vol. 88, p. 1667.

two forms - first, through Congress via the interest groups that send members to the advisory committee, and second, through the credibility and legitimacy that emerges from the committee's position as a lawful and balanced vehicle for interest representation. The advisory committee is a vehicle for direct interest representation and negotiation, but lacks the institutional structure to make difficult, controversial decisions unless broad agreement can be reached (which is unlikely).

Hypothesis 4: Creators of Abdication committees prefer open meetings, since this immunizes them against charges of bias in the outcome. They do not really care if openness hinders deliberation and decision-making within the committee; indeed, in so far as openness hinders the decision-making process, politicians desire it. The longer it takes for the committee to produce any output, and the weaker that output is and the less the politician suffers when forced to implement it.

Hypothesis 5: Members of abdication committees recognize the problems caused by openness, and should feel ambivalently about it. On the one hand, they recognize how much it may hinder the process. But on the other hand, they value openness for the guarantee it offers against hostile bias and the publicity it brings to issues on the table.

Hypothesis 6: Abdication committees often require considerable staff support to coordinate the discussions and negotiations. However, the agency has little incentive to provide this staff support, particularly if it is using the committee to avoid taking action. If the agency does provide staff support, it will do so to influence the outcome in a direction it favors, and thus use the legitimacy of the advisory committee to support its own position.

Hypothesis 7: Creators of Abdication committees would try to force committees to use inclusive, consensual voting procedures within the committee in order to insure that no group suffers excessively and blames the politician for their loss. The committee's reports would thus tend to be rather weak and watered down, and often inconsequential, even if (or perhaps because) individual stakeholders feel very strongly on the issues the committee is addressing. Individual stakeholders are not willing to make small sacrifices in the name of the bigger picture without promise of side payments or future compensation. The inclusiveness of such procedures would tend to enhance the committee's credibility when it does reach decision, but would severely limit the scope of issues on which the committee could reach decisions due to the consensus requirements. If such inclusive procedures hinder and slow down the committee process, the politician will further welcome this delay.

Hypothesis 8: Members of Abdication committees serve on advisory committees to represent the interests of their employers or special interest groups. Although they may behave like members of deliberative democracy committees from time to time, they do so only due to pluralistic pressures, not any sense of civic membership.

In the simple Abdication committees we just described, bargaining among members of an advisory committee becomes a dominant pattern of behavior due to the politician's refusal to assert any leadership. In the fourth theory outlined in this cell, which we label corporatism or neo-corporatism, bargaining among stakeholders becomes the dominant pattern of behavior because advisory committees are deliberately designed with this in mind.

Theories of Neo-Corporatism have historically focused on one area of government in particular, and have received considerably more attention in Europe than in the United States. They argue that most of the conflict within government emerges out of a single issue – the labor-management divide. Rather than allowing this singular issue to paralyze the political process, policy makers will shunt it aside into a different forum. The general format of this forum is a committee, or set of committees, composed of representatives of industry and labor, with the government as neutral arbiter. In exchange for granting participants a role on these powerful corporatist bodies, the participants agree to help enforce corporatist policies on their members and preserve industrial peace.²⁴⁷

Although often referring to the specific institutional structures used to manage labor-management conflicts in industrialized democracies, some definitions of corporatism offer a broader interpretation. For instance, Phillippe Schmitter labeled a state corporatist if it organized interests into “a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognized or licensed, (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and particular of demands and support.”²⁴⁸ Crouch and Dore (1990) defined an arrangement as corporatist if it was “an institutionalized pattern which involves an explicit or implicit bargain... between some organ of government and private interest groups... one element in the bargain being that the groups receive certain institutionalized or *ad hoc* benefits in return for guarantees by the groups' representatives that their members will behave in certain ways...”²⁴⁹

In the context of advisory committees, both definitions of corporatism could apply. Certainly, the Department of Labor, OSHA, and the Department of Commerce have several committees whose function partly consists in helping negotiate compromises between industry and labor. Also, various agencies such as Energy, Defense, EPA, SEC, and FCC include committees whose function is partly to negotiate outcomes among various members and the government. At the extreme, these committees are specifically designed with policy negotiation as their primary purpose, and come under the jurisdiction of the Negotiated Rulemaking Act of 1990.²⁵⁰ While few in number (only

²⁴⁷ Lehbruch, Gerard. “Concertation and the Structure of Corporatist Networks,” in Order and Conflict in Contemporary Capitalism. Edited by John H. Goldthorpe. Oxford Press, Clarendon, 1984.

²⁴⁸ Schmitter, Phillippe. “Still the Century of Corporatism?” Review of Politics. Vol. 36, No. 1, pp 85-131.

²⁴⁹ Colin Crouch and Ronald Dore. Corporatism and Accountability: Organized Interests in British Public Life.

²⁵⁰ The 1990 NRA outlined the rules governing neg-reg committees through 1995, and was later extended by the Administrative Dispute Resolution Act of 1996.

1% of the total in 1998), these committees have become rather popular among high ranking officials in the Clinton Administration, prompting OMB circular A-135 and Executive Order 12838 to favor such committees by exempting them from the overall restrictions on the number of discretionary FACA committees.

Regulatory Negotiating (Reg-Neg) committees probably come closest to approximating corporatist bodies. Under the NRA, rules negotiated in good faith by a Reg-Neg body, in which the agency is merely one of several participants, must be used by the agency as its *initial* proposed rule. This sort of policy initiating function is decidedly undemocratic in that it excludes anyone not on the committee from the first draft of the rule. As at least one legal scholar notes, “The conflict between public choice theory and a public interest concept of regulation is obvious.”²⁵¹

Yet in spite of the recent spate of legislative and executive support for Reg-Neg committees, they do not fully qualify as corporatist bodies. First, no FACA committee has the last word on proposed policies – even rules making it through Reg-Neg committees must go through at least one round of traditional, APA-style notice and comment procedures before taking effect. Second, no FACA committee – not even a Reg-Neg committee – can directly issue rules. The Non-Delegation Doctrine, weakened though it is after several decades of judicial deference to agencies, continues to forbid delegation of any policy-making authority to a body of private individuals.²⁵² Third, the court has failed to truly enforce the NRA requirement that agencies adopt the negotiated rule as the initial proposed rule. In the court’s own words, “the soundness of that advice to the agency, however great, cannot impair its legal right to make such changes.”²⁵³

Thus, one must question the appropriateness of applying corporatist theory to advisory committees, but one cannot yet exclude it. There may be mechanisms other than legal authority, such as credibility and decision-making costs, which compel or at least strongly encourage an agency to enact a committee’s preferences into a rule, either in whole or in part. But in general, we are considering here a somewhat weakened version of Corporatism, which we call Quasi-Corporatism.

Quasi-Corporatist theory makes the following predictions about advisory committees:

Hypothesis 1: Quasi-Corporatist theory predicts that Congress, an agency, or a combination of the two will create advisory committees in order to co-opt major stakeholders into the decision-making process, and thereby facilitate the negotiation of mutually acceptable outcomes and deflect hostility toward Congress or the agency.

²⁵¹ Funk, William. “Bargaining Toward the New Millenium: Regulatory Negotiation and Subversion of the Public Interest.” Duke Law Review. Vol. 46, Page 1351. April 1997.

²⁵² Clark, Gabriel. “The Weak Non-Delegation Doctrine and American Trucking Associations v. EPA.” Brigham Young University Law Review. 2000, No. 627. Clark notes that although the Supreme Court has backed away from the strong delegation doctrine, but still upholds a weaker version that requires Congress to include some “intelligible principle” in authorizing an agency to promulgate rules. Delegating to private bodies remains strictly unconstitutional – Congress cannot cede its authority to create law to another group.

²⁵³ Funk (ibid), citing Natural Resources Defense Council, Inc. v. EPA, 859 F.2d 156 (D.C. Cir. 1988).

Hypothesis 2: Quasi-Corporatist committees will always have very carefully balanced representation, in which the government has a pivotal role in the outcome. Balance implies a very narrowly construed balance between organized stakeholder groups, not balance in any larger sense of the word.

Hypothesis 3: Members of Quasi-Corporatist committees wield considerable political power. Effectively, they engage in self-regulation, save that the inclusion of all interested and organized parties prevents excessively re-distributive regulatory outcomes. This power comes from three sources: First, through Congress via the interest groups that send members to the advisory committee. Second, through the credibility and legitimacy that emerges from the committee's position as a lawful and balanced vehicle for interest representation. And third, through the leverage that members of the committee have in securing concessions from their own interest groups. The advisory committee is a vehicle for direct interest representation and negotiation; unlike Abdication committees, Quasi-Corporatist committees do have the institutional infrastructure to make and (with the help of agencies and Congress) enforce controversial and difficult policies.

Hypothesis 4: Creators of Quasi-Corporatist committees do not care whether the committee has open or closed meetings, so long as they don't have to deal with the problems they have delegated to the committee.

Hypothesis 5: Members of Quasi-Corporatist committees prefer closed meetings to facilitate dialogue and negotiation, but recognize that closed meetings have a political cost. Closed meetings potentially harm the credibility of committee members within their own stakeholder communities. Quasi-Corporatist committees might therefore seek a semi-open process that allows outside members of stakeholder groups to observe the general process, but not the details of the negotiations.

Hypothesis 6: Quasi-Corporatist committees often require considerable staff support to coordinate the discussions and negotiations. Agencies have every incentive to provide this support to ensure that negotiations do not break down and that an acceptable outcome is reached. They may use this influence to push the agency's viewpoints and interests from time to time.

Hypothesis 7: Creators of Quasi-Corporatist committees would tend to adopt a tri-partite (or multi-partite) voting structure within committees, in order to encourage consensual decision-making. However, they would leave the agency with a swing vote in order to deny any single group a veto power over negotiations. This swing vote helps the agency force members into some sort of consensus, but threatening to side with cooperative parties. Once decisions are made, an agency would tend to implement them faithfully in order to avoid further criticism from Congress and the stakeholder groups involved.

Hypothesis 8: Members of Quasi-Corporatist committees serve on advisory committees to represent the interests of their employers or special interest groups. Although they

may behave like members of deliberative democracy committees from time to time, they do so only due to pluralistic pressures, not any sense of civic membership.

The last theoretical perspective trying to explain policy-initiating delegation in high conflict, participatory environments comes directly out of the rational choice literature, and specifically from Arrow's vote cycling dilemma. Kenneth Shepsle's work on using institutional structures as a solution to Arrow's Impossibility Theorem suggests that democratic decision-making bodies may cede formal agenda control to an agent in order to avoid preference cycling.²⁵⁴ In short, when the balance of preferences in a voting body is insufficient to avoid coalition instability, one possible alternative to repeated vote cycling is to delegate authority for proposing a policy to a separate entity. This separate entity is called an agenda setter. Depending on the specific nature of the institution created (that is, the rules of the game), several equilibria can emerge,²⁵⁵ although some would argue that no equilibrium institutions emerge since the institutional choice super-game inherits the instability of the policy choice sub-game.²⁵⁶

Institutional Equilibrium theory relies very strongly on the formal power granted to agents by institutional rules. In other words, it predicts the existence of formal agenda setting authority. Thus, this theory applies especially strongly to the rules of parliamentary procedure used in most large voting bodies. However, Institutional Equilibrium theory does not easily accommodate a setting with weak, informal rules, such as one finds in advisory committees. An advisory committee does not have the sole authority to propose rules, does not have a veto, and does not even have the right to 'amend' rules. And yet we do find instances where the influence of advisory committees does cause rules to be proposed, and causes other rules to be significantly changed and perhaps even abandoned.

In other words, we do find instances of Agenda-Setting committees without formal agenda-setting authority. If Institutional Equilibrium theory has any explanatory power in explaining these instances, then it demands an explanation of the source of committee power within the proposed rule-making structure, and how this (often informal) committee power allows Congress or another rule-making body to evade the problem of preference-cycling. As elsewhere, Institutional Equilibrium theory relies on less tangible committee assets, such as credibility, consensus, and coordination, as the source of the committee's influence.

Institutional Equilibrium theory predicts the existences of 'Agenda-Setting' advisory committees, and makes the following predictions about them:

²⁵⁴ Kenneth A. Shepsle. "Institutional Arrangements and Equilibrium in Multidimensional Voting Models." *American Journal of Political Science*. Vol. 23, No. 1. (Feb., 1979), pp. 27-59. Also "Institutional Equilibrium and Equilibrium Institutions." In *Political Science: The Science of Politics*. Ed. By Herbert F. Weisberg. Agathon Press, Inc., New York, 1986.

²⁵⁵ Dion, Douglass. "The Robustness of the Structure Induced Equilibrium." *AJPS*, May, 1992, Vol. 36, No. 2, pp. 462-482.

²⁵⁶ Riker, William H. "Implications from the disequilibrium of majority rule for the study of institutions." *APSR*. 1980, Vol 74, pp. 432-447.

Hypothesis 1: Institutional Equilibrium theory predicts that Congress (primarily) will create agenda setting committees in order to escape Arrow's vote cycling dilemma.

Hypothesis 2: Institutional equilibrium theory offers ambivalent predications about the balance of interests on Agenda-Setting committees. If the balance of membership were to inherit the coalitional balance within the Legislature, we again face the quandary of Arrow's Impossibility Theorem. If it does not, then we must have an explanation of how the larger voting body could delegate agenda setting power to a biased institution. Again, balance in these committees typically refers to a narrow balance between organized stakeholder groups, but could easily be extended to include every conceivable notion of balance which involves the preferences (derived or not) of Congressmen.

Hypothesis 3: Members of Agenda-Setting committees wield considerable political power, but are limited by the effective veto that agencies and Congress have over their proposals. Thus, in order to influence policy, they must present a proposal which is at least as good as the status quo or any other proposed alternative on the agenda. Members of Agenda-Setting committees may wield external power through their interest groups, but institutional equilibrium theory does not address this. Credibility also has no role in institutional equilibrium theory.

Hypothesis 4: Creators of Agenda-Setting committees do not care whether the committee has open or closed meetings. Meeting openness or closure should not affect the dynamics of the committee, which ought to be dominated by rational coalition forming behavior.

Hypothesis 5: Members of Agenda-Setting committees also have no preferences for open or closed meetings for the same reason – openness or closure does not change the array of preferences or feasible coalitions.

Hypothesis 6: Agenda-Setting committees ought to require minimal staff support since decision-making is mostly a function of preference aggregation. Staff input thus has little influence on the committee's output, unless it is granted representation on the committee by the legislature.

Hypothesis 7: Like the balance of membership, the decision-making rules within Agenda-Setting committees must be specified by the creator, which yet again raises the specter of inheritance of preference cycling from the delegating body. Alternatively, one might allow for non-rational problem solving behavior within the committee in order to find a way out of the inheritability dilemma. For instance, committees (unlike large voting legislatures) might engage in direct bargaining, negotiation, or some other democratic process that only functions in small groups. Yet this would step outside the bounds of simple rationality, and require some other theory to explain.

Hypothesis 8: Members of Agenda-Setting committees serve in order to represent the interests of their employers or special interest groups. If one allows for small group

dynamics with the committee, however, they might behave more like members of Deliberative Democracy committees once they are actually appointed.

Cell 7: Purely Informative Committees

For better or worse, the political science and economics literature has produced less theory on the role of external expertise in the formulation of agency policy than on the role of private participation. However, the literature on scientific expertise *outside* of mainstream social science venues is rather large and has drawn considerable attention from lawyers, scientists, and major scientific institutions that assist the government in formulating policy. The National Research Council, for instance, has repeatedly revisited the issue of the relationship between democracy and expertise, particularly in such high-profile issues as medical research, nuclear waste disposal, environmental toxins, and high voltage power lines. In one recent study, for example, the NRC stressed the importance of an “analytic-deliberative process” that recognized non-expert concerns.²⁵⁷ It advocated a joint policy making strategy that sounds almost like scientific ‘outreach’.

Krehbiel’s work on Congressional committees stands out as one of the few political science theories of influence that specifically places value on expertise and the effort involved in processing information (rather than seeking rents by manipulating privately held information). Although Krehbiel’s theory of Informative Committees is primarily developed to explain delegation of authority by Congress to Congressional committees composed of Congressmen, it is easily extended to include FACA committees. According to Krehbiel’s theories, Congress, the President, and agencies might delegate authority (both formal and informal) to advisory committees in order to elicit work. Although often ignored in discussions about the value of advisory committees – perhaps because most advisory committee members serve on committees without compensation – the costs of operating advisory committees far understates the amount of work generated by these committees. Even a committee that meets one or two weekends a year imposes a significant burden on members who are often very prestigious, busy people. And some of the most important committees meet more often... The Clean Air Advisory Act Committee, for instance, meets four times a year for a few days each meeting, and typically requires individual members to participate through other means and gather information from their constituency to bring back to the committee. Moreover, EPA expects members of the committee to pull their weight, and looks favorably on those that do.²⁵⁸

According to Krehbiel, the influence that advisory committee members wield over policy outcomes is a type of compensation for the effort they expend in helping the agency understand key issues and build sound policies. While this may sound somewhat shady, it shouldn’t. First, the influence that many committee members receive in exchange for their advice is often not used to reward a narrow constituency. Rather, the

²⁵⁷ Understanding Risk: Informing Decisions in a Democratic Society. National Research Council. Washington D.C.: National Academy Press, 1996.

²⁵⁸ Interview on file with author.

reward that the members draw from this experience is more altruistic – it is the knowledge that one has successfully influenced US policy in a direction that he or she thinks is beneficial. Second advisory committee members (and especially scientists) often choose *not* to use their influence in a crudely self-serving manner, since this negatively affects their reputation of objectivity. Third, even if influence is wielded to serve the needs of a private interest, it is no less legitimate than influence wielded in a similar manner in Congress; nor is it necessarily harmful to the public interest if all interests or scientific viewpoints are represented and balanced.

More than any other theory presented in this discussion, Krebhiel's theory of information and influence most clearly reflects the ostensible purpose of advisory committees in government – which is to seek assistance from the best experts available in developing good policy and programs. At the same time, it supplies a solid rationale explaining why agencies would cede some degree of influence to such committees, without relying on special interest influence or a version of capture theory. Finally, Krebhiel's theory does not necessarily exclude non-experts from the policy process. Non-experts are clearly represented by Congress itself. However the theory of Informative committees does explain why a Congress representing the interests of the median American would nonetheless defer somewhat to expert opinions that diverge slightly from the median voter. To the extent that the views of experts diverge uniformly from the views of non-experts, Krebhiel predicts that Congress would enfranchise some of this divergence into policy, and he justifies this enfranchisement as a payoff for work completed by those experts. Krebhiel thus offers one possible way of blending the technocracy/democracy debate.

The following hypotheses emerge from Krebhiel's theory of Informative Committees:

Hypothesis 1: Informative advisory committees may be created by Congress, an agency, or a combination of the two, however there is little reason for Congress to mandate them into existence since agencies are unlikely to oppose using them.

Hypothesis 2: Informative advisory committees will include stakeholders as members, since they have strong incentives to invest additional effort in discovery and analysis of new information. Informative committees will include a broad-based membership, however, in order to limit the ability of committee members to manipulate private information to influence policy.

Hypothesis 3: Informative committees wield some limited political power, which results from their scientific credibility, from the credibility deriving from their balanced membership, and from the legitimacy bestowed upon them by Congress and/or the agency. Agencies willingly tolerate some amount of committee influence in order to induce members to contribute effort to the process.

Hypothesis 4: Congress and agencies should both prefer open committee meetings in Informative committees, in order to elicit as much information as possible.

Hypothesis 5: Because of the difficulty of working with non-experts in understanding complex issues, openness is likely to slow down the political process in Informative advisory committees. Moreover, scientists often express unease at the publicity shed on some of these committees (although no one I interviewed actually knew any instance in which publicity has ever kept a scientist from sounding out). On the positive side, openness should enhance legitimacy and credibility, and hinder opportunities for 'inappropriate' influence. Most members sitting on such committees should therefore value openness, though with some reservations. Nonetheless, public input would rarely contribute significantly to the final outcome due to the technical complexity of the issues involved.

Hypothesis 6: Informative committees should demand considerable staff and administrative support, but less agency resources than if the agency were to replicate the committee's work by itself. Agency participation should generally contribute to a committee's success.

Hypothesis 7: Informative committees should use consensual decision-making processes. Generally, the committee should try to resolve differences of opinion through additional research (rather than mere accommodation), but should be willing to tolerate and give voice to dissenting opinions if conflicts of opinion cannot be resolved with factual knowledge. The principal is never harmed by additional information, and procedures in the committee should encourage members to voice dissent when they strongly disagree with the majority.

Hypothesis 8: Members of informative committees should serve for a wide variety of reasons, including interest representation, professional development, and altruism, and should feel that their committee is generally effective (even if sometimes slow to reach decisions). Membership on Informative committees does confer status in some professions, as it signals that the member is recognized as an expert in his or her field at the national level.

Cell 8: Boundary Work Committees

While Krebhiel describes how expertise influences democratic institutions, Jasanoff comes at this problem from the other direction – how democracy invades scientific reasoning. Among the more famous and controversial of theorists in this field, Sheila Jasanoff has written extensively on the politicization of science.²⁵⁹ Unlike other theorists we have discussed, Jasanoff directly addresses advisory committees, but her focus remains entirely limited to technical advisory committees. Her main conclusion is that scientific advice tends to inherit the viewpoints of the scientists who offer it, and because scientists are appointed by policy-makers, the advice tends to inherit their

²⁵⁹ Jasanoff, Sheila. *The Fifth Branch: Science Advisors as Policy Makers*. Cambridge, MA: Harvard University Press, 1990.

viewpoints as well. Therefore, the real issue isn't getting the right advice or even doing good science. It's choosing the right experts to get the desired outcome.

If appointing committees were a simple game in which preferences of policy-makers, scientists, and so forth were laid out and actors chose moves in well specified stages, this would be the end of discussion. Expert committees in high conflict environments would differ very little from participatory committees in high conflict environments – there would simply be an extra layer of 'experts' that provide policy-makers with quotable statistics. This is akin to the inheritance problem in Agenda-Setting committees. But the reality is that expert advice strives for something more than mere cheap talk. It strives to explain an objective reality, even if modern critics of science admit that it cannot really achieve that.²⁶⁰ Yet even if experts cannot prove objective truth, they at least try to create reproducible evidence.

In policy terms, the existence of an objective reality implies the existence of a single objectively correct answer to some problems. Perhaps just as importantly, reproducible evidence implies that reported truths can be verified – a fact of tremendous importance. We have already noted that verifiable information is always more valuable than “cheap talk” to all actors in the process, and always produces better policies in expectation.²⁶¹ Moreover, objective standards of truth (if they exist) and verifiable information can help Congress and agencies specify less biased cost and benefit functions if one could agree on a standard of measurement – though choosing such a standard is an admittedly subjective endeavor.²⁶²

The problem, however, is that not all scientists strive to identify and objective reality. Some will strive to influence policy in preferred directions. Perhaps they have strong ideological opinions, and may not even be aware how their opinions are biasing their work. Other scientists may actively defend their own sub-fields in order to protect their work and that of their colleagues and students. And in the worst cases, such as in the cigarette industry, scientists will simply 'sell out' by deliberately misinterpreting or falsifying data. So in the end, the politics of the situation can both noise and bias to the science.

The problem for policy makers, claims Jasanoff, is drawing a line between the science and the politics. At some point, someone has to declare something true (or “likely”), and something false (or “unlikely”). Since the definition of the truth often determines or strongly influences the choice of the best policy, the fight over policy often becomes a fight over drawing lines. Jasanoff calls this task “Boundary Work”. It consists of drawing the boundaries between science (which is supposed to be neutral, unbiased, and objective) and policy advice (which contains several political biases).

²⁶⁰ Kuhn, Thomas S. The Structure of Scientific Revolutions. Chicago: University of Chicago Press, 1970.

²⁶¹ As we have already pointed out, even agents prefer to commit to verifiable information when they are even slightly risk averse. With verifiable signaling, a principal can extract full information, and risk averse agents prefer more accurate and biased policy than less accurate and biased policy.

²⁶² Understanding Risk: Informing Decisions in a Democratic Society. National Research Council. Washington D.C.: National Academy Press, 1996.

“Boundary Work” involves deciding where the science ends, and the construction and deconstruction of scientific arguments begins.

Jasanoff’s notion of Boundary Work offers a stern warning to those favoring technocratic solutions to political issues – you can take the science out of politics, but you can’t take the politics out of science. This is particularly true in controversial committees whose advice affects powerful, conflicting interest groups.

Jasanoff’s theory of Boundary Work offers the following hypotheses about advisory committees:

Hypothesis 1: Boundary Work advisory committees may be created by Congress, an agency, or a combination of the two. When creating such committees, Congress is more likely to mandate them than merely authorize them if it seeks to use such committees to influence the outcomes of agency policies.

Hypothesis 2: Boundary Work advisory committees should have biased memberships, deliberately stacked by the committee’s creator with members favoring his or her position. However, the creator of the committee does face a tradeoff between credibility and favorable membership, as with other types of advisory committees. Ideally, a committee’s creators want to bias the committee without appearing to bias the committee.

Hypothesis 3: Boundary Work committees wield some limited influence, which results from their scientific credibility and the legitimacy bestowed upon them by Congress and/or the agency. In so far as biased membership impairs their credibility, however, the committee loses credibility.

Hypothesis 4: Although closed meetings may facilitate Boundary Work committees in arriving at preferred outcomes, closed meetings also impose a heavy cost on the committee’s credibility. Thus, Boundary Work committees face a tradeoff in choosing between open and closed meetings.

Hypothesis 5: Since Boundary Work committees are typically created in controversial issue areas, openness tends to slow down the committee process because of the difficulty non-experts may have in understanding complex issues. Moreover, openness tends to hinder committees with biased membership from pursuing biased goals. Thus, experts sitting on Boundary Work committees are doubly likely to complain about open meetings. On the other hand, they should realize the value of openness for enhancing credibility, and take this into account.

Hypothesis 6: Boundary Work committees should demand considerable staff and administrative support, but less agency resources than if the agency were to replicate the committee’s work by itself. If the committee’s creator manages to stack the membership, then staff support should generally contribute to (the members perceptions of) a committee’s success if the agency created the committee, and hinder perceptions of success of a committee was mandated by Congress.

Hypothesis 7: Boundary Work committees should strive for consensus, since this enhances the credibility of the committee's recommendations, but should have difficulty obtaining it. Attempts to resolve differences of opinion through additional research will be of limited value since members will typically seek to arrange facts to fit their beliefs and interests rather than changing beliefs to fit facts. At some point, however, the data may achieve a point of clarity that admits a final truth which even the most creative of scientists cannot challenge.

Hypothesis 8: Members of Boundary Work committees should serve primarily to represent favored interests and enhance their professional development, and they should feel that their committee is generally effective (even if sometimes slow to reach decisions). Membership on Boundary Work committees does confer status in some professions, as it signals that the member is recognized as an expert in his or her field at the national level.

Conclusion

From time to time, the advisory committee system in the United States has been called a many-headed hydra. The literature on bureaucratic politics has similar attributes. Recognizing the strange congruence, this paper set out with the Herculean task of matching the heads of one beast to those of the other.²⁶³ The purpose of this task was two-fold:

First, to better understand a unique institution in American democracy that is becoming increasingly important as society becomes ever more dependent on increasingly complex and diffuse scientific and non-scientific information. Advisory committees are poorly understood and heavily used. They have enormous potential to enhance democratic participation in our heavily bureaucratized government. They offer a mechanism for gathering and analyzing complex information that is virtually unmatched in cost-effectiveness and excellence. In addition, they offer a mechanism to seek and transmit credible information that biased political actors cannot achieve alone.

Second, our efforts to match theory with types of committees have a broader application. Advisory committees have served as a lens to better structure and categorize a bewildering array of competing theories about political behavior in administrative agencies. Most political theories have taken a look at limited issues within the context of a single relationship: Congress and Congressional committees, Congress and agencies, agency heads and Career personnel, special interest groups and agencies, etc. Some authors have then claimed a broader application of their theories, without really investigating the aspects of the theory that made it work within its native terrain. Since advisory committees sprawled around government as much as these political theories,

²⁶³ Pray, let there be no stables to clean before I graduate.

they serve as an excellent tool for identifying and categorizing their underlying assumptions.

That said, we might take a step back and ask exactly what we are talking about when we compare theories to advisory committees. Broadly speaking, advisory committees are only one specific type of a broader information gathering mechanism – third party advisors. True, they have unique characteristics. For instance, they are regulated by FACA and they have several members, and these qualities endow them with attributed like bias (or unbiasedness) and credibility. But essentially, they are third party information brokers with no direct power over government institutions and actions. When we attempt to explain the existence and operation of advisory committees, we are also trying to explain how government uses all types of outside advisors. More deeply, we are trying to understand the role that information plays in formulating good policy and in structuring patterns of influence.

In recent years, the field of public administration has suffered a tremendous blow as cynical theories of influence have challenged our faith in government's ability to provide needed services such as public education and environmental regulation. Critics have contended that opacity, transaction costs, and complex administrative tasks have undermined democratic processes. This cynicism has caused some scholars to ask the question, "Can the Government Govern?"²⁶⁴ Theories of run-away-bureaucracy, inefficiency by design, and various types of capture have plagued anyone trying to build new government programs or even defend existing, highly successful programs. These cynical theories have grown ubiquitous in the literature, yet most of them have focused on simple two-party relationships. Almost none have adequately addressed the role of third party information brokers.

Applying existing theories of bureaucratic politics to advisory committees, we immediately notice that the cynical theories have a very difficult time explaining the existence of advisory committees, while the more optimistic theories can easily explain them. How can 'Lock-In' advisory committees exist if they have no power? Why would the Sunshine Act and other disclosure laws exist if capture was the aim of most advisory committees? Why would any balanced membership requirement exist if a committee's creators actively sought biased advice? Theories of Deliberative Democracy and Fire Alarm Oversight easily accommodate advisory committees, as do the simple explanation that FACs are primarily informative. How can we explain this trend toward optimism in advisory committees?

The answer lies in their role: providing advice. Advice is information, and the value of information rests in two characteristics – precision, and credibility. Noisy and untrustworthy information are not valuable to anyone, and the only way to make this information valuable is to enforce administrative processes that enhance competence and fairness: expert membership, balance, open meetings, access to records, public notice, and so forth. The same holds true when Congress delegates to agencies, but when

²⁶⁴ Chubb, John and Paul Peterson, eds. Can the Government Govern? Washington, DC: The Brookings Institution, 1989.

Congress delegates formal power it may also use administrative procedures to control that power, thus causing inefficiency and bias. Advisory committees do not confront this problem.

But without formal power, what is the point of studying advisory committees? Again, I answer that information confers influence, but *only to the extent it is precise and credible*. Thus, political actors who want to create biased advisory committees can do so, but only by creating untrustworthy ones. Congress and agencies thus face a tradeoff between credibility and control, and thus between useful information and preferentially biased information.

