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Economics and Finance

## WORKING PAPER NO. 380

### *Lobbying (Strategically Appointed) Bureaucrats*

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November 2014



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# ***Lobbying (Strategically Appointed) Bureaucrats***

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**Abstract**

When are strategic appointments useful in curbing policy bias from ex-post negotiation between state agencies and special interest groups? Bertelli and Feldmann (Jnl. of Public Admin. Research and Theory, 2007) provide an insightful analysis of the issue within a full information model of presidential appointments. This paper examines whether and how their findings extend to a world of policy uncertainty and asymmetric information, which rationalizes delegation in the first place. We establish that the existence of non-zero impact of lobbying crucially relies on interest groups' leverage over the appointment game between higher-level institutions. Remarkably, bureaucratic lobbying may prove highly non-neutral with separated powers even when a candidate agency is agreed upon. In some circumstances (e.g., recess appointments in the U.S.), by contrast, strategic appointments fully offset interest group influence in either form of government (unified versus divided), a finding in line with the conventional theory of delegation.

**Keywords:** Legislative delegation; Strategic appointments; Bureaucratic lobbying

**JEL Classification:** D72, D73, H1

**Acknowledgements:** I wish to thank Marcello D'Amato, Martin F. Hellwig, Massimo Morelli, Marco Pagnozzi, and the participants at the MPI Econ Workshop (Bonn) and the SSDEV 2012 (Ascea), for helpful discussions. Any errors are my own.

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# 1 Introduction

Delegating policy authority to various bureaucracies involves fundamental issues in modern administrative states. While granting sufficiently high discretion of choice would potentially entail an optimal use of the bureaucracy's professionalism and policy expertise, it could also encourage independent policy drift and thus require instruments of control (e.g., Gailmard, 2009). The fact that the executive often retains (some degree of) appointment power can in principle mitigate the agency problem inherent in delegation, yet in practice, it could be exacerbated by the conflict between higher-level institutions (e.g., Epstein and O'Halloran, 1999). The tension between the value of delegation and the impact of interest groups influence is also crucial. On the one hand, governmental form is likely to provide fairly different incentives for influence-seeking activities. On the other, institutional actors involved in the process should consider the possibility of lobby-induced bureaucratic drift and agencies' negotiation power (e.g., Sloof, 2000; Grossman and Helpman, 2001; Spiller and Siao, 2008).

In an effort to contribute to the debate on optimal selection of state agencies, Bertelli and Feldmann (2007) have extended the formal treatment of presidential appointments to account for negotiated policy making at the bureaucratic level. Do (mindful) politicians appoint ideologically aligned candidates, and to what extent do such (strategically selected) appointees affect policy if they act as non-autonomous policy setters? Who influences appointments, and which force involved (political institutions, bureaucrats, regulated constituencies), if any, dominates the process? The authors answer these questions by studying a full information appointment game in which the Senate wields indirect control over agency decisions by exercising its power of confirmation over presidential nominees, and the subsequent amendment of implemented policy via direct legislation. As a major finding, Bertelli and Feldmann (2007) show that the ally principle as a guide to appointments is generically suboptimal in the presence of negotiated policy choices. Rather, presidents are better served by extreme preferences bureaucrats who counterbalance the leverage of organized interests on the implementation process.

While insightful along several dimensions, the analysis of Bertelli and Feldmann (2007) is silent on two crucial features of the legislative delegation process. First, while typically holding (ex-ante) confirmation and (ex-post) corrective legislation powers, legislature also enacts statutes. That is, statutory design is a choice variable, sensitive to strategic considerations. Second, delegation of policy authority is often rationalized by bureaucratic expertise and superior knowledge of policy-relevant issues. This naturally raises the question of how and to what extent strategic appointments might be used to curb policy bias from ex-post negotiation in a world of strategic (legislative) delegation and ex-ante policy uncertainty.

The present paper answers this question by introducing strategic agency selection into Bennesen and Feldmann (2006)'s lobbying framework, in which a legislator entrusts a bureaucratic agent with political authority given the agent's policy expertise. An organized group may influence the decision-making process by initiating bargaining at the policy implementation stage. We endogenize bureaucratic preferences by allowing for optimal agency selection/nomination by the government administration (i.e., the president or executive under a separation of powers, or parliament in a parliamentary system). We provide a formal analysis of government policy making in the presence of lobbying by considering two potential configurations of the appointment-delegation

model, which differ by the set of institutional constraints surrounding the appointment process. In the first scenario (*unilateral appointment power*, UAP), the agency is unilaterally selected by the administration (e.g., recess appointments in the U.S. presidential example) after the enabling legislation is passed<sup>1</sup>. With the *legislative confirmation* (LC) configuration, we account for the presence of constitutional power-sharing arrangements, in the form of legislative confirmation (“advice and consent”) of administrative proposals (e.g., the presidential appointment of governmental positions, subject to the approval of the Congress in the U.S.).

The model yields several predictions about potential policy directions by identifying conditions under which the political process is influenced by organized interests, either directly (induced policy drift) or indirectly (induced confirmation/rejection of nominees). We show that strategic incentives indisputably matter in agency selection, yet their actual role is specific to the form of division of authority over the state’s administrative functions in separation-of-powers systems. Specifically, two major findings emerge from our analysis: (i) first, lobbying (strategically appointed) bureaucrats is completely neutral when power of appointment is vested in a single political entity (e.g., recess appointments); (ii) second, and most importantly, the interplay of legislative confirmation and optimal statutory design may well prevent insulation of policy making from interference by organized interests. Under LC, the existence of a non-zero impact of lobbying on (expected) policy outcomes and welfare crucially relies on its (model-specific) leverage over the confirmation process, which we label the *induced advice-and-consent effect*. When powers are separated the lobby may in principle act as the legislator’s or administrator’s ally during policy implementation by inducing convergence of the agency’s decision to either of their ideal policy outcomes. While this clearly affects the amount of optimal delegation (Benedsen and Feldmann, 2006), it also impinges on the legislature’s confirmation versus rejection decision. As a main consequence, lobbying may prove influential – via the induced advice-and-consent effect – even in cases where strategic agency selection results in the same choice of the bureaucrat as would occur under unilateral appointment power. The existence of such *conditional confirmation equilibrium* requires that (strategically appointed) bureaucrats negotiate policy with the interest group, creating room for indirect policy-relevant effects from lobbying. In the same vein, lobby-driven rejection of candidate bureaucrats can occur under preferences configurations for which legislative confirmation would rather emerge in the situation of autonomous policy setting. Remarkably, in any conditional confirmation or rejection outcome, the impact of lobbying activities is significant despite the presence of strategic agency selection.

