The Logic of Delegation

CONGRESSIONAL PARTIES AND THE APPROPRIATIONS PROCESS

D. Roderick Kiewiet
and Mathew D. McCubbins

The Logic of Delegation

Congressional Parties and the Appropriations Process

D. Roderick Kiewiet and
Mathew D. McCubbins

The University of Chicago Press Chicago and London

The University of Chicago Press, Chicago 60637
The University of Chicago Press, Ltd., London

Printed in the United States of America

00 99 98 87 96 95 94 93 5 4 3 2

Library of Congress Cataloging-in-Publication Data

Kiewiet, D. Roderick.
The logic of delegation: Congressional parties and the appropriations process / D. Roderick Kiewiet and Mathew D. McCubbins.
p. cm.—(American politics and political economy series)
Includes bibliographical references and index.
ISBN 0-226-43529-6 (cloth)—ISBN 0-226-43531-8 (pbk).
1. United States. Congress—Committees. 2. United States. Congress—Leadership. 3. Delegated legislation—United States. 4. Party discipline—United States. 5. Budget—Political aspects—United States. 6. United States—Appropriations and expenditures. I. McCubbins, Mathew D. (Mathew Daniel), 1956- . II. Title. III. Series: American politics and political economy.
JK1029.K54 1991
328.73'0769—dc20 90-21019
CIP

∞ The paper used in this publication meets the minimum requirements of the American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984.

Acknowledgments

We would like to thank the research assistants who have worked with us on this project: Scott Ainsworth, Marla Davison, Michael Greenberg, Sharyn O'Halloran, Bill Laury, David Moon, Suisheng Zhao, Brian Sala, Kenneth Williams, and especially David Falleck and Eric Claus, who collected much of the raw data. We thank Keith Poole for providing us with his data on congressional members' NOMINATE scores and Samuel Bookheimer for sending us his appropriations data. We would also like to thank George Pigman, Pamela Easley, Eloisa Imel, Tom Boyce, Debbie McGougan, Carol Pearson, Phyllis Pugh, Marty Hertzel, and Kathryn Kraynik for their assistance in preparing this book for publication.

We have benefited from the comments, criticisms, and advice provided by a large number of friends and colleagues, who are listed in alphabetical order: Joel Aberbach, Jim Alt, Stanley Bach, Kim Border, Tom Brock, Bruce Cain, Gary Cox, Lance Davis, Bob Erickson, Richard Fenno, John Ferejohn, Morris Fiorina, Gary Jacobson, Sam Kernell, Morgan Kousser, John Ledyard, Nick Masters, Gary Miller, Douglass North, Peter Ordeshook, H. L. Perry, Charles Plott, Keith Poole, David Rohde, Howard Rosenthal, Thomas Schwartz, Kenneth Shepsle, Steven Smith, Matt Spitzer, Charles Stewart, Barry Weingast, Joe White, Rick Wilson, and Chris Wlezian. We are particularly indebted to Roger Noll, who, after reading early drafts of some of the chapters, was able to tell us what this book is really about. That this book has been published now (as opposed to considerably later) is due largely to the efforts of our editor, John Tryneski.

Finally, we thank the California Institute of Technology, the University of Texas, the Business School at Washington University, and the University of California at San Diego for the support they provided us. Mr. McCubbins acknowledges the support of the National Science Foundation, grants SES-8421161 and SES-8811022.

Contents

Figures

Tables

CHAPTER ONE

Introduction

Congressional Parties and the Abdication Hypothesis

Few institutions have received as much disparaging comment from the political science community as the party organizations in the U.S. Congress. Indeed, the upshot of much scholarly criticism is that "organization" is too generous a term to use for such amorphous agglomerations of individuals. According to their detractors, congressional parties, unlike their parliamentary counterparts, cannot muster unified blocs of votes to enact policies espoused in the preceding election. In the absence of "responsible" parties in the Westminster mold, policy-making in Congress becomes subject to great uncertainty and instability. Majorities that coalesce to enact a piece of legislation are fleeting and ad hoc. Whatever stamp the majority party might put on legislation is further obscured by the tendency for winning coalitions to take the form of vast logrolls encompassing more than 90 percent of the members of both parties (Collie 1988).

