Paved with Partisan Intentions: The Impressive and Disheartening Validity of Cox and McCubbins's *Legislative Leviathan*

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Abstract

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Levislative Leviathan (henceforth, LL)[1] is a cornerstone of our theoretical understanding of the modern US Congress. Emphasizing the **brand value** of partisan identities,[2] LL focuses our attention on both the collective ways in which this brand value can be bolstered (ideological alignment of national policies, passage of significant legislation) and the institutional and procedural mechanisms through which members can be incentivized to support such brand value sustenance. A centerpiece of both strands is the House's standing committee system and, more specifically, the "control committees": Appropriations, Rules, and Ways & Means. Since the revolt against Speaker Cannon in 1910, assignments to these committees are allocated by the two party caucuses through their "committees on committees," respectively. C-M argue that demonstrated party loyalty has a positive effect on any member's likelihood of being assigned to such a committee (Chapter 7).

C-M argue that these assignments are individually valuable for multiple reasons. Accepting the general maxim that most members of Congress desire to be reelected, the authors describe how voters' impressions about the two "parties" may affect individual members' reelection chances (Chapter 5), in line with the general empirical concept of "electoral tides," as well as validating the idea that members are aware of these linked partisan fates. With this in hand, the authors then consider the need for a party to collective mute the production of overly particularistic by the party's individual members. The authors then suggest that the party leadership — particularly in the form of the Speaker of the House — can help manage this collective dilemma. The basic idea, in line with late 20th century scholarship on the law and economics of organization, is that a valuable, representative party leadership can successfully "internalize" the potential costs faced by their partisan colleagues.

The "Republican Revolution of 1995," in which the GOP took control of the House for the first time in four decades, provides a useful referent for the power and validity

[1]Cox and McCubbins (1993). Unless otherwise stated, all citations are from this book.

[2]For more on this issue, see Snyder and Ting (2002); Snyder, Jr. and Ting (2003) and Ashworth and Bueno de Mesquita (2008).

of C-M's organizational arguments. Simply put, Speaker Gingrich wielded an overt and strong hand in binding his enlarged, new, and quite junior majority caucus to his policy objectives (Chapter 7).

In line with this, our analysis chooses this point as its departure point. Our major claim is that C-M were essentially correct. We will discuss briefly how their arguments not only resonate in the succeeding 30 years, but our principal goal in this is to set the stage to consider the implications of LL's theory for both Congressional politics and more generally.

1 Extending Legislative Leviathan

The focus point of LL is how the majority party leadership can best ensure that the legislation passed by the chamber is as closely aligned as possible with the leadership's policy goals. For understandable reasons — and in line with Krehbiel (1998, 1999) — C-M focus on a single "dimension" of policy. Some of our analysis below retains this framework, but our insights — just as some of C-M's — are more general (*e.g.*, Sections 2 and 4).

In line with LL (and diverging from Krehbiel (1998)), our theory begins with the ideal of a principal (henceforth, "speaker") has an **appointment** (*e.g.*, to join or chair a control committees), that is valuable to any member, *ceteris paribus*. However, the degree to which it is valuable is a function of the degree to which that appointment is endowed with **policy discretion**, which can be interpreted simply as "the power to determine policy" in the associated issue area(s).

Our theory focuses more on this level of discretion than C-M do in LL (who largely treat the legislative rules as fixed). This is key, in our minds, because — particularly since the publication of LL — the House has altered its standing procedures in various ways. In addition, from a theoretical angle, granting a co-partisan discretion over policy implies that the appointed agent possesses some degree of *independence* from the party. This implies a tension within the notion of using committee appointments (with discretion over policy) to secure *policy loyalty* to the party. Our theory helps clarify how this tension provides some understanding about why "mavericks" are often granted wide discretion *when they are appointed* (Section 5).

Second, our theory follows that of C-M in acknowledging that members have heterogeneous local interests and electoral needs. We add to this the aligned conjecture that members have heterogeneous **career goals**. Variation in any of these produces variation in the prescriptive or normative benchmark of which member should receive any given appointment. However, as C-M persuasively argue, these benchmarks can differ from the incentives of the individual (the "leader") who chooses to which agent to offer any given appointment.

Our theory implies that solving the collective dilemma identified by C-M may require attention to the first form of heterogeneity — the potential for some members in the same party to face different electoral challenges in any given cycle — but not so much to the second: the variation in members' career goals.[3] We consider a few procedural routes for managing this tension, including closed rules, reconciliation, and bypassing committee jurisdictions. We provide some examples of how each of these has become much more common since the publication of the first edition of LL.

Third, we address the impact of very small partisan majorities, which have become even more empirically relevant since the publication of LL. As Patty (2008) showed both theoretically and empirically, traditional roll-call based measures of "party loyalty" are negatively correlated with the size of the majority party's advantage in terms of seats. In this article, we leverage some of the breadth of C-M's argument to consider in more detail how, and which, procedural tools might be used to sustain this empirical regularity, which is broadly consistent with C-M's collective dilemma framework. In general, all of

[3]Furthermore, we argue that variation in career goals tends to be correlated with variation in their local interests and/or electoral prospects. This raises important questions about our ability to disentangle ("identify") the true sources of legislative behavior.

these tools tend to increase the imposition of the majority party leadership's goals on their back-bencher colleagues.

