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978-0-521-87279-9 - The Craft of Bureaucratic Neutrality: Interests and Influence in Governmental Regulation of Occupational Safety

Gregory A. Huber

Excerpt

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Introduction

How can one reconcile the apparent conflict between political understandings of bureaucracy and Weberian conceptions of administrative neutrality? As universal explanations, neither claim – that administration is intrinsically political or that it is purely impartial – is satisfactory. Government agencies at times implement the law in ways that seem rife with political considerations, while at other times the machinations of administration seem largely technocratic and above the political fray. What, however, are the appropriate boundaries of, and interactions between, each characterization?

The argument advanced here is that the stark dichotomy between political and bureaucratic understandings of administrative behavior is a false one. By adopting the language of neutrality and efficiency at the core of the Weberian account of neutrally competent modern bureaucracy, administrative agencies can serve political ends. Agency leaders guide how the law is implemented through internal management practices that seek to minimize both agency inefficiency and the susceptibility of lower-level bureaucrats to outside influences. In critical ways, then, subordinate bureaucrats exemplify Weber's description of "[t]he 'objective' discharge of business . . . according to calculable rules and 'without regard for persons'" (1946: 215). At the same time, centralized administrative decisions move implementation away from "pure" neutrality to something more strategically valuable for agency leaders.

In sum, "strategic neutrality" is an implementation practice that simultaneously serves agency leaders' management and political needs. It helps guide public policy toward desired ends while minimizing the likelihood that outsiders will gain sufficient political strength to overrule agency

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decisions. Strategic neutrality therefore allows unelected agency officials to become limited, but important, independent political actors capable of shaping policy and subsequent political conflict.

That the language of neutrality and efficiency is used for political ends does not mean that these are empty concepts, however. Government implementation decisions are rarely “purely” neutral, in that they often incorporate important political calculations for differentiating among the recipients of government benefits and costs. (Moreover, even objectively neutral policy can produce disparate outcomes because of preexisting differences in society.) At the same time, the strategic neutrality that emerges is hardly either random or solely targeted to reward the powerful. Instead, it serves to limit particularism by routinizing and centralizing throughout entire agencies decisions about who is worthy of “special treatment.” Likewise, efficiency provides a benchmark against which to compare the relative cost of different political achievements. Agencies that can provide desirable outcomes in return for the least political investment (in terms of money and the time spent placating opponents) are more likely to survive than those that require greater attention.

The idea that bureaucracies adopt policies that are “strategically neutral” and then implement them through effective control of subordinates has important implications for political science and public administration alike. Most significantly, it suggests that the combination of internal administrative concerns and external political considerations together affect public policy. How the law is written makes little difference if agencies are unable to implement it; nor will administrators be able to generate support for sound policy ideas if they are unable to bring them to fruition. By contrast, agencies without the discretion to shape public policy have little ability to guide political conflict. When agencies have the authority and means to effectively alter how the law is implemented, however, these administrative machinations matter. Not only does this administratively directed policy immediately influence how the law is carried out, it also mediates external political pressure and alters the nature of subsequent political conflict about agency behavior. Public administration and political science are therefore inseparable.

1. Political Science, Public Administration, and Political Influence on Bureaucracy

There is long-standing scholarly interest in the relationship between political influence and how government agencies implement the law. Normative

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scholarship on this topic is concerned with the appropriate operation of American government. For instance, Lowi (1979) criticizes the delegation of policy-making authority to the bureaucracy, arguing that it inevitably entrenches organized interests, is contrary to the public good, and subverts the rule of law. Other scholars (e.g., Wood and Waterman 1994) claim, however, that the ongoing influence of interest groups and elected leaders on how the law is enforced demonstrates the health of American democracy itself. Roughly, they argue that because delegation is inevitable, control of implementation is a legitimate form of governance.

