MAINTAINING THE AMERICAN STATE

By

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To Grace

Acknowledgements

I see the states, across this big nation
I see the laws made in Washington, D.C.
I think of the ones I consider my favorites
I think of the people that are working for me.

Some civil servants are just like my loved ones
They work so hard and they try to be strong
I'm a lucky guy to live in my building
They all need buildings to help them along.
– The Talking Heads, "Don't Worry About the Government" (1977).

And as things fell apart
Nobody paid much attention
—The Talking Heads, "(Nothing But) Flowers" (1988).

This project began at the start of the COVID-19 Pandemic. The earliest ideas were formed in my head as I paced around the parking lot of my apartment complex. I listened to "(Nothing But) Flowers" on repeat and performed a mental autopsy of America's ailing healthcare institutions, piecing together how years of neglect and mismanagement had led to this moment. The process of writing a dissertation is maddening—even without global isolation and the burrowing earworms of 1980's New Wave Rock. I owe tremendous thanks to those who offered guidance and reprieve throughout my academic career.

I owe significant gratitude to my advisor, Dave Lewis, for his mentorship, kindness, and encouragement. Dave's office served as a forum for impromptu conversations about lighthouses, the concept of bureaucratic performance, and the goal of social science. Every summer, he curated a book club for students of American institutions, cultivating a friendly and collaborative spirit throughout the department. Our conversations shaped the ways in which I think about the world and approach research. His empathy and advice helped me overcome the largest academic and personal hurdles of the past five years. Dave's influence appears throughout this manuscript. As I transition to my own professorship, I hope to provide to my students a mere ounce of what Dave has provided me.

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CHAPTER 1

Introduction

On March 3, 2020, millions of voters in fourteen states turned out to select which Democratic candidate would face President Donald Trump in the 2020 presidential election. Nine days later, President Trump declared a national emergency, warning that the spread of the COVID-19 virus posed a deadly threat to the mass public. If the virus continued to spread (and it would), the November general election threatened to become the largest "super-spreader" event of the Pandemic. To avoid crowding at the polls, state governments expanded eligibility for mail-in voting. The sudden expansion of mail-in voting entrusted a bureaucratic agency—the United States Postal Service (USPS)—with securing and delivering the ballots for 83% of voters (Rabinowitz & Mayes 2020).

For decades, USPS had warned that it lacked the infrastructure to provide timely mail service.[1] Once viewed as an exemplar of organizational efficiency (Carpenter 2001), the agency had fallen into disrepair as congressional disinterest in USPS grew. In 1982, Congress stopped appropriating an annual budget for USPS and, instead, required the agency to use its revenues to cover costs. By 2006, USPS operated at a loss. Insufficient revenues forced USPS to reduce services and to forego necessary repairs to its aging vehicle fleet (Government Accountability Office 2020). In May 2020, Postmaster General Megan Brennan testified before Congress that USPS would run out of money by the end of September—right as voters began to mail their ballots (House Committee on Oversight and Reform 2020). Delayed ballots would disenfranchise voters, especially those who could not travel to the polls due to high-risk medical conditions.

The Postal Service Crisis presented the Trump Administration with competing electoral incentives over whether to build, neglect, or further deconstruct USPS's capacity. On the one hand, a majority of voters supported greater funding for USPS (Washington Post & University of Maryland 2020). If President Trump supported postal-service reform, then voters may have rewarded President Trump for improving government services. On the other hand, President Trump believed that mail-in voting would disproportionately benefit Democrats. In an interview on Fox News, President Trump said that if he increased USPS's funding, then "you'd never have a Republican elected in this country again" (Blake 2020).[2]

President Trump refused to support improvements to USPS's capacity. As Democrats intensified calls for

[1] USPS occupies a unique position in American governance. Unlike agencies that service discrete populations, USPS has a universal service obligation. By law, USPS must "render postal services to all communities" (39 U.S.C. § 101(a)). Satisfying this obligation requires significant capacity. On an average day, USPS delivers 425 million pieces of mail. It employs over 600,000 individuals, and its fleet includes over 233,000 automobiles, planes, boats, bicycles, and mules (US Postal Service 2022*b*). USPS operates more retail locations (34,223) in the United States than any other company, including Subway (26,932) and Starbucks (15,183) (US Postal Service 2022*c*).

[2] Other research suggests that this claim is unsupported (Thompson, Wu, Yoder & Hall 2020).

a legislative solution, President Trump responded

> They need that money in order to make the Post Office work, so it can take all of these millions and millions of ballots. Now, if we don't make a deal, that means they don't get the money. That means they can't have universal mail-in vote, they just can't have it. (Bogage 2020*b*).

The Trump-appointed Postal Regulatory Commission selected Louis DeJoy—a Republican donor and former logistics executive—to lead the agency. DeJoy reduced working hours, forbade extra trips, decommissioned mail-sorting machines, and ordered carriers to leave election mail behind (Bogage 2020*a*, Murphy & Cohen 2020).

In the end, the Postal Service Crisis had a greater effect on the everyday lives of Americans than the election (Bogage & Ingram 2020, Office of the Inspector General 2020). USPS lacked the material resources and workforce needed to manage its increased workload during the Pandemic. As pharmacies, grocery stores, and retailers closed, Americans increasingly relied on USPS to deliver food, medicine, and holiday gifts (Abelson 2020, Bogage & Bhattarai 2020, Miller 2020). Rural farmers opened packages of dead birds instead of cheeping chicks (Healy 2020). Some of these delays caused mere frustration but others threatened the health and economic well-being of ordinary Americans.

Importantly, USPS would have under-performed even without the Trump Administration's efforts to undermine agency performance. Neither the Trump Administration nor the COVID-19 Pandemic caused the decay of USPS's capacity. Although both exacerbated preexisting problems within the agency, the decline in capacity occurred as a result of decades of neglect from past congresses and presidents. Republican and Democratic politicians alike deserve blame for this neglect. This is not a case where President Trump's anti-administrativist beliefs caused a sudden decline in an otherwise well-functioning agency. Although we can ask what motivated the Trump Administration to deconstruct USPS's capacity, it is equally important to ask why elected officials neglected the agency for almost forty years. And if elected officials will not maintain the capacity of USPS—an agency with high public visibility, high public approval, and services used by almost every American citizen—then which bureaucratic agencies will they maintain?

* * *

Within the United States, bureaucratic agencies are the primary producers of policy and public goods. Congress and presidents delegate tasks, such as enforcement, rulemaking, and adjudication, to these agencies. Broadly, *bureaucratic capacity* describes the ability of an agency to complete those tasks. An agency's capacity to complete a particular task comprises two elements: material resources and human capital. *Material resources* describe the funding, equipment, space, and technology that an agency needs to perform its

tasks. *Human capital* describes the knowledge, skills, and experience of the agency's workforce. All else equal, bureaucratic capacity improves *bureaucratic performance*. Performance describes how successful the agency is at achieving a particular policy outcome.[3]

Traditional theories of bureaucratic politics describe the institutions within the U.S. administrative state as possessing uniformly high levels of bureaucratic capacity. In equilibrium, these institutions have the necessary resources and people to perform the tasks delegated to them by their political principals. Sometimes, stochastic events cause an agency to lose capacity, leading to poor performance. During these moments, members of Congress and presidents invest heavily in the agency to restore its capacity. These dynamics ensure that bureaucratic agencies within the United States exhibit no meaningful variation in their capacities. Some agencies may have more money or fewer people, but these differences are attributable to differences in workload rather than differences in underlying capacity.

This book challenges the traditional narrative. It makes three arguments about the capacity of bureaucratic institutions in the United States. First, the United States exhibits far greater variation in bureaucratic capacity than scholars often assume or predict. Second, variation emerges because members of Congress and presidents have stronger electoral incentives to build capacity in some bureaucratic agencies than in others. Third and finally, this variation has meaningful consequences for policymaking, individual rights, and the ability of agencies to comply with their statutory and constitutional obligations.

1.1 Maintaining the American State

Before summarizing the three arguments, I explain the scholarly and historical context in which these arguments unfold. This is a story about bureaucratic institutions in the Twentieth and Twenty-First Centuries. I begin long after the Pendleton Act, the New Deal, the Administrative Procedure Act, or any other event that may mark the emergence of the administrative state. By the time this story begins, the American state has been built (Carpenter 2001, Skocpol 1995, Skowronek 1982). The question has become: Who will maintain it? It is a story about when and how electoral dynamics motivate politicians to build, neglect, or deconstruct the capacity of agencies within the existing administrative state.

In many ways, this book is a sequel to canonical works that explain when and how strong bureaucratic institutions emerge in developing states (Geddes 1994, Grindle 1997, McDonnell 2017, Skowronek 1982). Bureaucratic capacity is inextricably intertwined with the ability of the state to collect taxes, raise an army, and promote economic growth, because bureaucratic institutions perform the day-to-day work of policy implementation (Besley & Persson 2014, Mann 1984, Scott 1998). Accordingly, scholars often measure the

[3]Of course, some tasks are harder than others. In a disaster-response context, an agency may perform well but thousands of lives may still be lost.

development of the state by the degree to which its institutions satisfy the principles established by Max Weber (Cingolani, Thomsson & de Crombrugghe 2015, Evans 1995, Evans & Rauch 1999). In the Weberian bureaucracy, agencies are staffed by civil servants hired for their expertise rather than their political connections (Weber 1978). Civil-service laws afford bureaucrats tenure and discourage them from using their offices for personal gain. These civil servants exercise jurisdiction over a discrete policy domain and enjoy some autonomy from their political principals. The emergence of the Weberian system has a strong influence on economic growth and, therefore, represents a milestone in state building (Cruz & Keefer 2015, Evans & Rauch 1999, Kasara & Suryanarayan 2020).

Bureaucratic institutions have been a fixture of the U.S. federal government since the Founding. Although it mentions "departments," "officers," a Post Office, and a Department of War, the Constitution left the task of building the administrative state to Congress (Chabot 2022, West 2018). During the First Congress, the Founders began to construct the scaffolding of the administrative state. President Washington soon found himself managing the Department of the Treasury, the Department of State, and an Attorney General (White 1948). During the early Nineteenth Century, the executive branch performed many tasks associated with modern bureaucracies: tax collection, regulation, inspection, benefits distribution, adjudication, and enforcement of criminal laws (Mashaw 2012, Mortenson & Bagley 2021, Parrillo 2021, White 1948, White 1954). The state was smaller, but it still engaged in the sort of policy implementation we have come to expect of bureaucratic institutions.

But the early administrative state was not Weberian. Like many developing states, elected officials rewarded loyal patrons with offices in these bureaucratic agencies. Clientelism caused severe performance problems throughout the bureaucracy, especially in the custom houses and naval yards where appointees engaged in corruption (White 1954). By the late Nineteenth Century, however, tides began to shift in favor of broad civil-service reforms that would limit patronage. The rise of new industries and the middle class decreased demand for jobs in the bureaucracy while increasing demand for social and economic regulations (Skocpol 1995, Skowronek 1982). Following the assassination of President Garfield by a disgruntled office-seeker, reformers pushed civil-service reform as the cure for the scourge of partisan politics. In 1883, Congress passed the Pendleton Act, tying the selection of some civil servants to merit-based exams (Skowronek 1982).

Since the reforms of the late Nineteenth Century, bureaucracy has been the preferred solution for the economic, environmental, and public-health problems of modern society. Agencies like the Social Security Administration, the Environmental Protection Agency, and the Department of Health and Human Services have been entrusted with the largest programs ever designed by the U.S. government. Efficient implementation of these programs requires agencies to possess sufficient levels of material resources and human capital.

Without sufficient capacity, bureaucratic agencies under-perform and fail to deliver the policies, programs, and services entrusted to them by elected officials.

Civil-service reform alone does not explain whether an agency is able to maintain its capacity in the long term. Civil-service reform creates a floor—not a ceiling—for the capacity of the bureaucratic institutions within an administrative state. Although civil-service reform provides the means for an agency to recruit and retain an expert workforce, individuals do not select into agencies randomly or uniformly (Downs 1964, Gailmard & Patty 2007). Nor does civil-service reform guarantee that individuals will choose to remain in their positions if the ruling party changes (Golden 1992, Richardson 2019). Most obviously, civil-service reform does not provide the annual appropriations that agencies need to rent office space, purchase equipment, and pay salaries (Pasachoff 2016, Wildavsky 1984).

The administrative state cannot just be built; it must be maintained. *Maintenance* describes the ongoing efforts of a state to preserve the capacity of its institutions. The core of this book focuses on bureaucratic institutions, but legislatures also need to maintain their capacities (Bolton & Thrower 2021). Maintenance occurs through *investment*. Investment describes efforts by internal and external actors to build capacity within an institution. Investment, however, is costly. Rarely does a simple injection of cash build bureaucratic capacity. Actors must spend time and effort to develop budgets, procedures, and plans aimed at buttressing weaknesses within the agency. Without periodic investment, capacity decays. This book details the circumstances under which elected officials have sufficient incentives to invest in bureaucratic capacity.

1.2 Variation within the U.S. Administrative State

I now turn toward the three arguments advanced by this book. First, I argue that the U.S. administrative state exhibits far greater variation in bureaucratic capacity than scholars often assume or predict. Specifically, I challenge the conventional wisdom that bureaucratic institutions within the United States do not exhibit meaningful variation in their capacities because the United States is a high-income state.

Early research in the area of bureaucratic capacity makes state-level comparisons (Evans & Rauch 1999, Hanson & Sigman 2021). By ignoring variation *within* the state, this work creates the false impression that low-capacity states have uniformly low-capacity institutions, and high-capacity states have uniformly high-capacity institutions. Scholars of low- and middle-income states, however, challenge this assumption. In a 2013 commentary, Francis Fukuyama argues that "states need to be disaggregated into their components, by function, region, and level of government" to fully understand the quality of government within a state (364). Scholars of low-income states have supported Fukuyama's argument by demonstrating that capacity tends to cluster within certain agencies in these states (Bersch, Praça & Taylor 2017*a*, Grindle 1997, McDonnell 2020). Rather than mirror the state's aggregate capacity, the administrative state is an archipelago of "islands

of excellence" and "islands of deficiency."

Bureaucratic autonomy and the promise of economic growth contribute to the emergence of "islands of excellence." Within these agencies, high levels of autonomy aid in management's efforts to recruit and retain highly-educated individuals who have developed a "bureaucratic ethos" during studies abroad (McDonnell 2020). These institutions cultivate a strong *esprit de corps* among employees, encouraging them to place the agency's mission above their own self-interest (Bersch, Praça & Taylor 2017*b*, Grindle 1997). Indeed, similar innovations allowed pockets of effectiveness to emerge in the United States at the turn of the Nineteenth Century (Carpenter 2001). Outside of the agency, emerging industries motivate elected officials to create these "islands of excellence" to protect tax revenues for other public-good projects (Kjær, Therkildsen, Buur & Hansen 2021). The motivations of these internal and external actors lead to an unequal distribution of material resources and human capital across bureaucratic institutions.

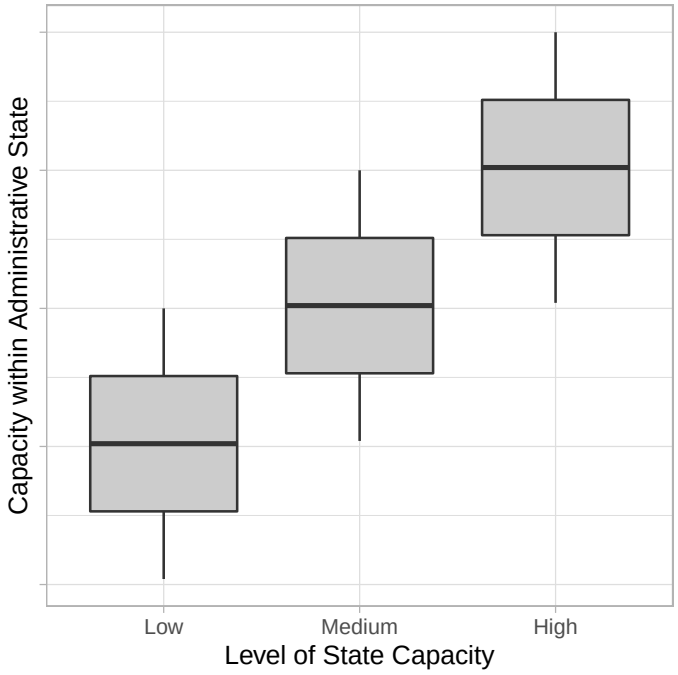
Studies in low-income states demonstrate the need to avoid ecological fallacies like the following: "If *State A* has low capacity, then *Agency* A_1 and *Agency* A_2 must have low capacity." Oddly, however, the same scholarship challenging this fallacy perpetuates its use in high-capacity states. Scholars often justify their decisions to study institutions within low- and middle-income states based on an assumption that *all* institutions within high-income states have sufficient capacity to perform the tasks delegated to them. For example, McDonnell (2020) writes, "advanced industrialized nations are so accustomed to the bureaucratic ethos that citizens often take for granted that bureaucracy will function," but "in *other times and places*, functional bureaucracy is a fragile, active project" (10). The implication of this statement—and many other similar statements in the literature—is that bureaucracies in high-income states have sufficient fiscal resources to build capacity and, therefore, they should exhibit no meaningful cross-agency variation in capacity, except in rare and fleeting cases.

Relative to other states, scarcity does not pose a problem for the maintenance of the U.S. administrative state. In 2021, the U.S. federal government spent $7.38 trillion, surpassing the total GDP of most world economies.[4] Beyond its fiscal resources, the United States has a strong and well-educated labor force that adapts well to bureaucratic work (March & March 1977, McDonnell 2020). If the U.S. administrative state exhibits variation in bureaucratic capacity, then economic scarcity is not the cause.

We should be wary, however, of endorsing a position that U.S. institutions do not exhibit meaningful variation in their capacities. On the one hand, the U.S. bureaucracy has attracted some of the greatest minds and made some of the greatest scientific advancements of the last century. Nobel-prize winners, Albert Einstein, Julia Child, and Clara Barton served in the executive branch during their careers (Partnership for Public

[4]U.S. Department of Treasury. 2022. *Spending Trends Over Time and the U.S. Economy*. https://fiscaldata.treasury.gov/americas-finance-guide/federal-spending/spending-trends-over-time-and-the-us-economy.

Figure 1.1: Conceptualization of the Variation Within a State



Service 2002, Federal News Network Staff 2016). Federal agencies contributed to the development of the Internet, electric vehicles, and vaccines. On the other hand, dozens of case studies of particular institutions, including the U.S. Congress, point to examples where a lack of capacity affects performance.[5] Contrasting these stories of excellence and failure suggest there may be greater cross-agency variation in capacity than broad generalizations permit.

This book examines a context where variation in bureaucratic capacity emerges despite the state's abundance of fiscal resources. Accordingly, the book provides a gentle correction to our current understanding of the correlation between capacity at the state level and the distribution of capacity across the state's institutions. Figure 1.1 illustrates how this book conceptualizes variation cross-state and within-state. The average institution in a high-capacity state, such as the United States, will have a greater level of capacity than the average institution within a medium-capacity state. But the high-capacity state may still exhibit wide variance at the institutional level. Dismissing the variation that emerges within high-income states limits the ability of scholars to identify other necessary conditions for the emergence and maintenance of bureaucratic capacity within a particular institution. This book identifies electoral incentives as a necessary condition for capacity

[5]Scholars and journalists have raised concerns about the capacity and performance of Congress (Bolton & Thrower 2021), the Department of the Interior (Katz 2023), the Department of Veteran Affairs (Ames, Handan-Nader, Ho & Marcus 2020, Moore 2020), the Executive Office of Immigration Review (Family 2019), the Federal Emergency Management Agency (Lewis 2008), the Internal Revenue Service (Davidson 2023), the Office of Information and Regulatory Affairs (Bolton, Potter & Thrower 2015), the Secret Service (Leonnig 2021), Social Security Administration (Derthick 1990, Mashaw 1983), state welfare agencies (Drolc & Keiser 2020), and a variety of other agencies (Herd & Moynihan 2018, Light 2008).

building to occur in any democratic context.

1.3 The Electoral Incentives to Build Capacity

If scarcity does not pose a problem for building bureaucratic capacity within U.S. federal agencies, then why do we observe such a high degree of variance? I argue that members of Congress and presidents have stronger electoral incentives to build capacity in some agencies than others. The modern United States experiences relatively close presidential elections that determine control over the administrative state. In many cases, politicians would rather neglect an agency than let their opponents benefit from improved bureaucratic performance in a future administration. Politicians have the greatest incentives to build capacity in agencies that implement their policy priorities and share their policy preferences.

Elected officials need both opportunities and incentives to build capacity within bureaucratic institutions. Undoubtedly, Congress and the president possess sufficient opportunities to invest in agencies' material resources and human capital. These opportunities stem from the constitutional powers of Congress and the president. Hiring new personnel, building new facilities, and purchasing new equipment necessitate appropriations from Congress (Wildavsky 1984). Often, agencies need support from presidents to advocate for expanding their budgets, and presidents play an integral role in deciding how the Office of Management and Budget will distribute this money to agencies (Pasachoff 2016). As head of the executive branch, presidents have a variety of tools to supervise and build capacity within the administrative state (Freeman & Jacobs 2021, Metzger 2015). Presidents set personnel policies, attract civil servants to government service, and select leaders with the potential to innovate agency processes (Golden 1992, Krause & O'Connell 2016, Lewis 2008, Teles 2009). Throughout, I assume that Congress and the president have sufficient opportunities to build capacity within bureaucratic institutions.

I focus my attention on the incentives for politicians to invest in bureaucratic capacity. Scholars have long predicted—without much testing—that politicians have sufficient incentives to build and maintain capacity across the administrative state. With respect to the president, Terry Moe (1990) states that "all presidents" try "to build and deploy an institutional capacity for effective governance" to avoid blame for government failures (237). Individual members of Congress may have fewer incentives to build bureaucratic capacity (Lewis 2019), but even they seek to expand the capacity of the agencies under their committee's jurisdiction and to protect programs that provide particularistic benefits to their constituents (Fiorina 1989, Mayhew 1974). As bureaucrats clamor for more money, people, and power, they develop new programs and benefits to attract politicians to a broad coalition designed to protect the agency's budget from significant cuts (Arnold 1979, Carpenter 2001). In sum, members of Congress and presidents continually build capacity to promote good governance and protect the electoral benefits generated by the administrative state.

Three trends should give us pause before continuing to endorse this prediction. First, the administrative state as a whole shows little signs of growth. Since the 1960s, the amount of discretionary spending has increased while levels of federal employment have remained stagnant (DiIulio 2014, Lewis 2019). The portion of government work performed by contractors has grown, encouraging potential public servants to pursue careers in contract firms rather than government agencies (Dooling & Potter 2022, Verkuil 2017). Presidents fail to appoint individuals to a sizeable portion of leadership positions, leaving these positions vacant or staffed by acting officials (Kinane 2021, O'Connell 2020, Piper 2021). Among leadership positions, presidents appear quick to nominate individuals to positions that engage in substantive policymaking but neglect management positions (Bednar & Lewis 2023). Collectively, these trends suggest that Congress and presidents care most about policymaking and consider the viability of implementation as an afterthought.

Second, a growing number of scholars have expressed concerns that bureaucratic capacity is in decline and the rate of government failure is increasing (DiIulio 2014, Light 2008, Lewis 2018, Lewis 2019, Verkuil 2017). Indeed, many government failures are attributable, in part, to the failure of Congress and presidents to invest in an agency's capacity:

- Under-funding and workforce attrition within the Federal Emergency Management Agency contributed to its sluggish response to Hurricane Katrina (Katrina Committee 2006).
- Difficulty recruiting physicians in the Veterans Health Administration resulted in long waitlists and an inability to care for the aging population of Vietnam veterans (Government Accountability Office 2013, Oppel & Goodnough 2014). Delays at an Arizona facility contributed to at least forty deaths (Bronstein & Griffin 2014).
- The Department of Health and Human Services struggled to develop HealthCare.Gov—the insurance marketplace for the Affordable Care Act—because unsustainable workloads resulted in high levels of workforce attrition. On the day of its launch, only six of the 250,000 users who accessed HealthCare.Gov completed their applications (Office of the Inspector General 2016).

The Government Accountability Office's (GAO) biennial list of "high risk" agencies and programs has grown longer, but few agencies have ever been removed from the list. Of the 36 areas on the 2021 list, two-thirds had been on the list for more than ten years and almost one-third had been on the list since before 2000 (Government Accountability Office 2021*a*). Failure has become so prevalent that some scholars wonder whether presidents have violated their constitutional obligation to "take Care that the Laws be faithfully executed" (Metzger 2015). If members of Congress and presidents truly have incentives to avoid blame for government failures (Moe 1989, Malhotra & Kuo 2008), then we should observe greater preemptive investments to prevent poor performance.

Third and finally, rhetoric from both the Republican Party and the Democratic Party reveals a willingness to diminish capacity within certain bureaucratic agencies. On the most extreme end, the Trump Administration vowed to "deconstruct" the administrative state and permanently encumber the functioning of some agencies (Freeman & Jacobs 2021, Skowronek, Dearborn & King 2021). President Trump's rhetoric is preceded by other small-government conservatives, such as President Reagan, who vowed to rein in the administrative state (Lowi 1987, Parshall & Twombly 2020).[6] Democrats too express a willingness to diminish bureaucratic capacity in certain agencies. Progressive members of the Democratic Party have called for Congress to abolish Immigration and Customs Enforcement (ICE) and diminish federal funding for local police (Godfrey 2018). Yet even anti-administrativism has its limitations. Republicans often express an interest in expanded funding for the Department of Homeland Security and the Department of Defense. Whatever the policy motivations underlying these proposals, deconstruction conflicts with theories that predict that elected officials continually build bureaucratic capacity.

This book argues that the dominant strategy for elected officials is neither building nor deconstructing bureaucratic capacity; it is neglect. Like most theories of elite behavior and political institutions, I assume that members of Congress and presidents are motivated to win reelection for themselves and their copartisans (Kriner & Reeves 2015, Mayhew 1974). Members of Congress and presidents use the federal bureaucracy to create policies, implement programs, and deliver particularistic benefits to their constituents (Fiorina 1989, Haeder & Yackee 2018, Lowande 2019, Moe 1985). Building capacity within federal agencies improves their ability to provide these public goods. But management does not attract the same level of interest from voters as new regulations, new benefit programs, and new government services.

Two phenomena explain the prevalence of neglect. First, voters struggle to connect policies and public goods to the work of the federal government, even if they receive direct benefits from those policies (Mettler 2011). The public has little knowledge of federal agencies and pays little attention to their management (Delli Carpini & Keeter 1996). Most agencies perform arcane and mundane tasks that escape the intrigue of the mass public. Few consumers consider how the Department of Agriculture's inspections prevent them from contracting foodborne illnesses while enjoying pepperoni pizza. Visitors to Lake Tahoe do not spend their vacation wondering what the Forest Service is doing about the lake's goldfish infestation (Heck 2013). If voters do not know or care about the underlying policy, then they certainly do not know or care about whether the agency has sufficient money and people to implement that policy. Apathy toward administration

[6] Gillian Metzger coined "anti-administrativism" to describe attacks by conservative jurists on administrative governance. She characterizes "anti-administrativsts" by saying "they are strong on rhetorical criticism of administrative government out of proportion their bottom-line results; they oppose administration and bureaucracy, but not greater presidential power; they advocate a greater role for the courts to defend individual liberty against the ever-expanding national state; and they regularly condemn contemporary national government for being at odds with the constitution structure the Framers created" (Metzger 2017*a*, p. 3). Her description extends naturally to the describe blanket efforts of deconstruction by conservative presidents.

incentivizes politicians to focus their attention on campaigning or policymaking—activities more likely to solicit a response in the polls than capacity building.

Second, elected officials face short time horizons before the next election. But capacity building is a long-term investment. When Congress or the president decides to build capacity, they must investigate what improvements are needed, appropriate the necessary funds, make any procedural changes, and wait for the agency to implement those changes. Hiring staff, building new office buildings, or procuring new equipment takes time, and agency performance may not improve until after the next election cycle. If Congress or the presidency changes hands in the next election, then the investor's political opponents have the opportunity to use the newly-improved agency for their own electoral gains. In a context where the likelihood that the incumbent party retains control over Congress or the presidency is close to 50%, elected officials express greater hesitation before deciding to build capacity.

As a result, politicians would rather spend their time on activities other than capacity building. When they do engage in capacity building, it is often ancillary to the pursuit of policies that they hope will win them reelection.

By presenting a unified theory of capacity building in the United States, this book joins an emerging literature that explores how political dynamics shape capacity building and deconstruction. Much of this literature focuses on when civil servants make *internal* investments in their agencies' own capacities (Arnold 1979, Carpenter 2001, Gailmard & Patty 2007, Ting 2011). Civil servants have opportunities to expand their existing expertise, innovate the agency's internal procedures to improve logistics and teamwork, and forge new political connections. In many cases, however, higher capacity agencies—those with larger budgets and stronger workforces—will have an easier time internally investing than lower capacity agencies. Moreover, only Congress and the president have the power to make certain types of investments, such as appropriating funds or lifting hiring freezes. By focusing on investments from external actors, this book provides a more holistic understanding of how agencies acquire bureaucratic capacity in the United States.

Other scholars have chosen to examine when presidents deconstruct bureaucratic capacity. These theories attribute patterns of deconstruction to the anti-administrativist beliefs held by conservative politicians (Benn 2019, Freeman & Jacobs 2021, Parshall & Twombly 2020, Skowronek, Dearborn & King 2021). Yet these theories often fail to explain the circumstances underwhich even anti-administrative politicians build capacity. Deconstruction has received undue attention relative to capacity building or neglect (Bednar & Lewis 2023, Lewis 2019). By presenting a theory that considers both capacity building and deconstruction, this book hopes to recenter the literature on the most common phenomena—neglect—rather than the salient exceptions.

1.4 The Consequences of Under-Investment

Finally, this book argues that variation in bureaucratic capacity has *meaningful* consequences for the implementation of law and public policy in the United States. Observed deficiencies in bureaucratic capacity are not minor. They determine whether a president has an opportunity to enact regulations during their term and whether agencies implement programs in ways that protect the rights of individuals.

Countless case studies have examined the effects of low capacity on performance within a single agency (Ames et al. 2020, Bolton, Potter & Thrower 2015, Derthick 1990, Leonnig 2021). This book examines how variation affects performance of a single task performed by multiple agencies: rulemaking. Rulemaking provides a suitable case study for examining the consequences of under-investment because presidents attempt to advance their policy agendas through the regulatory process. Therefore, if we observe that low capacity prevents agencies from completing rules before the end of the president's term in office, then we know that under-investment occurs *despite* the fact that presidents want to use the administrative state for policymaking.

Insufficient bureaucratic capacity increases the likelihood of government failure, preventing agencies from responding to harms facing the American public. Bluntly: neglect kills. Michael Lewis (2018) warns: "'Program management' is not just program management. 'Program management' is the existential threat that you never really even imagine as a risk" (75). The final chapter of this book demonstrates this point in the context of the refugee crisis at the U.S.–Mexico Border. It shows that Immigration Judges with fewer support staff are more likely to order the removal of asylum applicants. The willingness to provide bureaucratic agencies with capacity determines whether government succeeds at protecting the due-process rights of individuals. This analysis contributes to the conversation about how the structure of government institutions creates administrative burdens for individuals who rely on the administrative state for services (Herd & Moynihan 2018).

1.5 Defining the Administrative State

The central goal of this book is to explain why bureaucratic capacity varies across the U.S. administrative state. What is the "administrative state," and what institutions does it house? Efforts to measure the metes and bounds of the federal bureaucracy have returned varied answers. On one end, it may include only the cabinet-level agencies within the executive branch, such as the Department of Defense and the Environmental Protection Agency (Selin & Lewis 2018). On the other, it may include entities as diverse as congressionally-chartered nonprofits, such as Little League Baseball and the Girl Scouts of America (O'Connell 2014). The term may transcend executive-branch agencies to incorporate the bureaucracies of both Congress and the Judiciary. It may also expand beyond the federal government to mean agencies within state, local, and tribal governments.

As used here, the "administrative state" means the collection of federal agencies within the executive branch directed by one or more presidential appointees. The sample of agencies adheres—more or less—to the Administrative Procedure Act's definition of "agency." That definition excludes Congress, the President, the Judiciary, and the territorial governments of the United States, classifying most other federal entities as "agencies."[7] Federal agencies provide a harder test of this book's arguments than state agencies because the federal government generally possesses greater resources than state governments. Nevertheless, the broad incentive structures described in this book may travel readily to state governments.

Describing the archetypal agency proves impossible given the diverse range of missions, structures, and priorities exhibited by the institutions within the administrative state (Wilson 1989). Nevertheless, some basic background information may help readers with less knowledge about the United States or bureaucratic politics.

First, elected officials and bureaucratic agencies form principal–agent relationships (Gailmard 2014). Members of Congress and presidents direct federal agencies to perform certain tasks. They delegate policy-making or implementation authority to take advantage of the agency's relative expertise or credibility (Epstein & O'Halloran 1999, Gailmard 2002, Stiglitz 2022). Yet bureaucratic agencies and their civil servants are not always faithful to the preferences of their political principals and, therefore, the political branches have expended considerable effort to increase their control over agency activities. As Elena Kagan (2001) writes, "The history of the American administrative state is the history of competition among different entities for control of its policies" (2246). Elected officials want to use an agency's capacity to accomplish their policy goals but need the control and cooperation of the bureaucrats who actually use and understand this capacity. Bureaucratic control can thus be understood as the ability to direct bureaucratic capacity toward certain tasks and policy outcomes.

Second, agencies derive their structures and legal authority from statutes, executive orders, and internal procedures that govern their processes (Selin & Lewis 2018). Structure provides Congress, in particular, with a wide array of *ex ante* control over the ways that agencies implement the tasks delegated to them (West 2018). Structure can ensure that agencies remain responsive to certain interests during the policy-making and -implementation process (McCubbins, Noll & Weingast 1989, Moe 1989, Yackee 2006). However, it may also limit the ability of Congress and presidents to influence agency activities in the future (Devins & Lewis 2008, Selin 2015). *Independent agencies* are agencies that have structural features that insulate the agency's operations from members of Congress and the president. Many of these agencies have structures that prevent the president from removing appointees except "for cause," require presidents to balance the partisan composition of appointees, or have independent-funding mechanisms (Selin & Lewis 2018).

[7] 5 U.S.C. § 551(a).

Third, as head of the administrative state, presidents generally have greater opportunities than Congress to influence bureaucratic behavior (Kagan 2001, Moe 1985). The Appointments Clause of the U.S. Constitution provides presidents with the power to appoint officials within agencies. Scholars describe the strategy of increasing the number of political appointees within an agency as *politicization*. These officials implement presidents' agendas from within the agency (Bertelli & Feldmann 2007, Lewis 2008, Wood & Waterman 1991). Presidents have also built a large apparatus within the Executive Office of the President designed to coordinate and review everything from agency budgets, policymaking, litigation, congressional testimony, procurement, and responses to ongoing crises (Bolton, Potter & Thrower 2015, Bressman & Vandenbergh 2006, Rudalevige 2002). Scholars describe the strategy of increasing White House oversight over an agency's day-to-day activities as *centralization*. In theory, Congress's control over the appropriations process and agency design allows Congress to threaten an agency with destruction if it strays too far from congressional preferences (Fiorina 1989, McCubbins & Schwartz 1984, McCubbins, Noll & Weingast 1989). In reality, slim majorities and collective-action problems limit the ability of Congress to meaningfully constrain bureaucratic action except in exceptional circumstances (Bolton & Thrower 2021, Clinton, Lewis & Selin 2014).