The study is organized as follows. The next section briefly reviews further related literature. Section 3 lays out the basic framework of our analysis, while in section 4, we investigate its equilibrium properties. The model’s implications regarding the incidence of lobbying across different political systems are discussed in Section 5. Section 6 offers concluding remarks.

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<sup>1</sup>In the U.S., administrative appointments constitute a fundamental presidential prerogative, subject to the legislative “advice and consent” constraint. Presidents can also temporarily fill vacancies in several policy-making positions with limited interference from the Senate, by exercising the constitutionally-granted power to make recess appointments. The Recess Appointments Clause of the U.S. Constitution provides that “[t]he President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session” (Art. II, Section 2, C1.3). Recess appointees are required to leave office at the end the next Senate session or when a confirmed nominee is assigned the position. This allows recess appointees to serve a period of up to nearly two years (Black et al., 2007).



## 2 Related literature

While deep-rooted in the theoretical literature on political control over bureaucracies (e.g., McCubbins et al., 1987), the presented analysis also relates to other lines of research. One deals with the optimal allocation of policy authority between elected representatives and non-elected agencies. The focus of a sizable principal–agent literature has been the tradeoff between informational advantages and loss of political control (e.g., Tirole, 1994), and the existence of monitoring abilities and punishment devices for the optimal design of delegation schemes (e.g., Epstein and O’Halloran, 1994, 1999; Huber and Shipan, 2002). Complementary studies on this issue have instead investigated interest groups’ monitoring role over bureaucrats via an information provision mechanism that activates when legislative policies are intended to serve special interest groups and agencies depart from their legislative mandate (McCubbins and Schwartz, 1984; Banks and Weingast, 1992).

Presidential appointments, and more generally the issue of political control over bureaucratic agencies, have received considerable attention from an extensive body of political science literature (e.g., Weingast and Moran, 1983; Weingast, 1984; Hammond, 1986; Banks and Weingast, 1992; Hammond and Knot, 1996). Numerous empirical contributions have assessed the relationship between the nature of bureaucratic recruitment and various measures of government performance, incidence of corruption, and economic growth (e.g., Evans and Rauch, 1999, 2000; Carpenter, 2001). These findings suggest that careful selection and management of the bureaucracy, although subject to more or less elaborate sets of institutional constraints, represents a salient feature of modern administrative states.

Numerous recent contributions have examined the subject of policy formation under lobbying in the presence of multilevel (hierarchical) and/or multi-member political structures (e.g., Hoyt and Toma, 1989; Bennesen and Feldmann, 2002; Epstein and Nitzan, 2002, 2006; Mazza and van Winden, 2008) or the optimality of bureaucratic arrangements – what should be delegated and what should not – from a social welfare standpoint (Alesina and Tabellini, 2007). However, relatively few studies have focused on the relationship between interest group influence over decision-making and the scope of delegated legislation. Spiller (1990) develops a multiple-principals agency theory to investigate the extent to which legislators could be willing to allocate policy authority to regulators when the latter might be targeted by organized interest groups. Austen-Smith (1993) studies legislative lobbying at the agenda-setting (Committee) and voting (House) stages, concluding that only agenda-stage lobbying is likely to be influential. Diermeier and Myerson (1999) focus on the role of varying constitutional arrangements on legislatures’ internal organization. Their main result concerns incentives for deterring of collusive behavior induced by an institutional environment based on the existence of separate (and independent) legislative chambers. Grajzl (2011) investigates the interplay of political lobbying and delegation exploiting a property rights approach, according to which delegation also generates a rent-dissipation effect for it allows (exclusive) bargaining between the interest group and the bureaucracy.

This study is distinct from the cited literature in that it accounts for the possibility of strategic agency selection, in the same spirit of Calvert et al. (1989), Nokken and Sala (2000), Chang (2001), Bertelli and Feldmann (2007) and Krehbiel (2007). Most of these studies treat bureaucratic agencies as autonomous policy setters, with Bertelli and Feldmann (2007) representing an important

exception. Differently from this latter study, we employ the standard model of delegation under asymmetric information and hence incorporate the role of legislatures by acknowledging their power to enact statutes. Remarkably, the nomination process discussed in most political literature does not account for the possibility of recess appointments or other forms of bureaucratic recruitment as a unilateral exercise in administrative (presidential) power. Hence, the present study can be also be seen as providing the first, to our knowledge, comparative analysis of different mechanisms of agency selection within the strategic delegation literature.

Our analysis is clearly inspired by the work of Bennesen and Feldmann (2006), who examine the effects of bureaucratic lobbying in an otherwise standard imperfect information delegation model. Their analysis focuses on the influence of interest group lobbying on bureaucratic policy making and its consequences for optimal statutory design under different political structures. However, their framework does not account for endogenous bureaucratic preferences, and hence can not address the relevant question of whether, and under which conditions, lobbying strategically appointed bureaucrats impacts the process of legislative delegation and the resulting policy outcome. This study aims at making a step further toward understanding this and other related issues.