Not surprisingly, those seeking to measure the influence of political parties upon national policy in this country have almost always premised their analyses upon which party controlled the presidency, and not upon the partisan balance on Capitol Hill (Hibbs 1977; Cameron 1978; Tufte 1978). The most influential formal analyses of legislative structures abstract away any policy-making role for parties. Weingast and Marshall's (1988) "industrial organization" model of Congress, for example, explicitly assumes that "parties place no constraints on the behavior of individual representatives" (p. 6). Dodd and Oppenheimer (1977) put it this way:

> Throughout most of the postwar years, political parties in Congress have been weak, ineffectual organizations. Power in Congress has rested in the committees or, increasingly, in the subcommittees ... Party leaders have existed primarily to assist in smoothing the flow of legislation and mediating conflict, not to provide policy leadership and coordination. The parties themselves—particularly the House Democratic party—have been loose coalitions of convenience, not programmatic, cohesive organizations dedicated to enacting a specified set of policies. In many ways, political parties in Congress during the postwar years, as one observer has written, have been "phantoms" of scholarly imagination that were perhaps best exorcised from attempts to explain congressional organization, behavior, and process. (p. 41)

Virtually all features of the American polity have been implicated as factors contributing to the shortcomings of congressional parties—federalism, the separation of powers, and single-member plurality districts, among others (Brady 1989, pp. 8–9). In much of the scholarly criticism, however, there is a sense that the shortcomings and limitations of congressional parties, especially those of the majority party, are largely self-imposed. The frustrating thing, as far as many are concerned, is that the majority party could be an effective policy-making force if only it would pull itself together and act like a majority. Instead, the dominant role in policy-making is habitually assigned to others—internally to standing committees and subcommittees within each chamber, externally to the president and to the bureaucracy (Lowi 1979).

Many congressional scholars attribute the willingness to engage in delegation primarily to electoral considerations. In the delegation of legislative authority to standing committees, the scholarly consensus is that members of Congress, keen on maximizing their reelection prospects, demand assignments to committees whose jurisdictions coincide with the interests of key groups in their districts; thus the more clout committees have, the better. Parties, in contrast, are "more useful for what they are not than for what they are" (Mayhew 1974, p. 97). According to Fiorina (1982), Congress's delegation of legislative functions to the president and to the bureaucracy also grows out of electoral motives. Here, however, delegation facilitates the avoidance of blame rather than the taking of credit. Aware that most policies entail both costs and benefits, and fearful that those bearing the costs will hold them responsible, members of Congress often find that the most attractive option is to let someone else make the tough calls. Shifting responsibility for policy-making to others creates some "political daylight between the legislators and those who feel the incidence of legislative actions" (Fiorina 1982, p. 19).

Others view congressional delegation to the president and to the bureaucracy as unavoidable (and even desirable) in light of basic structural flaws in the design of Congress. They argue that Congress, or any other representative assembly for that matter, is incapable of formulating policies that address the full complexity of problems plaguing the modern world (Huntington 1965). Another charge is that action on bills can be stymied at several junctures in the legislative process by small groups of strategically placed opponents. Predisposed to deadlock, the only decision Congress can often reach is to let somebody else decide what to do. But, regardless of what they see as the motives underlying the choice to delegate, congressional scholars are in general agreement with what we henceforth refer to as the abdication hypothesis: congressional parties have repeatedly forfeited the central policy-making role that they might otherwise have played by turning the job over to others. By this view, delegation leads inevitably to abdication—usually little by little, sometimes precipitously, but in any case quite completely.

The purpose of this book is to reexamine the unflattering image of congressional parties that pervades the literature. Doing so necessarily requires us to reassess the discouraging view of delegation upon which it is based. We recognize that the facts of delegation are incontrovertible. A great deal of policy-making authority has been delegated by congressional parties to their members serving on standing committees; Congress has in turn chosen to delegate major legislative tasks to the president and to the bureaucracy. But it is not these facts that we wish to challenge. Rather, our aim is to determine to what extent these delegations of authority, both internal and external, undermine the ability of the majority party in Congress to pursue its policy objectives. The alternative we pose to the abdication hypothesis is that it is possible to delegate authority to others and yet continue to achieve desired outcomes. Indeed, it is often the case that desired outcomes can be achieved *only* by delegating authority to others.

