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## RESEARCH STATEMENT

My research focuses broadly on inter-branch conflict in United States lawmaking and policy regulation across the post-war period. My dissertation and related projects seek to explain the ways in which separation-of-powers conflicts shape and influence policymaking through the branches over time. I work to evaluate the partisan and statutory design conditions that expand agency latitude in policymaking, and the complex ways in which Congress, courts, and agencies interact to shape the regulatory outcomes that we observe. My research, both my dissertation and beyond, center around questions of lawmaking and institutional conflict across – as well as within – the branches. I evaluate these puzzles through a mix of formal theory, large-scale quantitative analysis, and qualitative case studies of statutory implementation over time.

*Dissertation Project: When Do Agencies Have Agency? Bureaucratic Noncompliance and Dynamic Lawmaking in the United States.*

My dissertation raises three core questions: To what extent, and under what conditions do administrative agencies have expanded policymaking latitude relative to that predicted by the dominant delegation models? How do Congress and courts respond to these implementation decisions? Finally, what are the long-term consequences with respect to policy volatility and the scope of the administrative state in regulating these sectors? Building on political economy models of delegation, the project addresses the little-explored subject of noncompliance from 1973 to 2010 in the Environmental Protection Agency and the Department of Interior.

While a rich literature has evaluated systematically the conditions conducive to passage of legislation (e.g., Brady & Volden 2006; Krehbiel 1998), as well as the nature of voting patterns on those laws, the study of statutes to date has neglected their dynamic dimension. This dynamic component is a critical dimension of how law, policy, and the American state develop over time, capturing better the realities of the increasingly complex, amendment-based nature of modern statutes, as well as the ongoing nature of inter-branch interactions in shaping policy outcomes.

I argue that the conditions of expanded polarization, fragmented legislative oversight, and increased judicial deference to agency interpretations in the aftermath of *Chevron v. NRDC* (1984), fundamentally reshape agencies' ability to be active policymakers and pull the policy location toward their preferences rather than complying with legislative dictates. I refer to this behavior as *bureaucratic noncompliance*. Amid conditions of polarization and gridlock, the transaction costs associated with lawmaking increase, thus hampering Congress's ability to be an effective overseer of bureaucratic behavior in a political setting largely dominated by conditions of divided government. Moreover, the post-*Chevron* world of increased judicial deference – as well as adjustments to standing doctrine and thus the ability to influence policymaking through litigation – has fundamentally reshaped the balance of power between courts and agencies, in turn influencing the policy outcomes that we observe. While extant delegation literature largely assumes compliance with legislative dictates, this project evaluates the conditions under which that bureaucratic control breaks

down, providing novel measures of *bureaucratic noncompliance*, or agency actions that deviate from legislative dictates in ways that provoke responses from Congress and/or the courts.

Discussing bureaucratic noncompliance begs the question, noncompliance *with what*? Looking within a narrow window of time can make quite plain the principal-agent accountability set-up with respect to new legislation, such that the Congress in power is the Congress that provided for that delegated discretion. However, agencies are often tasked with implementing laws passed several Congresses prior, by Congresses that may have a markedly different ideological distribution than that currently in power, and without necessarily further updating the statute. That is, while the Congress currently empowered to punish the agency may have preferences that cohere with the delegating Congress, it is hardly a given, nor is it a given that a contemporary Congress will be committed to upholding a legislative bargain from several Congresses previous. This potentially marked disconnect in legislative preferences can have the effect of yielding an important – and little-discussed – tension between the ideals of ex ante constraints set forth by the delegating Congress, and the ex post realities of policymaking in a highly volatile partisan environment characterized by changing political conditions over time. There is the further question of to what bargain the *judiciary* will expect adherence in evaluating bureaucratic compliance in implementation.

Thus, we have an important – though thus far, little-unexplored – wrinkle in American policy implementation, which is that while the United States Congress as an institution is stable, it does not serve the status as a stable principal in the sense of its ideological composition, which changes every two years (to varying degrees). Such problems of instability in principal-agent relationships were called attention to by Huber and Lupia (2001), who address cabinet ministries that are unstable such that the delegating principal does not ultimately perform the monitoring functions over the agent. Amid these information problems, the resulting instability has the effect of transferring power to bureaucrats (Id at 26) and furthermore, even without principal-agent information challenges, the uncertainty about turnover creates even greater difficulties in bureaucratic control. This is, I argue, not unlike the United States case given the presence of midterm elections every two years, some of which result in little ideological change, others of which do not affect partisan control but do affect supermajoritarian institutions (e.g., the filibuster), and others of which result in radical swings in preferences. As such, it is important that we turn our attention to “*delegation as it is practiced*” as opposed to “*delegation as it is portrayed* in many formal models” (Id at 18, emphasis in original text), and the challenges of democratic accountability that arise in this setting. The dissertation thus brings to light a number of important challenges of implementation arising not simply from *bureaucratic drift*, which is the focal point of much delegation analyses, but also the *coalition drift* that shapes future regulatory outcomes.

