

COMMENT

CONFRONTATION OR COOPERATION FOR MUTUAL GAIN?

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I

INTRODUCTION

In their insightful article on the role of the president in Positive Political Theory (“PPT”),¹ Moe and Wilson find much to criticize in the work that has gone before them. In particular, they observe that important earlier works by Weingast and Moran,² McCubbins and Schwartz,³ Shepsle,⁴ and McCubbins, Noll, and Weingast⁵ may be flawed because they fail to accord sufficient respect to the central role of the presidency in U.S. political life.

Moe and Wilson seek to cure the deficiencies in the earlier work by focusing close attention on the role of the president and by explaining the advantage that U.S. presidents have over Congress in the institutional struggle to control government. Perhaps the most important contribution of the Moe and Wilson article is its treatment of the presidency as an institution rather than as an office held by an individual. Consistent with this approach, Moe and Wilson view the presidency as a bureaucracy that reflects the *institutional* preferences of that organization rather than the *personal* preferences of any particular officeholder. In particular these institutional preferences include a preference for building an “institutional capacity for effective governance”⁶ and a desire by presidents to be viewed as “strong leaders.”⁷

The purposes of this comment are fourfold. Part I disputes two important assumptions of Moe and Wilson’s article. Part II questions Moe and Wilson’s

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1. Terry M. Moe & Scott A. Wilson, *Presidents and the Politics of Structure*, 57 LAW & CONTEMP. PROBS. 1 (Spring 1994).

2. Barry R. Weingast & Mark J. Moran, *Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission*, 91 J. POL. ECON. 765 (1983).

3. Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols versus Fire Alarms*, 28 AM. J. POL. SCI. 165 (1984).

4. Kenneth A. Shepsle, *Institutional Equilibrium and Equilibrium Institutions*, in POLITICAL SCIENCE: THE SCIENCE OF POLITICS 51 (Herbert F. Weisberg ed., 1986).

5. Mathew D. McCubbins et al., *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECON. & ORG. 243 (1987); Matthew D. McCubbins et al., *Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies*, 75 VA. L. REV. 431 (1989).

6. Moe and Wilson, *supra* note 1, at 11.

7. *Id.* at 12.

apparent belief that the concentration of political power in the hands of the president is beneficial to the nation since the president is better able to resist particularized pressures. Part III takes issue with Moe and Wilson's disregard of the Congress's power to unify in order to resist power encroachments by the president. Part IV closely examines each of the case studies cited in the article and argues that Moe and Wilson systematically underestimate the power of Congress to respond forcefully to presidential invasions of congressional power.

II

ENTRENCHED PREFERENCES: THE PRESIDENCY AS AN INSTITUTION

While I have no quarrels with Moe and Wilson's basic insight that the presidency is best viewed as an institution with its own well-entrenched set of bureaucratic preferences, I have my doubts about their description of how those preferences are expressed. One reason that presidents want to be viewed as strong leaders, Moe and Wilson suggest, is because "[u]nlike legislators, presidents are held responsible by the public for virtually every aspect of national performance."⁸ They argue that presidents try to build a unified, coordinated, centrally directed bureaucratic system because they are being held responsible for every social and economic mishap faced by the nation.

Specifically, Moe and Wilson presume that constructing a highly unified bureaucratic system is the best way of dealing with economic and social problems. But significant unanswered questions about their analysis remain.

First, if Moe and Wilson really mean that having an effective system of central planning is really the best way of dealing with social and economic problems, they should provide some support for this assertion. It is by no means clear that erecting "a unified, coordinated, centrally directed bureaucratic system" is necessarily the best way to solve national social problems. This strategy was tried for decades without notable success in the former Soviet Union as well as in Eastern Europe. There is no reason to believe that solutions to the social problems that plague the U.S. will emerge under the regime of central planning that Moe and Wilson discuss.