Finally, we conclude by discussing how this imposition has arguably led to the emergence of more clearly ideological — as opposed to geographical or issue-based — factions within each of the two parties. In this, we circle back to the heterogeneity of career goals within each party's members. We also consider new procedural developments (e.g., the banning of earmarks, the death of the standard appropriations process, the emergence of "new fights" over even seemingly mundane executive confirmations, and the recent rise in what one might call "partisan" congressional oversight). We do not have a clear answer as to whether these are the effect of the validity of C-M's theoretical argument, but we do believe they show classic ironies of its validity. For example, banning earmarks reduces efficiency of exchange and excessive oversight is similar to the "tragedy of the commons" that C-M argue that the institutional structures they describe were at least arguably designed to mitigate.

2 The Value and Price of Discretion

Consider the following family of principal-agent settings.[4] There are $n + 1$ players in the model, where $n > 1$. A set of n potential **agents** is denoted by $\mathcal{A}$, and the **principal** (*e.g.*, the Speaker or majority party leader) is denoted by P. We now turn to describing the baseline sequence of decisions.

Sequence of Play. The principal must choose an **appointee**, $a \in \mathcal{A}$, and a level of **discretion**, which we represent as a non-negative number, $d \geq 0$. Following that, the appointed agent, a,[5] chooses a policy that does not violate the assigned level of discretion, d.[6]

[4]For more on spatial models of delegation, see Bendor and Meirowitz (2004).

[5]Note that a will always accept the appointment if Assumption 1 (below) is satisfied.

[6]See Gailmard (2002) for more on the possibility of subversion.

Discretion Beyond Legislation. We take an agnostic approach to how discretion actually "works." We discuss this in more detail in Section 8. At this point, we simply note that we are assuming that an agent might have a larger or smaller degree of discretion to do things other than pass his or her most-preferred legislation, *per se*, including holding hearings, conducting investigations, or obstructing business on the floor (*e.g.*, Patty (2016)).

2.1 Agent Incentives

All agents have preferences of the same form (though they may be heterogeneous within our space of admissible preferences). Each agent $i \in \mathcal{A}$ has a two dimensional **type**, $t_i = (\gamma_i, \chi_i)$.

- Agent i's **policy goals** are denoted by $\gamma_i \in \mathbf{R}$, and
- Agent i's **career concerns** are denoted by $\chi_i \in \mathbf{R}$.

Any agent i's value from being appointed (*i.e.*, the net payoff i receives from $a = i$) is a function of d, γ_i, and χ_i.

Specifically, we assume that agent i's net payoff from being appointed with discretion $d \geq 0$ is given by the following:

$$u_i(a \mid d, \gamma_i, \chi_i) = \begin{cases} \pi(d \mid \gamma_i, \chi_i) + \chi_i & \text{if } a = i, \\ 0 & \text{otherwise.} \end{cases} \tag{1}$$

For simplicity, we assume that π is strictly increasing in d for all $\gamma_i, \chi_i \in \mathbf{R}^2$, satisfying the following:[7]

$$\pi(0 \mid \gamma_i, \chi_i) \equiv 0, \text{ for all } (\gamma_i, \chi_i) \in \mathbf{R}^2, \text{ and} \tag{2}$$

$$\lim_{d \to \infty} \pi(d \mid \gamma_i, \chi_i) = \infty, \text{ for all } (\gamma_i, \chi_i) \in \mathbf{R}^2. \tag{3}$$

[7]Each of these are effectively normalizations of π. The presumption that π diverges as $d \to \infty$ ensures that each agent would find the appointment appealing with a sufficiently high level of discretion, d.

When the context is clear, we simplify notation by writing $\pi_i(d) \equiv \pi(d \mid \gamma_i, \chi_i)$.

Career Concerns. In our theory, the career concerns of any agent i (*i.e.*, χ_i) are assumed to be exogenous and common knowledge. As we discuss below, this assumption is effectively without loss of generality in our framework, because our theory is so stylized. Specifically, while one's career concerns might depend on one's discretion,[8] our additive payoff structure below (Equation (1)) implies that such effects of discretion on an agent's career concerns can be subsumed into the agent's **value for discretion**, to which we now turn.

2.2 The Principal's Incentives

The principal, P, has **policy preferences** over d for any agent $i \in \mathcal{A}$ with type $t_i = (\gamma_i, \chi_i)$, which we denote by $\eta(d \mid \gamma_i, \chi_i) \in \mathbf{R}$. We assume that η is everywhere continuously differentiable and that it is strictly quasi-concave with a unique and finite maximizer over $\mathbf{R}_+$ for any $\gamma_i, \chi_i \in \mathbf{R}^2$. We denote this maximizer by

$$\delta_i^* \equiv \delta^*(\gamma_i, \chi_i) \equiv \operatorname*{argmax}_{d \geq 0} \left[\eta(d \mid \gamma_i, \chi_i) \right].$$

We denote the set of all continuously differentiable and strictly quasi-concave policy preferences by $\mathcal{E}$.

We also allow the principal's preferences over agents to depend on their career concerns, χ_i. We denote P's **leadership payoff** from hiring agent i by $\lambda(\chi_i) \in \mathbf{R}$. For simplicity, we assume that the leadership payoff from appointing any given agent $i \in \mathcal{A}$ is independent of the discretion i is granted, $d \geq 0$. Similarly, we are assuming that — holding career concerns, χ, constant — the leadership payoff is *anonymous*: the only dimension that differentiates the leadership payoff P receives from appointing agent i rather than agent j is their relative degrees of career concerns, χ_i and χ_j.[9]

[8] See, for example, Gailmard and Patty (2007, 2012).