The dissertation evaluates in the context of the Environmental Protection Agency and the Department of Interior the conditions under which Congress proves unable to effectively induce compliance in these agencies to which it delegates. Because there is extensive unobserved strategic behavior, measuring noncompliance is quite challenging and no systematic measures existed prior to this study. I address it indirectly by evaluating congressional and judicial interventions into bureaucratic policymaking – interventions that I do not expect to observe if there is perfect compliance. These measures I used are several hundred DC Circuit lawsuit losses on substantive grounds, as well as several thousand bill introductions by members of the president’s party that sought to strip regulatory authority from the agency. Utilizing time series cross-section statistical analysis covering the 19 Congresses in the study and the 26 statutes implemented in whole or in part by the EPA, and separately the 24 statutes implemented in whole or in part by the Department of Interior, I find strong support for the key hypotheses. I additionally provide qualitative examples these

processes, thus helping to better illuminate these separation of powers dynamics. These qualitative cases are statutes whose implementation is shared by the Environmental Protection Agency and the Department of Interior. Thus, I can to the greatest ability hold constant the policy content and evaluate the different ways that the agencies carry out their delegated authority given the political constraints that these agencies face.

To convert the dissertation into a book, I plan to extend the analysis to include also the Internal Revenue Service. The inclusion of this agency will enable me to have not only a case that is in a different policy domain from environmental regulation, but will allow me to compare across Lowi's categories of policy – regulatory (EPA), distributive (Interior), and redistributive (IRS). I have conducted FOIA requests for records of enforcement actions, which I hope will provide a more direct metric of agency enforcement actions than congressional and judicial responses to agency behavior. Lastly, I am currently preparing to administer an email survey to several hundred bureaucrats within each of these three agencies, on the subject of statutory implementation and the influence that other institutional actors play in shaping their decisions. This survey is awaiting IRB approval. By including this additional information, the project will provide a more comprehensive analysis of the ways in which agencies can – and do – capitalize on political configurations that expand their latitude in policymaking. The data, rich and extensive as they are, also provide a number of opportunities for extensions of this analysis, in particular evaluating the conditions under which local/particularistic interests trump national party line allegiances in this environmental context.

#### *Other Ongoing Research Projects*

I have a long-standing solo project, forthcoming at the *Journal of Law, Economics, & Organization*, that explores congressional use of backdoor regulatory mechanisms that enable it to achieve policy goals in the face of constraints against more direct regulatory strategy, such as under the Commerce Clause. This shifting of regulatory strategy has become all the more salient in recent years with the Court's declaration of the Affordable Care Act's constitutionality *not* on commerce grounds, but rather within Congress's power to tax and spend. This research provides a large-scale effort at evaluating the extent and conditions under which Congress is able to successfully shift the statutory enforcement strategies employed given the complex and conflictual separation-of-powers setting in which it operates, without necessarily ceding substantive ground in its regulatory agenda. While a prominent example is Congress's conditioning of federal education funds on the enforcement of guns-free school zones in the aftermath of *United States v. Lopez*, my research demonstrates that this congressional responsiveness to regulatory constraints have in fact been quite prevalent over time, particularly amid the documented rise in partisan conflict.

A theme in my dissertation is the importance of calling attention to disconnects between de facto and de jure policy amid institutional conflict. In keeping with this, I am also in the early stages of a paper with Douglas Spencer, utilizing multi-level regression and post-stratification (MRP) to derive estimates of state-level public opinion on a number of policies and estimate responsiveness in the vigor of state-level bureaucratic implementation given variation in the vigor with which legislated policies are put into practice. Here, we work to evaluate the following core question: To what extent, and under what conditions, is state-level policy implementation responsive to public opinion? A growing body of literature has sought to evaluate the extent to which we observe democratic responsiveness in policy *adoption* by evaluating congressional roll call votes on policy adoptions given the trajectories of public opinion in states and districts. We work to provide an important extension to this line of work, evaluating instead the vigor with which those adopted policies are, in fact, enforced. While some scholars have observed that public policies, once adopted,

are rarely repealed, we note that there is wide variation in the implementation and enforcement of these policies in practice. Given the differences between laws that remain on the books over time and laws that are carried into effect in recent years, we evaluate the extent to which policy implementation responds to public opinion.

