ARTICLES

Bureaucratic Discretion, Agency Structure, and Democratic Responsiveness: The Case of the United States Attorneys

Andrew B. Whitford
University of Kansas

ABSTRACT

Structural choices have fundamental and continuing effects on the democratic responsiveness of public agencies. In contrast to popular accounts of the United States Attorneys' splendid isolation, *I provide structural evidence of routes to the national political oversight of the prosecution of federal crimes in the field. I will examine U.S. Attorneys' data on the prosecution of regulatory crimes and present statistical tests of local justice, lone justice, and overhead democratic control accounts of prosecutorial behavior. The U.S. Attorneys' prosecution reflects local and internal office factors, but I also find a surprising degree of responsivness to national political trends, where this structure-induced responsiveness depends on the stage of the prosecutorial process. These results provide support for a design approach to understanding how public agencies respond to calls for democratic responsiveness.*

Bureaucratic discretion is a central and continuing concern in American politics and administration. Over the past century, social scientists have consistently voiced concerns about the transition to greater administrative discretion (Goodnow 1905) and the substitution of rule for discretion in the heightened powers of agencies (Freund 1915; Hayek 1944; Lowi 1979). At the heart of these ideals about the rule of law constraining bureaucratic discretion and power is the assumption that Congress exercises hierarchical con-trol over the bureaucracy (Finer 1941).

This historical hope for the rule of law as a constraint on discretion is echoed in recent studies of political control of the bureaucracy. The problem is that legislated goals can become per-

This article has benefited from the comments of Jim Fesler, Matthew Holden, Gary Miller, Bill Lowry, Jack Knight, John Sprague, Mary Olson, John Drobak, Jeff Yates, Dan Carpenter, and Eric Helland. I also thank the Eisenhower World Affairs Institute and the Washington University Center in Political Econ-omy for research support. All errors that remain are my own.

J-PART 12(2002):1:3-27

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

muted when implementing agencies practice discretion. Because discretion provides a basis for achieving policy success and introduces opportunities for unrepresentative actions, it is both necessary and problematic (West 1984). The pursuit of discretion can create an inherent conflict between rational administration and policy responsiveness.

Recent decades are replete with studies that provide evidence for bureaucratic responsiveness to political control. In some cases bureaucracies respond to congressional preferences (Weingast and Moran 1983), in others to presidential managerial control (Moe 1985). Indeed, as McCubbins and Schwartz (1984) show in regard to congressional control, Congress does not exercise frequent, direct, or active oversight, nor should it.

Because of the limited power of oversight by monitoring and sanctions, recent studies argue greater effectiveness for mechanisms for the selection of bureaucratic agents. Brehm and Gates (1997) claim that principled agents are the solution to the problems inherent in principal-agency, and they provide substantial evidence for this claim in a number of agency environments. The power of selection is in how it seeks to align the preferences of agents and principals, making the problem of agents' private information about their abilities and actions irrelevant. In American bureaucracy, the long history of our construction of civil service systems, personnel management, and political appointees bears witness to our concerns about the selection of agents.

The vast majority of the bureaucrats who implement national policies that are decided in Washington, D.C. are not located in that city, however. American national government relies on field service systems for extending national power into local areas (Truman 1940). In *Area and Administration* (1949), Fesler portrays the way governments use these systems to extend power and govern large, dispersed nation-states. Yet, as Kaufman shows in *The Forest Ranger* (1960), field location is a continuing threat to the consistent application of national laws because of the usual variance in local circumstances, preferences, and political values. Recent studies of bureaucratic politics argue that field location can compound the problem of national political control in a federalist system (Hedge and Scicchitano 1994; Scholz and Wei 1986).

These concerns about bureaucratic responsiveness, discretion, and power multiply in the case of prosecutorial discretion, long thought to be so complex that strong oversight might be doomed to failure (Baker 1992; Clayton 1992 and 1995; Davis 1969; Wallace 1933). Clearly, prosecution decisions depend on the rule of law and

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

regulation, on past court decisions, and on legal expertise and norms. But regulatory agencies' decisions similarly depend on technical factors, from engineering and economics, even to statutory language itself. Is the delegation of authority to prosecutors—and the discretion they exercise—different from the delegation to regulators? Are prosecutors responsive to political control in their production of cases?

Historical research holds two perspectives on this matter. One early working group of the National Conference on the Science of Politics, in an examination of how to study the delegation of discretion to administrative agencies, excluded prosecution; they also excluded all enforcement and even rule making (Guild 1926). In contrast, another early view, discussing the extension of judicial review to administration, included prosecutors in a collection of other technical experts that included sheriffs and peace officers (Dickinson 1928).

Those who have made recent studies are similarly of two minds. In the past two decades, perhaps the most systematic study is of the political determinants of antitrust enforcement by the U.S. Department of Justice. Among these studies Lewis-Beck (1979) investigates the economic and political determinants of enforcement by the Department of Justice. Eisner and Meier (1990) argue that antitrust prosecution is the product of personnel changes in the department. In contrast, Wood and Anderson (1993) find that the antitrust division is strongly affected by national political actors. Together these studies achieve a common goal: the investigation of the political determinants and political control of prosecutorial discretion. Yet these studies come to different conclusions regarding national political control over federal prosecutors.

This study addresses how structure frames bureaucratic responsiveness to national political oversight. Its proximate purpose is to assess the responsiveness of field agents to overhead political oversight, local geographic and structural forces, and the internal dynamics of the office itself. Conceptually speaking, is it lone justice, local justice, or national politics that agents respond to? My claim is that the responsiveness of an agency to each of these forces depends on the agency's design; because bureaucratic structure is a political enterprise (Moe 1989), early choices about supervision structures and conflict referral within agencies can limit or expand discretion in practice (Hammond 1986). I will provide evidence that in the case of the U.S. Attorneys—the prosecutorial arm of the federal government—organizational structure (conceived of both narrowly and broadly) provides the basis for national political control. First, the attorneys hold the power to resolve within-office

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

conflict locally; between-office conflict is referred to authorities in Washington. Second, the attorneys themselves are tied closely—through the mechanism for their selection—to the U.S. senators from their states. Third, the U.S. Attorneys engage in structured interactions with judges, juries, and enforcement agencies.

The effectiveness of these centralizing forces depends explicitly on the control the U.S. Attorneys exercise at specific stages of the prosecution process. Just as the U.S. Attorneys constrain regulatory agencies by their power to prosecute cases, the procedural environment of litigation before federal district and circuit courts constrains the "splendid isolation" and autonomy sometimes ascribed to the U.S. Attorneys (Clark 1970; McGee and Duffy 1996; Seymour 1975). Federal agencies investigate and process case information, but the final decision to prosecute is restricted by-and-large to the U.S. Attorneys. Similarly, the U.S. Attorneys select and litigate cases, but they know that final outcomes depend on local judges and juries.

To provide evidence for these claims, I will estimate three statistical models of the determinants of the federal prosecution of regulatory violations using data from the eighty-nine U.S. Attorneys' districts for the years 1980 to 1989. While the attorneys respond to local conditions and show aspects of personalized decision making, they also exhibit surprising responsiveness to national political actors. Most importantly, this responsiveness depends on the structure for the selection of the U.S. Attorneys themselves. In addition, this responsiveness varies over the basic stages of prosecution. In this context, the attorneys' responsiveness to local conditions is composed of two kinds: shifts in case production due to cross-sectional variation in location and shifts due to changes in within-district circumstances.

In sharp contrast to claims that the U.S. Attorneys are uncontrollable due to their spatial distribution, the U.S. Attorneys are responsive to national political control because of early structural choices. More importantly, these findings highlight how political control depends greatly on how, when, and with whom bureaucracies are required to engage. Rather than the autonomy and independence portrayed in some popular accounts, their system's design unifies conflict resolution in the position of the attorney while offering a selection mechanism for the pursuit of national political control.

In this study I will show that agency structure and conflict referral mechanisms are constraints on bureaucratic discretion. Then I will present the U.S. Attorneys as a test case, the research

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

design, and the testing of the models of prosecutorial performance. Finally, I will draw conclusions about this theory, case, and test. The fundamental result of this study will show the conditional nature of responsiveness to efforts at political control. Early design choices set the conditions for responsiveness, even when autonomy and independence seem almost certain.