We analyze the key issues involving congressional parties and the delegation of policy-making authority in the context of the annual appropriations process. There are a number of reasons for this choice. First, appropriations decisions are expressed in straightforward, "dollars-and-cents" terms and are thus the clearest statements of policy that exist. Democratic and Republican politicians may spout similar rhetoric about attaining peace through strength or about building a kinder, gentler nation, but policy must ultimately be crystallized into decisions about how much to appropriate for aircraft procurement versus how much for housing subsidies. Second, the appropriations process is of great substantive importance. It is the mechanism through which hundreds of billions of dollars of federal programs and activities are funded annually.

Third, there is an extensive body of previous research upon which to build. In particular, Fenno's (1966) study of the appropriations process, *The Power of the Purse*, is one of the classic works of political science.

Obviously we would not be taking a fresh look at the abdication hypothesis unless we thought we might arrive at a more optimistic conclusion and, thus, a more favorable view of the policy-making capabilities of congressional parties. Before building our case against the hypothesis, however, we review the case that has been made for it. We proceed by briefly detailing the historical record of the three major forms of congressional delegation of policy-making authority: (1) from congressional parties to subsets of their membership serving on standing committees; (2) from Congress to the president; and (3) from Congress to nonelected officials in the federal bureaucracy.

Each form of delegation arises from a different set of considerations. Each involves a different relationship between principal and agent, and each entails a different set of problems. In no way, however, have decisions to delegate been premised on constitutionally derived principles of government. To the contrary, a common feature of all congressional delegation is that it runs directly counter to the ideals and expectations of those who organized Congress in the early, formative years of the institution.

Delegation and the Organization of Congress

One of the first casualties of the new American republic was the Jeffersonian vision of Congress as a "forum where every member was a peer and no man led" (Harlow 1917). Not that this ideal was rejected on philosophical grounds; rhetoric espousing an unstructured, egalitarian legislature persisted long after the institutional reality gave the lie to it. Rather, it was dissipated in a series of concessions to organizational and political imperatives. The Jeffersonians came to see that whatever the democratic virtues of the practice, working out the general principles of legislation on the floor before referring it to a "committee on detail" was an inefficient and ultimately unworkable way to proceed. It meant that members spent most of their time deliberating matters about which they knew little and cared less. Furthermore, without some internal division of labor the Congress would be devoid of an independent capacity for gathering and evaluating information. This would leave the legislative branch unable to challenge executive policy recommendations or to formulate alternatives—a troubling prospect when the presidency was held by the opposition party.

The corrective the Jeffersonians seized upon evolved into the defining structural characteristic of the U.S. Congress: the delegation of legislative authority to committees. The resultant division of labor not only expedited the flow of legislation, but also encouraged the development of policy expertise, institutional memory, and greater stability in policy-making. In arguing for the creation of a new committee, a member of the Ninth Congress invoked language reminiscent of Adam Smith's paean to the pin factory: "That the business of the House would, on this point, be greatly facilitated by the institution of a standing committee, whose decisions would be uniform, who would from long experience become more enlightened than a select committee, and who would be enabled to dispatch the business confided to them with great celerity" (quoted in Cooper 1970, p. 13).

Rules changes enacted by the 17th Congress (1821–23) ratified what had become standard practice: all bills would be initially taken up by the appropriate committee, and the committee would report legislation to the floor only if it chose to do so (Cooper and Young 1989). Although the Speaker typically saw to it that majority party members dominated committee rosters, it seemed natural that those assigned to a committee would have a keen interest, intellectual or otherwise, in the area of policy over which the committee had jurisdiction.[1]

Cooper's account reveals that members of the early House appreciated the tradeoffs involved in delegating to committees. Gains achieved in policy expertise and organizational efficiency came at the cost of great inequality in influence across policy domains. Committees could parlay superior information and other strategic advantages into disproportionately large amounts of influence over policy in their jurisdictions. Indeed, as Gilligan and Krehbiel (1987) recognize in a recent paper, members of Congress would not invest their time and energy in committee work if this were not the case.

Delegation, in short, entails side effects that are known, in the parlance of economic theory, as agency losses. There is almost always some conflict between the interests of those who delegate authority (principals) and the agents to whom they delegate it. Agents behave opportunistically, pursuing their own interests subject only to the constraints imposed by their relationship with the principal. The opportunism that generates agency losses is a ubiquitous feature of the human experience. It crops up whenever workers are hired, committees are appointed, property is rented, or money is loaned. The message that we are all feckless agents of a Divine Principal is at the very heart of Judeo-Christian theology.