Alternatively, perhaps Moe and Wilson mean only that constructing a unified bureaucracy within the executive branch is the best way to give the *appearance* of dealing with national problems. It is by no means clear, however, why this is the case. In the most recent presidential election in the United States, for example, Bill Clinton ran on a platform of reducing the bloated executive branch bureaucracy by twenty-five percent. His plan was to deal with national social and economic problems by (working with Congress) and by "putting an end to the gridlock in Washington."

Moe and Wilson should make it clear why they assert with such conviction that presidents create bureaucratic systems in order to solve the nation's

8. *Id.* at 23.

problems,⁹ while legislators create bureaucratic systems for nefarious reasons, such as to appease interest groups, or to duck the responsibility for important decisions when “passions run high.”¹⁰

Similarly, Ronald Reagan was incredibly successful as a politician, and he most certainly did not attempt to create the appearance of constructing a unified bureaucracy to deal with national problems. His idea was to “get the government off of people’s backs” by dismantling governmental bureaucracies whenever possible. Indeed the Reagan Presidency casts some doubt on Moe and Wilson’s basic assumption that presidents cannot avoid accepting the blame for the nation’s problems. Reagan, the so-called “Teflon president,” was masterful at creating the impression that the nation’s problems were not his fault.

In light of the Reagan Presidency, perhaps Moe and Wilson’s observation, that presidents are different from legislators because they inevitably will be held responsible for virtually every aspect of national performance, should be questioned. Presidents differ from legislators because they risk being held responsible for all of the nation’s woes. To deal with this problem, presidents must either solve the problems, give the appearance of solving the problems, or successfully shift the blame onto some other group, like Congress, the judiciary, or welfare cheats. In any event, Moe and Wilson’s observations that presidents are uniquely concerned about national problems do not lead ineluctably to their conclusion that presidents will respond to these concerns through a program of massive bureaucratization.

I suspect that Moe and Wilson’s arguments about presidents’ likely responses to the institutional pressures of their office stem more from their rather idiosyncratic views about the efficacy of bureaucratic structures than from their views about the institution of the presidency. For example, Moe and Wilson suggest that the effective discharge of any social or economic program requires a massive bureaucracy, arguing that legislation can work as it is supposed to only if “most aspects of policy and organization [are placed] in the hands of professionals” who “flesh[] out the details.”¹¹

Others would argue, however, that social and economic policy could best be handled by reducing or eliminating large segments of the bureaucracy in favor of direct wealth transfers. Thus, it might be the case that presidents could best serve their national constituencies by substituting school vouchers for the programs administered by the Department of Education, and by substituting a negative income tax for the welfare programs administered by such agencies as the Departments of Agriculture, the Department of Health and Human Services, and the Department of Housing and Urban Development. The bureaucracy described by Moe and Wilson benefits Congress because it permits individual members of Congress and congressional committees with influence over

9. *Id.* at 13-15

10. *Id.* at 14.

11. *Id.* at 22.

individual agencies to use that influence to benefit their own constituencies and special interest group allies.

Positive political theorists have amassed a great deal of support for the proposition that Congress, not the president, controls the bureaucracies it creates.¹² At a minimum, Moe and Wilson should try to respond to the arguments and evidence presented in this work in some way other than simply by complaining that these authors ignore the role of the president.

In their discussion of the institutional interests of Congress and the presidency, Moe and Wilson make a critical lapse in their argument. First, they observe (correctly, in my view) that Congress's baseline concern is "the effective provision of benefits to constituents."¹³ They further acknowledge that "for problems of even moderate complexity . . . this requires putting most aspects of policy and organization in the hands of professionals and allowing them to use their own expert judgment in fleshing out the details."¹⁴ And, when this happens, as Moe and Wilson argue, presidents certainly will seek to influence the behavior of the bureaucrats within administrative agencies. And often, of course, the wishes of presidents will conflict with the wishes of those in Congress. What Moe and Wilson fail to recognize is that sometimes the president will prevail in these contests, and sometimes those in Congress will prevail.