DISCRETION, DESIGN, AND RESPONSIVENESS

My central claim is that political overseers seek to limit bureaucratic discretion by shaping an agency's organizational structure. In doing so, structure—construed both narrowly and broadly—shapes the agency's responsiveness to specific mechanisms of political control, either at the national or the local level. In the case of field administration, national and local poles of attraction are formed because national agents are placed in local areas. Structure determines how agents' implementation decisions will reflect these poles by determining the rules for conflict referral within the agency, the selection structure for the agents themselves, and the type of interactions agents are required to engage in. Specifically, while prosecutors wield significant discretion, case clearance procedures allow office heads—here, the U.S. Attorneys themselves—to resolve within-office conflict. Because of this the structure for their selection is a fundamental macroinstitutional choice. In this context, prosecutors are required to interact with judges, juries, and enforcement agencies. Combined, these structural choices provide routes for the national political control of the federal prosecutors located throughout the country.

In delegating authority, political actors are concerned with bureaucratic discretion and power (Gormley 1989; Knott and Miller 1987). Prosecutorial discretion—a specific kind of bureaucratic discretion—is extremely low-visibility decision making as it is "essentially unreviewed and its justifications unarticulated" (Rabin 1971, 1073). The complexity of this kind of discretion involves questions of time and effort, rationales, and the eventual choice to pursue and decline. For prosecutors this discretion forms the bounds of their positions, rights, and responsibilities (Baker 1992; Clayton 1992 and 1995; Davis 1969; Wallace 1930).

Prosecutorial discretion is the last in a series of administrative judgments that shape the street-level implementation of programs. While investigation often occurs in other agencies, where the decision of "enough evidence to recommend a prosecution" may be made at a high level, prosecutors are alone responsible for the decision to charge a person in federal court with the intentional violation of a federal rule. As they are in regulatory agencies, such

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

decisions may be based on general, local, and even personal considerations. Unlike in other agencies, the wisdom to prosecute rests with the prosecutor alone (George 1989, 62).

While the discretion of prosecutors may have unique qualities, it is still discretion. One way that political actors exercise the control of discretion is to design an implementing agency's organizational structure, to open and close avenues of decision making for the individuals in the organization (Moe 1989). A specific structural feature is a subordinate's ability to refer conflict upward to superiors in the hierarchy (Axelrod 1970; Boulding 1964; Downs 1967; Fesler 1980; Gulick 1937; Hammond 1986; Kaufman 1981; Simon 1947; Tullock 1965). In a formal statement of the problem, Hammond shows that when departmentalization does not mimic the natural division of work, even a seemingly neutral hierarchy may cause subordinates to refer conflict upward to superiors. Not surprisingly, for political systems such conflict referral can be a political good, as political actors concerned about bureaucratic drift may force an agency to refer conflict upward to increase their direct oversight of implementation; political actors may also dampen conflict referral to insulate agency decision making.

Conflict referral is a substantial problem in field administration due to the dispersal of personnel and task implementation from the capital city to the field (Fesler 1949; Stone et al 1942; Truman 1940). Given dispersion, three basic choices exist for supervisory control: areal—an area supervisor governs all functions in a geographic region; functional—a functional supervisor governs a single function regardless of location; and dual supervision—subordinates in a region are governed by both functional and areal supervisors (Fesler 1973). Field service systems are valuable natural experiments because supervision structures vary across them (Dalton, Barnes, and Zaleznik 1968; Kochen and Deutsch 1980; Smith 1985).

Hammond's formal treatment contradicts conventional wisdom by showing that areal supervision may actually increase conflict referral from subordinates to superiors. Areal supervision expands the types of conflict (and information) referred upward because within-function conflicts are never referred under functional supervision. Even if a strong regional leader or manager could resolve within-region conflict in-house, any interregional conflict (either within or between functions) is resolved at higher levels of the organization. At a minimum, a regional leader with areal supervision powers limits the ability of subordinates to reflect personal or local factors.

For field systems, the common concern is that field agents will

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

reflect local interests in the implementation of national laws, either due to pressure from citizens, local political actors, or the agency's task environment. Just as in regulatory federalism, field systems create national and local poles of attraction (Hedge and Scicchitano 1994; Scholz and Wei 1986; Scholz, Twolmby, and Headrick 1991; Wood 1992). Unlike the implementation of national laws by the states, field systems have structural unity; this means that dampening conflict referral through structural choices can increase the possibility of national control. Executives may monitor and direct bureaucrats (Moe 1985; Nathan 1983; Wood and Waterman 1994). Constitutions, in constructing legislative districts and election rules, can provide mechanisms for legislators to assess constituency preferences (Fiorina 1989; Moe 1987; Ripley and Franklin 1976). Numerous studies document presidential or congressional influence over political bureaucracies (Moe 1985; Weingast and Moran 1983; Wood 1988 and 1990; Wood and Waterman 1994). Yet an agency's actions may also depend on an office's internal attributes, through mechanisms like leadership, organizational dynamics or cultures, and personnel (Miller 1992; Pettigrew 1979; Romzek and Hendricks 1982).

These national and local poles represent true problems for the uniform implementation of law, but areal supervision serves to unify decision making within a field service office and provides points of national leverage. In addition to Hammond's claim about conflict referral, areal supervision creates unique opportunities for the selection of regional office heads with preferences similar to those of national political overseers. Perhaps more than others in recent years, Brehm and Gates (1997) provide a strong conceptual framework for examining selection rules in organizations. Just as leaders can shape organizational cultures and agendas (Miller 1992), areal chiefs direct the aggregate choices made by a regional office. The rules for their selection are a fundamental component in the organization's structure—how it organizes its internal affairs—and in the political control of the bureaucracy.

By manipulating the structure of agencies to encourage conflict referral and by selecting agents with similar preferences, political overseers construct means to encourage bureaucratic responsiveness to national political oversight. But agencies do not operate in vacuums. Just as systematic interactions between field agents and local actors may cause concern about agents' responsiveness, principals may require agents to interact with other actors, perhaps to encourage responsiveness. These interactions—structured by the division of labor across subunits—may change the practice of discretion just as structural choices within agencies change discretion. In this study, prosecutors who seek success must condition their

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

behavior on judges and juries. Accordingly, the responsiveness of these external actors to national trends—perhaps influenced by the structure for *their* selection—alters the incentives for prosecutors in their own work.

DISCRETION, CONTROL, AND THE U.S. ATTORNEYS

> The authority of the federal prosecutor has been expressly designated by Congressional mandate that: "except as otherwise provided by law, each U.S. Attorney, within his district, shall—(1) Prosecute for all offenses against the United States. . . ." On its face, this language seems to establish an absolute duty requiring U.S. Attorneys to prosecute every criminal violation of federal law. Read literally, then, Congressional intent is violated regularly in every U.S. Attorney's office in the country. While no commentator has ever sug-gested that the statutory mandate be taken literally, it is easier to proclaim the inevitability of federal prosecutorial discretion than to rationalize it (Rabin 1971, 1072-73).

Former Attorney General Griffin Bell has called the U.S. Attorneys "independent baronies" (see Burnham 1996, 72). James Eisenstein (1978, 11) notes in his authoritative account of the attorneys that the "legacy of this early independence . . . helps produce a degree of autonomy and independence from the department perhaps unmatched by any other field service in the federal government." The attorneys' current mission statement notes that "[e]ach United States Attorney exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdictions and needs of their communities. United States Attorneys have been delegated, and will continue to be delegated, full authority and control in the areas of personnel management, financial management, and procurement" (USDOJ EOUSA 2000).

While popular accounts often center on their personalities, the U.S. Attorneys are the administrative system for the field prosecution of federal crimes. Because of the discretion they wield, I will concentrate on three structures that contribute to the national control of these field agents. These include one for the selection of the attorneys, a second for their mediation and coordination, and a third that represents the litigation environment within which they operate.

There are ninety-four U.S. Attorneys, one in each federal judicial district. Eighty-nine are scattered in contiguous districts; the remaining five are located in Puerto Rico, the Virgin Islands, the Canal Zone, the Northern Mariana Islands, and the District of Columbia. Each state has at least one district; no district's boundaries cross a state line. District size varies: New York City is divided across three districts and Chicago is located within one.[1] Generally, prosecutors wield important local information. In stark contrast to other national field systems, the U.S. Attorneys usually come from

[1]Eisenstein argues that the construction of those boundaries was random (1978).