Fourth, although we often describe Congress and presidents as puppeteers pulling on the strings of bureaucrats, such rhetoric neglects the agency of the agent. Civil servants spend their entire careers learning the ins-and-outs of government work. These civil servants have a greater understanding of their agency's policy area, procedures, and capabilities than their principals (Potter 2019). Members of Congress and presidents have come to rely on bureaucrats for help in crafting policy (Rudalevige 2021, Walker 2017). But bureaucrats do not always share the preferences of their principals (Clinton & Lewis 2008, Richardson, Clinton & Lewis 2017). Indeed, civil servants select into agencies whose cultures and missions align with their own political preferences, forgoing higher salaries in the private sector for an opportunity to influence policy (Downs 1964, Gailmard & Patty 2007). When asked to complete an undesirable task, bureaucrats may shirk or sabotage the process in hopes of preventing its completion (Brehm & Gates 1999). Compared to members of Congress or presidents who face periodic elections, bureaucrats have long time horizons and will wait for the opportune moment to implement their preferred policies.

1.6 Outline of the Book

The book proceeds as follows. Chapter 2 conceptualizes bureaucratic capacity as the material resources and human capital available to an agency. After defining the concept, the chapter draws on a time-series survey of four million bureaucrats to show that the United States exhibits significantly more variation in material resources and human capital than existing theories predict.

Chapter 3 presents a formal model to explain how electoral dynamics inform the willingness of elected

officials to build or deconstruct bureaucratic capacity. The model reveals that politicians have fewer incentives to build capacity as the incumbent's likelihood of winning reelection creeps toward 50%. Only agencies that offer significant electoral benefits to politicians receive investments. The chapter concludes with a series of empirical implications about where we should observe investment in bureaucratic agencies.

The remaining chapters offer empirical evidence related to the arguments of the book. Chapter 4 uses responses from the 2020 Survey on the Future of Government Service to test whether bureaucrats' perceptions of investment align with the theory. Chapter 5 examines trends in the human capital of agencies' policy-making workforces. Chapter 6 explores how these trends affect the ability of presidents to implement policy through the rulemaking process. Chapter 7 draws on a dataset of over 1.9 million removal proceedings to explain how neglect of the Immigration Courts within the Department of Justice affects due process in removal proceedings.

CHAPTER 2

The American Administrative Archipelago

Broadly, "bureaucratic capacity" describes an agency's ability—not its willingness—to complete the tasks delegated to it by Congress and presidents. The maintenance of bureaucratic capacity requires two primary elements. First, the state must have sufficient fiscal resources to distribute to each agency. If scarcity occurs, inter-agency competition allows some agencies to accrue capacity while other agencies wither. In these contexts, archipelagos of "islands of excellence" and "islands of deficiency" emerge (Bersch, Praça & Taylor 2017*b*, Geddes 1994, McDonnell 2020). Second, elected officials within the state must have sufficient opportunities and incentives to build the agency's capacity. If an agency has no one willing to invest in its capacity, then the agency will still suffer from deficiencies despite state-level wealth.

Conventional wisdom predicts that bureaucratic institutions in the United States should exhibit uniformly high levels of capacity. The United States is one of the wealthiest economies and governments in the world and, therefore, economic scarcity should not explain cross-agency variation in capacity. If we observe deficiencies in particular agencies, then investors, such as members of Congress or presidents, must lack sufficient incentives to build capacity.

Examining variation in bureaucratic capacity requires a conceptualization of "bureaucratic capacity." As currently used, the concept of "bureaucratic capacity" is woefully amorphous (Cingolani, Thomsson & de Crombrugghe 2015, Hanson & Sigman 2021). At times, "capacity" appears to embody every concept related to bureaucratic politics, administrative law, and public administration. Scholars use "bureaucratic capacity" to mean budgets, human capital, legal authority, autonomy, networks, information, and a variety of other intertwined concepts. This is rarely the fault of those who carefully set forth their conceptualization. Rather, many scholars adopt a measure of "capacity" without taking the time to articulate the concept represented by the measure. Like any concept, a range of permissible definitions exists (Gerring 1999, Sartori 1970). However, the failure of scholars to pick a definition within this range has caused scholars to speak past one another or use "capacity" to describe other concepts, such as autonomy or performance (Evans & Rauch 1999, Fukuyama 2013). Given the cavalier nature with which researchers deploy the concept, some scholars have condemned it as "rarely analytically useful" and "frequently misleading." (Williams 2021, p. 2). Others concede that it "may be too broad a unit of analysis" but argue that "we should talk about it anyway" (Moynihan 2022).

This chapter seeks to salvage the concept of "bureaucratic capacity" in two ways. First, it centers the concept around the specific task that the agency needs to perform rather than the institution itself. Focusing

on the task allows for a cleaner articulation about what things and processes the agency needs to succeed and, empirically, allows for cleaner cross-agency comparisons. Second, it distills bureaucratic capacity into two key elements: *material resources* and *human capital*. Material resources are the tangible things—space, equipment, and raw materials—agencies need to complete a given task. Human capital is the expertise, experience, and team production brought to the agency by its workforce. Both elements incorporate the processes and procedures agencies need to make effective use of their resources and workforce. This conceptualization bears resemblance to others in the literature and, therefore, preserves the familiarity and resonance of "capacity" while ensuring it remains sufficiently parsimonious for research purposes.[1]

The latter half of this chapter provides a descriptive account of material resources and human capital within the U.S. administrative state. Note, once we control for an agency's workload, the chosen conceptualization provides a hard test for observing cross-agency variation in the U.S. context. Since the United States does not experience the sort of economic or workforce scarcities that plague developing states, we should observe little variation unless agencies simply do not receive adequate investments. I draw on surveys of over 4 million bureaucrats to examine cross-agency and within-agency variation. Across presidential administrations, the average agency reports that it does not have sufficient resources or people. Yet the results show wide and systematic variation in which agencies have sufficient resources. The American administrative state looks more like the archipelagos of developing states than a homogeneous, high-capacity administrative state. The remainder of this book builds the case for (1) why we should attribute this variation to the electoral incentives of members of Congress and presidents and (2) why this variation has a meaningful impact on policy and law in the United States.

2.1 The Task at Hand

Conceptualizing and measuring bureaucratic capacity requires us to ask, "The capacity to *do what*?" (Hanson & Sigman 2021). Different tasks require different resources, workforces, and expertise. The United States Postal Service (USPS) employs over 500,000 individuals to process and deliver the mail (US Postal Service 2022*a*). By contrast, the Centers for Disease Control (CDC) employs about 12,000 individuals to study infectious diseases and mitigate threats to public health (Office of Personnel Management 2023). Does the CDC have less capacity than USPS? Not necessarily. Delivering mail requires a different type and size of workforce than combating infectious diseases. These agencies also need different material resources. USPS can perform its duties without the CDC's world-class research labs and equipment but would never manage to deliver the mail with the Department of Health and Human Services' 670 vehicles (General Ser-

[1] In her foundational study of Latin American state development, Barbara Geddes (1994) defines a "bureaucratic agency" as "a machine that uses human and material inputs to accomplish tasks" (p. 46). In his effort to conceptualize "governance," Francis Fukuyama (2013) describes "capacity" as "both resources and the degree of professionalization of bureaucratic staff" (p. 364).

vices Administration 2022). Comparisons of budgets and workforces have little validity without a method to standardize the task performed by the sample of agencies.

All agencies perform multiple tasks, and each task requires different types and levels of material resources and human capital. USPS delivers mail and investigates mail fraud; the CDC conducts medical research and responds to outbreaks of infectious diseases. To borrow from Ronald Coase's *The Nature of the Firm* (1937), conceptualizing capacity at the agency-level rather than the task-level "tells us nothing about the effect on costs of conducting one activity, of undertaking another activity, or about the relative costs to different kinds of [agencies] of undertaking particular activities" (65).

Describing the capacity of the agency by its total budget or total workforce rarely tells us which tasks the agency has the material resources or human capital to perform. Following the September 11 Attacks, the Federal Emergency Management Agency (FEMA) invested heavily in its national-security functions at the expense of its disaster-relief functions. Although FEMA had robust infrastructure to respond to terrorist attacks, this infrastructure did not aid in its ability to respond to Hurricane Katrina (Katrina Committee 2006). Following Salmonella outbreaks in the mid-2000s, Congressional hearings showed that the Food and Drug Administration was better-equipped to regulate medical devices than food production (*Diminished Capacity: Can the FDA Assure the Safety and Security of the Nation's Food Supply* 2007). Sometimes capacity spills over from one task to another. Often, however, agencies compartmentalize tasks within discrete offices, limiting spillover.[2]

What do I mean by a task? A *task* is a concrete activity the agency undertakes to advance a particular policy objective. Common tasks performed by agencies include adjudication, policymaking, licensing, revenue collection, scientific research, service provision (such as mail delivery or medical care), and benefits distribution (such as social security or Medicare). A task differs from the agency's mission. An agency's mission is characterized by a broad, amorphous policy goal (Wilson 1989). Many law-enforcement agencies, such as the Bureau of Prisons, the Federal Bureau of Investigation, and Immigration and Customs Enforcement, exist to protect public safety. Other agencies promote economic growth, public health, or education. Although many agencies share a mission, they implement different tasks in furtherance of that mission. For example, both the Social Security Administration and the Wage and Hour Division share the mission of protecting the incomes of economically disadvantaged groups. The Social Security Administration does this by providing direct benefits to elderly and disabled claimants, while the Wage and Hour Division enforces labor laws through the adjudication of disputes related to underpayment. One agency distributes benefits; the other

[2]During an interview, an anonymous careerist with the Department of Commerce expressed frustration with the siloing of agency functions. The careerist's bureau focused on two types of enforcement tasks. The careerist had developed significant expertise in task *A* when other careerists lacked this expertise. To attain a management position, the careerist needed experience with task *B*. Leadership, however, prevented the careerist from working on cases related to task *B* because the agency lacked sufficient personnel capable of performing task *A*.

engages in enforcement.

Agencies receive their tasks from the legal authority delegated to them by Congress and presidents. Once assigned a task, the agency must complete it. There exists a relationship between the agency's capacity and its ability to achieve a desired outcome. Hospitals with diverse medical experts, high-end technology, and a surplus of beds achieve better patient outcomes than understaffed hospitals with antiquated equipment. Schools with small class sizes, highly educated teachers, and support staff produce higher-achieving students than schools with high enrollments and insufficient staffing. Some level of material resources and human capital is necessary for any agency to complete a task.

Of course, principal–agent dynamics between elected officials and agencies complicate this simple portrayal of policy implementation. Actors may disagree on *what* outcome the agency should strive to produce. Consider the decision of the Environmental Protection Agency (EPA) to promulgate regulations under the Clean Air Act. At the most basic level, one can view the outcome as whether the EPA completes the rulemaking processing and issues a final regulation. Faced with a tight electoral deadline, a president may prioritize policy creation over policy outcomes, hoping to claim credit for the agency's regulations before the next election. For example, the Clinton Administration encouraged the Occupational Safety and Health Administration (OSHA) to rush its ergonomics rule to ensure that the agency would complete it before the next election. OSHA officials later recalled that the Administration's pressure prevented them from "do[ing] justice to the record." (Shapiro 2007, 695). In general, bureaucrats care about the long-term effects of their policies more than the short-term electoral consequences to their political superiors.

Other times, members of Congress and presidents ask agencies to complete tasks that conflict with bureaucrats' ideological leanings or the agency's core mission. Agencies devote their greatest attention and resources to tasks that align with their core missions, neglecting ancillary tasks (Barkow 2013, Hickman 2016). When bureaucrats dislike a proposed policy or task, they may manipulate the agency's procedures to stall implementation (Brehm & Gates 1999, Potter 2019). Even the highest-capacity agencies may appear utterly incapable of achieving certain outcomes when bureaucrats offer enough resistance. Bureaucratic control describes the mechanisms available to politicians to force the agency to direct its capacity toward the politicians' preferred tasks and outcomes.

To summarize, bureaucratic capacity describes the ability of the agency to complete a *particular* task. Material resources and human capital are necessary conditions for policy implementation. But politicians and bureaucrats often disagree about what tasks and outcomes the agency should prioritize. By controlling the agency, politicians shape how and where the agency directs its capacity. Accordingly, outcomes from policy implementation are functions of both bureaucratic capacity and bureaucratic control. The remainder of this chapter details the first component: bureaucratic capacity.

2.2 Material Resources

All office work requires a fundamental level of tangible resources: office space, desks, pens, and printers. Many tasks only need these essentials. Other tasks require specialized equipment or spaces. The Veterans Health Administration needs geographically-dispersed hospitals with sufficient beds, medical devices, and medicine to treat patients. The Tennessee Valley Authority operates over seventy power plants to provide electricity throughout the Southeast (Tennessee Valley Authority 2018). NASA needs one-of-a-kind launch facilities, shuttles, and rocket fuel to send astronauts to the International Space Station. These tasks all require high levels of material resources compared to standard office work.

The quality and diversity of resources matter as much as quantity. An agency must procure resources suited for each task. For example, USPS's universal-service obligation requires the agency to provide mail delivery to all residents of the United States. Its fleet includes over 230,000 vehicles (US Postal Service 2022*c*). Yet the agency cannot reach many residents by automobile. USPS uses mules to deliver mail to the Havasupai Tribe at the bottom of the Grand Canyon and hovercraft to deliver mail in rural Alaska.

In equilibrium, an agency acquires only what it needs. Possession of unnecessary or inappropriate spaces or equipment incurs excessive upkeep costs that prevent the agency from investing in other forms of capacity. Following Hurricane Katrina, FEMA purchased 224.3 million pounds of ice in the Northeast and shipped it to the Gulf Coast (Federal Emergency Management Agency 2007). After hurricane season, 84.9 million pounds of ice remained unused, and the agency trucked the ice to cold-storage facilities as far as Maine (Canfield 2005). After two years and $12.5 million in storage fees, the agency chose to melt the remaining ice (Federal Emergency Management Agency 2007).

At times, agencies resist efforts to expand their material resources when they believe future maintenance costs will jeopardize other agency programs. The United States Coast Guard (USCG) maintains a fleet of cutters to patrol waters of the United States. The largest of these ships—the National Security Cutter—carries over 100 crew members and is the most expensive ship in the fleet to maintain. During the FY 2016 budget cycle, the Coast Guard combated congressional proposals to appropriate funds for a ninth cutter. In congressional testimony, Coast Guard officials warned that it could not afford the operation and maintenance costs for an additional cutter and that it would prefer funding for smaller ships (Congress 2015*a*). Nevertheless, Congress appropriated funds for a ninth cutter in FY 2016, followed by a tenth and eleventh cutter in FY 2018.

In many cases, constitutional and statutory law requires agencies to procure a certain quality of resources. For example, the Bureau of Prisons houses high-risk inmates in its highest-security institutions: the U.S.

Penitentiaries.[3] In a normative vacuum, the Bureau of Prisons could house inmates in bare concrete rooms surrounded by tall perimeter fences and guarded watch towers. Constitutional standards shape the required capacity for the task beyond this minimum. Courts have held that prisons must provide inmates with diets that correspond to their religious beliefs, adequate healthcare, housing free of toxins, due process prior to receiving punishment, and other accommodations associated with a minimal standard of living.[4] At times, courts have placed population limits on prisons due to overcrowding.[5] Satisfying these constitutional obligations requires a high level of diverse material resources.

An agency's capacity includes the procurement and logistics procedures that determine whether it has the ability to use the material resources it acquires. Efficient procedures allow an agency to procure space, equipment, and raw materials quickly and at a reasonable cost. For better or worse, the General Services Administration (GSA) has centralized much of the procurement process for the federal government, working with agencies to acquire real estate and supplies.[6] GSA—in conjunction with NASA and the Department of Defense—maintains the complex Federal Acquisition Regulation that governs how and when agencies may contract with private businesses for services and supplies. GSA also manages the majority of the federal government's real-estate holdings and leases these buildings to agencies for office space. Done well, centralized procurement allows the government to procure bulk goods at lower costs and reduces the need for individual agencies to maintain their own procurement offices. Done poorly, centralized procurement separates an agency from necessary goods with thick bands of red tape.

Inefficient procurement policies prevent agencies from attaining the resources needed for policy implementation. The lack of even simple office supplies or IT solutions may hinder performance. In the Immigration Courts, GSA refused to procure new filing cabinets because it had concerns about the structural integrity of the courthouses. As caseloads grew, staff stacked boxes of files in the hallways (Kopan 2021). Although the move toward electronic case management would alleviate many of these problems, insufficient funding and ill-equipped federal data centers stymied efforts by the agency to develop an e-filing system for almost twenty years (Government Accountability Office 2017). Procuring filing cabinets may seem trivial and detached from the central task of adjudicating immigration cases. But, at the Department of Veteran Affairs, the mishandling of paper filings caused employees to shred original documents and unprocessed cases (*Document Tampering and Mishandling at the U.S. Department of Veterans Affairs* 2009).

[3] Unlike many state systems, the BOP relies less heavily on for-profit prisons. In 2021, only 6% of federal inmates were confined in private prisons (Bureau of Prisons 2021).

[4] *Helling v. McKinney*, 509 U.S. 25 (1993) (right to housing free of second-hand smoke); *Estelle v. Gamble*, 429 U.S. 97 (1976) (right to healthcare); *Wolff v. McDonnell*, 418 U.S. 539 (1974) (right to due process in disciplinary hearings); *Jones v. Carter*, 915 F.3d 1147 (7th Cir. 2019) (right to Halal meat for an Islamic inmate).

[5] *Brown v. Plata*, 563 U.S. 493 (2011) (upholding a court-imposed population limit).

[6] Civil servants have ranked GSA as one of the lowest skilled agencies in the United States (Richardson 2019).

2.3 Human Capital

Human capital describes the size of the agency's workforce as well as the combination of expertise, skills, and experience within this workforce. For some agencies, the size of the workforce devoted to a particular task matters more than the workforce's overall expertise. The Transportation Security Administration (TSA) screens 1.6 million passengers per day, and the National Park Service welcomes 311 million visitors to over 400 parks per year (National Park Service 2023, Transportation Security Agency 2022). Although TSA agents and park attendants require training, recruiting a sufficient number of workers poses a larger problem for these agencies than ensuring their employees have sufficient knowledge and expertise to perform the work assigned to them. This is not to suggest that the personnel of large service or enforcement agencies require no expertise or experience. Patient outcomes in the Department of Veterans Affairs would certainly be better with ten thousand experienced and expert doctors than ten thousand novice residents. However, the most proximate reason VA patients experience long wait times is the lack of doctors and nurses rather than a lack of expertise to handle unusual diagnoses (Moore 2020).

More often, however, scholars discuss human capital in terms of the knowledge brought to a firm by its workforce. *Expertise* describes the explicit and tacit knowledge possessed by bureaucrats (Fisher & Shapiro 2020). Explicit knowledge describes the objective and tangible facts known by the bureaucrat. Volcanologists working for the U.S. Geological Survey understand the science behind volcanic eruptions and seismic activity. An attorney in the Office of the General Counsel at the EPA has an intimate knowledge of the Administrative Procedure Act and the Clean Air Act. Individuals usually acquire this knowledge through education or formal training. By comparison, tacit knowledge involves the subjective application of explicit knowledge to a given situation to attain a particular result. Colloquially, we describe tacit knowledge as "professional judgment." Tacit knowledge explains, in part, the willingness of members of Congress to delegate policymaking authority to bureaucrats (Miller & Whitford 2016). While members of Congress can learn specific facts about a situation, they lack the professional judgment that would allow them to use those facts to achieve a particular outcome.

Experience describes the knowledge of process, procedure, and politicking that can only be attained through work in public service. Knowledge of the rules matters less than knowledge of how to manipulate or apply those rules to achieve certain outcomes. According to Jerry Mashaw (1983), experience "involves things like a sense of what works and what doesn't when ferreting out information, what evidence is reliable and what is not—things that are an implicit part of the culture of the system but are not to be found in manuals or regulations" (67). Over time, bureaucrats learn to manipulate these procedures to achieve their preferred outcomes and avoid adverse outcomes (Potter 2019). Experience allows bureaucrats to develop

what Elizabeth Fisher and Sidney Shapiro term "decision-making expertise": "the skill of reconciling conflicting evidence and arguments, disciplinary perspectives, political demands, legal commands, and other considerations" (57–58).

Rarely does a single bureaucrat provide all of the expertise and experience the agency needs to complete a particular task. Instead, bureaucrats work in teams, bringing their own unique perspectives and knowledge to the task (Williams 2021). Team dynamics allow the agency to understand the diverse problems faced by the agency. Consider the National Atmospheric Oceanic Administration's development of regulations to protect and rebuild sardine fisheries. The research team studying how to structure these regulations included aerial surveyors, biologists, economists, environmental scientists, mathematicians, and statisticians (Pacific Fishery Management Council & National Marine Fisheries Service 2021). This list does not even include the lawyers who would ultimately work with the researchers to turn their policy proposals into law (Walker 2013). When lacking key experts, agencies may miss a key element of a problem, impeding their ability to attain certain outcomes.

Geography plays an often overlooked role in an agency's ability to engage in team production. Some agencies locate all workers in a single office in Washington, D.C.; other agencies have tasks that require them to dispere their workforce throughout the United States. Although all U.S. agencies have access to phones and e-mail, even minor geographic distances interfere with team production. While developing HealthCare.gov, the Centers for Medicaid and Medicare (CMS) located the development team in an office building a forty-five minute drive from CMS's headquarters. The Office of the Inspector General later found that the physical distance prevented the team from developing a sense of "unity" with the broader organization and contributed to miscommunications about the goals of the project (Office of the Inspector General 2016).

As with material resources, human capital embodies a procedural element as well. Many of the federal bureaucracy's human-resource functions are centralized within a single agency: the Office of Personnel Management (OPM). OPM standardizes many human-resource policies surrounding benefits, employee–employer disputes, and onboarding. The White House also plays a key role in the development of human-resource policies. The President can (and does) choose to implement hiring freezes to prevent agencies from expanding—or replacing—their workforces except in narrow circumstances. Presidents are also involved in the selection of agency leaders, key policymakers, or other employees the president considers important (Krause & O'Connell 2019, Lewis 2008, O'Connell 2020). On average, White House involvement in the hiring process slows the time it takes the agency to fill vacant positions (Light 2008).

Once an agency recruits an employee, it must retain the employee. Agencies must offer competitive wages to discourage employees from exiting public service for the private sector (Gailmard & Patty 2007). The United States federal government offers competitive benefits to entice potential civil servants, includ-

ing student-loan forgiveness and a charitable pension plan. They must also compete against other federal, state, and local agencies interested in hiring dedicated civil servants with relevant expertise (Teodoro 2011). Sometimes, however, even the most premium benefits package cannot prevent civil servants from leaving their agencies. Following an election, careerists may choose to leave government rather than implement the incoming president's agenda (Golden 1992, Richardson 2019).

Material resources and human capital do not operate independently of one another. In the vast majority of cases, these elements are complements and not substitutes. A deficiency in one element often causes the other element to operate inefficiently. For example, the Department of Energy stocks its National Laboratories with state-of-the-art equipment. Without scientists who understand how to use this equipment to produce discoveries, this lab equipment would remain unused and the National Laboratories' research tasks unfulfilled. Policy implementation requires *both* material resources and human capital.

2.4 A Note on Contractors and Capacity

In recent years, federal agencies have relied more heavily on contractors to support their missions (DiIulio 2014, Dooling & Potter 2022, Verkuil 2017). This has created a "make" or "buy" mentality for bureaucratic capacity. On the one hand, federal agencies can use the funds appropriated to them to lease new buildings, purchase new equipment, or hire new employees. This allows the agency to build and maintain its capacity to perform certain tasks within the agency. On the other hand, the federal agency can choose to purchase the services of a private firm with ostensibly better resources and expertise. By contracting, the agency may accomplish its tasks without making significant capital investments that detract from the agency's core mission. In the ideal world, contracting augments—but does not replace—the agency's material resources or human capital (Verkuil 2017).

Agencies may choose to "buy" capacity for a variety of reasons. Private firms have resources and expertise that allow them to provide goods and services at lower costs than if produced by the government (Dooling & Potter 2022). Contracting also provides agencies with flexibility in how they approach tasks (Dooling & Potter 2022). Rather than investing heavily in the infrastructure needed to perform a task in a particular way, the agency may terminate an existing contract and move to a purveyor who offers an alternative strategy (Milward & Provan 2000).

When an agency's workload becomes unsustainable due to a crisis, contractors provide agencies with an immediate source of surge capacity. During the COVID-19 Pandemic, the Department of Health and Human Services (HHS) contracted with six vaccine companies to produce 300 million doses of a vaccine. Close coordination between government and private actors allowed for the development of multiple vaccines in less than a year. As companies reached manufacturing limits, the Army Corps of Engineers helped contrac-

tors build new factories, and the Department of Defense procured necessary supplies for contractors. The Department of State expedited visas to contractors to fill gaps in employment (Government Accountability Office 2021*b*). The federal government alone would not have had the manufacturing facilities to produce 300 million vaccines. This public–private relationship allowed HHS to expand its capacity.

Sometimes, however, agencies replace essential employees and services with those provided by contractors. From 2005 to 2010, civilian agencies increased their spending on contracts for professional and management support by 44% (Government Accountability Office 2011). By one estimate, there are three private contractors per federal employee (Light 2019). The replacement of civil servants with contractors has "hollowed" the state by redistributing government functions to private organizations (Milward & Provan 2000). Because some agencies rely heavily on contractors for certain tasks, these agencies no longer develop the internal capacity needed to perform these tasks themselves. The agency becomes tied to contractual relationships because the costs of developing this capacity within the agency exceed the agency's budget and timeframe.

Without sufficient oversight, contracting creates risks of self-dealing and poor performance. Contracting has appeared on the Government Accountability Office's high-risk list in some form since at least 1990 (Government Accountability Office 2021*a*). Absent sufficient oversight, contractors may provide low-quality services, produce inferior goods, or engage in self-dealing or rent-seeking behaviors at the expense of the agency. For example, in 2021, Propublica reported that McKinsey and Company had advised the Food and Drug Administration (FDA) on how to regulate the pharmaceutical industry (MacDougall 2021). During the same period, McKinsey helped pharmaceutical companies challenge FDA's proposals to regulate opioids. FDA's contractual relationship with McKinsey provided regulated entities with insights that made FDA's regulatory tasks harder to perform.

Contracting rarely turns a low-capacity agency into a high-capacity agency. Making effective use of contractors requires experienced negotiators and contract managers who can oversee these contracts and protect the agency from waste, fraud, and abuse. As Bridget Dooling and Rachel Potter argue, "[h]arnessing the benefit of contractors—while simultaneously minimizing the disadvantageous aspects of contractor use—requires savvy and competent government managers who are willing to shoulder the risks and burdens to reap the rewards" (Dooling & Potter 2022, p. 746). Of course, in some cases, the agency may not have a choice in whether it contracts or not. Contractors make significant campaign donations to elected officials (Verkuil 2017). These campaign contributions influence whether private firms receive government contracts because presidents use contract dollars to award their party's donors (Fazekas, Ferrali & Wachs 2022). These political dynamics only increase the risk that the agency ends up in a sub-optimal arrangement that threatens its capacity.

2.5 Analysis

I turn to the distribution of material resources and human capital within the United States administrative state. I start with the equilibrium that scholars theorize exists. In equilibrium, agencies within the United States have uniformly high levels of capacity. We do not observe a competition for resources because the United States has sufficient wealth to fund all of its institutions (McDonnell 2017). Agencies themselves are opportunistic and innovate programs to ensure that they create the necessary incentives for members of Congress to invest (Arnold 1979, Fiorina 1981). Sometimes, stochastic events cause an agency to fail or lose capacity. When the president perceives an agency is at a high risk of failure, they build capacity within the agency and, therefore, restore capacity to equilibrium levels (Moe 1990). President Trump, however, represents an anomaly, because he possesses strong anti-administrative beliefs that encourage him to deconstruct all bureaucratic agencies (Skowronek, Dearborn & King 2021).

Controlling for the various tasks agencies perform, we should observe agencies clustered at the "high capacity" end of the distribution. Crises may cause sudden drops in bureaucratic capacity, but presidents should work diligently to restore capacity to the "high capacity" level.

This section provides descriptive evidence that this uniformly high-capacity equilibrium does not exist. Drawing on surveys of federal bureaucrats, I show that bureaucratic agencies exhibit wide variation in their material resources and human capital. An alternative research design could examine agency outlays or the size of the agency's workforce. However, raw measures such as these miss a key component of studying capacity. We must always measure capacity in terms of the agency's tasks and workload. Surveys allow researchers to account for differences in the tasks through question-wording. Contextualizing each question in terms of "my job" or their "work unit" primes respondents to consider their needs when answering questions about bureaucratic capacity.

2.5.1 Data

Since 2004, the Office of Personnel Management (OPM) has fielded the Federal Employee Viewpoint Survey (FEVS) to survey federal bureaucrats about their resources, performance, and job satisfaction.[7] From 2006 to 2019, the FEVS collected over 4.9 million responses from over 250 unique agencies. During this period, it had an average response rate of 53.03%, with a high of 76.2% in 2008 and a low of 40.6% in 2018.[8] Response rates far exceed surveys conducted on the general population and surveys of civil servants conducted by other academics (Bednar & Lewis 2023). Although FEVS samples the entire population of executive-branch

[7] OPM administered the survey biennially from 2004 to 2008 as the Federal Human Capital Survey. Since 2010, it has administered the survey annually as the Federal Employee Viewpoint Survey.

[8] Response rates for all years in the sample: 57.0% (2006), 76.2% (2008), 52.0% (2010), 49.3% (2011), 46.1% (2012), 58.0% (2013), 73.6% (2014), 49.7% (2015), 45.8% (2016), 45.5% (2017), 40.6% (2018), and 42.6% (2019). I exclude any agency that has fewer than five agency–years.

employees, OPM weights survey responses based on agency subgroups to correct for possible sources of response bias. OPM calculates these weights using known distributions of gender, sub-agency, and minority status within each agency.

I use two questions to measure material resources and human capital. To measure material resources, I use a question that asks respondents whether they agree or disagree with the following statement: "I have sufficient resources (for example, people, materials, budget) to get my job done." Over the entire sample, only 47.4% of respondents agree with this statement. To measure human capital, I use a question that asks respondents whether they agree or disagree with the following statement: "My work unit is able to recruit people with the right skills." Over half of the entire, less than half of all respondents (43.2%) agree with this statement. Respondents answer on a five-point scale ranging from "strongly disagree" to "strongly agree."[9] I aggregate responses to the agency–year level, measuring the percentage of respondents who "agree" or "strongly agree" with each statement in the agency.

2.5.2 Distributions

If conventional wisdom about the distribution of bureaucratic capacity within the U.S. administrative state holds, then we should observe clustering at the right tail of the distribution. Clustering would signify high agreement that agencies have sufficient resources to perform their jobs and are able to recruit people with the right skills.

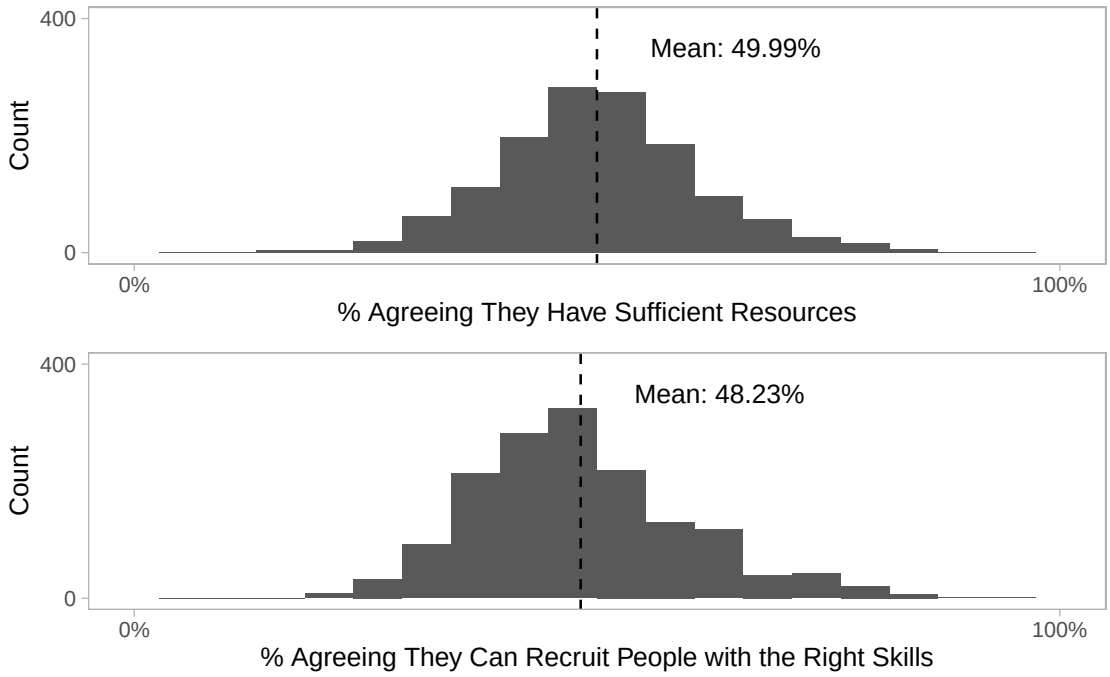
We do not observe the sort of clustering that would demonstrate uniformly high levels of bureaucratic capacity within the United States. Figure 2.1 plots the distributions for both questions. In the mean agency–year, only half (49.98%) of agency respondents agree that they have sufficient resources to perform their jobs. But the distribution is wide. In some agencies, like the Patent and Trademark Office and the Surface Transportation Board, the percentage of respondents agreeing with the statement occasionally exceeds 80%. Other agencies, like the Office of Civil Rights in the Department of Education or the Secret Service, regularly have years where the percentage of respondents agreeing falls below 20%.

We observe the same pattern for human capital. Again, the distribution shows greater and wider variance than conventional wisdom predicts. The mean agency–year has a rate of agreement of less than half (48.26%). Many of the agencies that report insufficient resources also report difficulty recruiting people with the right skills. Indeed, the correlation between these two measures is strong but imperfect ($\rho : 0.70$).

There are several explanations for this distribution that would be consistent with the traditional theory. First, the traditional theory does acknowledge that economic or environmental shocks may cause an agency to lose capacity. Perhaps bureaucratic capacity is more fragile than we expect, and the number of agencies

[9]The five response categories were "strongly disagree," "disagree," "neither disagree nor agree," "agree," and "strongly agree."