[9] This is also assumed in the theory of appointments presented by Patty et al. (2018).

The Principal's Payoff Function. The principal's overall expected payoff from hiring agent i with discretion d, given i's career concerns, χ_i, is once again the sum of P's policy and leadership payoffs:

$$u_P(i, d \mid \gamma_i, \chi_i) = \eta(d \mid \gamma_i, \chi_i) + \lambda(\chi_i). \tag{4}$$

An agent $i \in \mathcal{A}$ is **optimal** for P given discretion level $\bar{d}$ if $a = i$ maximizes (4) conditional on discretion $d = \bar{d}$.

3 Which Agent Is The Best to Pick?

In order to most clearly focus on the principal's incentives, we will make the following assumption for the first part of our analysis.

Assumption 1 *For each agent i, i's career concerns, χ_i, satisfy the following relative to π_i:*

$$\chi_i \geq 0 = \pi_i(0).$$

Assumption 1 ensures that each agent's sequentially rational response to being asked to accept an appointment is always to accept, *event if the appointment comes with zero discretion*. We drop Assumption 1 in Section 5 when we derive, for any given agent $i \in \mathcal{A}$, the *optimal discretion P* would allocate to i if P chooses to appoint i (*i.e.*, if $a = i$). With Assumption 1, however, we can assume that the level of discretion granted to an agent is independent of the agent's identity (and we do not yet need to worry about what that exogenous level of discretion is).

The Simplest Case: The Ally Principle Revisited. If there is an agent i^* with career concerns χ_{i^*} who independently maximizes both η_i and λ, then i^* is clearly the principal's optimal agent to appoint. This mirrors the *ally principle* (Bendor and Meirowitz (2004)). The ally principle does not give as much purchase in our setting as it does in classic spatial models of delegation whenever there exist two or more agents with distinct career concerns (this is in line with the richer models of delegation studied in the supplemental materials for Bendor and Meirowitz (2004)).

All Other Cases: Weighing Policy Goals and Career Concerns. If agents have heterogeneous policy goals and/or career concerns (*e.g.*, $\gamma_i \neq \gamma_j$ and/or $\chi_i \neq \chi_j$ for two or more agents i, j), then P's optimal agent will typically maximize neither η nor λ. However, given discretion $\bar{d}$, any optimal agent for P, $i^* \in \mathcal{A}$, must satisfy the following inequalities with respect to every other agent j:[10]

$$\begin{aligned} \eta_j \geq \eta_{i^*} \quad &\Rightarrow \quad \lambda(\chi_{i^*}) - \lambda(\chi_j) \geq \eta_j - \eta_{i^*}, \qquad \text{and} \\ \lambda(\chi_j) \geq \lambda(\chi_{i^*}) \quad &\Rightarrow \quad \eta_{i^*} - \eta_j \geq \lambda(\chi_j) - \lambda(\chi_{i^*}). \end{aligned} \tag{5}$$

The first implication in (5) states that an optimal appointee ($i^* \in \mathcal{A}$) has less similar policy goals to those of the principal only if the optimal appointee offers a higher leadership payoff (*i.e.*, has stronger career goals) than does any agent whose policy goals are more similar to those of the principal.[11]

The conditions in (5) reflect a classical trade-off in choice: appointing any given agent i may lead to some degree of policy loss from P's standpoint, which must be weighed when considering the benefits that agent i's career concerns would yield the principal. In the most basic form from an elected legislature's standpoint, these two dimensions compose a classic conundrum: policy is clearly important, but other (*e.g.*, "electoral") forces must be weighed in as well when shaping a party caucus's leadership team and priorities. We now turn to this question, considering how electoral forces should affect the leader's incentives when choosing which agent to appoint.

[10] Again, for the moment we are assuming that the level of discretion is exogenously fixed at $\bar{d}$ for any agent i that P appoints.

[11] The second implication in (5) is essentially the mirror image of this.

4 When Should the Principal Appoint an "Outsider"?

Many scholars have asked why a principal delegates authority to an agent who does not share the principal's preferences. We refer to any agent who does not share the principal's policy preferences as a **policy outsider**. The following definition makes this notion both more nuanced and formal.

Definition 1 *For any set of agents, $\mathcal{A}$, with associated policy costs $\eta \equiv \{\eta_i\}_{i\in\mathcal{A}}$ and career concerns $\chi \equiv \{\chi_i\}_{i\in\mathcal{A}}$, and any non-negative number, $q > 0$, an agent $i \in \mathcal{A}$ is a q-**policy outsider** if*

$$|\gamma_i| \geq q.$$

Thus, a policy *insider* is any agent who exactly shares the preferences of the principal (which we have normalized to equal $\gamma_i = 0$).

To understand this, consider situations in which an observer who is paying attention only to the policy motivations of the chosen agent and those of all of the agent's potential replacement would be confused by the principal's appointment choice. In order to make this as transparent as possible, we adopt a simple (parameterized) form the for P's leadership function.

The Effect of Electoral Insecurity. To make this a little more concrete, we focus on a simple family of leadership value functions, linearly parameterized by $\mu \in [0, 1]$:

$$\lambda_i(\chi_i \mid \mu) \equiv (1 - \mu) \cdot \chi_i, \tag{6}$$

where μ represents the probability that agent i's reelection next year secures the principal a return to office as the head of the majority party.[12]

[12] We assume that this probability is exogenous for simplicity, but one could allow μ to depend on both the agent appointed, and the discretion granted to him or her, by P (*i.e.*, replace μ with $\mu(i, d)$). This would complicate notation and the analysis, but we conjecture that many models like this would produce qualitatively similar prediction.