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

and return to their specific regions, and they have strong ties to local political and legal circles (Cummings and McFarland 1937; Edwards 1983; Eisenstein 1978; USDOJ EOUSA 1989; Heinberg 1950; Hoffman 1973; McGee and Duffy 1996; Seymour 1956 and 1975).[2]

The attorneys sit at the center of the federal prosecutorial machine. They are responsible for the prosecution of all offenses (28 U.S.C. § 543), but they enjoy broad discretion in both initiating and declining cases (Eisenstein 1978; Perry 1998). This discretion extends to both criminal and civil jurisdiction, but it is especially noticeable in criminal jurisdictions, given that many civil cases involve defending the United States' interests (Edwards 1983, 511; Seymour 1975, 47). No agency can bring civil or criminal charges without agreement from the U.S. Department of Justice (*DOJ*), and the attorneys are the DOJ's field prosecutors. If investigating agencies bring cases directly to her, the attorney acts as agency counsel in the prosecution of violations of federal laws (see Swisher 1939). If the agency forwards a case with a prosecutive memorandum, the attorney chooses whether to complete the investigation and prosecute. Last, the attorney can initiate investigation and prosecution without agency involvement. In each situation the attorney, not her assistant U.S. Attorneys, has sole responsibility whether to initiate or decline prosecution (Seymour 1975, 53).

As Kadish and Kadish (1971, 942) note, there is "substantial nonaccountability to the judiciary for the prosecutor's noncorrupt exercise of his power not to initiate criminal prosecutions." One reason for this conventional wisdom is that the separation of powers guarantees that the decision to prosecute cannot be reviewed by any court, in part to a long-standing concern by the Court about intruding upon the executive branch's constitutional authority (Clayton 1994-1995; Horwitz 1994).[3] As the Fifth Circuit Court noted in *United States v. Smith*:

> [T]he decision of whether or not to prosecute in any given instance must be left to the discretion of the prosecutor. This discretion has been curbed by the judiciary only in those instances where impermissible motives may be attributed to the prosecution, such as bad faith, race, religion, or a desire to prevent the exercise of the defendant's rights (523 F.2d 771,782 [5th Cir. 1975], citations omitted).

Yet cases of political influence date from Edmund Randolph's request to President Washington for authority over the attorneys (Waxman 1998). They include the prosecution of the Alien and Sedition Acts (Holden 2000), escaped slaves and allies in Pennsylvania in 1857 (Katz 1974), local California school boards for excluding Japanese students (Buell 1922), the Long machine

[2]In contrast, see Kaufman (1960) on the value of cycling field agents.

[3]The U.S. Attorney is not bound to follow grand jury indictments and can instead choose not to prosecute following positive jury findings (Seymour 1975:47).

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

during the Franklin D. Roosevelt administration for tax violations (Sindler 1956), Southern law officers for civil rights violations (Swisher 1948), and libel against the Indianapolis *News* over the acquisition of Panama Canal land (Beard and Hayes 1909).

The president's primary mechanism of oversight is the attorney general as head of the Department of Justice. Historically, the attorney general's workload, inadequate budget and staff, and the overlapping authority of the solicitor of the treasury and other departmental officers have seemed to make it impossible for the attorney general to exert control over the U.S. Attorneys (Cummings and McFarland 1939, 219-20). Just as in areal systems, in the districts, the assistant U.S. Attorneys (AUSAs) report only to their local U.S. Attorney.

Given the power of the attorneys in managing their district offices, the first key is their selection: By what means are the principles of these agents chosen? As political appointees, the power of the president to appoint the attorneys (he retains the only power to remove them) is mitigated in two ways. First, appointment occurs with the advice and consent of the Senate, with the resulting involvement of Senate committees. Second, this appointment usually occurs with senatorial courtesy and creates a bond between the appointee and the senators from the state within which the district lies (see Harris 1952).[4]

Once the attorney is in place, oversight by removal is an option; however, it is used infrequently and the local standing of individual attorneys (combined with the role of senators in appointment) can limit its power (Heinberg 1950, 245). Even the attorney general's powers to overrule the U.S. Attorney are suspect, risk local public opinion, and are unclear in impact (Seymour 1975, 47). Even the use of prosecutorial guidelines is limited in practice and effect, and is considered to be "generally malleable and unhelpful" (Maas 1987, 221).

Given the lack of systematic controls once attorneys are placed in the field, structural constraints may serve to enhance national oversight. One means would be to give the DOJ's specialized divisions veto power over an attorney's decisions and so require joint decision making. Yet the areal supervision structure of each attorney's office impedes this type of oversight, for the func-tional divisions' influence itself depends on the Executive Office of the U.S. Attorneys (EOUSA), which is located in Washington, D.C.

[4]See the pending appointment of Strom Thurmond Jr. to be U.S. Attorney for South Carolina.

Hammond's work shows that areal structures are generally prone to refer conflict upward. In this case, the EOUSA's purpose is

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

to mediate this conflict and coordinate across the attorneys' districts, not to act as a central clearinghouse for actions or conflicts within individual offices. The DOJ specialized divisions are interested in the uniform application of the law; the EOUSA's power is to achieve—where possible—this application, given both the geographic dispersion of the attorneys and the nature of their selection.

So the structure of the attorneys' selection (through the president and the Senate), their power to resolve within-office conflict, and the EOUSA's power to resolve conflict welling up from the field combine to form routes for national political oversight. This combination of structural choices is fundamental, and it is even understandable given the localized nature of their positions, which includes relationships with local juries and district judges in order to obtain high conviction rates and keep judges' dockets current (Kaplan 1965).[5] Yet, because prosecutors depend on judges and juries for convictions, these structured interactions produce countervailing pressures on the attorney. On one hand, local juries may cause attorneys to pursue local justice, or reflect local geographic and structural factors. On the other hand, federal district court judges are fairly sensitive to national political trends (Ducat and Dudley 1989), so federal prosecutors may align their behavior with those of judges, especially when the stakes are high.

The power of selection, the internal structure of their offices, and the EOUSA's power to mediate and coordinate meet with a challenge in the attorneys' location and their structured interactions with local juries. But these are reinforced by the attorneys' structured interactions with federal judges—who are vetted in similar ways, although they serve with life appointments. While conventional wisdom and the local nature of the attorneys lend credence to local and lone justice views of federal prosecution, their selection and the EOUSA's mediation and coordination role opens the door to the possibility of enhanced centralized control. For the attorneys, the EOUSA exists because of how areal field supervision encourages exactly this kind and degree of conflict referral from the field to Washington. However, the interactive nature of federal prosecution, where the attorneys operate in federal district and circuit courts, constrains prosecutorial discretion twice. The local nature of juries (which only serves to reinforce the motivation in naming attorneys from the district they serve) encourages a local justice orientation; the attorneys, however, operate in federal courts where judges are often responsive to national political trends. Even if centralized control exists there may be both significant residual responsiveness to local priorities and conditions, and the control itself rests on how dependent the attorneys are on the courts at stages of the prosecutorial process.

[5]This set of local, interactive constraints was ratified in the 1789 Judiciary Act's establishment of a hierarchical judicial structure where higher courts were limited to deciding questions of law. This may have been meant to protect local jury autonomy (Surrency 1987).

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

Model Specification

Do the U.S. Attorneys respond to national political control, do they administer justice with an eye to their local constituents, or is their production a function of internal office characteristics? My claim is that the attorneys are more responsive to national overhead political control—more responsive than in popular accounts—because early structural choices accounted for the handling of conflict within the individual attorneys' districts, between districts, and between the districts and the DOJ headquarters. The likelihood of national political control depends on the structured interactions between the attorneys and judges and juries. Likewise the quality of local responsiveness is composed of two parts: responsiveness due to differences in locality, and differences due to temporal changes in any given locality.

