

# COMMENT ON “PRESIDENTS AND THE POLITICS OF STRUCTURE”

ROBERTA ROMANO\*

## I

### INTRODUCTION

Terry Moe and Scott Wilson’s article *Presidents and the Politics of Structure*<sup>1</sup> develops and refines a theme that Moe’s work has emphasized: the importance of the president and, correspondingly, the incompleteness of models of the political process that focus on Congress and leave only a shadow role for the president as the exerciser of veto power. The purpose of the article is to supplement the McNollGast structure and process explanation of congressional establishment of administrative agencies<sup>2</sup> by elaborating the president’s countervailing institutional motivation to strengthen and consolidate the bureaucracy under presidential control.

I find Moe and Wilson’s thesis highly suggestive and one which ought to be pursued and amplified. My comment consists of three points directed at exploring their thesis further. The first two concern two institutions that are omitted from the analysis but whose inclusion might well alter some of Moe and Wilson’s conclusions on comparative institutional advantages—political parties and courts. These institutions offset some of the collective action problems that Moe and Wilson ascribe to Congress. The third point identifies lines of empirical inquiry which could make more compelling the president-centered explanation of the politics of agency structure offered by Moe and Wilson, by following up on what impact their three case studies of bureaucratic reform favored by presidents have had on the formulation of public policy.

## II

### POLITICAL PARTIES

A key institutional device in resolving collective action problems and coordinating individual members of Congress, and indeed, in coordinating the

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\* Allen Duffy/Class of 1960 Professor of Law, Yale Law School.

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

2. Mathew D. McCubbins, Roger G. Noll & Barry R. Weingast, *Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies*, 75 VA. L. REV. 431 (1989) [hereinafter *Structure and Process*]; Mathew D. McCubbins, Roger G. Noll & Barry R. Weingast, *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECON. & ORG. 243 (1987) [hereinafter *Administrative Procedures*].

Congress and the president, is the political party. This institution does not appear in Moe and Wilson's analysis. While there has been disagreement in the literature over the vibrancy of parties,<sup>3</sup> if the consolidating role of political parties is taken into account, much of the president's institutional advantage as a unitary actor that is emphasized in Moe and Wilson's article disappears. It would therefore be useful to examine whether Congress's organization into parties leads members to support institutional (as opposed to individual) utility-maximizing strategies, or whether party discipline causes members (of the president's party) to support the presidency against their institutional interests.

Inclusion in the analysis of the role of parties raises the question whether divided government—government when the president's party does not control Congress—affects Moe and Wilson's analysis. It is possible that the presence or absence of divided government better accounts for the article's stories of congressional indifference, support, and opposition to presidential efforts at regulatory reform than does the article's interest group explanation. President Carter, a Democrat whose party controlled both houses of Congress, appears to have successfully restructured agencies more easily than did the Republican presidents in the article's vignettes. Is the interaction of a party variable of importance as an explanatory variable, in addition to the interest group concerns mentioned by Moe and Wilson? If party, and hence divided government, is a factor in successful agency reform, we would expect to find a President Carter or Clinton more successful than a President Reagan or Bush. If, however, it is found that Carter and Clinton do no better than Republican presidents in the effort at restructuring the bureaucracy, then Moe and Wilson's approach excluding parties from the analysis, and treating the unitary actor-president as possessing a clear-cut institutional advantage, would be more compelling. Bringing parties into the analysis would enable us to get a better handle on the significance of the institutional advantage of the presidency that Moe and Wilson ascribe to its unitary actor characteristic.

Another aspect of the president's institutional advantage over Congress identified in the article that would benefit from a closer look is the proposition that presidents are less motivated by, or less interested in, reelection than are members of Congress (and thus want a strong bureaucracy despite interest groups' contrary desires).<sup>4</sup> In particular, an attempt ought to be made to determine whether differential reelection concerns matter. Do presidents more vigorously assert their branch's power in agency shaping in their first or second terms? Are members of Congress with safer seats, or senators whose reelection is further down the line, more likely to support either presidential agendas for agency reform or institutional reform that strengthens Congress's control of an agency at interest groups' expense? If there is no connection between reelection

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3. Kiewiet and McCubbins examine the debate and conclude that the majority party achieves its objectives, in the context of delegation of policymaking in the appropriations process. D. RODERICK KIEWIET & MATHEW D. MCCUBBINS, *THE LOGIC OF DELEGATION* (1991).

4. Moe & Wilson, *supra* note 1, at 16.

opportunities and positions on agency reform, then this institutional advantage may be less potent than the article suggests.

### III COURTS

Perhaps because it tends to interest lawyers more than political scientists, the judicial branch of government is also omitted from the analysis. Yet inclusion of their interaction in the administrative process may affect the institutional equilibrium favoring the president that Moe and Wilson describe. The question is whether courts protect Congress—or to put it more precisely, whether Congress successfully uses courts, in structuring administrative agencies, as in the McNollGast structure and process scenario,<sup>5</sup> to protect its interests in agency decisionmaking? If courts can play such a role in monitoring agency action, then Congress will not be overly concerned about presidential efforts to assert political control over the bureaucracy. This puts a different gloss on the three case studies in the article.