Interpreting μ as Electoral/Leadership Certainty. The functional form in (6) implies that the leadership value differential between any pair of agents i and j is *decreasing* in μ. If we think that the leadership function proxies for the principal's concern about the likelihood that P will remain the leader in the next period, then in substantive terms, lower values of μ represent greater electoral/leadership uncertainty for the majority party. For simplicity, we refer to this as **electoral insecurity** and move on to consider how this uncertainty affects P's incentives when choosing an agent.

The main result in this regard is simple, but informative. As stated below, higher levels of electoral insecurity will lead the principal to be more likely to appoint a policy outsider.

Result 1 *The probability that a policy outsider is appointed increases as electoral uncertainty increases (i.e., as μ decreases toward 0).*

Proof: The formal statement, proof, and technical discussion of this result is contained in Appendix A.1 (Proposition 1). ∎

Result 1 has broad implications, extending beyond legislatures.[13] Again, the intuition is very simple: when two or more potential factors determine the optimal choice, and one of those two factors decreases in magnitude, then the other factor(s) will play a weakly larger role in determining the optimal choice. *This is a property of optimal choice in general, with nothing particular about our setting being used to reach this conclusion.*

The intuition behind Result 1 is very simple: when two or more potential factors determine the optimal choice, and one of those two factors decreases in magnitude, then the other factor(s) will play a weakly larger role in determining the optimal choice. *This is a property of optimal choice in general, with nothing particular about our setting being used to reach this conclusion.* The proposition establishes a fundamental connection between electoral

[13]On the bureaucratic front see, among others, Edwards III (2001), Boehmke, Gailmard and Patty (2006), Lewis (2008, 2011), Moynihan and Roberts (2010), and Krause and O'Connell (2019).

factors and legislative organization. Intuitively, as electoral factors become more important, the leader, P, will hire more policy outsiders. Result 1 offers an implicit argument for *selection effects* in observational studies of the various impacts on P's appointment choices.

In words, it states that the majority party leader should appoint more "ideological mavericks" as his or her majority — or his or her prospects for remaining the majority leader — become less certain. When there are positive incumbency effects (*e.g.*, Carson, Engstrom and Roberts (2007)) *and* the nature of many legislative elections (in the House of Representatives, in particular) this electoral uncertainty is *decreasing in the size of the majority party*. Put another way, safe leaders who are relatively confident that their party will retain the majority *and* they themselves will be the leader of the party after the following election have more flexibility to appoint their ideological allies to important positions.[14]

5 How Much Discretion Should the Leader Delegate?

We now consider P's incentives when choosing how much discretion, d, to grant to any agent $i \in \mathcal{A}$ conditional upon $a = i$. At this point, it is useful to impose an additional assumption about η. Specifically, because $\eta(i, d)$ is intended to capture the policy impact of granting agent i discretion level d, we assume now that $d = 0$ represents no discretion at all, implying that the agent i appointed makes no difference to P if $d = 0$.

Assumption 2 *All agents $i \in \mathcal{A}$ have identical policy impacts with zero discretion:*

$$\eta(i, 0) = \eta(j, 0) \textit{ for all } i, j \in \mathcal{A}.$$

We now turn to the question of how much delegated discretion, d, is granted by the

[14]The implications of Result 1 extend beyond legislatures. For example, on the bureaucratic front see, among others, Edwards III (2001), Boehmke, Gailmard and Patty (2006), Lewis (2008, 2011), Moynihan and Roberts (2010), and Krause and O'Connell (2019).

principal, P. We focus on two competing causal mechanisms for the level of discretion granted. The first is from the "labor supply" side.

5.1 Discretion as a Recruiting Tool

We now allow agents to have different reservation values in terms of the minimal level of discretion that each agent would require to accept the appointment. This is a relaxation of Assumption 1, which implies that each agent would accept the appointment even if it comes with zero discretion ($d = 0$). We denote agent $i \in \mathcal{A}$'s **reservation value** by[15]

$$\rho_i \equiv \{d : \pi(d \mid \gamma_i, \chi_i) + \chi_i = 0\}.$$

Note that $\rho_i \geq 0$. We denote the profile of all agents' reservation values by $\rho \equiv \{\rho_i\}_{i \in \mathcal{A}}$.

Behavioral Implications. In equilibrium, no agent i will accept the assignment unless accompanied by discretion no less than ρ_i (*i.e.*, only if $d \geq \rho_i$). This can represent various motivations. The notion embedded here is that each agent i might have other activities beyond those required of the appointment that provide more value than simply being a faithful agent of the party leadership. Table 1 displays the 2x2 typology that qualitatively describes the agent's and principal's induced preferences in this setting. Casual inspec-

	High ρ_i	Low ρ_i
High χ_i	Choosy about appointments Wanted for many appointments	Willing to take any appointment Wanted for many appointments
Low χ_i	Choosy about appointments Not wanted for many appointments	Willing to take any appointment Not wanted for many appointments

Table 1: A Typology of Career Concerns & Reservation Values

[15]The assumptions imposed on π (Equations 2 and 3) ensure that ρ_i exists and is unique for each agent $i \in \mathcal{A}$.

tion of Table 1 illustrates the challenges faced by P: ideally, he or she will have one or more agents who fall into the upper right cell of Table 1 — these are agents who are eager to accept the appointment and deliver high leadership value to P. On the other hand, agents in the lower left cell are the worst options from P's standpoint: they require significant discretion to accept the appointment and do not bring much leadership value if they are appointed.