I center my analysis on three types of action: the number of matters handled, cases created, and cases concluded by an attorney in federal district court in a given fiscal year. The number of cases meeting these thresholds is considered useful information regarding the productivity of the attorneys, and has meaning both within the district and in Washington (GAO 1995, 3). These numbers are meaningful, manipulable, and motivated because the attorneys control their own caseloads (U.S. House 1993).[6] Once an attorney receives a possible prosecutorial action, an action becomes a *matter*—a referral not immediately declined but considered further for possible criminal prosecution—when an AUSA spends an hour or longer considering or working on the action. A *case* is a matter that an attorney decides to prosecute through a court action; this threshold is passed when a significant document is filed in court—but does not include affairs conducted before a magistrate, such as misdemeanors. A case is *concluded* when it is disposed of by the district court during a given year.

Specifically, I examine these outputs for the particular category of regulatory actions for three reasons. First, the attorneys are the front-line prosecutors of federal regulatory crimes. No agency can bring civil or criminal charges without agreement from the DOJ, and the attorneys are the DOJ's field prosecutors. Virtually all work in political science on the decision to prosecute by regulatory agencies fails to account for this. Second, regulatory enforcement involves a high degree of discretion. The attorneys have the power to make or break cases because of the lack of mandatory guidelines. Third, regulation involves significant social costs.

My measures of the number of regulatory matters handled, cases created, and cases concluded are from the Executive Office of

[6]In practice, prosecutors focus both on prosecution numbers and on conviction rates because AUSAs operate under the constraints of limited resources, high workloads, and judges interested in maintaining a current docket; convictions signal the value of the cases brought to trial (Seymour 1975; Maas 1987, 224). A low conviction rate may indicate the ineffectiveness of the case screening process of the AUSAs or for the whole office, and wasted opportunities. The media, Congress, and the EOUSA also view the number of cases meeting thresholds as salient measures of departmental activity. The DOJ views aggregate prosecution numbers disaggregated by type of criminal action as important measures of effectiveness and performance. Congress can analyze these numbers quickly for information about the behavior of the attorneys as a group or as individuals. While conviction rates depend on internal screening and selection processes and external review processes, prosecution numbers are informative because conviction rates are. If the constraints of judges and local juries cause attorneys to be concerned about maximizing conviction rates, then prosecution numbers (which reflect the attorneys' actions given this decision rule) also reflect that process. Cases with no chance of success, or where an attorney is unwilling to balance success with internal or external incentives to file, most likely will not to be made. Situations in which the attorney is disposed to decline prosecution will be balanced against a need to maintain high conviction rates.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

the U.S. Attorneys (EOUSA) internal administrative files, both in paper and in electronic form.[7] The measures are event counts, or the number of records occurring in a given year. While the distributions are lower truncated at zero, they have large variances and do not contain a preponderance of zeros. I account for high skewness by calculating the Box-Cox power transform for each measure (Box and Cox 1964).[8]

For these levels, prosecution is a sequence in which the cost of action increases throughout. Matters are handled before cases are created; cases are created before they are concluded. As exhibit 1 shows, the mean number of actions falls from one step to the next, meaning that discretion screens out cases over time. Note that the case conclusion is the point at which the U.S. Attorneys are most dependent on federal judges. My data are for the eighty-nine U.S. Attorneys located in the fifty states for the years 1980 to 1989.[9]

Exhibit 1
Sample Characteristics

Variable	N	Mean	Standard Deviation
Matters handled	890	2.5198	1.0382
Cases created	890	2.3596	1.0697
Cases concluded	890	1.7674	0.9191
Matters handled – average	890	2.5198	0.8957
Matters handled – deviation	890	0.0000	0.5250
Cases handled – average	890	2.3596	0.9008
Cases handled – deviation	890	0.0000	0.5769
Cases concluded – average	890	1.7674	0.7128
Cases concluded – deviation	890	0.0000	0.5803
Population – average	890	14.8192	0.7936
Population – deviation	890	0.0000	0.0373
Establishments – average	890	7.8799	0.8786
Establishments – deviation	890	0.0000	0.0826
PCI – average	890	16.8338	2.8603
PCI – deviation	890	0.0000	1.2814
Local ideology – average	890	46.1712	13.4378
Local ideology – deviation	890	0.0000	6.0431
Senate committee ideology	890	-0.0702	0.0607
Senate delegation ideology	890	0.0033	0.2813
House committee ideology	890	-0.1659	0.0648
House delegation ideology	890	0.0176	0.2289
Presidential ideology	890	0.3877	0.2892
Turnover	890	0.2157	0.4116
Attorney's party	890	0.2326	0.4227
Staff – average	890	2.8429	0.7545
Staff – deviation	890	0.0000	0.2647

[7]Cases considered to be *regulatory offenses* can include (but are not limited to): counterfeiting; customs violations; energy pricing fraud; federal health and safety concerns in the workplace and public; illegal discharges of toxics; copyright violations; and trafficking in contraband.

[8]The Box-Cox power transform is: $y^{(\lambda)} = (y^{\lambda} - 1)/\lambda$, where λ is calculated so that the final distribution of $y^{(\lambda)}$ has minimal skewness.
For *matters handled*, $\lambda = -0.0670759$; for *cases created*, $\lambda = -0.0346654$; for *cases concluded*, $\lambda = -0.0905092$.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

My three sets of independent variables represent local, overhead democracy, and internal mechanisms. For local mechanisms, I include the district's population, its manufacturing climate, its income, and its ideological stance. First, I include the district's population aggregated from county-level measurements (from the Bureau of the Census). Unlike legislative districts, there is no requirement for equal population across attorneys' districts, so larger districts may produce more cases. Yet including population as a causal factor establishes a baseline against which to assess the other effects included in this analysis. If population drives case production, the remaining factors in this analysis—local, national, or internal—form independent factors in addition to the effects of population. Also, the effects of population may depend on the level of analysis: It may drive matter handling, but not case creation or conclusion.

My second local measure is the number of manufacturing establishments in the district (aggregated from the county level, obtained from the Bureau of Economic Analysis' County Business Patterns data, Standard Industrial Classification 19 or 20). I expect that case production increased as the number of establishments increased because the number of establishments represents an upper limit on possible regulatory actions; this is similar to a bureaucratic goal of social welfare maximization (Noll 1985). However, the alternative hypothesis—that production increased when the number of manufacturers fell—may be supportable as well: The leverage of any manufacturer increases, as does the likelihood a manufacturer will not be a small business.

Estimating the effects of variables over time and space involves two questions. Federal prosecutors may produce more cases when the number of establishments is high *relative to other districts*. This *between* statement involves cross-sectional comparison and is a permanent effect. Alternately, a variable may affect case production when its value changes within a given district. This *within* effect is a secular effect. I decompose each explanatory variable over both time and space into its between and within effects. The between effect is the mean for the explanatory variable for the office over all observations for that office in the data; the within effect is the deviation of an observation's value from the mean for that variable for the office. In the case of manufacturing establishments, this will show whether the effect is cross sectional or is the effect of local business cycles.

Third, I include the per capita income for each calendar year (deflated, obtained from BEA regional accounts data). I expect that

[9]While there are both analytical and statistical reasons to concentrate on the actions of large numbers of regions, the number of regions can be manipulated for both political and administrative reasons, such as the 1969 establishment of standard federal regions for federal departments (Fesler 1980). Creating more regions for analytical reasons is no more possible than creating additional states; yet, hav-ing eighty-nine attorneys gives substan-tial degrees of freedom.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

a prosecutor produced fewer actions as per capita income increased to protect local income; this is an external signals model (Noll 1985).[10] My fourth measure is the ideological position of the district, measured as the citizen ideology of the state within which the district is located (the scale is more positive for more liberal districts; see Berry et al. 1998 for measurement details). I expect that prosecutors with more liberal citizens produced more cases. While states are likely to contain multiple districts, unfortunately no reliable measure of county-level citizen ideology exists. While this approach assumes that the variation of ideology within a state across districts is unsubstantial, this is a minimal assumption given that district boundaries change over time and are not associated with population shifts.