In addition, as the world becomes more complex and information becomes more crucial to government's tasks, the precision of information becomes increasingly important. As this happens, risk-averse Congressmen and administrators will demand more useful information. That means more credible and precise information. Lack of confidence over credibility essentially translates into more noise. Thus, *as society becomes more complex and accurate information more necessary, political actors are more likely to use process controls to enhance the credibility of advisory committees*. Pleasantly, credibility enhancing process controls (openness, balance, consensus, etc.) also tend to encourage democratic virtues.

In short, when we take into account the role of credibility-enhancing administrative procedures in controlling third party information brokers, democratic values actually improve as information becomes more complex.

Second Paper:

Transparency and Capture in Federal Advisory Committees

By

Kevin D. Karty

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Abstract

This paper uses data gathered on federal advisory committees over the last 28 years to test for a relationship between special interest group influence and opacity in the administrative process. Specifically, it looks at group affiliation of advisory committee members, committee authorization, and meeting closure in advisory committees in 1998, and at the relationship between committee authorization and meeting closure from 1997-2000. Using this data, it sets up and runs a horse race between three distinct versions of capture theory: Congressional Capture Theory, Agency Capture Theory, and Iron Triangle Theory. It finds some support in the aggregate for Iron Triangle Theory, but then isolates the source of this support entirely to committees in DOC and USDA. It further identifies clear differences in the relationship between authorization, industry group membership, and meeting closure across different agencies, suggesting that different theories of interest group influence may have more or less explanatory power in different agencies. Finally, it expands the findings to historical data using agency-aggregated numbers from spanning from 1974 to 2000, and discovers that present patterns of authorization and closure changed drastically in the six years since 1994, over which time the number of closed meetings tripled.

Introduction

Beginning in the early 1970s, the Harris Polls track a stark decline in the percentage of the US voting age population that expressed a “great deal of confidence” in the federal bureaucracy from over 40% in 1966 to under 10% in 1996.²⁶⁵ Most people have come to see government as an inefficient bureaucracy dedicated to serving big interests who look out for themselves.²⁶⁶ Yet in spite of this, US citizens often see few alternatives to state action, and continue to place strong demands on the federal government.²⁶⁷

²⁶⁵ Harris Poll Data compiled from annual Harris Poll data posted at University of South Carolina, Chapel Hill online statistical database. This data is corroborated by NES data on similar questions.

²⁶⁶ NES data. See Nye, etc. for graphs.

²⁶⁷ In the Harris polls, we observe a nearly identical drop in confidence in ‘Big Business’ during the same 30 year period.

In academia, scholars have likewise expressed doubt about government's ability to serve the common good effectively and fairly. Two primary lines of argument have eroded the once-dominant public interest paradigm of government administration: self-serving agencies and special interest capture. Sadly, the remedies for each of these problems tend to exacerbate the other problem.

Niskanen first brought widespread attention to the issue of self-serving agencies. Unlike Weber, who credited bureaucratic expertise as a source of efficiency, Niskanen argued that bureaucracies used their knowledge to extract rents from Congress and the public. The typical response to this problem was more intense oversight by Congress, but this becomes increasingly costly as information grows more complex. Alternative oversight mechanisms involved enlisting private actors to subsidize the cost of oversight, a method that has since been nicknamed "fire-alarms", in contrast to traditional "police-patrol" style oversight.²⁶⁸

Fire-alarms are no free lunch, however. An old and distinguished literature warns us about the threat of co-optation of bureaucratic agencies by private interest groups, in which agency dependence on cooperation by interest groups leads to the development of patron-client relationships.²⁶⁹ In more recent work, scholars have turned their attention from 'capture through co-optation' to 'capture through legislation'.²⁷⁰ In the most extreme cases, Congress may even empower privileged interest groups with direct or indirect control over an agency, effectively abdicating some of its own power.²⁷¹

Typical responses to the threat of capture have focused on rules – election campaign rules, reporting rules, transparency rules, *ex parte* contact rules, and so forth.²⁷² Yet these rules can grow hideously costly.²⁷³ In the agencies themselves, costly rules have a name – red tape – and are hated by agency personnel. The National Performance Review, for example, blamed the excessive red tape in government on a monitoring system that encouraged mediocrity rather than risk-taking, and was pre-occupied with

²⁶⁸ McCubbins, Mathew and Thomas Schwartz. "Congressional Oversight Overlooked: Police Patrols vs. Fire Alarms." American Journal of Political Science. 1984. Vol. 28: 165-179.

²⁶⁹ Herbert Kaufman. The Forest Ranger: A Study in Administrative Behavior. Baltimore: John Hopkins Press, 1960. Also see Selznick, Phillip. TVA and the Grassroots: A Study In the Sociology of Formal Organization. Berkely: UC Press, 1949.

²⁷⁰ Stigler, George. "The Theory of Economic Regulation." Bell Journal of Economics and Management Science. Spring, 1971. Downs, Anthony. An Economic Theory of Democracy. New York: Harper, 1957. Peltzman, Sam. "Toward a More General Theory of Regulation." Journal of Law and Economics. Vol. 19, p. 211, 1976. Posner, Richard A. "Theories of Regulation." Bell Journal of Economics and Management Science. Vol. 5, 1974.

²⁷¹ Moe, Terry. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." In Oliver E. Williamson, ed. Organization Theory: From Chester Barnard to the Present and Beyond. 1990, Oxford University Press, NYC.

²⁷² Kerwin, Cornelius. Rulemaking: How Government Agencies Write Law and Make Policy. Washington, D.C.: CQ Press, 1999.

²⁷³ Chubb, John and Paul Peterson, eds. Can the Government Govern? Washington, DC: The Brookings Institution, 1989.

avoiding scandal.²⁷⁴ Moreover, rules are no guarantee of virtue. Administrative procedures are frequently used as control instruments, and their impact depends on who wrote them and why.²⁷⁵

Complexity and The (Worsening?) Tradeoff Between Fairness and Efficiency

Many observers note that we are asking federal agencies to solve increasingly complex problems, placing very high information and coordination demands on them.²⁷⁶ The apparent inability of agencies to meet these demands has been widely recognized as a “crisis of competence” that has only exacerbated the already severe crisis of confidence.²⁷⁷ In seeking the roots of this crisis of competence, many scholars have begun by comparing government agencies to private firms. They first note that both institutions face difficult principal-agent problems.²⁷⁸ Government, however, faces additional problems. The key thing to note about the following list of problems is that *all of them become worse as information grows more complex*:

First, the sheer size of federal agencies exacerbates standard principal agent problems.²⁷⁹ Second, agencies often face organizational adversaries which devote

²⁷⁴ “In Washington’s highly politicized world, the greatest risk is not that a program will perform poorly, but that a scandal will erupt. Scandals are front-page news, while routine failure is ignored. Hence control system after control system is piled up to minimize the risk of scandal. The budget system, the personnel rules, the procurement process, the inspectors general—all are designed to prevent the tiniest misstep. We assume that we can’t trust employees to make decisions, so we spell out in precise detail how they must do virtually everything, then audit them to ensure that they have obeyed every rule. The slightest deviation prompts new regulations and even more audits.” Office of the Vice President. National Performance Review: Introduction. 1993.

²⁷⁵ McCubbins, Mathew D., Roger G. Noll and Barry R. Weingast. “Administrative Procedures as an Instrument of Political Control.” Journal of Law, Economics, and Organization. 1987. Vol. 3: 243-277.

²⁷⁶ Pressman, Jeffrey L. and Aaron Wildavsky. Implementation: How Great Expectations In Washington are dashed in Oakland. Especially chapter 5, “The Complexity of Joint Action.” University of California Press, Berkeley, 1973.

²⁷⁷ Sundquist, James L. “The Crisis of Competence in Our National Government.” Political Science Quarterly. Vol. 95, No. 2. Summer, 1980. Sundquist traces the ‘malaise’ of opinion in the U.S. to a lack of competent leadership caused by the disintegration of parties and the lack of a screening mechanism to select competent leaders into the nation’s political elite.

²⁷⁸ For an overview of incentives in organizations, see Gibbons, Robert. “Incentives in Organizations.” Journal of Economic Perspectives. 1998, Vol. 12, No. 4, pp. 115. Seminal works in this vein include: Alchian, Armen A. and Harold Demsetz. “Production, Information Costs, and Economic Organization” The American Economic Review. Vol. 62, No. 5. (Dec., 1972), pp. 777-795. Holmstrom, Bengt. “Moral Hazard and Observability.” Bell Journal of Economics. 1979, Vol. 10, Pp. 74-91. Milgrom, Paul and John Roberts. “Chapter 6: Moral Hazard and Performance Incentives.” Economics, Organization and Management. Englewood Cliffs, New Jersey: Prentice Hall, 1992. All of these works essentially propose a contract-based, rational actor theory of the firm in which transaction costs (or information costs, or imperfect contracting... which amount to the same thing) prevent optimal contracts from being reached between a principal and an agent.

²⁷⁹ For an overview of incentives in organizations, see Gibbons, Robert. “Incentives in Organizations.” Journal of Economic Perspectives. 1998, Vol. 12, No. 4, pp. 115. Seminal works in this vein include: Alchian, Armen A. and Harold Demsetz. “Production, Information Costs, and Economic Organization” The American Economic Review. Vol. 62, No. 5. (Dec., 1972), pp. 777-795. Holmstrom, Bengt. “Moral Hazard and Observability.” Bell Journal of Economics. 1979, Vol. 10, Pp. 74-91. Milgrom,

considerable resources to preserving asymmetric information that advantages them.²⁸⁰ Third, agencies report to multiple principals with conflicting goals.²⁸¹ Fourth, agencies often have time horizons that are shortened by electoral cycles, leading to short-sighted investment of resources.²⁸² Fifth, firms face additional organizational rigidities created by the agency's designers to lock in policy preferences.²⁸³ Sixth, agencies lack a clear measure of success (like money), and instead resort to imprecise measures of a 'common interest' that differs from person to person.²⁸⁴ Seventh, public agencies are subject to much stricter legal limits on activities in order to preserve constitutional rights of citizens and prevent abuse of power.²⁸⁵ Eighth, public agencies cannot easily ignore negative externalities of their behavior.²⁸⁶

Against this mass of factors working against the state, public agencies have one overwhelmingly important advantage – the power to coerce. Yet this power is a double edged sword, for many of the current procedural constraints on agency action exist to prevent abuse of the agency's power.²⁸⁷ To make matters worse, the very constraints that prevent *abuse* of power also inhibit the efficient and proper *use* of power. Thus we have the great conundrum in public policy: creating a government that is responsive to the public interest and the public's needs, but independent from particularistic social pressures. Scholars have had great difficulty designing institutions that can do the former without also doing the latter.²⁸⁸

Paul and John Roberts. "Chapter 6: Moral Hazard and Performance Incentives." Economics, Organization and Management. Englewood Cliffs, New Jersey: Prentice Hall, 1992. All of these works essentially propose a contract-based, rational actor theory of the firm in which transaction costs (or information costs, or imperfect contracting... which amount to the same thing) prevent optimal contracts from being reached between a principal and an agent.

²⁸⁰ Laffont and Tirole spend most of a textbook analyzing regulatory models designed to overcome asymmetric information. A Theory of Incentives in Procurement and Regulation. Laffont, Jean-Jacques and Jean Tirole. 1994, MIT Press, Cambridge MA.

²⁸¹ Terry Moe discusses the problems with implementing principal-agent theory directly from economics in his 1984 article. Moe, Terry S. "The New Economics of Organizations." American Journal of Political Science. November 1984.

²⁸² Dornbusch, Rudiger and Sebastian Edwards. Macroeconomics of Populism in Latin America. 1991, University of Chicago Press, Chicago and London.

²⁸³ Moe, Terry. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." In Oliver E. Williamson, ed. Organization Theory: From Chester Barnard to the Present and Beyond. 1990, Oxford University Press, NYC.

²⁸⁴ James Q. Wilson devotes an entire chapter to 'Beliefs', and the way they affect performance. Wilson notes that "Experience, professionalism, and ideology are likely to have their greatest influence when laws, rules, and circumstances do not precisely define operator tasks." Wilson, James Q. Bureaucracy: What Government Agencies Do and Why They Do It. 1989, Basic Books, Inc. This is merely an extension of general observations about cognitive behavior describing how dependent people are on 'paradigms' and 'categories' when lacking formal, precise characteristics (like profit) to base decisions on.

²⁸⁵ The US Constitution and Bill of Rights are premier examples.

²⁸⁶ This should be taken to refer to political accountability, but it may also refer to financial accountability. For instance, public agencies cannot declare bankruptcy to avoid obligations.

²⁸⁷ The Bill of Rights, for instance. The APA, FOIA, Privacy Act, Sunshine Act, Paperwork Reduction Act, and so forth are other examples.

²⁸⁸ The "checks and balances" system of the US Constitution is one famous attempt to solve the problem of interest group dominance (or "Factions" in Madison's terminology). Civil Service Reform is another famous attempt to fix government, this time focusing more on patronage and individual corruption. Faction dominance and corruption are both aspects of the same endemic problem, but we appear to have had more

Peter Evans has concisely summarized this paradox in his phrase 'embedded autonomy'. This notion extends beyond the developmental state, where it is more widely recognized. All states encounter dual and opposing needs: First, for close ties to social groups in order to facilitate the creation and implementation of effective policy, and second, for isolation from social pressures in order to avoid capture by social groups and corruption of officials. "The problem," Evans notes, "is separating the benefits of insulation from the costs of isolation."²⁸⁹ Evans' language focuses the spotlight directly on the core of the problem: We desire institutions that can *remain free of inappropriate influence* from social forces, and yet *extract information from society* and *exert limited power* upon it. At the same time, however, we also want institutions that are *responsive to appropriate influence*,

To make matters worse, Evans' dilemma intensifies as information becomes more complex for three compelling reasons. First, the increasing specialization of knowledge forces the public to delegate more tasks to Congress, and Congress to delegate more tasks to agencies.²⁹⁰ At the same time, complexity makes it difficult for the public to monitor Congress,²⁹¹ and forces Congress to yield greater discretion to agencies.²⁹² Second, as interdependencies in the economy and society grow more complex, the social costs of bad policies increase. Agencies are thus under increasing pressure to 'get it right'.²⁹³ Third, as knowledge becomes more fragmented and information becomes more diffused throughout society, agencies grow increasingly dependent on private actors to provide them with the information they need to do their jobs. Taken together, these three dynamics pose a serious threat to the creation of fair and effective agencies.

Information and "inappropriate influence" in Advisory Committees

This paper examines the tradeoff between fairness and effectiveness in an environment with complex information – specifically, in federal advisory committees. It is precisely in such an environment that we would expect to observe the worst aspects of this tradeoff. Like Congress, advisory committees serve as an *interface* between government and society, where influence and information are routinely exchanged. Moreover, advisory committees are issue specific, and work closely with federal agencies and sometimes with Congress. Thus, they are excellent vehicles for democratic

success solving corruption than factioneering. In the developing world, however, the focus often remains more on balancing the costs of corruption against the cost of bureaucratic oversight. Freedheim, S. and J. Tendler. "Trust in a Rent-Seeking World." World Development. December, 1994.

²⁸⁹ Evans, Peter. Embedded Autonomy. Princeton University Press, 1995.

²⁹⁰ Kiewett, D. Roderick and Matthew McCubbins. The Logic of Delegation: Congressional Parties and the Appropriations Process. Chicago: University of Chicago Press, 1991.

²⁹¹ ??????Rational ignorance literature – seminal work?

²⁹² Bawn, Kathleen. "Political Control Versus Expertise: Congressional Choices About Administrative Procedures." American Political Science Review. March, 1995. Vol. 89: 62-73.

²⁹³ Kremer, Michael. "The O-Ring Theory of Economic development." Quarterly Journal of Economics. Vol. 108, No. 3, August, 1993. p. 551-575. Also see Goldin, Claudia and Lawrence F. Katz. "The Origins of Technology-Skill Complementarity." National Bureau of Economic Research. Working paper 5657, July 1996.

participation in administrative government; likewise, they are precisely the sort of institutions that would facilitate capture by special interest groups.

Although not as commonly used as other government-society interfaces (such as informal notice and comment procedures under APA, and formal 'paperwork' requirements), federal advisory committees (FACs) have long been an important part of the US government.²⁹⁴ Ostensibly, most FACs exist to gather information. This simple function was best described by a 1970 Congressional report. Expounding on a phrase used in a 1957 Department of Justice report, which called advisory committees the "Fifth Branch of Government," the 1970 report wrote:

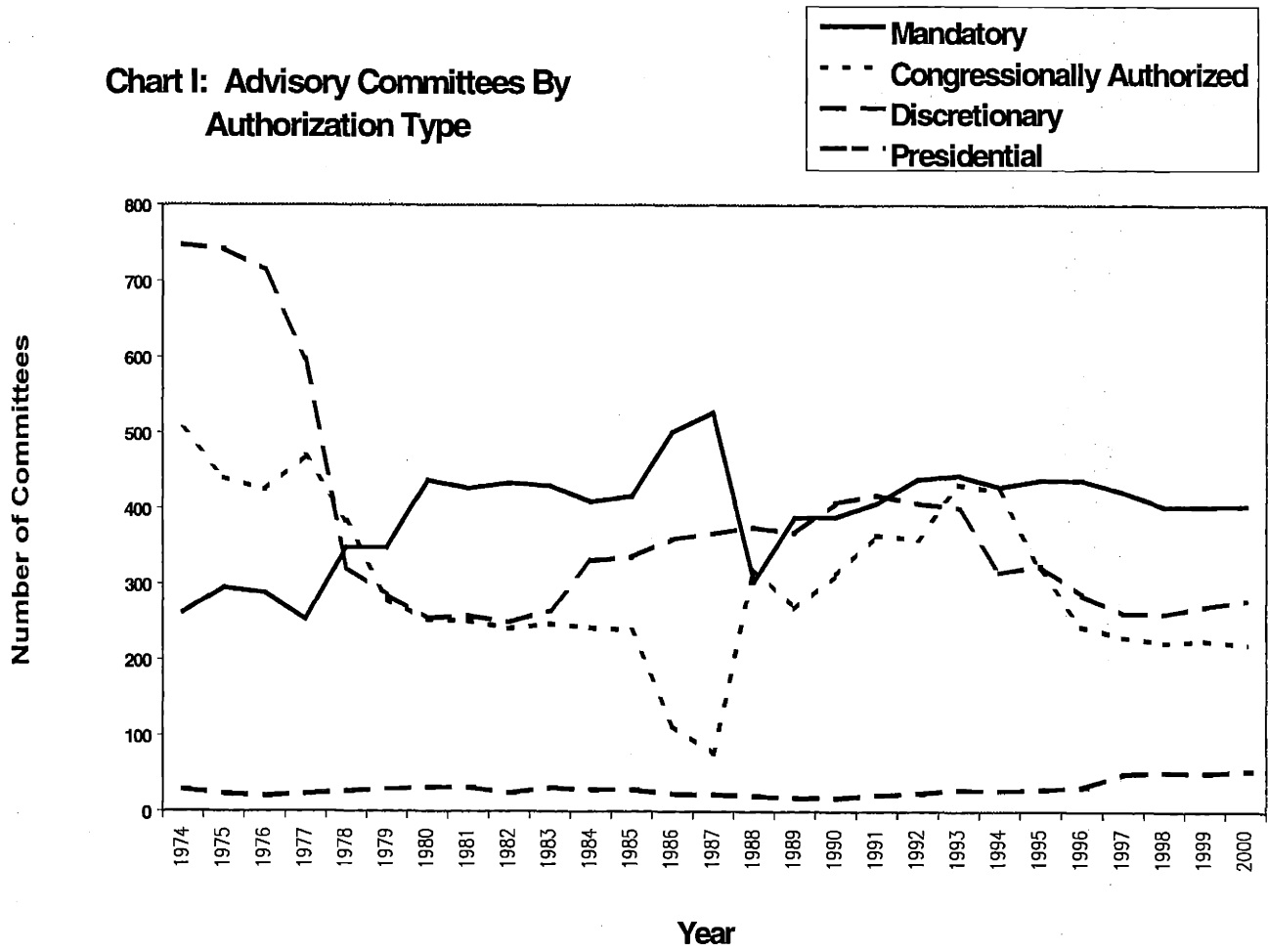
"The advisory body creates a contribution by the governed to the Government. It provides a means by which the best brains and experience available in all fields of business, society, government and the professions can be made available to the Federal Government at little cost. Our Government and leaders are continually in need of advice on a variety of problems at all times in their attempts to find answers to the problems of our increasingly diversified and complex society."²⁹⁵

As Congress and others recognized, advisory committees are an extremely flexible and diverse administrative tool for both the legislature and the executive. Thus, we observe some advisory committees that are mandated in Congressional legislation, some that are created solely by an act of agency discretion, some that are authorized by Congressional legislation but not mandated, and some that are created directly by the President. Chart 1 below illustrates the number of committees of each type over the last 28 years, since the GSA started tracking this data. Three features are notable – the sharp drop off in non-mandated committees in the middle of the 1970's as the GSA tightened the reigns on defunct and redundant committees, the shift from Congressionally authorized committees to Congressionally mandated committees in the late Reagan years, and another drop in non-mandated in the early Clinton years as GSA enforced Executive Order 12838 which set ceilings on the number of discretionary committees. Clearly, there has been substantial variation over time in the authorization patterns of advisory committees.

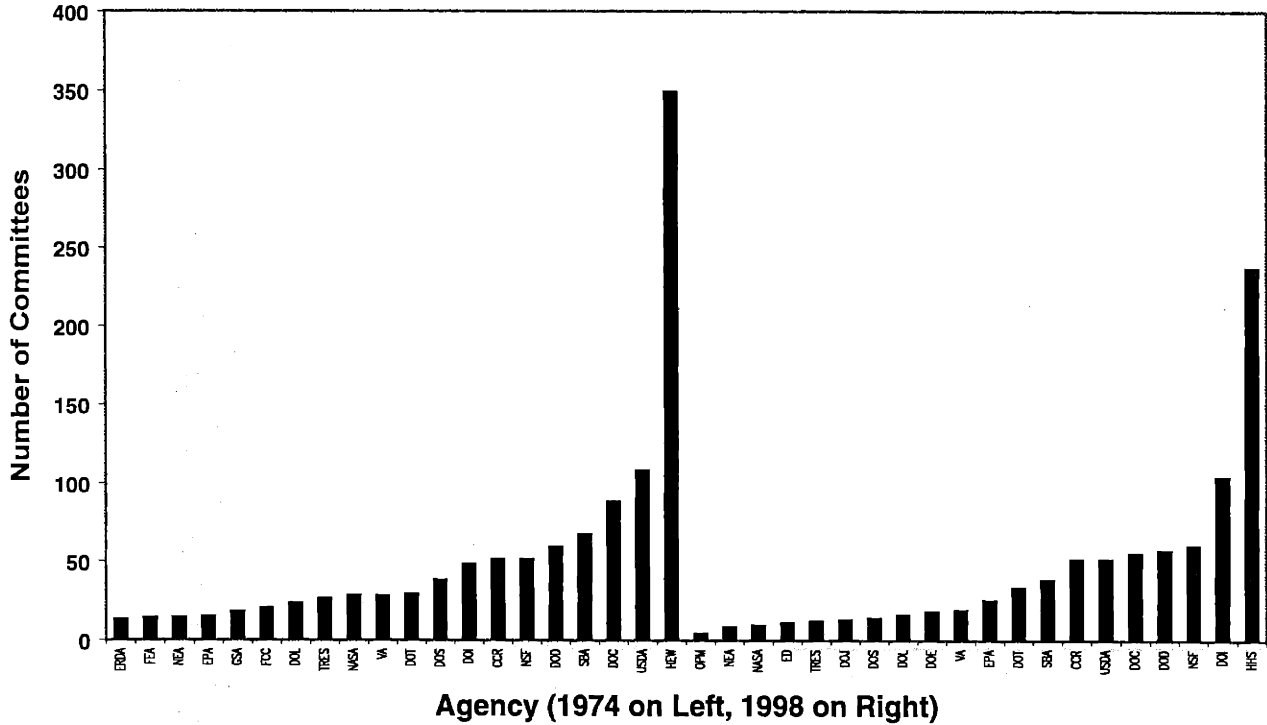
²⁹⁴ One of the first known committees dates back to George Washington, who convened it to seek a peaceful solution to the Whiskey Rebellion. Over the years, the popularity of commissions varied with the preferences and style of the president. Flitner, David Jr. The Politics of Presidential Commissions: A Public Policy Perspective. Transnational Publishers, Inc. Dobbs Ferry, NY, 1986.

²⁹⁵ House Report No. 91-1731, 91st Congress, 2d Session. "The Role and Effectiveness of Federal Advisory Committees." December 11, 1970.

Chart I: Advisory Committees By Authorization Type



**Chart II: 20 Agencies With The Most Advisory Committees:
Then and Now**



Currently, about 1,000 advisory committees exist in any given year, of which only a few dozen are temporary, ad hoc committees. Perhaps as many as fifty more are directly created by the president. The rest are long term, continuing committees that are either mandated by Congress, appointed solely by agencies, or authorized by Congress and appointed by agencies. Many, like the National Petroleum Council, have existed since World War II. Others are more recent. Some appear new, but are merely reincarnations of older committees under modern names. Old or new, however, they are ubiquitous. Advisory committees have seen consistent use in every federal department and in most of the larger agencies over the last three decades. Chart 2 ranks the twenty agencies with the most advisory committees in 1974 and 1998. The graphs demonstrate considerable continuity in advisory committee usage over time, though there are some notable changes – the reduction in the number of USDA committees, for instance.

Advisory committees are also used in several different capacities, from providing scientific advice on drug approval to managing federal lands. Chart 2 breaks down committees in 1998 by their purpose. Interestingly, regulatory negotiation committees,

which have received considerable attention both in the legal literature²⁹⁶ and by Congress and President Clinton,²⁹⁷ actually account for only a tiny fraction of all advisory committees. The rest fill other functions. The diversity of committees, and the tendency of advisory committees to have many functions, warns us to be careful in applying our standard toolbox of political theories to this highly flexible institution of government. Nonetheless, this paper attempts just that.

Although we do not have precise data before 1974, we do know that advisory committees were not particularly common prior to the Great Depression. For the most part, they were invoked by presidents, and their popularity rose and fell with the whim of the current administration. Some presidents, like Theodore Roosevelt, made extensive use of them. Others did not. A few of these commissions, such as the Brownlow Commission of 1937, have had an important and lasting effect on the history of the United States.²⁹⁸ Others faded without a trace. Yet it was not until the Great Depression and World War II that the use of advisory committees skyrocketed, with quasi-governmental committees wielding extraordinary influence over the entire economy and drawing heavy criticism from anti-New Deal forces.²⁹⁹ By some estimates, federal use of advisory committees peaked at 35,000 citizen advisory committees, many operating at a state or local level.³⁰⁰

In the Post-World War II era, much of the World War II control apparatus was disassembled, but not all of it. The apparent success of the committee system in WWII had legitimized advisory committees. They remained prolific and soon became integral to the functioning of government. For most of the early post war period, they also remained unregulated - a matter of Congressional or bureaucratic discretion.

The Department of Justice made the first serious attempt to regulate advisory committees in 1950 and again in 1957, to prevent collusive behavior by large firms which participated on industry advisory boards. The DOJ went so far as to specifically advise executive agencies against the inclusion of members of industry trade associations.³⁰¹ After the DOJ's 1957 report, Congress introduced a law similar in many ways to FACA.

²⁹⁶ The negotiated rulemaking literature began in earnest with Harter, Philip J. "Negotiating Regulations: A Cure for Malaise." Georgetown Law Review. Vol. 71, p. 30 (1982). For a (rare) empirical assessment of Reg-Neg committees, see Coglianese, Cary. "Assessing Consensus: The Promise and Performance of Negotiated Rulemaking." Duke Law Review. Vol. 46, p. 1255 (1977).

²⁹⁷ The two most prominent new rules are: Administrative Dispute Resolution Act of 1996 (ADR), Pub. L. No. 104-320, 11(a), 110 Stat. 3870, 3873.; Executive Order No. 12866, 3 C.F.R. 638, 642-43 (1994). Various other memorandums and reports have also encouraged the use of Reg-Neg committees.

²⁹⁸ President's Commission on Administrative Management. Report of the Committee With Studies of Administrative Management in the Federal Government. 1937. Among other things, the Brownlow Commission is famous for its warcry, "The President needs help!" and for using the phrase "headless fourth branch" to describe the myriad independent agencies which proliferated at that time without any guidance from the executive branch.

²⁹⁹ Levine, Richard O. "The Federal Advisory Committee Act." Harvard Journal on Legislation. 1974. Pp. 217-235.

³⁰⁰ H.R. Report No. 576. 85th Congress, First Session, 1957.

³⁰¹ Letter from Assistant Attorney General for Antitrust, Oct. 8, 1951, cited in Levine, Richard O. "The Federal Advisory Committee Act." Harvard Journal on Legislation. 1973, Vol. 10, p. 217.

The President evaded the legislation by signing executive order 11,007 in 1959, specifically regulating industry advisory boards. However, E.O. 11,007 allowed agency heads to waive the rules at their discretion. In the 1960s Congress took up Justice's cause again, but was again deterred from passing legislation by more executive promises to reform the advisory committee process. The Bureau of the Budget (predecessor of the OMB) failed to carry through, however, and advisory committees proliferated in an unregulated manner.

The issue of advisory committee influence faded in the latter 1960s, but was reintroduced in 1970 by Senator Metzenbaum and others, in the heyday of the 'Good Government' era and right in the middle of a growing conflict between President Nixon and a hostile Congress. After over a year of hearings, Congress heard advisory committees called by any number of epithets: a "headless monster", the "whipping boys" of the bureaucracy, and "the last refuge of incompetence."³⁰² After months of hearings and yet another attempt by the Executive to stave off legislation, Congress finally passed the Federal Advisory Committee Act in 1972. In conjunction with the Freedom of Information Act of 1966 (with subsequent amendment), the Privacy Act of 1974, and the Sunshine Act of 1976, FACA expresses and attempts to enforce several qualities that are desirable in institutions which mediate contact between government agencies and society.³⁰³ These criteria include:

- *Transparency*, expressed as a mandate for open meetings and publicly recorded minutes except in specific circumstances
- *Unbiasedness*, expressed as a mandate for balanced representation among social groups, economic interests, and political opinions, and a prohibition of the exercise of "inappropriate influence".
- *Rationality*, expressed as a desire for a streamlined committee process and an emphasis on obtaining results (reports and advice) and using them
- *Efficiency*, expressed as a desire to reduce the cost of committees, eliminate redundant committees, and eliminate obsolete committees
- *Public interestedness*, expressed as a mandate that agency officials convene and direct committee meetings themselves, use committees for advice (rather than privatized decision making), and keep the ultimate power to make decisions in their own hands.

Information, Influence, and Openness

This paper addresses the first two criteria of good government: transparency and unbiasedness, or in concrete terms, open meetings and balanced membership. It is these two mandates which have proven most controversial over the years since FACA was

³⁰² Markham, Jerry W. "The Federal Advisory Committee Act." University of Pittsburgh Law Review. 1974, Vol. 35, p. 557.