From the point of view of nineteenth-century congressional parties and their leaders, agency losses that accrued from delegating legislative authority to standing committees seemed manageable enough. In the House, members were assigned to committees at the beginning of each Congress by the Speaker, who was himself an agent of the majority party.

This arrangement, characterized by Hasbrouck (1927) as the "foundation of party control," implied that "within limits set by the existing degree of cohesiveness, the key committees could therefore be staffed more consistently with an eye to the program desires of the most durable majority coalition in the House" (Cooper 1970, p. 62). The committee system thus matured in an era of full-fledged party government. In the last few decades of the century the majority party in the House pursued its policy agenda under the aegis of Speakers so hegemonic that the regime was known as Czar Rule.

Following the Revolt against the Speaker in 1910, however, the principle of seniority, which grants members the right to continued service and advancement on a committee, became firmly established. So too did the practice of accommodating members' desires for assignments to committees with jurisdiction over programs of vital concern to their constituents. Under these arrangements, policy-making in Congress became characterized by a pattern of cooperation and reciprocity in which non-committee members on the floor defer to committee proposals, in the expectation that their own committee will be similarly deferred to (Weingast and Marshall 1988). Dodd and Oppenheimer (1977) describe the Congress that emerged after the fall of Boss Cannon as a:

> system of committee government which dispersed power among a set of autonomous committees. Appointment to committees, particularly the major committees, came to be determined within parties largely by seniority in the House; selection to chair one's committee came to depend entirely on committee seniority among members of the majority party. Each committee was left to fashion public policy in its own jurisdiction; the fate of public policy came to depend largely on the composition of committees and thus, by indirection, on patterns of seniority within the House and within committees. (p. 22)

There is general agreement, then, that the delegation of legislative authority to committees is necessarily corrosive to party government: "...to the extent the committees decided policy, party leaders were limited" (Brady 1989, p. 10). Over the past few decades, approximately one hundred thirty subcommittees in the House have acquired many of the properties of committees themselves (Smith and Deering 1984). The ascendancy of subcommittee government would seem to scatter authority even more diffusely and to make policy-making even more fragmented and disjoint.

In the view of many observers, the pendulum has swung back a bit in recent years. The party caucuses (especially the House Democrats) have become more active and assertive, and some of the Speaker's prerogatives have been restored. Indeed, it is because of these and other innovations that Dodd and Oppenheimer felt that Congress—or at least what Shepsle (1988) characterizes as "the Textbook Congress"—should be reconsidered. But recent gains in the stature of congressional parties are impressive mainly in light of the low baseline from which they are measured (Sinclair 1983; Hook 1987). Compared to their counterparts in parliamentary regimes, party leaders in the U.S. Congress would still seem to have at least one hand tied behind their backs.

Delegation to the President

A second major element of Jeffersonian thought was that Congress, as the supreme branch of government, should be an independent body free of executive influence. It was permissible for executive branch officials to provide Congress with information only; they were not to offer opinions, recommendations, or legislative proposals. This, too, proved to be naïve. The Constitution itself posed insurmountable problems for any doctrine of legislative supremacy. Article II states that the president, in addition to providing information to Congress on the state of the union, shall "recommend to their consideration such measures as he shall judge necessary and expedient." More importantly, Article I confers upon the president the power to veto any bill passed by Congress. Contingent only upon being sustained by one-third of the members of either the House or the Senate, the veto means that any legislation must accommodate his preferences and effectively establishes the president as the "third branch of the legislature" (Wilson 1956, p. 52). Standing at the end of the legislative process, the veto casts a shadow over all prior stages of congressional action.

In addition to constitutional realities, it makes sense on purely practical grounds for Congress to rely upon the president and other executive branch officials for policy recommendations. In the first place, it is difficult to distinguish in practice between policy-relevant information and policy recommendations. Even if the distinction can be drawn, those responsible for implementing policy have the most information about its strengths and weaknesses, and so, presumably, the most insight into what can be done to improve it. Second, it is often advantageous to delegate the tasks of collecting, evaluating, and integrating information into a concrete policy proposal to a single agent who is plainly accountable, whether this person be the president, a department head, or some other executive officer.