Figure 2.1: Distribution of Agency–Year Agreement, 2006-2019



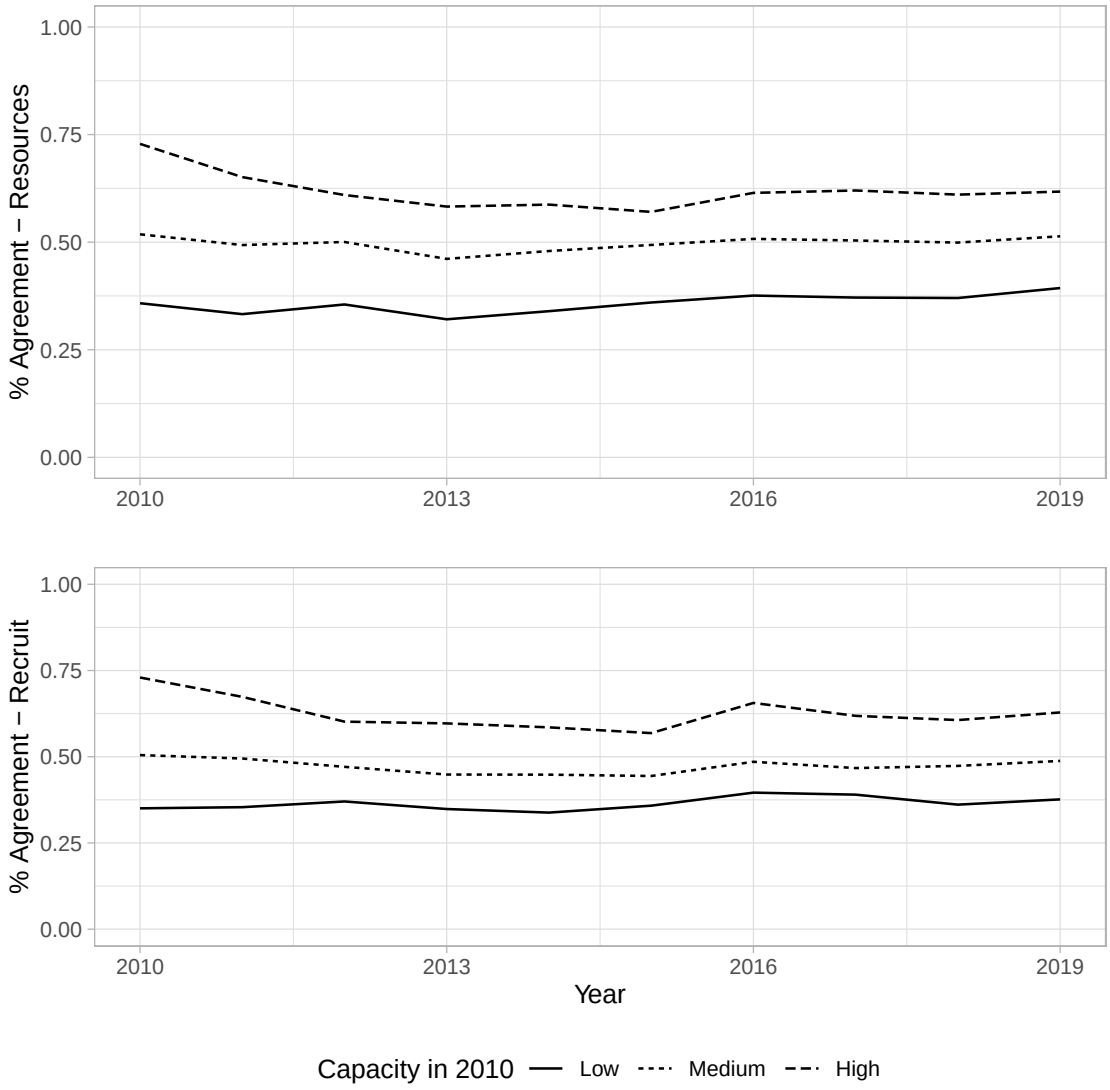
Source: Federal Employee Viewpoint Survey, 2006–2019.

requiring repair at a given point in time is higher than we typically acknowledge. If so, then the key is to examine whether low-capacity agencies see improvement in their capacity over time. Second, the traditional theory treats President Trump as an outlier. By failing to separate President Trump from the previous presidents, this analysis may have erroneously created the illusion of a normal distribution when—in reality—we will observe a right-skewed distribution (i.e., higher capacity) in the Obama Administration and a left-skewed distribution (i.e., lower capacity) in the Trump Administration.

2.5.3 Growth Overtime and President Trump

Key to the traditional theory is the belief that presidents will build capacity in agencies at a high risk of failure (Moe 1990). As low capacity is a key contributor to government failure (Government Accountability Office 2021*a*), presidents should expend significant effort to build capacity in agencies with low capacity. Based on the agency's responses in 2010, I divide the sample into three groups: high-capacity agencies (i.e., those with agreement one standard deviation above the mean), medium-capacity agencies (i.e., those with agreement between one standard deviation above and below the mean), and low-capacity agencies (i.e., those with agreement one standard deviation below the mean). I track each group's average response over time to see whether low-capacity agencies experience improvement in their material resources and human capital.

Figure 2.2: Average Agency–Year Agreement by Level of 2010 Agreement, 2010–2019



Source: Federal Employee Viewpoint Survey, 2010–2019.

Figure 2.2 plots the average percentage of agreement within each group for each year. We do not observe a substantively meaningful increase in agreement for agencies with low levels of agreement in 2010. For all three groups, the average percentage of agreement remains relatively stable from 2010 to 2019. The most notable change occurs in high-capacity agencies, which experience a *decrease* in reported agreement around 2012. Overall, the patterns of growth do not mirror the expectations of the traditional theory. We do not observe increases in the material resources or human capital of low-capacity agencies. This calls into question the degree to which presidents truly invest in low-capacity agencies.

Of course, some individual agencies do experience significant growth. Over the course of nine years, the percentage of respondents agreeing that the Criminal Division in the Department of Justice had sufficient resources increased by 12.1 percentage points (2010: 36.6%; 2019: 48.8%). The percentage of respondents agreeing that the Small Business Administration is able to recruit employees with the right skills increased by 10.6 percentage points (2010: 35.5%; 2019: 46.1%). But some agencies experienced significant decreases in their capacity. In 2010, 50.3% of respondents in the Executive Office of Immigration Review agreed that the agency was able to recruit people with the right skills. By 2019, only 30.5% of respondents agreed—a 19.7 percentage-point decrease.

The time trend also calls into question the degree to which President Trump deconstructed the administrative state. We do not observe sharp declines in capacity beginning in 2017. If the Trump Administration successfully deconstructed the administrative state, then we would expect civil servants to report dramatic decreases in their material resources and human capital—especially in agencies with high levels of capacity in 2010. Ultimately, the distribution during the Trump Administration is statistically indistinguishable from the other presidential administrations.[10] Bureaucrats express similar levels of discontent during both the Obama Administration and the Trump Administration. If anything, agencies' perceptions of their material resources decline from the final year of the Bush Administration (Mean Agency in 2008: 53.9%) to the final year of the Obama Administration (Mean Agency in 2016: 49.9%).

Despite the Trump Administration's promise to deconstruct the administrative state, some agencies, such as Immigration and Customs Enforcement and the Small Business Administration, express increased satisfaction with their material resources and human capital. Of course, other agencies, such as the Environmental Protection Agency, express greater dissatisfaction with their capacity during the Trump Administration. This result suggests that strategies of deconstruction (1) appear to be targeted at particular agencies rather than widespread and (2) are not the predominant source of decay within the administrative state.

[10]The mean for the Trump Administration is 0.498. The mean for the rest of the sample is 0.50. A t-test returns a p-value of 0.771.

2.6 Discussion

Traditional theories of capacity building predict that the United States has uniformly high levels of bureaucratic capacity. The analyses here show that the U.S. administrative state has a far greater distribution than these traditional theories expect. Unsurprisingly, we observe some unimpeachable "islands of excellence." Yet we also observe a number of "islands of deficiency." Although cross-national studies may reveal that agencies within the U.S. administrative state have higher levels of capacity than institutions in other states (Evans & Rauch 1999), the United States still exhibits a high degree of internal variation.

What explains this distribution of material resources and human capital? Under the traditional theory, we should expect that presidents would be quick to restore the capacity of low-capacity agencies to prevent government failures (Moe 1990). Instead, Figure 2.2 illustrates that low-capacity agencies tend to remain low-capacity. Likewise, high-capacity agencies tend to remain high-capacity. Meaningful growth and decline does occur within some agencies. While capacity remains stable for most agencies in the administrative state, *someone* is making targeted investments in particular agencies.

One possible explanation for these trends is that these low-capacity agencies are an exception to the rule because *any* president would have incentives to deconstruct them. But some of these agencies, like the National Park Service, enjoy widespread public support (Pew Research Center 2019). Another possible explanation is methodological. Bureaucrats may overstate their need for resources because they value more people, money, and authority (Fiorina 1989). Maybe. If so, then we should expect greater clustering toward the bottom of the distribution because all bureaucrats would bias their responses downward. We do not observe significant signs of clustering and, in fact, many respondents report high levels of satisfaction with their agency's capacity.

Moreover, many of lowest capacity agencies have experienced highly salient performance failures. Both Customs and Border Protection and Immigration and Customs Enforcement have struggled to enforce immigration laws and maintain humane detention conditions since the start of the 2014 Border Crisis. Insiders have warned that the Secret Service will "never be able to stop a real attack" because of its "outdated equipment and spotty training" (Leonnig 2021, p. 2). Even the National Park Service—an agency beloved for the recreation it provides to hikers, birders, and hunters—has struggled to afford the lands that it is statutorily obligated to purchase (Repanshek 2008). The tie between the percentage of respondents indicating a need for capacity and anecdotal evidence of performance failures suggests that bureaucrats sincerely reflect on their agency's needs when answering surveys.

The most likely explanation—the explanation endorsed throughout the remainder of this book—is that politicians lack sufficient electoral incentives to build capacity in the majority of federal agencies. This

creates a relatively stable distribution of material resources and human capital throughout the administrative state. But sometimes we do observe efforts by politicians to build or deconstruct bureaucratic capacity within particular agencies. The remainder of this book explores the conditions under which politicians choose to build, neglect, or deconstruct agencies.

2.7 Conclusion

The study of bureaucratic capacity requires careful conceptualization to avoid further rending the concept. This book conceptualizes bureaucratic capacity as the material resources and human capital needed for an agency to complete a particular task. Focusing on the task makes cross-agency comparisons more accurate by standardizing the level of capacity we should expect the agency to need.

In order for an individual bureaucratic institution to have sufficient capacity, three conditions must be met. First, the state itself must have a sufficient level of fiscal resources. As one of the wealthiest nations in the world, the United States easily satisfies this prong. Second, actors within the state must have sufficient opportunities to expand the institution's capacity. The Constitution grants members of Congress and the president the authority necessary to appropriate funds, hire civil servants, and structure agencies in ways that are conducive to efficient performance. Third and finally, these actors must have sufficient incentives to make these investments. If neither fiscal resources nor opportunities for investment explain the trends we observe in this chapter, then the distribution of bureaucratic capacity must be explained by a lack of incentives to invest in particular agencies.

CHAPTER 3

Performing Maintenance

Agencies within the U.S. administrative state vary in whether they have sufficient capacity to perform the tasks delegated to them by Congress and presidents. But the United States does not experience a level of economic scarcity that would prevent politicians from investing in its governing institutions. If institutions still appear starved for resources in the wealthiest of contexts, then political dynamics must discourage actors from building capacity within certain agencies.

This chapter theorizes about how electoral incentives shape the willingness of politicians to build or deconstruct bureaucratic capacity. I start from the assumptions that (1) all elected officials want to win reelection for themselves and their copartisans, and (2) federal agencies perform tasks that directly influence the likelihood that an incumbent wins reelection. From these assumptions, I construct a two-period model that explores how the behavior of three actors—a Leftwing Politician, a Rightwing Politician, and an Agency—shapes the likelihood that an incumbent politician builds or deconstructs the Agency's capacity.

Three results contribute to our understanding of when elected officials build capacity within bureaucratic institutions. First, electoral dynamics discourage politicians from building capacity even when all actors have a sincere preference for improved bureaucratic performance. Second, elected officials have the greatest incentives to build capacity in agencies that implement priorities related to their policy agendas and that share their policy preferences. Third and finally, all else equal, actors have a strong incentives to build capacity within independent agencies that share their ideological preferences. This final result is particularly surprising because elected officials struggle to control the capacity once built within these agencies. The chapter concludes with a set of implications that guide the remainder of the book.

3.1 Perpetually Building the Bureaucracy

Conventional wisdom paints the picture of an administrative state that rooted itself in the New Deal and has perpetually grown since. At first glance, this tale holds some truth. Federal outlays have grown from $58 billion in 1930 to $5.1 trillion in 2023 (2023 Constant USD). The last century has witnessed an increase in the creation of agencies as well as an extension of federal reach into new policy domains (Selin & Lewis 2018). Bureaucratic rulemaking has overtaken legislation as the primary mechanism by which federal law gets made in the United States (Potter 2019). By all accounts, the federal bureaucracy looks bigger than it did a century ago.

Much of the literature on bureaucratic politics explains the expansion of the administrative state and

its programs as a function of politicians' electoral motivations. Both members of Congress and presidents recognize that the bureaucracy acts as a tool for delivering policy and particularistic benefits (Arnold 1979, Kriner & Reeves 2015, Moe 1985). So long as they wield control over bureaucratic agencies, elected officials may use the authority and expertise endowed to federal agencies for their own electoral gain. In order to use the administrative state for their own personal policy gains, an agency must possess sufficient capacity (Huber & Mccarty 2004*a*, Ting 2011, Turner 2020).[1] Accordingly, scholars predict that additional funding accompanies grants of new authority, ensuring the agency has the resources it needs to carry out the wishes of Congress and the president (Fiorina 1989).

An extension of this literature predicts that bureaucrats innovate agency programs to encourage elected officials to invest in their agency's capacity (Arnold 1979, Carpenter 2001, Wildavsky 1984). As Morris Fiorina (1989) states, "The genuinely committed bureaucrat is just as likely to seek to expand his agency as the proverbial empire-builder" (39). By constantly having new and exciting products to offer politicians, bureaucrats build large coalitions invested in preserving the agency's capacity. They also gladly aid members of Congress with constituent services in exchange for goodwill (Fiorina 1989).

Presidents also leverage bureaucratic capacity to attain their preferred policy outcomes. The president's budget often sets the ceiling for the agency's negotiation with Congress and, therefore, agencies often negotiate with the Office of Management and Budget for an increase in proposed funding (Pasachoff 2016). In the words of one Obama-era appointee, "When you're the head of a federal agency, OMB is your daddy."[2] By agreeing to prioritize the president's policies today, the agency may protect its budget and workforce tomorrow.

The present narrative envisions constant and persistent growth across agencies. Politicians and bureaucrats form a symbiotic relationship that ties together programmatic growth and capacity building. As elected officials constantly seek ways to protect their vote margins and bureaucrats seek to expand their budgets and workforces, the two work in tandem to grow the administrative state. Programmatic growth without capacity building creates the risk of poor bureaucratic performance. In sum, the current literature predicts that elected officials have sufficient incentives to build and maintain the capacity of bureaucratic agencies.

The obvious exception to the rule is politicians who hold anti-administrativist opinions (Lowi 1987, Metzger 2017*b*). Anti-administrativists appeal to small-government conservatives by proposing the wholesale deconstruction of bureaucratic agencies (Skowronek, Dearborn & King 2021). President Ronald Reagan encapsulated the fears of small-government conservatives when he said, "The top 9 most terrifying words in the English Language are: I'm from the government, and I'm here to help." Unlike legislative or regulatory

[1] This assumption appears in a wide array of theories of the administrative presidency (Lewis 2008, Moe 1990).

[2] Email Correspondence between John Gomperts, Former Director of AmeriCorps, and Author (April 5, 2023).

changes, deconstruction of an agency's capacity limits the ability of future administrations to implement new policies (Benn 2019). During anti-administrativist regimes, we should observe a reversal of the status quo and efforts to decrease bureaucratic capacity across the vast majority of government agencies.

The empirical trends observed in Chapter 2 do not support the existing narrative. We observe neither uniformly high levels of bureaucratic capacity across the administrative state nor uniform patterns of growth. Nor do we observe uniform decreases in bureaucratic capacity during the anti-administrativist presidencies, such as the Trump Administration. Of course, some agencies do experience increased budgets almost every Congress, and presidents do make an effort to deconstruct some agencies. These trends, however, are less ubiquitous than currently envisioned by political scientists. Most often, politicians choose to neglect bureaucratic agencies. The goal of this chapter is to explain the political dynamics that fuel neglect.

3.2 Assumptions

Given the disconnect between traditional theories of capacity building and the empirical realities facing the administrative state, a broader theory of bureaucratic maintenance is needed to understand patterns of growth, decline, and stagnation within agencies. The theory proposed here approaches bureaucratic maintenance from a rational-choice perspective. Rational-choice theories assume that political actors behave strategically in pursuit of their own self-interest (Diermeier & Krehbiel 2009). Some scholars express hesitation toward this approach. As one skeptic explains, "Frankly, it would be very hard to develop a rational choice theory of state capacity, as capacity in any organization is so heavily influenced by norms, organizational culture, leadership, and other factors that do not easily fit into a model based on economic incentives" (Fukuyama 2013, p. 348). Yet these attributes are observable to external actors poised to invest in the agency. If we can understand the motivations of these investors, namely members of Congress and presidents, then we can develop a rational-choice model in which the agency's cultural and structural characteristics inform external investments.

The theory centers around six core assumptions. All six assumptions are well-founded within the political-science literature but remain open to careful research and debate. The next section formalizes these assumptions into a game-theoretic model to deduce predictions about the behavior of elected officials.

Assumption 1 (Reelection Motivation). *Elected officials are motivated to win reelection.*

A central axiom of elite behavior is that politicians are "single-minded seekers of reelection" (Mayhew 1974, p. 12). Empirically, even second-term presidents behave as though seeking reelection for a third term (Kriner & Reeves 2015, Hudak 2014). Although elected officials also have sincere policy preferences and want to protect their historic legacies (Cohen 2012, Moe 1990), these preferences are second order to winning reelection.

Assumption 2 (Administrative Action Affects Elections). *The actions and policies of administrative agencies affect the likelihood that voters support incumbent elected officials.*

Broadly, voters and interest groups consider three things when deciding whether to support the incumbent or the challenger in a forthcoming election. First, voters want elected officials to enact policies aligned with their sincerely-held preferences (Arnold 1990). Second, voters want elected officials to enact policies that reward them with tangible benefits, such as tax cuts, improved infrastructure, or jobs (Healy & Malhotra 2009). Third and finally, voters punish elected officials for economic and physical harms that affect themselves and their families (Achen & Bartels 2016, Malhotra & Kuo 2008).

Bureaucratic agencies affect the preferences of voters through policymaking and program implementation. First, agencies may use their policymaking authority to enact policies desired by the electorate. For example, President Obama used the Department of Homeland Security's control over immigration policy to create the Deferred Action for Childhood Arrivals program (DACA) following the House's failure to pass the DREAM Act (Cox & Rodriguez 2020). Second, the distribution of grants and contracts by agencies provides a source of particularistic benefits for members of Congress and the president (Arnold 1979, Hudak 2014, Kriner & Reeves 2015). Finally, agencies play an important role in managing the "portfolio of risks" encountered by the modern American public. Voters attribute blame for failures in these programs to elected officials (Lewis 2018). When the Federal Emergency Management Agency (FEMA) botches its response to a natural disaster, voters blame the president and members of Congress in addition to FEMA (Malhotra & Kuo 2008).

How much influence a given agency has on electoral outcomes depends on the centrality of its tasks to voters and the degree to which voters trace the benefits they receive to the work of the agency. Even when individual voters receive a concrete government benefit, they often do not attribute the benefit to the federal government or the implementing agency (Mettler 2011). Interest groups may mobilize certain populations to protect large government programs, such as Medicare or social security (Arnold 1990). Many other programs and agencies, however, exist in relative obscurity. Moreover, capacity building concerns the marginal improvement of performance—not the creation of new programs (Bednar & Lewis 2023). Voters understand the costs and benefits of tax cuts, but they cannot connect improvements to the IRS's computer systems to their own economic well-being (Davidson 2023). All told, we may expect that the performance of many administrative tasks has only a knife-edge consequence on an incumbent's electoral returns.

Assumption 3 (Bureaucratic Control). *Elected officials exercise varying degrees of control over agencies.*

Elected officials—especially presidents—have invested significant effort into increasing their control over the administrative state (Lewis 2008, Moe 1985, McCubbins, Noll & Weingast 1989, Pasachoff 2016). The

degree of control exercised by elected officials depends on its structure and placement within the executive branch. Many agencies are designed to insulate civil servants from political pressures that may influence their decision-making (Lewis 2003, Selin 2015). These insulating structures limit the degree to which elected officials control the agency's day-to-day activities and, therefore, controlling these agencies is costly relative to executive-branch agencies.

Assumption 4 (Mission Motivation). *Bureaucrats are motivated to complete tasks that align with their agency's primary mission.*

Bureaucrats want to fulfill the central mission of the agency (Dilulio 1994, Kaufman 1960, Wilson 1989). The labor market for public-service positions reinforces the agency's mission by attracting employees with a sincere interest in the agency's policy area (Downs 1964). The self-selection of civil servants into agencies based on the agency's mission ensures a stable ideological bent within the agency (Richardson, Clinton & Lewis 2017, Clinton & Lewis 2008). Individuals passionate about environmental policy tend to be more liberal and choose to work in agencies like the Environmental Protection Agency or the National Oceanic and Atmospheric Administration. By contrast, individuals passionate about national security tend to be more conservative and choose to work in agencies like the Department of Homeland Security or the Department of Defense.

Agencies place greater value on tasks that align more closely with their sense of mission or ideological predispositions. The Internal Revenue Service has a strong proclivity toward protecting the fisc and, therefore, has neglected its implementation of social-welfare policies (Hickman 2016). Likewise, the Department of Justice has a strong prosecutorial culture and has been loathed to make clemency recommendations (Barkow 2013). Asked to implement policies that conflict with the agency's mission, bureaucrats may prioritize other tasks unless elected officials invest significant effort into controlling the agency (Brehm & Gates 1999, Potter 2019).

Assumption 5 (Capacity Improves Performance). *All else equal, higher capacity agencies perform better than lower capacity agencies.*

Even when elected officials and bureaucrats agree on the tasks to be performed by the agency, the material resources and human capital available to the agency affect agency outputs (Bolton, Potter & Thrower 2015, Drolc & Keiser 2020, Frakes & Wasserman 2013).[3] Any particular case requires delineating "good performance" from "bad performance." Even easily measured performance metrics like the

[3] I want to be careful to distinguish this assumption from common characterizations in the literature about the level of capacity in the American administrative state. This assumption says nothing about the level of capacity across the American administrative state or within a given agency. Indeed, the purpose of the theory is to explain capacity within the United States context. Nor does the extant literature say that the institutions of the American administrative state will never fail. More often, existing research predicts that capacity is so high within agencies that any variation is inconsequential for government performance.

speed of processing welfare applications come with trade-offs in terms of achieving accurate results (Ames et al. 2020, Bednar 2023, Shah 2023). For purposes of the theory, I shelve normative conversations about what "good performance" looks likes and simply assume agencies with higher capacity are better at achieving it.

Assumption 6 (Long-Term Investment). *Elected officials do not realize immediate returns on investments in bureaucratic capacity.*

Investments in bureaucratic capacity take time to make returns. An agency receiving a significant increase in appropriations must procure new equipment, build new office space, and otherwise invest its money in long-term projects. An agency hoping to increase the size of its workforce must engage in recruitment, onboard those individuals, and wait for the maturation of their training before investments in human capital make returns. In fact, the agency may actually suffer a sudden lapse in performance while it devotes its limited resources to figuring out how to best distribute its new resources. Elected officials must often wait years before they see the sort of improvement in performance that would aid in their chances of reelection. As a result, the agency rarely experiences improvements in its performance before the next election cycle.

Starting from these assumptions, I develop a game-theoretic model to explain under what conditions elected officials build, neglect, and deconstruct bureaucratic capacity.

3.3 Model

I model the investment in bureaucratic capacity as a noncooperative game of complete and perfect information between three actors: a Leftwing Politician L, a Rightwing Politician R, and an Agency A. The game lasts two periods and yields a winner of an election and a level of two policies—x_1 and x_2—in each period. The state variable $c_t \in \{-\lambda, 0, \lambda\}$ describes whether an investment in a previous period has resulted in a *marginal decrease* or a *marginal increase* in the Agency's capacity. The Agency's level of capacity affects the actions available to the actors in each period. At the end of each period, the Agency produces policy equal to $c_t a_t$, where $a_t(x_1, x_2)$ is an allocation of the Agency's capacity in period t. The parameter $\lambda \in (0, 1]$ captures the effect of capacity on agency performance.

The game begins with no investment $c_1 = 0$. At the end of the first period, the incumbent $i_1 \in \{L, R\}$ has the opportunity build, neglect, or deconstruct the Agency's capacity. If the Incumbent builds or deconstructs the Agency's capacity, then they pay a cost of $z > 0$.[4] If the incumbent builds the Agency's capacity in period $t = 1$, then the Agency's marginal capacity increases to $c_2 = \lambda$ in the period $t = 2$. Likewise, if the incumbent

[4] In reality, the cost of building capacity and deconstructing capacity may be different. In a repeated game, it would be important to consider the effect of different costs on equilibrium outcomes. As the two-period model only experiences one instance of investment, the different costs do not affect equilibrium outcomes in this model.

deconstructs the Agency's capacity in period $t = 1$, then the Agency's marginal capacity decreases to $c_2 = -\lambda$ in period $t = 2$. If the incumbent neglects the Agency, then $c_2 = 0$ for the remainder of the game.

If the Agency has experienced an increase in its capacity (i.e., $c_t = \lambda$), then the actors must allocate the Agency's additional capacity between policies x_1 and x_2. An allocation strategy $a_t^j(x_1, x_2|\lambda)$ for actor j is a mix that satisfies the constraints $a_t^j(x_1, x_2|\lambda) \leq 1$ and $a^j(x_n) \geq 0$. At the start of the period, the incumbent decides whether to control the Agency's allocation decision for a cost $k > 0$. If the incumbent controls the Agency, then the incumbent makes the allocation decision. If the incumbent does not control the Agency, then the Agency makes the allocation decision.

If the Agency has experienced a decrease in its capacity (i.e., $c_t = -\lambda$), then the actors must allocate the Agency's loss of capacity between policies x_1 and x_2. An allocation strategy $a_t^j(x_1, x_2| - \lambda)$ for actor j is a mix that satisfies the constraints $a_t^j(x_1, x_2| - \lambda) = 1$ and $a^j(x_n) \geq 0$.[5] As above, at the start of the period, the incumbent decides whether to control the Agency's allocation decision for a cost $k > 0$.

In any period where $c_t = 0$, neither the control decision nor the allocation decision occur. The Agency maintains its preexisting level of capacity and, therefore, experiences no marginal increase or decrease to its performance. As $c_1 = 0$, the first period never includes a control or allocation decision, and the marginal level of policy produced by the Agency is always zero.

The timing of game is as follows:

1. *Investment (t=1)*: The Incumbent decides whether to build, neglect, or deconstruct the Agency's capacity. If the Incumbent builds capacity, then the Agency's capacity increases to $c_2 = \lambda$ in period $t = 2$ and the incumbent pays a cost z. If the incumbent deconstructs capacity, then the Agency's capacity decreases to $c_2 = -\lambda$ in period $t = 2$ and the incumbent pays a cost z. If the incumbent neglects the Agency, then $c_2 = 0$.

2. *Election (t=1)*: An election occurs. The incumbent wins the election with probability ρ, and the challenger wins the election with probability $1 - \rho$.[6] The winner receives a benefit of $h > 0$ and becomes the incumbent in period $t = 2$.

3. *Control (t=2; $c_2 = \lambda$ or $c_2 = -\lambda$)*: The incumbent decides whether to control the Agency for cost $k > 0$ or not.

4. *Allocation (t=2; $c_2 = \lambda$ or $c_2 = -\lambda$)*: If the incumbent controls the Agency, then the incumbent makes an allocation decision of $a_2^i(x_1, x_2|c_2)$. If the incumbent does not control the Agency, then the Agency

[5] Notice, the chosen actor need not allocate the entirety of the Agency's capacity if $c_t = \lambda$ but must allocate the capacity such that $a_t = 1$ if $c_t = -\lambda$.

[6] As any investment in the Agency's capacity is a *marginal* increase or decrease in capacity, ρ incorporates the electoral benefits provided to the incumbent by the Agency in a period where $c = 0$.

makes an allocation decision of $a_2^A(x_1, x_2|c_2)$.

5. *Election (t=2)*: An election occurs. The incumbent wins the election with probability

$$w_2^i = \begin{cases} \rho + \lambda\gamma^i a_2 & \text{if } c_2 = \lambda \\ \rho & \text{if } c_2 = 0 \\ \rho - \lambda\gamma^i a_2 & \text{if } c_2 = -\lambda. \end{cases} \tag{3.1}$$

where $\gamma^i(x_1, x_2)$ is the value placed by the incumbent on the Agency's policies, such that $\gamma_n^i \in (-1, 1)$. The challenger wins the election with probability $1 - w_2^i$. The winner receives a benefit of $h > 0$. The game ends.

Actors' second-period payoffs are discounted by $\delta \in (0, 1)$. The combination of the election and discounting allows the second period to represent the expected stream of continuous payoffs from an investment decision made by the incumbent in period $t = 1$.[7]

The expected utility for each first period incumbent equals

$$\begin{aligned} EU^L(I_1 = L) &= \Big(\rho\Big)\Big[h + \delta h\big(w_2^L\big)\Big] + \Big(1 - \rho\Big)\Big[\delta h\big(1 - w_2^R\big)\Big] - z - k \\ EU^R(I_1 = R) &= \Big(\rho\Big)\Big[h + \delta h\big(w_2^R\big)\Big] + \Big(1 - \rho\Big)\Big[\delta h\big(1 - w_2^L\big)\Big] - z - k \end{aligned} \tag{3.2}$$

The Agency only values policy outcomes. The Agency's expected utility equals

$$EU^A = \begin{cases} \delta\lambda\gamma^A a_2 & \text{if } c_2 = \lambda \\ 0 & \text{if } c_2 = 0 \\ -\delta\lambda\gamma^A a_2 & \text{if } c_2 = -\lambda \end{cases} \tag{3.3}$$

where $\gamma^A(x_1, x_2)$ is the value placed by the Agency on its policies such that $\gamma_n^A \in (-1, 1)$.

[7] This interpretation assumes that the investments in made in period $t = 1$ are long-lasting and not immediately reversed by an opposing incumbent. A limitation of the model is that it does not capture cycles of building and deconstruction—a tit-for-tat strategy where the Rightwing Politician deconstructs whenever the Leftwing Politician builds. While alternative modelling would identify whether cyclical equilibria exist, in the majority of cases, an investor does not want to build if they expect their opponent to deconstruct before the investor has a chance to profit from the improvement in the Agency's capacity.

In an environment with relatively close elections (like the United States), it is likely that a cyclical equilibrium would require relatively extreme parameters. A thought experiment illustrates the point. Suppose the Leftwing Politician has a 51% chance of winning reelection at the end of the period. If the Leftwing Politician builds capacity, then there is a 51% chance they get reelected and get to use the high-capacity Agency for their preferred policies. But there is a 49% chance the Rightwing Politician gets reelected, uses the high-capacity Agency for their preferred policies, and immediately deconstructs the Agency. In the latter case, the Leftwing Politician never sees a return on their investment in building the Agency's capacity. The Leftwing Politician would have to experience such a significant increase in the likelihood of reelection from building the Agency's capacity that they are willing to risk the Rightwing Politician profiting from the Leftwing Politician's investment without the Leftwing Politician *ever* having an opportunity to benefit from the high-capacity Agency. Effectively, the game is not dissimilar to tit-for-tat prisoner's dilemma where the prosecutor randomizes between which actor has the opportunity to defect next. A dynamic model could explore whether these cycles would be sustainable as ρ approaches 0.5.

3.4 Results

In this section, I analyze the behavior of the actors under different preference configurations. The focus is on the willingness of the incumbents to invest in the Agency's capacity in period $t = 1$. Subgame-perfect Nash equilibrium is the appropriate solution concept because this is a sequential game of complete and perfect information. I solve for equilibria through backwards deduction. An equilibrium consists of a profile of strategies including an investment decision for each politician in period $t = 1$, a control decision for each politician in period $t = 2$, and an allocation decision for each actor in period $t = 2$. Proofs for all propositions are in the appendix.

3.4.1 Period 2 Behavior

The actors' behaviors in the second period are important to the results. The willingness of the first-period incumbent to build or deconstruct the Agency's capacity depends on how future administrations will use that capacity to shape policy and, in turn, election outcomes. When deciding whether to build or deconstruct bureaucratic capacity in period $t = 1$, the incumbent must consider how they will allocate that capacity if they win reelection *and* how the challenger will use that capacity if they win the election. I briefly review the period $t = 2$ behavior of the actors.

Lemma 1. *Suppose Actor j has the following preference ordering: $\gamma_m^j > \gamma_n^j$. If $c_2 = \lambda$ and Actor j has an opportunity to allocate the Agency's capacity, Actor j allocates*

$$a_2^j(x_m, x_n | c_2 = \lambda) = \begin{cases} (1,0) & \text{if } \gamma_m^j > 0; \\ (0,0) & \text{Otherwise.} \end{cases} \tag{3.4}$$

First, we consider each actor's allocation decision in period $t = 2$ when the previous period incumbent has built the agency's capacity. If the incumbent has controlled the Agency, then Lemma 1 states that they will devote the entirety of the Agency's capacity to whichever policy provides them with the greatest electoral returns. This assumes, however, that at least one of the Agency's policies provides the incumbent with positive electoral returns. If both policies decrease the incumbent's likelihood of reelection, then the incumbent chooses an allocation strategy of $a_2^i(x_1, x_2 | \lambda) = (0,0)$.

The Agency receives utility from implementing its most preferred policies. If the incumbent has not controlled the Agency, then the Agency chooses to allocate the entirety of its capacity to whichever policy provides it with the greatest policy returns. Theoretically, if Agency received negative utility from both of its policies, then the Agency would choose $a_2^A(x_1, x_2 | \lambda) = (0,0)$. In reality, agencies derive utility from policies that align closely with their primary mission, and it seems unlikely that an Agency would ever find itself in a

situation where it only implements policies that conflict with its primary mission.

Lemma 2. *Suppose Actor j has the following preference ordering: $\gamma_m^j > \gamma_n^j$. If $c_2 = -\lambda$ and Actor j has an opportunity to allocate the Agency's capacity, Actor j allocates $a_2^j(x_m, x_n | c_2 = -\lambda) = (0,1)$.*

Forced to cut the Agency's programming, Lemma 2 explains that all actors cut their least preferred policy. In cases where $\gamma_n^j > 0$, the actor will suffer a loss of expected utility as a result of the Agency's loss of capacity. But this is not always the case. If $\gamma_n^j < 0$, then the actor's expected utility will *increase* as a result of the Agency's loss of capacity. This result captures the fact that deconstruction may serve as a substitute to deregulation for some politicians.

Lemma 3. *If $c_2 = \lambda$ and $k < h\lambda\gamma^i(a_2^i - a_2^A)$, then the incumbent controls the Agency. If $c_2 = -\lambda$ and $k < h\lambda\gamma^i(a_2^A - a_2^i)$, then the incumbent controls the Agency. Otherwise, the incumbent does not control the Agency.*

In deciding whether to control the Agency, Lemma 4 states that the incumbent considers the difference between the incumbent's allocation strategy and the Agency's allocation strategy. The inclusion of λ suggests something interesting about the nature of bureaucratic control. All else equal, politicians prefer to control high-capacity agencies. As λ increases, controlling the agency becomes more attractive. The importance of bureaucratic capacity is under-explored in existing empirical work related bureaucratic control, but this result is consistent with other theories showing that capacity shapes patterns of delegation (Huber & Gordon 2004, Ting 2011, Turner 2020).