³⁰³ For a more complete discussion of these issues, see Croley, Steven P. and William F. Funk. "The Federal Advisory Committee Act and Good Government." Yale Journal on Regulation. Volume 14, p. 451. Yale University, Spring, 1997.

passed, spawning two score precedent-setting lawsuits and over a dozen articles in law journals. Legal scholars have debated at length the questions of law and precedent surrounding the open meetings and balanced membership requirements, but have offered little hard data about the prevalence and severity of alleged problems, except by anecdote.

The emphasis on open meetings and balanced membership emerge directly out of capture theory, and Congress the inherent potential for capture through advisory committees in the 1957 House Report on the precursor-legislation to FACA.

“All members of advisory committees to some degree represent segments of special interest which frequently do not coincide with the interests of the country as a whole. An advisory body composed of members outside the Government and not answerable to the people or to the Congress for their actions should never be placed in a position where it can assume the functions of a board of directors or indirectly usurp the managerial functions which are the responsibility of the governmental agency.”³⁰⁴

Congress was therefore particularly concerned about unrepresentative advisory committees wielding influence. To the degree that membership on advisory committees were biased toward special interests, Congress was even more suspicious of their activities. Membership bias thus seems to offer a reasonably good indicator of biased outcomes – or capture.

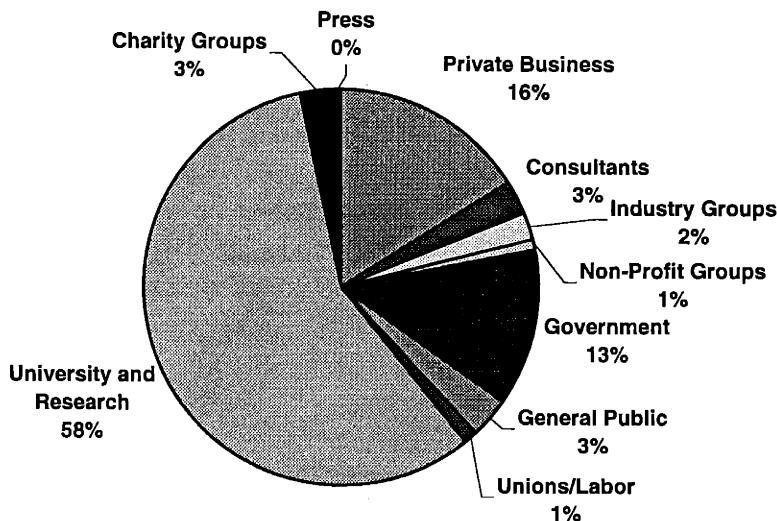


Chart III: Membership Proportion by Group Category

³⁰⁴ House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.”

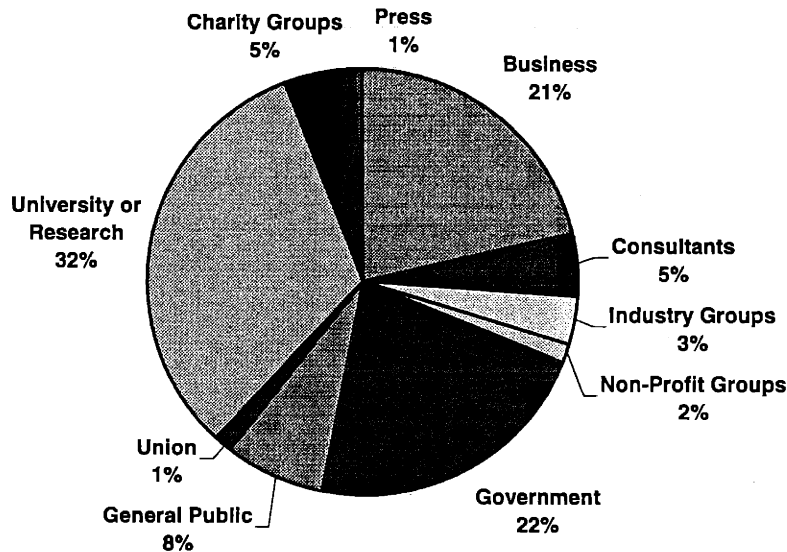


Chart IV: Average Membership Proportion by Committee

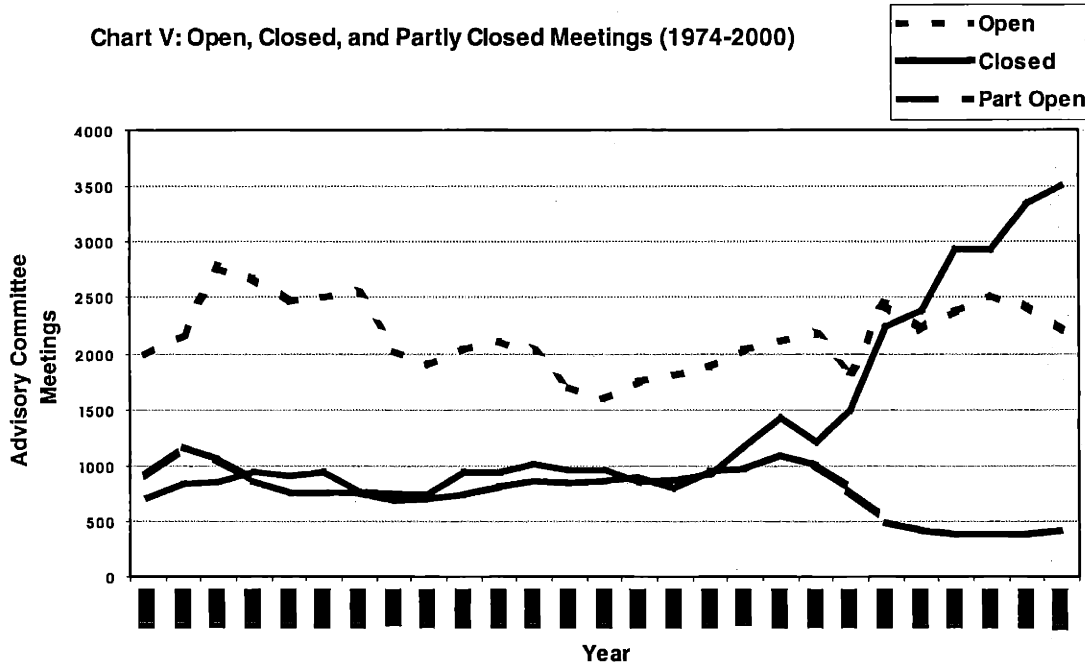
Actually measuring 'biased membership' is a difficult matter, however. The narrowest interpretation of capture theory would contend that 'bias' really means 'bias toward privileged economic interests.'³⁰⁵ As Charts II and III demonstrate, members affiliated with private businesses and trade associations do account for a sizeable proportion (18%) of the overall membership of advisory committees.³⁰⁶ In addition, they constitute 24% of the average advisory committee's membership. Yet business membership is far smaller than academic and research membership. Indeed, 58% of advisory committee members belong to universities or independent research institutes, yet few academics would concur that their profession is the most privileged economic class in the United States. Raw membership data thus offers little support for broad capture of advisory committees by business interests.

A somewhat more flexible approach to testing the explanatory power of capture theory would examine the relative levels of membership by business interests across committees. Capture Theory would suggest that those committees with higher levels of business membership are more likely to be captured by business interests than other committees, everything else being equal. Yet this test also remains weak, because mere membership of business groups cannot alone signal capture by those groups. Business groups, like other groups, are legitimate stakeholders and participants in the democratic process, and Congress was loath to define "fair balance" in a way that limited

³⁰⁵ Downs, Anthony. *An Economic Theory of Democracy*. New York: Harper, 1957. Also, Olson, Mancur. *The Logic of Collective Action*. Cambridge, MA. Harvard University Press, 1965.

³⁰⁶ Chart II is based on a hand count of all advisory committee members, and is of course subject to coding error. Data was obtained from the Committee Management Secretariat for all committees and committee members in 1998. Chart IV displays the average membership percentages for all advisory committees, which clearly indicate that more academics and scientists serve on larger committees.

participation by economic interests, as the original 1957 Department of Justice rules would have done.³⁰⁷ To truly prove capture, one must show that this membership is used to wield power in a manner that is inconsistent with democratic principles – in other words, that certain members wield “inappropriate influence”.³⁰⁸ Measuring inappropriate influence presents a difficulty, of course. Fortunately, the administrative law literature suggests one indicator which is intuitive and easy to measure – opacity.



As a measure of opacity, we examine the frequency of closed meetings, which has been tracked at the agency level in annual reports since 1974. Chart V displays the total number of open, closed, and partly closed meetings each year over that time, and again we see considerable variation. In recent years especially, advisory committees have seen an alarming growth in the number of closed meetings.

Our focus on closed meetings as an indicator of the potential for capture has a strong basis in historical fact. When the Congress first became concerned about advisory committees in 1957, it clearly took the view that closed meetings tended to harm the public interest. The 1957 Congressional report wrote,

³⁰⁷ As anticipated by Levine in 1973, the courts have interpreted the “fair balance” of “viewpoints” and “functions” very leniently, as a “fair balance of viewpoints given the functions.” Levine, Richard O. “The Federal Advisory Committee Act.” *Harvard Journal on Legislation*. 1974. Pp. 217-235. The courts adopted this interpretation almost exactly. *Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods*, 708 F.Supp. 359 (D.D.C. 1988), aff’d 886 F.2d 419 (D.C.Cir. 1989).

³⁰⁸ Exactly what this means is unclear. The courts have been very vague in defining the term ‘inappropriate influence’, which FACA outlaws. *Cargill, Inc. v. U.S.*, 173 F.3d 323 (5th Cir. 1999)

“...under the veil of secrecy which now surrounds the activities of these groups, it is possible and entirely probable that some of them are established not for the primary purpose of giving advice.”³⁰⁹

The 1957 report then went on to express other concerns, as noted above. Yet the frequency of closed, secretive meetings weighed heavily on Congress' mind, and continued to weigh heavily on its mind right through such major pieces of legislation as FOIA (1966), FACA (1972), and the Sunshine Act (1976). These three pieces of legislation came at a real transitional period in Congress.³¹⁰ Struggling to 'clean up' the bureaucratic process (and perhaps strengthen its weakened position against what was then perceived as an imperial presidency), Congress hit upon a number of mechanisms to reform the bureaucracy. Open meetings was among the more important of these mechanisms, and was considered a major remedy for collusion between agencies and special interests. Indeed, it was perhaps *the* major remedy, since it did not seem to impair the desirable sort of cooperation between agencies and the private sector that Congress encouraged. Other remedies, such as stricter oversight and balanced representation, were much more far more costly and difficult to enforce.³¹¹ Sunshine, however, is easy to administer, easy to measure, and by all accounts effective. In Justice Brandeis' often cited words, “Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.”³¹²

Unfortunately for the public interest, later research has suggested that sunshine comes with a price after all.³¹³ At the worst, sensitive information may threaten the national security and destabilize financial markets.³¹⁴ Even in less extreme circumstances, bargaining theorists suggest that excessive transparency may hinder the free exchange of ideas, stifle creativity, weaken the feeling of collegiality and the sense of teamwork, and cause private actors to withhold embarrassing information.³¹⁵ Thus, even those committees trying to serve the public interest might loathe the requirement of open meetings from time to time. However, *all things being equal*, captured committees

³⁰⁹ House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.” Emphasis added.

³¹⁰ Stewart, Richard B. “The Reformation of American Administrative Law.” Harvard Law Review. 1975, Vol. 88, p. 1667.

³¹¹ Although balanced representation suggested the possibility of radical reform of the committee process, the courts have failed to deliver on the potential of this rule. They have frequently interpreted the ‘balance’ rule leniently toward agencies, and have failed to offer substantial remedy when it has been violated. See Aurelia, Laurie. “FACA and its Failure to Work in the Environmental Context.” Boston College Environmental Law Review. Fall, 1995.

³¹² Louis Brandeis, *Other People's Money* 67 (1933). Cited in Kathy Bradley, “Do You Feel the Sunshine? Government in the Sunshine Act: Its objectives, Goals, and Effect on the FCC and You.” Federal Communications Law Journal. P. 473, February 1997.

³¹³ Bradley, Kathy. “Do You Feel the Sunshine? Government in the Sunshine Act: Its Objectives, Goals, and Effect on the FCC and You.” Federal Communications Law Journal. February, 1997, Vol. 49, p. 473. Also see Lawrence, Michael. “Finding Shade From the ‘Government in the Sunshine Act’.” Catholic University Law Review. Fall, 1995, Vol. 45, p. 1.

³¹⁴ See Duvall, David. “The Occasions for Secrecy.” University of Pittsburgh Law Review. Spring, 1986.

³¹⁵ Faure, David. “FACA: Balanced Representation and Open Meetings in Conflict with Dispute Resolution.” Ohio State Journal on Dispute Resolution. 1996.

should use more closed meetings than those committees serving the public interest. Thus, if the simplest economic version of capture theory were true, we should expect to observe a relationship between private interest membership and open meetings.

Closure and Capture: A Three-Theory Horse Race

In addition to testing for the hypothesized relationship between business group membership and closed meetings, we can take our investigation one step further. Assuming a relationship between closed meetings and “capture” by business group membership, we can try to identify the source of this capture. That is, we ask whether Congress or the Bureaucracy is more to blame. The importance of this question points to disagreements over modern efforts to reform the government: Should we take greater care to insulate agencies from political pressures through expansion of Civil Service laws and other measures, or should we instead focus on reigning in runaway agencies? The answer depends on which version of capture theory we believe.

Generally, capture of government programs and policies occurs through one of two interfaces: Congress or agencies. The other two branches of government are less vulnerable. The President, as a representative of all of the people, has greater incentives to resist particularistic influence.³¹⁶ The federal judiciary, since it is appointed for life, is widely regarded as resistant to direct influence by specific interests, though it has been derided for ideological capture.³¹⁷ This paper thus focuses on the interactions between Congress, the bureaucracy, and the advisory committee system.

We propose three different versions of capture theory: Congressional Capture Theory, Agency Capture Theory, and a combination of the two – Iron Triangle Theory – which posits that both are subject to capture. All of these theories begin with narrow, compact groups tend to dominate broad-based, diffuse groups in seeking political influence.³¹⁸ From here, however, the theories diverge in describing the mechanism of capture, and hence in proscribing recommendations for fixing the process.

Congressional Capture of policies and programs works through legislation and oversight. Congressional Capture theory received its strongest statement by Stigler in his famous 1971 piece. Stigler argued that concentrated economic interests dominate the legislature through propaganda-like control of information and access. Thus, capture of government policies and programs emerges directly from the law itself. “...as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit.” Those interests which are organized and wealthy enough to pay the “costs of obtaining legislation” get it.³¹⁹ Stigler argues that agencies that are specifically created

³¹⁶ Neustadt, Richard. *Presidential Power: The Politics of Leadership*. NY: New American Library, 1984.

³¹⁷ In other words, ideological capture. Many consider the 2000 election a good example.

³¹⁸ Olson, Mancur. *The Logic of Collective Action*. Cambridge, MA. Harvard University Press, 1965.

³¹⁹ Stigler, George. “The Theory of Economic Regulation.” *Bell Journal of Economics and Management Science*. Spring, 1971.

by Congress to regulate industry for the benefit of the industry by restricting competition and providing subsidies.

Agency Capture theory contends that Congress may write legislation with good intentions, but that laws subverted during implementation. Due to the complexity of the issues, Congress grant agencies wide discretion in crafting policy. This discretion enhances agency's effectiveness, but at the cost of allowing agency drift.³²⁰ This discretion allows agencies to be co-opted by private groups and constituents from whom they need support to fulfill their mission or preserve their funding levels.³²¹ Selznick provided one of the earliest examples of such behavior in his description of the TVA.³²² Kaufman likewise discussed this danger in his treatment of the Forest Service.³²³ Finally, Congress itself marshaled this argument in its first report in 1957:

“...the advisory committee system as it now operates may be channeled into a convenient and effective source of support for established programs or policies or those contemplated by the Government administrators. *Under the ostensible objective of seeking advice and counsel, the real purpose may be in many instances to enlist support of the regulated in the process of regulation.*”³²⁴

The third version of capture theory, *Iron Triangle* theory, blames both Congress and agencies. Special interests seek influence in Congress by funding Congressional campaigns, but they also lobby in support of regulatory agencies. As before, they derive benefits from the actions of Congress and agencies through beneficial regulation, subsidies, and the letting of lucrative contracts.

Although the term “iron triangle” first entered common parlance in the 1970s,³²⁵ the idea has been around for a while – at least since 1955, when Freeman identified them as “subsystems”.³²⁶ Aberbach and Rockman later addressed them again in 1978 as “clientele groups”, and iron triangles surfaced as a hot topic of political debate during the latter part of the 1980s, attracting the attention of Ronald Reagan himself.³²⁷ However,

³²⁰ Bawn, Kathleen. “Political Control Versus Expertise: Congressional Choices About Administrative Procedures.” *American Political Science Review*. March, 1995. Vol. 89: 62-73.

³²¹ Niskanen, William A. *Bureaucracy and Representative Government*. Chicago: Aldine-Atherton, 1971.

³²² Selznick, Phillip. *TVA and the Grassroots: A Study In the Sociology of Formal Organization*. Berkely: UC Press, 1949.

³²³ Herbert Kaufman. *The Forest Ranger: A Study in Administrative Behavior*. Baltimore: John Hopkins Press, 1960.

³²⁴ House Report No. 85-576, 85th Congress, 1st session. “Amending the Administrative Expenses Act of 1946, and For Other Purposes.” Emphasis added.

³²⁵ Davidson, Roger H. “Breaking Up Those ‘Cozy Triangles’: An Impossible Dream?” In *Legislative Reform and Public Policy*. Edited by Peters, John G. and Susan Welch. Praeger, 1977. New York. Also see Ripley, Randall B. and Grace A. Franklin. *Congress, the Bureaucracy, and Public Policy*. The Dorsey Press, 1976. Homewood, IL.

³²⁶ Freeman, J. Leiper. *The Political Process: Executive Bureau-Legislative Committee Relations*. Random House, 1955. New York.

³²⁷ Reagan, Ronald. “Remarks to Administration Officials on Domestic Policy, 13 December 1988.” *Weekly Compilation of Presidential Documents*. Vol. 24, No. 50, December 19, 1988. Cited in Peterson, 1990-1991, *Supra* Note 51.

iron triangles have received little attention from academics in the last two decades.³²⁸ Indeed, using extensive interviews with Congressman and in-depth case studies, two separate studies have concluded that the era of issue-domination by specialized interests is over.³²⁹ Recent scholarship suggests that the old iron triangle dynamic has been replaced, either by a more entrepreneurial, mass-constituent driven Congress³³⁰ or by networks of elite experts upon whom agencies increasingly rely.³³¹ Nonetheless, we include this theory in our tests for the sake of theory.

Finally, it is important to recall that all three versions of capture theory compete not only against each other, but also against *Public Interest Theory*. Public Interest advocates assert that government tries to serve the common good and generally does a decent job given the constraints it faces. Although not as glamorous or scandalous as other theories of governance, Public Interest Theory retains a strong following both in and out of administrative circles.³³²

To test these three versions of Capture Theory, we observe the relationship between *committee authorization* and *closed committee meetings*. We ask, *who creates the committees with the most closed meetings?* In answering this question, we control for committee purpose and for agency-specific effects, and then observe the actual relationship between committee authorization, group affiliation of members, and closed meetings. Chart VI below summarizes the theories and their predictions.

Chart VI

Variable	Congressionally Mandated	Congressionally Authorized	Sole Agency Discretion
Congressional Capture Theory	High Meeting Closure		Low Meeting Closure
Agency Capture Theory	Low Meeting Closure		High Meeting Closure
Iron Triangle Theory		High Meeting Closure	
Public Interest Theory	Low Meeting Closure	Low Meeting Closure	Low Meeting Closure

³²⁸ Aberbach, Joel D. and Bert A. Rockman. "Bureaucrats and Clientele Groups: A View From Capitol Hill." *American Journal of Political Science*. November, 1978.

³²⁹ Peterson, Paul E. "The Rise and Fall of Special Interest Politics." *Political Science Quarterly*. Vol. 105, No. 4. 1990-1991. Also see Browne, William P. and Won K. Paik. "Beyond the Domain: Recasting Network Politics in the Post-reform Congress." *American Journal of Political Science*. November, 1993.

³³⁰ Browne and Paik. *Ibid*.

³³¹ Heclo, Hugh. "Issue Networks in the Executive Establishment." In *The New American Political System*. Edited by Anthony King. American Enterprise Institute, 1978. Washington D.C.

³³² For instance: Goodin, Robert E. "Institutionalizing the Public Interest: The Defense of Deadlock and Beyond." *American Political Science Review*. Vol. 90, No. 2. (June, 1996), pp. 331-343.

Thus, we now have two sets of tests before us. First, we can test to see whether group membership is a good indicator of meeting closure. And second, we can test to see who creates committees with the most closed meetings, and thus which interfaces of government are allegedly serving as the vehicles of capture.

Data Description and Empirical Results

A full empirical test of the hypotheses above would require complete data on committees, and all their characteristics, spanning from 1950 to the present. This data simply does not exist in its entirety. Although committee level data for several years does exist in archives held by the Committee Management Secretariat, only the full data for 1997 through 2000 is available electronically. Fortunately, we also annual agency-aggregated data back to 1974, though this data is especially suspect in the early years because the executive branch was still working on identifying all committees and refining the conceptual definitions it uses in its annual reports. Nonetheless, the cross-time data allows us to observe committee trends during periods of different political climates – for instance, when different parties controlled Congress and the Presidency. This paper therefore examines both of these data sets in order to test the hypotheses presented above.

Committee Level Data

The committee-level data for 1997-2000 has two advantages. First, it is far more precise than the agency-level data. The 1997-2000 data sets allow us to construct a set of over a thousand distinct committees that existed during that time, yielding fairly precise estimates of the effects of our independent variables, nearly 900 of which had at least one meeting within the 4 year period. Second, the 1997-2000 data includes information on other aspects of the committees (such as their purpose, authorizing legislation, and status as a continuing or ad hoc committee). However, because committee characteristics rarely change over time (if a committee is mandated by law, it remains that way throughout its existence), a year-by-group panel regression is of little use, limiting us to cross-section analysis. Third, we have annual data on the 41,000 individual FAC committee members. Given the time-intensity of coding this data, however, I have only coded it into categories for the year 1998, but this still proves adequate to generate significant results.

I first begin by looking at the combined data for 1997-2000, which includes the following favirables:

The following table summarizes the variables I have collected:

Table I: Independent Variables

Variable	Category	Description	Mean
Closed Meetings	Dependent Variable	Percentage of meetings held by the committee that are closed	0.204
Congressionally Mandated	Establishment Authority	Dummy variable: 1 if mandated by Congress	0.421

Congressionally Authorized	Establishment Authority	Dummy variable: 1 if authorized by Congress	0.220
Presidential	Establishment Authority	Dummy variable: 1 if created by President	0.068
Sole Agency Discretion (Default)	Establishment Authority	Dummy variable: 1 if created solely by agency	0.290
Science and Technology	Committee Purpose	Dummy Variable: 1 if classified as a Scientific Technical Program Advisory Board.	0.223
Non-Science Program	Committee Purpose	Dummy variable: 1 if classified as a Non-Scientific Program Advisory Board.	0.349
National Policy (Default)	Committee Purpose	Dummy variable: 1 if classified as a National Policy Issue Advisory Board.	0.179
Grant Review	Committee Purpose	Dummy variable: 1 if classified as a Grant Review Committee.	0.110
Regulatory Negotiation	Committee Purpose	Dummy variable: 1 if classified as a Regulatory Negotiation Committee.	0.017
Other	Committee Purpose	Dummy variable: 1 if not classified under any of previous five categories	0.107

The results of the regressions are included in Table III below. In addition to these regressions, I conducted several more regressions using a few other specifications. The results were similar, and are not reported in this paper.³³³ Since all of the regressions use a linear model, they can be interpreted as increases in the average proportion of closed meetings in the type of committee described by the independent variables. The default variable for committee function is National Policy, and the default committee for authorization is Sole Agency Discretion, so the coefficients measure differences from this baseline. For example, a coefficient of 0.15 on the Congressionally Authorized variable in the fixed effects regression means that committees authorized by Congress have (on average) 15% more closed meetings than those sponsored solely by agencies. This interpretation holds true in both the committee-level data and the 27 year panel data.

³³³ I conducted the regressions using an analysis of proportions method, and also using a modified dependant variable that equals the percentage of closed meetings plus one-half the percentage of partly closed meetings. In the regressions with the modified dependent variable, the results were very similar but usually slightly attenuated. I left these out of this paper largely to save space, but also because of a strong theoretical difference between partly closed and completely closed meetings. Partly closed meetings are conducted in the public eye and only specific parts are closed to the public. Also, partial meeting closure (or breaking out into closed subcommittee meetings) may be more easily justified as necessary to facilitate open discussion rather than as a tool to lock out opposing interests. Faure, David. "FACA: Balanced Representation and Open Meetings in Conflict with Dispute Resolution." *Ohio State Journal on Dispute Resolution*. 1996.

Table II: Authorization and Closure: Simple Correlations

Congressionally Mandated	Presidential	Congressionally Authorized	Agency Discretion
-0.2207	-0.0731	0.2032	0.0945

**Table III: Effects of Authorization on Meeting Closure
(1997-2000 Aggregated Data, P-values in parentheses)**

Variable	OLS	OLS (No HHS)	Random Effects	Fixed Effects	Between Effects	Random Effects Tobit	Random Effects (No DOC or USDA)
Congressionally Mandated	-0.073 (0.001)	-0.031 (0.188)	-0.011 (0.615)	0.002 (0.943)	-0.181 (0.031)	1.016 (0)	-0.085 (0)
Presidential	-0.083 (0.054)	-0.045 (0.326)	-0.051 (0.217)	-0.050 (0.248)	-0.049 (0.743)	0.296 (0.467)	-0.041 (0.294)
Congressionally Authorized	-0.013 (0.624)	0.150 (0.001)	0.153 (0)	0.167 (0)	0.436 (0.01)	1.247 (0.001)	0.047 (0.177)
Scientific/ Technical	-0.126 (0)	-0.094 (0.005)	-0.094 (0.001)	-0.095 (0.001)	-0.103 (0.35)	-0.090 (0.751)	-0.018 (0.518)
Non-Science Program	-0.124 (0)	-0.147 (0)	-0.065 (0.019)	-0.061 (0.039)	-0.011 (0.894)	0.245 (0.356)	-0.006 (0.821)
Grant Review	-0.168 (0.03)	-0.190 (0.027)	-0.053 (0.475)	-0.012 (0.887)	-0.332 (0.241)	-1.021 (0.265)	0.637 (0)
Regulatory Negotiation	0.580 (0)	0.661 (0)	0.570 (0)	0.600 (0)	0.596 (0.011)	3.213 (0)	-0.027 (0.708)
Other	0.041 (0.278)	0.051 (0.321)	0.107 (0.003)	0.103 (0.008)	0.222 (0.077)	1.538 (0)	0.183 (0)
Constant	0.225 (0)	0.209 (0)	0.131 (0)	0.120 (0)	0.158 (0.062)	-1.591 (0)	0.105 (0.001)
R-squared (Pseudo)	0.412	0.3744	0.381	0.375	0.276	(1.016)	0.5101
Observations	924	709	924	924	924	924	818

Surprisingly, the committee-level battery of regressions strongly supports the Iron Triangle hypothesis – the notion that meeting closure and capture emerge primarily through close cooperation between Congress and federal bureaucracies. In the panel data regressions, committees authorized by Congress had meeting closure rates at least 15% higher than those created by solely by agencies or solely by Congress. This effect is strong in both the fixed and random effects regressions, but is exceptionally strong in the between effects regression, which estimates that Congressionally authorized committees have meetings closure rates 45% higher than agency sponsored committees, and 60% higher than Congressionally mandated committees. This suggests that the explanatory

power of the different types of capture theory varies across different agencies. Thus, political subsystems or ‘iron triangles’ may have more purchase in some agencies than in others. In further support of this contention of cross-agency differences, we note that the ‘weak’ result in the OLS regression results entirely from the above average openness of Congressionally authorized committees in the Department of Health and Human Services – which contains a third of all committees. Dropping HHS committees from the regression yields estimates almost identical to those in the random effects regression. Further, we present results for a random effects regression without DOC and USDA committees, which would support strikingly different conclusions about who authorizes the most closed committees. We leave discussion of the sensitivity of the estimation to the inclusion of DOC and USDA committees for later, however.

The between effects regression results and the sensitivity of the regressions to removing USDA and DOC committees suggest a new line of inquiry: If different theories have more or less explanatory power in different agencies, we should be able to observe differences in how Congress and bureaucrats use committees within different agencies. Clearly, different agencies have different average levels of committee closure – the Wald statistic for significance of the fixed effects confirms this ($p < 0.0001$). However, the fixed effects model does not test for differences in the effect of the independent variables *within* panels.³³⁴ To help us understand how the relationship between authorization and meeting closure differs across agencies, we separately analyze four agencies, all of which have at one time or another come under heavy criticism as vehicles for special interest influence: the Department of Commerce, the Department of Defense, the Department of Agriculture, and the Environmental Protection Agency. We reran the closed meeting regressions, limiting the sample to those committees within each agency. The results are presented below, and turn up a surprising number of significant coefficients in spite of the small sample sizes.

Table IV: Predicting Closed Meetings Across Different Agencies
(OLS models, P-values in parentheses)

Variable	DOC	DOD	USDA	EPA
Congressionally Mandated	0.267 (0.026)	-0.304 (0.007)	0.008 (0.866)	-0.002 (0.755)
Presidential	-0.515 (0.008)	-0.305 (0.043)	-0.050 (0.731)	-0.000 (0.973)
Congressionally Authorized	-0.515 ³³⁵ (0.106)	0.276 (0.127)	0.769 (0.000)	(dropped)
Scientific/ Technical	-0.575 (0.000)	0.030 (0.815)	0.057 (0.352)	0.006 (0.669)

³³⁴ In other words, it does not include interactions between variables and agency dummies to determine whether difference variables have different slopes within different agencies – essentially an SUR regression. This data set is not large enough to run SUR, however, since most agencies have fewer committees than the number of independent variables.

³³⁵ Although apparently negative, the coefficient here is identical to that in the constant and on Presidential committees, indicating a high degree of collinearity between function and authorization. When the coefficients on function are constrained by including other agencies in the regression, DOC committees will contribute positively to the Congressionally Authorized coefficient, as we will see below.