This debate suggests that two additional forms of inquiry are in order. The first is theoretical, the second empirical. On the theoretical side, do government agencies change how they implement the law in response to the influence of their elected overseers and powerful interest groups? If so, when? If the bureaucracy is ungovernable or if administrative decisions are purely apolitical applications of the law to the facts at hand, one would expect agencies to be largely unresponsive to outside pressures. On the other hand, the real world of politics is messy. Agencies operate with broad and uncertain mandates, and their decisions substantially shape the implementation of public policy. Given bureaucratic discretion, bureaus may very well look to the political realm for guidance in choosing how to enforce the law. Not surprisingly, therefore, political scientists have variously hypothesized that agencies are “dominated” by powerful congressional committees (Weingast and Moran 1983); that bureaucratic structures and procedures advantage certain groups but not others (Moe 1989); that powerful interest groups are able to influence directly how subordinate bureaucrats implement the law (Scholz et al. 1991); and that interest groups “capture” the agencies tasked to oversee them (Huntington 1952).

At the same time, public administration scholars and those studying the sociology of organizations have pointed to factors internal to the bureaucracy in explaining administrative performance. In this view, the ideology of bureaucratic leaders (and their commitment to neutral and effective policy implementation), the recruitment and socialization of professional experts, and simple management routines are the primary sources of bureaucratic outputs. In practice, it is argued, many bureaucratic agencies implement public policy in a way that resembles the neutral competence ideal advocated in Weber’s account of a professionalized bureaucracy.

1.1 The Political Power of Neutrality

Seemingly apolitical bureaucratic decisions about policy implementation nonetheless have significant political implications. As early as the 1960s,

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for instance, examinations of the practices of urban service bureaucracies revealed the distributional consequences of internally generated bureaucratic decision rules for “who gets what and how.” The “neutral” practice of forgoing street repaving in areas slated for utility work or of assigning library resources based on patterns of use can create service delivery patterns that mirror important political divisions (Levy et al. 1974). Similarly, basing city trash collection or environmental enforcement on “neutral” measures of, respectively, waste production or citizen complaints produces a distribution of government action that is politically relevant (Jones et al. 1977; 1978). Administratively focused scholars, however, often argue against interpreting these implementation decisions as overtly political. Rather, they are merely unforeseen consequences of professional management decisions by control-, expertise-, and routine-oriented managers as manifested in politically relevant policy decisions.

I argue that these seemingly incompatible visions of bureaucracy – externally constrained by the political environment or internally driven by bureaucratic preferences about appropriate behavior and the need to control subordinates – are in fact manifestations of the same reality. Of course, this is not an entirely new statement. Others have suggested that how bureaucracies are managed internally is linked to the external political environment (Moe 1987) and that internal management has important implications for efforts by outsiders to control the bureaucracy (Carpenter 2001). But are the central Weberian attributes of professional neutrality and efficiency incompatible with political visions of contemporary public bureaucracy? The answer suggested here is not at all.

Rather, adopting the language of efficiency and the practice of “neutral” implementation can itself be a political strategy. This practice of strategic neutrality is driven simultaneously by internal management needs of bureaucratic leaders and the linkages between external political support and an agency’s behavior. Therefore, the observation that bureaucracies at times develop and sustain patterns of policy implementation that are “neutral” along some given dimension of political conflict should not lead one to reject the notion of political control. Nor, however, should one infer from bureaucratic responsiveness along a given dimension that bureaucracies are politically impotent. Rather, the language of efficiency allows an agency to defend itself against certain efforts to “politicize” dimensions of its behavior. Additionally, by implementing policy that is “strategically neutral,” an agency can attempt to prevent the formation of political coalitions that might otherwise garner the support necessary to change agency behavior. This is a limited form of political power, but

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it is power that nonetheless has important implications for understanding the contours of public policy outcomes and the external governance of the bureaucracy.