3.4.2 Homogeneous Preferences

We may expect that relatively uncontroversial agencies with strong support from the electorate enjoy persistent and continual investment. Both Democrats and Republicans campaign on promises to protect programs like Medicare, social security, and veterans benefits. Empirically, however, the agencies that administer these programs often suffer from significant deficiencies in bureaucratic capacity (Ames et al. 2020, Derthick 1990, Mashaw 1983).

In many models of policymaking, homogeneous preferences allow actors to overcome gridlock and create policy at everyone's ideal point (Krehbiel 1996). I begin the analysis of the politicians' period $t = 1$ investment strategies by examining a case of homogenous preferences. Formally, suppose all actors value the agency's policies at $\gamma_1 > \gamma_2 > 0$. In effect, the Agency is uncontroversial and a source of positive utility for everyone. In period $t = 2$, the incumbent anticipates that neither politician will control the Agency (Lemma 3). If $c_2 = \lambda$, then the Agency will allocate $a_2^A(x_1, x_2 | \lambda) = (1,0)$ (Lemma 1). If $c_2 = -\lambda$, then the Agency will allocate $a_2^A(x_1, x_2 | -\lambda) = (0,1)$ (Lemma 2).

Proposition 1. *Suppose all actors value the agency's policies at $\gamma_1 > \gamma_2 > 0$. In equilibrium, the actors play the following collection of strategies:*

- *If $z \leq \delta h \lambda \gamma_1 (2\rho - 1)$, then the incumbent builds the Agency's capacity in period $t = 1$. If $z \leq \delta h \lambda \gamma_2 (1 - 2\rho)$, then the incumbent deconstructs the Agency's capacity in period $t = 1$. Otherwise, the incumbent neglects the Agency in period $t = 1$.*
- *The incumbent does not control the Agency.*
- *If $c_2 = \lambda$, then the Agency allocates $a_2^A(x_1, x_2|\lambda) = (1,0)$. If $c_2 = -\lambda$, then the Agency allocates $a_2^A(x_1, x_2|-\lambda) = (0,1)$.*[8]

Proposition 1 reveals that homogeneous preferences do not necessarily result in a willingness to build capacity—even if the incumbent would incur no costs. If $\rho \leq 0.5$, then the incumbent never builds the Agency's capacity. The incumbent expects to lose the election and, therefore, does not want to give their opponent the advantage of improved bureaucratic performance in the period $t = 2$ election. Likewise, if $\rho \geq 0.5$, then the incumbent will never deconstruct the Agency's capacity. The incumbent expects to win the election and, therefore, does not want to hurt their chances of winning reelection by diminishing bureaucratic performance. Electoral dynamics interfere with the willingness of politicians to invest in bureaucratic capacity—even when all actors sincerely favor the Agency's policies.

Three additional results deserve discussion. First, the willingness to build or deconstruct capacity depends on the magnitude and direction of the effect of agency's policies on the incumbent's electoral outcomes. As γ_1 approaches 1, the incumbent becomes more willing to pay cost z to build the Agency's capacity. As γ_2 approaches 1, the incumbent becomes more willing to pay cost z to deconstruct the Agency's capacity. Although the incumbent places a positive value on γ_2, deconstruction occurs because the incumbent's opponent will suffer electoral consequences from diminished bureaucratic performance in the next period.

Second, as λ approaches 1, the attractiveness of building capacity increases. The incumbent wants to build capacity in the agencies where investments produce the greatest marginal returns relative to cost z. Substantively, if we envision that capacity building experiences diminishing marginal returns as the Agency's baseline level of capacity increases, then incumbents will want to invest in the lowest capacity agencies.

Third and finally, λ and γ are decreasing in each other. As λ increases, the value of γ needed to induce investment decreases and vice versa. The relationship between these variables suggests that not one factor dominates the politicians' investment decisions. Capacity building requires an auspicious electoral cycle, a policy supported by the incumbent's voters, and a sufficient improvement in performance.

[8] Off path, the incumbent uses the same allocation strategy as the Agency.

Both neglect—and even deconstruct—are feasible strategies when actors have homogeneous preferences. Electoral cycles discourage politicians from making costly investments that may benefit their opponents in future administrations. Instead, elected officials would rather invest their time and energy in electoral activities that return immediate benefits, such as policymaking or campaigning. We should expect that heterogeneous preferences only further discourage capacity building.

3.4.3 Heterogenous Preferences

In reality, ideological disagreement surrounds the policies and programs of many agencies. Democrats and Republicans disagree about what the Environmental Protection Agency, Immigration and Customs Enforcement, and the Internal Revenue Service should prioritize. Preference divergence leads to different policy outcomes during different presidencies and, in turn, affects the willingness of incumbents to invest in the capacity of these agencies.

To explore these dynamics, I examine two cases of heterogeneous preferences. In both cases, I assume $\gamma_1 > 0$ and $\gamma_2 > 0$, where $\gamma_1 > \gamma_2$.[9] The Leftwing Politician and the Agency share all preferences and receive γ_1 from the implementation of policy x_1. By contrast, the Rightwing Politician receives $-\gamma_1$ from the implementation of policy x_1. I vary the actors' preferences over policy x_2. In addition, the configuration of preferences and Lemma 3 produce two "types" of agencies. I describe an Agency that the Rightwing Politician will never control in period $t = 2$ as an *Independent Agency*. I describe an Agency that the Rightwing Politician will always control in period $t = 2$ as an *Executive Agency*.[10]

First, I consider a case where the Leftwing Politician and the Agency only receive positive utility from the Agency's policies and the Rightwing Politician only receives negative utility from the Agency's policies. Formally, the Leftwing Politician and the Agency have preferences of γ_1 and γ_2. The Rightwing Politician has preferences of $-\gamma_1$ and $-\gamma_2$.

Proposition 2. *Suppose the Agency is an Independent Agency. Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > \gamma_2 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$ and $-\gamma_2$. In equilibrium, the actors play the following collection of strategies:*

- *If $\delta h \lambda \gamma_1 \geq z$, then the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. If $\delta h \lambda \gamma_2 \geq z$, then the Rightwing Politician deconstructs the Agency's capacity. Otherwise, the Rightwing Politician neglects the Agency.*

- *The incumbent does not control the Agency.*

[9] This constraint ensures that the Agency does not receive its highest utility from the deconstruction of its own capacity.
[10] These conditions are formally defined in the appendix for each case.

- *The Agency allocates* $a_2^A(x_1, x_2|\lambda) = (1,0)$ *and* $a_2^A(x_1, x_2|-\lambda) = (0,1)$.[11]

Proposition 2 demonstrates how agency independence reshapes the calculus for investment. As in Proposition 1, the Leftwing Politician still considers the effects of γ and λ relative to the cost of building capacity. Unlike Proposition 1, the probability of winning reelection ρ does not factor into the Leftwing Politician's investment decision. An independent agency will continue to produce policy benefits enjoyed by the Leftwing Politician regardless of whether they win the election in period $t = 1$. This reason also explains why the Leftwing Politician never deconstructs the Agency.

A similar logic explains why the Rightwing Politician always deconstructs the Agency. The Rightwing Politician receives disutility from the Agency's policies but receives positive utility from undermining agency performance. By dismantling the Agency's capacity, the Rightwing Politician *gains* positive expected utility regardless of who wins the election at the end of period $t = 1$. This result is similar to the model in Benn (2019), which explains why presidents with deregulatory beliefs choose to deconstruct regulatory agencies. Substantively, deconstruction behaves as a substitute to deregulation when the cost of controlling the Agency's policymaking efforts is too high.

Proposition 3. *Suppose the Agency is an Executive Agency. Assume the Leftwing Politician and the Agency have preferences of* $\gamma_1 > \gamma_2 > 0$*, and the Rightwing Politician has preferences of* $-\gamma_1$ *and* $-\gamma_2$*. In equilibrium, the actors play the following collection of strategies:*

- *If* $\delta h \lambda \gamma_1 \rho \geq z$*, then the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. If* $\delta h \lambda \big(\gamma_1 \rho + \gamma_2(1-\rho)\big) - \delta \rho k \geq z$*, then the Rightwing Politician deconstructs the Agency's capacity. Otherwise, the Rightwing Politician neglects the Agency.*
- *The Leftwing Politician does not control the Agency. The Rightwing Politician controls the Agency.*
- *The Agency allocates* $a_2^A(x_1, x_2|\lambda) = (1,0)$ *and* $a_2^A(x_2, x_2|-\lambda) = (0,1)$*. The Rightwing Politician allocates* $a_2^R(x_1, x_2|\lambda) = (0,0)$ *and* $a_2^R(x_1, x_2) = (1,0)$.[12]

Proposition 3 shifts the focus from independent agencies to executive agencies. The Leftwing Politician's indifference condition is similar to Proposition 2. In this case, however, the Leftwing Politician anticipates that the Rightwing Politician will control the Agency and prevent it from producing any policy in period $t = 2$. The Leftwing Politician's indifference condition, therefore, incorporates the likelihood of winning reelection ρ. As ρ approaches 0, the Leftwing Politician anticipates that the Rightwing Politician will prevent the

[11] Off path, the Leftwing Politician uses the same allocation strategy as the Agency. The Rightwing Politician allocates $a_2^R(x_1, x_2|\lambda) = (0,0)$ and $a_2^R(x_1, x_2|-\lambda) = (1,0)$.

[12] Off path, the Leftwing Politician uses the same allocation strategy as the Agency.

Agency from producing any policy in period $t = 2$ and, therefore, the willingness of the Leftwing Politician to build capacity decreases.

The Rightwing Politician's indifference condition differs from Proposition 2 in two main respects. First, the ability to control the Agency enables the Rightwing Politician to undermine performance for their least preferred policy x_1. As ρ approaches 1, the Rightwing Politician expects to be able to allocate the loss of capacity toward their least preferred policy. Second, the need to control the Agency requires the Rightwing Politician to consider the cost of controlling the agency $k > 0$.

Propositions 1–3 rely on relatively extreme preference configurations. Many disagreements in bureaucratic politics do not divide neatly into agency supporters and agency opponents. Agencies like the Department of Justice and the Department of Agriculture enjoy support on both sides of the aisle but still experience ideological disagreement about where these agencies should focus their attention. To model this dynamic, I assume that the Leftwing Politician and the Agency have a preference of $-\gamma_2$, and the Rightwing Politician has a preference of γ_2.

Proposition 4. *Suppose the Agency is an Independent Agency. Assume the Leftwing Politician and the Agency have a preference of $\gamma_1 > 0$, and the Rightwing Politician has a preference of $-\gamma_1$. In addition, the Rightwing Politician has a preference of $\gamma_2 > 0$, and the Leftwing Politician and the Agency have a preference of $-\gamma_2$. In equilibrium, the actors play the following collection of strategies*

- *If $\delta h \lambda \gamma_1 \geq z$, the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. The Rightwing Politician neglects the Agency.*
- *The Incumbent does not control the Agency.*
- *The Agency allocates $a_2^A(x_1, x_2|\lambda) = (1,0)$ and $a_2^A(x_1, x_2|-\lambda) = (0,1)$.*[13]

Proposition 4 examines the willingness of the actors to invest in an independent agency given the split preference arrangement. The Leftwing Politician has the same indifference condition as Proposition 2. The Rightwing Politician, however, will neither build nor deconstruct the Agency's capacity. The shift from deconstruction to neglect is explained by the increased utility experienced by the Leftwing Politician when the Agency allocates capacity away from policy x_2. Neglect is the only strategy that prevents the Leftwing Politician from experiencing an increased likelihood of winning the election in period $t = 2$.

Proposition 5. *Suppose the Agency is an Executive Agency. Assume the Leftwing Politician and the Agency have a preference of $\gamma_1 > 0$, and the Rightwing Politician has a preference of $-\gamma_1$. In addition, the Rightwing*

[13] Off path, the Leftwing Politician uses the same allocation strategy as the Agency. The Rightwing Politician allocates $a_2^R(x_1, x_2|\lambda) = (0,1)$ and $a_2^R(x_1, x_2|-\lambda) = (1,0)$.

Politician has a preference of $\gamma_2 > 0$, and the Leftwing Politician and the Agency have a preference of $-\gamma_2$. In equilibrium, the actors play the following collection of strategies

- *If $\delta h\lambda\big(\gamma_1\rho - \gamma_2(1-\rho)\big) \geq z$. the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. If $\delta h\lambda\big(\gamma_1\rho - \gamma_2(1-\rho)\big) - \delta\rho k \geq z$. the Rightwing Politician deconstructs the Agency's capacity. Otherwise, the Rightwing Politician neglects the Agency.*
- *The Leftwing Politician does not control the Agency. The Rightwing Politician controls the Agency.*
- *The Agency allocates $a_2^A(x_1,x_2|\lambda) = (1,0)$ and $a_2^A(x_1,x_2|-\lambda) = (0,1)$. The Rightwing Politician allocates $a_2^R(x_1,x_2|\lambda) = (0,1)$ and $a_2^R(x_1,x_2|-\lambda) = (1,0)$.*[14]

Finally, Proposition 5 highlights the electoral trade-offs faced by the politicians when choosing to invest. As ρ approaches 1, the Leftwing Politician expects to win reelection and, therefore, has greater incentives to build capacity. Yet the Leftwing Politician must remain leery of the possibility that the Rightwing Politician wins reelection, controls the Agency, and allocates the capacity toward policy x_2. Similar considerations govern the Rightwing Politician's decision to deconstruct the Agency.

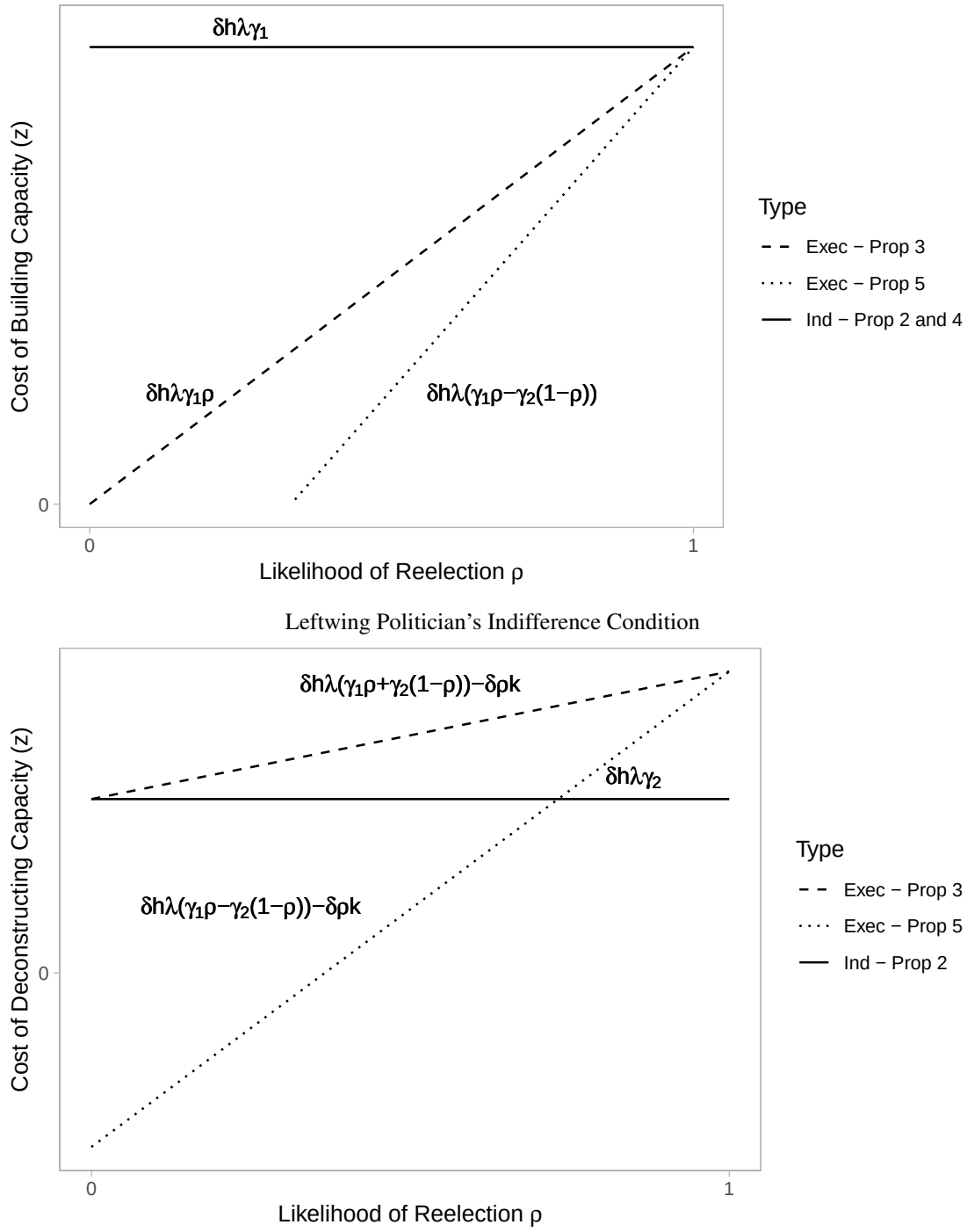
Figure 3.1 compares the indifference conditions across the different sets of heterogeneous preference arrangements. This comparison yields interesting implications. The Leftwing Politician has the greatest incentive to build capacity in (1) independent agencies and (2) agencies where the Rightwing Politician places less priority on the Agency's policies. Both conditions reinforce that politicians want to build capacity without providing their opponents an electoral edge in future periods. The Rightwing Politician has the greatest incentive to deconstruct capacity in (1) agencies where the Leftwing Politician places the greatest priority of the Agency's policies, (2) independent agencies, and (3) agencies where it will profit from deregulation. The willingness to deconstruct an Agency depends, in part, on the politicians' ability to ensure the Agency reduces capacity in programs the politician wants eliminated or that harm the opponent's chances of reelection.

3.5 Implications

Electoral dynamics play a significant role in the willingness of politicians to build bureaucratic capacity. As the likelihood of the incumbent's reelection decreases, the willingness to build and deconstruct decreases. Neglect becomes the norm except for a particular set of agencies. The main results explain relatively low levels of investment in the United States. Since World War II, margins in presidential elections have remained relatively narrow. No president has won with a margin greater than 8.51% since 1988, and two presidents have lost the popular vote. The majority in both houses of Congress changes with greater frequency, and the margins between the parties have narrowed considerably (Lee 2016).

[14] Off path, the Leftwing Politician uses the same allocation strategy as the Agency.

Figure 3.1: Comparison of Investment Decisions



Leftwing Politician's Indifference Condition

Rightwing Politician's Indifference Condition

Note: The politician builds/deconstructs below the line. Parameters held constant at $\delta = 0.25$, $h = 3$, $\gamma_1 = 0.05$, $\gamma_2 = 0.025$, and $\lambda = 0.5$. For executive agencies, calculations assume $k = 0.01$.

The model helps to explain how three features of American politics contribute to neglect of the administrative state. First, politicians want to build or deconstruct capacity in agencies with policies that are salient to the electorate. In the model, these agencies implement policies with high absolute values of γ. Yet voters rarely understand or observe the outcomes of bureaucratic policymaking and, therefore, marginal improvements in bureaucratic performance go unnoticed by the majority of the electorate (Mettler 2011). Agencies like the U.S. Geological Survey or the Marine Mammal Commission rarely make the frontpage of the *New York Times*. In the model, these agencies would all have values of γ close to 0, limiting the willingness of any politician to build or deconstruct their capacity.

Second, short election cycles encourage politicians to prioritize policymaking and campaigning that will arouse immediate attention from voters. Capacity building is a multi-year effort. For example, in February 2023, the Commissioner of the Social Security Commissioner sent a letter to Congress thanking them for a $785 million increase in appropriations. She warned, however, that "[i]t will take a multi-year effort and sustained funding to restore our average initial disability claims wait times to pre-pandemic levels." Although "some performance measures will show improvement in FY 2023," "others will show temporary degradation" because "employee capacity may not be fully realized until FY 2024 . . . which will initially drive wait times up as they are cleared, and hires from FY 2022 and FY 2023 become more proficient."[15] Politicians weigh the cost of capacity building against the discounted value of winning future elections. If the politician loses the election, then they risk that their opponent will enjoy the returns of their investment rather than themselves. In many cases, elected officials would rather expend the effort of capacity building (z) on something that produces a more immediately tangible boost in the polls.

Third and finally, members of Congress and presidents want the opportunity to use the agency's improved capacity for their own policy initiatives. If the current incumbent loses reelection, then the opposition has an opportunity to implement their own preferred policies. Presidents, in particular, seem acutely aware of the possibility that the next administration may use this capacity to reverse the current administration's policies (Thrower 2017). Incumbents, therefore, worry that the next administration will use the agency's newfound capacity to implement policies that conflict with their sincerely-held policy preferences.

Collectively, the results suggest that the vast majority of agencies lack the sort of policies and structures that attract investment. Even agencies that enjoy universal support experience neglect because politicians worry their opponents will claim credit for improvements in bureaucratic performance.

Nevertheless, the model reveals a number of conditions where we should expect investment to be more likely to occur. These implications draw on the ways that elected officials use the administrative state to but-

[15] Kijakazi, Kilolo. 2023. "Letter from Acting Commissioner of Social Security Administration to Senator Patty Murray, Chair of the Senate Committee on Appropriations." https://www.ssa.gov/budget/assets/materials/2023/2023OP.pdf.

tress their chances of reelection. The assumptions describe three ways agencies affect the electoral outcomes of politicians: (1) policymaking, (2) the distribution particularistic benefits, and (3) government failure. The implications center on these mechanisms. Where appropriate, I consider how the different constituencies of members of Congress and the president may affect the decision to invest.

Implication 1 (Priority Agencies). *Members of Congress and the president are more likely to build capacity in agencies that implement policies related to their priorities. Members of Congress and the president are less likely to build capacity in agencies that implement policies related to their opponent's priorities.*

Members of Congress and presidents structure their agendas around the policies that appeal to their base. Federal agencies play an integral role in the successful realization of politicians' policy agendas. Because political parties tend to concentrate their attentions on certain issue domains, they continuously gravitate their attention toward agencies with jurisdiction in those areas. The Democratic Party advocates for climate-change regulations and, therefore, works with the Environmental Protection Agency to promulgate regulations and enforce federal laws in furtherance of this objective. The Republican Party emphasizes border security and, therefore, works with Customs and Border Protection to decrease the number of unauthorized entries into the United States. These policy areas appear on parties' agendas in repeated election cycles. The continuous reliance on these agencies for policymaking and policy implementation increases the value of improvements to bureaucratic performance. The bigger the priority (i.e. $|\gamma_n| > 0$), the more likely the agency experiences a change to its capacity.

Major policy initiatives also decrease the cost of capacity building. Most major pieces of legislation require implementation by at least one federal agency. For example, President Obama's signature legislation—the Affordable Care Act—required the Department of Health and Human Services and the Department of the Treasury to promulgate new regulations, design insurance marketplaces, and collect new taxes. Members of Congress and presidents want their policy agendas to succeed, and politicians have an easier time devoting attention to capacity building as they consider expanding the agency's authority. Often, supplemental appropriations accompany authorizing legislation to improve capacity.

Of course, the sorts of increases in overhead spending, authorized hiring, or organizational reforms that accompany expansions in agency programming are not always sufficient to sustain the agency's new workload. The Affordable Care Act itself encountered numerous instances where the supplemental appropriations were significantly less than what the Congressional Budget Office predicted the agency would need for implementation. Indeed, as Martha Derthick notes in her study of the Social Security Administration, "If policymakers do not carefully inquire into organizational capacities when imposing new burdens, presumably they never do so" (Derthick 1990).

By contrast, members of Congress and the president want to avoid improving the ability of their opponents to pursue their own priorities through administrative action. Improving the performance of agencies prioritized by a political opponent improves their ability to use the administrative state for their own electoral ends in the future. Meanwhile, the improvement offers no immediate electoral benefit for the incumbent. Of course, at times, Democrats and Republicans prioritize the same policies. In these cases, the willingness to invest turns on the likelihood that the incumbent wins reelection. In other cases, however, politicians have strong incentives to neglect or deconstruct the agency.

Implication 2 (Preference Congruence). *Capacity building is more likely to occur in agencies whose policy views are similar to those of members of Congress or the president.*

Politicians want to ensure that agencies use their investments to implement policies that align with the politicians' preferences. When preference congruence is high (i.e., $\gamma_m^i > \gamma_n^i$ and $\gamma_m^A > \gamma_n^A$), the politician anticipates that the agency will behave as the perfect agent, choosing to allocate its capacity in ways that improve the politician's likelihood of reelection. As the distance between the politician's preferences and the agency's preferences increases, the cost of building capacity increases because (1) the politician may attain a less preferred policy or (2) the politician may have to control the Agency to attain its preferred result.

Building capacity in agencies with divergent preferences poses a risk to politicians—especially if the agency implements a policy disliked by the elected official's base. Although a politician may favor improvements to one program, the possibility that the agency will instead use its capacity to implement a different, disfavored program limits the willingness of politicians to invest in agencies who share no overlapping preferences with the politician.

Implication 3 (Independence and Preference Congruence). *The marginal effect of preference congruence increases as the agency becomes more insulated from political control.*

Independent agencies present a valuable opportunity for electorally-minded politicians. These agencies continue to produce policy benefits enjoyed by the politicians even when they are not in office. Unlike executive-branch agencies, these agencies are "election proof." Investing in these agencies comes with a significant trade-off. Congress and presidents design independent agencies to limit political interference in the agency's implementation of its programs (Moe 1989, Selin 2015). Although presidents often find ways to exercise control over these agencies (Devins & Lewis 2008), variations in agency structure means that it takes more effort to control the Federal Communications Commission than the Department of Agriculture. Because elected officials cannot control investments in independent agencies, they only make these investments in agencies with high levels of preference of congruence.

Implication 4 (Particularistic Benefits). *Members of Congress are more likely to build capacity in agencies that distribute particularistic benefits to their constituents.*

The electoral prospects of members of Congress have long been tied to their ability to deliver pork-barrel spending to their districts (Hammond & Rosenstiel 2020, Mayhew 1974). Indeed, early theories of capacity building tied the willingness of members of Congress to increase an agency's appropriations to its ability to deliver particularistic benefits (Arnold 1979). Congress is organized by geographic districts and, therefore, the agency must provide benefits to the member's particular constituency. A representative from a rural Midwestern state receives greater electoral benefits from grant programs administered by the Department of Agriculture than those administered by the Department of Housing and Urban Development. However, the agency must distribute a sufficiently large number of particular benefits to a sufficiently large number of districts to experience an investment in its capacity.

Presidents use the administrative state to distribute particularistic benefits as well (Hudak 2014, Kriner & Reeves 2015). We should not be surprised if presidents also build capacity in agencies that administer grant programs. Presidents, however, have much more promising methods to use the administrative state to increase their chance of reelection, such as policymaking. In other words, if x_1 represents a program that distributes grants, the value of γ_1 is lower for the president than a member of Congress whose district receives those grants. The political-science literature, therefore, tends to associate the particularistic benefits as a campaign strategy of members of Congress rather than presidents.

Implication 5 (High-Risk Agencies). *Presidents are more likely to build capacity in agencies at a high risk of poor performance.*

Finally, voters penalize presidents for the economic and physical harms experienced by themselves and their families (Achen & Bartels 2016). The failure of government agencies to respond to crisis may exacerbate these harms, leading voters to attribute the harms to the government and its failures (Malhotra & Kuo 2008). As head of the executive branch, presidents want to improve bureaucratic capacity in agencies at a high risk of experiencing a failure that would cause significant harm to a large number of voters (Moe 1990). Investments in these high risk agencies tend to result in greater marginal improvements in bureaucratic performance (i.e., higher λ) and larger expected improvements in the president's electoral outcomes.

In general, members of Congress enjoy some protection from the electoral consequences of government failure. The public associates poor bureaucratic performance with the president more than individual members of Congress (Malhotra & Kuo 2008). Members of Congress use their oversight functions to shift blame for the failure toward the president or the agency head (Binder & Spindel 2017, Fiorina 1989). In addition, many government failures afflict only particular geographic regions or small populations within each district.

A member of Congress from Louisiana may care deeply about the capacity of the Federal Emergency Management Agency, but an insufficient number of districts experience hurricanes to attract regular attention from all members of Congress. In the wake of the 2014 Veterans healthcare scandal, all members expressed concern about the Department of Veteran Affairs but the population of veterans in each district was small enough to evade substantial investment in the agency for over a decade. Even when government failure affects the approval ratings of members of Congress, representatives seize the opportunity to pass relief bills, making Congress a savior at the time of crisis (Healy & Malhotra 2009).

3.6 Conclusion

Empirical evidence shows significant neglect throughout the U.S. administrative state. This chapter theorizes about why neglect has become the dominant strategy for politicians. It shows that electoral dynamics discourage investment in bureaucratic agencies even in cases where all actors have a sincere preference for the agency's policies. Yet the model also uncovers some conditions under which we should expect to observe capacity building. Politicians have strong incentives to build capacity in agencies that implement policies related to their priorities and in agencies that share their policy preferences. Most surprisingly, politicians have strong incentives to build capacity in independent agencies that align with their preferences. The following chapter tests these implications.

CHAPTER 4

Perceptions of Investment

Throughout the FY 2016 appropriations season, Congress pestered the Coast Guard about whether it would benefit from additional national-security cutters, the largest ship in the Coast Guard's fleet. The Coast Guard emphatically told Congress that it could not afford the maintenance costs for an additional cutter and that it lacked sufficiently trained personnel to crew the ship. Instead, Commandant Paul Zukunft requested that Congress direct its spending toward the $1.4 billion maintenance backlog for the agency's shore facilities. Testifying before Congress, the Commandant remarked, "Ironically, we get some relief when you have a hurricane, and then we get relief funding to then restore infrastructure that was also on that backlog. So at least we can use disaster relief funding. But that is using hope as an acquisition strategy, so I can't do that" (Congress 2015*b*). Congress ignored the Commandant's request, choosing instead to appropriate funds for the unwanted and unneeded cutter.

The experience of the Coast Guard reveals one difficulty of observing investments in bureaucratic capacity. On paper, we observe when the size of an agency's budget or workforce increases. But we cannot easily disentangle whether these increases correspond to improvements in capacity or pork-barrel spending for a politician's constituents. Moreover, budgetary, hiring, and restructuring decisions are the result of strategic interactions between Congress, presidents, and bureaucrats. Tracing which actor took the actions necessary for the investment to occur proves challenging from observational data alone.

Surveys provide an alternative way to measure who builds bureaucratic capacity and where they build it. Civil servants have the greatest understanding of their agency's resource and personnel needs relative to their current workloads. They also observe which actors make the greatest efforts to provide those resources to their agency.

This chapter uses the 2020 Survey on the Future of Government Service to test the predictions in Chapter 3. The data includes over 900 responses from federal executives in over 180 agencies about efforts by the White House, congressional Republicans, and congressional Democrats to ensure that their agencies have sufficient resources to accomplish their missions. Testing the theory in the context of the Trump Administration provides a hard test. President Trump vowed to "deconstruct the administrative state" and "drain the swamp" of the federal bureaucracy. If we observe significant investments despite these claims, then it calls into question the degree to which any president adopts a wholesale strategy of deconstruction.

With several notable exceptions, the results provide support for the theory developed in Chapter 3. Elected officials invest the greatest effort to build capacity in agencies prioritized by their party and those that share

their ideological leanings. Members of Congress build capacity in agencies that administer grant programs, and presidents build capacity in agencies at high risk of poor performance. I discuss how these findings comport with our understanding of bureaucratic management during the Trump Administration and beyond.

4.1 Bureaucratic Maintenance in the Trump Administration

Small-government conservatives often campaign on promises to dismantle the regulatory state and take power away from unelected bureaucrats. In his first inaugural address, President Ronald Reagan stated, "[G]overnment is not the solution to our problem; government is the problem." On the campaign trail, President Trump and his supporters echoed President Reagan's attacks, warning that the "Deep State" threatened the freedom of the American people (Skowronek, Dearborn & King 2021). This rhetoric reflects a preference for fewer regulations and smaller government budgets.

Although bureaucrats often resist deregulation (Potter 2019), deconstruction provides an alternative strategy to control the bureaucracy. By dismantling the capacity of the agency, presidents can prevent the agency from enforcing existing regulations and adopting new ones. Scholars have documented the various strategies used by the Trump Administration to dismantle the capacity of federal agencies. President Trump appointed judges that exhibited hostility toward administrative power (Metzger 2017*a*). He froze federal hiring and ordered the Office of Personnel Management to recommend a long-term plan for reducing the size of the federal workforce (Freeman & Jacobs 2021). His appointees reorganized and relocated agencies to encourage careerists to exit federal employment (Skowronek, Dearborn & King 2021). In independent agencies, President Trump left positions vacant, causing boards to lose quorums and their authority to act (Freeman & Jacobs 2021, Devins & Lewis 2022).

Deconstruction also limits the ability of future administrations to use the agency to create new policies. For politicians who favor government action, deconstruction risks that they will tie their hands in future administrations. For politicians who disfavor government action, however, deconstruction achieves their ideal outcome while simulatenously preventing future administrations from adopting new, expansive policies. For example, Theodore Lowi (1987) describes how the Reagan Administration could "reduce significantly the level and intensity of government intervention while leaving the capacity for intervention intact for himself and his successors." As conservative politicians tend to hold deregulatory beliefs, Benn (2019) theorizes that deconstruction should only be observed among conservative presidents.

The literature's focus on deconstruction creates the perception that investment depends on left–right ideology. Democrats prefer to build capacity so that agencies will distribute benefits and regulate corporations; Republicans prefer to deconstruct capacity to reduce government spending and interference with free-market capitalism. While this heuristic sometimes holds, it ignores the importance of the individual agency's tasks,

culture, and structure to the calculation.

Moreover, President Trump's rhetoric has often overshadowed the role that Congress plays in maintaining the American state. Members of Congress control the appropriations process and often have much longer political careers than the president. Even if the president is unwilling to build bureaucratic capacity, members of Congress may choose to do so to protect their own electoral interests (Arnold 1979, Fiorina 1989). Yet they too may lack incentives to build capacity, prefering to spend their days campaigning or policymaking.

By presuming a constant willingness to build or deconstruct capacity, existing accounts of investment ignore neglect as a dominant strategy for elected officials. The U.S. administrative state houses hundreds of bureaucratic agencies. Elected officials only have sufficient time and energy to pay attention to a select few. The question becomes: where do they choose to invest their energies?