Non-Science Program	-0.522 (0.001)	-0.205 (0.112)	0.101 (0.065)	0.000 (0.980)
Grant Review	(dropped)	(dropped)	(dropped)	(dropped)
Regulatory Negotiation	(dropped)	(dropped)	0.101 (0.617)	0.000 (0.987)
Other	-0.514 (0.099)	0.067 (0.736)	0.052 (0.62)	(dropped)
Constant	0.515 (0.000)	0.465 (0.000)	-0.051 (0.304)	0.000 (1.000)
R-Squared	0.637	0.267	0.8419	0.0522
Observations	59	69	47	27

The differences between the agencies are striking. Congressionally mandated committees in Commerce have a very high rate of closure, suggesting that powerful economic interests work through Congress to embed their influence in the DOC committees. This evidence supports Congressional capture theory. In Defense, on the other hand, Congressionally mandated committees have a very low rate of closure, suggesting that Congress has made a modest attempt to use advisory committees to shed a little sunlight into the dusty corridors of the Pentagon. In both Agriculture and Defense, Congressionally authorized committees have the highest rate of closure. In fact, Congressionally authorized committees in USDA have meeting closure rates that are over 75% higher than committees created solely by Congress or agencies. This data strongly supports the hypothesis that dense subsystems (“iron triangles”) remain strong in some – but not all – branches of our modern day federal bureaucracy.

Nonetheless, Iron Triangle Theory finds no purchase in the EPA, and not does any other version of capture theory. EPA has virtually no difference between closure rates in its committee meetings, regardless of who created or authorized the committee. Indeed, the EPA has virtually no meeting closure at all, even though it routinely deals with sensitive and economically significant matters in its many committees.

Opacity and Interest Group Influence: A Closer Look

The data above clearly find a relationship between Congressionally authorization of committees and opacity. Skeptics, however, will take issue with our assumption that opacity is an indicator (even a weak one) of improper influence in government. They will note that FOIA, the Sunshine Act, and the Privacy Act all set forth several valid exceptions to open meeting requirements, even though agencies can easily abuse these exceptions.³³⁶

In order to further test the model, I coded a new set of variables for the data set in 1998. They were derived by coding each of the 41,000 individuals who served on

³³⁶ Two recent cases include: Association of American Physicians and Surgeons, Inc. Clinton, 879 F.Supp. 103 (D.D.C. 1994); and Animal Legal Defense Fund, Inc. v. Shalala, 104 F.3d 424 (D.C.Cir. 1997). Although the courts ruled in favor of the plaintiffs in these two cases, the courts have more frequently held in favor of the defendants (the government) in earlier cases.

advisory committees in 1998, and aggregating by committee.³³⁷ Originally, I identified over thirty separate groups, but for the sake of parsimony, I aggregated similar groups together in this analysis.³³⁸ These variables are listed below.

Table V: Membership Categories for 1998

Variable Name	Description	Mean	Std.
Business (Default)	Includes private business, doctors in practice, scientists/engineers employed in private sector	0.206	0.256
Industry	Industry groups	0.046	0.101
Consultant	Lawyer or Consultant	0.034	0.090
Non-Profit	Recreational Groups and Professional Groups	0.015	0.050
Government	Federal, Retired Federal, State, Local, International, and Foreign Government, and Indian Tribe	0.211	0.235
Public Interest	General Public, Public Interest Groups, Consumer Groups, Environmental Groups, Ethnic/Gender Groups	0.073	0.157
Union	Unions	0.013	0.068
Research	Research Groups, Universities, Social Research Institutes, and Scientific Research Institutes	0.293	0.322
Medical Research	Medical Research Institutes, Major Research Hospitals	0.051	0.115
Charity	Charitable Non-Profits, International NGOs, Non-Profit Medical Facilities, Non-Profit Medical Support Groups	0.006	0.032
Press	Writer/Journalist	0.206	0.256
Balance	Interaction between Public and Industry	0.0016	0.0071

The next set of regressions adds the membership variables and a variable to code for the handful of Ad Hoc committees, but limits the data to 1998 only. The coefficients on the membership category variables indicate the expected percentage increase in the number of closed meetings caused by a one percent increase in the given membership category. The default membership category is Business membership, so a statistically significant coefficient indicates a difference between the effect of business membership and membership in another type of group.

The table below presents results from five models. The estimates are strong, significant, and relatively stable in all of the models except the between effects model, and they are unsurprisingly largest in magnitude in the Tobit model which corrects for

³³⁷ Unfortunately, a number of advisory committees in HHS did not report members' actual group membership, but instead listed nebulous terms such as "Chief", "Administrator", and "Director". These committees were dropped from the final regressions. Given that 180 out of 246 HHS committees remain in the sample this should not overly bias the results.

³³⁸ Tests of equality of the coefficients within each cluster of categories fail to reject the null hypotheses of equality. The original aggregation combined medical research groups with other research organization, but testing revealed strong differences between these two types of groups in every model.

truncation in the percentage of meetings that are closed.³³⁹ In viewing the estimates, we must caution strongly against imputing causality to the relationships -

Table VI: Effect of Membership on Closure, 1998 Committees Only

(P-values in parentheses, N = 788,
estimates significant at the 90% level are highlighted)

Variable	OLS	Fixed Effects	Between Effects	Random Effects	Tobit	Random Effects Tobit
Consult	0.260 (0.013)	0.258 (0.023)	-0.109 (0.686)	0.241 (0.024)	3.012 (0.043)	-1.008 (0.691)
Industry	1.069 (0.000)	0.970 (0.000)	-0.707 (0.217)	0.931 (0.000)	9.627 (0.000)	9.206 (0.01)
Non-Profit	-0.100 (0.000)	-0.911 (0.000)	0.1239 (0.886)	-0.897 (0.000)	-20.628 (0.009)	-13.710 (0.016)
Government	-0.131 (0.012)	-0.180 (0.002)	-0.157 (0.364)	-0.146 (0.006)	-1.883 (0.044)	-2.186 (0.086)
Public	-0.152 (0.053)	-0.184 (0.047)	-0.262 (0.551)	-0.154 (0.078)	-14.537 (0.009)	-2.217 (0.246)
Union	0.199 (0.181)	0.186 (0.369)	-0.123 (0.639)	0.190 (0.214)	2.017 (0.351)	3.246 (0.397)
Research	-0.052 (0.315)	-0.190 (0.002)	-0.087 (0.733)	-0.110 (0.048)	-0.525 (0.494)	-4.929 (0.002)
Charity	-0.117 (0.250)	-0.162 (0.174)	-0.092 (0.738)	-0.069 (0.504)	-0.584 (0.722)	-1.481 (0.594)
Press	-0.431 (0.289)	-0.109 (0.810)	-1.704 (0.192)	-0.399 (0.318)	-6.983 (0.525)	-12.832 (0.372)
Medical Research	-0.991 (0.000)	-0.970 (0.000)	-2.925 (0.416)	-0.901 (0.000)	-14.390 (0.001)	-18.556 (0.004)
Balance	-5.821 (0.000)	-4.462 (0.002)	-4.463 (0.717)	-4.559 (0.002)	-56.021 (0.490)	-153.908 (0.024)
Congressionally Mandated	-0.053 (0.035)	-0.003 (0.925)	-0.087 (0.371)	-0.014 (0.586)	-0.723 (0.091)	-3.282 (0.006)
Presidential	-0.013 (0.795)	-0.006 (0.903)	0.054 (0.721)	-0.003 (0.950)	-0.282 (0.741)	1.273 (0.088)
Congressionally Authorized	0.028 (0.339)	0.164 (0.000)	0.210 (0.35)	0.137 (0.000)	-0.090 (0.838)	0.989 (0.438)
Ad Hoc	-0.075 (0.232)	-0.061 (0.342)	0.057 (0.778)	-0.073 (0.233)	-1.043 (0.330)	4.080 (0)
Scientific/ Technical	-0.048 (0.173)	-0.041 (0.240)	0.018175 (0.89)	-0.039 (0.247)	-0.763 (0.161)	0.277 (0.844)
Non-Science	-0.074 (0.018)	-0.005 (0.881)	0.026 (0.804)	-0.035 (0.266)	-1.414 (0.009)	0.055 (0.95)

³³⁹ The interpretation of the Tobit model is questionable – how could one observe a negative percentage of closed meetings? Consider the following: the openness of a meeting can be so over-determined by a pattern of independent variables which all favor openness that OLS underestimates the individual effects of each independent variable. Indeed, we do observe considerable massing of the dependent variable at 0% closed meetings and 100% closed meetings. Tobit would compensate for this, however the magnitude of the estimates could be exaggerated due to Tobit's dependence on in-sample observations to extrapolate unobserved distributions (similar to making out of sample predictions).

Program						
Grant Review	0.689 (0.000)	0.636 (0.000)	0.757 (0.040)	0.665 (0.000)	5.444 (0.000)	0.762 (0.36)
Regulatory Negotiation	-0.144 (0.221)	-0.120 (0.308)	-0.672 (0.210)	-0.093 (0.418)	-12.603 (NA)	9.875 (0)
Other	0.128 (0.005)	0.140231 (0.002)	0.594 (0.002)	0.154 (0.000)	1.190 (0.070)	1.417 (0.628)
Constant	0.208 (0.000)	0.194 (0.000)	0.175 (0.150)	0.155 (0.000)	-1.079 (0.099)	2.307 (0.047)
R-Squared (Pseudo)	0.5573	0.5256	0.3680	0.5446	(0.4146)	
Observations	788	788	788	788	788	

The estimates of the effect of membership category are solidly predicted by capture theory. Members of non-profit associations, public interest groups, medical research groups, and even government all consistently participate in advisory committees that are more open than those on which business members sit. Although not statistically significant (probably due to lack of observations), membership by non-profit research organizations, the press, and charitable organizations also appear to contribute to open meetings. Unlike other associational groups, however, labor unions do not contribute to meeting openness, and may even contribute to meeting closure.

On the other side of the aisle, closed meetings are most likely in committees with many industry group representatives, and also far more likely in committees composed largely of consultants. Membership from industry groups and consultants makes a committee indicate a greater propensity toward closed meetings than mere membership in a private business. The random effects regression estimates that an increase in industry group membership of 10% (about one standard deviation) increases the predicted percentage of closed meetings by 9.3%. This result is entirely consistent with the original Department of Justice allegations that industry group participation in advisory committees was especially prone to undemocratic behavior.

The coefficient on the Balance variable, an interaction term between Industry and Public that measures the combined presence of both groups, offers some further insight. Balance is both negative and significant in most of the regressions above, indicating that the presence of public interest groups has an even more pronounced effect on preventing meeting closure when industry group participation is high. If one believes the claims about meeting closure and capture, this seems to validate a pluralist vision of advisory committees.

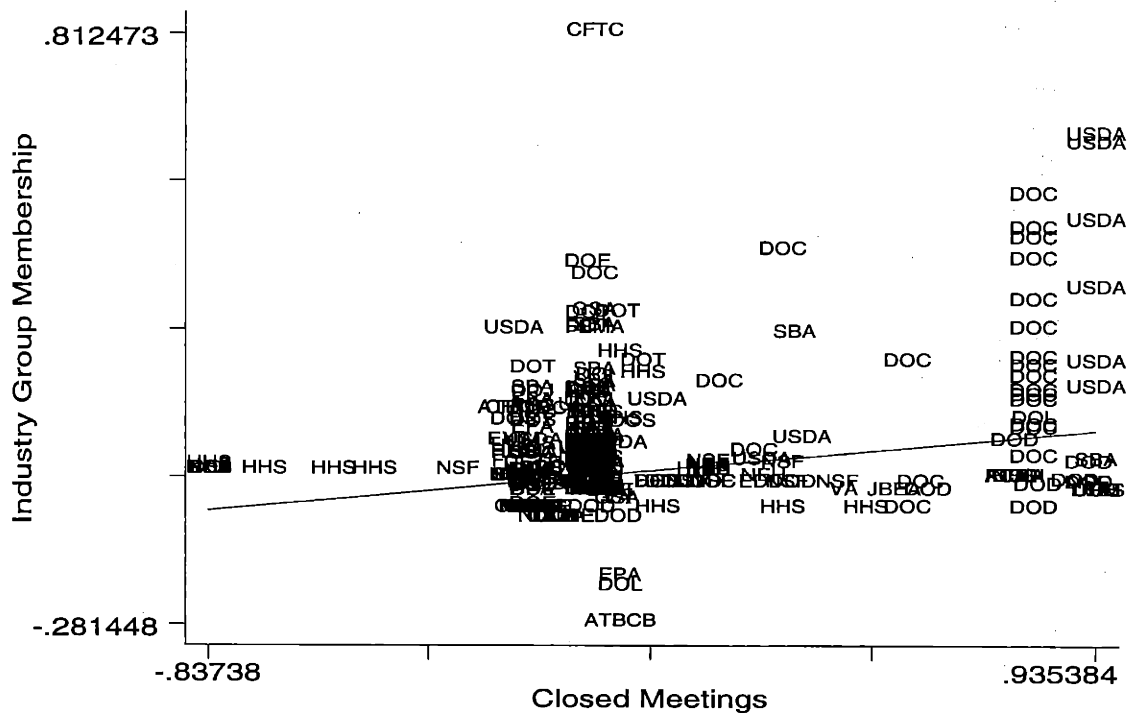
But what of the as-yet unproven relationship between closed meetings and capture? The claim that our data supports Iron Triangle theory is based on the imputed relationship between special interest (i.e. industry group) influence and closed meetings. Thus, we argue, opacity is an (imperfect) indicator of capture. If so, then we should be able to use closed meetings and committee authorization to predict industry group membership. The regressions in Table VII do exactly that, and although they do not have any causal interpretation, they do show that closed meetings strongly predict industry group membership on a given committee (after controlling for agency specific effects).

However, when we look at the partial regression scatterplot (Chart VI) of industry group membership against closed meetings, we immediately notice that the committees generating the relationship are largely concentrated in two agencies – DOC and USDA.

Table VII: Using Closed Meetings to Predict Industry Membership in 1998

Variable	OLS	Random Effects	OLS, Excluding USDA and DOC	Random Effects, Excluding USDA and DOC
Percent Closed Meetings	0.084 (0.000)	0.074 (0.000)	-0.007 (0.468)	0.001 (0.887)
Ad Hoc	0.021 (0.272)	0.016 (0.390)	0.050 (0.002)	0.047 (0.002)
Scientific/ Technical	-0.038 (0.000)	-0.025 (0.007)	-0.007 (0.397)	-0.004 (0.63)
Non-Scientific Program	-0.023 (0.013)	-0.009 (0.328)	-0.004 (0.572)	-0.004 (0.609)
Grant Review	-0.125 (0.000)	-0.089 (0.000)	-0.024 (0.033)	-0.021 (0.06)
Regulatory Negotiation	0.225 (0.000)	0.241 (0.000)	0.243 (0)	0.245 (0)
Other	-0.062 (0.000)	-0.041 (0.001)	-0.021 (0.041)	-0.018 (0.069)
Constant	0.0548 (0.000)	0.0467 (0.000)	0.030 (0)	0.0346 (0)
R-Squared	0.1944	0.1876	0.1735	0.1790
Observations	788	788	708	708

Chart VI: Predicting Industry Group Membership from Committee Closure (Partial Regression Plot)



After removing committees in USDA and DOC, the capability of closed meetings to predict industry group membership disappears. While this conforms to expectations of capture theorists, it also reinforces the striking disparity across agencies observed above. Interestingly, we do not observe any relationship between closed meetings and industry group membership in DOD committees, largely because closure rates are high in all committee meetings – both those with and those without industry group members.

We now recall the closed meeting vs. authorization regressions using the 1997-2000 combined data, above (Table III). DOC and USDA committees are not simply influential data clusters. They are statistical and theoretical outliers with (controlling for committee function) far higher levels of meeting closure and industry group membership than one finds in the rest of the committees.

Looking more closely at DOC and USDA committees, we can isolate most of the relationship between closed meetings and industry group membership to a specific set of committees – industry and agricultural technical and trade advisory committees. An in depth search of authorizing legislation for all committees in 1998 reveals that these committees share similar or the same authorizing legislation, and that this legislation is unique in one key aspect. This is the *only* legislation *requiring* an agency to set up a committee at the request of any segment of *industry*. In addition, the authorizing legislation rings a few other alarms: First, it requires that the majority of the committee consist of non-federal members drawn from the particular industry of concern. Second, the legislation mandates that the agency provide the committee with information it requests. Third, the law requires that the committee elect a chair (and thus that the chair not be appointed by the agency). Fourth, the agency is required to meet at least 4 times a

year. Fifth, using the Trade Act of 1974 as justification, the Department of Commerce has issued blanket approval for closing all meetings to these committees under the FACA trade negotiation exemption.³⁴⁰ Taken together, these qualities raise severe misgivings about the underlying purpose of these committees.

Given the legal background behind these committees, it is not surprising that the membership of these committees includes a surprising number of vice-presidents and program directors of major corporations and trade groups: from the Director of Commercial Programs at Boeing to the President of the Petroleum Equipment Suppliers Organization. These committees, which are given explicit permission by law to comment on and advise the agency with respect to trade matters and policies, have no members who can claim to represent the general public or consumer groups. Moreover, it is precisely committees like these which originally inspired the Department of Justice in 1957 to raise objections to the advisory committee structure based on the opportunities for collusion that it created. Thus, while this set of thirty or so advisory committees is largely generating the relationship between closure and industry membership, they also provide strong evidence of the sort of influence that capture theory predicts.

27 Year Panel Data Evidence

In order to supplement the evidence offered by the committee level data, I also examine committee data agency-level data drawn the 27 Federal Advisory Committee Annual Reports, including information on committee establishment authority and duration (ad hoc vs. continuing). The annual reports do not include information on committee type, as these records were not gathered for most of the period, and are not recorded at agency-aggregated levels (they can be constructed from committee level data for 1997-2000, but not for earlier years). Also, many of the agencies in the data set have no committees during some parts of the time period, thus further restricting the types of models one can use to fit the data.

On the positive side, the 27 year period does allow us a glimpse at the overall trends in committee authorization and closure over time. In addition, it spans two periods during which control of the Congress and the President was fully split: 1974-1976 (Ford with Democratic House and Senate) and 1995-2000 (Clinton with Republican House and Senate). It also contains one period in which the executive and legislature were partly split: 1981-1986 (Reagan with Democratic House). This allows us to code for split government, as described in Table VIII below.

Table VIII: 27 Year Panel Data Variables

Independent Variable	Category	Description
Mandate	Authorization	Percentage of committees within the agency in a given

³⁴⁰ Although challenged, the USTR policy of blanket closure was upheld in court. *Public Citizen vs. Barshefsky*, 939 F.Supp. 31 (D.D.C. 1996).

		year that are mandated by Congress
Authorized	Authorization	Percentage of committees within the agency in a given year that are authorized by Congress
President	Authorization	Percentage of committees within the agency in a given year that are authorized by the President
Discretionary (Default)	Authorization	Percentage of committees within the agency in a given year that are sponsored by the agency
Ad Hoc	Committee Type	Percentage of committees within the agency that are ad hoc. Agencies which are not ad hoc are 'continuing' committees that persist for long periods of time.
Split Government	Dummy Variable	Split take on the value 1 when different parties control Congress and the Presidency. It takes on a value of 0.5 when control over Congress is split. Finally, it takes on the value 0 in all other years. <i>There are two periods of fully split government: the Nixon/Ford years (1974-1976) and the later Clinton years(1995-1998). There is one period of partially split government, the early to middle Reagan years(1981-1986). Only in the last period do the Republicans control both houses of Congress.</i>
Interaction Terms	Split * Authorization	This paper tests the above variables interacted with Split to determine whether the effect of committee authorization changes in years of split government.

The split-government interaction variables potentially offer some additional insight into the role of advisory committees in relations between Congress and the Executive. Common sense suggests that Iron Triangles should be weaker during times of split government, since collusion between agencies and Congress would become more difficult. Thus, we might anticipate that Congressionally authorized (but un-mandated) committees should diminish in number and should tend to have fewer closed meetings. In addition, Congressionally might mandate more open and aggressive committees to assist with oversight, while agencies might close committees to the public and to Congress to keep sensitive information out of the hands of hostile political forces. Thus, we would expect to observe Iron Triangle theory weakening in the aggregate, and Agency Capture theory appearing stronger.

Table VIII presents the evidence from six versions of the regression model, progressing from least to most complicated. The final version weights each agency by the average number of committees they have over the period, and also accounts for agency specific effects and for serial correlation.³⁴¹ Unfortunately, it suffers from several flaws, foremost of which is lost observations due to estimation restrictions (which tends to select out smaller agencies) and collinearity issues.

³⁴¹ I choose AR2 here because election cycles persist for two years, and because all the charters of all advisory committees are required to be reviewed every two years by FACA.

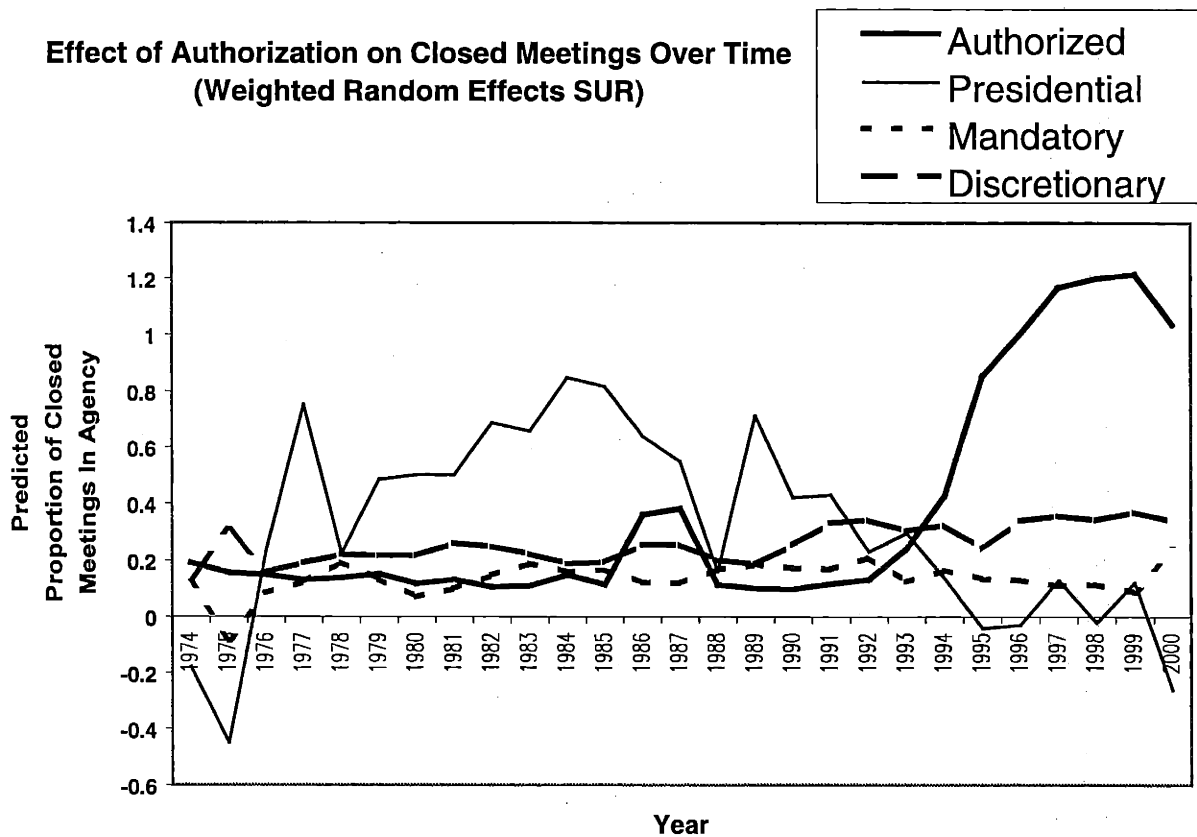
A quick look at the entire table reveals the following simplified facts and insights:

- Congress appears to mandate committees with more closed meetings during times of split government, a result which is consistent across all the specifications. This also contradicts the expectations of capture theory.
- Weighting by the number of committees (which favors larger agencies), Congress appears to authorize committees with more closed meetings during times of split government, a result which also contradicts our predictions.
- Again weighting by the number of committees, committees created solely by agencies appear to use more open meetings, which again contradicts our expectations.

Table IX: 27 Year Panel Data Evidence

Variable	OLS	Weighted OLS	Population Averaged Random Effects	Weighted Population Averaged Random Effects	Population Averaged Random Effects, AR2	Weighted Population Averaged Random Effects, AR2
Percent Mandated by Congress	-0.14618 (0.000)	-0.42586 (0.000)	-0.15484 (0.000)	0.114006 (0.008)	-0.10638 (0.002)	0.061214 (0.196)
Percent Authorized by President	0.098226 (0.154)	-0.2115 (0.316)	0.190847 (0.000)	0.2375 (0.135)	0.014005 (0.879)	0.134076 (0.525)
Percent Authorized by Congress	0.498102 (0.000)	-0.37049 (0.000)	0.017328 (0.594)	0.121418 (0.012)	-0.00034 (0.993)	-0.01711 (0.738)
Percent Ad Hoc	-0.11388 (0.102)	-0.32124 (0.098)	-0.01664 (0.669)	-0.02567 (0.839)	-0.04562 (0.461)	-0.02346 (0.86)
Split Govt./ Ad Hoc	0.046673 (0.570)	0.047668 (0.842)	0.031975 (0.473)	-0.10483 (0.492)	0.057146 (0.422)	0.001172 (0.994)
Split Govt./ Mandated by Congress	0.06303 (0.048)	0.127059 (0.006)	0.05166 (0.000)	0.146046 (0.000)	0.059011 (0.000)	0.033958 (0.197)
Split Govt./ Authorized by President	-0.09576 (0.258)	0.605219 (0.023)	-0.32929 (0.000)	0.233731 (0.192)	-0.114 (0.236)	0.118421 (0.629)
Split Govt./ Authorized by Congress	-0.1484 (0.014)	0.210415 (0.000)	-0.04736 (0.063)	0.19988 (0.000)	-0.04933 (0.037)	0.068754 (0.002)
Split Govt./ Agency-Sponsored	0.00865 (0.796)	-0.12001 (0.007)	0.024327 (0.099)	-0.0576 (0.028)	-0.02788 (0.086)	-0.03412 (0.152)
Constant (Agency-Sponsored)	0.179908 (0.000)	0.47688 (0.000)	0.192735 (0.000)	0.081143 (0.037)	0.18652 (0.000)	0.228823 (0.000)
R-squared	0.1834	0.1017				
Observations	1462	1462	1462	1462	939	939

The 27 year panel data regressions offer inconclusive and unintuitive results. Moreover, the results do not appear entirely consistent with the committee-level regressions for 1997-2000. This suggests that the model instability may be caused by changes in the coefficients over time, particularly if these changes are not adequately accounted for by the split-government interaction variables. In order to gain a better look at how the use of advisory committees have changed over time, we adopt a more empirical approach. We generate a set of yearly dummy variables, and interact each yearly dummy variable with every authorization variable. The coefficients from this regression indicate the predicted percentage of closed meetings an agency will hold in a given year as a function of who authorized that agency's committees. Chart VII plots these coefficients over time. The results are striking, and immediately show why the panel data and the split-government interaction terms fail to describe the changing patterns of advisory committee behavior.



First, Chart VII reiterates the findings of the committee-level regressions for the years 1997-2000. During those years, Authorized committees have an exceptionally high level of meeting closure, and Congressionally mandated committees are slightly more open than agency-sponsored committees. The fact that the agency level findings are consistent with the committee level findings is encouraging. Moreover, the patterns in Chart VII are fairly robust, and change little with the exclusion of one or two agencies from the model.

Second, Chart VII reveals that the strong coefficients on the split-government/Congressional-authorization coefficients are not consistent across all years of split government; rather, they are entirely artifacts of the post-1994 period. The effect of split government between 1974-1976 and 1981-1986 is almost negligible. Except for the lattermost period, split government appears to have very little impact on the relationship between committee authorization and closure.

Third, 1997-2000 are extremely anomalous years. Prior to 1994, the differences in committee closure levels of Congressionally authorized, Congressionally mandated, and agency sponsored committees were much less pronounced. Moreover, Congressionally mandated committees tended to be the most open, and agency sponsored committees were more closed. Thus, prior to 1994, it appears that Agency Capture theory had somewhat more explanatory power than any of the other competing capture theories. Congress did indeed act more as a watchdog over secretive federal agencies, and less as an instrument of private interests seeking to use advisory committees as instruments of political control. In 1994-1997, we observe a drastic change in authorization and closure. The number of non-mandated committees plummets as the Clinton administration enforces E.O. 12,838, which cuts and caps their numbers. At the same time, the number of closed meetings triples and Congressionally authorized committees begin exhibiting extraordinarily high levels of closure, as picked up in the committee level regressions. Meanwhile, those advisory committees created solely by Congress or agencies continue to have relatively low levels of meeting closure.

Third, Chart VIII displays an extraordinary change in Presidential committees. Although not the focus of this paper, Presidential commissions deserve some comment here because of the dramatic trend line. Between 1980 and 1991, presidential advisory committees exhibited relatively high levels of closure after controlling for agency-specific effects – generally above 40% of total meetings. From 1991 to 1994, the percentage of closed meetings in presidential committees plummeted. From 1994 to 2000, presidential committees exhibited virtually no meeting closure. Unlike low-level administrative advisory committees, presidential committees have been the topic of significant scholarly work.³⁴² Given the stark change in closure rates, it may be time for these high profile commissions to be revisited in the era of (allegedly) reformed federal government.

Conclusion

As governments face an increasingly complex environment, they continue to rely (ever more heavily) on advice from private citizens and members of the private sector. Yet scholars have long recognized that the enhanced information gathering capabilities offered by this sort of embeddedness comes at a steep price - the loss of some autonomy and the sacrifice of influence to the private actors providing the information. Public

³⁴² Wolanin, Thomas. Presidential Advisory Commissions. University of Wisconsin Press, Madison, Wisconsin, 1975. Also Flitner, David Jr. The Politics of Presidential Commissions: A Public Policy Perspective. Transnational Publishers, Inc. Dobbs Ferry, NY, 1986.

interest theorists question any loss of bureaucratic autonomy, and demand that the value of information gained from advisory committees be balanced against the loss of influence to special interests. Modern liberal theorists encourage influence-seeking behavior in the federal bureaucracy, but only if the process is open, fair, balanced, and encourages participation by all.

Both groups of theorists, as well as Congress and common wisdom, agree that preferential private influence seeking is facilitated by opacity and hindered by transparency (or sunshine). In advisory committees, we have an excellent measure of opacity – meeting closure. This allows us to test the predictions made by capture theorists about the relationship between special interest influence and opacity, and also to run a horse race between three different versions of capture theory: Congressional Capture, Agency Capture, and Iron Triangle Theory.

We have examined three sets of data, one aggregated at the committee level and spanning the years 1997-2000, one aggregated at the committee level in 1998 and including measures of group participation, and one aggregated at the agency level and spanning the years 1974-2000. The committee level data rejects the Congressional capture hypothesis, though it does support this hypothesis in certain specific agencies, such as the Department of Commerce. The committee level regressions also offers some moderate support for Agency Capture Theory, especially when excluding DOC and USDA committees.

By far, the strongest result from the committee level data is the surprisingly high level of closure in Congressionally authorized committees, and the concentration of this effect in USDA and DOC committees. Congressionally authorized committees have meeting closure levels 15% or more higher than comparable committees sponsored solely by Congress or agencies. This result is only anticipated by Iron Triangle Theory, which has received relatively little attention in the scholarly literature of late.