In practice, it is hard to estimate any individual's career concerns (χ_i) and/or reservation value (ρ_i). That said, within this framework, the model offers a prediction about which agents get higher discretion. In equilibrium, individuals with higher reservation values will receive greater discretion when they are appointed. It is clear that, in equilibrium, for any agent $i \in \mathcal{A}$, higher values of ρ_i imply (weakly) higher values of d_i^*.

Lemma 1 *In equilibrium, the discretion granted to agent $i \in \mathcal{A}$ conditional on $a = i$ is*

$$d_i^* \equiv d_i^*(\gamma_i, \chi_i) = \begin{cases} 0 & \textit{if} \sup_{d \geq 0} [\eta(d \mid \gamma_i, \chi_i) + \lambda(\chi_i)] < 0, \\ \max[\rho_i, \delta_i^*] & \textit{otherwise.} \end{cases}$$

In equilibrium, P should appoint any agent $i^*(\gamma, \chi, \rho)$ satisfying the following:

$$i^* \equiv i^*(\gamma, \chi, \rho) \in \operatorname*{argmax}_{i \in \mathcal{A}} \left[\eta(d_i^* \mid \gamma_i, \chi_i) + \lambda(\chi_i) \right],$$

For simplicity, we consider cases in which i^* is unique.

5.2 Limits on Discretion

Suppose that there is an upper bound on the discretion that P can give the agent, $\bar{d} \geq 0$. Lemma 1 implies that limiting P's control over discretion in this fashion will affect discretion in two ways. An agent i's equilibrium level of discretion (d_i^*) is sensitive to changing $\bar{d}$ only if

$$\min[\rho_i, \delta_i^*] \leq \bar{d} \leq \max[\rho_i, \delta_i^*]$$

However, if $\delta_i^* < \rho_i$, then tying P's hands more tightly by reducing $\bar{d}$ to $\bar{d} - \varepsilon$ will have an impact on discretion only by changing P's *choice of agent to appoint* (*i.e.*, by changing i^*). Furthermore, this will be due to P no longer having enough discretion to induce his or her previously optimal agent to accept the appointment.

Such reductions of $\bar{d}$ can only harm P (which is unsurprising, because this is essentially a decision-theoretic model with complete information). However, it need not necessarily benefit any third party. For example, suppose that the "third party" has an interest in maximizing the capability of the appointed agent (*i.e.*, maximizing χ_{i^*}). Then reducing $\bar{d}$ may be counter to the third party's interests if this reduction changes i^*, because a high value of χ_{i*} was possibly the reason that P had picked i^* in the first place.

Example 1 Suppose that $\mathcal{A} = \{1, 2\}$, with

$$\begin{aligned} \gamma_1 &= \gamma_2 > 0, \\ \chi_1 &> \chi_2, \end{aligned}$$

that P's preferences are as follows:

$$\begin{aligned} \eta(d \mid \gamma_i, \chi_i) &= -(d - \gamma_i)^2, \\ \lambda(\chi_i) &= \chi_i, \end{aligned}$$

the agents' reservation values are

$$\begin{aligned} \rho_1 &= 0.75, \\ \rho_2 &= 0, \end{aligned}$$

and F's preferences are as follows:

$$u_F(d, \gamma_i, \chi_i) = -d + \beta_F \cdot \chi_i.$$

If F chooses $\bar{d} \geq 1$, then P will appoint agent 1 and allocate $d_1^* = 1$ authority to him or her. If F chooses $\bar{d} \in [0.7, 1]$, then P will appoint agent 1 and allocate $d_1^* = \bar{d}$ authority to him or her. If, however, $\bar{d} < 0.75$, then agent 1 will not accept the appointment, so P will choose agent 2 and allocate $d_2^* = \bar{d}$ authority to him or her. It follows that, if F chooses $\bar{d} < 0.75$, it is weakly dominant for F to set $\bar{d} = 0$. This yields F an equilibrium payoff of $\beta_F \chi_2$. If F chooses $\bar{d} \geq 0.75$, it is weakly dominant to choose $\bar{d} = 0.75$, yielding F an equilibrium payoff equal to $\beta_F \chi_1 - \frac{3}{4}$. Accordingly, F is hurt (in equilibrium) by restricting discretion to $\bar{d} = 0$ rather than $\bar{d} = 0.75$ if

$$\chi_1 - \chi_2 \quad > \quad \frac{3}{4\beta_F}.$$

Accordingly, if agent 1's capacity is sufficiently greater than agent 2's, F will allow P to allocate greater discretion than F's (naively) "optimal discretionary limit" (which is $\bar{d} = 0$.

△

The example offers some insight into the credibility of allowing the speaker some control over discretion: P is essentially the agent of the floor, and the floor's deference to P's needs in recruiting a sufficiently high capacity "agent 1" may resemble a *de facto* form of "property rights" by agent 1 over the appointment in question. As the example demonstrates, this does not imply that the floor does not want to restrict the discretion that P can delegate — like many choice problems, there is a trade-off inherent in limiting P's ability to delegate discretionary control to the agent he or she appoints.