4.2 Data

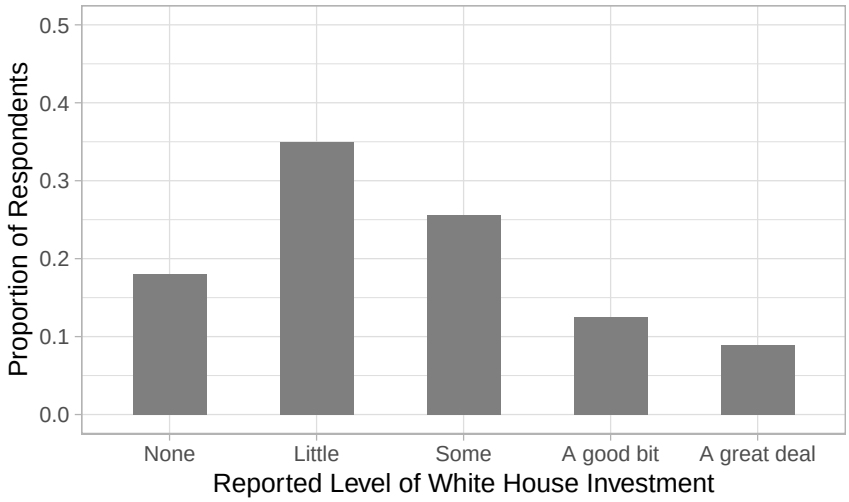
One way to measure how much effort politicians invest into building bureaucratic capacity is to ask bureaucrats. The 2020 Survey on the Future of Government Service (SFGS) evaluates appointed and career federal executives' perceptions of their workplaces. The SFGS surveys all political appointees, all career members of the Senior Executive Service, DC-based members of the Senior Foreign Service, and other high-level management professionals in all non-advisory federal agencies. Of the 16,232 federal executives contacted for the 2020 survey, 1,779 individuals (11%) participated. All analyses include weights to adjust for non-response and non-coverage bias.[1]

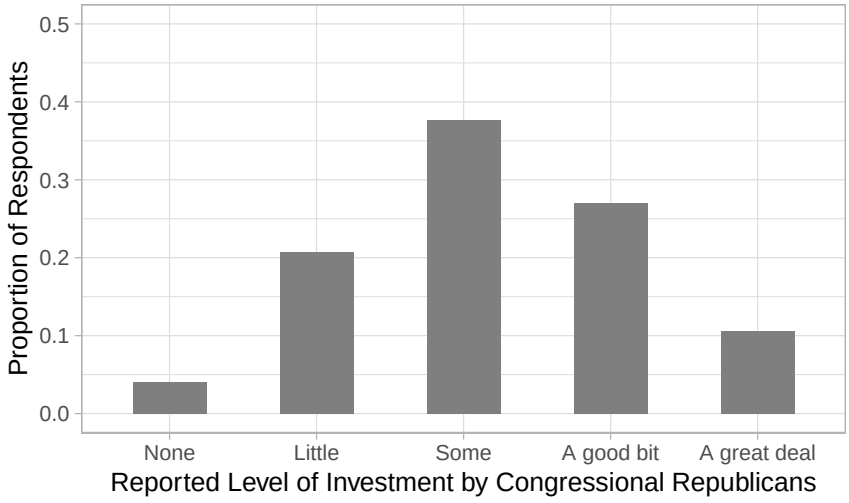
The dependent variable of interest is whether politicians build capacity within particular agencies. To measure investment in bureaucratic capacity, I use a question that asked respondents, "How much effort do the following groups spend to ensure that [your self-identified agency] has what it needs to carry out its mission?" The response categories were "None," "Little," "Some," "A good bit," "A great deal," and "Don't know." The survey asked respondents about five groups: the White House, political appointees, congressional committees, Republicans in Congress, and Democrats in Congress. I focus my analysis on the White House, Republicans in Congress, and Democrats in Congress.

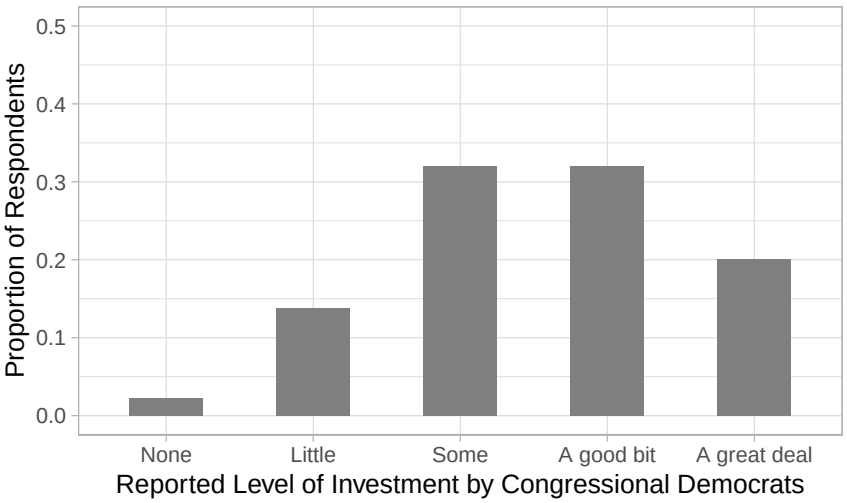
Figure 4.1 reports the distribution of responses for these three groups. Overall, respondents report higher levels of investment from members of Congress than President Trump. The median respondent states that the White House expends "little" effort to ensure that their agency has what it needs to carry out its mission. Nevertheless, we do not observe the sort of clustering at "none" that we would expect if President Trump engaged

[1] Specifically, post-stratification weights were created by raking. The weights incorporate whether the respondent worked in the DC area, the position type, and the location of the respondent's agency within the executive branch (i.e., the Executive Office of the President, an executive department, or an independent agency). Bednar and Lewis (2023) demonstrate that the weights address concerns related to correlations between non-response bias and the variables used in this analysis.

Figure 4.1: How much effort do the following groups spend to ensure that your agency has what it needs to carry out its mission?







exclusively in a strategy of deconstruction. The median respondent reports that congressional Republicans expend "some" effort and that congressional Democrats expend "a good bit" of effort.

Of course, these politicians may focus their investments in different agencies. The crux of the analysis focuses on identifying the agency-level characteristics that motivate investment. Respondents in many agencies, however, report that *no one* is expending significant effort to ensure their agencies have sufficient resources. In 67.7% of agencies, the average respondent reports that all three actors expend less than "a good bit" of effort. In 12.3% of agencies, the average respondent reports that all three actors expend less than "some" effort. The latter group includes agencies like the Indian Health Service, the Federal Deposit Insurance Corporation, and the Office of Personnel Management. Ideology does a poor job explaining why these agencies receive little attention from both Democrats and Republicans. Instead, these results suggest that all politicians lack sufficient incentives to invest in a large swath of the administrative state regardless of their party affiliation.

What factors explain why some agencies receive investments while others do not? Chapter 3 provides the theoretical framework that guides the analysis of the survey responses.

Hypothesis 1 (Own Party Priorities). *Members of Congress and presidents invest more effort to build capacity in agencies implementing policies central to their party's agenda.*

Hypothesis 2 (Opposing Party Priorities). *Members of Congress and presidents invest less effort to build capacity in agencies implementing policies central to the opposing party's agenda.*

Politicians want to use bureaucratic agencies to implement policies that align with their priorities. They also want to prevent their political opponents from doing the same. I measure priorities by coding each party's 2016 policy platform for mentions of specific agencies and programs. I code an agency as a *Democratic Priority* (*Republican Priority*) if only the Democratic Party (Republican Party) mentions the agency in its platform. I code an agency as a *Joint Priority* if both parties mention the agency. Within the sample, 9.5% of respondents work for an agency coded as a *Democratic Priority*, 7.6% work for an agency coded as a *Republican Priority*, 29.1% work for an agency coded as a *Joint Priority*, and 52.9% work for an agency that was not coded as a priority for either party.[2]

Hypothesis 3 (Ideological Congruence). *Members of Congress and presidents invest more effort to build capacity in agencies that share their ideological leanings.*

Politicians want to build capacity in agencies that share their policy views because they anticipate that the agency will use its increased capacity to produce and implement policies that align with their preferences.

[2] At the agency level, 22 agencies are coded as a *Democratic Priority*, 13 agencies are coded as a *Republican Priority*, and 37 agencies are coded as a *Joint Priority*.

Ideological congruence proxies the alignment of policy beliefs between a politician and an agency. I measure *Agency Ideology* using scores created by Richardson, Clinton, and Lewis (2018). Using the 2018 version of the SFGS, the authors estimate the stable, ideological leanings of agencies by aggregating responses to the following question: "In your opinion, do the policy views of the following agencies tend to slant liberal, slant conservative, or neither in both Democratic and Republican administrations?" A negative score describes a more liberal agency while a positive score describes a more conservative agency (Min: -1.94; Max: 1.93). The average respondent works in a relatively moderate agency, but the sample includes respondents in agencies across the ideological spectrum (Mean: -0.36; SD: 0.86).

In some cases, the prioritization of an agency may actually reflect a promise by the politician to rollback the agency's policies. For example, the Republican party platform mentions the Consumer Financial Protection Bureau in the context of abolishing the bureau. To control for this possibility, I interact the measures of priority with *Agency Ideology*.

Hypothesis 4 (Independence and Agency Ideology). *All else equal, ideology has a stronger effect in agencies with greater independence.*

Elected officials invest in independent agencies that align with their policy beliefs because these agencies continue to create policies that align with the officials' preferences regardless of who wins the election. Agencies derive their independence from structural decisions made by Congress and the president at the time of the agency's creation (Lewis 2003, Moe 1989, McCubbins, Noll & Weingast 1989). Although agencies vary greatly in their structures (Selin 2015), scholars typically describe independent commissions—agencies headed by a board of fixed-term appointees—as among the most insulated agencies. To measure independence, I include a binary indicator for whether the respondent's workplace is classified as an *Independent Commission* (6.4% of respondents) by Selin and Lewis (2018).[3] I also include controls for other agency structures, such as whether the agency is part of the *Executive Office of the President* (1.8%), the *Office of the Secretary* of a cabinet department (5.4%), or a *Bureau* of a cabinet department (60.1%).

Hypothesis 5. *Members of Congress invest more effort to build capacity in agencies that offer particularistic benefits.*

Members of Congress use the administrative state to distribute particularistic benefits to their constituents.

[3]These agencies are the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Defense Nuclear Facilities Safety Board, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Mine Safety and Health Review Commission, the Federal Trade Commission, the Merit Systems Protection Board, the National Credit Union Administration, the National Transportation Safety Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Surface Transportation Board, and the United States International Trade Commission.

Therefore, we should observe higher rates of investment in agencies that administer programs that award economic benefits to politicians' constituents. I use an indicator for whether the agency awards program grants to capture an agency's potential to offer particularistic benefits in exchange for more capacity. Within the sample, 50.2% of respondents work for an agency that awards program grants.

Hypothesis 6. *Presidents invest more effort to build capacity in agencies at a high risk of poor performance.*

Presidents have a national consistuency and, therefore, want to avoid poor performance in agencies during times of crisis (Malhotra & Kuo 2008, Moe 1990). I measure whether an agency is at a high risk of government failure by coding whether the agency appeared on the Government Accountability Office's 2019 High-Risk List (39.0% of respondents).

I include several other controls that may influence capacity building. Conservatives may target an agency for deconstruction because they pursue deregulatory agendas. I capture whether an agency engages in rulemaking by including an indicator of whether the agency issued a major rule during the final year of the Obama Administration (20.1% of respondents). In addition to these structural features, I include department fixed-effects.[4]

Respondents have individual characteristics that may affect their perceptions of investment. I include an indicator for whether the respondent is a political appointee (7.0%), and a continuous measure of the respondent's partisanship (Mean: 0.67; Democrat (0): 48.9% Independent (1): 34.8% Republican (2): 16.3%). My expectation is that appointees and Republicans express greater support from the White House and Congressional Republicans than non-appointees and Democrats. Respondents may also have different perceptions of investment based on their experience in government or their individual responsibilities. Following the method of Bednar and Lewis (2023), I also measure the scope of the individual's responsibilities using a question that asks respondents whether they "directly deal with decisions" regarding eight different managerial responsibilities.[5] I count the number of "yes" answers to these questions and assume that respondents with more responsibilities have a greater understanding of the involvement of elected officials in agency administration (Mean: 3.35; SD: 1.70).

As the dependent variable takes the form of an ordered, categorical variable, I use an ordered logistic regression to estimate the model.

[4]Independent administrations are grouped in a single constant.

[5]The responsibilities included in the question are: (1) Information management (e.g., Information Technology, Database Management); (2) Grants to state or local governments, other organizations, or other individuals; (3) Deciding what enforcement responsibilities to prioritize; (4) Human resources; (5) Budget formulation/proposals; (6) Setting overall priorities in [your agency]; (7) Procurement and contract management; and (8) Developing Notices of Proposed Rulemaking, summarizing related comments, and writing final rules.

4.3 Analysis

4.3.1 Investments by the President

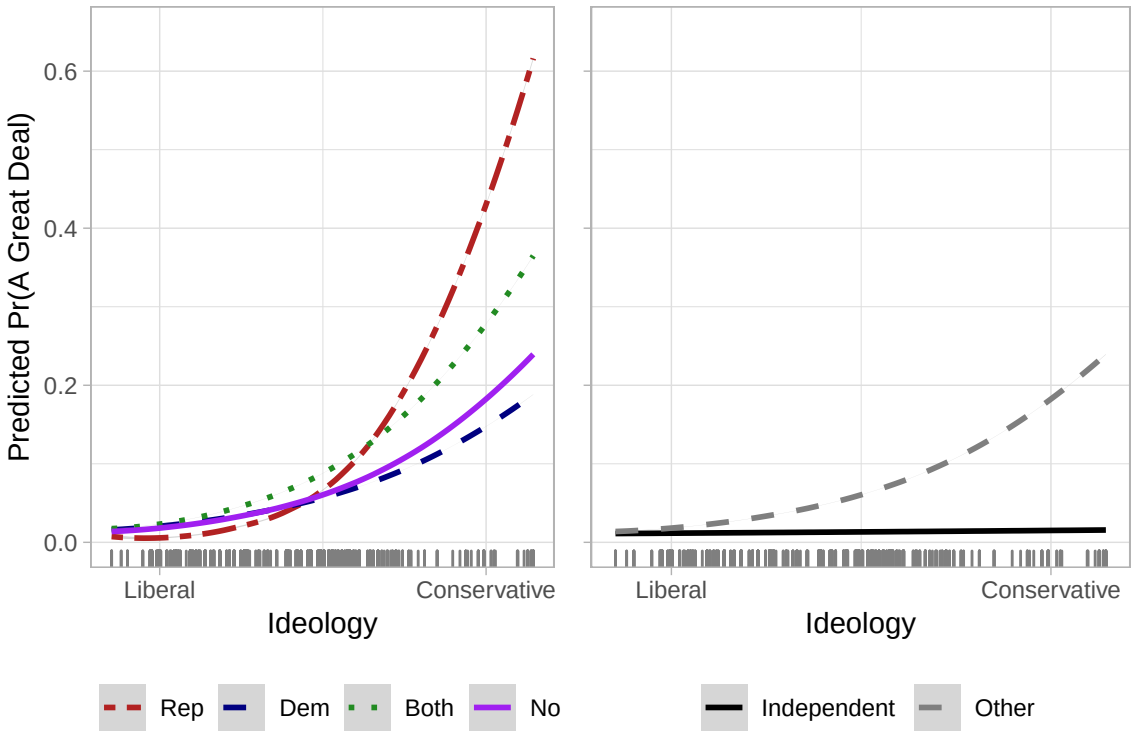
I begin by examining where President Trump invested effort. Table 4.1 reports the results. Model (5) is the preferred model.

Table 4.1: Models of Federal Executive Responses to the White House's Effort to Ensure Agency Has What It Needs to Carry Out Its Mission, 2020

	White House Effort				
	(1)	(2)	(3)	(4)	(5)
Ideology		0.76^{***}	0.73^{***}	0.90^{***}	0.82^{***}
		(0.04)	(0.05)	(0.04)	(0.05)
Rep Priority	0.35^{***}	0.10	0.06	0.14	0.10
	(0.08)	(0.09)	(0.09)	(0.09)	(0.09)
Ideology × Rep Priority			0.80^{***}		0.77^{***}
			(0.13)		(0.14)
Dem Priority	-0.06	0.03	-0.06	0.02	-0.07
	(0.09)	(0.09)	(0.10)	(0.09)	(0.09)
Ideology × Dem Priority			-0.17^{*}		-0.12
			(0.09)		(0.09)
Joint Priority	0.22^{***}	0.30^{***}	0.33^{***}	0.36^{***}	0.40^{***}
	(0.06)	(0.06)	(0.07)	(0.07)	(0.07)
Ideology × Joint Priority			0.04		0.10
			(0.05)		(0.05)
Ind. Comm'n	-0.88^{***}	-1.13^{***}	-1.21^{***}	-1.50^{***}	-1.57^{***}
	(0.11)	(0.11)	(0.11)	(0.12)	(0.12)
Ideology × Ind. Comm'n				-0.75^{***}	-0.74^{***}
				(0.11)	(0.11)
High-Risk Agency	0.41^{***}	0.22^{***}	0.26^{***}	0.16^{**}	0.20^{**}
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Grant-Giving Agency	-0.25^{***}	0.01	-0.03	0.04	0.003
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Rulemaking Agency	-0.31^{***}	-0.10	-0.18^{**}	0.01	-0.06
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
EOP	0.71^{***}	0.42^{*}	0.33	0.51^{**}	0.44^{*}
	(0.17)	(0.18)	(0.18)	(0.18)	(0.18)
Office of the Secretary	0.21	0.17	0.22	0.10	0.13
	(0.12)	(0.12)	(0.13)	(0.12)	(0.13)
Cabinet Bureau	-0.38^{***}	-0.69^{***}	-0.64^{***}	-0.84^{***}	-0.79^{***}
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
Appointee	1.24^{***}	1.26^{***}	1.25^{***}	1.28^{***}	1.29^{***}
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
Party Identity	0.65^{***}	0.61^{***}	0.62^{***}	0.61^{***}	0.62^{***}
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
Responsibilities	0.08^{***}	0.08^{***}	0.08^{***}	0.09^{***}	0.09^{***}
	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
N	906	906	906	906	906
Department Fixed Effects	Yes	Yes	Yes	Yes	Yes
Sampling Weights	Yes	Yes	Yes	Yes	Yes

$^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Figure 4.2: Predicted Effect of Ideological Distance on White House Investment



The model provides a number of baseline results that help validate the specification. Both appointees and Republican respondents are significantly more likely to report that the White House expends higher levels of effort. This makes sense given that these individuals have either been chosen to serve in the agency by President Trump or share his partisan leanings. Among the various agency structures, respondents who work within the Executive Office of the President (EOP) report the highest levels of investment. Presidents centralize the policymaking activities of the entire executive branch within the EOP as a means to control bureaucratic agencies (Rudalevige 2002, Haeder & Yackee 2015, Moe 1985). It is unsurprising that President Trump continued the tradition of building capacity within the EOP to further centralize control over the federal bureaucracy.

I hypothesize that presidents expend more effort to build capacity in agencies that their party prioritizes. The coefficient on *GOP Priority* is positive in all five models and reaches statistical significance when conditioned on *Ideology*. In other words, President Trump invested greater effort in conservative agencies prioritized by the Republican Party but significantly less effort in liberal agencies prioritized by the Republican Party. The left plot of Figure 4.2 illustrates the interaction effects. The interaction may reflect that the Republican Party prioritized more liberal agencies, like the Consumer Financial Protection Bureau and the

Environmental Protection Agency, with the intent of pursuing an agenda of deconstruction or deregulation within these agencies. Therefore, it is unsurprising that *GOP Priority* only reaches significance when conditioned on *Ideology*. Agencies prioritized by both the Republican and Democratic parties also receive more investment but less than conservative agencies prioritized by the Republican party.

Likewise, I hypothesize that presidents expend less effort to build capacity in agencies prioritized by the opposing party. The coefficient on *Democratic Priority* is negative in three of the models but does not reach statistical significance. In other words, there is no distinguishable difference between the level of investment reported by a respondent in an agency prioritized by the Democratic Party and that reported by a respondent in an agency that no party prioritized.

I hypothesize that presidents expend more effort to build capacity in agencies that share their ideological leanings. Figure 4.2 provides strong evidence of this hypothesis. As *Ideology* approaches the liberal end of the spectrum, the probability that a respondent reports any investment quickly approaches zero. In addition, *Ideology* should have a larger effect in independent commissions because presidents have strong incentives to build capacity in independent agencies that share their preferences and strong incentives to deconstruct capacity in independent agencies that do not share their preferences. The right plot of Figure 4.2 shows that independent commissions report low levels of White House investment—regardless of *Ideology*. The coefficient on *Independent Commission* is negative and has the largest magnitude of any of the coefficients in the model. The interaction between *Ideology* and *Independent Commission* is also negative and washes out the positive coefficient of *Ideology*. I provide greater context for this result in the discussion.

Finally, I hypothesize that presidents should expend more effort to build capacity in agencies at high risk of government failure. All five models provide statistically significant evidence for this hypothesize.

4.3.2 Investments by Congressional Republicans

I turn now to the analysis of investments by congressional Republicans. Table 4.2 reports the results. Model (5) is the preferred model.

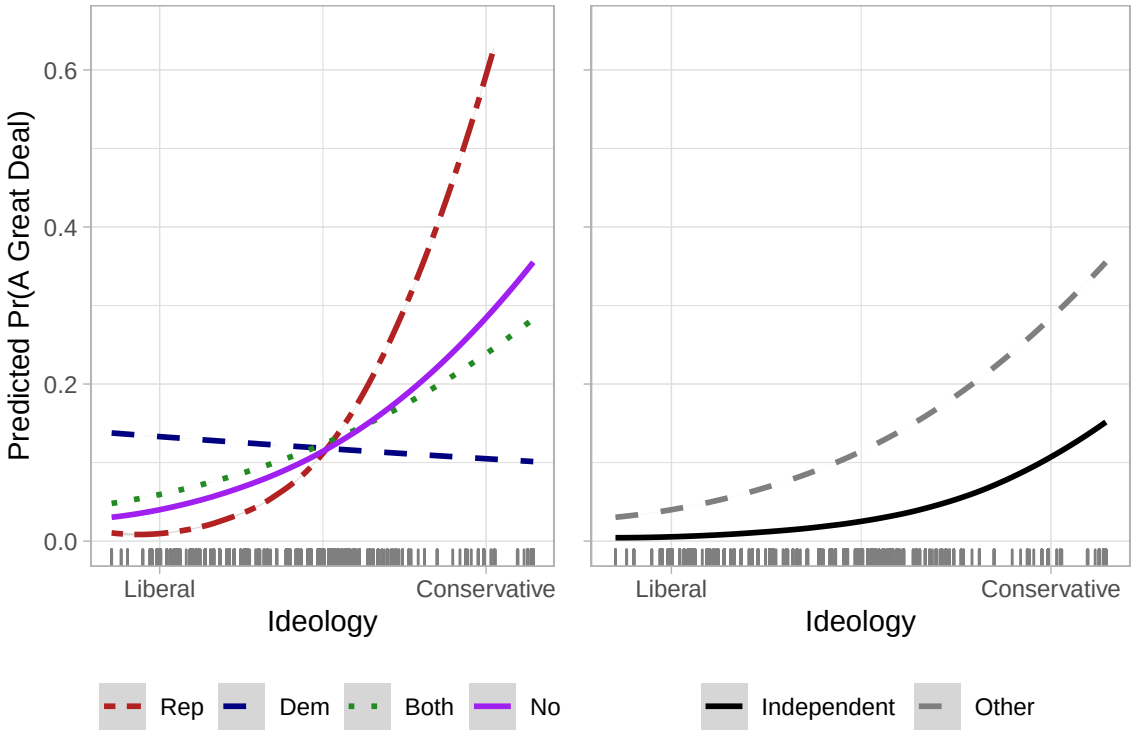
I hypothesize that congressional Republicans should expend more effort to build capacity in agencies prioritized by the Republican Party. As with the results in Table 4.1, *GOP Priority* is significant conditional on *Ideology*. In other words, congressional Republicans invest greater effort in conservative agencies prioritized by the Republican Party but significantly less effort in liberal agencies prioritized by the Republican Party. Figure 4.3 illustrates this interaction effect. Again, this may reflect the fact that conservatives tend to prioritize liberal agencies in hopes of pursuing a deregulatory agenda. The fact that *Rulemaking Agency* is negative and statistically significant in all five models buttresses the notion that congressional Republicans avoided investments in regulatory agencies.

Table 4.2: Models of Federal Executive Responses to the Congressional Republicans' Efforts to Ensure Agency Has What It Needs to Carry Out Its Mission, 2020

	Republican Effort				
	(1)	(2)	(3)	(4)	(5)
Ideology		0.63***	0.78***	0.61***	0.75***
		(0.04)	(0.05)	(0.04)	(0.05)
Rep Priority	0.16	−0.003	−0.01	−0.01	−0.03
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
Ideology × Rep Priority			0.87***		0.87***
			(0.13)		(0.13)
Dem Priority	0.31***	0.38***	0.04	0.38***	0.04
	(0.08)	(0.08)	(0.09)	(0.08)	(0.09)
Ideology × Dem Priority			−0.83***		−0.84***
			(0.09)		(0.09)
Joint Priority	0.02	0.10	0.11	0.09	0.09
	(0.06)	(0.06)	(0.07)	(0.06)	(0.07)
Ideology × Joint Priority			−0.19***		−0.22***
			(0.05)		(0.06)
Ind. Comm'n	−1.36***	−1.55***	−1.74***	−1.49***	−1.61***
	(0.11)	(0.11)	(0.11)	(0.12)	(0.12)
Ideology × Ind. Comm'n				0.13	0.26*
				(0.11)	(0.11)
High-Risk Agency	−0.48***	−0.64***	−0.69***	−0.63***	−0.67***
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Grant-Giving Agency	−0.01	0.24***	0.22***	0.24***	0.21***
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Rulemaking Agency	−0.57***	−0.42***	−0.58***	−0.44***	−0.62***
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
EOP	−0.03	−0.31	−0.54**	−0.32	−0.56***
	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)
Office of the Secretary	−0.63***	−0.67***	−0.54***	−0.66***	−0.52***
	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)
Cabinet Bureau	−0.16	−0.43***	−0.36***	−0.40***	−0.31***
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
Appointee	0.54***	0.53***	0.50***	0.53***	0.50***
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
Party Identity	0.19***	0.15***	0.17***	0.15***	0.17***
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
Responsibilities	0.04***	0.04***	0.04***	0.04***	0.04***
	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
N	914	914	914	914	914
Department Fixed Effects	Yes	Yes	Yes	Yes	Yes
Sampling Weights	Yes	Yes	Yes	Yes	Yes

*p < .05; **p < .01; ***p < .001

Figure 4.3: How much effort do Congressional Republicans spend to ensure that your agency has what it needs to carry out its mission?



Similarly, I hypothesize that congressional Republicans expend less effort to build capacity in agencies prioritized by the Democratic Party. As Figure 4.3 illustrates, the results are mixed. For liberal agencies, congressional Republicans expend more effort to build capacity in agencies coded as a *Democratic Priority* versus those coded as a *Republican Priority*. For conservative agencies, the trend reverses. In the discussion, I explain that this may be a function of divided government and the need for congressional Republicans to negotiate with congressional Democrats to secure investments for their own priorities.

I hypothesize that ideology should have a larger effect in independent commissions because congressional Republicans have strong incentives to build capacity in independent agencies that share their preferences and strong incentives to deconstruct capacity in independent agencies that do not share their preferences. The results support this hypothesis. The main effect of *Ideology* is positive and significant, and the interaction between *Ideology* and *Independent Commission* is positive and significant. Therefore, the marginal effect of *Ideology* is greater in independent commissions than other agencies.

I hypothesize that congressional Republicans expend more effort to build capacity in agencies that administer program grants. The results support this hypothesis. All else equal, a respondent in a *Grant-Giving Agency* is 1.7 percentage points more likely to report that congressional Republicans invest "a great deal" of effort than a respondent in an agency that does not award program grants. High-risk agencies, however, report little attention from congressional Republicans. All else equal, a respondent in a *High-Risk Agency* is 5.3 percentage points less likely to report that congressional Republicans invest "a great deal" of effort than a respondent in an agency not on GAO's high-risk list. Both of these trends are the reverse from what we observed with reported levels of White House investment. I explain how different electoral considerations for members of Congress and presidents may inform these findings in the discussion.

4.3.3 Investments by Congressional Democrats

Finally, I turn to the analysis of investments by congressional Democrats. Table 4.3 reports the results. Model (5) is the preferred model.

I hypothesize that congressional Democrats should expend more effort to build capacity in agencies prioritized by the Democratic Party. The analysis reveals strong support for this hypothesis. Unlike the previous two analyses, the significance of *Democratic Priority* does not depend on its interaction with *Ideology*. As Figure 4.4 demonstrates, *Ideology* does strengthen the effect of *Democratic Priority*. But respondents in an agency coded as a *Democratic Priority* always report higher levels of investment than respondents in an agency coded as a *Republican Priority*. This may reflect the fact that the Democratic Party rarely prioritizes conservative agencies with the goal of deregulation or deconstruction.

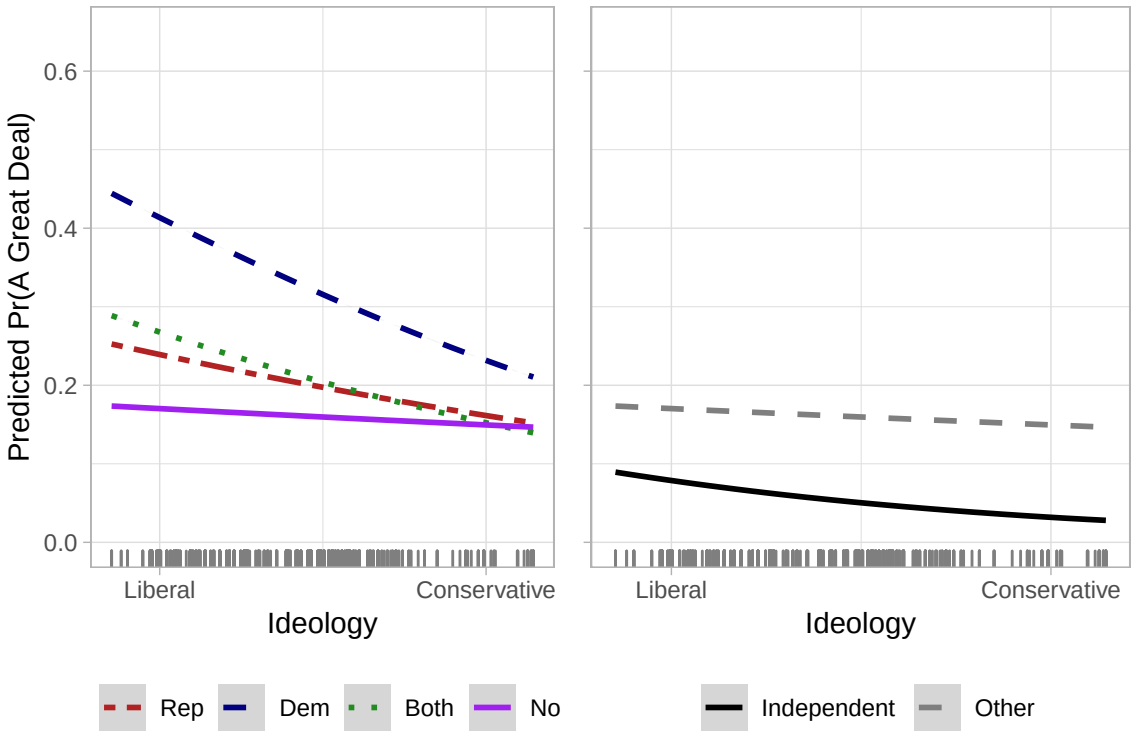
I also hypothesize that congressional Democrats should expend less effort to build capacity in agencies

Table 4.3: Models of Federal Executive Responses to the Congressional Democrats' Efforts to Ensure Agency Has What It Needs to Carry Out Its Mission, 2020

	Democratic Effort				
	(1)	(2)	(3)	(4)	(5)
Ideology		-0.21^{***}	-0.09	-0.16^{***}	-0.05
		(0.04)	(0.05)	(0.04)	(0.05)
Rep Priority	0.18^{*}	0.23^{**}	0.24^{**}	0.26^{**}	0.26^{**}
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
Ideology × Rep Priority			-0.10		-0.11
			(0.12)		(0.12)
Dem Priority	0.98^{***}	0.96^{***}	0.89^{***}	0.96^{***}	0.89^{***}
	(0.08)	(0.08)	(0.09)	(0.08)	(0.09)
Ideology × Dem Priority			-0.24^{**}		-0.23^{**}
			(0.08)		(0.08)
Joint Priority	0.36^{***}	0.32^{***}	0.27^{***}	0.35^{***}	0.30^{***}
	(0.06)	(0.06)	(0.07)	(0.06)	(0.07)
Ideology × Joint Priority			-0.21^{***}		-0.19^{***}
			(0.05)		(0.05)
Ind. Comm'n	-1.17^{***}	-1.12^{***}	-1.13^{***}	-1.30^{***}	-1.28^{***}
	(0.10)	(0.10)	(0.11)	(0.12)	(0.12)
Ideology × Ind. Comm'n				-0.33^{**}	-0.27^{*}
				(0.10)	(0.11)
High-Risk Agency	-0.29^{***}	-0.23^{***}	-0.26^{***}	-0.26^{***}	-0.29^{***}
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Grant-Giving Agency	0.08	0.001	0.02	0.02	0.03
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Rulemaking Agency	0.08	0.03	-0.01	0.06	0.03
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
EOP	-0.69^{***}	-0.61^{***}	-0.70^{***}	-0.58^{***}	-0.66^{***}
	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)
Office of the Secretary	-0.37^{**}	-0.36^{**}	-0.30^{*}	-0.40^{**}	-0.33^{**}
	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)
Cabinet Bureau	-0.47^{***}	-0.38^{***}	-0.36^{***}	-0.45^{***}	-0.42^{***}
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
Appointee	0.22^{**}	0.22^{**}	0.20^{*}	0.22^{**}	0.20^{*}
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
Party Identity	-0.50^{***}	-0.49^{***}	-0.48^{***}	-0.49^{***}	-0.49^{***}
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
Responsibilities	0.04^{**}	0.04^{***}	0.04^{**}	0.04^{***}	0.04^{***}
	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
N	918	918	918	918	918
Department Fixed Effects	Yes	Yes	Yes	Yes	Yes
Sampling Weights	Yes	Yes	Yes	Yes	Yes

$^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Figure 4.4: Predicted Effect of Ideological Distance on Investment by Congressional Democrats



that the Republican Party prioritizes. I do not find support for this hypothesis. Congressional Democrats still invest more effort into building capacity in agencies coded as *Republican Priorities* than agencies not prioritized by either political party. Again, this may reflect the need for the parties to negotiate during periods of divided government.

I hypothesize that ideology should have a larger effect in independent commissions because congressional Democrats have strong incentives to build capacity in independent agencies that share their preferences and strong incentives to deconstruct capacity in independent agencies that do not share their preferences. The main effect of *Ideology* is negative, and the interaction between *Ideology* and *Independent Commission* is negative and significant. Therefore, the marginal effect of *Ideology* is greater in independent commissions.

Curiously, we do not find strong evidence that congressional Democrats invest in grant-giving agencies. The inability to find an effect, however, may be caused by a strong correlation between *Grant-Giving Agency* and *Joint Priority* ($\rho : 0.44$). If the priority variables are removed from the model, then *Grant-Giving Agency* becomes statistically significant and substantively meaningful. As above, we find little evidence that congressional Democrats invest in agencies that appear on the GAO's high-risk list.

4.4 Discussion and Conclusion

The Trump Administration has revived interest in research surrounding the maintenance of the administrative state. Yet the tendency to describe Republicans as "deconstructers" and Democrats as "builders" misses much of the nuance. By focusing on anecdotal instances of deconstruction and construction, scholars have selected on the dependent variable and failed to observe that elected officials neglect most agencies. Respondents in most agencies report little effort from all three actors to build capacity within their agencies. When elected officials choose to build capacity, their decisions do not fall neatly on partisan lines. Elected officials consider the characteristics of individual agencies when deciding whether to invest in particular agencies.