The 1974-2000 agency-aggregated data offers another twist to these results. Although the agency-level regressions confirm the committee-level regressions for the years 1997-2000, they reveal that this latter period differs substantially from earlier periods. Prior to 1994, Congressionally authorized committees exhibited closure levels only slightly lower than those of agency sponsored committees, and Congressionally mandated committees were the most open of all committees. Since 1994, agency sponsored committees have tended to use more closed meetings, and meeting closure by Congressionally authorized committees has skyrocketed.

The substantial use of closed meetings by Congressionally authorized committees in recent years suggests that Iron Triangles – which may never have really existed in large numbers when they were a popular topic of debate – may be growing more common. However, the committee-level data shows that this effect is concentrated in those agencies with the heaviest industry association involvement – USDA and DOC. Outside of these agencies, Congress appears to mandate advisory committees with more open meetings than anyone except the President in recent years.

Arguably, we should view recent trends with some fear. Both the raw meeting closure data and the regression analysis hint that the informational function of advisory committees may be giving ground to special interest influence. Open government advocates might not be surprised, and could easily point to the increasing use of loopholes in FACA to erode the open meeting mandate.³⁴³ They would point out, as Chart V indicates, that the number of closed meetings has tripled in the last decade. And they would warn us that cooperation between the Executive and the Legislature is something to be feared, not praised. On the other hand, the general public has expressed a keen desire to see the Legislature and the Executive working together efficiently, and advisory committees certainly facilitate this process.

This paper evaluates the debate over transparency and interest group influence in advisory committees, and points to a potential solution. Since massive reform efforts like those that spawned FOIA, FACA, and the Sunshine Act are likely not forthcoming, we might begin with a more reasonable set of goals. Rather than scrapping a system that has generally worked, the analysis herein suggests focusing on specific committees (those in DOC and USDA) and on influence by specific interest groups (industry associations and possibly consultants). For starters, we might re-evaluate the implicit authorization in the 1974 Trade Act to close industry trade committees. After that, we might even revisit the original 1957 Department of Justice rules on the involvement of industry association and large business representatives in advisory committees.

³⁴³ The proliferation of executive sessions and subcommittee meetings, which do not involve the entire committee, is one excellent example which frequently came up in personal interviews with committee members. The courts have allowed such meetings, so long as they do not make substantively binding recommendations to the general committee. Another excellent example is Congress' choice in 1997 to grant the National Academy of Sciences a partial exemption to the open meeting requirement.

Third Paper:

**Testing the Limits of Democracy:
Participation, Openness, and Effectiveness
in Federal Advisory Committees**

By

Kevin D. Karty

Abstract

This paper considers the tradeoff between democratic values and administrative efficiency in policymaking. Specifically, it looks at Federal Advisory Committees, and asks two questions. First, do opportunities for public participation in and scrutiny of these committees impair their effectiveness? Second, how do efforts to ensure a balance of interests in committees impact the committees effectiveness? The paper analyzes data from a survey conducted by the General Accounting Office of committee members in 1998, and concludes that enhancing transparency does significantly impair committee effectiveness. However, balanced membership improves committee effectiveness and can be used as a way to indirectly represent public viewpoints. Based on these results, it argues for representative (rather than direct) democracy within administrative agencies.

Introduction

Scholars have invented dozens of catchy terms to describe the alleged inability of democratic institutions to deal with the complex problems of modern society. "Crisis of Democracy", "Systems Overload", and "Legislative Logjam" are just a few. Yet at the same time that pundits lament an increasingly incompetent and special-interest-ridden state, we also fear our growing dependence on technocrats to help us design and administrate laws - a dependence that has estranged people from their government. Thus, we are torn between two *apparently* conflicting goals: participatory democracy and administrative competence.

Following two decades of gloomy forecasts about the future of democracy, the crisis rhetoric has diminished somewhat during the economic boom and information revolution of the 1990s. Unemployment plummeted, poverty rates dropped, crime decreased, and the once-abandoned urban centers of America saw renewal, prosperity, and skyrocketing property values. Nonetheless, both Americans and political philosophers still remain deeply suspicious of the perceived drift toward technocratic rule both in the US and in democracies abroad. In Europe, Scholars have invented new terms to describe the form of government in the EU - 'Comitology', or government by expert committees.³⁴⁴ In the US, the response to technocracy has been schizophrenic. In the "Contract With America" of 1994, a renegade Republican Congress casually dismantled the Office of Technology Assessment, even though OTA was highly regarded in both the scientific and political communities.³⁴⁵ Within a few years, however, Congressional requests for reports from the National Research Council (an allegedly non-governmental

³⁴⁴ Egan, Michelle and Dieter Wolf. "Regulation and Comitology: The EC Committee System in Regulatory Perspective." Columbia Journal of European Law. Summer 1998, Vol. 4, p. 499.

³⁴⁵ Morgan, M. Granger. "Death by Congressional Ignorance: How the Congressional Office of Technology Assessment (Small and Excellent) was Killed in the Frenzy of Government Downsizing." Pittsburgh Post-Gazette. August 2, 1995. Morgan summarizes the praise OTA received from other newspapers, and recounts the "comedy of errors" that resulted in OTA's unlikely demise.

institution mostly funded by Congressional grants and dominated by peer-elected academics) more than doubled.³⁴⁶

The dislike of technocracy has spurred a growing political sentiment in favor of bringing government closer to the people. This has manifested in a demand for two institutional changes. The first is decentralization of governmental functions to state and local bodies.³⁴⁷ The second is increasing the responsiveness of federal agencies to the public, however one chooses to define "the public".³⁴⁸ There are, however, practical limits to both strategies.

Most people recognize these limits; very few would truly advocate running the federal government like a New England town meeting. Those who recall such historical moments as the Salem Witch Trials and the lynchings of the Old South may even question the inherent virtue of the hallowed institution of direct democracy, as did James Madison in the Federalist Papers.³⁴⁹ Nonetheless, the ideal of direct democracy remains the golden apple of political ideology in the United States. Only our mortal limitations prevent us from achieving it, for the federal government is simply too large and too complex to make all decisions by democratic vote. Confronted with these problems, the federal government has frequently looked to advisory committees as a possible solution.

A Brief History of Advisory Committees in the U.S.

Advisory committees have existed since the very beginning of the US government. One of the first known committees dates back to George Washington, who convened it to seek a peaceful solution to the Whiskey Rebellion. Although this committee failed (and may even have been expected to fail),³⁵⁰ various presidents down

³⁴⁶ Interview on file with author. Actually, interviewee may have understated the impact of the demise of OTA. In 1995-1996, NRC delivered 4 Congressionally mandated reports. In 1997-1998, NRC delivered 26! NRC archives, online. <http://www4.nationalacademies.org/arc.nsf>

³⁴⁷ Decentralization first entered modern academic literature in the context of designing efficient organizations (See Marschak, Thomas. "Centralization and Decentralization in Economic Organization." *Econometrica*. Vol. 27, No. 3, July 1959.) In 1993, the National Productivity Review also approached decentralization in this context, as a method of streamlining government. (See *NPR Executive Summary*. Office of the Vice President, 1993.) In the past few decades, however, comparative scholarly work has focused on the political aspects of decentralization and its effects on democracy. (See Manor, James. *The Political Economy of Democratic Decentralization*. Washington D.C., The World Bank, 1999.)

³⁴⁸ The National Productivity Review advocated responsiveness in the form of "customer-driven agencies." (See *NPR* accompanying report, *Improving Customer Service*. Office of the Vice President, 1993.) In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA) to modify the Regulatory Flexibility Act of 1980 by creating an oversight system of advisory boards and ombudsmen to advocate for small businesses and report to Congress on their efforts of agencies to address the needs of small businesses.

³⁴⁹ Madison argues, in Federalist No. 10, that pure democracies consisting of small numbers of citizens "admit of no cure for the mischiefs of faction." Madison, James. *Federalist Papers, No. 10*. Available online at <http://www.mcs.net/~knautzr/fed/fedpaper.html>.

³⁵⁰ Flitner, David Jr. *The Politics of Presidential Commissions: A Public Policy Perspective*. Transnational Publishers, Inc. Dobbs Ferry, NY, 1986.

the years have made use of committees and panels for a wide variety of purposes. Their popularity waxed and waned with different presidential incumbents, rarely having much of an impact throughout the 19th century. Frequently, Congress challenged the president's right to appoint commissions, with virtually every holder of that office defending the right of the president to independently seek advice. Yet it was not until Theodore Roosevelt in the early 20th century that presidents began to use advisory committees with sustained frequency. In particular, Roosevelt's Commissions on Public Lands, Inland Waterways, Country Life, and National Conservation publicized and informed the debate on protecting national lands, and thereby helped build the foundations underlying the National Park Service.³⁵¹ Since the first Roosevelt, commissions became more accepted and more commonplace. A few even wielded considerable influence – for example, the Brownlow Commission of 1937, which is famous for designing the structure of the modern presidency, and advocating it with the war cry, "The President needs help!"³⁵²

Yet these were all high-profile, ad hoc, temporary committees. The emergence of low-level policy and administrative advisory committees in their present form began with the New Deal, when the reformist government discerned a need to cooperate more fully with the private sector in managing the economy and other social problems. Due largely to legal challenges and a generally anti-administrative philosophy among those opposed to the New Deal, advisory committees failed to gain complete legitimacy until World War II.

World War II transformed advisory committees into a permanent fixture of modern government. Although the War Materials Board is probably the best known advisory committee of that era, there were literally thousands of smaller boards and committees that were instituted to help the government manage the needs of the war economy. The apparent success of these efforts, illustrated by the fact that the US controlled over half of the world's GNP by 1945 and was turning out war material at an incredible rate, seemed to prove the success of this new model of government-private sector cooperation.³⁵³ After the war, most of these committees were disbanded during the general dismantling of the US war machine, but much of the administrative infrastructure was left in place and even built up during the years of the Cold War that followed.

The Great Depression and Post-War years marked a phenomenal growth in both the reach and size of the US federal government. The increase in the number of

³⁵¹ Wolanin, Thomas. Presidential Advisory Commissions. University of Wisconsin Press, Madison, Wisconsin, 1975.

³⁵² President's Commission on Administrative Management. Report of the Committee With Studies of Administrative Management in the Federal Government. 1937. Among other things, the Brownlow Commission is also famous for using the phrase "headless fourth branch" to describe the myriad independent agencies which proliferated at that time without any guidance from the executive branch.

³⁵³ Soon after Pearl Harbor, Roosevelt came forth with a seemingly absurd demand of producing 60,000 planes, 45,000 tanks, 20,000 aircraft guns, and 8 million tons of shipping within a year. Although initial mobilization efforts generated some ridiculous stories of bottlenecks in the first year of the war, the U.S. economy was soon exceeding these demands by a considerable margin. Janeway, Eliot. The Struggle For Survival. Weybright and Talley, Inc. NYC: 1951.

employees and the amount of expenditures was the largest in US history, in both absolute and proportional terms. There were more (non-military) federal employees in 1940 than today, even though the US population has nearly doubled. In addition, the US public expressed great faith in the competence and integrity of the federal bureaucracy - after all, it had won the war. Nonetheless, undercurrents of criticism persisted and eventually resurfaced. By 1957, the advisory committee process came under intense scrutiny from Congress.

Spurred by Department of Justice allegations that advisory committees were being used to facilitate collusion among large corporations, Congress conducted an investigation and was shocked by what it unearthed. Congress expressed two fears: First, that under the "veil of secrecy" surrounding these committees, agencies were improperly using them to solicit support among the public for their programs. Second, that narrow special interests groups dominated certain committees and were using them to directly control the regulatory process to pursue their own selfish ends. Congress threatened to regulate advisory committees, but in the early 1960s, the Bureau of the Budget (predecessor to the OMB) avoided new legislation by convincing Congress that it would deal with the problem through administrative means. OMB failed to follow through, however, and Congress again took notice of abuse of the advisory committee process in 1970. Led by Senator Metzenbaum, the Senate Subcommittee on Intergovernmental Affairs of the Committee on Government Operations first began inquiries into the advisory committee process, and was soon followed by the House. After many hearings, multiple legislative proposals, and much deliberation, Congress passed the Federal Advisory Committee Act in 1972.³⁵⁴

FACA created a new administrative body to oversee advisory committees, and set forth several principles for managing them. Among these principles are:

- **Transparency**, expressed as a mandate for open meetings and publicly recorded minutes except in specific circumstances
- **Unbiasedness**, expressed as a mandate for balanced representation among social groups, economic interests, and political opinions
- **Participation**, expressed as a mandate that committee meetings be announced ahead of time and that agencies make an effort to inform interested parties about such meetings
- **Rationality**, expressed as a desire for a streamlined committee process and an emphasis on obtaining results (reports and advice) and using them
- **Efficiency**, expressed as a desire to reduce the cost of committees, eliminate redundant committees, and eliminate obsolete committees
- **Public interestedness**, expressed as a mandate that agency officials convene and direct committee meetings themselves, use committees for advice (rather than privatized decision making), and keep the ultimate power to make decisions in their own hands.

³⁵⁴ For a more complete account of the story behind FACA's passage, see Markham, Jerry W. "The Federal Advisory Committee Act." University of Pittsburgh Law Review. Vol. 35, p. 557, 1974.

FACA and the Principles of Democracy

As many legal scholars have commented, these principles sometimes conflict with each other.³⁵⁵ Opening committee meetings to the press, for instance, can have a "stifling" effect on committee discussions.³⁵⁶ Efforts to allow the public to directly participate can make meetings run longer and can allow disaffected individuals and groups to bog down the discussion.

These problems are not unique to advisory committees. They are common to all democratic institutions in the modern age – not least of which, Congress. However, the conflict between these principles is often particularly acute in advisory committees, and from time to time it reaches critical proportions. It did so in 1997, when a federal court ordered the National Academy of Sciences to open all of its meetings to the public, and Congress was forced to step in with legislation to compromise between the important principles at stake.³⁵⁷ Nonetheless, advisory committees remain a strikingly visible organ of administrative decision-making and political involvement. Advisory committees secure advice from some of the most experienced and skilled citizens in the nation, most of whom serve on these committees for free. In the words of Congress itself, advisory committee provide “a means by which the best brains and experience available in all fields of business, society, government and the professions can be made available to the Federal Government at little cost.”³⁵⁸ Yet at the same time, they allow important social groups to directly participate in making decisions that affect issues they care about. Examining how the conflict between participatory values and efficiency plays out in advisory committees promises to shed considerable light on how these values interact in the broader political realm.

The frequency of court cases surrounding FACA provides compelling evidence of this conflict between participatory and administrative values. In twenty-five years, FACA has racked up an impressive body of precedent cases – totaling nearly 100 in all. Twenty of these directly address issues of openness, a dozen address issues of balance, and another thirty address related issues such as when FACA applies and what constitutes an advisory committee.³⁵⁹ Often, they founder in legal details, as courts seek to render decisions based on technicalities to avoid answering the big questions. Yet out of these

³⁵⁵ Funk, William. “Regulatory Negotiation and the Subversion of the Public Interest.” *Duke Law Journal*, Vol. 46, p. 1351. April 1997.

³⁵⁶ Faure, David. “The Federal Advisory Committee Act: Balanced Representation and Open Meetings in Conflict with Dispute Resolution.” *Ohio State Journal on Dispute Resolution*. Vol. 11, 1996. Faure’s sources included articles by Phillip Harter, Robert Reich, and Perritt & Wilkinson.

³⁵⁷ See Federal Advisory Committee Act Amendments of 1997. Also see “Animal Legal Defense Fund, Inc. vs. Donna E Shalala, 104 F.3d 424, 322 (U.S. App. D.C. 1997) The appellate court overturned the lower court decision, ruling that the NAS committee in question was an advisory committee and produced advice that was intended for use by the agency. Congress amended FACA to allow NAS committees somewhat more flexible criterion for fulfilling FACA requirements.

³⁵⁸ House Report No. 91-1731, 91st Congress, 2d Session. “The Role and Effectiveness of Federal Advisory Committees.” December 11, 1970.

³⁵⁹ Committee Management Secretariat website. <http://policyworks.gov/org/main/mc/index-la.htm>.

cases has emerged a body of legal rulings that purport to interpret and apply FACA. A number of legal scholars make the following observations about these rulings:

1) Minimal Emphasis on Balanced Membership

The federal courts have given only the weakest of interpretations to the balanced membership requirement. Even when the courts have granted standing to sue, the courts have frequently denied petitions. Courts have allowed agencies to interpret balance in terms of either interests or points of view, have respected agency discretion in determining which individuals adequately represent which interests, and have denied protests that committee must be numerically balanced. Even though many agencies strictly enforce balanced membership, courts have been loathe to enforce this requirement. Even in the most egregious of cases, when the courts have identified wrong-doing on the part of the agency, they have ordered only the weakest of remedies.

2) High Emphasis on Transparency

By contrast, courts have taken a much more stringent (though not unwavering) stand on openness. Although abiding by the list of FOIA exceptions (which are admittedly quite broad), courts have occasionally compelled the release of documents prepared for the committee and ordered meetings open to the public. In one of the most recent and high profile cases, the courts ordered NAS to comply with the open meeting requirement, an order that was superseded by Congressional amendment in 1997.

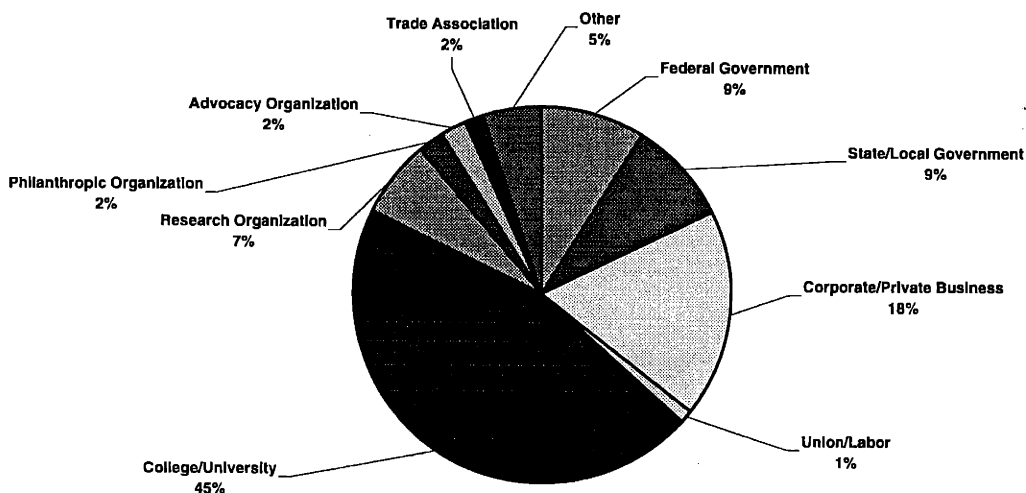
Clearly, the intensity of the legal battles involving FACA demonstrate that formal and case law has an extraordinary impact on the way advisory committees are handled in the United States. Our question is simply this: **What are the consequences of these legal choices on committee effectiveness, and given these consequences, should we continue to place a low emphasis on balanced membership and a high emphasis on transparency?** At first glance, this appears to be a meaningless question. Our instinct is to demand more of both; democracy is like money and power, you can't have too much of it. Yet upon closer inspection we find practical and normative arguments against both balanced membership and complete transparency.

Balanced Membership: Lowi vs. Madison vs. Arrow

The primary argument against strictly balanced membership rests in the distinction between interest group liberalism and classical Madisonian democracy. Interest group liberalism finds its clearest statement in the writings of Theodore Lowi and Robert Dahl (who labels it polyarchy). These modern liberals argue that society is so large and complex that groups have considerably more ability to influence government than individuals, because they can more adequately coordinate their behavior and overcome collective action problems. Recognizing this comparative advantage of groups, individuals pursue political goals through groups, and groups effectively

represent them. Democracy ceases to be a balancing of individuals, and becomes a balancing of the groups and interests who represent them. Democratic decision-making can be thought of as the summing up of social pressures in some sort of 'Calculus of Consent'. Thus, if group participation is unbalanced, the political outcome will be biased, unfair, and harmful to the nation as a whole. Modern liberals would therefore express concerns that corporate/business/trade group membership outnumbers that of other non-government, non-academic groups by over 2 to 1, as Chart 1 shows.

Chart I: Advisory Committees and Group Membership



(Proportion of Survey Respondents, By Group Type)

In contrast, the classical Madison theory of democracy rails against faction as the root of all evil, contending that it fragments society and encourages selfish behavior. Instead, Madison supports the notion that atomistic individuals with diverse and cross-cutting interests can best contribute to governing the nation. This view models government either as a guardian of the public interest, or as an extension of the altruistic, civic activity of citizens.³⁶⁰ Empowering groups with rights to participate in advisory committees merely accentuates the cleavages of faction and undermines civic principles, thereby undermining democracy.

The Madisonian view of democracy finds strong statement in law, under the so-called non-delegation doctrine.³⁶¹ Since the New Deal era, however, courts have been reluctant to enforce the non-delegation doctrine, though they do give it lip service.³⁶² Nonetheless, the courts have sternly maintained that specific groups have no right to

³⁶⁰ The latter view has been called Civic Republicanism by legal scholars, and has received more attention in the legal field than from political scientists. See Croley, Steven P. "Theories of Regulation: Incorporating the Administrative Process." *Columbia Law Review*. 1998, V. 98, p. 1.

³⁶¹ The non-delegation doctrine typically rests on a trio of cases dating back to the New Deal - *Schechter Poultry Corporation vs. United States* (1935), *Carter vs. Carter Coal* (1935), and *Panama Refining Co. v. Ryan* (1933).

³⁶² Occasionally, the issue becomes one of major concern. Early in 2001, the Supreme Court overturned a lower court ruling that would have invalidated a large portion of the EPA rulemaking process as the unlawful delegation of law-making powers to an agency. The Court held that EPA's rulemaking powers were narrowly circumscribed, and thus were not legislative in nature. *American Trucking Associations, Inc. vs. Whitman*. In doing so, the Court reiterated the 'intelligible principle' doctrine of *J. W. Hampton, Jr., & Co. vs. United States*, without which modern 'technocracy' would be untenable.

participate in committees, and that individuals who sit on committees do so as individuals rather than groups.³⁶³ Nonetheless, the new GSA proposed ruling allows the existence of so-called 'operational committees', which function more like mini-agencies than instruments of advice.³⁶⁴ Moreover, practical experience raises doubts about the reality underlying this legal doctrine, and suggests that many groups have *de facto* guaranteed representation on certain advisory committees. Said one interviewee who sat on an EPA committee, "I don't know how the appointments are selected, but it's pretty obvious who the stakeholders are... Yes, the stakeholders are mostly organizations."³⁶⁵ Another committee member indicated that he filled a position which had traditionally been filled by an employee of his firm; however, he also noted that when serving on the committee he deliberately took a broader view rather than pushing for the narrow interests of the firm.³⁶⁶

Clearly, Lowi and Madison offer different prescriptions for running a participatory government. Lowi believes factions are an inevitable part of politics. He therefore advocates carefully balancing interests, and warns us against narrow interest groups who gain biased access to government. Madison warns us against an excessive focus on groups as the basic political unit, fearing that factions discourage selfless behavior, undermine common sense, heighten conflict, and paralyze decision-making.³⁶⁷

The Lowi/Madison debate is re-iterated in modern theoretical treatments of the issue of fragmented interests. These modern treatments are often less concerned about the possibility of biased outcomes than they are about the possibility of ever achieving a stable political outcome. Ever since Arrow's Impossibility Theorem, models of democratic decision-making bodies have consistently predicted that more heterogeneous groups have greater difficulty reaching decisions.³⁶⁸ Buchanan and Tullock cogently argue that rational citizens will yield up authority in exchange for more efficient institutions.³⁶⁹ While formal theorists argue about the precise conditions under which stability can be achieved, virtually all agree on one thing – homogeneity increases the efficiency of decision-making and the likelihood of reaching stable outcomes, while heterogeneity impedes efficient decision making and increases the likelihood of political instability. Arrow and others who model large-scale, democratic groups of rational decision makers thus tend to support the hypothesis that balance of all sorts impedes effectiveness. We ask whether the results of Arrow and others extend to the advisory committee setting.

³⁶³ National Association of People with AIDS v. Reagan, Civil No. 87 2777 OG (D.D.C. May 13, 1988). Also see Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods, 708 F.Supp. 359 (D.D.C. 1988), *aff'd* 886 F.2d 419 (D.C.Cir. 1989).

³⁶⁴ Proposed GSA Ruling. Federal Register. Vol. 65, No. 10, P 2504.

³⁶⁵ Interview on file with author.

³⁶⁶ Interview on file with author.

³⁶⁷ James Madison. Federalist Papers, No. 10.

³⁶⁸ "Implications from the Disequilibrium of Majority Rule for the Study of Institutions." Riker, William H. The American Political Science Review. Vol. 74, No. 2, pp. 432-446. June, 1980.

³⁶⁹ Buchanan, James and Gordon Tullock. The Calculus of Consent. Ann Arbor: University of Michigan Press, 1962.

Open Meetings: Freedom vs. Freedom

In the over-quoted words of James Madison, “A popular government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.”³⁷⁰ Long after Madison, President Wilson took up the cause, writing: “Everybody knows that corruption thrives in secret places, and avoids public places... Government must... be absolutely public in everything that affects it.”³⁷¹ Around the same time, Justice Brandeis wrote: “Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.”³⁷² Numerous others have said less memorable words.

Strikingly, this tradition of openness in the United States is truly unique. The US was the first country to introduce a Freedom of Information law. Britain, for which we are thankful for so many of our institutions and civic traditions, retained a very insular administration until only very recently. Indeed, Britain did not pass its own FOIA law until the year 2000. One wonders how these democracies managed to defend their traditions of secrecy for so long. Yet upon closer review, we do find those (even in the United States) who support placing limits on openness. Indeed, FACA, FOIA, and the Sunshine Act all include a number of justifications for closing the processes of government, including:

- National security interests
- Agency rules and employment practices
- Interagency memoranda
- Matters of individual privacy
- Trade secrets, and commercial and financial information
- Law enforcement records

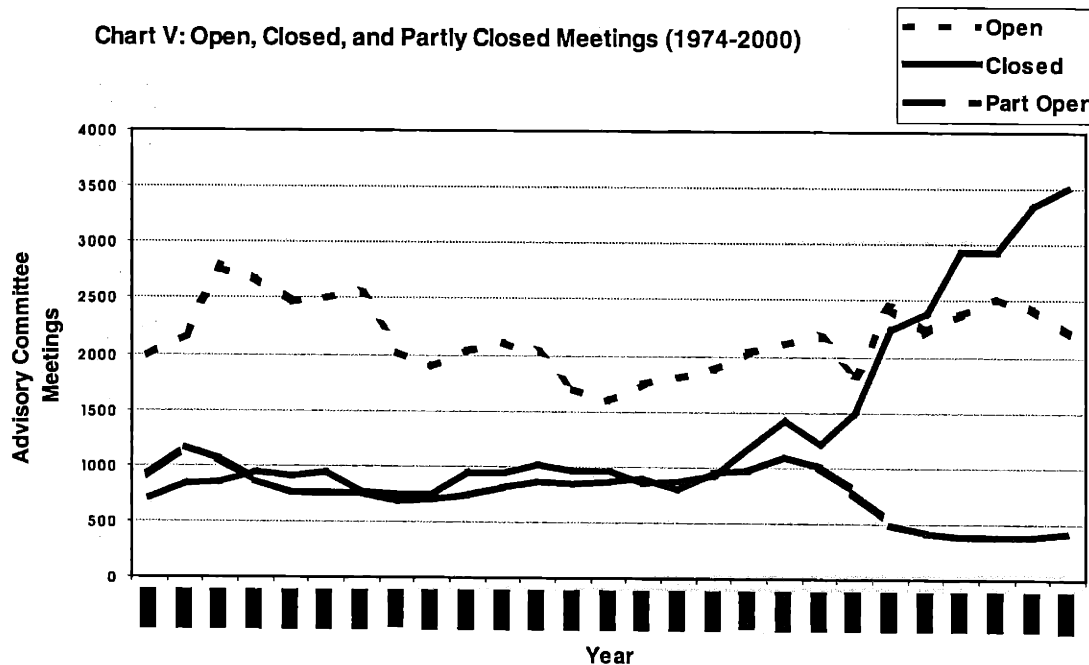
This list is rather expansive, and in recent years the number of closed meetings has been increasing rather dramatically, as Chart II shows. Many thinkers, including modern theorists such as Olson and Stigler, would express concern about this trend. In their view, information asymmetry between special interests and the mass public is a key

³⁷⁰ James Madison. Letter to W. T. Barry, August 4, 1822. Reprinted in The Complete Madison. Ed. By S. Padover. P. 337. 1953. Cited in John Moon, “A Symposium of Critical Legal Study: The Freedom of Information Act: A Fundamental Contradiction.” American University Law Review. Vol. 34. Summer, 1985. This famous quotation appears in literally hundreds of books and articles, including the Congressional documents supporting FOIA.

³⁷¹ Wilson, Woodrow. The New Freedom. Ed. By William E. Leuchtenburg. NY: Prentice-Hall, 1961. Cited in Rourke, Francis E. “Introduction: Secrecy and the ‘Issue Attention Cycle’.” In Itzak Galnoor, Ed. Government Secrecy in Democracies. NYC: NYU Press, 1977. Also in . NY: Doubleday, Page, and Co., 1913. (Should I cite the original author here, or not bother?)

³⁷² Louis Brandeis, Other People’s Money 67 (1933). Cited in Kathy Bradley, “Do You Feel the Sunshine? Government in the Sunshine Act: Its objectives, Goals, and Effect on the FCC and You.” Federal Communications Law Journal. P. 473, February 1997.

requirement for the existence of regulatory capture.³⁷³ Yet while closed meetings may serve to facilitate special interest influence, the converse is not true – open meetings do not always serve the public interest. Congress essentially recognized this claim in the NAS amendments to FACA in 1997. Open meetings can and do hamper the administrative process. An agency may have convincing evidence of a fact, but be unable to share the evidence with committee members because it is sensitive data. An agency may wish to facilitate negotiation, but openness may hamper this by encouraging grandstanding, highlighting concessions, and creating an atmosphere that stifles free discussion.³⁷⁴ Even in meetings that serve no negotiating purpose, open meetings may threaten the sense of collegiality among committee members, encourage important meetings to not be held, and allow the staff and chairman to dominate the proceedings.³⁷⁵ Taken together, these arguments present a formidable challenge to the notion that openness is always in the public interest.



³⁷³ Olson, Mancur. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press, 1965.

³⁷⁴ Faure, David. "The Federal Advisory Committee Act: Balanced Representation and Open Meetings in Conflict with Dispute Resolution." *Ohio State Journal on Dispute Resolution*. Vol. 11, 1996. Faure's sources included articles by Phillip Harter, Robert Reich, and Perritt & Wilkinson. In cases where meetings include a negotiating function, Faure finds four arguments for open meetings and four against them.

³⁷⁵ Bradley, Kathy. "Do You Feel the Sunshine? Government in the Sunshine Act: Its Objectives, Goals, and Effect on the FCC and You." *Federal Communications Law Journal*. Vol. 49, February, 1997.