In comparison, I include five measures of responsiveness to overhead democracy mechanisms: the ideology of the relevant House and Senate delegations for each U.S. Attorney, the ideology of the House and Senate Judiciary Committees, and an indicator for the ideology of the three presidential administrations included in this analysis. The selection mechanism provides one clear prediction: that the House should not be causal, and of the three political institutions the Senate and the president should dominate. I include measures of the average ideology position for the members of the U.S. Attorneys' district-level House and Senate delegations. The scale is the median Poole and Rosenthal first dimension score (liberalness or conservativism) for each delegation for each year (Poole and Rosenthal 1997; Poole 1998).[11] I expect that when the delegation was more conservative, the U.S. Attorneys produced fewer cases, suggesting a negative relationship. The Senate delegation should dominate the House due to senatorial courtesy in the selection process.

My second measure is the median ideological position on the oversight committees for each year. I include the median ideology measures for the House and Senate Judiciary Committees (Nelson 1993). I expect that the attorneys produced fewer cases when the committees were more conservative; I expect that the Senate effect dominates that of the House.

I include the Poole-Rosenthal first dimension measure to assess the effect of presidential ideology. This measure is consistent for each president and can be compared across presidents.[12] When the president's ideology was more conservative, I expect that the attorneys produced fewer cases. This variable may have differ-ential impact in the case conclusion equation, given the selection mechanism, the president's formal power to remove U.S. Attorneys, and the power of the president to appoint federal judges.

[10]This is calculated as the total income divided by population. An alternate measure is the median per capita income for the district's counties. These are correlated at 0.876.

[11]The scale represents increasing conservativism in the voting records of the median legislator when it is more positive. The underlying measures have been adjusted to achieve temporal stability. A House member is coded as being in the delegation if there is at least an intact one-county overlap between the House district boundaries and the attorney's office boundaries.

[12]An alternate strategy would be to include administration fixed effects. In that case, I would expect the Carter administration to have a positive impact, the first Reagan administration to be negative, and the first Bush administra-tion's impact to be positive. This strategy does not extract any more information than is obtained by the parsimonious one-variable strategy.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

While federal prosecutors hold substantial discretion, each office remains an organization. I include three basic measures of the impact that internal attributes of the office can have on the decisions field offices make. These measures do not fully capture the internal dynamics of the offices, but they go some way toward assessing the concept of splendid isolation or lone justice. First, attorneys' offices are composed of one U.S. Attorney and several AUSAs. As a proxy for the resources an attorney can bring to bear in prosecution, I include the staff for the office for each year (in full-time equivalents, or FTEs). I expect that when the number of staff increased, the office produced more actions. However, while more AUSAs may indicate more resources, each office still contains a *single* U.S. Attorney. Two simple measures directly assess the ability of the attorney to direct the office's actions. First, I include information about whether the attorney's position turned over in a given year. Given the clearance responsibility of the attorney and the role of the EOUSA, I expect that districts under-going transition in the attorney's position produced fewer actions; cases in process remained cases because of uncertainty about the preferences, interests, and leadership style of the next appointee. Second, I include the party affiliation of the attorney. This variable is coded as "1" for Democratic U.S. Attorneys. I expect that Demo-cratic U.S. Attorneys produced more actions. Clearly, these measures do not account for numerous immeasurable attributes of the attorneys and their staffs. I address this below.

Results

I estimate three models of U.S. Attorney performance by generalized estimating equations (GEE), a procedure that accounts for three important features of the prosecution process; GEE is a generalization of generalized linear models (Liang and Zeger 1986; Zeger, Liang, and Albert 1988).[13] First, I calculate the robust estimate of the variance to account for heteroskedasticity, given that the variance for each panel may differ and the units may have variation of scale (Huber 1967; White 1980). The form I use also relaxes the assumption of the independence of observations from common regions (Gail, Tan, and Piantadosi 1988; Kent 1982). Specifically, this addresses concerns about immeasurable office-level effects.

Second, each model assumes that the error correlation structure is *unstructured*. Rather than assess immeasurable office-level effects by including random effects,[14] this approach simultaneously accounts for possible stickiness in office behavior[15] and immeasurable effects by making no specific assumption about the form of the error correlation structure.[16]

[13]The specific assumptions are that the family of distributions is Gaussian, the link is logit, the error correlation structure is unstructured, and the scale parameter is the Pearson chi-squared statistic divided by the residual degrees of freedom (McCullagh and Nelder 1989).

[14]For estimation by GEE, let n_i be the number of observations for a group. $\mathbf{R}$ is the within-group working correlation matrix, a square $\max\{n_i\} \times \max\{n_i\}$ matrix, for modeling the within-group correlation; $\mathbf{R}_{t,s}$ denotes the t,s element. For the GEE equivalent (population-averaged) of a random effects structure, $\mathbf{R}_{t,s} = 1$ if $t = s$; otherwise, $\mathbf{R}_{t,s} = \rho$.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

Third, just as I have chosen three dependent variables to assess the attorneys' behavior, the attorneys may assess their behavior in the same way. For example, an attorney handling matters may alter her intake depending on the number of cases she has in the pipeline or expects to conclude that year, and vice versa. To account for this, I estimate the model for each dependent variable as a function of the explanatory variables and the other two dependent variables with an unstructured error correlation structure.[17]

Exhibit 2 presents the three models. The χ^2 statistic indicates the three models fit well. Exhibit 3 presents the estimated unstructured error correlation matrix for each model. The first two models suggest the need for the inclusion of random effects and an autocorrelation parameter; there is substantial error correlation, but it does not decay at a rate expected under an AR(1) assumption. The third model shows only limited evidence for either random effects or AR(1) errors. This is intuitive, given the ladder effect of the three steps of the prosecution process, and provides some evidence that the structure of interactions matters.

At the outset, case creation acts as a natural process link between matter handling and case conclusion. The number of matters handled depends upon the number of cases created, but not on those concluded, in the time period. The number of cases created depends on the number of matters handled and cases concluded, but the response to matter handling is within office only; case creation is not associated with between-office differences in levels of matters handled. The number of cases concluded depends on the number of cases created but not matters handled.

Internally, the U.S. Attorneys' behavior depends on personal attributes. Fewer matters are handled and cases concluded when the attorney's position turns over; change in the prosecutor's position creates uncertainty about appropriate action. Democratic attorneys handle more matters and conclude more cases. That these attributes operate for matter handling and case conclusion signals that these are important thresholds of discretion: They are entry and exit points in the prosecution process. Staff levels (which are partly determined by district population) affect no performance measure, either between or within districts.

The models also reveal aspects of local regulatory justice. First, across districts, higher population levels are associated with greater numbers of matters handled. This is not surprising since the attorneys' districts are not constructed to equalize population. Population drives matter handling (the prosecutorial entry point), so the lack of a significant effect for case creation and conclusion is intui-

[15]For an AR(1) structure, $R_{t,s} = 1$ if $t = s$; otherwise, $R_{t,s} = \rho^{|t-s|}$.

[16]The only constraint is that the matrix's diagonal elements are 1: $R_{t,s} = 1$ if $t = s$; otherwise, $R_{t,s} = \rho_{t,s}$ (where $\rho_{t,s} = \rho_{s,t}$).

[17]Alternate models include a simultaneous equations model and a seemingly unrelated regression (SUR) equations model, each with autocorrelation and random effects. While the random effects SUR model is easily implemented, it does not account for autocorrelation.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept on April 17, 2013