The different constituencies of elected officials inform where they choose to invest. As head of the executive branch, the president faces public scrutiny in the event that poor bureaucratic performance exacerbates a crisis (Malhotra & Kuo 2008, Moe 1990). Therefore, the president has greater incentives than Congress to build capacity in agencies at a high risk of failure. The constituents of individual members of Congress are less likely to trace blame to government failure to their elected representative. They will, however, attribute pork-barrel spending and other particularistic benefits to their representatives. Members of Congress, therefore, expend more effort to build capacity in agencies that will deliver particularistic benefits (Arnold 1979). Although presidents also use the bureaucracy to distribute particularistic benefits (Kriner & Reeves 2015), they can rely on Congress's willingness to invest and divert their attention to other agencies.

Different institutions may also inform the patterns of investment that we observe. For example, contrary to President Trump, Republicans and Democrats both show some willingness to invest in the priorities of the other party. In 2020, Democrats controlled the Senate, and Republicans controlled the House. Divided government requires the two parties to take serious the platform of the other party. What appears to be Republican investment in agencies prioritized by the Democratic party (and vice versa) may actually result from a bargained-for-exchange made by Republicans in pursuit of one of their own priorities. Future research should examine whether the willingness of one party to invest in the opposing party's priority agencies declines in periods of unified government.

As the survey was conducted during the Trump Administration, idiosyncratic trends may make it difficult to observe certain patterns of investment. For example, Chapter 3 predicts that elected officials should build capacity in independent agencies that share their ideological leanings. The failure to observe this result during the Trump Administration may reflect the Administration's strong belief in the unitary executive theory. The unitary executive theory posits that independent agencies pose a constitutional risk to the president's ability to lead the executive branch (Hickman 2018). President Trump took action to hinder the performance of numerous independent agencies, including the Consumer Financial Protection Board, the Chemical Safety

and Hazard Investigation Board, and the Merits System Protection Board (Devins & Lewis 2022, Skowronek, Dearborn & King 2021). This final agency lacked a quorum for the entirety of the Trump Administration, preventing the agency from hearing cases related to federal employment. We do observe, however, evidence that ideology has greater influence on investments in independent commissions for members of Congress. In another time and place, presidents may have greater incentives to build capacity within these agencies.

Although the Trump Administration emphasized its intent to deconstruct the administrative state, we observe the willingness of the Trump Administration and congressional Republicans to invest in certain agencies, especially those that align with their priorities and ideological dispositions. We observe that Democrats do not uniformly build capacity across the administrative state, and many of the same investment strategies transcend party lines. This trend calls into question traditional accounts of capacity building that focus solely on partisanship or the risk of crisis.

CHAPTER 5

Human Capital

In November 2019, the Bureau of Land Management (BLM) announced that it would move its headquarters from Washington, D.C., to Grand Junction, Colorado—a city of fewer than 70,000 people and more than a four-hour drive from Denver. Leadership at the BLM sold the relocation to Congress as necessary to enforce federal law on public lands. More than half of the relocated workforce chose to retire or find new jobs. Careerists within the agency viewed it as an intentional effort by the Trump Administration to gut the Department of the Interior's ability to make and implement policy. According to one departed policy expert, "There was an intentional effort to hobble the agency. Not just to reduce the workforce, but to diminish the capacity of the department." A scientist in the Fish and Wildlife Service—another agency within the Department of the Interior—worried, "It will take many years to just get back to where we were, and there is a constant fear that it can all be demolished again if a similarly bent administration comes to power."[1]

Scholars have long described bureaucratic autonomy as a key ingredient to protecting an agency's human capital (Cingolani, Thomsson & de Crombrugghe 2015). Structurally, civil-service laws protect bureaucrats from the throes of patronage during presidential transitions (Geddes 1994, Skowronek 1982). Autonomy rewards civil servants with policy motivations for investing in expertise, discouraging them from seeking opportunities in the private sector (Gailmard & Patty 2007). Without autonomy, political pressures from the current administration may cause civil servants to exit public service—taking their expertise and experience with them (Golden 1992, Richardson 2019).

Autonomy plays a key role in the theory of this book. Politicians have strong incentives to invest in independent agencies that align with their preferences. These agencies continue to produce desirable policy outcomes even when the incumbent loses office. Agencies with higher levels of autonomy also tend to manage high-risk policy areas, such as banking or national defense. This immunizes many independent agencies from the forces of deconstruction.

This chapter explores the relationship between bureaucratic autonomy and the growth of human capital within bureaucratic agencies. It focuses on a single task engaged in by most agencies: policymaking. Focusing on policymaking is appropriate because it requires significant levels of human capital but relatively low levels of material resources. I use over 50 million personnel records to measure the size, education, and experience of the policymaking workforces of 266 agencies from 1998 to 2022. I then test how bureaucratic

[1]The story of the Department of the Interior has been documented by Eric Katz in a series of articles in *Government Executive* (Katz 2019, Katz 2020, Katz 2023).

autonomy affects the growth of human capital within agencies.

5.1 Bureaucratic Autonomy and Human Capital

Theories of bureaucratic capacity have long explained growth in human capital as a function of civil servants' autonomy over administrative policymaking (Downs 1964, Weber 1978). Civil servants in the policymaking workforce select into government service to influence policy in the direction of their sincerely-held preferences. Most of these bureaucratic policymakers have lucrative options in the private sector. Therefore, autonomy over administrative policymaking is central to their willingness to remain in government (Golden 1992, Gailmard & Patty 2007, Richardson 2019).

All presidents seek to further their own goals through administrative policymaking. In an effort to control administrative policymaking, presidents politicize agency leadership by installing loyal patrons who implement their agendas from within the agency (Bertelli & Feldmann 2007, Lewis 2008). Politicization reduces bureaucratic autonomy by transferring control of administrative policymaking from career civil servants to the White House. According to surveys, increased politicization encourages civil servants to exit government service at higher rates (Richardson 2019). If the loss of autonomy comes with the need to implement policies that *conflict* with civil servants' preferences, politicization only further encourages exit.

Bureaucratic autonomy encourages individuals interested in policymaking to select into agencies with greater independence, but the erosion of this autonomy through politicization increases the likelihood that these same individuals exit government service. Patterns of public-service entrance and exit have significant implications for bureaucratic capacity and an agency's ability to retain expert and experienced civil servants.

The ability of presidents to control agencies depends, however, on the structural features of the agency. Congress designs some agencies to better protect both bureaucratic autonomy and policymaking capacity (Devins & Lewis 2008, Selin 2015). For example, in designing the Federal Trade Commission, the Senate suggested that fixed terms would "give [commissioners] an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience." (S. Rep. No. 63-597, 11 (1914)). Presidents cannot easily remove appointees from agencies with greater insulation. They may face restrictions on the number of copartisans they can appoint to the agency or the necessary qualifications of the appointees (Selin & Lewis 2018). All of these features help to preserve bureaucratic autonomy and, in turn, soften the forces that encourage civil servants to exit public service.

Based on this literature, I offer two hypotheses about the relationship between bureaucratic autonomy and human capital.

Hypothesis 1 (Structural Independence). *All else equal, agencies with higher levels of structural independence exhibit higher levels of human capital.*

Hypothesis 2 (Politicization). *As politicization increases within an agency, human capital decreases.*

The absence of time-series measures of policymaking capacity has prevented the testing of these hypotheses. To date, scholars have relied on crude measures, such as the size of the agency's workforce, to test theories related to human capital (Bolton, Potter & Thrower 2015, Potter & Shipan 2019). These measures capture the size of the workforce, but they do not measure its expertise or experience. Others rely on surveys to measure the likelihood that individual civil servants exit government service at a given point in time (Richardson 2019). Yet a research design focused at the level of the individual civil servant cannot easily tell us about the aggregate effect of exit on the agency's capacity. Capacity cannot be easily distilled to a single element, such as the number of policymaking employees or their average education. Capacity is the sum of its parts. To create policy, the workforce needs substantive expertise in the policy area, experience with procedural requirements, legal know-how, and networks with external actors to avoid politically contentious pitfalls (Fisher & Shapiro 2020, Potter 2019, Walker 2013).

5.2 Measuring Policymaking Capacity

All bureaucratic agencies engage in some form of policymaking. Policymaking includes promulgating regulations, drafting guidance documents, and even creating handbooks for employees that describe how to implement the agency's statutory duties (Parrillo 2019, Potter 2019). Relative to other tasks, most policymaking efforts can be performed with few material resources. Bureaucrats only need basic office space and supplies to draft new regulations and guidance documents.

Policymaking, however, requires high levels of human capital. Bureaucratic policymakers need technical expertise in complex areas related to their agency's jurisdiction, such as economics, engineering, or science (Fisher & Shapiro 2020). They also need procedural knowledge to navigate the complex procedures governing administrative policymaking (Potter 2019). Bureaucrats acquire both technical and procedural knowledge through experience. Retaining this expertise requires the agency to offer employees sufficient compensation relative to outside wages.

At the institutional-level, the agency must organize its workforce in such a way as to encourage teamwork (Williams 2021). A single policy may have numerous effects on the economy, environment, or lives of American citizens. Identifying and balancing competing costs and benefits requires policymaking teams to incorporate a diverse set of experts who can identify potential problems with the proposal. The exclusion of a particular expert may prevent the agency from achieving its desired outcome.

The size of the agency's policymaking workforce does not proxy for expertise or experience. But it does influence whether the agency has the staff needed to manage the policymaking process. Policymaking requires agencies to negotiate with stakeholders and review thousands of comments (Potter 2019, Parrillo

2019). Interest groups intentionally flood agencies with comments as a delay tactic, forcing the agency to spend more time reviewing comments. Slowdowns threaten the ability of the agency to complete their policymaking activities before the next election. If the incumbent or their party loses reelection, then the president may order the agency to end its ongoing rulemaking activities (Thrower 2018). Agencies with larger policymaking workforces, therefore, may have an advantage in navigating cumbersome procedural requirements.

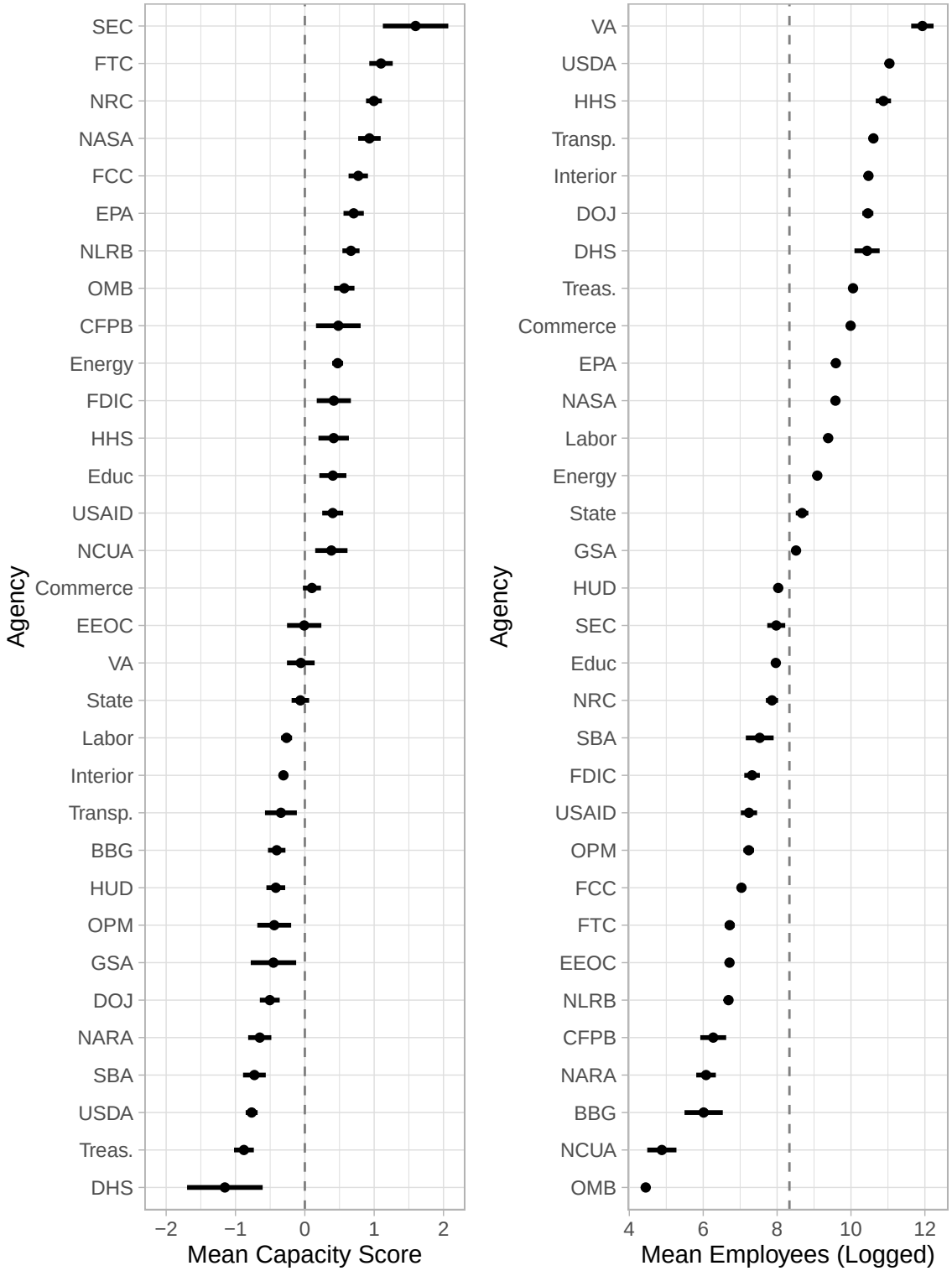
Using over 50 million personnel records from the Office of Personnel Management (OPM), I develop 5,590 yearly policymaking-capacity scores for 266 agencies from 1998–2021 (Appendix B.1). I identify employees engaged in policymaking by coding individuals' occupations using descriptions from OPM's *Handbook of Occupational Groups and Families* (Appendix B.2). A Bayesian model aggregates five separate variables that correlate with policymaking capacity. *Proportion of Policymakers with a College Degree* measures average technical expertise of agency employees. *Average Length of Service of Policymakers* proxies the procedural expertise of these employees. Finally, the *Total Number of Policymakers* captures the size of the agency's policymaking workforce, and *Proportion of Workforce Devoted to Policymaking* proxies whether the agency has devoted a sizeable portion of its workforce to policymaking. The resulting policymaking-capacity scores range from -2.38 (low capacity) to 3.59 (high capacity) (Mean: 0, SD: 0.68). Validation exercises suggest that these measures are robust to alternative configurations (Appendix B.1), correlate with survey responses related to agency capacity (Appendix B.3), and predict rulemaking production (Appendix B.4). These measures provide a valuable tool to executive-politics scholars as either a dependent variable or an independent variable.

5.3 Facial Validity

We can draw a set of priors about which agencies should have the highest levels of policymaking capacity and which agencies should have the lowest levels. Regulatory agencies whose missions necessitate quasi-legislative policymaking, such as rulemaking, should have the highest scores. Within this set of regulatory agencies, agencies whose jurisdictions necessitate high levels of technical expertise should have the highest scores because these agencies employ well-educated and well-paid experts. Agencies that engage in infrequent or less formal policymaking (e.g. agencies with strong enforcement missions) should have scores lower than these regulatory agencies. Additionally, agencies with known workforce attrition or patterns of mismanagement should have lower scores. These heuristics are not infallible, but they provide a quick means of assessing the facial validity of the measures.

Figure 5.1 compares the average policymaking-capacity score for the fifteen executive departments and the agencies classified as large independent agencies by OPM ($N = 34$) against the number of policymaking

Figure 5.1: Policymaking Capacity Estimates and Total Policymaking Employees for Major Agencies



employees (logged) in the same subset of agencies.[2] I make this comparison because the number of policymaking employees in each agency is a plausible alternative measure to the policymaking-capacity scores (Bolton, Potter & Thrower 2015, Potter & Shipan 2019). I observe significant differences in the two measures, which suggests that the policymaking-capacity scores capture a different concept than the size of the agency's policymaking workforce.

First, I examine the policymaking-capacity scores. The rank order of the scores comports with prior expectations. All ten of the top agencies engage in some level of quasi-legislative policymaking, and many operate in highly technical policy areas. These agencies enact regulations that govern nuclear energy and the environment (NRC, Energy, EPA), finance and securities (SEC, FTC, CFPB), telecommunications (FCC), and labor (NLRB). The Office of Management and Budget (OMB) acts as the nucleus of policymaking in the executive branch by reviewing proposed budgets, legislation, regulations, executive orders, and guidance (Bolton, Potter & Thrower 2015, Rudalevige 2021, Pasachoff 2016). Although most associate NASA with the moon landing, it also heavily regulates the use of its launch facilities and participates in promulgating the Federal Acquisition Regulations. Many of these agencies are also known for their employment of highly educated experts. For example, the Department of Energy's National Laboratories are known for STEM-heavy workforces and breakthrough scientific discoveries, such as founding the Human Genome Project and identifying what caused the extinction of the dinosaurs. Its policy bureaus employ similar experts who can propose meaningful legislation and regulations related to energy.

Many of the bottom ten agencies have missions that revolve around enforcement, benefits distribution, and other non-policymaking tasks. Although all of these agencies engage in some form of policymaking, policymaking is tertiary to their main missions, especially when compared to the missions of the top ten agencies. This does not mean that these agencies lack policymaking capacity to perform their primary function. However, it does mean these agencies are less equipped to make policy relative to their high-capacity peers.

The agency with the lowest average score—the Department of Homeland Security (DHS)—polices American borders, waterways, and airports while also adjudicating immigration applications and distributing ben-

[2]The fifteen executive departments are Agriculture (USDA), Commerce, Defense (DOD), Education, Energy, Health and Human Services (HHS), Homeland Security (DHS), Housing and Urban Development (HUD), Interior, Justice (DOJ), Labor, State, Transportation, Treasury, and Veteran Affairs (VA). The large independent agencies are the Consumer Financial Protection Bureau (CFPB), the Environmental Protection Agency (EPA), the Equal Employment Opportunity Commission (EEOC), the Federal Communications Commission (FCC), the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), the General Services Administration (GSA), the National Aeronautics and Space Administration (NASA), the National Archives and Records Administration (NARA), the National Credit Union Administration (NCUA), the National Labor Relations Board (NLRB), the Nuclear Regulatory Commission (NRC), the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), the Securities and Exchange Commission (SEC), the Small Business Administration (SBA), the Social Security Administration, the U.S. Agency for Global Media (BBG), and the U.S. Agency for International Development (USAID). Although classified as a medium independent agency, I also include the Office of Management and Budget (OMB) because it has a significant role in the review of policymaking. The scores for the fifteen executive departments incorporate all policymaking employees in all of the department's bureaus.

efits following disasters. Of the eleven DHS bureaus with policymaking-capacity scores, seven appear in the bottom fifty and five of those seven appear in the bottom twenty-five.[3] The fact that DHS lacked a policy shop until 2005 highlights the relative inattention it gives to this function.[4] Beyond workforce organization, mismanagement and scandal have wracked the agency since its inception in 2003 (Leonnig 2021, Lewis 2008). Together, the lack of policymaking structures and mismanagement have prevented DHS's workforce from developing the capacity it needs to make policy.

Many of the bureaus within the Department of the Treasury and the Department of Justice (DOJ) also have strong enforcement missions. The majority of Treasury's activities involve auditing tax returns, distributing refunds, and protecting the fisc (Hickman 2016). In the last decade, the largest employer within Treasury—the Internal Revenue Service (Mean: -1.01, SD: 0.15)—has suffered from a significant loss of employees brought about by an aging workforce, government shutdowns, and budget cuts.[5] Since 2010, IRS's appropriations have fallen by 20% and the agency has lost 22% of its total staff.[6] Although these trends have had the most significant impact on the agency's enforcement and audit workforces, the trend is observed among policymaking employees as well.

DOJ's enforcement bureaus, such as the U.S. Marshals Service, the Bureau of Prisons, and the Drug Enforcement Administration, employ over half of its workforce classified as policymaking employees (58.2%).[7] DOJ has a strong enforcement culture that has caused it to neglect many of its other functions (Barkow 2013, Dilulio 1994). Although many of these agencies create regulatory policy, low policymaking capacity has hindered these activities. Following President Biden's promise to use the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to create gun-control policies, commentators expressed doubts about the capacity of the agency's workforce to accomplish the administration's objectives. Former ATF officials expressed "that the agency need[s] to be restructured, modernized, given adequate resources and managed in a more proactive and aggressive way" if the agency hoped to implement the policies desired by

[3]The agencies in the bottom twenty five are Customs and Border Protection (Mean: -1.08 SD: 0.36), the Federal Emergency Management Agency (Mean: -1.03, SD: 0.10), the Federal Law Enforcement Training Center (Mean: -0.93, SD: 0.08), the U.S. Secret Service (Mean: -1.20, SD: 0.20), and the Transportation Security Administration (Mean: -1.51, SD: 0.38). The agencies in the bottom fifty are Citizenship and Immigration Services (Mean: -0.80, SD:0.28) and Immigration and Customs Enforcement (Mean: -0.78, SD: 0.29). The remaining agencies are the Coast Guard (Mean: -0.59, SD: 0.08), the Cybersecurity and Infrastructure Security Agency (Mean: -0.17, SD: 0.32), and the Domestic Nuclear Detection Office (Mean: 0.55, SD: 0.61).

[4]McIntire, Katherine. 2005. "DHS Policy Shop May Reshape Agency Priorities." *Government Executive*. 20 July. https://www.govexec.com/defense/2005/07/dhs-policy-shop-may-reshape-agency-priorities/19707.

[5]Kiel, Paul and Jesse Eisinger. 2018. "How the IRS Was Gutted." *ProPublica*. December 11.https://www.propublica.org/article/how-the-irs-was-gutted. Weiner, Rachel. 2013. "What the IRS Scandal Means for Health-Care Reform." *Washington Post*. May 15. https://www.washingtonpost.com/news/the-fix/wp/2013/05/15/what-the-irs-scandal-means-for-health-care-reform.

[6]Congressional Budget Office. 2020. *Trends in Internal Revenue Service's Funding and Enforcement.*. https://www.cbo.gov/system/files/2020-07/56422-CBO-IRS-enforcement.pdf.

[7]These bureaus include the Bureau of Alcohol, Tobacco, Firearms, and Explosives (Mean: -1.25, SD: 0.43), the Bureau of Prisons (Mean: -0.93, SD:0.04), the Drug Enforcement Administration (Mean: -0.88, SD:0.36), the U.S. Marshals Service (Mean: -1.13, SD:0.13), and the Federal Bureau of Investigation (Mean: -1.31, SD: 0.35).

the administration.[8]

In order to produce valid inferences, the scores must accurately capture the latent concept of the workforce's capacity to make policy (Adcock & Collier 2001, King, Keohane & Verba 1994). At first glance, the scores exhibit facial validity. Regulatory agencies whose jurisdictions encompass highly technical policy areas have the highest scores. Meanwhile, agencies infrequently engaged in policymaking have the lowest scores, and anecdotal evidence suggests that lower capacity in these agencies led to policymaking failures. These findings comport with prior expectations.

The comparison of the policymaking-capacity scores to the size of the agency's policymaking workforce suggests that crude measures do not adequately capture the concept of policymaking capacity. For example, the Department of Veterans Affairs (VA) employs the most individuals classified as policymakers because it employs so many physicians and attorneys (Appendix A.2.2). However, anyone familiar with the agency and its recent scandals would call into question an assertion that VA is a high-capacity agency. More realistically, the policymaking-capacity scores estimate that VA's policymaking capacity is just below the mean. The Office of Management and Budget (OMB) offers another example. OMB has the fewest policymaking employees of the listed agencies. However, OMB reviews all agency rulemakings and budgets, making it an essential component for the policymaking of all executive agencies (Bolton, Potter & Thrower 2015, Pasachoff 2016). The policymaking-capacity scores better capture OMB's capabilities compared to raw employment figures.

5.4 Analysis

5.4.1 Structural Independence

I illustrate the value of these new measures by testing two hypotheses about the relationship between bureaucratic autonomy and policymaking capacity. The first hypothesis predicts that agencies with higher levels of structural independence have higher levels of policymaking capacity because their autonomy attracts individuals seeking policymaking positions and prevents political intrusions that would otherwise cause employees to exit government service.

This analysis looks for cross-sectional evidence of a relationship between structural independence and policymaking capacity. The dependent variable is an agency's policymaking capacity in a given year. Using measures developed by Selin (2015), I estimate the effect of two types of structural independence: decision-maker independence and political-review independence. Decision-maker independence measures how much influence the president has over the selection and removal of key agency officials (Mean: -0.12, SD: 0.87).

[8] Additionally, the ATF has a reputation for its toxic culture and favoritism of policing over other activities. The gun-and-badge carrying special agents of the ATF mockingly refer to its unarmed civilian workforce as "booger eaters." Thrush, Glenn, Danny Hakim, and Mike McIntire. 2021. "How the A.T.F., Key to Biden's Gun Plan, Became an N.R.A. 'Whipping Boy."' *New York Times*, 29 September. https://www.nytimes.com/2021/05/02/us/politics/atf-nra-guns.html.

Political-review independence measures the ability of the White House to review the agency's policy proposals (Mean: 0.10, SD: 0.95). I control for the age of the agency (in hundreds of years) because newer agencies have had less time to build capacity than older agencies (Mean: 0.57, SD: 0.50). Finally, I include year fixed effects to account for time trends that influence policymaking capacity in all agencies. The model is estimated using an OLS regression with standard errors clustered at the agency level.

Figure 5.2: Predicted Effects of Structural Independence on Policymaking Capacity

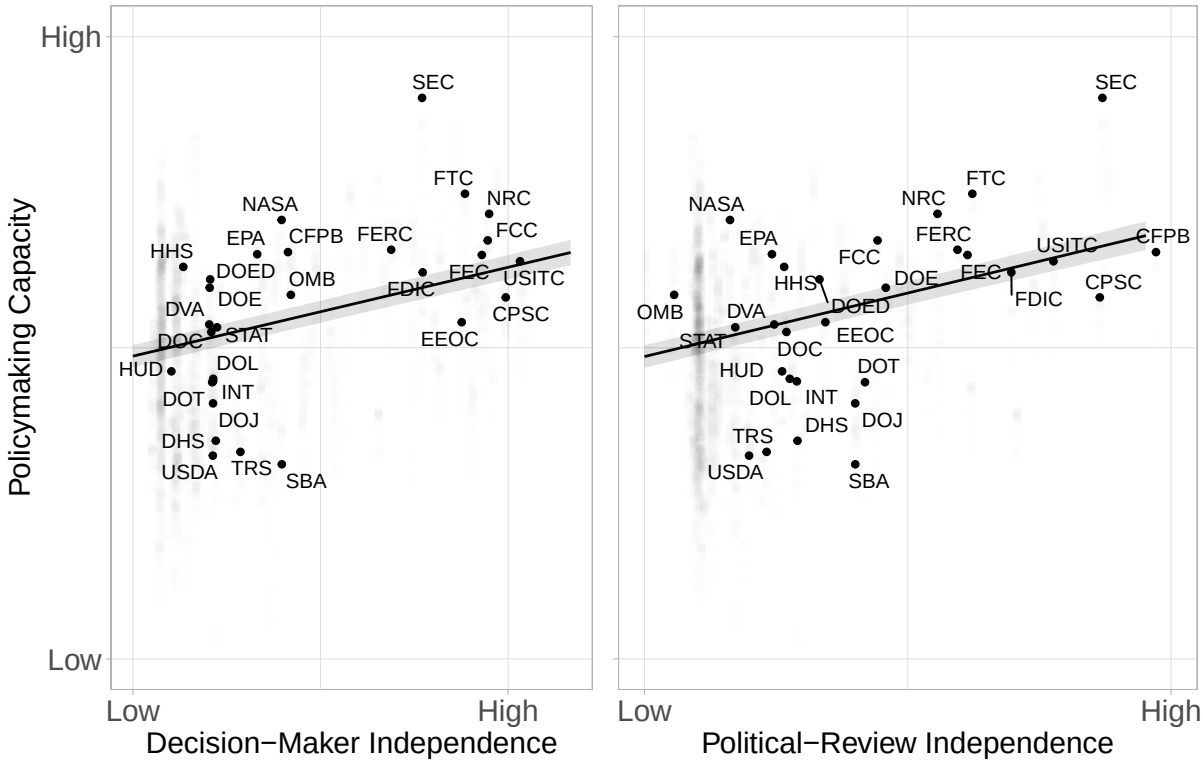


Table 5.1: Model Estimates of Effect of Independence on Capacity

	Policymaking Capacity	
	(1)	(2)
Decision-Maker Independence	0.24^{***} (0.04)	
Political-Review Independence		0.19^{***} (0.04)
Age (Hundreds of Years)	-0.28^{***} (0.07)	-0.31^{***} (0.07)
Constant	-0.07 (0.05)	-0.11 (0.06)
Year Fixed Effects	✓	✓
Observations	4,698	4,698
R^2	0.16	0.15

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001

Table 5.1 reports the results. Figure 1 plots the predicted effect, highlighting the 2021 scores of notable agencies. A one standard deviation increase in either decision-maker or political-review independence increases bureaucratic capacity by more than a quarter of a standard deviation. Both forms of independence have a positive and significant effect on policymaking capacity when the model is estimated on either the subset of agencies within the executive departments or the subset of independent agencies. The effect is even stronger when Selin's measures are substituted for an indicator of whether the agency is an independent commission (Appendix A.2.5). Consistent with the theory, agencies with higher levels of structural independence exhibit higher levels of policymaking capacity.

5.4.2 Politicization

While agency structure may protect policymaking capacity by preserving bureaucratic autonomy, presidential control threatens to erode autonomy by shifting control over administrative policymaking to appointees. The second hypothesis predicts that as politicization increases within an agency, policymaking capacity decreases. Additionally, the predicted effect should be largest in agencies that are ideologically opposed to the current administration.

Using agency fixed effects and year fixed effects, this analysis looks at overtime variation within agencies.[9] I measure politicization as the ratio between agency appointees and supervisors (Mean: 0.11, SD: 0.27) (Lewis 2008). I classify any executive pay, non-career SES, or Schedule C position as an appointee. When the ratio exceeds one, the number of appointees exceeds the number of career supervisors. The range of politicization within the average agency is 0.21 (SD: 0.53). Using Richardson et al.'s measures of agency ideology, I classify an agency as liberal (conservative) if its score is more than one standard deviation below (above) the mean (Richardson, Clinton & Lewis 2017). A liberal (conservative) agency is coded as opposed to the current administration in any year where a Republican (Democratic) president is in office. I control for the agency's age and estimate the model using a within estimator with clustered standard errors.

Table 5.2 reports the results. As hypothesized, an increase in politicization within an agency reduces policymaking capacity. However, additional robustness checks demonstrate that this effect only holds for agencies within the executive departments (Appendix A.2.6). This heterogeneity suggests that structural independence preserves capacity even when the agency experiences greater politicization. Although imprecisely estimated, the effect of politicization is greatest in agencies that are ideologically opposed to the current administration—nearly doubling the loss of policymaking capacity. Consistent with the theory, the results suggest that politicization reduces policymaking capacity—at least within the executive departments.

[9] A two-way fixed effects approach cannot be used in this analysis, because the interaction between capacity and opposed agencies is colinear with the year fixed effects. However, the direct effect of politicization is robust to a two-way fixed-effects model (Appendix A.2.6).

Table 5.2: Model Estimates of Effect of Politicization on Capacity

	Policymaking Capacity	
	(1)	(2)
Politicization	-0.18^{**} (0.06)	-0.17^{*} (0.08)
Opposed		0.02^{*} (0.01)
Politicization × Opposed		-0.15 (0.09)
Age (Hundreds of Years)	2.48^{***} (0.14)	2.51^{***} (0.14)
Agency Fixed Effects	✓	✓
Year Fixed Effects	✓	✓
Observations	5,574	5,104
R^2	0.29	0.30

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001.

5.5 Conclusion

Renewed scholarly interest in the growth and maintenance of bureaucratic capacity creates a need for new measures. This study fills that void by creating new time-series measures of policymaking capacity. As the first of their kind in the American context, these measures provide scholars an opportunity to test emerging theories about the relationship between bureaucratic capacity, administrative policymaking, and presidential administration (Gailmard & Patty 2007, Huber & McCarty 2004*b*, Turner 2020). Additionally, scholars can extend the method here to other agency tasks, such as enforcement or adjudication.

Substantively, this study offers empirical support for a longstanding but under-tested theory about the relationship between bureaucratic autonomy and capacity. Consistent with this theory, the findings suggest that increased presidential control threatens policymaking capacity. However, agencies with greater structural independence appear more resistant to the erosion of capacity—even when faced with heightened levels of presidential control. Normatively, the results warn against proposals to increase presidential control over independent agencies. Recently, the Supreme Court has ruled that certain modes of structural independence are unconstitutional because they inhibit presidential control (Hickman 2018). Devins and Lewis (2023) argues that these independent agencies offer few benefits over their executive counterparts. That may hold true for some of the smaller, routinely neglected independent agencies. However, the results of this study suggest that larger independents—those receiving the greatest scrutiny from the courts—have managed to build capacity far exceeding other agencies because of their autonomy.

CHAPTER 6

Consequences for Presidential Control

In his inaugural address, President Biden promised to "press forward with speed and urgency" to deliver policy change.[1] His priorities were ambitious: rebuild the middle class, reform healthcare, deliver racial justice, combat climate change, and end the COVID-19 pandemic. Faced with congressional gridlock, Biden turned toward administrative policymaking to accomplish his objectives. Yet Biden inherited an administrative state in need of repair (Lewis 2018, Skowronek, Dearborn & King 2021). For example, the relocation of the Bureau of Land Management during the Trump Administration caused significant workforce attrition, leading to policymaking delays.[2] Low staffing in the Environmental Protection Agency and the Department of Energy slowed implementation of Biden's Infrastructure Investment and Jobs Act.[3] Despite the ambition, the managerial decisions of past administrations constrained Biden's success.[4]

Presidents inherit a massive administrative state of more than 250 major agencies and 2.8 million civil servants (Selin & Lewis 2018). As congressional majorities have slimmed and the capacity of Congress has declined (Bolton & Thrower 2021, Lee 2016), administrative policymaking has become a more attractive avenue for presidents to implement their policy agendas. In particular, rulemaking has surpassed legislation as the dominant form of federal policymaking. Yet rulemaking is onerous (McGarity 1991). To successfully promulgate new regulations, agencies need teams of policymakers with expertise and experience in both the substantive policy area and the policymaking process (Potter 2019, Potter & Shipan 2019, Walker 2016). The policymaking capacity brought to an agency by its workforce significantly affects whether a president is likely to accomplish their agenda through the rulemaking process.

Thus far, this book has shown significant cross-agency variation in bureaucratic capacity. It has explained that this variation is caused by political forces. It has yet to show, however, that this variation matters for the creation and implementation of policy. If variation within the United States does not influence the creation and implementation of policy, then whatever variation exists is inconsequential and uninteresting. Moreover, it suggests that the lack of investment does not occur because elected officials accomplish their goals regardless

[1] Biden, Joseph. 2021. "Inaugural Address by President Joseph R. Biden, Jr." *The White House*. 20 Jan. https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/20/inaugural-address-by-president-joseph-r-biden-jr.

[2] Katz, Eric. 2018. "Land Management Agency Still Facing Vacancies from Headquarters Move After Workers Fled." *Government Executive*. 18 Nov. https://www.govexec.com/workforce/2021/11/land-management-agency-still-facing-vacancies-headquarters-move-after-workers-fled/186945.