The Leader's Optimization. Decreasing $\bar{d}$ reduces the set of options available to P in two complementary ways. First, it obviously restricts the sets of "agent-discretion" pairs from which P can choose. But, more importantly, as a result of this, decreasing $\bar{d}$ also restricts the set of agents that P might ever offer the job to. In particular, decreasing $\bar{d}$ to a sufficiently small level (*i.e.*, $\bar{d} \to 0$) implies that the leader's choice of whom to appoint will be entirely driven by his or her leadership function, λ. In other words, if committees are entirely subordinate to the wishes of "the floor" (or, perhaps, the "party membership"), then the leader's optimal appointee, i is the member who maximizes $\lambda(\chi_i)$. This is stated formally in the next result.

Result 2 *If the floor eliminates the principal's ability to grant disretion ($\bar{d}$ = 0), then the principal's optimal choice of agent will be the agent who has maximum capacity* ***among the agents who will accept the job with zero discretion****.*

Implications of Result 2 for Agenda Control. Result 2 has several implications for institutional design in the House of Representatives. For example, Result 2 implies that Speakers who are unable to protect committees from the "centripetal" forces of majoritarian governance (*e.g.*, open rules in the House) will pick those individuals who advance the Speaker's other leadership goals (raising money, winning reelection, *etc.*). It also offers some insight into positions of authority that are *outside the parliamentary process* (such as DNC, RNC, *etc.*).

The result also highlights the importance of P's leadership value function, λ. We now turn to consider the shape of this function in some more detail.

6 Leadership Value

The leadership value function, λ, has little structure placed on it aside from the fact that it is independent of all factors in the model aside from the appointed agent i's career concerns, χ_i. There are reasons to believe that λ might not be monotonic in χ_i. For example, while "sticking with a known, motivated quantity" is a pretty good strategy when choosing an agent, there are situations in which an agent's career concerns might be so high that appointing him or her to an important position might lead to him or her replacing P as the party leader.

We explore this possibility in a pair of simple examples.

A "Threat to the Throne" Example. Suppose first that the leadership value (*e.g.* the party's electoral brand) is increasing in career concerns for low values of career concerns, but that above some threshold, $\hat{\chi}$, higher levels of career concerns decrease the probability that P will remain *leader* of the majority party next period. One such example of this dynamic is Jim Jordan and the House Freedom Caucus in the leadup to Speaker Boehner's retirement and the ensuing speakership election. The Freedom Caucus, an organized and secret group of conservative Republicans in the House unofficially led by Jim Jordan, opposed a number of Republican initiatives in the House, including budget votes, requiring Boehner to give concessions to moderate Democrats to achieve a majority for his budgets (Phillips (2015)). At the start of the 114th Congress, John Boehner removed Freedom Caucus-aligned opponents of his re-election as speaker, whom were dissatisfied over his leadership and sought to elevate one of their own as speaker, from key committee spots, particularly in the Rules Committee which is traditionally stacked with members loyal to the speaker (Marcos (2015)).

A "Bail Out" Example. Suppose next that λ is increasing, then decreasing, and then increasing, in χ. Such a case might emerge if the leader fears aspiring successors, but is willing to accept that *sufficiently* motivated agents might exert enough effort on their own to pass important legislation to warrant accepting the probability of a coup in return for their positive impact on P's policy aims. In a finite horizon model, this would be particularly true as P's conditional probability that he or she will "retire" for non-electoral reasons grows (*i.e.*, as P "ages"). Jim Jordan, fittingly enough, also serves as a good example here in the context of Kevin McCarthy's election as speaker in 2023. While the Freedom Caucus was opposed to McCarthy's election as speaker in 2015 after Boehner's retirement, several members of the caucus warmed to McCarthy's candidacy in 2023, albeit not enough to prevent multiple rounds of voting on the floor of the House. To secure conservative votes for his speakership, McCarthy enlisted Jordan to nominate him on the second round of balloting for the speakership as conservatives simultaneously rallied to give Jordan votes as a McCarthy alternative, even though Jordan had pledged support for McCarthy (Treene (2023)). After the election was over, Jordan took the chair of the Judiciary Committee, as well as the newly created Select Subcommittee on the Weaponization of the Federal Government, and led much sought-after investigations into the Biden administration to placate conservatives in his caucus (Wagner and Alfaro (2023)). In this instance, Jordan takes a more prominent position in the caucus as chair of one of the most public-facing committees in the House and pushes for an initiative asked for by prominent conservatives in the conference that serves McCarthy's aim of embarrassing the Biden administration to potentially increase his majority at the next election.

7 The Effects of Thin Partisan Majorities

Within Legislative Leviathan, the finding is that thinner majorities for the majority party result in higher party cohesion. However, we posit that there is a point wherein a combination of thin majorities, alongside the presence of maverick members of the House with independent brands and differing policy goals from party leadership, makes party cohesion untenable and will result in high levels of legislative dysfunction through making difficult the implementation of Legislative Leviathan-style controls on rank-and-file members of the chamber. While this could happen at any point in time provided the conditions are met, the recent rise in partisan polarization has made maverick members on the extremes of both parties a more prominent force in each party's caucus, and the rise in partisan gerrymandering as well as polarization has simultaneously made more congressional districts than ever politically noncompetitive at the general election level, reducing the amount of seats that can reasonably swing from one party to the other. Therefore, the conditions for legislative dysfunction as a result of thin partisan majorities appear much more likely to be met today and in the future than at the time *LL* was written. Tools employed by party leadership to control the legislative process to the party's benefit, such as closed rules and a loyal rules committee, are increasingly untenable as maverick members seek to empower their own at the expense of party leadership during negotiations over the rules of the chamber at the start of each Congress.