The assertion that Moe and Wilson make, that the president has a systematic advantage over Congress in the struggle over administrative agencies seems impossible to support. After all, Congress has the power of the purse, that is, the power to expand or to contract the budgets of administrative agencies. Congress also has the power to call agency officials to the Hill to testify before committees and subcommittees, and thus can monitor what they do fairly effectively. Moreover, congressional staffers work closely with administrative agency officials (as do executive agency officials) and can influence their activities at the staff level. Thus Moe and Wilson's assertion that the problem Congress faces in controlling administrative agencies is analogous to the classic problem a board of directors faces in trying to control management in the private firm¹⁵ is absurd, in my view. Corporate boards of directors meet only episodically, often only monthly or even quarterly. Board positions are part-time, and board members have no staffs whatsoever and no daily contact with employees below the echelon of top executives. In stark contrast, Congress meets continually for most of the year, and congressional posts are, of course, full-time jobs. And, unlike members of boards of directors, members of Congress have huge staffs to monitor agency officials.

12. See, e.g., McCubbins et al., *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECON. & ORG. 243 (1987); Weingast & Moran, *supra* note 2; Barry R. Weingast & William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are not Organized as Markets*, 96 J. POL. ECON. 132 (1988).

13. Moe & Wilson, *supra* note 1, at 22.

14. *Id.*

15. *Id.* at 22-23.

Moe and Wilson's further assertion that a U.S. president's ability to influence agencies is far stronger than that of corporate managers to influence corporate performance appears to me to be even more far-fetched. After all, corporate managers often select the membership in their boards of directors, while congressional delegations are certainly not selected by presidents. In fact, they often are either from the rival political party or have radically different views from the president, or both. By contrast, corporate boards of directors almost never disagree with management, and management controls the hiring and firing of subordinates as well as their advancement through the firm in ways that presidents can only dream about.

The more probable view would hold that, while administrative agency officials enjoy considerable discretion, both Congress and the president attempt, with varying degrees of success, to influence the decisionmaking process within agencies. Moe and Wilson do not succeed in establishing that presidents have systematic advantages over Congress in the fight to influence agency outcomes. Their strained analogy to the corporate context only weakens an already shaky argument.

Other statements cavalierly advanced by Moe and Wilson deserve much more reflection. For example, the authors should provide some support for their assertion that presidents attach a lower priority to reelection than other elected officials. This assertion appears to me to be quite dubious. Surely some presidents value reelection less than some senators, but more than others. Surely some presidents value reelection more than other presidents. Moe and Wilson's core assumption appears to be that presidents are benign rulers, immune from both pressure from specialized interest-groups and the unseemly desire for reelection that deprive Congress of the ability to govern effectively. Moe and Wilson seem to believe that the most important motivational force exerted on presidents is the desire to be viewed as a good and effective ruler in the eyes of history. Upon reading their article, one is forced to wonder how Moe and Wilson would react to a suggestion to disband Congress and give the president unfettered discretion to govern. Thus, Moe and Wilson would seem to be strongly approving of President Yeltsin's actions to outlaw the Russian Parliament, and strongly disapproving of the Framers' ideas for a government of separated powers.

Having said all of this, it is important to emphasize that many of the more important insights contained in the Moe and Wilson article do not require the acceptance of their argument that presidents systematically respond to the peculiar institutional pressures of their office by erecting massive bureaucratic structures. Their basic idea, that presidents are distinctive institutional actors with particular institutional roles that transcend the particular personality of any particular officeholder, is correct and incontrovertible. My quibble is with their characterization of how the unique institutional preferences of the president are likely to manifest themselves.