### 3 The model

**Players and preferences.** The model builds upon the standard model of delegation as developed by Epstein and O'Halloran (1994, 1999) and extended by Bennesen and Feldmann (2006) to account for interest group influence. Four different players are involved in the political game: an administration ( $A$ ), a legislature ( $L$ ), a bureaucracy or agency ( $B$ ), and an organized interest group ( $I$ ). The policy space  $X \subset \Re$  is one-dimensional, and the policy outcome  $x = p + \omega$  is assumed to be a linear function of the effectively chosen policy,  $p$ , and of a noise variable,  $\omega$ , uniformly distributed over  $\Omega := [-r, r]$ . We regard  $r$  as a measure of ex-ante policy uncertainty and interpret  $\omega$  accordingly as specific (unforeseen) contingencies to which new policies are expected to apply.

The legislature is in charge of designing a fixed window<sup>2</sup>  $D$ , which reflects the scope of delegation, by specifying a reference policy  $q$  and a distance  $d \geq 0$ , such that  $D := [q - d, q + d]$ . Factual policy implementation – the choice of  $p \in D$  – results from the negotiation between the bureaucratic agency (which is appointed by the government administration) and the interest group. Under Nash bargaining – or any jointly efficient negotiation rule – the policy outcome always constitutes some compromise between  $B$ 's and  $I$ 's ideal policies. Without loss of generality, we restrict attention to the extreme case of take-it-or-leave-it offers from the interest group.<sup>3</sup>

All players have single-peaked preferences over the policy outcome  $x$  of the form:

$$U_i(x(p)) = -(x - x_i)^2, \quad i \in \{A, L\} \tag{1}$$

and

$$U_B(x(p), t) = -(x - x_B)^2 + \alpha_B t(p), \quad \alpha_B > 0 \tag{2}$$

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<sup>2</sup>Thus, we only consider the case of a fixed discretion window, as in Bennesen and Feldmann (2006). The model could be fruitfully generalized to encompass the possibility of bureaucratic subversion (e.g., Gailmard, 2002).

<sup>3</sup>As the players' objectives are linear in the transfer  $t(p)$ , this assumption on the allocation of bargaining power does not impose any restrictions on the model's equilibrium outcome.

$$U_I(x(p), t) = -(x - x_I)^2 - \alpha_I t(p), \quad \alpha_I > 0 \quad (3)$$

where  $t(p)$  is interpreted as a measure of transferable utility (incentive schedule) that the interest group is able to assign to the bureaucracy  $B$ . This transfer can be thought of as an explicit incentive contract or rather as a promise of future earnings in the private sector (e.g., Grossman and Helpman, 1994, 2001). The parameters  $(\alpha_B, \alpha_I)$  are taken to represent the transfer's relative values from the viewpoint of the bureaucratic agency and the interest group, respectively. For simplicity, we normalize  $\alpha_B = 1$ .<sup>4</sup>

**Information assumptions.** While the actors' ideal points and the objectives (1)-(3) are common knowledge, we maintain the informational rationale of delegation by assuming that only the bureaucrat and interest group have the expertise to learn the actual realization of the policy shock  $\omega \in \Omega$ .

**Political structure.** A distinguishing feature across political systems and forms of government is their connection to political conflict and the extent of executive and legislative power. In a parliamentary system, the administration and the legislature have the same constituencies, and the fusion of powers is intended to promote coordination between governmental functions and policy implementation. On the other hand, the principles that inspire the relationships between the branches of government, as derived from the doctrine of the separation of powers, view the latter as distinct and independent of one another. We adopt Bennesen and Feldmann (2006)'s convention of referring to unified government as the parliamentary system and to divided government as the system of separation of powers. Hence, while alignment between administrative and legislative preferences emerges in the former (i.e.,  $x_A = x_L$ ), the latter is characterized by a given degree of ideological conflict (i.e.,  $x_A \neq x_L$ ). Without loss of generality, we focus on the case  $x_L \leq x_A$ .

**Timing of events.** The game structure is specific to any of the appointment scenarios discussed in the introduction. Hence, for ease of exposition, the exact timing of events will be presented at the outset of the configuration under investigation. It is worth emphasizing that the bargaining outcome between the lobby and agency is not constrained by corrective legislation or executive veto power ex-post, and is thus equivalent to that resulting from Bennesen and Feldmann (2006)'s framework.

## 4 Optimal delegation and strategic appointments

For any political scenario, we derive the subgame perfect Nash equilibrium (SPNE) of the model by backward induction.<sup>5</sup> General conclusions with respect to the degree of policy bias and political influence induced by bureaucratic lobbying will be jointly discussed in the following section. To simplify comparison of results, we use the superscript  $j = P, S$  – where  $P$  (resp.  $S$ ) stands for *parliamentary* (resp. *separation*) – to label relevant variables and other quantities. All proofs are presented in the Appendix.

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<sup>4</sup>As a consequence, all bureaucrat equally candidates benefit from the transfer  $t(p)$ , and this is common knowledge.

<sup>5</sup>Despite the presence of asymmetric information, simple backward induction reasoning is sufficient for the informed player (the bureaucrat) moves last.

## 4.1 Unilateral Appointment Power

In the UAP scenario, the timing of events is as follows (for  $j = P, S$ )<sup>6</sup>:

- Date 0.*  $L$  chooses the delegation pair  $\{q^j, d^j\}$ ;
- Date 1.*  $A$  appoints  $B$  by choosing  $x_B^j$ ;
- Date 2.*  $B$  and  $I$  learn  $\omega \in \Omega$ ,  $I$  offers  $t(p^j)$  to  $B$ ;
- Date 3.*  $B$  chooses  $p^j \in D^j$ , and payoffs are realized.

A tenet of the standard theory of delegation without lobbying is that, in a system of separation of powers, the optimal amount of delegated authority is solely related to the extent of political conflict between higher-level institutions (Epstein and O'Halloran, 1999). In the presence of bureaucratic lobbying, Bennesen and Feldmann (2006) have rather shown that interest groups may have a non-negligible influence on the scope of delegation even in the presence of unified powers.