The president is also the most prominent member of his party. With a common investment in the "brand name" associated with the party label, the president's fellow partisans in Congress have strong incentives to join with him in forging a common policy agenda. Not surprisingly, the Jeffersonian Democrats in Congress became markedly less reluctant to entertain executive policy recommendations after they took control of the White House:

> It became common during the years of Madison's presidency for Republican members to argue, on grounds of executive wisdom and knowledge, that proposals which the appropriate department heads did not think necessary or expedient should not be passed and even that the department heads should be the ones to suggest what was necessary and expedient in their various areas of concern. (Cooper 1970, p. 44)

As in the case of delegation to standing committees within Congress, party leaders in the early House did not think that delegation of legislative responsibilities to the president posed undue institutional risks. Even after the party caucuses in the House ceased making presidential nominations directly, they continued to play a leading role in naming their party's standard bearer. Indeed, Congress's hold on national policy-making in the decades following the Civil War was so secure that Sundquist (1981) describes this period as the Golden Age of Congressional Ascendancy (p. 25).

If the nineteenth century belonged to the Congress, however, the twentieth would seem to belong to the president. In the view of many political scientists, the expanding role of the federal government in domestic affairs and the transformation of the United States into a superpower relegated the notion of policy-making by Congress to a bygone era. According to a past president of the American Political Science Association, "Legislation has become much too complex politically to be effectively handled by a representative assembly" (Huntington 1965, p. 29). Sundquist (1981), similarly, identifies two "endemic weaknesses" of the legislative branch: an inability to act quickly and an inability to develop and coordinate comprehensive policies. Fortunately, in his view, at crucial junctures responsible members of Congress owned up to these liabilities and delegated to the president legislative tasks that the legislature itself could not accomplish:

> A legislative program for the country had to be assembled, coordinated, made internally consistent, fitted with available resources, and coherently presented, and within it priorities had to be assigned. As the size and scope of government grew in the twentieth century, the capacity of the Congress to perform those tasks itself did not keep pace, and the Congress turned outside itself for the leadership it needed—to the president. (pp. 152–53)

Political scientists who bemoan the role committees and subcommittees play in Congress often point to the deleterious consequences this has for the quality of legislation; lacking the integrative role that can only be provided by effective party organization and leadership, policy becomes disjointed, fragmentary, and inconsistent. It is possible, then, that in delegating so much legislative authority to committees inside Congress, the congressional parties necessitated a major legislative role for the president! On the other hand, Cooper (1970) argues that a major impetus for the committee system was to enhance internal specialization and policy expertise in order to ward off executive branch dominance of the legislative process. Whatever the relationship between internal and external delegation, the transfer of policy-making responsibility to the president would seem to be sufficient to undermine the ability of congressional parties to independently pursue a policy agenda. Today the legislative accomplishments of a particular Congress are interpreted in terms of how successful the president has been in winning support for "his" program. As Sundquist (1981) duly observes, however, it was Congress that was responsible for the president becoming the "Chief Legislator":

> The modern aggrandizement of the presidency was the product of considered legislative decisions, neither acts of impulse by the Congress nor presidential coups d'etat. The Congress had to consent, because it had to pass the laws. But more than that, much of the transfer of power was initiated by the legislative branch itself. (p. 35)

Delegation to the Bureacracy

The delegation of legislative initiative to the president is largely a matter of choice. It is unavoidable, however, that Congress delegate the task of implementing public policy to the nonelected employees of the federal government. In keeping with their ideal of legislative supremacy, the Jeffersonians insisted that these officials should be allowed the smallest possible room for discretion or interpretation in carrying out the laws of the land. To this end, it was imperative that Congress write statutes that were as concrete and specific as possible; allowing administrators wide latitude in interpreting the law was tantamount to allowing them to make the law. This doctrine opposing the delegation of legislative power to nonelected officials (*delegata potestas non potest delegari*) is deeply rooted in contractarian political theory, which holds that the consent of the governed—manifested in a popularly elected legislature—is "the only legitimate basis for the exercise of the coercive power of government" (Stewart 1975, p. 1672; see also Fisher 1985, p. 100). The Jeffersonians