III

PRESIDENTS AND INTEREST GROUPS

While Moe and Wilson are able to demonstrate quite convincingly that presidents have different institutional interests than Congress, I think they misapply this insight in significant ways. In particular, they argue that because the presidency is a national office, presidents' heterogeneous national constituencies lead them to think in grander terms about social problems and the public interest and to resist specialized appeals.¹⁶

This claim is certainly true as far as it goes, but it does not go very far. The important question is not whether the president is better at resisting specialized appeals than Congress, but whether resisting specialized appeals is best accomplished by concentrating power in the hands of the president or by having power more or less equally divided among the three branches of the national government.

Moe and Wilson are a bit vague on this point, but any suggestion that resisting specialized appeals is best done by concentrating power in the president is clearly counterfactual, as the Framers themselves recognized. Instead of concentrating power in the hands of the president, the Framers wanted to diffuse power among the three branches of government for the express purpose of creating a governmental structure capable of resisting the very specialized appeals that Moe and Wilson suggest are best resisted by the president alone. The Constitution "was designed to impede interest groups from obtaining economic advantage through political means."¹⁷ Indeed, the postulate that the Framers wanted to deter the efficacy of interest groups in the political process has been described as "the most promising candidate for a unitary theory of the Constitution."¹⁸ Similarly, because the executive not only has a significant role to play in promulgating and proposing new laws, but also has the power to veto laws passed by Congress, the Constitution has what is, in effect, a supermajority voting rule that was intended to impose a significant obstacle to the passage of new statutes.

These points are so well known that it seems likely that Moe and Wilson meant only that the president's greater institutional capacity to resist interest group pressures suggests that the systematic increases in presidential control of the structures of government is all to the good. The flaw in this reasoning, of course, is that it sets up a false dichotomy by forcing an institutional comparison

16. *Id.* at 11.

17. Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 223, 249 (1986).

18. Cass R. Sunstein, *Naked Preferences and the Constitution*, 84 COLUM. L. REV. 1689, 1732 (1984); See also JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* 233-48 (1967). Where the members of each house of a bicameral legislature represent different constituencies, and where the two houses must concur to pass a law, it is more difficult for discrete factions to ensure the passage of legislation that furthers their interests.

between the presidency and Congress that is divorced from reality. The appropriate inquiry is not whether the presidency is a more effective institution than Congress; the appropriate inquiry would recognize that both Congress and the president have important institutional roles to play in policy formation and would focus on the appropriate equilibrium between these two institutions.

Interestingly, at various points in their article, Moe and Wilson recognize that the relevant issue is not what the institutional preferences of one branch or other might be when viewed in isolation. Rather, the critical question is how these branches of government relate to one another. In particular, one reason why PPT previously has ignored the role of the president is that his or her role simply is invisible in equilibrium in the models developed by positive political theorists. Generally, however, Moe and Wilson view Congress not as an institution, but as a collection of individuals so hobbled by collective action problems that they are unable to articulate, much less to defend, a set of institutional interests in opposition to the president. For Moe and Wilson, the result of this one-sided dynamic is the systematic erosion of Congress's power in favor of presidential prerogatives.

IV

CONGRESS AS AN INSTITUTION

Both theory and practical experience suggest, however, that Congress is better able to articulate and defend its own institutional interests than Moe and Wilson suggest. Congress's ability to formulate its own internal rules of governance has enabled it to devise such institutional features as the committee system and the seniority system, which work very well to enable Congress to solve the collective action problems that prevent it from acting as a firm.¹⁹ Congress can best "be viewed as a firm (a partnership) that designs both its internal rules and external rules so as to maximize the political support received by its members."²⁰

None of this is intended to diminish the power of Moe and Wilson's insights about the president. However, by viewing the president in isolation from the other institutions with which the president must interact, Moe and Wilson are making the same mistake as those who have viewed Congress in isolation from the president. Government can only be fully understood as a complex, iterative game between all of these competing institutions.

One hopes that, at some point, the analysis provided by PPT will move beyond models that treat Congress and the presidency as simple institutions, and become even more densely layered. For example, future analysis might take account of the fact that just as Moe and Wilson are correct in their observation that Congress and the president have different constituencies, and hence different

19. See Jonathan R. Macey, *Public Choice: The Theory of the Firm and the Theory of Market Exchange*, 74 CORNELL L. REV. 43, 52-56 (1988).