Exhibit 2
GEE Estimates of U.S. Attorney Production Functions

Variables	Matters Handled		Cases Created		Cases Concluded	
	Coefficient	Semi-Robust SE	Coefficient	Semi-Robust SE	Coefficient	Semi-Robust SE
Matters handled – average			0.0314	0.0265	0.0362	0.0224
Matters handled – deviation			0.1163	0.0207†††	-0.0018	0.0194
Cases handled – average	0.6037	0.2435†			0.7423	0.0258†††
Cases handled – deviation	0.2582	0.0701†††			0.9168	0.0162†††
Cases concluded – average	0.0006	0.3165	1.2012	0.0428†††		
Cases concluded – deviation	-0.0062	0.0623	0.8101	0.0284†††		
Population – average	0.1981	0.0821**	0.0198	0.0358	-0.0129	0.0273
Population – deviation	0.4360	0.8115	0.1002	0.3658	0.3201	0.3041
Establishments – average	0.0179	0.1175	-0.0434	0.0435	0.0416	0.0327
Establishments – deviation	0.4372	0.2154*	-0.0970	0.1878	0.1550	0.1833
PCI – average	0.0074	0.0304	-0.0111	0.0068	0.0105	0.0056*
PCI – deviation	-0.0135	0.0254	-0.0076	0.0125	-0.0064	0.0117
Local ideology – average	-0.0065	0.0063	0.0050	0.0020**	-0.0056	0.0014***
Local ideology – deviation	-0.0012	0.0032	0.0012	0.0018	-0.0022	0.0018
Senate committee ideology	-1.3980	0.6702*	-0.6726	0.3978*	0.8621	0.3617††
Senate delegation ideology	-0.3786	0.1854*	0.0848	0.0709	-0.0893	0.0553
House committee ideology	-0.1221	0.2809	0.0253	0.1892	0.3755	0.1869†
House delegation ideology	-0.1947	0.1840	-0.0822	0.0748	0.0333	0.0546
Presidential ideology	0.5528	0.1386†††	0.2311	0.0848†††	-0.1671	0.0798*
Turnover	-0.0721	0.0368*	0.0260	0.0236	-0.0420	0.0229*
Attorney's party	0.1828	0.0966*	-0.0402	0.0300	0.0631	0.0274*
Staff – average	0.1088	0.1747	0.0705	0.0506	-0.0494	0.0374
Staff – deviation	0.0125	0.1571	0.0736	0.0570	-0.0222	0.0531
Constant	-2.4724	1.1497†	-0.1613	0.3538	0.1922	0.2832
Observations		890		890		890
Groups		89		89		89
Observations/group		10		10		10
Link function		Identity		Identity		Identity
Family		Gaussian		Gaussian		Gaussian
Working correlation matrix		Unstructured		Unstructured		Unstructured
Wald χ^2 (21)		648.51***		4448.79***		8771.58***
Scale parameter		.4598824		.0861207		.0795853

All standard errors adjusted for clustering on U.S. Attorney's district identifier.
* indicates significance at p=0.05, ** at p=0.01, and *** at p=0.001 (one-tailed tests; normally distributed test statistic).
† indicates significance at p=0.05, †† at p=0.01, and ††† at p=0.001 (two-tailed tests; normally distributed test statistic).

Exhibit 3
Estimated Correlation Matrices

	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9	Col. 10
Row 1	1.0000									
Row 2	0.8628	1.0000								
Row 3	0.5965	0.6703	1.0000							
Row 4	0.5023	0.5732	0.7735	1.0000						
Row 5	0.3751	0.5099	0.6588	0.8146	1.0000					
Row 6	0.3259	0.4316	0.5815	0.7372	0.8203	1.0000				
Row 7	0.1986	0.3732	0.4440	0.5555	0.6488	0.7568	1.0000			
Row 8	0.1693	0.3401	0.3866	0.4569	0.5567	0.5760	0.6740	1.0000		
Row 9	0.2551	0.3935	0.4412	0.5065	0.5835	0.6197	0.6261	0.6441	1.0000	
Row 10	0.2590	0.3943	0.4062	0.4247	0.5604	0.6077	0.6527	0.6533	0.8241	1.0000

3a: Working Correlation Matrix for Matter Handling Equation

	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9	Col. 10
Row 1	1.0000									
Row 2	0.5978	1.0000								
Row 3	0.4087	0.5032	1.0000							
Row 4	0.4633	0.4437	0.4432	1.0000						
Row 5	0.2942	0.3296	0.3881	0.4260	1.0000					
Row 6	0.5034	0.4724	0.3866	0.4956	0.4848	1.0000				
Row 7	0.2534	0.3748	0.3143	0.2613	0.3655	0.5984	1.0000			
Row 8	0.2561	0.3473	0.3391	0.3300	0.3409	0.3218	0.5335	1.0000		
Row 9	0.4146	0.3534	0.3860	0.3742	0.3864	0.5284	0.4221	0.4147	1.0000	
Row 10	0.3344	0.2403	0.2807	0.3490	0.2851	0.5076	0.4100	0.3817	0.4258	1.0000

3b: Working Correlation Matrix for Case Creation Equation

	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9	Col. 10
Row 1	1.0000									
Row 2	0.1711	1.0000								
Row 3	0.0770	0.1204	1.0000							
Row 4	0.1595	0.1109	0.0603	1.0000						
Row 5	0.0893	0.1323	0.2560	0.0780	1.0000					
Row 6	0.1812	0.1568	0.1570	0.2558	0.3035	1.0000				
Row 7	-0.0219	0.2639	0.1954	0.0993	0.1849	0.3777	1.0000			
Row 8	0.0317	0.1334	0.1648	0.1690	0.1274	0.0777	0.3950	1.0000		
Row 9	0.0783	0.2378	0.1542	0.2238	0.2112	0.3981	0.2859	0.1577	1.0000	
Row 10	0.1340	0.0816	0.1713	0.2439	0.2288	0.4430	0.3542	0.2966	0.1543	1.0000

3c: Working Correlation Matrix for Case Conclusion Equation

tive. Second, a greater number of manufacturing establishments is associated with a greater number of matters handled within office. This is a strong local response by attorneys to increase regulation when there are more manufacturing establishments and to minimize it when there are few. The relevant comparison for the attorney is to other states of the economy for the district (not other districts' economies); essentially, the attorneys are engaging in cognitive counterfactuals. Third, attorneys in higher income districts create fewer cases; attorneys in more liberal districts create more cases.

Together, these results indicate a strong and intuitive response by the attorneys to local mechanisms. Population forms a local baseline that varies in response to perceived states of the local economy. Income and ideology effects are functions of interoffice

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

comparisons; the state of the manufacturing sector is not. In the case conclusion model, while attorneys in higher income districts create fewer cases, they conclude more. While attorneys in more liberal districts create more cases, they conclude fewer. In sum, this is evidence for opportunistic hedging behavior. Case creation and conclusion have separate opportunity costs, and the attorneys' responsiveness to these aspects of local justice varies with what they are processing. This betrays knowledge of the tradeoffs implicit in different types of costly action.

In this context, there is evidence of systematic responsiveness to overhead democratic mechanisms. When either Senate committee ideology or individual Senate delegations are conservative, the attorneys handle fewer matters. For Senate committee ideology, there is a case creation effect as well. Together, this is evidence for a strong role of selection mechanisms in the oversight of the attorneys: Senatorial courtesy is practiced in nomination and the Senate Judiciary Committee confirms nominations. But these relationships change for case conclusion. Here the attorneys fail to respond in the expected way to committee or delegation conservativism. When either committee is more conservative, the attorneys conclude more cases, suggesting hedging behavior on their part.

This hedging behavior is also reflected in the presidential results. The attorneys respond to presidential conservativism only for case conclusion, the one production function where there are no congressional effects in the expected direction. For the first two measures, there is no evidence of responsiveness to the president. This is evidence of the conditional nature of attorney discretion in case conclusion, as case conclusion depends greatly on the litigation arena within which the attorneys bring cases. Just as the federal courts are susceptible to influence by overhead democratic mechanisms, the attorneys' ability to conclude cases depends on the district court, at least in terms of processing time once matters have become cases (Eisenstein 1978).

CONCLUSIONS

Structural choices have fundamental and continuing effects on the democratic responsiveness of bureaucracies. The purpose of this study is to show that organizational structure helps to determine how agencies process diverse external signals about how they should exercise discretion. For agencies like the U.S. Attorneys, field location creates opportunities for responsiveness to local constituencies. Yet early structural choices about the agency—choices that determine how conflict within offices is resolved, how office leaders are selected, the conditions under which field-level conflict is referred upward, and which external actors the agency

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

must regularly engage with—created routes for national political oversight. The U.S. Attorneys are responsive to national political oversight in surprisingly structured ways.

Three themes run throughout this study. First, the location of federal agents in the field is a fundamental choice in the implementation of national programs. While field location creates poles of attraction for these agents, their responsiveness to national influences is not a foregone conclusion; rather, organizational choices can provide the foundation for national intervention. In this way, the historical contributions of Fesler, Kaufman, and Truman on field service systems are central concerns in both the construction of large nation-states and the organization of national bureaucracies.