The possibility of strategically selecting the bureaucracy dramatically changes the picture. We show that, under either form of government, bureaucratic lobbying has no impact on (expected) policy outcomes. Formally, the unique SPNE of the game is characterized as follows:

**Proposition 1.** *Let  $x_B^j$  be the bureaucracy's ideal point as optimally chosen by the administrator, and  $\hat{x}^j := \beta x_I + (1 - \beta)x_B^j$ , with  $\beta := \frac{1}{1 + \alpha_I}$  and system  $j = P, S$ . Also, let  $c^j := x_A - x_L$  denote the preference divergence between  $A$  and  $L$ .<sup>7</sup> Then in the unique SPNE*

(i)  $A$  appoints a bureaucracy whose ideal policy is:

$$x_B^j = (1 - \beta)^{-1}[x_A - \beta x_I], \quad j = P, S; \quad (4)$$

(ii)  $L$  chooses the reference policy and the degree of discretion

$$q^j = x_L; \quad d^j = \max\{0, r - c^j\}, \quad j = P, S \quad (5)$$

(iii) Given  $(q^j, d^j)$ , the appointee  $B$  is induced by the lobby to implement policy (for  $j = P, S$ )

$$p^j = \begin{cases} x_A - \omega & \text{if } \omega \in [-r + 2c^j, r - 2c^j] \\ x_L + r - c^j & \text{if } \omega < -r + 2c^j \\ x_A - r & \text{if } \omega > r - 2c^j \end{cases} \quad (6)$$

Intuitively, when higher-level institutional preferences are aligned, the legislature allows for maximum discretion since no bureaucratic drift arises from delegation, given the optimal appointment mechanism at work. Hence, the bureaucrat's expertise is optimally exploited to resolve uncertainty, irrespective of the location of the interest group's ideal point. In this sense, strategic agency selection works as a perfect substitute for legislative control (of the bureaucracy) via statutory provisions.

<sup>6</sup>It is well known that administrative procedures very often provide executives with both appointment and removal power over agencies. In these cases, agency selection can typically be adapted ex-post to the given (legislative) statutory design. On the other hand, the legislative process is generally shaped by a wide array of constitutional, statutory, and also informal norms, which may severely constrain the timing of law-making (e.g., Gersen and Posner, 2007). Hence, as a matter of fact, legal intervention is generally less frequent than appointments of executive agencies and other bureaucratic personnel. We incorporate these arguments by letting the legislature move first.

<sup>7</sup>Hence,  $c^P = 0$  and  $c^S > 0$ .

Under separation of powers, the bureaucracy is not granted maximum discretion in offsetting ex-post shocks to policy. However, the existence of conflicts emerging from separate administrative (appointment) power and legislative (delegation) power over the bureaucracy do not undermine agencies' non-responsiveness to the external principal (the lobby): in equilibrium, bureaucratic lobbying has no policy-relevant effect. As a consequence, the scope of delegation only relies on the ideological wedge between higher-level institutions.

Summing up, in the UAP scenario, interest group influence neither amplifies nor mitigates the conflict between the legislature's preferences and the policy that is effectively implemented by the appointed bureaucracy, regardless of whether the government is unified or divided. As a crucial implication, for given  $x_L$  and  $x_A$ , the legislature never delegates more to the bureaucracy under a separation of powers system than under a parliamentary structure, independent of the location of the interest group's ideal policy<sup>8</sup>.

## 4.2 Legislative confirmation

Consider now the case of legislative confirmation of administrative appointees. This structure more closely reflects the tension between higher-level institutions in a separation-of-powers system. As a prime example, in the U.S., numerous governmental positions fall under the President's direct nomination authority and yet are subject to Congressional approval. Apparently, effective bureaucratic control (with respect to pressure from organized interests) may in principle be undermined by the presence of constitutional power sharing arrangements when the government structure is not unified.

While keeping all the basic model's primitives, we introduce legislative confirmation by assuming that preference policy reverts to an incumbent bureaucrat  $\bar{B}$  with ideal policy  $|\bar{x}_B| < r$ , and a policy  $\bar{x}$  prevails – after negotiation with the interest group – whenever an administrative nominee is rejected<sup>9</sup>. In the LC scenario, the timing of the game is as follows (for  $j = P, S$ ):

*Date 0.*  $L$  chooses the delegation pair  $\{q^j, d^j\}$ ;

*Date 1.*  $A$  appoints  $\tilde{B}$  by choosing  $\tilde{x}_B^j$ ;

*Date 2.*  $L$  confirms or rejects  $A$ 's appointee, and delegation occurs in favor of  $B \in \{\tilde{B}, \bar{B}\}$

*Date 3.*  $B$  and  $I$  learn  $\omega \in \Omega$ ,  $I$  offers  $t(p^j)$  to  $B$ ;

*Date 4.*  $B$  chooses  $p^j \in D^j$ , and payoffs are realized.

For simplicity, but with no loss of generality, we normalize  $x_L = 0$  and thus consider the case  $x_A \geq 0$  and  $x_I \neq 0$ . The following result holds:

**Proposition 2.** *Let  $\bar{x} := \beta x_I + (1 - \beta)\bar{x}_B$  and  $\tilde{x}^j := \beta x_I + (1 - \beta)\tilde{x}_B^j$ . Also, let  $\hat{x}^j$  denote the equilibrium lobby-induced ideal policy,  $j = P, S$ . Then:*

- (i) *In the parliamentary system, a unique confirmation equilibrium with  $\hat{x}^P = \tilde{x}^P = x_A$  exists, in which the bureaucrat is unconstrained ( $d^P = r$ );*

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<sup>8</sup>The model also predicts that ex-ante commitment to a more moderate agency actually induces larger discretion from the legislature through the legislative delegation channel. This in turn increases the (expected) welfare of the legislature. This result is line with McCarty (2004), who argues that the adverse consequences from the division of authority over bureaucratic behavior can be mitigated by restricting the removal power of executives.