20. *Id.* at 56.

institutional preferences, it also is the case that the House of Representatives and the Senate have different constituencies, different bureaucratic structures, and, hence, different institutional preferences. And, presumably, just as the equilibrium of power between Congress and the Presidency evolves over time, so too does the equilibrium between the two houses of the bicameral national legislature.

Finally, from a practical perspective, it seems clear to me that Moe and Wilson systematically underestimate the power of Congress to respond forcefully to presidential encroachments on what Congress perceives to be its turf. This bias can be seen in each of the three case studies they present to show how presidents have expanded their power at the expense of Congress.

A. Regulatory Review

For example, to support their contention that presidents systematically are able to expand their power at the expense of Congress, Moe and Wilson argue that the Office of Management and Budget ("OMB") has further solidified the president's grip on the process of administrative rulemaking. As Moe and Wilson observe, under applicable legislation, administrative agencies must obtain OMB approval for proposed legislation as well as for legislative testimony through the OMB Office of Information and Regulatory Affairs.²¹ It is clearly the case that these laws make OMB "a powerful conduit for injecting the President's views directly into the rule-making process."²² However, as a practical matter, the executive acting through OMB still is subject to considerable congressional power. Congress now requires Senate confirmation of the appointment of the director of the Office of Information and Regulatory Affairs,²³ and by so doing

has undermined the President's ability to usurp regulatory authority from agencies by using OMB as a filter for proposed legislation. The Senate's recent stubborn unwillingness to confirm a nominee to that position [during the Bush Administration] is clear evidence that, like the President, the Senate can play hardball to restore the balance of power when it so desires.²⁴

B. Congressional Oversight of the Presidency

Moe and Wilson also make the point that Congress does a very poor job of overseeing the institutional presidency and preventing its incremental growth and development as a foundation of presidential power.²⁵ But again the issue is not whether the presidency has grown in power and stature; clearly it has. Instead,

21. Moe & Wilson, *supra* note 1, at 38-39.

22. Cynthia R. Farina, *Statutory Interpretation and the Balance of Power in the Administrative State*, 89 COLUM. L. REV. 452, 506 (1989).

23. 44 U.S.C. § 3503(b) (1988).

24. Jonathan R. Macey, *Separated Powers and Positive Political Theory: The Tug of War Over Administrative Agencies*, 80 GEO. L.J. 671, 700 (1992).

25. Moe & Wilson, *supra* note 1, at 33-37.

the issue is whether the institutional power of Congress has grown along with the institutional power of the Presidency. If it has, then from a balance of power perspective, there has been no change in the underlying equilibrium between the executive branch and the legislative branch.

Along these lines, it seems clear that Moe and Wilson are correct to observe that Congress does a poor job of monitoring the president. But the president does an equally poor job of monitoring the Congress. As I have observed in another context

it is difficult to credit the conclusion that the executive can control agency behavior through its ability to deny agencies the money and staff they need to carry out their assigned functions. There are no credible examples of this having taken place, even at the height of the so-called "Reagan Revolution."²⁶

While Moe and Wilson are correct to point out that the presidency has increased its absolute power, they are too quick to conclude that this increase in power has come at the expense of Congress. Rather, as Moe and Wilson recognize, the presidency is an institution. It operates on its own terms and within its own sphere of autonomy. The same is true of Congress. Thus, even in terms of Moe and Wilson's own model, citing the lack of congressional oversight of the president as evidence of a weak Congress and a strong president is like concluding that AT&T does not compete with MCI on the grounds that AT&T does not oversee MCI. Similarly, the fact that AT&T is a huge, profitable corporation does not mean that MCI is not also a formidable enterprise.