Second, these structural choices operate at multiple levels. How an agency resolves conflict forces consideration of the selection of the leaders holding that power of resolution. The division of labor across agencies creates the demand for structured interactions between agencies. Recent scholarship on the political control of the bureaucracy—in part, through a concentration on the canonical form of principal-agency—rarely examines the effects of these structural choices on democratic responsiveness.

Last, accounting for the dual effects of field location and structural choice provides a base for insight into the practice of prosecutorial discretion by the U.S. Attorneys, the nation's lawyers. Rather than the splendid isolation often portrayed in the popular press, the attorneys are responsive to both the unique features of the areas in which they practice and the national political principals by whom they are selected and at whose pleasure they serve. This finding is not an indictment of the attorneys or of politicians. Rather, it is a statement of the richness of the institutional framework the early designers of the Republic put in place for meeting competing goals: the prosecution of violations of the nation's laws, and the respect for local interests, customs, and needs. At a minimum, these results show that the U.S. Attorneys are incredibly adept at navigating these competing pressures.

Together, these themes provide support for a design approach to understanding how public bureaucracies respond to calls for democratic responsiveness. Just as the hope that the rule of law would constrain public servants subsided with concerns about a lack of political oversight, the swing of the pendulum toward canonical principal-agency and away from institutional concerns about the design of agencies has left political views of public administration poorer. Indeed, organizational choices are fundamental in bureaucratic politics, just as in all political organizations.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

REFERENCES

Axelrod, Robert.
1970 *Conflict of Interest*. Chicago: Markham.

Baker, Nancy V.
1992 *Conflicting Loyalties: Law and Politics in the Attorney Gen-eral's Office, 1789-1990*. Law-rence: University Press of Kansas.

Beard, C.A., and Hayes, C.H.
1909 "Record of Political Events." *Political Science Quarterly* 24:2:343-76.

Berry, William D.; Ringquist, Evan J.; Fording, Richard C.; and Hanson, Russell L.
1998 "Measuring Citizen and Govern-ment Ideology in the American States, 1960-93." *American Journal of Political Science* 42:1:327-48.

Boulding, Kenneth.
1964 "A Theory of Pure Conflict Applied to Organizations." In George Fisk, ed. *The Frontiers of Management Psychology*. New York: Harper and Row.

Box, GE.P., and Cox, D.R.
1964 An Analysis of Transformations." *Journal of the Royal Statistical Society: Series B* 26:2:211-52.

Brehm, John, and Gates, Scott.
1997 *Working, Shirking, and Sabotage: Bureaucratic Response to a Democratic Public*. Ann Arbor: University of Michigan Press.

Buell, Raymond Leslie.
1922 "The Development of the Anti-Japanese Agitation in the United States." *Political Science Quarterly* 37:4:605-38.

Burnham, David.
1996 *Above the Law: Secret Deals, Political Fixes, and Other Mis-adventures of the U.S. Depart-ment of Justice*. New York: Scribner.

Clark, Ramsey.
1970 *Crime in America: Observation on Its Nature, Causes, Preven-tion, and Control*. New York: Simon & Schuster.

Clayton, Cornell W.
1992 *The Politics of Justice: The Attor-ney General and the Making of Legal Policy*. Armonk, N.Y.: Sharpe.
1994-1995 "Separate Branches—Sepa-rate Politics: Judicial Enforcement of Congressional Intent." *Political Science Quarterly* 109:5:843-72.
1995 *Government Lawyers: The Fed-eral Legal Bureaucracy and Presidential Politics*. Lawrence: University Press of Kansas.

Cummings, Homer, and McFarland, Carl.
1937 *Federal Justice Chapters in the History of Justice and the Federal Executive*. New York: Macmillan.

Dalton, Gene W.; Barnes, Louis B.; and Zaleznik, Abraham.
1968 *The Distribution of Authority in Formal Organizations*. Cam-bridge, Mass.: MIT Press.

Davis, Kenneth Culp.
1969 *Discretionary Justice: A Preli-minary Inquiry*. Baton Rouge: Louisiana State University Press.

Dickinson, John.
1928 "Judicial Control of Official Discretion." *American Political Science Review* 22:2:275-300.

Downs, Anthony.
1967 *Inside Bureaucracy*. Boston: Little, Brown.

Ducat, Craig R., and Dudley, Robert L.
1989 "Federal District Judges and Presidential Power during the Postwar Era." *Journal of Politics* 51:1:98-118.

Edwards, John S.
1983 "Professional Responsibilities of the Federal Prosecutor." *Uni-versity of Richmond Law Review* 17:511-38.

Eisenstein, James.
1978 *Counsel for the United States: U.S. Attorneys in the Political and Legal Systems*. Baltimore: Johns Hopkins University Press.

Eisner, Marc Allen, and Meier, Kenneth J.
1990 "Presidential Control versus Bureaucratic Power: Explaining the Reagan Revolution in Anti-trust." *American Journal of Politi-cal Science* 34:1:269-87.

Fesler, James W.
1949 *Area and Administration*. Tusca-loosa: University of Alabama Press.
1973 "The Basic Theoretical Question: How to Relate Area and Function." In Leigh E. Grosenick, ed. *The Administration of the New Fed-eralism*. Washington, D.C.: Amer-ican Society for Public Administra-tion.
1980 *Public Administration: Theory and Practice*. Englewood Cliffs, N.J.: Prentice-Hall.

Finer, Herman.
1941 "Administration Responsibility and Democratic Government." *Public Administration Review* 1:335-50.

Fiorina, Morris.
1989 *Congress: Keystone to the Wash-ington Establishment*, 2d ed. New Haven, Conn.: Yale University Press.

Freund, Ernst.
1915 "The Substitution of Rule for Dis-cretion in Public Law." *American Political Science Review* 9:4:666-76.

Gail, M.H.; Tan, W.Y.; and Piantadosi, S.
1988 "Tests for No Treatment Effect in Randomized Clinical Trials." *Biometrika* 75:1:57-64.

George, Peter.
1989 "The Role of the Federal Prose-cutor in Initiating and Declining Prosecution." *Florida Bar Journal* (Dec.):61-63.

Goodnow, Frank.
1905 "The Growth of Executive Dis-cretion." *Proceedings of the American Political Science Association* 2:29-44.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

Gormley, William T.
1989 *Taming the Bureaucracy: Muscles, Prayers, and Other Strategies*. Princeton, N.J.: Princeton University Press.

Guild, Frederic H.
1926 "Round Table on Legislation: Delegation of Legislative Discretion to Administrative Agencies." *American Political Science Review* 20:1:143-46.

Gulick, Luther.
1937 "Notes on the Theory of Organization." In Luther Gulick and Lyndall Urwick, eds. *Papers on the Science of Administration*. New York: Institute of Public Administration, Columbia University.

Hammond, Thomas.
1986 "Agenda Control, Organizational Structure, and Bureaucratic Politics." *American Journal of Political Science* 30:2:379-420.

Harris, Joseph P.
1952 "The Courtesy of the Senate." *Political Science Quarterly* 67:1:36-63.

Hayek, Friedrich A.
1944 *The Road to Serfdom*. Chicago: University of Chicago Press.

Hedge, David M., and Scicchitano, Michael J.
1994 "Regulating in Space and Time: The Case of Regulatory Federalism." *Journal of Politics* 56:1:134-53.

Heinberg, John C.
1950 "Centralization in Federal Prosecutions." *Missouri Law Review* 15:(June):244-58.

Hoffman, Paul.
1973 *Tiger In the Court*. Chicago: Playboy Press.

Horwitz, Robert B.
1994 "Judicial Review of Regulatory Decisions: The Changing Criteria." *Political Science Quarterly* 109:1:133-69.

Huber, P.J.
1967 "The Behavior of Maximum Likelihood Estimates under Nonstandard Conditions." In *Proceedings of the Fifth Berkeley Symposium on Mathematical Statistics and Probability*. Berkeley: University of California Press.

Kadish, Sanford H., and Kadish, Mortimer R.
1971 "On Justified Rule Departures by Officials." *California Law Review* 59:905-60.

Kaplan, John.
1965 "Prosecutorial Discretion—A Comment." *Northwestern University Law Review* 60:174-93.