<sup>9</sup>Given sufficient electoral change in the legislature and the executive, (status quo) agency preferences need not be aligned with those of either the (median) legislator or the executive in office.

(ii) In the separation-of-powers system, a unique confirmation equilibrium exists if and only if at least one of the following conditions holds:

$$(iia) \quad x_A \in (0, |\bar{x}|], \quad (iib) \quad \bar{x} < 0 \quad (7)$$

In either case, the bureaucrat is constrained ( $d^S = r - |\hat{x}^S|$ ,  $\hat{x}^S \in \{x_A, |\bar{x}|\}$ ). Otherwise, the game has multiple rejection equilibria with  $d^S = r - |\bar{x}|$ .

In the presence of shared power over agency nominations, the actual impact of lobbying depends on its role in shaping the (equilibrium) confirmation range – the set in which the administrative nominee must lie for her not to be vetoed by the legislature – with respect to the no lobbying scenario. Strategic agency selection then cannot always deliver  $A$ 's most preferred outcome, for legislative confirmation may result in a constrained choice on the bureaucrat's part. As such, lobbying strategically appointed bureaucrats is likely to involve nonobservance of the classical ally principle as the administration's best response, thus lowering the importance of ideological compatibility and loyalty (Bertelli and Feldmann, 2007).

Not surprisingly, in a parliamentary system, the administration's proposal is always confirmed and fully compensates the group's influence on both (expected) policy bias and welfare. Under separation of powers, by contrast, lobbying may either exacerbate or ameliorate the preference conflict between higher-level institutions depending on the ideological location of the status quo bureaucrat. In the confirmation equilibrium, lobbying has a non-zero impact on both (expected) policy and welfare only if it induces – via the advice-and-consent effect – confirmation of the unconstrained optimal administrative ideal appointment, which would be otherwise rejected in favor of the status quo bureaucracy or the constrained proposal (i.e., only if  $|\bar{x}_B| < x_A$ ). We label this outcome as a *conditional confirmation equilibrium*, since its existence relies on the presence of interest group influence over policy implementation.<sup>10</sup> By contrast, when the reversion (lobby-induced) policy  $\bar{x}$  instead is located further from  $L$ 's most preferred option than in the negotiated policy under confirmation, the legislature will prefer not to exercise their rejection power. Notably, this may occur even in the presence of a perfectly aligned status quo bureaucrat ( $\bar{x}_B = 0$ ). Under these circumstances, strategic appointments serve as a perfect substitute for legislative control over bureaucracies, and confirmation outcomes are characterized by a null impact by lobbying<sup>11</sup>.

## 5 Alternative government structures and the impact of lobbying

Following Bennedsen and Feldmann (2006), we now turn to contrast the effects of interest group influence in the parliamentary system with those arising under separation of powers. In this regard, two types of measures for the incidence of lobbying are utilized: (1) the expected lobby-induced policy bias under delegation with respect to the case when no lobbying occurs and (2) the average impact of lobbying on the legislature's expected welfare.

<sup>10</sup>Rejecting the administrative appointee may be costly for the legislature (e.g., Bertelli and Feldmann, 2007). In our framework, removing the assumption of costless rejection would increase the confirmation range given by the pair  $\{\bar{x}^j, x_A\}$ , and hence widen the parameter space over which the (conditional) confirmation equilibrium obtains.

<sup>11</sup>In the U.S. presidential example, this finding supports the well-known “preference view” of the observed pattern of Senate confirmation of presidential nominees (Hammond and Hill, 1993).

More specifically, we define the lobby's impact on the (expected) policy outcome (*LIO*):

$$LIO^j = E(x|lobbying) - E(x|no\ lobbying), \quad j = P, S \quad (8)$$

and the lobby's impact on the (expected) legislature's welfare (*LIW*):

$$LIW^j = E(U(x)|d_l^j, x_l) - E(U(x)|d_{nl}^j, x_{nl}), \quad j = P, S \quad (9)$$

where the subscripts ( $l, nl$ ) stand for *lobbying* and *no lobbying*, respectively. Again without loss of generality, we consider the case  $x_L = 0, x_A \geq 0$  and  $x_I \neq 0$ .

Let us first focus on the UAP scenario. In a parliamentary system, we have shown that the informational advantage of delegation fully applies and the legislature is willing to rely on the bureaucracy's expertise. Under lobbying,  $\hat{x}^P = x_A$  is obtained in equilibrium for any  $\omega \in \hat{\Omega}$ , and thus  $E(x|lobbying) = \hat{x}^P$  with probability one. When the agency is not being lobbied, by contrast, the ally principle  $x_A = x_B^P$  holds and  $E(x|no\ lobbying) = x_A$ . It readily follows that lobby-induced (expected) policy bias does not arise, i.e.,  $LIO^P = 0$ . Furthermore, given the distribution of outcomes resulting from delegation, the legislature's expected welfare from optimal delegation under lobbying simply reads as  $E(-(x)^2|d^P, \hat{x}^P) = -\hat{x}^{P^2} = 0$  both with and without lobbying (hence  $LIW^P = 0$ ).