The theory discussed above highlights a fragility within the institutional solution C-M explore for the collective action problem faced by the majority party. Maintaining majority control needs to be near, if not directly at, the top of the majority party's agenda. To the degree that some members are more electorally valuable (for example, by holding the attention of voters and special interests), relying on carrots and/or sticks that are more closely tied to policy outcomes becomes more difficult. Result 1 makes this point most clearly: as majority control becomes more uncertain in electoral terms, then the Speaker should begin to prioritize elevating members who are electorally valuable to positions of prominence within the caucus and/or chamber as a whole.

The Reemergence of the Giant Jigsaw Puzzle. If one believes that the (positive) electoral impact of appointing any given agent to a committee is increasing in the degree to which that committee's jurisdiction overlaps with the economic and political interests of the member in question's district, then the results above can easily produce a slate of appointments in which members are appointed to committees that "represent their district's interests." Put more simply: a leadership function that reflects this kind of structure will provide the Speaker with an incentive to appoint a member from a rural district to the Agriculture Committee, members from districts with significant military bases to the Defense Committee, *etc.*. Such a pattern might very well mimic the "giant jigsaw puzzle" analyzed by Shepsle (1978).

It is important to note this point that we have made assumptions about the foundations of the leadership value function, λ. It *could* be a function of the expertise of the member in question, the agent's career concerns more broadly construed, or other bases of what one might call electoral "valence" (*e.g.*, Stokes (1963), Groseclose (2001), Carter and Patty (2015)).

Fraying at The Edges. In the 118th Congress, the National Defense Authorization Act of 2024 serves as a key example of how thin majorities promote legislative dysfunction.

While traditionally passed by large bipartisan majorities, the progression of the bill in the current session of the House of Representatives indicates the increased power of the empowered conservative flank of the Republican conference; several amendments targeting key conservative policy goals, including restrictions on transgender healthcare for service members and affirmative action, were added to the legislation, ostensibly to placate hardcore conservative members of the conference who wanted 'wins' to show to their supporters (Coudriet (2023)). This is on the heels of Speaker McCarthy's many concessions to conservatives to keep his conference together in the face of potential defections and electoral losses, including appointments of Freedom caucus members to the Rules committee and the agreement that the Congressional Leadership Fund not spend money in safe Republican districts (Watso (2023)). The bill narrowly passed the House with widespread Democratic defections from an otherwise bipartisan vote and the conservative amendments face an uncertain future as the House and Senate (whose bill passed by a wide bipartisan margin) reconcile their differences. This illustrates the risks associated with placating increasingly extreme and independent members upon whom McCarthy's position as speaker rests- they have leverage to force policy in their direction and punish party leadership for pursuing bipartisan solutions for even longstanding bipartisan issues.

8 Discretion in the Abstract: The Multiple Pathways to Influence Policy

Our model "black boxes" many details of the **policy process**. While C-M and Krehbiel each focus on roll call voting over legislation, legislators have other ways to influence policy, even in a separation of powers system. For example, committees conduct budgetary reviews, general administrative oversight, and negotiate finer (*i.e.*, administrative) details of legislation in other committees. Indeed, while it is very important, direct Congressional statutory intervention in any given policy realm is relatively rare in the United States. Accordingly, the median voter theorem is less useful as a predictive tool about the policy effects any given legislator — especially committee chairs — can influence during a Congress. Without this, in fact, the policy effects of any given committee chair must be exerted either through gatekeeping (negative agenda control) or through the successful passage of special rules. Each of these routes can succeed only if there is some probability that the median voter theorem will fail to hold "on the floor."

A few examples include:

- Jim Jordan's investigations (FBI "whistleblowers"),
- Speaker McCarthy's unilateral exclusive release of January 6th video footage to Tucker Carlson,
- Targeted appropriations (formerly including "earmarks"), and
- Slow-walking specific legislation or nominations (such as currently occurring with Senator Tuberville's holds on Military confirmations).

9 To Where Does the Logic of LL Ultimately Lead?

1. Committees are carrots, but they also represent independence from the party
2. Members have heterogeneous local interests/ electoral needs
3. Members have heterogeneous career goals
4. The party wants to honor 2(b), but not necessarily 2(c)
5. Committees that can serve 2b are fine, but 2c is more complicated
6. One way to neutralize 2c is to use reconciliation
7. Another way is to use closed rules (this is foreseen by LL)
8. Closed rules on their own increase value of committee membership for both 2(b) and 2(c)
9. How does Patty (2008) factor into this?
   (a) When parties are closer in membership, members are more motivated to accept LL type controls
   (b) But if useful, they increase net majority status and reduce value of LL controls
   (c) Unanimous control by one party reduces the value of LL controls to zero (?)
10. With EPG, might be important to consider that when majorities are marginal, EPG controls may be difficult to implement, so there might be some weird bimodal distribution over the presence of party centralization where LL type controls are harder to implement with a single digit seat majority and as majority gets into the larger double digits LL type controls are less necessary
11. The reason these single digit majority situations are costly is that there are a few members with their own independent brands who are simultaneously not super

tied to/constrained by the party brand (?) but also not in an electorally marginal district (see: squad, far-right republicans), they have the least to lose by being uncooperative (might also be a career interests thing)

12. Their preferences may be to have more open rules and more lay-member participation in the legislative process, but this all may be conditional on perceived ideological distance from the party leadership

13. In sum, might be important to consider some limiting conditions on LL controls that will be increasingly likely in the future (marginal majorities, maverick politicians, career concerns less tied to being a 'team player')