[3] Katz, Eric. 2022. "Key Agencies are Shedding the Exact Employees They Need to Spend New Infrastructure Dollars." *Government Executive*. 15 Aug. https://www.govexec.com/workforce/2022/08/key-agencies-shedding-exact-employees-they-need-spend-new-infrastructure-dollars/375861/.

[4] Abramson, Mark A. 2021. "Big Government Is Back. Is the Civil Service Ready?" *Government Executive*. 7 May. https://www.govexec.com/management/2021/05/big-government-back-civil-service-ready/173902.

of the level of capacity within the agency.

This chapter examines how policymaking capacity affects the ability of presidents to implement their policy agendas. Most theories of administrative policymaking focus on the influence of bureaucratic control. As Chapter 2 describes, the ability of an agency to implement or create policy depends on both bureaucratic control and capacity.

Using an analysis of over 6,000 rulemakings across three administrations, I demonstrate policymaking capacity's enduring effect throughout a presidency. The first analysis finds that presidents experience the greatest success in promulgating rules in high-capacity agencies. However, the marginal effect of capacity declines as the agency's structural independence increases or the ideological distance between the president and the agency increases. The second analysis examines how these dynamics inform the initiation of significant rulemakings. As expected, this analysis finds greater levels of rulemaking in high-capacity agencies with less structural independence. Together, these analyses show how variation in policymaking capacity affects the likelihood that presidents succeed in implementing their agendas through the rulemaking process.

6.1 Capacity as a Constraint

Since the late Nineteenth Century, Congress has delegated authority to the administrative state to make policy in every domain (Epstein & O'Halloran 1999, Skowronek 1982). As heads of the executive branch, presidents have claimed this authority to enact policies related to climate change, gun control, internet access, and a wide array of other salient issues.[5] When implemented through the rulemaking process, these policies have legally-binding effects and achieve policy outcomes rivaling legislation. For example, President Obama announced the Environmental Protection Agency's Clean Power Plan as "the single most important step that America has ever made in the fight against global climate change."[6] As the legislative process has become more inaccessible for presidents, rulemaking has become a meaningful alternative for presidents to implement their policy agendas.

Although presidents wield control over the administrative state, they cannot claim this authority as their own. Instead, they must rely on the hundreds of agencies they inherit to implement their preferences through administrative policymaking. Agencies are molded over the course of many administrations. They derive their structures from organic statutes designed to constrain future administrations from undermining the preferences of the enacting coalition (McCubbins, Noll & Weingast 1989, Moe 1989). At the same time, the agency develops a sense of mission, which shapes the agency's policy prefer-

[5]Following a mass shooting in Las Vegas, the Bureau of Alcohol, Tobacco, Firearms, and Explosives outlawed bump stocks. *Bump-Stock-Type Devices*, 83 Fed. Reg. 66,514 (Dec. 26, 2018). Concerns that internet-service providers would charge different rates for different content led the FCC to enact net-neutrality protections. *Protecting and Promoting the Open Internet*, 80 Fed. Reg. 19,737 (June 12, 2015). In response to the COVID-19 Pandemic, the Centers for Medicare and Medicaid Services issued a rule requiring healthcare workers to be vaccinated against the virus. *Omnibus COVID-19 Health Care Staff Vaccination*, 86 Fed. Reg. 61,555 (Nov. 5, 2021).

[6]Perkins, Lucy. 2015. "President Obama Unveils New Power Plant Rules in 'Clean Power Plan'." NPR. August 3.

ences (Barkow 2013, Downs 1964, Hickman 2015, Wilson 1989). Although presidents politicize and centralize agencies to increase control over agencies' agendas (Bolton, Potter & Thrower 2015, Haeder & Yackee 2018, Kagan 2001, Lewis 2008, Moe 1985), the effectiveness of these strategies depends on the agency's structure and the willingness of its civil servants to serve the president (Brehm & Gates 1999, Potter 2019, Selin 2015).

The administrative-presidency literature has devoted significant attention to the mechanisms that presidents use to increase the administrative state's responsiveness to their policy agendas (Bertelli & Feldmann 2007, Bolton, Potter & Thrower 2015, Kinane 2021, Lewis 2008, Moe 1985). By assuming that the implementing agency has sufficient capacity to complete the president's agenda, these theories do not account for the ways in which capacity may inform (1) whether the president chooses legislation, unilateral action, or administrative policymaking and (2) the vehicle of administrative policymaking, such as rulemaking or guidance, chosen by the administration and the agency.

Control alone cannot guarantee policymaking success.[7] For example, the Clinton Administration made it a priority for the Occupational Safety and Health Administration (OSHA) to enact regulations related to ergonomics before the next presidential election (Shapiro 2007). Two decades of partisan disagreements had starved OSHA of resources (Vike 2007). Testifying before Congress, Assistant Secretary of Labor Joseph Dear expressed concerns that OSHA's lack of resources would hinder its policymaking efforts.[8] Others called the idea of finalizing the rule before the 2000 election a "Herculean task" (Shapiro 2007). Although OSHA ultimately completed the rule before inauguration day, its final-hour completion made it possible for Congress to vacate the rule using expedited procedures under the Congressional Review Act (CRA). If OSHA had possessed greater policymaking capacity at the start of the Clinton Administration, then the agency may have completed the rule in a timeframe outside the reach of the CRA.

The goal of this study is to encourage presidency scholars to engage more with bureaucratic capacity as a constraint on presidential action. Presidents have neither time nor energy to build the capacity necessary to implement their agendas. Instead, they must work with whatever resources reside in the agency at the beginning of their terms. As a result, the configuration of the administrative state on Inauguration Day has an enduring effect throughout a president's term.

6.2 Rulemaking in an Inherited Presidency

I turn now to explaining how policymaking capacity shapes the initiation and finalization of rulemakings related to the president's agenda. Presidents are policy-motivated. They want to win reelection for themselves

[7] Of course, some theories do engage with bureaucratic capacity (Huber & Gordon 2004, Turner 2020, Ting 2011). Yet these theories often model capacity as a determinant of policy quality rather than completion.

[8] *OSHA: New Mission for a New Workplace*. 114th Cong. (Oct. 17, 1995).

and their co-partisans so that they can continue to create policies aligned with their preferences. Moreover, presidents want to establish a legacy as a "great" president by enacting durable policy change. Voters respond favorably to policy accomplishments and, accordingly, presidents structure their policy agendas around the concerns of the public (Hill 1998, Jacobs & Shapiro 1994, Panagopoulos 2012). Presidents are motivated to enact policies related to these priorities so that they can claim credit in campaign speeches and history books.

Presidents have a short time to accomplish their agendas and demonstrate to voters their ability to bring about policy change. As elected officials who care about the immediate electoral consequences of their actions, presidents often care more about the initial completion of the policy rather than whether it will achieve certain outcomes in years to come. They want to secure Congress for their parties in the midterm elections so that they can continue their legislative programs in the second half of their terms. Doing so requires them to deliver policy accomplishments within the first 100 days of the presidency (Light 2014). Rulemaking is an attractive form of policymaking because it produces legally-binding policy without the need to undergo the legislative process. Unlike guidance documents, the rulemaking process results in legally-binding regulations that cannot be repealed except through the rulemaking process (Potter 2019).

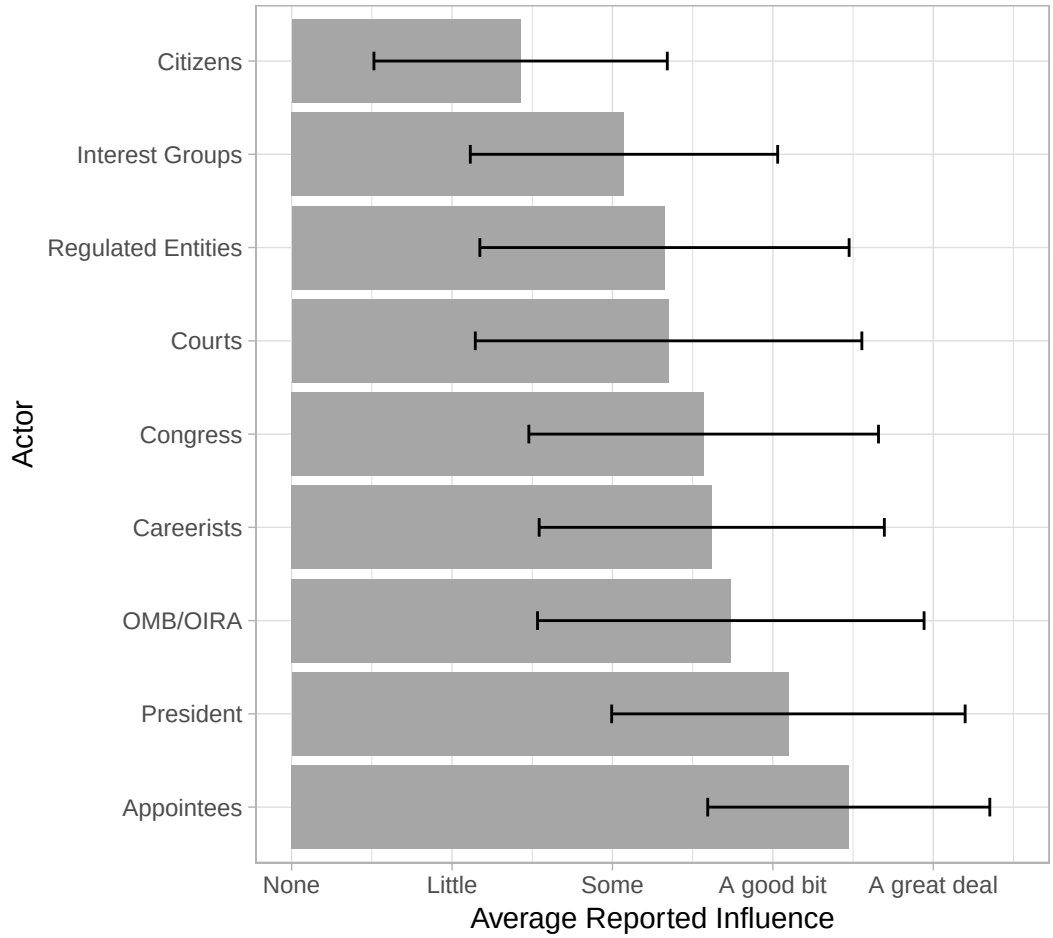
However, presidents cannot claim credit for proposed rules that remain unfinished on election day. The public does not laud attempted but failed policy reforms as much as actual accomplishments. If the agency fails to finalize a rulemaking—for whatever reason—before the end of the president's term, then a hostile incoming administration is likely to withdraw the proposed rule and end the rulemaking process (Thrower 2018). Accordingly, three ingredients are necessary for presidents to succeed in rulemaking: (1) agenda-setting authority, (2) policymaking capacity, and (3) control over the agency's day-to-day operations.

First, presidents need the ability to place their priorities on agencies' rulemaking agendas. Internally, appointees direct civil servants to draft and propose rulemakings that respond to the president's priorities.[9] Externally, the Office of Information and Regulatory Affairs (OIRA) reviews and revises agencies' proposed rules to comport with presidential priorities, and the Office of Management and Budget leverages its control over spending to ensure compliance with presidents' directives (Bolton, Potter & Thrower 2015, Haeder & Yackee 2018, Pasachoff 2016). Respondents to the 2020 SFGS reported that appointees, presidents, and OIRA exercise the greatest control over agency rulemaking agendas (Figure 6.1). Accordingly, presidents enjoy de facto control over agency rulemaking agendas. They prevent agencies from initiating rulemakings that conflict with their preferences and strong-arm agencies into beginning rulemakings that align with their preferences.

Agenda-setting alone does not ensure policymaking success. Rulemaking is onerous and requires the

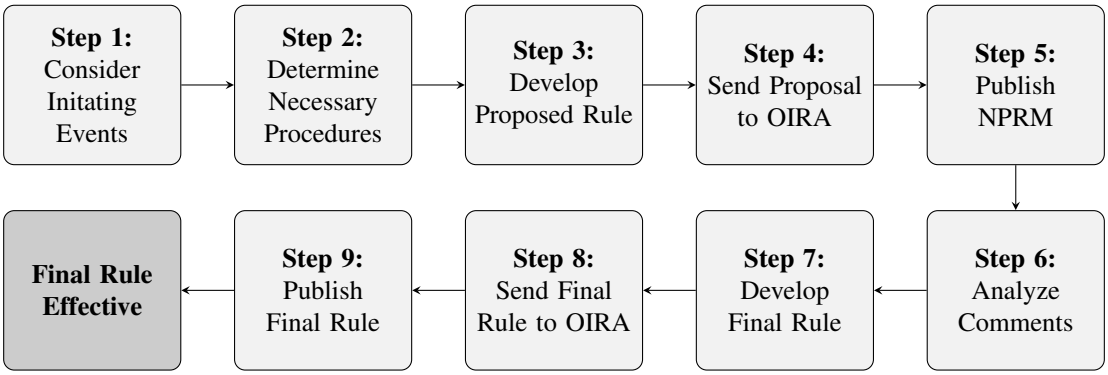
[9]The degree of control that presidents exercise over their own appointees varies from agency to agency. Even in the most independent agencies, however, presidents gain control over agency leadership and prove effective at pushing their agendas (Devins & Lewis 2008).

Figure 6.1: Reported Influence Over Rulemaking Agenda, 2020 SFGS



Note: Question Wording: "In your experience, how much influence do the following groups have over which issues get included on the agency's Unified Agenda?" Respondents all stated that their job deals with "developing Notices of Proposed Rulemaking, summarizing related comments, writing final rules." ($N = 492$). *Source:* 2020 Survey on the Future of Government Service.

Figure 6.2: Map of the Rulemaking Process



Source: Adapted from Office of Information and Regulatory Affairs. 2021. "Reg Map." *RegInfo.gov*. https://www.reginfo.gov/public/reginfo/Regmap/index.jsp.

agency to have sufficient policymaking capacity (McGarity 1991, Potter 2019). Figure 6.2 illustrates the procedural requirements that have made rulemaking a resource-intensive endeavor. Drafting a proposed rule involves dozens of experts who must analyze the rule's effect on the economy, environment, small businesses, state governments, and other actors. Once drafted, the Administrative Procedure Act (APA) requires agencies to publish a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* and to solicit public comments on the proposed rule (5 U.S.C. § 553(c)). Salient rulemakings may require the agency to hire contractors to review, categorize, and respond to thousands of comments (Dooling & Potter 2022). Only after the agency has reviewed and responded to all comments, analyzed the disparate impacts of the rule, and satisfied OIRA that the rule comports with presidential objectives may the agency publish its final rule. In sum, agencies need policymaking capacity to finalize a rule before the president leaves office.

Finally, presidents need mechanisms to direct an agency's policymaking capacity toward their policy agendas. Although presidents exercise agenda-setting authority, they may face resistance from civil servants during the rulemaking process (Brehm & Gates 1999, Potter 2019). Civil servants behave as strategic actors in the policymaking process and prefer to advance the interests of their agency over the interests of the president. When the president's preferences do not align with the agency's preferences or the president lacks sufficient means to control the agency's policymaking activities, the president is less likely to experience policymaking success, regardless of the level of capacity within the agency. This leads to a prediction that presidents are most likely to experience rulemaking success in high-capacity agencies subject to high levels of presidential control.

Hypothesis 1 (Rulemaking Completion). *As policymaking capacity increases, the likelihood that the agency finalizes a rulemaking before the end of the president's term increases. However, the marginal ef-*

fect of policymaking capacity decreases as the ability of the president to control the agency decreases.

Given this prediction, where and when should presidents prioritize the initiation of rulemakings? Presidents anticipate that higher capacity agencies will be more successful at completing policies. If they anticipate that the agency does not have sufficient capacity to complete the rulemaking process, presidents may prefer to pursue unilateral action, legislation, or a less onerous form of administrative policymaking. Likewise, if they expect that civil servants within the agency will resist their policymaking efforts or they lack sufficient means to ensure compliance with their agenda, presidents may seek an alternative mode of policymaking.

Hypothesis 2 (Rulemaking Initiation). *As policymaking capacity increases, the number of significant rulemakings begun by an agency increases. However, the marginal effect of policymaking capacity decreases as the ability of the president to control the agency decreases.*

Like all policy ventures, rulemaking is a gamble that may still result in failure. Presidents cannot perfectly observe an agency's policymaking capacity and, therefore, may over-estimate an agency's capabilities. Moreover, presidents may not have a viable alternative to rulemaking. Many presidents campaign on the promise to reverse the previous administration's regulations. Deregulation requires either the agency to repeal the old regulations or Congress to enact legislation nullifying the regulations. Faced with growing polarization in Congress, presidents may gamble on the rulemaking process in a low-capacity agency. All said, presidents choose rulemaking over other forms of policymaking when they anticipate that rulemaking has the highest probability of delivering success.

6.3 Analysis

6.3.1 Rulemaking Completion

The ability of the president to benefit from rulemaking is constrained by the policymaking capacity of the administrative state on the day of inauguration. The Completion Hypothesis predicts that agencies with higher levels of capacity are more likely to complete rulemakings before the end of the president's term, but that the marginal effect of capacity decreases as presidential control decreases.

The research design leverages presidential transitions to test the relationship between policymaking capacity and the likelihood that the agency finalizes a rulemaking during the president's first term in office. The data consists of all rulemakings started during the first terms of the Bush, Obama, and Trump administrations. The data excludes any rulemaking that carried over from the previous administration. All independent variables are either (1) stable characteristics that do not change within an administration or (2) measured before the start of the current administration. This design overcomes two inferential hurdles. First, the elimination of rules begun prior to the start of the new administration ensures that the subset of rulemakings includes only

those aligned with the current president's priorities.[10] Second, measuring the independent variables before the start of the administration ensures that the current administration had no direct influence over measures of capacity, structure, or preferences.

To collect data on rulemakings, I use the *Unified Agenda*.[11] All agencies engaged in rulemaking, including independent agencies, must report their planned and ongoing regulatory activities in the *Unified Agenda*. Every rulemaking has a unique Regulatory Information Number ("RIN"), which makes it possible to track the progress of rulemakings over time. Machine-readable files make it possible to assemble a dataset of every reported rulemaking from January 2001 to January 2021. A rulemaking enters the dataset if (1) it first appeared in the *Unified Agenda* during the first term of Bush, Obama, or Trump, and (2) the agency published the first Notice of Proposed Rulemaking (NPRM) for the rulemaking in the same term. Although the *Unified Agenda* offers the most comprehensive source of rulemaking data, it often contains typographical errors and inconsistencies (Nou & Stiglitz 2016, O'Connell 2011). Accordingly, I have checked all rulemakings against their original publications in the *Federal Register* and made corrections to dates and the type of action (e.g. NPRM or final rule) reported by the agency. The data includes 6,157 rulemakings from 222 agencies.

Presidents care about completing rulemakings before the end of their term in office so that they can claim credit for the resulting policy. The dependent variable of interest is the duration of an ongoing rulemaking. I measure the duration of the rulemaking as the number of days between the publication of the first NPRM to the agency's final submission to OIRA (Mean: 289.86; SD: 235.00).[12] I use the final OIRA submission because, at that point, the agency has completed its work on the rulemaking (Bolton, Potter & Thrower 2015, O'Connell 2009, Potter 2019). The data exhibits right censoring for rules that remain uncompleted after the president's first term.[13]

Table 6.1 summarizes the rulemaking data. Although presidents differ in the number of rulemakings they pursue during their first terms, similar patterns emerge across administrations. Approximately 67% of all rulemakings begun during a president's first term are finished in that term. The average rulemaking takes about ten months from the issuance of the NPRM to the final rule, but there is significant variance in rulemaking duration. Over 15% of rulemakings take more than two years to complete. Of course, this measure underestimates rulemaking duration because it does not consider the time agencies expend drafting

[10] One could further subset the data to presidential priorities or include a measure of presidential priorities. For purposes of this research design, controlling for presidential priorities may introduce post-treatment bias. Presidents may prioritize certain policy areas based on the administrative state's capacity to bring about policy change in those areas. Existing theoretical and empirical research suggests that the rulemakings begun during the president's term in office are those that either directly implement the president's agenda or do not conflict with that agenda (Bolton, Potter & Thrower 2015). Agencies may have begun working on some of these rulemakings during the previous administration. If the new administration decides that a rulemaking should continue, it reflects a conscious decision that the rulemaking comports with the agenda. To the extent this holds, direct accounting for presidential priorities is unnecessary for this study. Nevertheless, I replicate my analyses on a subset of priority agencies.

[11] Office of Information and Regulatory Affairs. "RegInfo.gov" https://www.reginfo.gov/public.

[12] If the final rule was exempted from OIRA review, then I use the day the final rule appeared in the *Federal Register*.

[13] The results do not change if duration is measured beyond the first term.

Table 6.1: Rulemakings Begun During the First Term of the Administration, 2001–2021

Admin.	Total Rulemakings (Priority Agency)	Finalized in First Term (%)	Mean Duration (SD)
Bush II	2193	1356	308.19
	(1788)	(61.83%)	(257.34)
Obama	2402	1535	311.21
	(1948)	(63.91%)	(241.59)
Trump	1954	1332	260.45
	(1120)	(68.17%)	(220)
Total	6549	4223	304.58

Duration reported as the censored time from NPRM to Final Rule.

and vetting the rule before issuing the NPRM.

The most proximate reason that administrative policymaking succeeds is the capacity of the agency's policymaking teams. An agency with a high-capacity workforce exhibits substantive and procedural expertise (Fisher & Shapiro 2020), the ability to recruit and retain talented civil servants (Gailmard & Patty 2007), and processes conducive to team production (Williams 2021). I measure *Capacity* using the scores described in Chapter 5. If the Completion Hypothesis holds, then agencies with higher capacity should take less time to finalize their rulemakings.

Whether presidents can coerce an agency into implementing their agendas depends on two stable characteristics of agency design: structural independence and agency preferences. As I explain below, I focus on these characteristics because they are a function of agency design and, therefore, arguably exogenous to the rulemaking activities of the current administration.

First, presidents have fewer opportunities to exercise control over agencies whose leaders are more insulated from presidential control (Lewis 2003). Structural independence is a function of design choices made at the agency's inception and, therefore, is exogenously determined prior to inauguration day (McCubbins, Noll & Weingast 1989, Moe 1989). I measure agency independence using Selin's (2015) measures of decision-maker independence (Mean: 0.81; SD: 0.85). These measures model agency independence as a function of the statutory mechanisms that insulate the agency's leaders from political control. They range from 0.00 (low independence) to 3.08 (high independence).[14] If the Completion Hypothesis holds, then the marginal effect of capacity on rulemaking duration should decrease as the agency's independence increases.

Second, presidents have an easier time convincing civil servants to work on policies related to their agendas if those civil servants share the president's preferences. Like-minded civil servants choose to work in similar agencies, which leads to stable ideological leanings within agencies (Downs 1964, Richardson,

[14]For ease of interpretation, I have linearly transformed the measures from Selin's original measures so the lowest level of independence is 0.00.

Clinton & Lewis 2017, Wilson 1982). I measure ideological distance between the president and the agency using measures developed by Richardson, Clinton, and Lewis (2017). I transform the authors' measure so that it ranges from 0.06 (ideologically close) to 3.94 (ideologically distant) in both Republican and Democratic administrations (Mean: 2.04; SD: 0.92). If the Completion Hypothesis holds, then the marginal effect of capacity on rulemaking duration should decrease as the ideological distance between the president and the agency increases.

Agencies have varying levels of rulemaking authority and, over time, may have increased their capacity to satisfy their obligations. Left unaccounted, estimates of the effect of capacity on rulemaking outputs may simply proxy the expected level of rulemaking within the agency. Accordingly, I control for the agency's logged rulemaking workload to account for this possibility (Bolton, Potter & Thrower 2015). I measure workload using the logged number of rulemakings reported in the *Unified Agenda* in the fall before the inauguration. A basic Pearson correlation test reveals a strong and significant relationship between agency workloads between the Bush and Obama Administrations ($\rho = 0.88$; $p < 0.001$) and the Obama and Trump Administrations ($\rho = 0.95$, $p < 0.001$).[15] As anticipated, agencies do have some baseline level of rulemaking that persists regardless of changes in the White House. However, a correlation test reveals a *negative* but insignificant relationship between capacity and workload ($\rho = -0.08$; $p = 0.07$), suggesting that the measure of capacity does not simply capture the expected level of policymaking within an agency. This reduces concerns of an endogenous relationship between policymaking capacity and rulemaking levels.

Agencies may also rely to varying degrees on contract services for help with rulemaking (Dooling & Potter 2022). Reliance on contractors is plausibly correlated with both capacity and the duration of rulemaking. Yet obtaining data on the use of contractors in the rulemaking process is notoriously difficult.[16] Instead, I use the logged number of contract managers employed full time by the agency. This measure assumes that agencies that have more employees devoted to managing contracts are more likely to have the processes and procedures in place to use contractors in the rulemaking process.

Additionally, I included fixed effects for presidential administrations to control for time-varying policies within administrations that affected rulemaking procedures.[17]

Because the data exhibits right censoring, I estimate the effect of the independent variables on rulemaking

[15]The correlation is also strong between the Bush and Trump Administrations ($\rho = 0.84$; $p < 0.001$).

[16]Potter, Rachel Augustine. 2022. How Much of Rulemaking Is Done by Contractors? *Brookings*. 16 Feb. https://www.brookings.edu/research/how-much-of-rulemaking-is-done-by-contractors.

[17]With one exception (i.e., the interaction of capacity and ideological distance in the Trump Administration), the results are consistent when re-estimated on the subset of rulemakings within each presidency. I do not include any measures of divided government because (1) all three presidents had unified government during the first Congress of their first term and (2) the alignment of the second Congress may be a function of presidential policymaking success and, therefore, post-treatment. Fixed effects for presidential administration controls for at least some of the dynamics between Congress and the president.

In addition, I do not include agency fixed effects. Many of the agencies exhibit remarkable stability in their policymaking capacities across the three administrations. Therefore, there is insufficient variation to estimate within-agency effects of policymaking capacity. This is consistent with the findings of Bednar and Lewis (2022), which suggest that presidents mostly neglect the administrative state.

duration using a Cox proportional hazard model. The Cox model belongs to a class of survival models that estimates the time to an event (i.e., rulemaking completion). I use robust standard errors clustered at the agency level. Table 6.2 reports the estimates from the Cox model. Model (4) is the preferred specification. Positive coefficients correspond to faster rulemaking completion, while negative coefficients reflect longer rulemakings. As a robustness check, I estimate the models on the uncensored time to finalization, allowing the duration to extend beyond the first term. All results hold.

Table 6.2: Estimated Days to Rulemaking Finalization: First Terms of the Bush, Obama, and Trump Administrations

	Hazard Rate of Finalization			
	(1)	(2)	(3)	(4)
Capacity	0.28^{*}	0.48^{***}	0.56^{**}	0.78^{***}
	(0.14)	(0.12)	(0.18)	(0.21)
Ideological Distance	-0.06	-0.03	-0.06	-0.03
	(0.05)	(0.05)	(0.05)	(0.05)
Capacity $\times$ Ideological Distance		-0.10^{*}		-0.11^{*}
		(0.05)		(0.05)
Independence	-0.25	-0.25	-0.09	-0.09
	(0.15)	(0.15)	(0.15)	(0.15)
Capacity $\times$ Independence			-0.30^{***}	-0.30^{***}
			(0.09)	(0.09)
Workload	0.05	0.04	0.04	0.03
	(0.10)	(0.10)	(0.10)	(0.10)
Contractors	-0.03	-0.03	-0.05	-0.05
	(0.03)	(0.03)	(0.04)	(0.04)
Obama	-0.13	-0.13	-0.12	-0.13
	(0.10)	(0.10)	(0.10)	(0.10)
Trump	0.14	0.15	0.16	0.17
	(0.09)	(0.08)	(0.10)	(0.09)
Capacity (Wald P-Value)	–	$< 0.001^{***}$	0.002^{**}	0.002^{**}
Ideological Distance (Wald P-Value)	–	0.046^{*}	–	0.049^{*}
Independence (Wald P-Value)	–	–	0.001^{**}	0.002^{**}
Estimator	Cox	Cox	Cox	Cox
N	5,152	5,152	5,152	5,152

$^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$
HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

Consistent with the Completion Hypothesis, I find evidence that an agency's policymaking capacity increases the likelihood of rulemaking finalization. In all four models, *Capacity* is a positive and significant predictor of rulemaking finalization. At any point in time, an agency with *Capacity* one standard deviation above the mean is 69 percent (Hazard Ratio: 1.69) more likely to complete an ongoing rulemaking. By contrast, an agency with *Capacity* one standard deviation below the mean is over 40 percent more likely to complete a rulemaking (Hazard Ratio: 0.59). This is consistent with the expectation that agencies must have

a sufficient level of policymaking capacity in order for presidents to successfully implement their agendas through rulemaking. Agencies must have personnel who understand the rulemaking process, resources to review and respond to the public's comments, and the substantive expertise to revise the regulations to comport with demands from the public and the president. Without policymaking capacity, agencies have a harder time completing rulemakings before the end of the president's term in office.

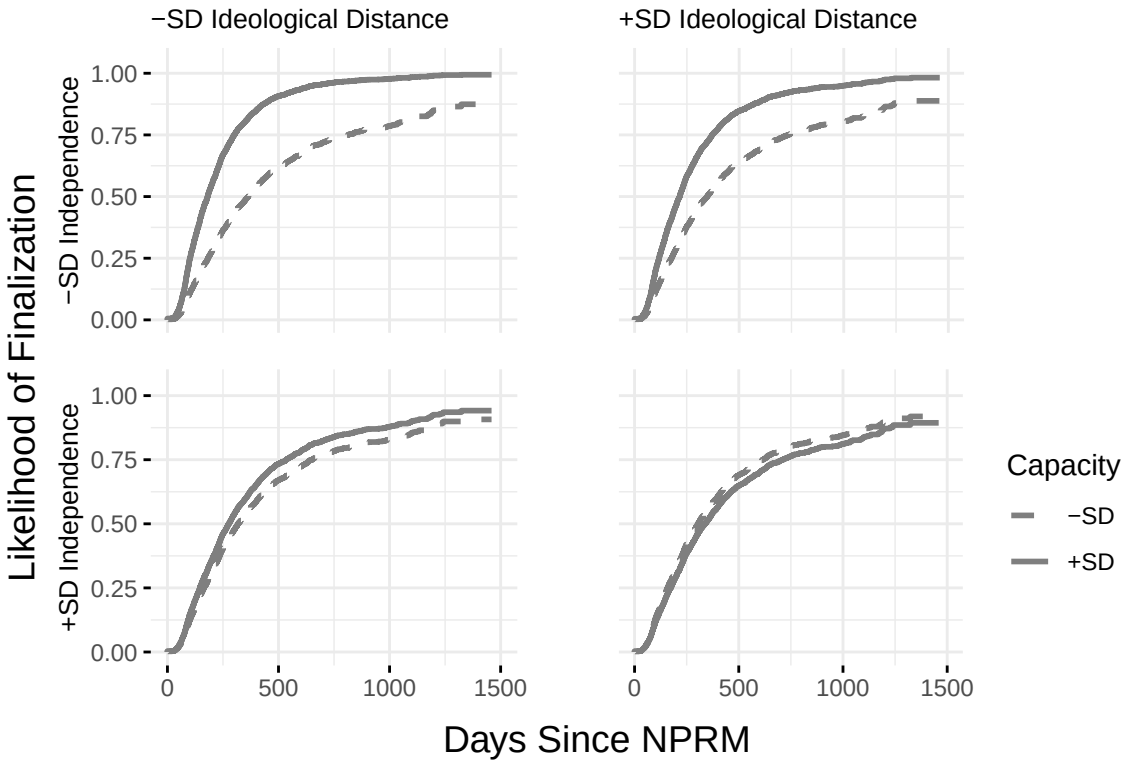
The Completion Hypothesis also predicts that the marginal effect of policymaking capacity declines as it becomes harder for the president to control the agency. The models support this hypothesis in two ways. First, the interaction term between *Capacity* and *Ideological Distance* is negative and statistically significant in both models. For an agency with *Capacity* one standard deviation above the mean, a one standard deviation increase in *Ideological Distance* reduces the likelihood of finalization at any point by 10 percentage points (Hazard Ratio: 1.59). Consistent with expectations, presidents have a harder time benefiting from an agency's policymaking capacity when the agency does not the share the president's policy preferences. Civil servants in high-capacity agencies may shirk their responsibilities or manipulate rulemaking procedures to delay completion of presidents' policy objectives (Potter 2019).

Second, the interaction term between *Capacity* and *Independence* is also negative and statistically significant in both models. For an agency with *Capacity* one standard deviation above the mean, a one standard deviation increase in *Independence* reduces the likelihood of finalization at any point by 23 percentage points (Hazard Ratio: 1.46). Again, presidents have a harder time benefiting from an agency's policymaking capacity when the agency's structure insulates leaders from presidential control. While presidents appoint leaders who share their preferences (Bertelli & Feldmann 2007), gridlock among agency officials or the leaders' own priorities may limit presidents' use of independent agencies for their own policy goals.

Figure 6.3 plots the predicted cumulative-hazard function for Model (4) based on the agency's independence and ideological distance. The upper-left quadrant predicts the likelihood of rulemaking finalization for an agency that is ideologically close to the president and designed to be less structurally insulated from presidential control. The president has the greatest control over such an agency and, as predicted, benefits the most from agency capacity in this quadrant. By comparison, the lower-right quadrant predicts the likelihood of rulemaking completion for an agency that is ideologically distant from the president and structurally insulated. Here, the capacity of the agency provides no meaningful benefit for the president. At 500 days, the high-capacity, high-control agency is more than 25 percentage points more likely to have completed the rulemaking than the low-capacity, low-control agency.

The analysis of rulemaking duration suggests that presidential success is constrained by the configuration of the administrative state prior to inauguration day. Although presidents have opportunities to increase capacity and control within an agency of high priority, the level of capacity and independence within the agency

Figure 6.3: Cumulative Likelihood of Rulemaking Finalization by Level of Presidential Control



**Note*: All other variables held constant at their means.

at the time of inauguration still has a significant impact on rulemaking completion. Successful implementation of the president's agenda cannot be attained through control alone. Whether this fact shapes presidents' pursuit of rulemaking is the subject of the next section.

6.3.2 Rulemaking Initiation

If presidents are strategic actors, then the capacities, structures, and preferences of federal agencies should inform when and how they pursue administrative policymaking. As Figure 6.1 illustrates, presidents exercise great control over rulemaking agendas. Moreover, OIRA acts as an effective veto on agencies' efforts to pursue rules that do not align with presidents' preferences (Bolton, Potter & Thrower 2015, Haeder & Yackee 2015). If a rule—particularly one carrying great economic or policy significance—receives an NPRM, it is a safe assumption that it aligns with the administration's agenda. The Initiation Hypothesis predicts that presidents are more likely to pursue rulemakings in high-capacity agencies over which they exercise the greatest amount of control. Therefore, we should observe the highest levels of rulemaking initiation within these agencies.