In the separation-of-powers system, policy outcomes have a simple two-part distribution. In fact, for  $\omega \in [-r + 2\hat{x}^S, r - 2\hat{x}^S]$ , the agency selects the policy within its domain that yields  $\hat{x}^S$ . By contrast, with probability  $(1 - d_l^S/r)$ , the bureaucrat is constrained in its choice, which varies uniformly over  $[-\hat{x}^S, \hat{x}^S]$ . It follows that the expected policy outcome with delegation is simply  $E(x|lobbying) = \frac{d_l^S}{r}\hat{x}^S$ . Since lobbying at the implementation level only entails a strategic reaction from the administration – for  $\beta \in (0, 1)$ , we have  $x_{B,l}^S \neq x_{B,nl}^S$  – but not a different induced policy outcome  $\hat{x}^S$  or an alteration in the level of delegated authority (i.e.,  $d_l^S = d_{nl}^S$ ), it is easily shown that  $LIO^S = 0$  and  $LIW^S = 0$ .

In the LC scenario, the existence of a non-zero impact of lobbying on (expected) policy outcomes and welfare crucially relies on the legislature's confirmation/rejection optimal behavior. This in turn is governed by two distinct factors: on the one hand, the (exogenous) degree of preference conflict between the administration and legislature; on the other hand, the effect of negotiated policymaking on the admissible region (confirmation range) for administrative proposals. Remarkably, while the former is necessary for overturning the neutrality result established in Proposition 1, the latter is neither necessary nor sufficient to this end, as its actual direction is model-specific. Perfect alignment of administration and legislature within parliamentary systems neutralizes interest group influence (hence  $LIO^P = LIW^P = 0$ ). When powers are separated, by contrast, lobbying may prove influential – via the induced advice-and-consent effect – even when the administrative proposal is mutually agreed (conditional confirmation equilibrium). This occurs when the presence of special interests drives the status quo policy outcome further away than the relative ideological distance between institutional preferences. Hence, although the appointing player is unconstrained in the confirmation equilibrium, lobbying may still have a policy-relevant role in the process. In the same vein, lobby-driven rejection of candidate bureaucrats can occur under preference configurations in which legislative confirmation would rather emerge in the case of autonomous policy setting. In any conditional confirmation or rejection equilibrium, Bennesen

and Feldmann (2006)'s results with respect to the impact of lobbying activities fully apply. The following Proposition formalizes the foregoing argument:

**Proposition 3.** *(Expected) impact of lobbying under strategic appointments:*

(i) *In parliamentary systems, lobbying has no impact on (expected) policy outcomes and legislature's welfare, under either appointment regime;*

(ii) *In separation-of-powers systems, lobbying may have a non-zero impact only in the legislative confirmation scenario. Specifically:*

- *Lobby's impact on the (expected) policy outcome ( $LIO^S$ ):*

(iia) *In the confirmation equilibrium with  $|\bar{x}_B| \geq x_A$  or  $\bar{x}_B < 0$ ,  $LIO^S = 0$ . In the conditional confirmation equilibrium ( $0 < \bar{x}_B < x_A$ ),  $LIO^S > 0$  ( $LIO^S = 0$ ) if and only if  $r > x_A + \bar{x}_B$  ( $r = x_A + \bar{x}_B$ ).*

(iib) *In rejection equilibria with  $|\bar{x}_B| \geq x_A$ ,  $LIO^S > 0$  ( $LIO^S = 0$ ) if and only if  $r < x_A + \bar{x}$  ( $r = x_A + \bar{x}$ ). In rejection equilibria with  $|\bar{x}_B| < x_A$ ,  $LIO^S > 0$  ( $LIO^S = 0$ ) if and only if  $r > \bar{r}$  with  $\bar{x} > \bar{x}_B$  or  $r < \bar{r}$  with  $\bar{x} < \bar{x}_B$  ( $r = \bar{r}$ ), where:*

$$\bar{r} := \frac{\bar{x}^2 - \bar{x}_B|\bar{x}_B|}{\bar{x} - \bar{x}_B}$$

- *Lobby's impact on the (expected) legislature's welfare ( $LIW_L^S$ ):*

(iic) *In any confirmation equilibrium with positive delegation,  $LIW_L^S < 0$  ( $LIW_L^S = 0$ ) if and only if  $|\bar{x}_B| < x_A$  ( $|\bar{x}_B| \geq x_A$ ).*

(iid) *In any rejection equilibrium with positive delegation,  $LIW_L^S < 0$  if and only if  $\bar{x} < |\bar{x}_B|$ .*

This set of findings can also be regarded as a qualification of Bennesen and Feldmann (2006, p. 648)'s claim that “[...] any convex combination of independent and strategic choice of the bureaucrat would retain the gist of [...]” their analysis.<sup>12</sup> Following their convention, let us characterize separation-of-powers systems with independent bureaucrats by the congruence of preferences between agencies and the current administration (i.e.,  $x_B^S = x_A > x_L = 0$ ). In our environment, by contrast, strategic choice under legislative confirmation of the bureaucrat would result in<sup>13</sup>  $x_B^{LC} = (1 - \beta)^{-1}[\hat{x}^{LC} - \beta x_I]$ , where  $\hat{x}^{LC} = \min \{x_A, |\bar{x}|\}$  (Proposition 2). A first observation is that, when legislative confirmation acts as a binding constraint within the strategic selection process (i.e.,  $\hat{x}^{LC} = \bar{x}$ ), then ideological congruence between administration and agency ( $x_A = x_B^{LC}$ ) may endogenously emerge for some preference configurations of the model, even when the interest group's preferences are not aligned with the former's. In this case, the bureaucrat's strategic choice would be equivalent to his independent choice and hence predict the same equilibrium outcome. Second and most importantly, our analysis allows for a generally independent (status quo) bureaucrat, i.e., one possibly aligned with neither the administration nor the legislature. According to Proposition 2, when  $0 < \bar{x} < x_A$ , any (endogenous) combination between the independent (status quo) bureaucrat and the strategically appointed one will lie outside the confirmation range and hence enforce a rejection equilibrium, consistent with Bennesen and Feldmann (2006)'s analysis.

<sup>12</sup>Footnote 10.

<sup>13</sup>For ease of exposition, we drop the superscript identifying the form of government, and introduce a new one referring to the appointment scenario(s) under investigation.