Katz, Jonathan.
1974 *Resistance at Christiana: The Fugitive Slave Rebellion, Christiana, Pennsylvania, September 11, 1851: A Documentary Account*. New York: Crowell.

Kaufman, Herbert.
1960 *The Forest Ranger*. Washington, D.C.: Resources for the Future.
1981 *The Administrative Behavior of Federal Bureau Chiefs*. Washington, D.C.: Brookings.

Kent, John T.
1982 "Robust Properties of Likelihood Ratio Tests." *Biometrika* 69:1:19-27.

Knott, Jack H., and Miller,Gary J.
1987 *Reforming Bureaucracy. The Politics of Institutional Choice*. Englewood Cliffs, N.J.: Prentice-Hall

Kochen, Manfred, and Deutsch, Karl W.
1980 *Decentralization*. Cambridge, Mass.: Oelgeschlager, Gunn & Hain.

Lewis-Beck, Michael S.
1979 "Maintaining Economic Competition: The Causes and Consequences of Antitrust." *Journal of Politics* 41:(1):169-91.

Liang, Kung-Yee, and Zeger, Scott L.
1986 "Longitudinal Data Analysis Using Generalized Linear Models." *Biometrika* 73:2:13-22.

Lowi, Theodore.
1979 *The End of Liberalism*. New York: Norton.

Maas, Arthur.
1987 "U.S. Prosecution of State and Local Officials for Political Corruption: Is the Bureaucracy Out of Control in a High-Stakes Operation Involving a Constitutional System." *Publius: The Journal of Federalism* 17:(summer):195-230.

McCubbins, Mathew, D., and Schwartz, Thomas.
1984 "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 2:1:165-79.

McCullagh, Peter, and Nelder, John A.
1989 *Generalized Linear Models*, 2d ed. London: Chapman & Hall.

McGee, Jim, and Duffy, Brian.
1996 *Main Justice: The Men and Women Who Enforce the Nation's Criminal Laws and Guard Its Liberties*. New York: Simon & Schuster.

Miller, Gary J.
1992 *Managerial Dilemmas*. Cambridge: Cambridge University Press.

Moe, Terry M.
1985 "Control and Feedback in Economic Regulation: The Case of the NLRB." *American Political Science Review* 79:4:1094-116.
1987 "An Assessment of the Positive Theory of 'Congressional Dominance'." *Legislative Studies Quarterly* 12:4:475-520.
1989 "The Politics of Bureaucratic Structure." In Paul E. Peterson and John E. Chubb, eds. *Can the Government Govern?* Washington, D.C.: Brookings.

Nathan, Richard P.
1983 *The Administrative Presidency*. New York: Wiley.

Nelson, Garrison.
1993 *Committees in the Congress: 1947-1992: Committee Jurisdictions and Member Rosters*, vol. 1. Washington, D.C.: CQ Press.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

Noll, Roger G.
1985 "Government Regulatory Behavior: A Multidisciplinary Survey and Synthesis." In Roger G. Noll, ed. *Regulatory Policy and the Social Sciences*. Berkeley: University of California Press.

Perry, H.W. Jr.
1998 "United States Attorneys–Whom Shall They Serve?" *Law and Contemporary Problems* 61: (winter):129-48.

Pettigrew, Andrew M.
1979 "On Studying Organizational Cultures." *Administrative Science Quarterly* 24:(Dec.):570-81.

Poole, Keith T.
1998 "Recovering a Basic Space from a Set of Issue Scales." *American Journal of Political Science* 42:3:45-62.

Poole, Keith, and Rosenthal, Howard.
1997 *Congress: A Political-Economic History of Roll Call Voting*. New York: Oxford University Press.

Rabin, Robert L.
1971 "Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion." *Stanford Law Review*. 24:1036-91.

Ripley, Randall B., and Franklin, Grace A.
1976 *Congress, the Bureaucracy, and Public Policy*. Homewood, Ill.: Dorsey.

Romzek, Barbara, and Hendricks, J. Stephen.
1982 "Organizational Involvement and Representational Bureaucracy: Can We Have It Both Ways?" *American Political Science Review* 76:1:75-82.

Scholz, John T.; Twolmby , John; and Headrick, Barbara.
1991 "Street Level Political Control over the Bureaucracy." *American Political Science Review* 85:3:829-51.

Scholz, John T., and Wei, Feng Heng.
1986 "Regulatory Enforcement in a Federalist System." *American Political Science Review* 80:4:1249-70.

Seymour, Whitney North Jr.
1956 "Why Prosecutors Act like Prosecutors." *Record of the Association of the Bar of the City of New York*. 11:(June):302-13.
1975 *United States Attorney*. New York: William Morrow.

Simon, Herbert
1947 *Administrative Behavior*. New York: Free Press.

Sindler, Allan P.
1956 *Huey Long's Louisiana: State Politics, 1920-1952*. Baltimore: Johns Hopkins University Press.

Smith, B.C.
1985 *Decentralization*. London: Allen & Unwin.

Stone, Donald C.; Loveridge, Earl W.; Keplinger, Peter; Mitchell, William L.; and Fesler, James W.
1942 *Washington-Field Relationships in the Federal Service*. Washington, D.C.: Graduate School of the U.S. Department of Agriculture.

Surrency, Erwin C.
1987 *History of the Federal Courts*. New York: Oceana.

Swisher, Carl B.
1939 "Federal Organization of Legal Functions." *American Political Science Review* 33:6:973-1000.
1948 "The Supreme Court and the South." *Journal of Politics* 10:2:282-305.

Truman, David B.
1940 *Administrative Decentralization: A Study of the Chicago Field Offices of the United States Department of Agriculture*. Chicago: University of Chicago Press.

Tullock, Gordon.
1965 *The Politics of Bureaucracy*. Washington, D.C.: Public Affairs Press.

U.S. Department of Justice, Executive Office for United States Attorneys (USDOJ EOUSA).
1989 *Bicentennial Celebration of the United States Attorneys: 1789-1989*. Washington, D.C.: Executive Office for United States Attorneys.
2000 *United States Attorneys: Mission Statement*. http://www.usdoj.gov/usao/eousa/usa_mission.html.

U.S. General Accounting Office (USGAO).
1995 *U.S. Attorneys: More Accountability for Implementing Priority Programs Is Desirable*. GAO/GGD-95-150.

U.S. House, Government Operations Committee.
1993 *Hearing on Are Federal Prosecutors Located Where We Need Them?* Washington, D.C.: Government Publishing Office.

Wallace, Schuyler C.
1930 "Nullification: A Process of Government." *Political Science Quarterly* 45:3:347-58.

Waxman, Seth P.
1998 "'Presenting the Case of the United States as It Should Be': The Solicitor General in Historical Context." Address to the Supreme Court Historical Society by the Solicitor General of the United States, June 1.

Weingast, Barry, and Moran, Mark.
1983 "Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission." *Journal of Political Economy* 91:5:765-800.

West, William F.
1984 "Structuring Administrative Discretion: The Pursuit of Rationality and Responsiveness." *American Journal of Political Science* 28:(2):340-60.

White, Halbert.
1980 "A Heteroskedasticity-consistent Covariance Matrix Estimator and a Direct Test for Heteroskedasdisticity." *Econometrica* 48:4:817-30.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013

Wood, B. Dan.
1988 "Principals, Bureaucrats, and Responsiveness in Clean Air Enforcement." *American Political Science Review* 32:1:213-37.
1990 "Does Politics Make a Difference at the EEOC?" *American Journal of Political Science* 34:2:503-30.
1992 "Modeling Federal Implementation as a System." *American Journal of Political Science* 36:1:40-67.

Wood, B. Dan, and Anderson, James E.
1993 "The Politics of U.S. Antitrust Regulation." *American Journal of Political Science* 37:1:1-39.

Wood, B. Dan, and Waterman, Richard W.
1994 *Bureaucratic Dynamics: The Role of Bureaucracy in a Democracy.* Boulder, Colo.: Westview.

Zeger, Scott L.; Liang, Kung-Yee; and Albert, Paul S.
1988 "Models for Longitudinal Data: A Generalized Estimating Equation Approach." *Biometrics* 44:4:1049-60.

Downloaded from http://jpart.oxfordjournals.org/ at D H Hill Library - Acquis Dept S on April 2, 2013