14. Also might be nice to include some new legislative tools that are in use to centralize party control in the House & Senate (filling the tree, committee bypass, etc)

A Derivations & Proofs

A.1 Electoral Insecurity

Definition 2 *For any pair of agents, $i, j \in \mathcal{A}$,*

- $\delta_i^* > \delta_j^*$ *implies that agent i is a **policy outsider** relative to j, and*
- $\delta_i^* < \delta_j^*$ *implies that agent j is a **policy outsider** relative to i.*

*Furthermore, any agent i, who is a policy outsider to any other agent j is referred to more simply as a **policy outsider**.*

Because we have assumed that discretion granted to an agent i, d, does not affect P's leadership value from appointing i *and we assume that any agent j would accept the job*,[16] δ_i^* will depend entirely on P's incentives (specifically, the function η). Thus, each agent i can be represented as presenting P with a (sequentially rational) *policy value*, which we write as $v_i \in \mathbf{R}$, defined as follows:

$$v_i = \max_{d \in \mathbf{R}_+} \left[\eta(i, d) \right].$$

With this in hand, reorder the agents in $\mathcal{A}$ (without loss of generality) according to v_i as follows:

$$i \leq j \Leftrightarrow v_i \geq v_j$$

Thus, any agent with a "higher index" is *less* preferred by (or, *more* "distant from") P on policy grounds. Then, the set of career concerns, $\chi = \{\chi_j\}_{j \in \mathcal{A}}$, that would appoint over any given agent with policy value of v_i is equal to

$$R_\lambda(v_i \mid \chi) = \left\{ \{\chi_j\}_{j \in \mathcal{A}} \in \mathbf{R}^{n-1} : v_i + \lambda(\chi_i) < v_j + \lambda(\chi_j) \right\},$$

or, equivalently, as

$$R(v_i \mid \chi)_\lambda = \left\{ \{\chi_j\}_{j \in \mathcal{A}} \in \mathbf{R}^{n-1} : \lambda(\chi_j) > v_i - v_j + \lambda(\chi_i) \right\},$$

[16] We will return to relaxing Assumption 1 below.

Remark 1 *Fix any n-dimensional vector $\{v_i\}_{i\in\mathcal{A}} \in \mathbf{R}^n$. To keep our analysis transparent, we refer to the "probability that P appoints a policy outsider" as increasing when changing from $\chi \in \mathbf{R}^n$ to $\chi' \in \mathbf{R}^n$ if*

$$R_\lambda(v_1 \mid \chi) \subset R_\lambda(v_1 \mid \chi).$$

Furthermore, our assumptions imply that

$$\max[\chi] < \max[\chi'] \Rightarrow R_\lambda(v_1 \mid \chi) \subseteq R_\lambda(v_1 \mid \chi').$$

The principal's optimal appointment function, denoted by $\alpha^* : \mathcal{E}\times\mathbf{R}^n\times[0,1] \to \{1,\dots,n\}$, is any selection satisfying the following:

$$\alpha^*(\eta,\chi,\mu) = \underset{i\in\{1,\dots,n\}}{\operatorname{argmax}}\ u_P(i, d_i^* \mid \chi_i).$$

For simplicity, we will suppose that P appoints according to the following selection:

$$\alpha^*(\eta,\chi,\mu) = \min\left[\underset{i\in\{1,\dots,n\}}{\operatorname{argmax}}\ u_P(i, d_i^* \mid \chi_i)\right].$$

With this terminology in hand, we have the following result that states that increasing electoral uncertainty induces P to pick a policy outsider.

Proposition 1 *Suppose that P's leadership function, λ, is*

1. *anonymous:*

$$\chi_i = \chi_j \Rightarrow \lambda_i(\chi_i \mid \mu) = \lambda_j(\chi_j \mid \mu) \text{ for all } \mu \in [0,1],$$

   and

2. *strictly decreasing in μ.*

Then for any $(\eta,\chi) \in \mathcal{E}\times\mathbf{R}^n$, P's optimal appointment function, $\alpha^*(\eta,\chi,\mu) : [0,1] \to \{1,2,\dots,n\}$, is weakly decreasing in μ.

Proof: Suppose that P's leadership function, λ, satisfies Conditions 1 and 2. When $\mu = 1$, the following is an optimal appointment function for P:

$$\alpha^*(\eta, \chi, 1) = 1.$$

Now suppose that there exists $\mu' \in [0,1)$ such that $\alpha^*(\eta, \chi, \mu') > 1$. (If there is no such value $\mu' \in [0,1)$, the claim is true.) Then, to the contrary of the claim (for the purpose of reaching a contradiction), suppose that there exists $\hat{\mu} > \mu'$ such that

$$\alpha^*(\eta, \chi, \mu') < \alpha^*(\eta, \chi, \hat{\mu}).$$

This would imply that λ violates anonymity or is increasing in μ (or both), resulting in a contradiction. ∎

A.2 Optimal Choice with Bounds on Discretion

Proposition 2 *If leaders can not grant any discretion to their appointees (i.e., if $\bar{d} = 0$), then*

$$i^*(\chi \mid \eta, \lambda, \bar{d}) \in \operatorname*{argmax}_{i \in \mathcal{A}} \lambda(\chi_i), \tag{7}$$

and, if $\eta(i, \cdot)$ is continuous for each $i \in \mathcal{A}$, there exists $\tilde{d}_{\eta,\lambda} > 0$ such that (7) *holds for all $\bar{d} \le \tilde{d}_{\eta,\lambda}$.*

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