C. Civil Service Reform

By far Moe and Wilson's most interesting case study is their analysis of civil service reform. Moe and Wilson argue that the Carter Administration's changes in the structure of the civil service system shifted power into the hands of the president by creating the Office of Personnel Management, to be headed by a presidential appointee. The important question is whether this change, which removed power from the Civil Service Commission, a nonpartisan agency, actually reduced Congress's institutional power or whether it enhanced the power of both Congress and the president, at the expense of the public-at-large, to deal effectively with special interest groups.

Moe and Wilson assume that any increased power gained by the Presidency as a result of Civil Service Reform must have come at the expense of Congress. But this is not necessarily the case. It is possible that both Congress and the president stand to gain from strengthening the bureaucracy and making it more professional and effective. Once a compromise has been brokered among Congress, the president, and the relevant competing interest groups that will

26. Macey, *supra* note 24, at 702.

result in new legislation, all sides have an interest in making sure that such legislation is enforced as efficaciously as possible.

Moreover, one of the most important insights of PPT has been to show that Congress faces severe contracting problems when it deals with interest groups. In particular, these contracting problems manifest themselves in the form of nonsimultaneity of performance problems that occur because interest groups often are called upon to perform their end of a legislative bargain (providing political support) before Congress is expected to perform its end (passing legislation).

Another manifestation of the contracting problems faced by Congress is known as "legislative drift,"²⁷ which describes the fact that the preferences of politicians evolve over time, thereby creating a legislative environment inconsistent with the preferences of an original legislative coalition. This problem can reduce the willingness of interest groups to trade political favors for legislation in two ways by lowering the present value to interest groups of any legislative wealth transfer they might be able to obtain. First, legislative drift can result in hard-won legislative compromises being abrogated through outright legislative repeal. This occurs only rarely, however.

More commonly, future legislatures will try to jaw-bone administrative agencies into accepting a different interpretation of an underlying legislative regime. By increasing the independence of legislative agencies, Congress can mitigate the problem of legislative drift, and thereby increase the value of the legislation it enacts, other things being equal. But, of course, other things are not equal. As Horn and Shepsle have observed, efforts to control legislative drift give rise to another sort of drift, bureaucratic drift, which refers to changes in administrative agency policies that lead to outcomes inconsistent with the original expectations of the legislation's intended beneficiaries.²⁸

The application of this analysis to Moe and Wilson's observations about civil service reform is straightforward. Attempts to make the civil service more independent of Congress and more professional will harm Congress by raising the specter of bureaucratic drift, but help Congress by reducing legislative drift. The net effect of these reforms on Congress's overall power is an empirical issue.

However, two factors suggest that Congress did not think it was acquiescing to a reduction in its own power by acceding to civil service reform. First, the fact that Congress was supportive of President Carter's initiative suggests that Congress did not think its interests were being threatened. Moe and Wilson do not explain why Congress did not oppose this reform effort if such reform was not in Congress's interest. At various points in their article, they attribute what they see as Congress's inability to protect its interests to a collective action problem that prevents the institution from galvanizing into an effective coalition

27. Murray J. Horn & Kenneth A. Shepsle, *Commentary on "Administrative Arrangements and the Political Control of Agencies": Administrative Process and Organizational Form as Legislative Responses to Agency Costs*, 75 VA. L. REV. 499, 503 (1989).

28. *Id.*

to protect its own interests. This analysis, however, would not seem to apply to their analysis of civil service reform.

A simple resolution passed by the House and Senate in opposition to the reform effort would have stopped the President's plan. The costs of drafting such a resolution would seem to be very low. Civil service reform was not a politically salient issue that grabbed the public's attention in a way that would have made authorship of such a resolution very costly. Moreover, the presidential reorganization plan called for a simple up-or-down vote by Congress. There would not appear to be any collective action problem in this context. Moe and Wilson offer no explanation of how individual members of Congress could possibly have benefitted themselves at the expense of the institution by voting yes.