Our analysis focuses on two important policies: capital punishment and bias-motivated violence. Thirty-two states—among them some liberal and others conservative—allow for capital punishment, yet the extent to which the death penalty is pursued varies widely among, for example, California, Texas, and Ohio. Forty-five states and the District of Columbia criminalize certain types of bias-motivated violence or intimidation, but there is variation in the reach of these provisions and the strictness with which they are enforced. This variation can produce important disconnects between de jure and de facto laws in the states. In this paper we ask: When public opinion goes strongly against the death penalty, do we observe declines in its usage in the criminal justice system? When public opinion goes strongly favors gay rights, do we observe more vigorous enforcement of hate crimes laws that protect gays? To answer these questions, we analyze dozens of public opinion polls from the Roper Center archive on the death penalty and on hate crimes over time, estimate state-level support for these issues using multilevel regression and poststratification, and collect extensive data on not just capital punishment and hate crimes convictions, but also homicides and discrimination charges, we we argue can proxy for “opportunities” to enforce these policies. This project has important implications with respect to democratic responsiveness, and will allow us to understand the extent to which we observe meaningful differences between de facto and de jure policy, and the institutional and public opinion factors that drive these disconnects.

My joint work with Sean Farhang, forthcoming at the *American Journal of Political Science*, explains the patterns driving congressional fragmentation of the administrative state as a mechanism to create a sticky status quo amid divided government and electoral uncertainty. While the fragmented character of the American administrative state had been considered somewhat of a common assumption, little empirical work allowed for the measurement of this phenomenon of fragmentation, let alone the measurement of its patterns and persistence over time. We derived such a novel measure, hand-coding each significant regulatory law identified by David Mayhew from 1947 to 2008, and identified each administrative actor and each administrative agency tasked with implementing a core regulatory function (rulemaking, administrative adjudication, lawsuits, or administrative sanctions) and each instance in which Congress simultaneously delegated the same authority to multiple actors with respect to the same tasks (“overlapping jurisdiction”). We find that in these laws there are on average four administrative actors – often coming from three or more separate agencies – tasked with implementing a given statute, and that the congressional decision to fragment across these different actors and entities is powerfully associated with concerns about drift from the executive branch or from future legislative coalitions. These robust findings pave the way for future explorations not just of the causes of fragmentation in lawmaking, but also the policy *consequences* of those choices. It opens up further opportunities for evaluating not just horizontal fragmentation – that is, fragmentation across federal actors – but also fragmentation among multiple levels of government (federal, state, local), as well as fragmentation among state regulatory agencies and the ways in which courts resolve potential conflicts that emerge, which would seem to also have highly salient policy consequences as well.

*Post-Dissertation Project: Inter-Agency Learning in Post-War United States Policymaking*

A number of legal and political science scholars have acknowledged the fragmented nature of the American administrative state, with James Q. Wilson referring to American policy implemen-

tation as a “barroom brawl” with “many participants” and “no referee” (1989: 297-301). Despite the assumption of this complex implementation structure – with a number of administrative actors and agencies involved in a statute’s enforcement, and an increasing amount of overlapping jurisdiction, with multiple agencies tasked with the same enforcement responsibilities over the same policy provisions (e.g., joint rulemaking) – scholars had not formulated a measure of this administrative fragmentation, which is needed to answer such questions as the factors explaining fragmentation’s patterns and persistence over time. Farhang & Yaver (2015) provide the first such measure, and find that divided government and electoral uncertainty are powerfully associated with congressional decisions to fragment authority across multiple actors and agencies and to create overlapping jurisdiction among those actors, with the goal of guarding policy against bureaucratic drift from the executive branch and against coalition drift from future congressional coalitions. They find that these fragmented policymaking designs have been particularly common since the late 1960s with the onset of prevalent divided government. But while this study provides new insights into the *causes* of such legal designs, we do not yet know the *consequences* of these congressional choices with respect to the policies we ultimately observe.