Introducing courts in an agency's structure does present difficulties for Congress, however. Presidents shape courts through the appointment power. In addition, life tenure strengthens the judiciary's independence as a political actor. I have no intuition concerning how, in Moe and Wilson's framework, courts affect the balance of power between Congress and the president in the competition to shape agencies. Information on the positions presidents take in legislative proposals on agency structure on issues such as judicial review or on access to court would provide evidence at least of how presidents perceive their interests to be affected by courts. If presidents were not hostile to judicial involvement, I would have fewer misgivings over the courts' exclusion from the analysis.

### IV FURTHER EMPIRICAL INQUIRY

An alternative to Moe and Wilson's presidential institutional advantages explanation for the presidential successes in the politics of agency structure, is that none of the changes discussed in the article diminished congressional power. That is, the changes did not alter the balance of power between Congress and the president with respect to agency agendas or actions. This explanation is consistent with the congressionally dominated McNollGast view of agencies as Moe and Wilson characterize it. If this alternative hypothesis is correct, then Congress's quiescent approval of presidents' agency reforms is evidence not of an institutionally advantaged presidency but of a Congress that shapes agencies in its image.

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5. See McCubbins, Noll & Weingast, *Structures and Process*, *supra* note 2; McCubbins, Noll & Weingast, *Administrative Procedures*, *supra* note 2.

Moe and Wilson contend, for instance, that President Carter's 1978 civil service reforms were significant because they enabled the President to assert control over agencies.<sup>6</sup> We can measure, albeit crudely, how important this legislation was. Was there a change in bureaucratic output post-1978 in favor of the president's position over Congress, or that harmed the interest groups of concern to Congress and thus benefitted the president at Congress's expense? Does the president now exercise more control over the bureaucracy than presidents did prior to 1978? Are career bureaucrats, compared to political appointees, less powerful in agency decisionmaking than before? Moe and Wilson's contention would be bolstered if evidence of this sort was brought to bear on the analysis. Congress's acquiescence in President Carter's reform proposal is meaningful evidence of an institutional advantage only if the reform has real policy consequences.

The same interpretative issue over the absence of congressional resistance to presidential efforts at agency reform can be raised concerning the article's two other examples. One might examine, for instance, whether the Bureau of the Budget was more responsive to Congress's desires than those of the president prior to the OMB reforms. If there is no difference, before and after, then congressional approval of the change was, again, costless. Finally, consider the article's evaluation of the regulatory review case history. Moe and Wilson criticize Congress for continuing to fund agencies responsible for regulatory review because by doing so Congress enhanced the president's power, by "bur[y]ing the EPA still further in bureaucracy" rather than "stop[p]ing the president in his tracks."<sup>7</sup> This end-product of bureaucratic ineffectiveness might, however, be precisely what Congress wanted; given the congressional interest in maintaining the status quo for the benefit of the interest groups it serves as detailed by Moe and Wilson, retaining the status quo through regulatory review could be more consistent with Congress's institutional interest than Moe and Wilson recognize.

Apart from examining whether agency outputs change after the occurrence of administrative reforms favoring the presidency, there is another line of inquiry, using cross-sectional data, that would bolster Moe and Wilson's hypothesis that the president is of primary importance in shaping U.S. bureaucracies. How different is the structure and process of U.S. agencies compared to agencies in parliamentary systems such as the United Kingdom and Canada? Are U.K. bureaucracies more effective than those of the United States, as the article's thesis implies? In the past, Moe has outlined organizational differences across political systems in order to demonstrate that his analysis of the power of the presidency is correct.<sup>8</sup> In this article, however, no comparative institutional data are offered to support the authors' hypotheses about the kind

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6. Moe & Wilson, *supra* note 1, at 30.

7. *Id.* at 39.

8. Terry M. Moe, *Political Institutions: The Neglected Side of the Story*, 6 J.L. ECON. & ORG. 213 (Special Issue 1990).

of bureaucracy produced by the interaction of the institutional presidency and Congress. Undertaking a comparative institutional analysis of bureaucracies across political systems is important if we are to move further in developing a positive political theory of agency structure.

## V

### CONCLUSION

There is a strong consensus among those who study administrative agencies that Moe and Wilson's core thesis—that the president has a major role in the politics of agency structure, and this role is importantly defined by institutional factors rather than personalities—is accurate. In this regard, Moe and Wilson's article is a valuable antidote to a congressionally centered political science literature. But in addition to developing more realistic formal models of the politics of agency structure with richer characterizations of the presidency, we need to work on microanalytic studies of agencies to delineate better the respective roles of the president and Congress in influencing agency structure, and the conditions under which the institutional advantages of the presidency are capitalized on and converted into policy successes.