Existing theories of political control – congressional dominance, agency design, and direct and indirect interest group influence – are therefore best understood as potential constraints on bureaucratic power. Bureaucratic leaders, when imbued with discretion, make policy choices with significant implications for how the law is carried out. Agency leaders' decisions are limited, however, by both internal management concerns and the need to secure political support. One important strategy that achieves these twin ends in the area of regulation is strategic neutrality. An important contribution of this perspective is to identify the reasons why some dimensions of policy choice become subject to larger political conflict (e.g., the appropriate level of spending on government safety regulation) whereas others do not (e.g., whether federal inspectors should be more aggressive in one state than in another). Thus, the theory helps to explain how the strategic construction of administrative neutrality is in fact a political choice with significant implications for political conflict.

The dissonance among existing theoretical perspectives on bureaucratic behavior is echoed in the uncertainty surrounding empirical work on the relationship among interest groups, elected officials, and how agencies implement the law. Writing about grant allocation, for instance, Arnold reports that “bureaucrats appear to allocate benefits strategically in an effort both to maintain and to expand their supporting coalitions” (1979: 207). In examining a broader set of grant programs, however, Rich concludes that “political influence . . . accounted for very little in the distribution of program funds. . . . [Economic Development Agency] officials do a relatively good job of targeting grant allocations to the neediest places” (1989: 207–208).

1.2 The Need for Holism in Understanding Bureaucratic Power

Perhaps this inquiry will help us to understand how these seemingly irreconcilable characterizations of bureaucracy persist. In general, neither bureaucratic choice nor real political conflict is readily reducible to a single measure. Therefore, finding that changes in some aspect of bureaucratic performance correlate with external political stimuli does not prove that all bureaucratic decisions will respond similarly to, for instance, changes in the preferences of the relevant congressional oversight committee. Likewise, merely identifying some pattern of bureaucratic decision making that seems unresponsive to the wishes of powerful actors does not mean

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that bureaucrats are immune to political pressure. In general, some of the persistent disagreement about the nature of political control may simply reflect the fact that different scholars have taken different cuts at what an agency does, thereby presenting divergent pictures of a unified political animal.

Given these concerns, it is perhaps more useful to examine holistically, rather than piecemeal, bureaucratic choices in the implementation of the law. This approach serves two ends. First, it helps to illuminate how and when bureaucratic choices about implementation are constrained by external political pressures. Significantly, when external political threats exist, bureaucratic leaders may choose to heed these pressures in order to avoid being compelled to do so. These external threats are best seen as constraints, however, and not as immutable external mandates. Despite persistent external political pressure, bureaucratic leaders can still make discretionary choices about policy implementation that affect the likelihood of garnering support or opposition.

Second, examining all aspects of implementation helps to clarify the interactions among the multiple dimensions of policy choice at stake in the execution of the law. Strategic choices along one dimension of policy choice – for instance, which businesses a regulatory agency should target for inspection – may alter the support an agency receives for enforcement more generally. An agency may therefore make and sustain unpopular targeting decisions because this allows it to sustain political support elsewhere. But analyzing aggregate agency behavior along a single dimension – for example, how many inspections it conducts or the number of citations it issues – will miss these critical machinations. The interactions between external politics and internal management efforts to direct subordinate bureaucrats along the many dimensions of choice in policy implementation may not be clear without a wholesale consideration of how an agency implements the law.

2. The OSH Act Case

My general theoretical argument is advanced in the context of an investigation of federal law governing occupational safety. In order to better understand how unelected officials affect the enforcement of the law and when they adjust their implementation decisions in response to political pressure, I examine how the Occupational Safety and Health Administration (OSHA), in cooperation with state agencies, enforces the Occupational Safety and Health Act of 1970 (OSH Act).