The relationship between Congress and administrative agencies in the United States is typically modeled as that between a single principal (the legislature) and a single executive agency (the agent). However, given the great extent to which agencies are now structured as interacting together to implement public policy, there are ample reasons to reconsider the ways in which we evaluate these inter-branch relationships and the factors shaping the policy outcomes that we ultimately observe. With an average of nearly four administrative actors implementing a single statute and as many as 14 (Farhang & Yaver 2015), agencies have ample opportunities to learn from one another the preferences of their shared political principals (Congress, courts, and the interest groups that lobby them). We can expect, for example, that when the Environmental Protection Agency and the Department of Interior share authority over different aspects of the Safe Drinking Water Act and the EPA is criticized for lax enforcement, the Department of Interior would likely be attuned to the regulatory responses not just to its own actions, *but also to the EPA’s actions*, in turn carrying out more vigorous implementation so as to avoid litigation or public scrutiny.

Thus, the project raises the following core question: To what extent and under what conditions does punishment over one agency’s implementation behavior have effects that spill over and reshape the incentives of other, related agencies and in turn impact the policies they implement? Relatedly, it evaluates the statutory configurations of implementing agencies that are most conducive to this inter-agency learning taking place, and the conditions under which agencies will invest in learning about the regulatory behavior of other actors and the responses of other key actors (Congress, courts, and interest groups). The project argues that in evaluating oversight of a single agency, the extant literature significantly overlooks the complexities inherent in these separation-of-powers relationships in policymaking. It brings to light the factors shaping the effectiveness of bureaucratic control in a fragmented enforcement setting, and in doing so evaluates the important relationship between representation and administration.

The project includes a signaling model that considers when agencies will invest in learning about the other agencies operating in its policy space (or similar policy space), and when the agency will adapt its regulatory behavior given that updating of information. To empirically evaluate these dynamics, I have identified each agency engaged in major regulatory actions (rulemaking, hearings, administrative sanctions, and/or lawsuits) in the post-war significant legislation from 1973 to 2012 (Mayhew 2005), and whether the actors are carrying out the same or different tasks within the law. Thus, I can also determine whether they interact with high or low frequency (that is, agencies

sharing responsibility over multiple laws may be more likely to learn from one another than will agencies sharing responsibility over one law). I also know the policy similarities among these implementing agencies (e.g., that is, whether they are both, for example, environmental agencies), and their ideological composition according to the Clinton & Lewis (2008) scores. These factors should importantly shape an agency's propensity to observe signals between the other agency and other key institutions (e.g., Congress, courts, shared interest group interactions), with more similar agencies more likely to learn from one another than in cases with greater policy or ideological discrepancy. Utilizing these various characteristics – number of laws with shared policy space, number of laws with same tasks in that policy space, whether the agencies are in the same policy domain, and ideological distance – will allow me to assign a similarity score among the agencies over time. I will begin with environmental policy given my particular expertise in this domain, having studied the Environmental Protection Agency and the Department of Interior in my dissertation, but will then extend the analysis to a number of additional policy domains including labor, civil rights, public health and safety, and financial regulation.

I then will develop a novel measure of agency learning, comprising agency citations to other agencies' rules and enforcement actions and to what extent these citations occur in the context of substantive differences between proposed and final rules as well as administrative orders. I argue that this will serve as a reasonable proxy for awareness of other agencies' actions and the incorporation of that new information into regulatory decisionmaking. If the agency makes considerable policy changes within the rulemaking or enforcement processes, it may be updating given this learning dynamic on which I focus. This project will require involve original data collection from the Code of Federal Regulations from 1973 to 2012, in addition to evaluating litigation activity directed at the agencies over this same time period.

The implications of this project, likely to be developed into a book manuscript, are vast and unexplored, shedding important new light on the downstream effects of bureaucratic control on policymaking in an increasingly complex and fragmented regulatory state. Much political science literature has emphasized strategic choices of legislative design and delegation (e.g., McNollgast 1987, 1989; Epstein & O'Halloran 1999; Huber & Shipan 2002; Farhang 2010), but little systematic effort has gone toward understanding the *consequences* of these decisions and evaluating potential disconnects between *de jure* and *de facto* policies. This project brings to light the challenges of bureaucratic control in a fragmented political environment, and the potentially lasting impacts of reshaping agency incentives in policy implementation.