## 6 Concluding remarks

This study's objective was to test the predictive value of Bertelli and Feldmann (2006) with respect to the interplay of (bureaucratic) lobbying and strategic appointments in a world of policy uncertainty and asymmetric information. Using the formal delegation framework, we have shown that bureaucratic lobbying may either reduce or enlarge the scope of delegation, given the extent of policy conflict between the branches of government and the nature of the prevailing appointment process. When the (executive) appointment power is unilateral (e.g., recess appointments), the optimal degree of delegated authority emerges as an exclusive (monotonic) relationship between agency discretion, on the one hand, and the preference divergence of branches, on the other. Since strategic agency selection is crucial to this finding, the relevant empirical question is then whether strategic appointments as an exercise in unilateral power are common in practice and in which policy area or for what positions they are more likely to arise.<sup>14</sup>

However, the interplay of confirmation authority and statutory design may well prevent strategic appointments from offsetting interest groups' influence. Remarkably, bureaucratic lobbying may prove highly non-neutral – in terms of both expected policy outcomes and welfare – even when the legislature does not exercise veto power. More generally, the ample evidence documenting the pervasiveness and efficacy of lobbying in policy making can be fully consistent with the presence of strategic appointment when the selection mechanism requires some form of checks and balances between higher-level institutions.

In a nutshell, our study emphasizes that different governmental structures (unified versus divided), each characterized by more or less homogeneous sets of rules or institutional arrangements, provide quite different incentives for strategic appointments. While complementing the findings of Bertelli and Feldmann (2006), our analysis also provides new insights on the question why legislatures (e.g., the U.S. Congress) carefully attend to the rights of various organized interests in policy-relevant issues, and often design elaborate structures for interest group participation (e.g., McCubbins et al., 1987, 1989; de Figueiredo and de Figueiredo, 2002). Such an approach may be motivated, we argue, by the ambiguous impact of lobbying upon the checks-and-balances between higher-level institutions, and ultimately upon the trade-off between the informational advantage of delegation and the need to limit (induced) policy drift via strategic appointments.

Our work can be extended to analyze other aspects of the political process. A relevant aspect concerns the multi-tier nature of lobbying activities, in their various forms, which are typically not restricted to the policy-implementation stage. The mere fact that public policies are shaped by interactions among distinct branches or levels of government, each enjoying some degree of autonomy, makes it clear that organized interests groups typically face a choice of venue.<sup>15</sup> Lobbies need then to evaluate, in the first place, which node of decision-making they should attempt to influence, and which instrument in their tool chest (e.g., electioneering, information provision, monetary contributions) to exploit to this end. As an example, consider the opportunity for the interest group to engage in costly lobbying-related activities (such as running an advertising campaign or hiring high-price spokespersons) at the agency selection stage in an attempt to educate

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<sup>14</sup>Recently Black et al. (2007) have found strong support for the strategic use of recess appointments to important policymaking positions, namely major independent agencies.

<sup>15</sup>Several empirical studies support this view (e.g., Potters and Sloof, 1996; Boylan, 2002). Studies that deal with interest group venue choice in policy making are, e.g., Boehmke et al. (2005), Mazza and van Winden (2007), Naoi and Krauss (2009), Albanese and Sorge (2012).

policymakers about the uncertain political environment. This would likely result in a revelation equilibrium outcome, in which the neutrality result might be reversed. We leave the analysis of this and other related issues concerning strategic problems that interest group(s) typically face within the appointment-delegation process to future work.

## Appendix

**Proof of Proposition 1.** For any given  $(q^j, d^j, x_B^j)$   $j = P, S$ , chosen at the upper node, the lobby will induce (for any given  $x_B^j$ ,  $j = P, S$ ) either the policy outcome  $\hat{x}^j$ , if the legislative constraint is not binding, i.e., if  $(\hat{x}^j - q^j) - d^j \leq \omega \leq (\hat{x}^j - q^j) + d^j$ , or one of the two boundaries of the delegation window otherwise (e.g., Bennedsen and Feldmann, 2006). Notice that under knowledge of  $x_I$  and  $\beta$ , a one-to-one correspondence exists between the set of choices for the bureaucrat's preferences and the set of policy outcomes. Then, at date 1 the administration will solve

$$\begin{aligned} \max_{\hat{x}^j} E(U_A) &= -\frac{1}{2r} \int_{-r}^{\hat{x}^j - q^j - d^j} (q^j + d^j + \omega - x_A)^2 d\omega \\ &\quad - \frac{1}{2r} \int_{\hat{x}^j - q^j - d^j}^{\hat{x}^j - q^j + d^j} (\hat{x}^j - x_A)^2 d\omega \\ &\quad - \frac{1}{2r} \int_{\hat{x}^j - q^j + d^j}^r (q^j - d^j + \omega - x_A)^2 d\omega \\ &= -\frac{1}{r} \left[ \frac{1}{3} (r - d^j)^3 + (q^j - x_A)^2 (r - d^j) + (\hat{x}^j - x_A)^2 d^j \right], \quad j = P, S \end{aligned} \tag{10}$$

which results in  $\hat{x}^j = x_A$ . The legislator will thus design the delegation window by choosing  $(q^j, d^j \geq 0)$  so as to maximize its expected utility  $EU_L$ , i.e.  $q^j = x_L$  and  $d^j = r - |x_A - x_L|$ . Given  $(q^j, d^j)$ , the restrictions on realizations of  $\omega$  in equation (6) follow readily from  $|\hat{x}^j - \omega - q^j| \leq d^j$ .