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This is a fruitful case for understanding the nature and limits of bureaucratic power for several reasons. First, OSHA is widely perceived as highly constrained by its political environment. The OSH Act was enacted during the Nixon presidency and came into force in a political environment that was already increasingly hostile to government regulation. Despite limited funding and near constant attacks from the businesses community and conservative Republicans, however, the agency has persisted in supporting a credible enforcement presence. This perseverance, even in the face of unified Republican control of the executive and legislative branches, suggests that an agency that would otherwise be characterized as a political football caught between liberal and conservative extremes has managed to defuse a substantial portion of the conservative opposition that initially fought for the agency's abolition. It has done so without becoming aligned with business interests, becoming hamstrung by the red tape originally imposed on it (Moe 1987), or simply responding reflexively to the contemporaneous power of business and labor groups. OSHA is therefore a tough case; if one can establish that it embraced strategic neutrality to become an independent (albeit limited) policymaker, then many less-constrained agencies should be similarly empowered.

The second reason this is a useful case for inquiry is that enforcement of the OSH Act involves numerous decisions made by actors in different political environments at different levels within OSHA's hierarchy. When OSHA issues a citation to an employer, it is the culmination of a complex chain of events involving the choice of an inspection target, a visit by an inspector to a workplace, the interpretation of OSHA standards, and the subsequent drafting and review of a citation. OSHA and state inspectors are in this way similar to forest rangers (Kaufman 1960), Environmental Protection Agency enforcement personnel (Gordon 1999), and numerous other government agents who perform tasks in the field, away from the direct review of agency leaders. The structure of OSHA's field enforcement program is therefore critical in shaping how the law is enforced and directly links internal administrative decisions to the political conflict surrounding the OSH Act. If OSHA's leaders are to pursue a strategically neutral enforcement strategy, they must overcome these centrifugal tendencies.

Previous scholarship, however, has characterized OSHA's enforcement posture as highly responsive to local political concerns. Scholz and colleagues (1991), for example, conclude that local political actors (interest groups and elected officials) affect the vigor with which OSHA's field-level bureaucrats enforce the law by changing how the agency behaves in different localities. By this account, perhaps OSHA has survived by

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engaging in enforcement that is calibrated to appease different local constituencies. Such an explanation, while enticing, seems inconsonant with business and labor concerns about the competitive costs of regulation. Businesses subject to more aggressive regulation than their competitors are at a competitive disadvantage. It therefore seems unlikely that this sort of discernment would have saved OSHA from its political opponents.

In this respect, studying OSHA is ideal because it is possible to disaggregate the regulatory process. At OSHA, the routine of choosing and inspecting workplaces is repeated thousands of times per year, and the result of every inspection is recorded in thorough detail. This makes it possible to diagnose the means of political influence on enforcement outcomes and related management efforts to mitigate or encourage this responsiveness. By examining variation in OSHA's treatment of similar regulated employers, one can assess whether inequality is related to differences in regulatory effort (the number of inspectors an agency deploys or the number of inspections that these inspectors conduct), fair treatment (more aggressive enforcement in politically supportive areas), or perhaps even behavior by workers or employers at regulated firms (e.g., whether or not workers complain about workplace hazards and whether or not employers make efforts to alleviate workplace hazards).¹ This diagnosis is essential for understanding whether and how external influences affect bureaucratic decisions.

To give a brief sense of my findings in this regard, the analysis in the following pages confirms this empirical pattern – more aggressive and persistent enforcement in some areas than in others – but disputes the attribution of influence. OSHA does not appear to tailor enforcement to appease local constituencies. Instead, OSHA's allocation of staff, choice of workplaces to inspect, inspector effort, and stringency of inspections are largely consistent across geographic areas. Enforcement variation does persist, however, both because of variation in the geographic distribution of the businesses OSHA targets for frequent inspections – large businesses in unsafe industries – and because of variation in the behavior of employers and workers – their willingness to exercise their statutory right to complain to OSHA and participate in workplace inspections. Attributing this variation to political influence on discretionary OSHA decisions in the field is therefore incorrect.

¹ The terms “employer,” “business,” and “firm” are used interchangeably throughout this book. This simplification glosses over differences between nonprofit employers (e.g., universities) and private businesses.