Balanced Membership, Meeting Openness, and Committee Effectiveness

This paper analyzes a data set compiled by the General Accounting Office from a multi-question survey conducted in 1997. The survey was sent to 900 federal advisory committee members, randomly selected from the general pool of all members. 607 members responded, generating a response rate of 67%. The survey was conducted anonymously, and did not include questions that could identify the responding committee member. This unfortunately precludes us from implementing certain statistical controls for committee type, a potential problem that is addressed later in this paper.

The paper is primarily interested in three sets of questions, those pertaining to balance, openness, and effectiveness. It uses a measure of effectiveness as the dependent variable, and asks how balanced membership and openness affect a committee's capacity to accomplish its purpose.

Recognizing the importance of other factors in running effective committees, however, it includes several controls.

The Dependent Variables

The following chart summarizes the possible variables in the survey that could be used to measure the dependent variable, committee effectiveness:

Variable	Question (Paraphrased ³⁷⁶)	Rating Scale	Obs.	Mean	Std.Dev.
Success	This committee should be continued because it is successfully fulfilling a continuing purpose.	1 to 5	413	4.53753	0.80150
Purpose	The number of meetings held are adequate for the committee to achieve its purpose.	1 to 5	579	4.14853	0.96945
Discuss	The number of meetings held are adequate for the committee to thoroughly discuss its recommendations and advice.	1 to 5	579	4.02936	1.04443
Consistent	Advice or recommendations are consistent with purpose.	1 to 5	594	4.59259	0.65628
Account	Agency takes advice into account when making policy or changing operations.	1 to 5	525	4.2	0.88240
Effectiveness1	Principal component of previous 5 variables using orthogonal varimax rotation.	-4.089263 to 1.008503	359	0	0.936716
Effectiveness2	As 'Effectiveness1', but excluding the 'Success' variable from the principal component.	-3.688728 to 0.9521708	504	0	0.9385846

³⁷⁶ See the appendix for a full description of these questions.

Each of the variables has advantages and disadvantages. At the most basic level, the 'Success' variables appears to most directly measure the committee's effectiveness. However, this variable only addresses continuing committees (those which were scheduled to be re-authorized), and excludes those committees which had finished their work. Thus, it may introduce some selection bias. For this reason, we replicated the regressions separately using each of the variables as the dependent variable. The results were highly robust to choice of the dependent variable, and the high correlation in the responses to the questions above suggest that selection bias in the 'Success' variable is not problematic. Ultimately, the model adopts a principal component combination of these five variables, labelled 'Effectiveness' as a dependent variable. The results remain quite strong in spite of the reduced number of observations. Nonetheless, we replicate the regression with 'Effectiveness2', a principal component that excludes the 'Success' variable, and obtain almost identical results.

As with most survey data, however, this data may suffers from typical biases. Most importantly, the dependent variable is drawn from questions that ask committee members to rate their own committee. Some critics may contend that members are predisposed to overrating their committee, but this does not concern us since we are more interested in the *relative* impact of our independent variables than in overall levels of committee approval. We are far more concerned about the possibility that a respondent's perceptions of committee effectiveness may not coincide with the preceptions of an agency or of society at large (if this could even be measured). Thus, we must trust that respondents are not judging committees based entirely on selfish criterion. We do have some basis for making this judgement. First, the survey was fairly extensive, including dozens of questions, and required considerable effort to fill out. Since respondents had little to personally gain from submitting the survey, we may expect that those who were motivated to serve on their committee purely for selfish reasons would choose not to respond. That GSA received such a high response rate (76%) from an incredibly busy group of people speaks very highly of the typical advisory committee member and the quality of the data. Second, the survey included several questions that measured aspects of success, and these questions were worded to specifically address a single (somewhat technical) aspect of the committee's behavior. Yet these questions had a single linking theme (which I call effectiveness), and their responses were highly correlated and yielded similar results when they were separately used as dependent variables in the regressions that follow. I therefore find it highly likely that the resulting variable 'effectiveness' accurately measures some composite index of how the committee functioned, and not how much the individual member personally gained from the committee.

Independent Variables

The GAO survey included several questions that we use to construct independent variables. These questions are listed below:

Variable	Question (Paraphrased)	Rating Scale	Obs.	Mean	Std.Dev.
Express	Are members of the public ever	0 to 1	597	0.567839	0.427657

	allowed to express their views?				
Openmeet	How open are committee meetings?	1 to 4	600	2.313333	1.197586
Balance1	The committee's membership is balanced in terms of points of view represented.	1 to 5	595	4.292437	0.811446
Balance2	The committee includes a represented cross-section of stakeholders.	1 to 5	586	4.182594	0.878482
Balance	Average of balance1 and balance2.	1 to 5	584	4.239726	0.778064
Worthwhile	This committee has a worthwhile purpose.	1 to 5	594	4.73569	0.53779
Contact1	How much contact do you have with the agency head?	1 to 5	576	1.904514	1.301336
Contact2	How much contact do you have with management level agency officials?	1 to 5	568	2.617958	1.401748
Contact3	How much contact do you have with designated agency officials assigned to the committee?	1 to 5	582	3.561856	1.14317
Contact4	How much contact do you have with other agency officials than those designated to the committee?	1 to 5	551	2.540835	1.459035
Contact	Average of contact1-contact4.	1 to 5	530	2.603302	1.041467
Access	Is your level of access to agency officials adequate?	1 to 4	579	3.272884	0.640183
Support	How adequate is the current level of administrative staff support?	1 to 4	570	3.192982	0.647792
Prior1	Do you have access to necessary preparatory materials prior to meetings?	1 to 5	595	4.087395	1.004582
Prior2	Do you have access to necessary preparatory materials prior to discussions?	1 to 5	586	4.139932	0.945096
Prior3	Do you have access to necessary preparatory materials prior to decisions?	1 to 5	582	4.199313	0.926638
Prior	Average of prior1-prior3.	1 to 5	580	4.149425	0.882836
Member Input	Relative Level of Committee Member Input vs. Agency Input (high = high member input)	1 to 5	582	4.298969	1.007698
Federal	Federal government member.	0 to 1	607	0.107084	0.309475
State/Local	State or local government member.	0 to 1	607	0.103789	0.305238
Corporate/ Business	Corporate/private business member.	0 to 1	607	0.214168	0.410582
Union	Trade union or labor organization member.	0 to 1	607	0.01318	0.114137
University	College or university member.	0 to 1	607	0.543657	0.498501
Research	Non-university research organization member.	0 to 1	607	0.080725	0.272637
Philanthropic	Philanthropic organization member.	0 to 1	607	0.024712	0.155373
Advocacy	Advocacy organization member.	0 to 1	607	0.028007	0.165128
Trade Association	Trade association member.	0 to 1	607	0.019769	0.139322
Other	Member of other group.	0 to 1	607	0.059308	0.236395

We primarily measure transparency with the variable 'Openmeet', in which members rate how open their committees were to the general public. We recognize,

however, that openness has two implicit meanings – first, transparency, and second, participation. Thus, we also include a related variable, ‘Express’, which measures opportunities for public participation. Opportunities for expression may take the form of time set aside at meetings for public comment, formal committee hearings, or access to committee members during breaks and intermissions.

Although not the focus of this paper, the coefficient on the ‘Express’ variable carries considerable importance, as it measures the effect of public participation on the efficient functioning of democratic institutions in the United States. A notable literature contends that sheer size can impose considerable constraints on democracy, and if this were true, we might expect to see participation imposing a cost on efficiency and effectiveness.³⁷⁷

As one might expect, ‘Express’ and ‘Openmeet’ are highly correlated and have similar coefficients in all of the regressions when they are individually included in the model. When they are included together, however, the effect of the ‘Express’ variable tends to fall out, as we will see later.

The balance variables are perhaps the most intriguing in this study. The survey offers us two questions from which to construct a ‘Balance’ variable. The first question directly addresses points of view, and the second directly addresses interest groups (stakeholders). The difference in these two measures potentially offers us the opportunity to test whether the Madisonian theory of democracy better describes advisory committee dynamics than Interest Group Liberalism. Empirically, however, the two measures are highly correlated (simple correlation of 0.69), and in all of the regressions the variables had virtually identical coefficients. Thus, for the sake of parsimony and statistical significance, we combine these two variables in the final set of regressions into a single ‘Balance’ variable by simply averaging them. The combined ‘Balance’ variable measures the impact of balanced membership *and* viewpoints on the effectiveness of advisory committees.³⁷⁸

The remaining variables are control variables. Although not particularly interesting from the standpoint of a democratic theorist, they are still quite important to the design of efficient agencies and organs of government.

The first, and perhaps most important control variable, is ‘Worth’, which measures whether a committee had a worthwhile purpose. This variable presents a possible problem for the analysis, as it may explain *too much* of the variation in committee effectiveness. We include it because we believe that respondents tend to rank committees as more effective if committees are created for valuable purposes. However, we caution that the coefficient may overestimate the effect of the ‘Worth’ because of reverse causation – those committees which performed better may *appear* to have more worthwhile purposes. As one would expect, the inclusion of this variable tends to slightly attenuate the estimated effects other variables. However, the effect is slight, and so this variable is retained in the final set of regressions in order to err on the side of caution.

³⁷⁷ Dahl, Robert. *On Democracy*. New Haven, CT: Yale University Press, 1998. Specifically, Chapter 8.

³⁷⁸ A Wald test fails to reject the hypothesis of equivalence of coefficients on the two balance variables at even a 40% significance level in any of the regressions.

The next set of control variables, the 'Contact' variables, should all measure the same thing – the level of contact a member has with the sponsoring agency. We hypothesize that committees with higher levels of contact between committee members and agency personnel would tend to perform better, and that the effects of the contact variables would be similar. As with the dependent variables and the balance variables, we construct a composite measure of 'Contact' for the sake of parsimony. Ultimately, all four contact variables and the composite were dropped from the final regressions due to lack of significance.

The 'Access' variable appears to measure something very similar to the contact variables, but with a slightly different emphasis. The contact variables measure how much interaction advisory committee members actually engaged in with agency personnel; the 'Access' variable measures how much access the committee members *could* have had to agency officials. Surprisingly, the 'Access' variable is generally significant (and positive) even though the 'Contact' variable is not. Unfortunately, the access variable may also suffer from some multi-causality issues, as important agency officials may grant more access to committees that are successful. Thus, I ran the regressions with and without this variable to see if it changes the coefficients on our variables of interest. In no case did the inclusion of 'Access' flip a sign or significantly change a coefficient. Nor did its inclusion ever change the significance of a coefficient, so the results appear to be robust to its inclusion.

The 'Support' variable measures the level of administrative support given to a committee by its agency or sponsor. One would suspect that administrative support should increase the probability of committee success, and indeed at least one interviewee cited administrative support as a key determinant of success.³⁷⁹ However, another interviewee expressed concerns about the strategic use of administrative support to encourage or strangle a committee's deliberations and investigations.³⁸⁰ In general, we expect that administrative support would have a large and positive impact on committee effectiveness, but there are arguments to the contrary.

The prior materials variables measure the degree to which committee members have access to supporting materials and documents prior to meetings, which was one of the primary recommendations of a major 1992 Institute of Medicine report on advisory committees in the health sciences.³⁸¹ As with the balance variables, the prior variables all have similar signs and magnitudes. Combining them into a single average variable,

³⁷⁹ Interview on file with author. "The most common cause of committee breakdown... is probably insufficient staff support. For instance, there was one committee where we had a staffer who had lots of technical expertise in the area, but was less good at the sort of un-quantitative things that are needed to manage a committee and prepare a report generated by a lot of people."

³⁸⁰ Interview on file with author. "There are a lot of tensions between the commission and the staff. How independent is the committee? If the staff is largely detailed (sent by the agency to do work for the committee and paid from agency budgets), and the staff writes the report, and the committee rubber stamps them, then I am cynical about its unbiasedness."

³⁸¹ Institute of Medicine. Food and Drug Administration Advisory Committees. Washington D.C.: National Academy Press, 1992.

'Prior', improves the precision of the coefficients and the parsimony of the model, without really hindering the analysis.

The 'Input' variable measures the relative amount of input from committee members vis-à-vis agency personnel. In bivariate regressions, this variable has a strong positive impact ($p < 0.001$) on all measures of committee effectiveness, indicating that agency interference in committees might harm eventual outcomes – whether deliberately or inadvertently, we cannot say. Although this result seems highly intuitive, since it is easy and tempting to imagine federal bureaucrats distorting the committee process, this result largely falls out in the multivariate analysis below. Ultimately we leave this variable out of the final regressions.

Finally, the regressions include 10 membership dummy variables. All ten variables are included in the regression because some respondents listed themselves as members of more than one group (eliminating the problem of collinearity), and a handful did not list themselves as a member of any group (even 'Other'). Quickly scanning the means of these variables, we note that fully 54.4 percent of all advisory committee members who responded to the survey work in universities, colleges, or university-sponsored research institutions. Even considering that university members may be more likely to respond to the survey than members of the private or government sectors, the influence of universities in advisory committees (and especially science advisory committees) is truly extraordinary. Indeed, virtually every committee in existence has at least one, and usually more than one, university member serving. Furthermore, as non-governmental experts that can claim unbiased positions, university members tend to serve more often as committee chairs. In many cases, university members dominate the entire committee, particularly in the NAS and NIH committees. Even in committees that are not part of the scientific establishment, the presence of university members remains one of the defining characteristics of advisory committees in the United States.³⁸²

Before moving on to the results, readers should consider a few words of caution.

First, in interpreting the membership variables, the reader should be especially cautious. It is impossible, given this data, to determine whether group membership has a negative effect on committee success, whether certain groups tend to sit on certain types of committees, or whether certain group members tend to systematically rate success higher or lower than members of other organizations. Moreover, the coefficients on group membership are almost never significant, and are never consistently significant (let alone consistently signed) across specifications.

Second, the survey data lacks two additional controls: agency dummies and committee type. Unfortunately, for reasons of anonymity, these questions were not included in the survey. Agency dummies would prove problematic anyway, especially given the large number of agencies relative to the number of responses. Committee type, however, should be included as a control, and there was no particular reason not to

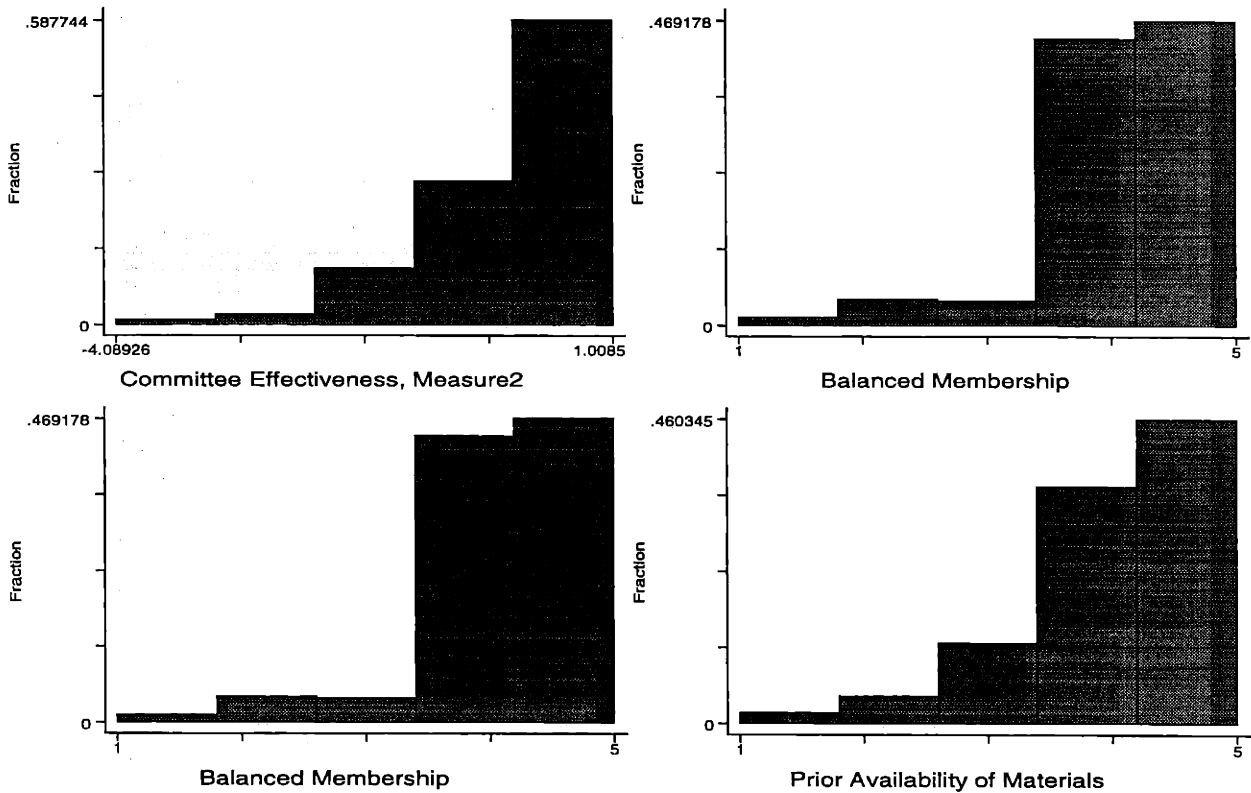
³⁸² If one considers advisory committees a sample that represents where our society keeps its expertise, then universities account for a tremendous amount of our national knowledge base.

include the question in the survey. Interview evidence offers every indication that low-level grant review committees behave differently in key aspects than high-level trade negotiation committees. Moreover, evidence from other work provides very strong evidence that certain types of committees differ consistently in such aspects as meeting closure and frequency, which suggests that committee type might be very powerful in predicting effectiveness as well.³⁸³ We must therefore hope that failure to control for committee type does not bias our other estimates by introducing spurious correlation (that is, that committee type does not contribute toward both balance and effectiveness in a systematic manner). Future work should include questions on committee type, particularly since such information would not threaten the confidentiality of responses.

Third, most of the responses from the survey questions have skewed distributions, with means located at the upper ranks. On the whole, therefore, most respondents felt their committees did a pretty good job on most things, as Chart III demonstrates. Thus, about 95% of all respondents rated their committees as having a 4 or 5 on balanced membership, and about 95% of all respondents gave their agencies a 3 or better on taking committee viewpoints into account. On the whole, most committee members think the process works fairly well in most cases. This raises potential problems with the estimation if the results are being driven by outliers, since the nature of the survey tends to overweight those with unusually harsh or strong viewpoints. To address this problem, I conducted sensitivity analysis by systematically dropping observations with the lowest ratings in each variable, one by one. Surprisingly, these never changes the significance of the major variables (although it does cause those variables with significance levels around $p < 0.05$ to fluctuate slightly). More often than not, it actually increases the significance levels (since outliers tend to increase the estimated residuals), so we ignore the skewness issue throughout the remainder of the paper.

³⁸³ Second paper of this thesis.

Chart III: Histograms of Key Variables



Statistical Results and Discussion

Since most of the data (including the dependent variables) are categorical, it is tempting to use ordered probit estimation in testing our hypotheses. While we did estimate several ordered probit models, the results invariably replicated the OLS results, and also lacked the ease of interpretation. Moreover, the composite dependent variables (which we are most interest in) have too many potential categories to properly estimate an ordered probit model. This paper therefore only reports the OLS models.

The following two charts summarize the results of the data. The first chart lists the complete regressions, with all of the independent variables. The second chart presents the restricted regressions. These regressions drop the 'Express' and 'Contact' variables, and collapsed the two balance variables into a single average, called 'Balance'. The 'Express' variable proved insignificant in the first set of regressions. The four separate contact variables varied in sign and significance, with no consistent patterns. Moreover, a composite 'Contact' variable constructed from their average also entirely lacked significance (regressions not shown). The 'Balance' variables, on the other hand, did prove significant. However they also suffered from serious collinearity, which plays out in the near identity of the coefficients and the extremely high standard errors.

The coefficients in the second series of regressions tend to be a little more significant than those in the first series, and the adjusted R^2 value is actually higher in 4 of the 7 specifications. This paper therefore uses the coefficients in the second series of regressions during the discussion below.

**Table I: Full Regressions
(Beta Coefficients, P-Values)**

Variable	Success	Purpose	Discuss	Consistent	Account	Effectiveness1	Effectiveness2
Express	0.011775 (0.839)	-0.01688 (0.734)	0.05603 (0.255)	-0.0138 (0.78)	0.033421 (0.55)	0.000386 (0.994)	0.025089 (0.591)
Openmeet	-0.11089 (0.075)	-0.19549 (0)	-0.24785 (0)	-0.02383 (0.655)	-0.10983 (0.067)	-0.20329 (0)	-0.2292 (0)
Balance of Viewpoints	0.015502 (0.805)	0.101882 (0.054)	0.074803 (0.15)	0.118737 (0.022)	0.124594 (0.034)	0.091928 (0.093)	0.115236 (0.02)
Balance of Interests	0.111071 (0.066)	0.085304 (0.095)	0.074689 (0.134)	0.06393 (0.2)	0.109507 (0.054)	0.105834 (0.047)	0.102935 (0.032)
Worthwhile	0.433987 (0)	0.084706 (0.048)	0.067141 (0.111)	0.46072 (0)	0.144804 (0.003)	0.205584 (0)	0.14612 (0)
Contact1	0.012539 (0.834)	-0.02941 (0.546)	0.054371 (0.257)	-0.09346 (0.053)	-0.08228 (0.133)	-0.00635 (0.902)	-0.02415 (0.6)
Contact2	0.038388 (0.561)	-0.0459 (0.386)	-0.05354 (0.303)	0.09725 (0.064)	0.13091 (0.03)	0.025681 (0.653)	-0.00434 (0.932)
Contact3	-0.00465 (0.93)	0.163157 (0)	0.13203 (0.002)	-0.02569 (0.549)	-0.06713 (0.174)	0.027233 (0.554)	0.128311 (0.002)
Contact4	-0.04417 (0.444)	0.041055 (0.38)	-0.00903 (0.846)	0.009916 (0.83)	0.058759 (0.262)	0.031395 (0.535)	0.01675 (0.706)
Access	0.147749 (0.005)	0.100478 (0.019)	0.133307 (0.002)	0.013301 (0.755)	0.192541 (0)	0.136963 (0.003)	0.1274 (0.002)
Support	0.009158 (0.849)	0.115477 (0.005)	0.071839 (0.076)	0.070205 (0.083)	0.047962 (0.302)	0.145659 (0.001)	0.096377 (0.014)
Prior	0.103619 (0.067)	0.232453 (0)	0.27094 (0)	0.146026 (0.002)	0.166395 (0.002)	0.282858 (0)	0.25806 (0)
Input	0.046718 (0.374)	0.107153 (0.014)	0.1195 (0.006)	0.026069 (0.545)	-0.01572 (0.746)	0.072817 (0.105)	0.081516 (0.047)
Federal	-0.01658 (0.728)	0.009419 (0.815)	0.006199 (0.877)	-0.00883 (0.824)	0.029634 (0.511)	0.046236 (0.263)	0.005851 (0.879)
State/Local	0.02364 (0.599)	-0.00426 (0.91)	0.020362 (0.584)	-0.01399 (0.707)	-0.03968 (0.351)	-0.03177 (0.418)	-0.00838 (0.815)
Corporate/Business	0.009231 (0.868)	-0.06588 (0.16)	-0.01641 (0.724)	0.046621 (0.315)	-0.07759 (0.139)	-0.0169 (0.725)	-0.02135 (0.633)
Union	-0.04288 (0.348)	-0.06969 (0.067)	-0.02909 (0.44)	-0.04423 (0.24)	0.052253 (0.221)	-0.05531 (0.163)	-0.0408 (0.257)
University	0.108669 (0.068)	0.002797 (0.958)	0.064509 (0.216)	0.039608 (0.447)	0.102788 (0.081)	0.073711 (0.151)	0.0727 (0.144)
Research	0.035015 (0.442)	0.015464 (0.693)	0.029685 (0.447)	0.007377 (0.849)	0.04156 (0.347)	0.054677 (0.164)	0.023023 (0.535)
Philanthropic	0.05489 (0.201)	0.026228 (0.473)	-0.00307 (0.932)	0.036187 (0.317)	-0.02572 (0.533)	-0.00973 (0.794)	0.022899 (0.51)
Advocacy	0.023986 (0.609)	-0.01994 (0.609)	-0.04605 (0.233)	-0.09816 (0.011)	-0.04195 (0.339)	-0.01175 (0.774)	-0.0463 (0.211)
Trade Association	0.079709 (0.078)	-0.07259 (0.058)	-0.04417 (0.246)	0.039709 (0.294)	-0.00899 (0.834)	-0.0409 (0.297)	-0.02468 (0.499)
Other Group	0.028898 (0.519)	-0.0346 (0.358)	-0.04298 (0.248)	0.015889 (0.67)	-0.008 (0.851)	-0.01078 (0.781)	-0.04073 (0.255)
Constant	(0.43)	(0.966)	(0.392)	(0.001)	(0.291)	(0)	(0)
Observations	315	438	439	444	408	284	398

Adjusted R ²	0.4411	0.4467	0.458	0.4509	0.3544	0.6229	0.5526
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**Table II: Restricted Regressions
(Beta Coefficients, P-Values)**

Variable	Success	Purpose	Discuss	Consistent	Account	Effectiveness1	Effectiveness2
Openmeet	-0.09141 (0.048)	-0.21008 (0)	-0.21111 (0)	-0.02348 (0.554)	-0.0548 (0.237)	-0.20183 (0)	-0.21318 (0)
Balance	0.134865 (0.004)	0.176385 (0)	0.152612 (0)	0.192669 (0)	0.190754 (0)	0.183087 (0)	0.193897 (0)
Worth	0.435636 (0)	0.101054 (0.012)	0.075842 (0.051)	0.430999 (0)	0.131945 (0.004)	0.228567 (0)	0.152896 (0)
Access	0.157869 (0.001)	0.118901 (0.003)	0.164547 (0)	0.004915 (0.898)	0.202845 (0)	0.15981 (0)	0.157477 (0)
Support	-0.01085 (0.807)	0.103764 (0.007)	0.055722 (0.137)	0.079436 (0.034)	0.053686 (0.224)	0.132576 (0.001)	0.09027 (0.014)
Prior	0.089486 (0.082)	0.208067 (0)	0.269648 (0)	0.133907 (0.002)	0.154879 (0.002)	0.275686 (0)	0.246714 (0)
Input	0.042811 (0.348)	0.121747 (0.002)	0.104473 (0.006)	0.062187 (0.098)	0.026707 (0.542)	0.071181 (0.067)	0.093919 (0.011)
Federal	-0.03069 (0.478)	0.023109 (0.537)	0.005397 (0.883)	-0.00401 (0.912)	0.021742 (0.61)	0.023655 (0.527)	-0.00183 (0.959)
State/Local	0.038585 (0.35)	0.011524 (0.745)	0.042981 (0.213)	0.001232 (0.971)	-0.00783 (0.846)	-0.0048 (0.892)	0.016745 (0.618)
Corporate/ Business	-0.02126 (0.677)	-0.06088 (0.168)	-0.00271 (0.95)	0.028576 (0.504)	-0.07084 (0.155)	-0.01573 (0.718)	-0.02079 (0.619)
Union	-0.04047 (0.338)	-0.0399 (0.268)	-0.00309 (0.93)	-0.09363 (0.008)	0.068832 (0.093)	-0.04591 (0.207)	-0.02347 (0.492)
University	0.073071 (0.172)	0.020842 (0.668)	0.069008 (0.145)	0.016557 (0.725)	0.078553 (0.153)	0.039634 (0.386)	0.057268 (0.212)
Research	0.026401 (0.525)	0.039344 (0.282)	0.040969 (0.251)	0.004367 (0.902)	0.036757 (0.375)	0.055136 (0.12)	0.031621 (0.359)
Philanthropic	0.036161 (0.367)	-0.00798 (0.819)	-0.03033 (0.372)	0.012622 (0.709)	-0.04563 (0.252)	-0.04934 (0.153)	-0.01578 (0.635)
Advocacy	0.016812 (0.694)	-0.01223 (0.736)	-0.03611 (0.306)	-0.08392 (0.018)	-0.0395 (0.339)	-0.01468 (0.69)	-0.04133 (0.23)
Trade Association	0.071875 (0.079)	-0.05253 (0.141)	-0.03595 (0.3)	0.027731 (0.423)	-0.01639 (0.686)	-0.03893 (0.267)	-0.01995 (0.555)
Other Group	0.006605 (0.875)	-0.02812 (0.435)	-0.04553 (0.195)	0.005135 (0.884)	-0.0089 (0.828)	-0.02047 (0.569)	-0.02728 (0.424)
Constant	(0.26)	(0.472)	(0.76)	(0.001)	(0.275)	(0)	(0)
Observations	360	498	498	505	461	324	449
Adjusted R ²	0.4443	0.4296	0.4609	0.4549	0.3233	0.6329	0.5417

As anticipated, a worthwhile purpose, access to agency personnel, and prior availability of materials all contribute strongly and significantly to meeting success. None of these results are surprising, although the beta coefficients serve as a stern warning to political scientists that simple administrative matters often outweigh larger political concerns. In fact, prior availability of materials is consistently the most

important factor in determining success. An increase in one standard deviation in prior availability improves effectiveness by a full quarter of a standard deviation!

Also surprising are the rather weak coefficients on staff support and member input, especially given the strength of the bivariate relationships between these variables and committee effectiveness. Although significant, the somewhat tenuous result on staff support in the multivariate regressions suggests one of two things: either committees with other things going for them can make do with limited staff, or committee members find staff contributions of less value than the agencies which assign the staff.³⁸⁴ Indeed, committee members find staff harmful in some cases, as the member input variable suggests. Yet this variable is also weak, and actually fails to reach significance in several of the regressions. The coefficient on member input really derives its strength from the 'Discuss' and 'Purpose' questions, which ask whether the number of the committee's meetings were adequate to discuss all the issues and achieve its purpose. Thus, it is hard to make conclusive claims about these two variables. Nonetheless, there is little to lose from taking additional steps to encourage more committee member participation relative to agency personnel, and from providing the marginal funds to ensure adequate staff support after the much larger funds for travel have been appropriated. Nonetheless, in a number of personal interviews respondents emphasized the importance of staff support, so one hesitates to dismiss its significance so quickly.

The group membership variables tend to lack much statistical significance, although several have sizeable coefficients. More data would surely help. On the positive side, the lack of significance in the membership variables tend to assuage some of our fears about failing to control for committee type. Membership is certainly highly correlated with committee type, yet produces no strong and significant effects in the regressions.

This brings us to our major variables of interest: 'Openness' and 'Balance'. Both variables have very strong coefficients. In fact, judging by the beta coefficients, the open meetings and balanced membership variables have a stronger effect than either the worth of the committee's purpose, the level of staff support, or access to ranking officials. Only the prior availability of preparatory materials has a higher effect on meeting success. Thus, while administrative qualities certainly do affect committee success, political aspects of committees still explain a significant component of effectiveness.