**Proof of Proposition 2.** To reduce notation, the bureaucrat  $B \in \{\bar{B}, \tilde{B}\}$  will be unambiguously identified with its ideal point in the policy space. Recall that we assumed, with no loss of generality, that  $x_L = 0$ ,  $x_A \geq 0$  and  $x_I \neq 0$ . For any  $(q^j, d^j)$  to which the legislature commits in date 0,  $L$  will not reject the administrative proposal  $\tilde{x}_B^j$  if and only if  $EU_L(|\tilde{x}^j|, q^j, d^j) \geq EU_L(|\bar{x}|, q^j, d^j)^{16}$ . Hence, rejection does not occur if and only if  $|\tilde{x}^j| \leq |\bar{x}|$ . This inequality defines a *policy set*  $\mathcal{P} = \{\tilde{x}^j : |\tilde{x}^j| \leq |\bar{x}|\}$  and a *confirmation range*  $\mathcal{C}$  such that any  $\tilde{x}_B^j \in \mathcal{C}$  will map into  $\mathcal{P}$  and induce confirmation. Since  $A$  acts strategically,  $\mathcal{C}$  will depend on  $\mathcal{P}$ ,  $\beta$  and the interest group's location  $x_I$ . According to Proposition 1,  $E(U_A)$  is strictly concave in the policy outcome  $\hat{x}^j$  for a given delegation pair  $(q^j, d^j)$ . When  $x_A$  lies in  $\mathcal{P}$ , an *unconstrained confirmation equilibrium* emerges with  $\hat{x}^j = x_A$ , otherwise (i.e. when  $x_A \notin \mathcal{P}$ ) the administrator will be either indifferent across any  $\tilde{x}_B^j \notin \mathcal{C}$  such that  $\tilde{x}^j \in (\bar{x}, +\infty)$  which results in the constrained optimal policy  $\bar{x} > 0$  (*rejection equilibria*), or better off appointing  $\tilde{B}$  such that the constrained optimum  $\tilde{x}^j = -\bar{x}$  emerges, when  $\bar{x} < 0$  (*constrained confirmation equilibrium*). In a parliamentary system ( $x_L = x_A$ ), by definition of  $\mathcal{P}$ , the unique SPNE equilibrium entails confirmation of the administrative nominee. Under separation of powers, by contrast, confirmation or rejection equilibria will arise depending on the relative distance between  $\hat{x}^S \in \{x_A, |\bar{x}|\}$  and  $x_L = 0$ .

**Proof of Proposition 3.** Part (i) is shown in the main text. As for parts (ia) and (ib), we discriminate between the confirmation equilibrium (*CE*) and the rejection equilibrium (*RE*).

<sup>16</sup>In case of indifference, we break the tie by assuming that the legislator will confirm the administrator's nominee. The commitment solution is dynamically consistent as  $L$ 's expected welfare from optimal (non-zero) delegation  $d(\hat{x}) > 0$  at any given (lobby-induced) ideal policy  $\hat{x}$  is  $E[-x^2|\hat{x}, d(\hat{x})] = -\hat{x}(1 - \frac{2}{3r}|\hat{x}|)$ , which is strictly decreasing in the distance  $|\hat{x}|$ .

CE - In case of confirmation, the expected policy outcome under lobbying is either  $r^{-1}(r - x_A)x_A$  (unconstrained equilibrium) or  $r^{-1}(r - x_A)\bar{x}$  (constrained equilibrium). When  $|\bar{x}_B| \geq x_A$  or  $x_A > |\bar{x}_B|$  and  $\bar{x}_B < 0$ , these are also the expected outcome without lobbying, hence  $LIO^S = 0$ . When  $\bar{x}_B > 0$  and  $\bar{x}_B < x_A$  (conditional confirmation equilibrium),  $E(x|no\ lobbying) = r^{-1}(r - \bar{x}_B)\bar{x}_B$ . Since the discretion variable  $d_i^S$  ( $i = l, nl$ ) is always nonnegative, when  $\bar{x}_B > 0$  by contrast, we have:

$$LIO^S = \frac{(r - x_A)}{r}x_A - \frac{(r - |\bar{x}_B|)}{r}\bar{x}_B > 0 (= 0) \quad \text{iff} \quad (x_A - \bar{x}_B)[r - (x_A + \bar{x}_B)] > 0 (= 0) \quad (11)$$

from which the assertion.

RE - In case of rejection<sup>17</sup> the expected policy outcome under lobbying is  $r^{-1}(r - \bar{x})\bar{x}$ . When  $|\bar{x}_B| \geq x_A$  we have  $E(x|no\ lobbying) = r^{-1}(r - x_A)x_A$ , whereas  $|\bar{x}_B| < x_A$  implies  $E(x|no\ lobbying) = r^{-1}(r - |\bar{x}_B|)\bar{x}_B$ . In the former case, since  $d_i^S \geq 0$  ( $i = l, nl$ ),  $LIO^S > 0$  ( $= 0$ ) if and only if  $(\bar{x} - x_A)[r - (\bar{x} + x_A)] > 0$  ( $= 0$ ), from which the assertion.

When  $|\bar{x}_B| < x_A$ , we have:

$$LIO^S = \frac{(r - \bar{x})}{r}\bar{x} - \frac{(r - |\bar{x}_B|)}{r}\bar{x}_B > 0 (= 0) \quad \Leftrightarrow \quad r(\bar{x} - \bar{x}_B) + \bar{x}_B|\bar{x}_B| - \bar{x}^2 > 0 (= 0) \quad (12)$$

which completes the proof.

Parts (iic) and (iid) readily follow from Proposition 2 and the fact that the legislature's (expected) welfare from optimal delegation is monotonically decreasing in the distance  $|\alpha|$ , where  $\alpha \in \{x_A, \bar{x}, \bar{x}_B\}$ .

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<sup>17</sup>Notice that when both  $\bar{x}_B$  and  $x_I$  are to the right of  $x_A$ , it holds that  $x_A < \bar{x}$ . Hence, for rejection to occur it must be the case the at least one between status quo bureaucrat's and lobby's ideal policies lies to the left of the (unconstrained) most preferred expected outcome of the administrator.

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