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Clearly, this does not demonstrate that politics per se is irrelevant. Rather, OSHA's leadership has made a political choice to undertake a geographically neutral inspection strategy while discriminating among businesses on the basis of size, industry of operation, and compliance history. Recast in this light, political scientists are correct to doubt claims of absolute neutrality in enforcement, but perhaps too quick to reject evidence of successful efforts by national agency leaders to insulate field enforcement efforts from local political influences.

Furthermore, the bifurcated federal and state enforcement of OSHA standards provides a window into how different bureaucracies implement the same task. In twenty-one states, OSHA has granted primary enforcement authority to a state agency.² Examining variation in how the law is enforced across each of these agencies allows one to assess whether differences in state politics affect the generic imperative for bureaucratic leaders to build supportive coalitions and control their subordinates. Additionally, understanding variation in the shared federal and state enforcement of a federal statute is important because one of the principal justifications for federal action is the claim that the states are subject to competitive pressures that deter aggressive regulation and redistribution (Fesler 1949). A uniform federal statute, according to this argument, is supposed to alleviate these pressures. If allowing the states to participate in the enforcement process re-creates the pressures for a "race to the bottom," however, it calls into question both the reason for allowing state enforcement of federal law in the first place and whether aggressive federal enforcement is politically feasible when states are also active in enforcing the law.

Finally, beyond this focus on the nature of bureaucratic choice, governance of OSHA is important because enforcement of the OSH Act has a large effect on workers, individual businesses, and the national economy. As Table I.1. shows, 12 percent of the nation's employees, and 25 percent of workers in the manufacturing sector, work at establishments that are inspected by OSHA or the states in a given year.³ In 1992 alone, OSHA imposed \$77 million in penalties for violations of the OSH

² The states are Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Additionally, Connecticut, New Jersey, and New York have programs restricted to state and local public employees. In all states, federal OSHA retains enforcement authority for federal employees and most maritime activity.

³ Thus, the fact that OSHA and the states inspect only 2 percent of the nation's businesses every year dramatically understates the scope of OSH Act enforcement.

TABLE 1.1. *OSH Act inspection rates, 1995*

	Overall	Manufacturing
Number of private sector establishments	6,660,864	402,030
Number inspected ^a	96,847	25,119
Percent inspected	1.45%	6.25%
Number of private sector employees	103,573,156	19,939,124
Number of employees whose workplace was inspected	12,218,376	4,962,924
Percent subject to inspection	11.80%	24.89%

^a Includes state and federal inspections. All figures are for calendar year 1995.
Source: OSHA IMIS database and Bureau of the Census County Business Patterns data.

Act and conducted forty-eight thousand inspections.⁴ These inspections and penalties are associated with substantial improvements in workplace safety (Gray and Scholz 1993). But this worker protection is not without its costs. Gray (1987) estimates that OSHA regulations accounted for about 20 percent of the decline in manufacturing productivity in the 1970s, and critics charge that OSHA’s ergonomics standard would have imposed annual costs in excess of \$18 billion dollars on private employers had it not been repealed by Congress (Dreazen 2000).

3. Research Approach

The idea of strategic neutrality suggests that bureaucratic leaders are not merely acted upon by external political forces, but can also proactively shape the nature of their political environment. Simultaneously, the limits of this power are demarcated both by agency leaders’ management concerns and their need to secure political support from elected leaders and powerful groups. Establishing the power of strategic neutrality therefore requires demonstrating, first, that agency leaders act to shape their political environment and, second, that their choices are bound by these internal and external constraints. Theoretically, this approach therefore impinges upon arguments about the power of interest groups, the preferences and powers of elected officials, and the management and operation of bureaucracies.

Empirically, I employ diverse methodological approaches to establish the power and limits of strategic neutrality. In addition to detailed

⁴ Source: OSHA IMIS database.