'Openness' impairs committee effectiveness.

An increase of one standard deviation in the open meeting variable depresses committee effectiveness by over a fifth of a standard deviation in the final two regressions (which use the principal component as the dependent variable). Moreover, this estimate may still underestimate the actual effect of the open meeting requirement,

³⁸⁴ Interviews support both arguments. One interviewee described the members of a major DOD commission essentially throwing out a nearly-complete, highly technical report, and substituting their own opinions in its stead. Another interviewee with experience on multiple EPA committees complained that the meetings were often poorly organized and thus a waste of time.

since we do not measure the lost opportunities from *potential* advisory committee meetings that might have occurred in an atmosphere of enhanced confidentiality. Thus, we must conclude that transparency does strongly impact administrative processes, and that openness can interfere with successful policy analysis and decision-making. The coefficient on this variable sends a clear message: transparency in political processes comes at a cost. Yet this study does not identify the mechanism – only case studies, interviews, and/or much more detailed survey data can answer this question. On the positive side, the effect of open meetings should not be taken to imply a negative effect of public participation – the ‘Participation’ variable proved entirely insignificant once we controlled for committee openness.

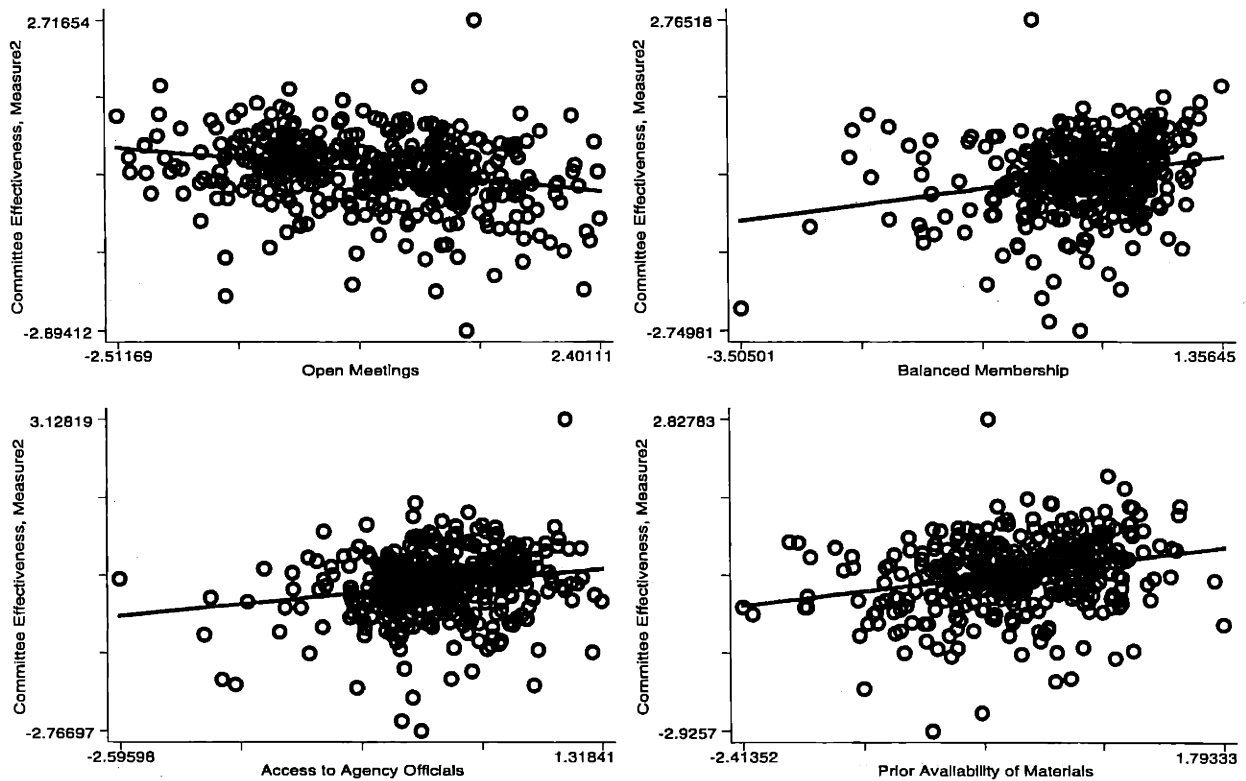
There is one notable exception in the coefficients on the open meetings variable. While the open meetings coefficient is negative across all the specifications, it is notably insignificant in the regressions that use ‘Consistent’ as the dependent variable. Since ‘Consistent’ measures the degree to which the committee’s output is consistent with its purpose. If we take the ‘consistent with purpose’ variable as an indicator of bias, this would indicate that open meetings neither reduce nor cause bias in the committee process. One may even suspect that the slight negative coefficient may be an artifact of the survey, since the consistency question was lumped with several other ‘success’ questions (and questions in physical proximity tend to have some correlation in their answers). Thus, we conducted a handful of additional regressions (which are not reported) using ‘Consistent’ as the dependent variable. We regressed ‘Consistent’ on the standard roster of independent variables, along with ‘Success’, ‘Purpose’, ‘Discuss’, and ‘Account’, in order to purge the ‘Consistent’ variable of any component which might be related to committee success. Strikingly, we see the sign on ‘Openness’ flip. Controlling for other indicators of ‘Effectiveness’, committees with open meetings now appear to be more consistent with their purposes. However, the coefficient remains only slightly positive and insignificant at even a 50% level of confidence. Based on this, we must question the accepted wisdom that openness and transparency reduce bias in the political process (once we control for other determinants).

‘Balance’ improves committee effectiveness.

An increase of one standard deviation in the balanced membership variable increases committee effectiveness by nearly one fifth of a standard deviation. Perhaps more importantly, the coefficients on the two separate measures of balance (balance of viewpoints vs. balance of stakeholders) were almost identical, throwing an interesting wrench into the old Lowi vs. Madison debate. The apparent conflict between interest groups and individual viewpoints appears to be a false dichotomy. *Both* contribute to committee effectiveness, and indeed they may be inseparable in this day and age (which, admittedly, favors Lowi’s argument that people have come to conceive of their interests through group membership). Moreover, balanced membership contributes strongly to all measures of committee effectiveness, including the dependent variable ‘Consistent’, which measures whether a committee acts consistently with its purpose.

In spite of the robustness of the balanced membership variable, the regressions did turn up one unexpected result. Partial regression plots reveal a slight, but detectable, U-shape in the scatter. Based on this result, I attempted to introduce a quadratic term into the final regressions. To my dismay, the results proved ambiguous, largely due to collinearity and the existence of a handful of outliers. The regressions using the composite dependent variables generated a negative and nearly significant coefficient on balanced membership, and a large positive coefficient on balance squared. However, these results proved unstable, and were largely an artifact resulting from a single piece of the composite – the 'discussion' variable. The coefficients in the other were regressions were either inconsequential, or produced opposite signs. This is unfortunate, as the hint of a quadratic relationship raises important issues. Could it be that both homogeneous and highly heterogeneous committees are equally productive, but those committees with strong (and perhaps bipolar) factions face difficulties?³⁸⁵ While a plausible argument, this dataset cannot test its validity.

**Chart IV: Partial Regression Plots of Four Key Independent Variables
(Dependent Variable = Committee Effectiveness, Measure 2)**



³⁸⁵ Similar arguments have been proposed to other phenomena of competition, including ethnic conflict and international war. Dahl, Robert. *Polyarchy*. 1971. Kaplan, Morton A. "Balance of Power, Bipolarity, and Other Models of International Systems." *APSR*. Vol 51, No. 3. September, 1957.

In general, the results of the final regressions are quite robust, regardless of the choice of dependent variable. Looking at the final two regressions, which use the principal components as dependent variables, we note that the estimated coefficients are almost always more significant (and thus, one might argue, more precise) than the other regressions. We obtain these more precise estimates in spite of the reduced number of observations, indicating that the principal component probably does measure some underlying characteristic that the five individual variables separately attempt to (noisily) measure. Furthermore, the principal component regressions have substantially higher R^2 values, indicating a better fit to the model. These regressions thus support our contention that the previous five variables share a common linking theme - a theme which deeply reflects the difficult-to-measure property of committee effectiveness.

Discussion

Open meetings do in fact have a negative and significant impact on committee effectiveness (as reported by surveyed committee members). This impact is relatively large and meaningful. An increase of a standard deviation in our measure of meeting openness contributes to a decrease of approximately a fifth of a standard deviation in committee effectiveness. Moreover, this estimate does not include the effect of the meeting openness requirements on deterring agencies and Congress from forming otherwise worthwhile committees.

Unfortunately, this paper cannot estimate the positive effect of meeting openness on reducing biased output, because it has no estimate of the 'public interestedness' of that output. Simply because openness comes with an efficiency cost does not imply that openness is not desirable.³⁸⁶ A number of committee members expressed in personal interviews that they would hesitate to recommend closing meetings, even if it would allow them to speak more freely and hasten the meetings. Closed meetings can jeopardize a committee's credibility, and invite charges of misconduct even when there is really nothing to hide. Open meetings, on the other hand, help "reduce the mystery and suspicion surrounding the decision-making process."³⁸⁷ Moreover, they reduce inappropriate, 'off-the-cuff' remarks, and encourage committee members not "to say something unless they feel they have a good reason to say it, and can back up their words with evidence."³⁸⁸ Nonetheless, these data indicate that transparency is *not* a panacea to cure all ills. Says another interviewee,

"Open meetings can have a positive effect – they hold people accountable to what they say. They prevent people from having agendas. In a closed meeting, people can have agendas. I would say that usually accountability is more important than

³⁸⁶ The tradeoff is not unlike that between bias and efficiency in statistical estimators.

³⁸⁷ Interview on file with author.

³⁸⁸ Interview on file with author.

frankness, but this is a case by case situation. Sometimes accountability to ones constituents and peers is less important, and frankness would be better.”³⁸⁹

Although the paper confirms a somewhat pessimistic appraisal of the tradeoffs of administrative transparency, it does offer two very optimistic results. First, after controlling for open meetings, public participation in meetings does not appear to harm committee effectiveness – although neither does it enhance effectiveness. This result may account for the dual effect that public participation has in meetings. On one hand, public participation certainly lengthens meetings, and can allow “people with strong concerns” to dominate the discussion.³⁹⁰ Members of the public may show up merely to reiterate views that are already well known or “rehash old issues that the committee had already discussed or addressed.”³⁹¹ In many committees, the members already know what presenters will say long before they say it. On the other hand, presenters can sometimes provide valuable information and outside perspectives to committees.³⁹² Like the committee members themselves, those who attend the committee meetings often represent stakeholder groups or work in careers that are deeply involved in the committee’s area of discussion.³⁹³ Although they may have biased viewpoints (as will many of the committee members themselves), they will also have a great deal of specific knowledge that the committee may find useful. In a few cases, a member of the public may even present a piece of information or a perspective that completely changes the tenor of the discussion. Moreover, many committee members recognize a value in letting the members of the public speak their mind and vent their opinions, even when the public presenters have little or no new information to add. When I asked one very prestigious committee member whether there was value in expression for its own sake, the member replied:

“Overall, I’d say yes, although maybe less so after an hour of listening to comments and falling asleep. It’s a valuable process, putting ideas out for review and public commentary. Although rarely if ever has there been a public comment that hasn’t been repeated or previously made in writing. But overall, I believe in the open process and in free expression.”³⁹⁴

Even more optimistically, this paper finds that committee balance has a strong, positive impact on effectiveness. Moreover, balance of interests and balance of viewpoints have almost identical effects, suggesting that worries about faction-induced conflict or passionless academics are both ill-founded. Both types of balance contribute to committee success, and neither seems to harm it. How can this be? Democratic theory of large groups certainly does not predict this. The more homogeneous a group’s preferences, the *more* effective groups should be at producing decisions.³⁹⁵ Heterogeneous groups, whether they differ along beliefs or along preferences, should

³⁸⁹ Interview on file with author.

³⁹⁰ Interview on file with author.

³⁹¹ Interview on file with author.

³⁹² Personal Observation. National Parks Meeting, January 2001. [Transcript in mail.]

³⁹³ Multiple interviews.

³⁹⁴ Interview on file with author.

³⁹⁵ Buchanan and Tullock, *ibid.*

have much greater difficulty acting effectively. Nor can we interpret this as an artifact of the survey question. If respondents were participating in their advisory committee to make selfish gains, and then chose to report false measures of the committee's actual effectiveness, we would expect a lower coefficient, not a higher one.³⁹⁶ Yet the estimated effect is positive and significant at the 95%-99.9% level in every regression.

The positive impact of both types of balance on committee effectiveness suggests two things. First, the dichotomy between individuals and groups may – to some extent – be a false one. Unfortunately, it is difficult to say whether this is good or bad for democracy. On the one hand, it does raise the possibility of individuals taking broader views than those forwarded by the organizations they work for. On the other hand, it often throws the policy process into the hands of an insulated 'Washington Elite'. Says one member of an environmental organization who served on an EPA committee, "One or two individuals are there representing the whole environmental community. But really, we're much more professional advocates, and don't have really broad legitimacy to be representing the quote 'public'."³⁹⁷

Second, the positive coefficient on balanced membership also suggests that the dynamic which dominates advisory committee proceedings differs from that described in most rational choice models of voting behavior. This dynamic clearly merits further attention, but preliminary interview evidence suggests it emerges from three factors: consensus-type decision-making, a healthy respect and need for information, and credibility.

The emphasis on consensus-style decision-making in advisory committees is truly extraordinary, given the broader emphasis in American democracy on majority-rule. At first glance, many advisory committees do appear to abide by some semblance of majority rule, yet there is almost never any official basis for this practice. FACA does not in any way mandate the rules and by-laws under which advisory committees may operate. Moreover, it is extremely rare that authorizing legislation mandates voting rules or bylaws – fewer than 5% of all committees have legal requirements to enact majority voting.³⁹⁸ It is therefore not surprising that on closer inspection, many (perhaps even most) advisory committees actually operate in a much less formal manner. Of the forty committee members (spanning a dozen committees) whom I interviewed, few could actually recall a single instance of a formal vote being cast – most recalled a series of straw polls that ultimately resulted in a recommendation receiving general unanimity. In other cases, majority votes ultimately determined outcomes, but only after the committee took extensive measures to try to resolve the most glaring disagreements. Said one committee member, "We primarily established consensus standards, using a formalized

³⁹⁶ This is clear from considering a single committee split between two groups. If one group has a narrow majority, the majority will be pleased with the outcome but the large minority will be upset. If the committee is homogeneous, the dissatisfied minority will be smaller and fewer people will be upset. If the 'Effectiveness' variable really measured personal gains from outcome, then homogeneous committees would appear more effective, not less effective, as our coefficients indicate.

³⁹⁷ Interview with Joseph Chaisson

³⁹⁸ Results from analysis of legislation authorizing all advisory committees in 1998. Data on file with author.

mechanism.”³⁹⁹ Only a fairly specific subgroup of committees operate under strict voting rules (FDA drug review committees, for instance).

The desire for consensus emerges from many sources, resulting in very few members (less than 5% in the GAO survey) reporting any instances in which the advisory committee yielded advice contrary to the consensus of the committee.⁴⁰⁰ Several factors push for this consensus.

- First, advisory committees produce advice, not policy. In instances where advisory committees yield very specific advice that has a high probability of becoming policy (FDA drug review, NHS and NEH grant review, and so forth), committees do depend more on majority rule voting institutions.
- Second, members of committees clearly express a degree of collegiality toward one another. In many cases, committee members have interacted with each other in the past, or may interact in the future. In other cases, committee members extend courtesies to other members with the expectation that the committee will consider their points of view more thoroughly when they are in the minority.
- Third, committee members must compromise in order to secure any committee output at all. The alternative to compromise is wasting time, accomplishing nothing, and giving the agency free reign to do whatever it feels best. Compromise, on the other hand, offers a chance for the committee to solve problems and seek innovative solutions that may be less costly than the agency-directed alternative. This aspect of advisory committees emerges strongly in the EPA, where the agency specifically balances different interest groups against one another. With the agency holding the threat of unilateral regulation, and interest groups (of all types) holding the power of judicial appeal, negotiation at least offers the *possibility* of achieving a settlement that is (more) acceptable to all parties.

Like other aspects of advisory committee behavior, consensus comes at a cost – a negotiating cost, to be exact. Yet while some interviewees complained about this cost, most of them believed the value of consensus to be well worth the price.

The second key characteristic that pushes for balanced membership in advisory committees, the respect and need for information, emerges directly out of the committee’s function (the provision of advice). The superior information-gathering capabilities of balanced committees appeal to several potential audiences. Even the simplest principal-agent signaling models confirm that principals extract more information when agents have conflicting interests.⁴⁰¹ Public-interested agencies in particular benefit from balanced membership by extracting more complete information

³⁹⁹ Interview with Susan Narveson, Phoenix Police Department Crime Lab

⁴⁰⁰ GAO Survey, Q20.

⁴⁰¹ It turns out that principals can extract a great deal of information in most games where agents are risk averse. If the principal can confirm the accuracy or inaccuracy of a signal relatively cheaply and the agent is risk averse, the principal can extract complete information. Even in “cheap talk” games, the principal can still extract fairly accurate information. (“Strategic Information Transmission.” Crawford, Vincent P. and Joel Sobel *Econometrica*. Vol. 50, No. 6. (Nov., 1982), pp. 1431-1451.) Nonetheless, never hurts and usually helps.

from private actors whom they regulate. Congress may also benefit from balanced membership, which can facilitate its use of advisory committees as ‘fire alarms’.⁴⁰² Even highly contentious interest groups can benefit from committee balance, by gaining a better grasp of their opponent’s arguments and better refining their own.

Committees themselves also benefit from balance. Most committee members strive to have an impact on political outcomes, but since the committee has no formal power, it can only sway policy outcomes by making a convincing case in favor of its analysis. To some degree, it can rely on the expertise and the prestige of its members (and particularly its chairman), but expertise becomes suspect when it is backed by powerful interests (financial, ideological, etc.). Fortunately, the committee has a second way of securing credibility with its audience – information. Committees thus benefit by providing hard data to Congress, the President, the agency, and the public. Committees with diverse viewpoints, experiences, and backgrounds are far more capable of marshalling data, anticipating arguments, and responding to these arguments than one-sided committees.

The third driver for balanced membership is credibility. Simply put, an advisory committee’s analysis and recommendations stand to gain a great deal more credibility when they bring all of the committee’s members and factions on board. Since committees have no formal power, credibility becomes crucial to their success. “Credibility is a precious commodity,” says one committee member.⁴⁰³ Another committee member notes that major institutions such as the NRC jealously protect the credibility of their committees because “it’s all they have”.⁴⁰⁴ A major dissenting opinion opens the agency up to criticism, while a unanimous recommendation may help insulate an agency from criticism and litigation, and help secure funding and legislative support from Congress.⁴⁰⁵ So intense is the effort for consensus, that chairmen of advisory committees have been known to exert extreme pressure on dissenting individuals in order to bring them in line, and may look unkindly on the inclusion of dissenting remarks in the final report.⁴⁰⁶

The issues of consensus, credibility, and information run very deep in the lifeblood of advisory committees, and they are deeply intertwined. Advisory committees provide a venue for interest groups and individuals to lobby government in an open atmosphere, under the aegis of peer review. In scientific committees, this function is explicitly stated and even encouraged by Congress in several pieces of authorizing legislation. Yet all committees to some degree perform a peer review function. That is, advisory committees reward good information (and also good work on the part of their members) with legitimacy, but in order to protect its own credibility the committee must demonstrate unbiasedness and competence. Consensus, hard data, balanced membership,

⁴⁰² Balla, Steven J. and Wright, John R. “Can Advisory Committees Facilitate Congressional Oversight of the Bureaucracy?” Unpublished Paper. George Washington University. 1999.

⁴⁰³ Richard Lancaster, NTIA Office of Spectrum Management

⁴⁰⁴ Interview with Shiela Widnall

⁴⁰⁵ Interview with Joseph Canizares

⁴⁰⁶ Interview with Dr. Vinh Cam

and transparency are all tools that help preserve the committee's credibility, which is the source of its political influence.

Conclusion

Advisory committees are an administrative response to complexity. At their best, they contribute to the governing process in two ways. First, they provide a mechanism for the voting public to overcome the many levels of delegation that stand between them and the decisions and policies of federal agencies. Second, they allow administrative agencies to gather and analyze information that they cannot otherwise obtain. Like other political institutions, however, they present opportunities for abuse and misuse of power. Congress can use them to lock in favored special interests, agencies can use them to build alliances with special interests in order to garner support in Congress, and special interests can use them to exert excessive sway over the execution of Congressional laws.⁴⁰⁷

FACA and other laws gave courts, outside groups, and supervisory agencies more tools to guard against corruption. To this end, FACA borrowed from similar legislation – most notably the Administrative Procedures Act of 1946 – and created *procedural* constraints that would effectively control the *substantive* abuse of advisory committees. Legal experts have long recognized that these procedural constraints come at a cost, and that the rudimentary administrative oversight by the GSA is only a small portion of this cost. Although citing numerous theoretical arguments and a few examples, the current legal literature does not provide statistical evidence of this cost. This paper fills this gap.

Using survey data gathered by GAO in 1998, this paper asks the simple question: what influences committee effectiveness? The analysis above provides powerful evidence that open meetings negatively impact committee effectiveness, and that this impact is both large and significant. This result strengthens the argument against adding administrative process burdens to further increase the transparency of the advisory committee process. It also warns us that we may very well have already passed the threshold of diminishing returns in rendering the government transparent to outside observation. While this paper in no way argues that the costs of transparency exceed the benefits, it does remind us that these costs are substantial.

Optimistically, however, the paper also finds that balanced membership has a strong positive impact on committee effectiveness. Moreover, the ideals underlying balanced membership closely reflect the democratic ideals of pluralism and representative government. This result offers an encouraging appraisal of further efforts to ensure balanced membership and viewpoints on committees. Moreover, the synchronicity of our different measures of balance (balanced interests vs. balance viewpoints) calms our fears about the potential conflict between the interest group models and the individualistic models of democratic power. Given this virtuous synergy,

⁴⁰⁷ Unpublished Paper. "Information, Influence, and Capture in Federal Advisory Committees." Karty, Kevin D. 2001.

the balanced membership requirement seems an apt place to begin if we wish to strengthen the advisory committee apparatus in the United States. To date, the courts have proved reluctant to adequately enforce this requirement, perhaps because scrutiny of membership requires the exercise of more discretion than mere scrutiny of meeting minutes. The vagueness of the Federal Advisory Committee Act has permitted the courts to defend this weak stance. While further legal process requirements and additional court intervention would incur their own cost, it is clear that strengthening the balanced membership requirement offers substantial opportunities to improve both the participatory atmosphere and the administrative outcomes of the advisory committee apparatus.

Appendix: Advisory Committee Survey Questionnaire
GAO Report: GGD-98-147

Variable	Question Number	Question Statement
Success	Q23e	(Agree or disagree?) This committee should be continued because it is successfully fulfilling a continuing purpose. [Strongly agree, Generally agree, Neither agree nor disagree, Generally disagree, Strongly disagree, No basis to judge]
Purpose	Q22a	In your opinion, to what extent, if at all, has the number of meetings that your committee has held or is holding adequate for your committee to achieve its purpose as defined by its charter? [To a very great extent, To a great extent, To a moderate extent, To some extent, To little or no extent, No basis to judge]
Discuss	Q22b	In your opinion, to what extent, if at all, has the number of meetings that your committee has held or is holding adequate for your committee to thoroughly discuss its recommendations and advice? [To a very great extent, To a great extent, To a moderate extent, To some extent, To little or no extent, No basis to judge]
Consistent	Q21d	(Agree or disagree?) The advice or recommendations that my committee provides through its reports, meetings, and other sources of output are consistent with its purpose. [Strongly agree, Generally agree, Neither agree nor disagree, Generally disagree, Strongly disagree, No basis to judge]
Account	Q21f	(Agree or disagree?) The agency takes committee advice and recommendations into account when developing policy or making changes in operations. [Strongly agree, Generally agree, Neither agree nor disagree, Generally disagree, Strongly disagree, No basis to judge]
Effectiveness1		Principal component of previous 5 variables using orthogonal varimax rotation.
Effectiveness2		As 'Effectiveness1', but excluding the 'Success' variable from the principal component.
Express	Q27	Are members of the public ever allowed to express their views to your committee? (Check one.) [Yes, No, Not sure]
Openmeet	Q24	Which of the following <u>best describes</u> your committee's meetings with respect to public access? (Check one.) [All meetings are <u>totally open</u> to the public, Some meetings are open to the public and some are closed, A portion of the meetings are closed to the public, All meetings are <u>totally closed</u> to the public, Not sure]
Balance1	Q13a	(Agree or disagree?) The committee's membership is fairly balanced in terms of the points of view represented. [Strongly agree, Generally agree, Neither agree nor disagree, Generally disagree, Strongly disagree, No basis to judge]
Balance2	Q13b	(Agree or disagree?) The committee includes a representative cross-section of those directly interested in and affected by issues discussed by the committee. [Strongly agree, Generally agree, Neither agree nor disagree, Generally disagree, Strongly disagree, No basis to judge]

Balance		Average of balance1 and balance2.
Worthwhile		(Agree or disagree?) This committee has a worthwhile purpose. [Strongly agree, Generally agree, Neither agree nor disagree, Generally disagree, Strongly disagree, No basis to judge]
Contact1	Q14a	Not including formal committee meetings, how often have <u>you</u> had contact (i.e., in person or by phone or fax) with the agency head that was related to the purposes of the committee with the following agency officials? (<i>Check one.</i>) [At least once a month, At least once each six months, At least once a year, Less than once a year, Not at all]
Contact2	Q14b	Not including formal committee meetings, how often have <u>you</u> had contact (i.e., in person or by phone or fax) with management level agency officials that was related to the purposes of the committee with the following agency officials? (<i>Check one.</i>) [At least once a month, At least once each six months, At least once a year, Less than once a year, Not at all]
Contact3	Q14c	Not including formal committee meetings, how often have <u>you</u> had contact (i.e., in person or by phone or fax) with designated agency officials assigned to your committee that was related to the purposes of the committee with the following agency officials? (<i>Check one.</i>) [At least once a month, At least once each six months, At least once a year, Less than once a year, Not at all]
Contact4	Q14d	Not including formal committee meetings, how often have <u>you</u> had contact (i.e., in person or by phone or fax) with agency program officials (other than the designated agency official assigned to your committee) that was related to the purposes of the committee with the following agency officials? (<i>Check one.</i>) [At least once a month, At least once each six months, At least once a year, Less than once a year, Not at all]
Contact		Average of contact1-contact4.
Access	Q15	In your opinion, is <u>your level</u> of access to agency officials adequate or inadequate? (<i>Check one.</i>) [More than adequate, Generally adequate, Generally inadequate, Very inadequate, No basis to judge]
Support	Q9	In your opinion, how adequate or inadequate is the <u>current</u> level of administrative or staff support that the sponsoring agency provides to your committee? (<i>Check one.</i>) [More than adequate, Generally adequate, Generally inadequate, Very inadequate, No basis to judge]
Prior1	Q10a	In your opinion, to what extent, if at all, are you provided with necessary preparatory materials prior to committee meetings? [To a very great extent, To a great extent, To a moderate extent, To some extent, To little or no extent, No basis to judge]
Prior2	Q10b	In your opinion, to what extent, if at all, are you provided with necessary preparatory materials prior to discussing issues? [To a very great extent, To a great extent, To a moderate extent, To some extent, To little or no extent, No basis to judge]
Prior3	Q10c	In your opinion, to what extent, if at all, are you provided with necessary preparatory materials prior to deciding on issues? [To a very great extent, To a great extent, To a moderate

		extent, To some extent, To little or no extent, No basis to judge]
Prior		Average of prior1-prior3.
Member Input		In terms of formulating committee advice or recommendations, in general, about what level of input <u>is usually provided</u> by committee members and agency officials? (<i>Check one.</i>) [Committee members provide <u>much more</u> input that agency officials, Committee members provide <u>somewhat more</u> input that agency officials, Input is about equal, Agency officials provide <u>somewhat more</u> input that committee members, Agency officials provide <u>much more</u> input that committee members]
Member Variables	Q1	In which of the following sectors do you work? (<i>Check all that apply.</i>)
Federal	Q1	Federal government
State/Local	Q1	State or local government
Corporate/Business	Q1	Corporate/private business
Union	Q1	Trade union or labor organization
University	Q1	A college or university
Research	Q1	A non-university affiliated research organization (profit or nonprofit)
Philanthropic	Q1	A philanthropic organization
Advocacy	Q1	An advocacy organization
Trade Association	Q1	A trade association
Other	Q1	Others – Please specify:

Conclusion

This thesis explores the use of federal advisory committees in the United States, but at a more general level it concerns itself with a much larger question:

In an era of growing complexity and increasing diffusion of technical information throughout society, how does government gather and use information in the formulation and execution of policy?

Standing alone, this question is far too broad to tackle in a single thesis. I thus direct my attention to advisory committees, and try to identify the obstacles these committees face and the characteristics of advisory committees that make them successful. How, I ask, do advisory committees work? How has their use been affected by the changing nature of information and government? How have broader administrative processes affected the interplay between information and influence in these committees.

Advisory committees provide a fascinating lens through which to observe information in the administrative process, yet I hope that the lessons learned from this thesis can be applied to public administration more broadly. Ultimately, we hope to learn something about the relationship between information and influence in technological and diverse societies. I try, for instance, to apply the lessons we learn from observing advisory committees to help us structure the burgeoning and disorganized literature on bureaucratic politics, and also to identify key dynamics within the bureaucracy that merit further study.

We began this thesis by confronting a few key problems. First, government has a huge advantage over private actors in gathering information because it has the power to coerce. However, in a democracy like our own, this is a blessing and a curse. Government also faces far more constraints on its ability to gather and use information than private actors, and these constraints can sometimes overwhelm the advantage of legitimate authority.

Second, as society becomes more complex, government requires ever more information to effectively regulate it, and ever more knowledgeable people to help it understand this information and suggest courses of action appropriate to changing conditions. What's more, the nature of information is also changing. In the past, most information had been either knowledge intensive and concentrated in the hands of a few experts (scientific information), or easily understood and diffused in the population (information on diverse experiences, viewpoints, and preferences). In the present, these categories are merging. Many different interest groups possess unique expertise, broad experiences and perspectives, and strong preferences. Given this growth in complexity, many scholars are justifiably pessimistic about government's ability to effectively gather and use information to run programs, regulate industries, and target new investments. As

these problems become more pronounced, most theories grow even more pessimistic about government's ability to function effectively.

Yet this is not all, because we must also worry about the interaction of these two problems. That is, we may observe the first problem (restraining government's power to coerce) working against the second problem (securing complex information and expertise from diverse private actors).

The introduction of this thesis spends a lot of time laying out the inherent conflict between federal government efforts to gather information, and maintaining sufficient autonomy from special interest groups in society. It describes some of the difficulties involved in setting up institutions that both encourage extensive information exchange between agencies and members of the private sector, and also restrict the ability of special interests and government employees to wield undue influence over those same agencies. The primary solution that governments have adopted lies in process controls – that is, legal restrictions on such things as meeting notification, openness, access to records, conflict-of-interest rules, balance restrictions, deadlines and timelines, and so on and so forth. In other words, red tape.