To the contrary, if civil service reform harmed Congress as an institution, it did so by reducing the power of the congressional leadership, who lost control over administrative agencies. If this were the case, however, these congressional leaders could have trumped up some public interest smokescreen to cloud their actual motives, and mounted an opposition to President Carter's plan.

A second reason why it seems implausible that Congress was relegating governmental authority to the president in agreeing to civil service reform stems from the fact that Congress's basic power to control the behavior of administrative agencies has never come from its ability to staff agencies. Rather, Congress's authority to control agencies comes primarily from two sources: its power to control appropriations and its power to control the basic organizational design of such agencies. The enhanced professionalism within the civil service that came about as a result of civil service reform increased both of these powers. First, with respect to appropriations, the new, professional bureaucrats within the civil service would be particularly interested in expanding the size and scope of their own authority. The professional civil service employees within the various agencies are interest groups unto themselves. They are very interested in expanding their own budgets.²⁹ This bureaucratic self-interest leads the professionals within the agency to try to appease Congress so that it will expand their budgets.

Second, the politicians who create administrative agencies can best constrain the behavior of the bureaucrats who staff such agencies not by establishing procedural and substantive rules under which the agencies must operate, but by establishing an original organizational design that creates an institutional structure that will tend to generate results consistent with the original understanding of the enacting coalition. In particular, Congress can control future decisions of administrative agencies by defining agencies' central mission and jurisdictional focus. In this way, Congress can control the industries and interests

29. WILLIAM A. NISKANEN, JR., *BUREAUCRACY AND REPRESENTATIVE GOVERNMENT* (1971); Ronald N. Johnson & Gary D. Libecap, *Agency Growth, Salaries, and the Protected Bureaucrat*, 27 *ECON. INQUIRY* 431, 448 (1989).

that will be represented on the agency's staff, and can determine which interest groups have repeat dealings with the professionals within an agency.³⁰ Congress can even strengthen certain interest groups relative to others by establishing agencies whose mission is to guard the interests of particular groups.³¹

In other words, the politics of structure applies to administrative agencies just as it does to Congress and the presidency. Congress's knowledge of this fact, coupled with its power to create agencies and define their institutional structure, permits it to shape the preferences of the professionals within such agencies. As noted above, once an agency's organizational design is in place, its preferences are shaped. At this point, it is in Congress's interest to put the agency on "autopilot" by keeping the agency independent and professional, because this is the best way to avoid the problem of legislative drift.

V

CONCLUSION

Moe and Wilson perceive any changes that appear to enhance the power of the president as a loss for Congress. This assumption ignores the fact that the relationship between Congress and the president is not inevitably adversarial. Moe and Wilson's observation that the presidency is an office with real power and a set of clearly discernible institutional preferences does not necessarily yield the conclusion that the president's interests are systematically at odds with the interests of Congress. Over a wide range of issues, both Congress and the president benefit by enhancing their shared power and removing power from other sources such as the states, the judiciary, and above all, from private citizens. After all, Congress and the president offer a joint product—law. The better they are able to cooperate in producing this product, the more pork there will be in Washington to divide among them. Put another way, as I have observed elsewhere, "any perceived tilt in the constitutional balance of powers toward the executive branch is a result of congressional acquiescence as much as presidential usurpation."³²

I hope that these quibbles do not undermine the fact that Moe and Wilson have written an extremely important article that will be much cited by scholars working in PPT, including myself. Their article cogently analyzes the presidency as a bureaucratic institution with distinct institutional preferences. It also brilliantly describes the forces that shape those preferences and distinguishes how those preferences differ from those of Congress. The article also makes a valuable preliminary effort to describe the problems faced by the president in transforming his or her preferences into reality. This article would have been a

30. Jonathan R. Macey, *Organizational Design and Political Control of Administrative Agencies*, 8 J.L. ECON. & ORG. 93, 100-05 (1992).

31. *Id.*

32. Macey, *supra* note 24, at 702.

real contribution to the literature if it had managed to do only one of these things. That it did all of them is quite remarkable.