As we have also discussed, process controls are costly. They are costly in terms of money, stress, and especially time. Others have pointed this out long before me. What others have not done as well, however, is investigate the effect of the government's ever-growing information dependence on the effectiveness, efficiency, and cost of these process controls. How successful is the open meeting rule when the government needs advice from industry experts on the effects of a new technology in the hands a privately-held company that is afraid of releasing this information to its competitors? How successful is the balanced membership rule when many interests are unorganized, and an average person can't even hope to understand the technicalities of an issue in a single weekend, let alone meaningfully contribute to the debate?

The cost and effectiveness of process controls is crucially important to anyone in government who is choosing from among several different ways to gather information and advice. Moreover, cost and effectiveness are crucial to legislators, agencies, and voters in choosing whether they want the government to try to tackle an issue at all. As economists are fond of pointing out, the costs of intervention may outweigh the benefits even if a program is executed with the best of intentions. But how do these choices relate to advisory committees?

We know that advisory committees first began to enter frequent use in government around the middle of the century. Their use exploded in the Great Depression and World War II, along with the rest of the civil service bureaucracy. They were an immediate reaction by Congress, the President, and agencies to difficulties that the government encountered in gathering information on society, coordinating the behavior of private actors, and evaluating the likely impact of new policies and programs.

At that time, I argue when I discuss the technocracy/democracy debate in the first paper, advisory committees commonly fell into one of two groups: Participatory Committees or Expert Committees. Participatory committees sought information that was widely diffused in the population and required little specific knowledge to analyze and use. Participatory committees, like the various committees on the national parks, tried to draw in a diverse set of voices into the decision-making process. Expert committees, on the other hand, sought information that was concentrated in the hands of a few experts, and required considerable specific knowledge to apprehend and use. Expert committees, like the one which advised the government on the atomic bomb project, tried to bring neutral competence into government.

Since the early explosion of advisory committees, information has become both more diffuse and more technical. Only a few decades ago, the federal government itself employed most of the nuclear and aerospace engineers in the United States. The government itself regulated power prices and oversaw new plant construction. Likewise, the US government and military led the world in the development of computers.

Since the height of government control over the economy, federal investments in key technologies have declined – a fact well acknowledged in universities. The federal government's discretionary budget has declined markedly as a percentage of the national GDP. Government's contribution to the national share of funds spent on research and development has also declined. At the same time, the demands placed on an increasingly cost-constrained federal bureaucracy and a heavily time-constrained Congress have increased as regulatory functions struggle to accommodate the pace of change: The rate of drug development has multiplied. Laptops now possess enough computational power to qualify as military grade supercomputers. The number of known chemical compounds has grown so large that the government hasn't even rated the effect of most of them on human health. Spectrum, once abundant and free, now has become so valuable that bandwidth sells in the billions of dollars. The number of PhDs in the United States has continued to grow faster than the population, even while the value of a PhD has also grown. The government simply cannot afford to keep the best experts on its permanent payroll, nor would it want to even if it could. The result is that the government must increasingly rely on outside expertise, and not the neutrally-competent expertise of the 1950s. The new expertise often resides with interested actors – business, industry groups, environmental groups, health advocacy organizations, and others.

As technical information becomes more diffuse, the clear demarcation between participatory and expert institutions has blurred. This blurring has tracked a larger phenomenon in the administrative process as a whole, which has been characterized by Aberbach, Putnam, and Rockman as a shift from Type I governments to Type IV governments. Type I governments cleanly separated the legislative and executive components. The legislative component set the policy, and the neutrally competent bureaucracy faithfully carried it out. Over time, however, legislators have been gathering more information and writing more complicated laws, and bureaucrats have intruded into the legislative function, until their functions have merged and overlapped. There is no clearer example of this than the simultaneous existence of the Office of Management and

Budget and the Congressional Budget Office, which annually provide competing predictions for the economy and budget.

So where does this leave the advisory committee process? In traditional Participatory Committees, average citizens can adequately evaluate the value and accuracy of information. It is easy to tell where the members stand and what their interests are. In traditional Expertise Committees, we count on the experts to offer unbiased advice most of the time. Independent employment and concerns about professional reputation generally kept them honest. But in modern advisory committees, average citizens often cannot evaluate the value and accuracy of information, nor can we count upon experts who are employed by private groups or whose work is funded by private groups to be neutral.

Nor are these problems unique to advisory committees. The courts have been facing these problems for several years now, as they try to set a balance between agency discretion and intervention by untrained judges. Even the hallowed institution of peer review, upon which Congress and the courts have placed increasing faith, has shown some cracks.

Consider the problems faced by one of the most complex and controversial of advisory committees, the Clean Air Act Advisory Committee and its half dozen subcommittees. It's easy for most of us to say that we want clean air. But who is really causing the air quality problems, and how much would it cost them to clean up? What technologies are available to clean up auto or coal plant emissions? What are the most effective ways of enforcing compliance? Just how deadly are air pollutants, and what concentration levels meet the standards of safety set by Congress? Just how damaging is acid rain, and how valuable are our remaining wetlands? Piecing together the answers to these questions requires information from several sources. Unfortunately, these sources have interests that may motivate them to distort the information they present. Furthermore, they often have conflicting values – people who work for environmental groups generally place a greater value on preserving wildlife than power producers.

In the face of these conflicts, how does the effectiveness of our traditional process controls change? Should we prevent members of a drug review committee from deliberating because they hold stock in a company whose drug is under review, even if that person knows more about the field than anyone else present? In trying to balance an expert environmental committee, who can represent the bulk of US citizens? The environmental groups? Can they muster the resources to hire the best experts? Can they even legitimately claim to represent the average voter when environmentalists tend to be a little left of the center? And what about open meetings? Will engineers really speak their minds when their words are liable to be quoted or misquoted in a trade journal (or even a mainstream newspaper) the next day? Will they reveal their true and complete opinions about the best new technologies when their employers can read the transcripts and hold them accountable? When they brainstorm and speculate on the future, will talking into a microphone force them to censor their own words?

As if the increasing complexity of modern society were not enough, advisory committees also face radically different environments and are created for a wide variety of purposes. So when considering the cost of some administrative process, we must also take into account who made the committee and why, and who is likely to care about the committee's outcome. Sadly (except for those of us seeking employment in social research), there are a lot of disagreements about how interest groups in society behave, how much influence they have in the different branches of government, how much public administrators really serve the public interest, and how democracies can make stable decisions.

In the first paper, I identify seven key debates, and break them up into five process debates and two outcome debates:

- Interest Liberalism Group vs. Individual Liberalism
- Technocracy vs. Democracy
- Openness vs. Closure
- Coalitions (Strategic Decision Making) vs. Consensus Decision Making
- Selfish Bureaucrats vs. Altruistic Bureaucrats
- Government Capture vs. Public Interest Administration
- Efficient Government vs. Wasteful Bureaucracy

These are all old and well-argued debates, and we are not likely to resolve them here. Instead, I briefly examined these debates in the first paper of this thesis, and tried to pull out the aspects of the arguments that apply to advisory committees. I used these old debates to help frame the myriad of modern theories of public administration and bureaucratic politics that compete in the current academic literature. Specifically, I tried to categorize the theories of bureaucratic politics along three axes: one describing the purpose of the committee, the second describing the type of information the committee was designed to seek out, and the third describing the degree of conflict within society and government over the subject the committee was studying. In constructing these axes, I simplified a great deal. For instance, to describe the type of information the advisory committee is seeking, I break committees into Participatory and Expert committees, even though I have just spent considerable time describing how this dichotomy is breaking down.

This 2 X 2 X 2 chart yields eight cells. That is, eight combinations of purpose, information type, and conflict level that frame advisory committees. I place the major modern theories of bureaucratic politics and administrative government into one of these cells. In some cases, only one theory fits into a given cell. In that case, I describe what that theory predicts about those types of committees. How might openness affect that advisory committee? How might we see that advisory committee behaving in relation to Congress? The agency? Its members? Is there anything we should be particularly concerned about? For the daily practitioner who is considering forming an advisory committee, what might they expect to come out of this advisory committee? For the member considering an appointment, how will they likely spend their time, and what will come of their work?

Some of these theories yield fairly mundane predictions. In the case of expert committees appointed by Congress to oversee a particular agency, like the advisory committees to the various branches of the Health and Human Services Department, an advisory committee might play a watchdog role over an agency and its budget. But if the committee is set up to oversee a new or multi-faceted issue over which multiple agencies have some authority, we might observe these agencies competing within the committee to claim jurisdiction over the issue. Depending on which situation the advisory committee is in, Congress might take different measures to insure that the committee pursued its oversight function effectively.

This is an easy case. In some cases, however, several different theories seek to explain the same committees. These theories yield quite different predictions about how these committees will be constructed and will behave. Will we see deliberative, consensus-building advisory committees, or will we see advisory committees run by and for a tight-knit group of special interests as capture theorists predict? Will we observe Congress using administrative process laws to make long term commitments to keep advisory committees balanced and open, or will we see Congress breaking its rules and using administrative process laws to shut out interest groups it doesn't like? Will we observe Congress or an agency throwing an issue into an advisory committee to avoid dealing with them at all, or will Congress or an agency delegate an issue to an advisory in order to seek support for a contentious decision that it wants (but is afraid) to make alone?

This chart is clearly a beginning. It lays out over a dozen sets of hypotheses about advisory committee behavior, all of which beg to be tested. In the future, I intend to take up this challenge with a set of case studies and interviews. In addition, I hope to offer a set of recommendations for the creators, managers, and members of each type of advisory committee. At the present, however, I focus my attention on a few key conflicting hypotheses, and try to test them using quantitative data.

In the second paper of this thesis, I direct my attention to the various theories of capture and special-interest dominance that have plagued public administration and mass media for decades. In particular, I establish the theoretical connection between opacity (meeting closure) and capture, and examine longitudinal and cross-section data on advisory committees to determine whether there is a relationship between group membership and closure, and between committee authorization and closure.

I do indeed find a strong relationship between industry group membership within advisory committees, and meeting closure. Also, I find a strong negative relationship between closed meetings and membership by public interest groups and other non-profit and charitable groups. Interestingly, private business membership (as opposed to industry group membership) is not a good predictor of meeting closure.

Based on these results, it is tempting to accept the argument made by capture theorists and others that special interest groups use opacity in the administrative process

to hide their actions from the eyes of the unsuspecting public. However, further investigation reveals that the relationship between industry group membership and meeting closure is largely concentrated in committees within the Department of Commerce and the Department of Agriculture – specifically, the industry and agriculture sector trade committees. Removing DOC and USDA committees from the regression causes the relationship between industry group membership and meeting closure to disappear. This does not mean that capture theorists must give up their claim – indeed, the finding that trade advisory committees are both extremely closed in their deliberations over trade policy and also tend to include the largest and most prestigious corporations in the United States, could be said to bolster their argument. If we were seeking evidence of capture, USDA and DOC would be among the first areas we would look, and the trade committees are a sizeable chunk of committees within those departments – about a quarter of the total. However, predictions made that are based on the qualities and behavior of these committees do not necessarily extend to all other agencies and committees.

In view of these results, we do accept meeting closure as a crude indicator of ‘inappropriate influence’. Although there are plenty of legitimate reasons for closing committees, at the margin we expect special interest influence to encourage meeting closure. We use this result to extend our analysis into other years (where data on committee membership is unavailable, but data on open meetings is accessible and accurate). In extending these results, we are seeking to do two things: First, to explain the sudden rise in the number of closed meetings in the latter part of the 1990s. Second, to determine who authorizes the most opaque committees – Congress, agencies, the President himself, or some combination of Congress and agencies. The second paper then tests the relationship between meeting closure and committee authorization using two data sets: a committee level data set with information on all committees and meetings in 1997-2000, and an agency level data set with aggregated information on meetings between 1974 and 2000. The committee level data set has the strong advantage of allowing us to control for committee purpose. The agency level data set, however, allows us to go further back in time.

Both data sets yield concurring conclusions. In recent years, Congressionally mandated committees tend to use slightly fewer closed meetings than agency authorized committees, but this difference is insignificant or barely significant in most of the statistical models. The most striking results emphasize the unanticipated importance of Congressional authorization. Committees that are both authorized (but not mandated) by Congress and are created with the cooperation of an agency have the highest level of meeting closure by far. Moreover, most of the increase in meeting closure in the last half decade has been concentrated in these authorized committees. These results are robust to the exclusion of committees within any single agency or pair of agencies.

This thesis uses these results as a weak test of several competing types of capture theory, which it labels Congressional Capture, Agency Capture, and Iron Triangle Theory. Surprisingly, and contrary to predictions by modern skeptics of Congress and bureaucracy haters, neither Congress nor agencies alone can easily support very high

levels of meeting closure. Only by working together can Congress and the executive branch maintain high levels of closure. Nor (although this is not the focus of the thesis) can the President easily close meetings – although presidential committees routinely were among the most closed of institutions in the 60's and 70's, it was virtually unheard of to close a meeting of a committee directly authorized by the President in the later part of the 1990s. The most closed committees are those in which Congress and the executive branch work closely together, supporting the conjectures made by believers in Iron-Triangle Theory and political 'subsystems'.

From this second paper, we take out three key findings: First, cooperation between the branches of government is no protection against undemocratic processes. Indeed, as the founding fathers wisely claimed, the stability of our democracy and our institutions (including advisory committees) rests on a system of checks and balances. We should be especially watchful of committees which are eagerly supported by both Congress and the executive branch. Although these committees may possess the greatest capacity to contribute productively to our society and economy, they also are the most susceptible to special interest group influence. Second, it seems that 'Iron Triangles' have grown stronger since the middle of the 1990s, although it is difficult to pinpoint a reason why. This matter clearly merits further investigation. And third, as capture theorists have predicted, political participation by concentrated interest groups may lend itself to more undemocratic practices than participation by individuals, public advocacy and charitable groups, and individual businessmen and women.

After reviewing the evidence on meeting closure in the second paper, this thesis emerges with greater confidence that process controls (like the open meeting requirement) do have a powerful effect on fairness. Yet this still does not answer our other key question: how costly are these process controls, in terms of efficiency and effectiveness of committees? Indeed, do they pose any significant cost at all on committee effectiveness?

The third paper attempts to tackle these questions. Since devising a single measure of 'committee effectiveness' across the entire range of advisory committees is impossible, the paper resorts to evidence from a GAO survey conducted in 1997. The GAO survey included several questions measuring different aspects of efficiency and effectiveness. The paper combines five of these measures into a principal component, and uses this as a dependent variable to measure 'effectiveness'. Although recognizing the limitations of this analysis, it nonetheless points out how rarely we have any measure of administrative effectiveness at all, let alone one which includes dozens of other correlated variables.

From the survey, we also draw measures of committee balance (in terms of interests and viewpoints), meeting closure, public access to and participation in meetings, committee contact with agency officials, committee access to ranking agency officials, agency input into committee meetings, responsiveness of the agency to the committee, availability of materials to committee members prior to meetings, and group affiliation of members. Sadly, this data lacks an indicator for committee purpose, as the broader

committee-level data for 1997-2000 includes. Even so, we are able to control for a wide variety of explanatory variables.

As we anticipate, meeting openness has a strong negative effect on committee effectiveness. Many of the other variables yield unsurprising results as well. Availability of materials has a huge and positive effect, access to agency officials has a positive effect, and agency responsiveness has a positive effect. There are, however, a few surprises.

When meeting closure is included in the regressions, public access to and participation in meetings has no effect on committee effectiveness. Committee contact with agency personnel also has an insignificant effect. Agency input into committee meetings, however, has a decidedly negative effect (suggesting that committees like their independence from their sponsoring agency). Group affiliation of members is difficult to rate, since the effects are large but imprecisely measured.

The biggest surprise, however, was that balanced membership (both balance of viewpoints and balance of interests), has a strong and positive effect on committee effectiveness, as measured by the respondents of the survey. This flies in the face of much of political theory, which predicts that homogeneous groups have an easier time making decisions and that those in positions of authority prefer institutions which help them pursue their own narrow interests. Why, we may ask, would individuals not prefer packed committees? One explanation is simply that survey respondents were lying, but this is difficult to support since there is no individual reward for lying (nor is there any reward for taking the survey). Another is that respondents had warped visions of balance, which implies that respondent's views were systematically warped in a very pernicious way – the mere tendency for people to overrate the balance of membership on their committees would only skew the distributions and introduce measurement error in the independent variable (thus biasing the effect downward) or in the dependent variable (thus introducing noise). Yet in spite of this, the result is both large and significant. Balance actually enhances committee effectiveness.

Taking the results in this third paper at their face value, this thesis concludes that process controls do in fact have a potentially negative effect on institutional effectiveness. However, this is not universally true. Given open meetings, opportunities for public participation do not impair committee effectiveness. Since committee contact with agency personnel does not appear to enhance committee effectiveness, mild restrictions on the worst forms of ex parte contact between committee members and agency officials probably wouldn't do much harm either (although it is hard to see what good they would do as well). And most importantly, the balanced membership requirement is a win-win piece of the democratic process. It both enhances fairness and effectiveness.

With these results in hand, we can now object to the pessimistic views on administrative procedures that have lately dominated much of the legal and political science literature. The pursuit of justice through administrative procedures does not

always result in extravagant red tape – in some cases, it actually improves outcomes across the board. Yet this flies in the face of some pretty simple and elegant political theory. Political scientists have built mathematical models showing that any constraints on discretion should hamper administrative effectiveness. They have shown mathematically that homogeneous groups generally have an easier time making decisions. So what explains the apparent inconsistencies?

In pursuit of answers to these questions, I conducted several interviews of advisory committee members, and asked them open-ended questions about their committee and how it worked. Their responses suggested a few explanations of these surprising results, and also hinted at some needed changes to the body of political theory that we have tried to apply to advisory committees.

Interestingly, these conversations with advisory committee members return us to the discussion about the conflict between Information and Influence, and the dichotomy between Participation and Expertise. In particular, I will now argue that as information becomes both more diffuse and more knowledge-intensive, advisory committees become an increasingly effective and democratic way to gather information without sacrificing excessive influence to special interests. But how can this be?

Simply, standard theories about bureaucratic politics miss a few things, and these things are particularly important in the context of advisory committees. In these last few pages of this thesis, I try to explain what these things are, and why they are important.

First, many theories underestimate the importance and ubiquity of credibility. Concerns for credibility are everywhere, and they dominate the committee process. One of the key characteristics of the advisory committee process is that most advisory committees have no formal power. Even an FDA drug advisory committee, whose advice FDA is loathe to contravene, has no formal authority. It cannot enforce decisions. It can only recommend that FDA enforce them. In policy-initiating and agenda-setting advisory committees, the committee cannot institute a new rule. It can only suggest to the agency or to Congress that they institute the new rule. However, the choice of the agency or Congress to institute that rule depends largely on how credible the committee's advice is.

Credibility comes in many forms. Committees can have technical credibility provided by the presence of prestigious experts. They can have moral credibility – that is, the credibility in their honesty and good intentions, which is provided by the presence of highly regarded members of the community. They can have credibility in the fairness of their outcomes, provided by the presence of unbiased members and/or of a balanced membership. Consider what can happen if this credibility is lacking: Congress or an agency may ignore the advice as technically incompetent, they may ignore the advice as the product of a secret cabal, or they may ignore the advice as being unrepresentative of the feelings of wider society (or in the case of specific Congressman, of their own constituency).

Some skeptics may challenge just how important credibility is. Are not some committees appointed for the mere purpose of show, they might argue? Perhaps, but in this case we must grant that those receiving the advice would recognize this fact. Both evidence from the survey regressions and from individual interviews support this. Credibility is constantly in the minds of those creating, striving to manipulate, and receiving input from advisory committees. In the words of one staff person who worked for the DOD, "Those who appointed the committee were always trying to get the outcome they wanted without making the committee look biased."

But what if it is difficult to discern how much influence specific interests have behind the scenes, or whether or not a committee is packed with those with favorable views on a topic? In other words, what if the committee process is opaque. We might conceive of a world (before FACA was passed), where the advisory committee process was opaque. In the words of one senator, advisory committees were like satellites – you sent them up and they flew around without anyone knowing how many were there or what they were up to. In such an environment, it would be nigh impossible to judge the credibility of an advisory committee.

Yet we are clearly not in this environment. We have ready access to meeting minutes, the identities of every participant, and committee reports. How is it that a Congress that is notorious for special interest influence and a bureaucracy that is widely feared as secretive and authoritative would be so free with this information? The answer again is credibility. Without transparency, advisory committee advice is at best cheap talk, and cheap talk conveys a lot less information (when it conveys any) than other forms of communication. All we need is a simple assumption that Congress and agencies are moderately risk averse to see how we might get rules to help us verify the key attributes of advisory committees. In other words, if Congress, agencies, and even special interests are a little more worried about the harmful, unintended consequences of an action than about milking committees for favorable (but untrustworthy) advice, then these actors have strong incentives to build a system that enables both them and others to rate the credibility of a committee.

In other words, Congress is smart. FACA is a long-term commitment device. It enables Congress to give up some control over the committee process, and in doing so to give these committees the credibility they need to make meaningful recommendations. The benefits of FACA extend deeper, however. Knowing that their advice is now important, members have greater incentives (both from an altruistic and from an individualistic perspective) to participate and contribute effort.

Yet Congress and administrative law are not the only sources of credibility. Credibility also emerges through repeated interactions in a policy-formulating environment that spans many forums, many years, and many issues. Individual members also must think about their own personal credibility as they participate in advisory committees. They must consider how their current comments will affect other members' perceptions of them. If they take a self-interested view now, will this harm the member's ability to influence the committee in the future? If they consistently take self-interested

views, will this harm their standing in the broader community? For example, if a scientist consistently propounds favorable interpretations of products made by companies sponsoring his or her research, how will he or she be viewed by his or her colleagues? If an agency consistently appoints advisory committees favorable to one particular stakeholder, how does that affect its ability to interact with and elicit trust from other stakeholders in the future, or in other important matters? Thus, credibility concerns enter into the advisory committee process not only in static, single-issue ways like the balance of the committee, but also in dynamic, repeated interactions.

So from the perspective of both users of and participants in advisory committees, the value of credibility cannot be overstated. Yet credibility is a two edged sword – it has its downsides as well as its upsides. Consider an example:

An agency appoints an advisory committee to study an issue in order to determine how an agency should structure a new rule. The agency must pay close attention to the balance of the committee and its technical expertise. If the committee's advice is not credible, then the agency will not be able to win the appropriations it needs from Congress to enforce the new rule, and the rule will likely be challenged repeatedly in the courts. (In some agencies, rules will be challenged anyway to slow down implementation, even if there is little chance of nullifying them.) Moreover, the more the agency tries to control the committee's deliberations and the content of its report, the more the committee will be perceived as a tool of the agency and the less power the committee will wield. But if the agency builds an unbiased committee and gives it the independence and resources it needs to do its job, it is taking the risk that the committee may come out with recommendations that it disagrees with. Others will then be able to use this information against the agency in the future.

The choice by an agency or Congress to create and structure an advisory committee can therefore be a difficult one, requiring complex decisions about likely outcomes, the possible value or harm of the committee's advice, and the potential harms if an issue is left uninvestigated. Congress and agencies must also consider how the creation and activity of any given advisory committee might affect the agency's capacity to use advisory committees in the future. Credibility is the lens that focuses these decisions, and the glue that holds this whole process together.

In addition to credibility, which most political models portray in an oversimplified manner, modern political theories tend to ignore another phenomenon that crops up repeatedly in advisory committees: small group politics, or simply put, consensus decision making. Most modern theories of politics, and to an increasing degree the popular conception of how politics works, suggest that people and interest groups pursue their narrow goals at all costs, and extend little consideration to others. While this might be easy to imagine in some forums, it is more difficult to imagine within the context of an advisory committee meeting, where "everyone already knows everyone else".

There are really two ways to view the rational behind small group, consensus politics. First, one can view it as a rational regime with its basis resting in repeated game

interactions. That is, committee members approach meetings as negotiations, with specific quid-pro-quo's in mind, and they extend consideration to other members with the specific intention of eliciting consideration from those members at some future time. In this context, 'small group dynamics' essentially means logrolling. One can even extend this dynamic beyond a single meeting or even a single advisory committee. Since many of the advisory committee members already know each other, they can call each other up and ask for information, advice, or favors in the future. Finally, within a given policy community, individuals develop reputations, which help enforce norms of reciprocity and fairness, just as the broad literature on 'trust' describes.

The second view of small group, consensus politics appeals to a more behavioral paradigm. It essentially states that when you get people together into the same room, they tend to behave better than when they communicate through letters or email (or even worse, through lawyers who write letters and email). People are nicer, more considerate, more reasonable, more trusting, and so forth. Sometimes, committee members even become friends. When an individual or group's interests differ from those of the rest of the committee members, the committee can apply social pressure on the outlying member to join with the committee in promoting a consensus decision. Moreover, unlike in the repeated-game justification of consensus politics, cooperation today need not require interaction in the future.

Neither view of small group, consensus politics claims that these dynamics can overcome longstanding, bitter feuds. But they do claim that in situations where political compromise is possible but difficult, small group dynamics can provide the little bit of grease (or, if one prefers, the glue) that makes everything work. Given the delicacy of some issues that advisory committees must deal with, this bit of grease can make all the difference. Unfortunately, administrative procedures that interfere with small group politics (like the open meeting requirement), can have the same effect as throwing acetone into an engine. While openness therefore has a very beneficial effect on promoting credibility, it may have a pernicious effect on encouraging mutual understanding and necessary compromise. Yet balanced membership, once again, emerges with a clean slate. Small group dynamics are never more important than when one is trying to bring together multiple, conflicting groups to work out a mutually acceptable agreement.

Finally, modern political theories leave out a third dynamic that helps make advisory committees so important to modern democracies: coordination. Often, the activities carried out within advisory committees could be conducted in other forums. Advisory committees merely make them easier by serving as focal points for a particular debate or issue study. Advisory committees have several advantages in filling this function. Their federal support grants them added legitimacy, funding for expenses, and access to the information resources of the federal bureaucracy. Federal oversight of the advisory committee process helps maintain greater credibility than any simple agglomeration of private actors could otherwise achieve. Federal endorsement of an advisory committee implicitly grants the committee a receptor site for any information or advice that the committee might produce, helps to draw in prestigious persons who may

otherwise choose not to offer their time, and also carries the sanction of exclusion from important deliberations for those who choose not to participate.

The coordination function of advisory committees is both very simple and very important. Scholars have written books on the difficulty in getting projects through dozens of successive veto points, even after funding for a project has already been approved in Congress. Minor objections, approvals, phone calls, form-filing, and all manner of trivial and non-trivial details can hold up projects for years. Advisory committees provide a simple way to get all of the interested parties together at once to work out the details and secure agreement with everyone in the same room. Moreover, advisory committees guard against leaving anyone out of any decisions, and thus alienating them from participating in a project. Clearly, then, advisory committees generally benefit from including as many voices as possible and opening up their deliberations to public input – up to a point. The more participants in the committee and the more public hearings the committee it has, the more effectively it can coordinate activity and secure cooperation from interested parties. Yet all of this takes time, so agencies and committees must carefully weigh the cost in terms of time against the benefits of enhanced participation and coordination.

Unfortunately, the coordinating function of advisory committees has a downside. It can be easily misused, and when this happens we call it collusion. Indeed, industry-dominated advisory committees first came under criticism in 1957 from the Department of Justice for precisely this sort of activity. But collusion is not merely limited to members of the advisory committee. It can occur between members of the committee and the sponsoring agency. Without proper administrative rules, agencies can easily make use of advisory committees to rally support among major constituencies, which can then lobby Congress in favor of the agency. This may be something as beneficial as building a broad-based consensus to rapidly push through a necessary law that is in everyone's interest, or as pernicious as trading administrative favors to committee members in exchange for support in Congress' next budget hearings.

Presented in this way, coordination almost seems like a threat to the democratic process rather than a valued quality. How can advisory committees claim that coordination enhances fairness, for example? At best, coordination is a necessary evil...

Evil? Perhaps, but only under certain circumstances. And therein lies the value of advisory committees. Without public forums for such coordination efforts, either society would miss valuable opportunities, or private efforts would ensure. But unlike private forums, public forums provide a way to facilitate coordination under the aegis of administrative laws that regulate the communication between interest groups and agencies. When meeting in groups to discuss committee business, the meeting must be registered and announced, and must be open unless there is specific cause for closure. Moreover, the agency cannot in any way ask committee members to lobby Congress on its behalf. This is a fine line, of course. An agency might present its budget and operations projections for the coming year to an advisory committee full of members who care deeply about the agency's activity, and then let those committee members draw their

own conclusions and carry them back to their constituencies. But at least this does not happen behind closed doors – to the extent the agency is mobilizing support for its programs or its budget, it does so by providing information and not by exchanging favors.

Looking at the broad picture once more, advisory committees suggest the presence of three key dynamics that explain why certain administrative process controls like balanced membership might enhance committee effectiveness, and why others like open meetings may hinder effectiveness from time to time. We can easily remember them as the three C's: Credibility, Consensus Decision Making, and Coordination. These three dynamics are what makes the advisory committee process in the federal bureaucracy so valuable. These are the attributes which make an advisory committee so much more useful (and influential) than hiring a dozen experts for individual consultations. And these are the reason why this conclusion ends with a positive message.

Looking forward to the much-hyped 'complexification' of our economy and society, we recall our earlier chain of pessimism: Information becomes both diffuse and knowledge-intensive at the same time, participatory institutions and expert institutions are forced to merge together, and the government faces a potentially worsening tradeoff between gathering crucial information and sacrificing control to special interest groups. Yet in spite of these challenges, the advisory committee institution appears to thrive. If anything, advisory committees are growing in influence, and only the strictest executive oversight has managed to keep their numbers from growing as well (although committee size has grown, along with total membership and expenses). Advisory committees have achieved this success because they in many ways evade the information/influence tradeoff. Concerns over credibility encourage interest groups, Congressional factions, and agencies to deliberately sacrifice control over outcomes in order to secure useful information. Consensus decision-making practices in small groups encourage the inclusion and accommodation of diverse viewpoints, rather than the formation of exclusive coalitions. And as society becomes more complex, the need to coordinate private and public efforts pulls agencies and special interests into public forums that are more easily monitored than private networks.

Advisory committees will always be an integral part of the interface between government and society. Nonetheless, they have received little attention in the political science literature thus far. This thesis tries to fill this gap by providing an understanding of this institution so that we can protect and perhaps even improve it. Preserving advisory committees as effective, participatory, knowledgeable institutions demands that we understand how they work and why they are used. It demands that we recognize how changes which may enhance fairness in one sort of advisory committee in one setting might harm effectiveness in another sort of advisory committee in another setting. Finally, with enough understanding of the advisory committee process, we can even try to offer some recommendations to Congress, agencies, and members of society who depend on committees for vital advice.

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