For this analysis, I aggregate the rulemaking data to the agency–term level. The dependent variable is

the number of significant NPRMs published by the agency in the first-term of the Bush, Obama, and Trump presidencies (Mean: 13.11; SD: 29.82; Min: 0; Max: 285).[18] A rulemaking is coded as significant if the agency reported it as "economically significant" or "other significant" on the *Unified Agenda*. Economically significant rules are those that have an annual economic effect of at least $100 million or have an adverse effect on the economy, public health, the environment, or state and local governments. Other significant rules are those that "are a priority of the agency head." I focus on this subset of rules because they often represent large policy initiatives spearheaded by the White House. To enter the dataset, the agency must have existed at the time of the president's inauguration. The independent variables remain the same as the previous analysis. If the Initiation Hypothesis holds, then we should anticipate that presidents prioritize rulemaking in higher capacity agencies over which they have greater levels of control.

I estimate the effect of the independent variables on NPRM issuance using ordinary least squares. I use robust standard errors clustered at the agency level. Table 6.3 reports the results. Model (4) is the preferred model.

The Initiation Hypothesis predicts that presidents select rulemaking over other forms of policymaking when the implementing agency has sufficient capacity to finish the rulemaking process. I find support for this hypothesis. In three of the models, *Capacity* has a positive and significant effect on the number of significant rulemakings begun by an agency. All else equal, an agency with *Capacity* one standard deviation above the mean issues about nine more significant rules than an agency with the mean level of *Capacity*. This is consistent with a finding that presidents pursue significant rulemakings in agencies capable of finalizing them before the end of their first term.

The model finds mixed support for presidents' consideration of the ability to control agencies. Figure 6.4 plots the predicted number of significant NPRMs as a function of *Independence* and *Ideological Distance*. In both models, the marginal effect of *Capacity* declines as *Independence* increases. Beyond a certain level of *Independence*, an agency's level of capacity factors less into the decision to pursue rulemaking. While the coefficient does not quite achieve statistical significance ($p = 0.052$), the result is consistent with the prediction that presidents want to control the rulemaking process and direct the agency's capacity toward their agendas. Presidents have fewer incentives to pursue rulemaking in agencies where they will struggle to control the final outcome.

By contrast, the effect of *Ideological Distance* on rulemaking initiation is consistently negative, but imprecisely estimated and substantively small. Two phenomena may explain this finding. First, as shown in Table 6.2, *Ideological Distance* plays a much smaller role in rulemaking completion than other factors. Pres-

[18] When estimated on individual presidencies, the results hold for the Obama and Trump presidencies. However, *Capacity* has a negative effect on the number of significant rulemakings in the Bush Administration.

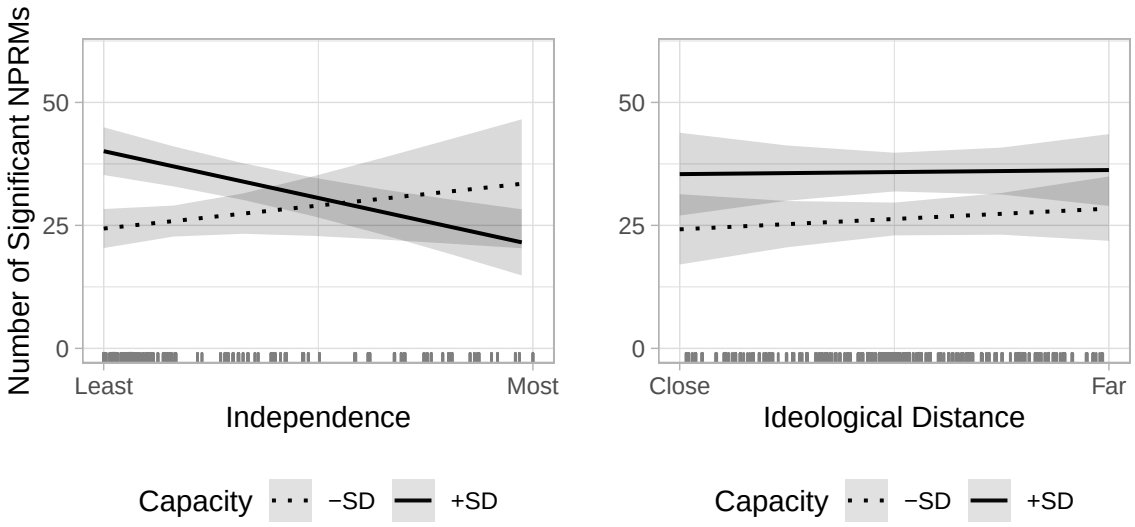
Table 6.3: Estimated Significant NPRMs: First Terms of the Bush, Obama, and Trump Administrations

	Number of Significant NPRMs			
	(1)	(2)	(3)	(4)
Capacity	7.26	8.58	12.25*	13.69
	(4.37)	(6.53)	(5.49)	(7.41)
Ideological Distance	0.96	0.91	0.69	0.63
	(0.86)	(0.86)	(0.86)	(0.85)
Capacity × Ideological Distance		−0.61		−0.66
		(1.41)		(1.39)
Independence	−3.98	−4.01	−1.54	−1.57
	(2.59)	(2.62)	(2.36)	(2.39)
Capacity × Independence			−7.19	−7.20
			(3.68)	(3.69)
Workload	11.58***	11.59***	11.93***	11.94***
	(2.68)	(2.70)	(2.74)	(2.75)
Contractors	1.89	1.90	1.80	1.81
	(1.03)	(1.04)	(1.02)	(1.03)
Obama	−3.46	−3.57	−3.34	−3.46
	(2.18)	(2.25)	(2.23)	(2.29)
Trump	−11.33***	−11.27***	−10.69***	−10.62***
	(3.17)	(3.11)	(3.07)	(3.02)
Constant	−11.09	−10.98	−11.83*	−11.71*
	(5.78)	(5.73)	(5.95)	(5.90)
Capacity (Wald P-Value)	–	0.041*	0.005**	0.011*
Ideological Distance (Wald P-Value)	–	0.647	–	0.756
Independence (Wald P-Value)	–	–	0.011*	0.013*
Estimator	OLS	OLS	OLS	OLS
N	358	358	358	358
R-Squared	0.31	0.31	0.32	0.32

*p < .05; **p < .01; ***p < .001

HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

Figure 6.4: Predicted Number of Significant NPRMs



idents may compensate for ideological distance by increasing the level of control within the agency. This is consistent with other work suggesting that presidents politicize agencies to increase policymaking output (Potter 2020). Second, presidents have few options when seeking to repeal the regulations of past administrations. Presidents can either undergo the rulemaking process to reverse the regulations or seek legislation that would supercede the regulations. In a polarized Congress, rulemaking may be the only way for presidents to keep campaign promises to deregulate. Although presidents may encounter resistance from civil servants within the agency, the rulemaking process may be the only efficacious way to achieve the presidents' objectives.

6.4 Discussion

In the past century, presidents have centralized and politicized the administrative state to exert control over agency rulemaking (Lewis 2008, Moe 1985). However, agencies need policymaking capacity to finalize policies related to presidents' agendas. For too long, the administrative-presidency literature has examined questions of presidential control without paying adequate attention to capacity. This study illuminates two ways that capacity affects presidential policymaking. First, presidents strategically initiate more rulemakings in higher capacity agencies. Second, higher capacity agencies are more likely to complete their rulemakings before the end of the president's first term. While the results highlight the importance of capacity to administrative policymaking, they also strengthen the existing literature on presidential control: Presidents need either sufficient control over agencies or the willful cooperation of civil servants to advance their priorities

through administrative policymaking. In short, theories of presidential control must provide greater attention to capacity, and studies of capacity should consider the political environments in which bureaucrats choose to use that capacity to advance their own interests.

The findings suggest that presidents face trade-offs between policy completion and durability. By all accounts, presidents want durable policy change (Thrower 2017). In the administrative context, durability comes from rulemaking. Yet what substitutes exist for presidents seeking less costly ways of achieving their policymaking goals? The question may have more than one answer depending on the precise problem encountered by the president. Presented with a low-capacity but easily controlled agency, presidents may order the agency to pursue a less onerous form of administrative policymaking, such as guidance documents or internal memorandum. The Obama Administration followed this approach in creating the Deferred Action for Childhood Arrivals program. When encountering resistance from within the agency, however, presidents may seek alternatives to administrative policymaking, such as unilateral action or legislation. Alternatively, presidents may pursue rulemaking in an agency with concurrent jurisdiction that is either easier to control or more friendly toward the president's agenda. Greater theoretical and empirical work is needed to understand the trade-offs presidents face between legislation, rulemaking, and less formal policymaking (Turner 2020).

A subtler implication of this research concerns the incentives presidents have to build bureaucratic capacity. Presidents appear to initiate a greater number of rulemakings in higher capacity agencies. Yet, in many circumstances, presidents will be forced to pursue administrative policymaking in low-capacity agencies. When Congress is gridlocked, presidents turn to rulemaking as a way to create policy, even in low-capacity agencies. This raises questions about what strategies presidents use to shore up capacity in poorly performing agencies. Do presidents prefer appointee competence over loyalty in lower capacity agencies (Krause & O'Connell 2019)? Does the White House participate more in the policymaking activities of low-capacity agencies (Bressman & Vandenbergh 2006)? Greater attention to the relationship between capacity building and policymaking may answer these questions.

The need for capacity varies with the president's regulatory agenda. When the models are run on individual presidents, the effects are largest for the Obama Administration. This is unsurprising. Compared to President Bush or President Trump, President Obama advanced a much larger and more complex regulatory agenda. Extending an agency's jurisdiction into new, unexplored territory requires a workforce that is more expert, experienced, and politically connected. By contrast, rolling regulations back to the status quo takes less time, effort, and expertise. Presidents still need civil servants with sufficient experience to navigate the rulemaking process but may still succeed at deregulation even if they choose to deconstruct the agency.

Beyond the presidency, capacity likely shapes the relationship between the administrative state and other political institutions. A sizeable literature has explored the ways that Congress uses federal agen-

cies to advance its own policy initiatives (McCubbins, Noll & Weingast 1989, Ritchie & You 2019). Indeed, a number of theorists have incorporated bureaucratic capacity into models of delegation (Huber & McCarty 2004*b*, Ting 2011). Capacity may influence congressional delegation in the same way that it influences presidential initiation of administrative policymaking. For example, Congress sometimes delegates new authority to an agency and imposes a deadline on the agency to promulgate new regulations related to that authority. In the dataset of all 24,583 rulemakings, 1,703 were subject to a statutory deadline. Agencies finalized only 31.5% of those 1,703 rulemakings by the deadline. Whether non-compliance stems from a lack of congressional control or bureaucratic capacity remains unanswered.

Courts too depend on agencies to carry out their orders. Litigants challenge agency actions in court, demanding greater due process, the initiation of rulemaking proceedings, or compliance with statutory mandates. Yet agencies need capacity to accomplish these tasks and comply with court orders. For example, in 2003, Fish and Wildlife Service issued a plea to litigants to stop challenging its critical-habitat determinations under the Endangered Species Act.[19] The agency warned that persistent lawsuits left "the Service with little ability to prioritize its activities" or direct its limited resources to enacting rules for the species most in need of protection. According to the agency, court orders "left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines." On the one hand, courts have an obligation to ensure agencies comply with their statutory mandates. On the other hand, the obligations imposed by courts may so burden agency capacity that the agency proves incapable of complying with both court orders and statutory mandates. This trade-off warrants greater attention from students of the federal courts and administrative law.

6.5 Conclusion

All presidents want to implement policymaking using the powers possessed by the administrative state. Rulemaking allows presidents to create durable policies while circumventing congressional logjams. Yet policymaking success requires the president to exercise sufficient control over the rulemaking agency, and the agency to have sufficient capacity. The analysis here shows that cross-agency variation in bureaucratic capacity has a meaningful effect on policymaking in the United States.

The relative control that presidents exercise over administrative policymaking cannot be doubted. Indeed, presidents have spent decades centralizing the rulemaking process within the Office of Information and Regulatory Affairs. Yet bureaucrats remain the lifeblood of rulemaking, and presidents would do best to remember that. The success of a particular rulemaking depends on the expertise, experience, and coordination of the

[19] *Final Designation of Critical Habitat for Cirsium Ioncholepis*, 69 Fed. Reg. 12,553 (Mar. 17, 2004).

agency's policymaking team. Rulemakings live and die at the feet of these bureaucrats. And if the bureaucrats do not like the president's proposed policy, they may refuse to use their expertise to help the president ensure its promulgation.

But policymaking is not the only task agencies perform. Agencies enforce laws, implement programs, and adjudicate claims for benefits. When presidents campaign on toughening immigration laws or issuing millions of stimulus checks, they rarely consider whether implementing agencies have sufficient capacity to complete these tasks. And, often, resolving an ongoing crisis requires increasing capacity in multiple agencies. Capacity impacts presidential goals whether those goals necessitate policymaking, enforcement, benefits distribution, or some other administrative task.

CHAPTER 7

Consequences for Individuals

The pressure to complete cases made me less patient and less able to uphold the constitutional protections required to properly adjudicate cases.

– Immigration Judge Ilyce Shugall[1]

Thus far, this book has revolved the behavior, preferences, and experiences of political elites. Indeed, elites serve as the focus of most studies of political institutions. As the previous chapter shows, the lack of investment in bureaucratic capacity has downstream consequences for the ability of political elites—namely presidents—to implement their preferences through administrative policymaking. Yet any study of bureaucratic capacity would be incomplete without considering its impact on the clientele of most federal agencies: the mass public.[2]

Individuals interact with bureaucratic agencies in a variety of contexts. Social-welfare agencies, like the Social Security Administration and the Board of Veterans Appeal, adjudicate whether individuals will receive disability, medical, and housing benefits (Ames et al. 2020, Mashaw 1983). Law enforcement agencies arrest and detain individuals suspected of engaging in criminal activity. Other agencies provide direct services to individuals by delivering their mail or performing routine medical care. As Chapter 3 theorizes, elected officials have fewer incentives to invest in these agencies unless they provide services that are integral to their reelection. But for the individuals who interact with these agencies, low capacity may mean the wrongful loss of life, liberty, or livelihood.

This chapter examines the relationship between capacity and outcome disparities in agency adjudication. Adjudication is an appropriate case for a study of the effects of capacity on individuals because almost every individual will experience some form of adjudication during their lifetime (Mashaw 1983). Indeed, adjudication is prolific. By one estimate, adjudicatory agencies conduct nine times more hearings than the federal courts (Guthrie, Rachlinski & Wistrich 2009). All fifteen executive departments and many independent agencies adjudicate administrative disputes (Bremer 2021, Barnett & Wheeler 2018, Selin & Lewis 2018). If capacity affects outcomes in agency adjudications, then the findings of this research carry significant normative consequences for a large swath of the mass public.

I argue that variation in bureaucratic capacity creates disparities in adjudicatory outcomes by causing low-

[1] Shugall, Ilyce. 2019. "Op-Ed: Why I Resigned as an Immigration Judge." *LA Times*. Aug. 4. https://www.latimes.com/opinion/story/2019-08-03/immigration-court-judge-asylum-trump-policies.

[2] This chapter is adapted from Bednar, Nicholas R. Forthcoming 2023. "The Public Administration of Justice" *Cardozo Law Review* 44.

capacity adjudicators to rely on coping mechanisms to manage their workloads. Ideally, agency adjudication achieves accurate results using the most efficient and thorough procedures possible (Cramton 1964, Redish & Marshall 1986, Rubin 1984). Presented with the same legal arguments and evidence, two adjudicators should arrive at similar outcomes that reflect the "truth" contained within the administrative record. Implementing these procedures, however, requires adjudicators to possess a threshold level of bureaucratic capacity. Adjudicators need hearing offices, support staff, law clerks, and other forms of capacity to manage their caseloads and conduct a thorough review of the administrative record. Without sufficient capacity to manage their workloads, adjudicators develop coping mechanisms that allow them to decide cases faster but diminish the thoroughness with which they review the administrative record. Instead of introducing random error, these coping mechanisms tend to bias results in favor of a particular party or policy direction.

I use the Executive Office of Immigration Review (EOIR, pronounced "Eeyore") as a case study of the consequences of bureaucratic capacity for individuals appearing before adjudicatory agencies. The Immigration Judges (IJs) of EOIR adjudicate whether noncitizens charged with violating immigration laws may remain in the United States. As of April 2022, EOIR faces a backlog of over 1.78 million cases, but only has sufficient capacity to complete about 400,000 cases per year. Continual neglect by Congress and the president has left EOIR underfunded and understaffed. Although EOIR rests firmly in the executive branch, presidents have shown minimal interest in managing the agency, choosing instead to focus on more salient forms of immigration policy (Cox & Rodriguez 2020, Family 2019). President Trump's public complaints illustrate this disinterest: "I don't want judges. I want border security."[3] Yet the neglect of EOIR has severe consequences for the many respondents who face persecution or torture if returned to their home countries. Reflecting on the current administrative problems within EOIR, one IJ states, "In essence, we're doing death penalty cases in a traffic court setting."[4]

I focus on one element of EOIR's capacity: law clerks. The analyses examine whether IJs with more law clerks are less likely to remove respondents and more likely to grant requests for asylum. Using over 1.6 million removal proceedings decided between 2004 and 2022, I find that respondents appearing before an IJ with one law clerk are 5.2 percentage points less likely to be removed from the United States and 4.4 percentage points more likely to receive asylum than those appearing before an IJ with no law clerks. These effects are even higher along the Southern Border, where respondents who appear before an IJ with one law clerk are 8.9 percentage points less likely to be removed from the United States and 14.7 percentage points more likely to be granted asylum. The discussion benchmarks these findings and shows that the effect size of

[3]Rucker, Philip, and David Weigel. 2018. "Trump Advocates Depriving Undocumented Immigrants of Due-Process Rights." *Washington Post*. June 25. https://www.washingtonpost.com/powerpost/trump-advocates-depriving-undocumented-immigrants-of-due-process-rights/2018/06/24/dfa45d36-77bd-11e8-93cc-6d3beccdd7a3_story.html.

[4]See @LastWeekTonight. 2018. "Immigration Courts: Last Week Tonight with John Oliver (HBO)." *Youtube*. Apr. 2. https://www.youtube.com/watch?v=9fB0GBwJ2QA.

capacity meets or exceeds the effect sizes of other commonly studied sources of bias.

7.1 Accuracy and Efficiency in Adjudication

Agency adjudication involves the resolution of a dispute by a federal agency. Adjudicatory proceedings may occur informally, such as when the Department of State reviews an application for a passport or when the Fish and Wildlife Service selects a winning artist for its annual duck stamp competition. Other adjudications take place in a formal, trial-like setting (Bremer 2021). An agency adjudicator hears motions, collects evidence from competing parties, and issues a ruling. These trial-like proceedings emerge in contexts where an erroneous outcome poses a grave threat to the respondent, including removal proceedings in the Executive Office of Immigration Review (EOIR), appeals from the denial of welfare benefits in the Social Security Administration, and appeals from the denial of veteran benefits in the Board of Veteran Affairs (Ames et al. 2020, Mashaw 1983).

The Constitution affords individuals a degree of due-process rights in all agency adjudications that involve the potential deprivation of a life, liberty, or property interest by the government. These rights are strongest in cases where the risk of erroneous deprivation of the individuals' rights has the potential to cause grave harm. Whatever procedures the agency adopts to protect these interests, they must be designed to ensure that agency reaches an "accurate" decision.[5] Under the Supreme Court's precedent, "procedural due process rules are shaped by the risk of error inherent in the truth finding process *as applied to the generality of cases*, not the rare exceptions."[6] Mashaw (1974) defines "accuracy" as "the correspondence of the substantive outcome of an adjudication with the true facts of the claimant's situation and with an appropriate application of the relevant legal rules to those facts" (p. 38). Achieving accuracy requires each adjudicator to conduct a thorough review of the record and arrive at an outcome based on the facts presented and the applicable law.

Yet adjudicatory agencies must balance the demand for accuracy against other normative considerations, such as efficiency. Agency adjudicators confront massive caseloads, and the pursuit of flawless decision-making hinders the ability of adjudicators to complete cases. For example, delays in disability hearings prevent eligible welfare recipients from receiving the aid needed to afford rent, food, and medication. Contrasting the value of accuracy against efficiency, Cramton (1964) states, "The work of the world must go on, and endless nit-picking, while it may produce a more nearly ideal solution, imposes huge costs and impairs other important values" (p. 112).

Whether agency adjudication promotes accuracy and efficiency depends on the management and capacity of the agencies performing these adjudications. Agency adjudicators need a threshold level of resources to

[5] *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).
[6] *Mathews*, 424 U.S. at 344 (emphasis added).

implement the formal procedures that govern the hearing process. Hearing offices provide adjudicators with the space they need to hear claims, testimony, and evidence. Support staff supplements the adjudicator's own review of the record to ensure that their decision comports with the facts of the case. Of course, politicians rarely have sufficient incentives to build this capacity. When adjudicators lack capacity, they resort to coping mechanisms to increase case completions. Although these coping mechanisms expedite proceedings, they increase the likelihood that the adjudicator fails to consider a key piece of evidence.

7.2 The Capacity to Adjudicate

The needs of adjudicatory agencies can be divided into material resources and human capital. High-capacity adjudicatory agencies exhibit (1) well-equipped hearing offices, (2) expert adjudicators, and (3) dedicated support staff. Collectively, these resources allow adjudicators to maintain manageable workloads by ensuring they have sufficient time to consider the administrative record and arrive at an accurate decision.

Adjudicators need a variety of material resources to conduct fair hearings. They need offices—often courtrooms—from which to hear the parties' arguments, question witnesses, and perform other procedures associated with an oral hearing. Beyond the physical space to conduct hearings, adjudicators need basic office amenities and technologies like furniture, computers, and filing systems to organize case records for easy retrieval. These criteria may seem trivial, but some agencies exhibit staggering deficiencies. Difficulty establishing e-file systems has caused many of adjudicatory agencies to rely in whole or in part on paper filings.[7] In the Immigration Courts, the difficulty procuring filing cabinets has caused staff to stack boxes of paper filings, preventing IJs from easily locating relevant files. Requests for more filing cabinets are met with questions about whether the building has structural integrity to hold them.[8] At the Board of Veteran Appeals, similar backlogs and the mishandling of files has led to the accidental shredding of documents needed to process claims.[9]

The lack of available courtrooms affects the accuracy and efficiency of adjudicatory proceedings. As caseloads have risen and the availability of courtrooms has declined, agencies have substituted in-person hearings for videoconference hearings. Yet studies have found that respondents who appear in videoconference hearings are less likely to take advantage of their procedural rights and that some respondents lack computers capable of engaging in videoconferencing (Eagly 2015). Additionally, adjudicators describe suffering fatigue from videoconference hearings. In one survey, over half of IJs interviewed reported having

[7] Government Accountability Office. 2017. *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*. GAO-17-438. American. Immigration Lawyers Association. 2022. "Featured Issue: E-filing with EOIR Now Mandatory" Feb. 17. https://www.aila.org/advo-media/issues/all/featured-issue-e-filing-eoir-becomes-mandatory.

[8] Kopan, Tal. "Exclusive: Outgoing SF Immigration Judge Blasts Courts as 'Soul-Crushing,' Too Close to ICE." *San Francisco Chronicle*. May 17, 2021. https://www.sfchronicle.com/politics/article/ Exclusive-Outgoing-SF-immigration-judge-blasts-16183235.php.

[9] "Document Tampering and Mishandling at the U.S. Department of Veterans Affairs," March 3, 2009.

changed their "assessment of a respondent's credibility ... after holding a subsequent in-person hearing."[10] The need to shift away from in-person hearings to videoconference hearings stems from a lack of either physical space to conduct hearings or enough adjudicators in the offices with the greatest workloads.

To prevent workloads from exceeding manageable levels, agencies must employ a sufficient number of expert adjudicators to conduct hearings and issue decisions. The appropriate number of adjudicators depends on the agency's workload and the speed at which adjudicators must render their decisions. The absence of a sufficient number of adjudicators plagues many agencies and causes the workloads of individual adjudicators to rise. Even when an agency is authorized to hire more adjudicators, inefficient hiring processes and hiring freezes can prevent it from filling these positions. Additionally, White House involvement can further stymie the hiring of adjudicators by increasing the procedures needed to vet and hire a candidate.

Adjudicators need support staff who can assist with the management of cases. Support staff schedule hearings, file paperwork, and interpret foreign languages, among other administrative tasks. Without sufficient support staff, adjudicators must devote their time to ministerial work instead of examining evidence, conducting hearings, and writing decisions. The absence of dedicated support staff limits the ability of adjudicators to complete their workloads. In the Social Security Administration, a fifth of Administrative Law Judges report that the use of pooled support staff has a "great" impact on their ability to meet performance expectations.[11] As workloads climb, support staff face similar burdens as adjudicators and may provide these adjudicators with sloppy or incomplete work. Therefore, efficient management requires the agency to employ a sufficient number of support staff and to assure these support staff are assigned to the adjudicators with the greatest need.

7.3 The Relationship Between Capacity and Accuracy

I turn now toward explaining why an absence of capacity leads to systemic biases in agency adjudication. Adjudicators face competing demands that shape the thoroughness with which they review the record in an individual case. On the one hand, adjudicators have a sincere interest in administering justice and ensuring respondents receive adequate due process (Engel & Zhurakhovska 2017, Lipsky 1980, Posner 2010). On the other hand, these adjudicators also want to advance their careers (Downs 1964, Teodoro 2011).

Rising workloads and the expectations of management may encourage adjudicators to favor case completions over accurate outcomes. Agency leaders often measure adjudicator performance in terms of the number of cases completed or the speed of disposition (Barnett & Wheeler 2018).[12] Performance expectations often

[10]Government Accountability Office. 2017. Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges. Government Accountability Office. https://www.gao.gov/assets/gao-17-438.pdf.

[11]Government Accountability Office. 2021. Social Security Disability: Process Needed to Review Productivity Expectations for Administrative Law Judges. Government Accountability Office. https://www.gao.gov/assets/gao-21-341.pdf.

[12]Government Accountability Office. 2021. *Social Security Disability: Process Needed to Review Productivity Expectations for Administrative Law Judges. Government Accountability Office*. https://www.gao.gov/assets/gao-21-341.pdf.

rise as the agency's caseload rises. However, the time it takes to review a given case remains the same. As one Administrative Law Judge in the Social Security Administration describes, "it can take hours to review large case files, which reduces the time available for reviewing other cases."[13] The tension between administering justice and satisfying the expectations of political leaders and agency management causes adjudicators to favor expeditious case completion over accurate decisions. Capacity determines whether adjudicators have the resources they need to satisfy performance metrics while also providing each case the thorough consideration it deserves.

Absent sufficient capacity, adjudicators develop coping mechanisms that allow for faster case completion. Two predominant coping mechanisms emerge in the adjudicatory context: procedural shortcuts and heuristics. *Procedural shortcuts* describe actions taken to shorten the time it takes to complete the average proceeding. These shortcuts may diverge from the formal procedures endorsed by the agency and its governing statutes (von Helversen & Rieskamp 2009). Adjudicators may not spend as much time reviewing motions, applications, or evidence before a hearing. They may schedule more hearings than manageable in a single day, increasing the likelihood that they miss key arguments and evidence. Procedural shortcuts decrease the likelihood that an adjudicator arrives at the correct outcome by decreasing the amount of time the adjudicator spends considering the case.

Heuristics describe the mental shortcuts or "rules of thumb" that individuals use to make decisions (Guthrie, Rachlinski & Wistrich 2003). Common heuristics include stereotypes, in which an individual judges the personality, behavior, or past experiences of another individual based on their objective traits. Although heuristics are an unavoidable element of complex decision-making, they are prone to error. Adjudicators may assume the likely outcome of a case based on the respondent's appearance, economic status, or demeanor in court (Keyes 2012, Rachlinski, Guthrie & Wistrich 2007). During the hearing, adjudicators internalize evidence that confirms their prior expectations and ignore evidence that contradicts those priors (Peer & Gamliel 2013, Rassin, Eerland & Kujipers 2010). Overburdened adjudicators rely on heuristics even when they have a great level of expertise and experience. As a result, heuristics increase the likelihood that an adjudicator makes a decision based on extrajudicial considerations rather than the presented evidence (Sale 2002).

In theory, adjudicators may make random errors. In some cases, adjudicators may award relief to undeserving individuals and, in other cases, they may deny relief to otherwise deserving individuals. More likely, coping mechanisms penalize the party with the greater burden of proof. These parties have the greater evidentiary burden and, therefore, when adjudicators fail to thoroughly consider the record, these parties suffer the most. For example, performance metrics in the Patent and Trademark Office encourage examiners to

[13] *Id.* at 27–28.

grant patent applications because, otherwise, examiners must assemble a case to rebut the presumption of patentability (Frakes & Wasserman 2017). In the federal courts, overworked judges award greater deference to government agencies (Huang 2011). In other cases, the bias may penalize respondents applying for benefits or relief from the government.

To prevent overreliance on these coping mechanisms, adjudicatory agencies must provide sufficient levels of capacity to their adjudicators. Adjudicators with less capacity must rely on these coping mechanisms more often to manage their workloads and, therefore, the lack of capacity threatens the accuracy of their decisions. Empirically, we should expect the following:

1. As workloads and organizational pressures increase, adjudicators increase their reliance on coping mechanisms. All else equal, adjudicators with higher levels of capacity are less likely to rely on these coping mechanisms.

2. All else equal, adjudicators with higher levels of capacity make different decisions than adjudicators with lower levels of capacity.

For the most part, the reliance on procedural shortcuts and heuristics does not result from malice. Most adjudicators want to provide a fair and unbiased appraisal of each case. Yet too frequently adjudicators are denied the resources they need to perform their jobs. Overworked and understaffed, adjudicators commit small and frequent violations because they do not have the time or energy to comply with performance metrics and statutory obligations in a way that protects individual rights. In some situations, these coping mechanisms may improve efficiency in the adjudicatory process without harming either the public or respondents. In other cases, however, these coping mechanisms bias outcomes against either the government or the respondent, leaving some respondents without the relief or benefits to which they are entitled.

7.4 Case Study: The Immigration Courts

In this section, I introduce the EOIR as a case study of the relationship between bureaucratic capacity and outcomes in adjudicatory agencies. I focus on a single element of EOIR's capacity: the provision of law clerks to Immigration Judges (IJs). Significant cross-sectional and temporal variation exists in the number of law clerks provided to IJs. While some IJs have two dedicated law clerks, the vast majority of IJs share their law clerk with at least one other IJ. Law clerks are an appropriate indicator of the distribution of capacity within EOIR because they provide invaluable support to IJs. According to the testimony of one IJ,

> Immigration Judges spend on average 36 hours a week on the bench. That leaves us with 4 hours a week to read the material submitted to us in cases, to read new legal developments, to read the

> parties' briefs, as well as changes in country conditions. If we had sufficient judicial law clerks to be able to help summarize, organize, draft proposed decisions, help us wade through some of the complexities of the law, [it would be a tremendous improvement].

Indeed, EOIR has consistently raised concerns about its inability to attain a one-to-one ratio of law clerks to IJs in its budget requests.

There are significant reasons to believe that the absence of capacity affects the quality of due process provided by IJs. In a 2007 speech, Judge Bea of the Ninth Circuit lamented, "Of course, [Immigration Judges] don't have time to review all the documents in the record . . . I think we would see fewer appeals if Immigration Judges were given the resources necessary to do a detailed, thorough, thoughtful job in the first place." According to one IJ, "They come down a belt, you've got a big stamp, you stamp them on the forehead that says 'deport,' and away they go. The problem is you don't have time to grant relief and have a hearing. . . There's no due process. There is no judging."[14] In this section, I provide a brief introduction to the U.S. system of immigration adjudication, its resources, and its backlog. This section concludes with several empirical predictions about the relationship between law clerks and outcomes in removal proceedings. The next section tests these predictions.

7.4.1 A Survey of Immigration Adjudication

Removal proceedings are adjudicatory proceedings that determine whether a noncitizen accused of violating the Immigration and Nationality Act will be allowed to remain the United States. They begin when the Department of Homeland Security (DHS) issues a Notice to Appear to a noncitizen it believes has entered the United States without inspection, overstayed their visa, violated the terms of their admission, or committed any other violation of the Immigration and Nationality Act (INA). The Due Process Clause of the Fifth Amendment guarantees individuals in removal proceedings a right to a hearing. Congress has delegated the administration of these hearings to the IJs within EOIR. Once removed, respondents cannot easily return to the United States. Therefore, attaining accurate results in removal proceedings is essential to protecting the life and liberty of individuals within the immigration system

In general, removal proceedings take place over two hearings. During the master-calendar hearing, the IJ advises the respondent of their rights, takes pleadings, and schedules any additional hearings. To expedite the proceedings, IJs often conduct master calendar hearings in large groups, spending only a few minutes on each case. At the individual-merits hearing, the IJ collects evidence, questions the respondent, and listens to the legal arguments about the removability of the respondent and their eligibility for relief. The majority

[14] Improving the Immigration Courts: Efforts to Hire More Judges Falls Short, TRAC (July 28, 2008), https://trac.syr.edu/immigration/reports/189; see also *Benslimane v. Gonzales*, 430 F.3d 828, 830 (7th Cir. 2005) (arguing that removal proceedings have fallen below the "minimum standards of justice.").

of respondents concede removability and, therefore, this hearing focuses on applications for relief, such as asylum or cancellation of removal. The respondent carries the burden to establish their eligibility for relief from removal. During the hearing, the IJ must assess the credibility of the respondent and determine whether their statements are plausible and internally consistent. Following the hearing, the IJ issues a decision on both the issues of removability and relief.

These formal procedures have not prevented disparities in case outcomes. Existing empirical studies describe three separate factors that contribute to these disparities: (1) the demographics of the IJ conducting the proceeding, (2) the political and economic environment when and where the hearing is conducted, and (3) the presence of counsel.

One possible explanation for these disparities is that certain IJs—by virtue of their own biases—are more or less prone to granting relief to respondents in removal proceedings. Multiple studies find that female IJs are significantly more likely to grant asylum than their male peers because respondent feel more comfortable sharing trauma with female adjudicators (Chand, Schreckhise & Bowers 2017, Ramji-Nogales, Schoenholtz & Schrag 2007, Kim & Semet 2020). IJs who previously worked for the Department of Homeland Security are less likely to grant asylum (Ramji-Nogales, Schoenholtz & Schrag 2007). Although many commentators describe the Immigration Courts as "too conservative" or even "too liberal," evidence is mixed on the role of political affiliations and ideology in IJ decision-making. Most studies have found that the political party of the appointing Attorney General or president has no effect on removal or asylum outcomes (Chand, Schreckhise & Bowers 2017, Hausman, Ho, Krass & McDonough 2023).[15] IJs are no more liberal or conservative than the average attorney (Hausman et al. 2023). Yet an IJ's own political leanings may still have some influence. Liberal IJs are more sympathetic toward respondents from countries with human-rights abuses, and conservative IJs are more skeptical of respondents fleeing countries that benefit from U.S. military aid (Keith, Holmes & Miller 2013).

The political, social, and economic environment in which IJs work impacts their decision-making. Empirical evidence shows that the sitting president has an influence on outcomes in removal and asylum proceedings. IJs are more likely to grant asylum during Democratic administrations and less likely to grant asylum during Republican administrations (Keith, Holmes & Miller 2013). Likewise, IJs were more likely to order removal during the Trump Administration irrespective of which President appointed the IJ (Kim & Semet 2020). IJs working in communities with large Hispanic populations are less likely to grant asylum (Chand, Schreckhise & Bowers 2017), and IJs working in communities with healthier economies are more likely to grant asylum. However, the level of crime within the community does not impact outcomes (Kim &

[15]Government Accountability Office. 2008. *U.S. Asylum System: Significant Variation Existed in Asylum Across Immigration Courts and Judges*. Government Accountability Office.

Semet 2020).

Studies consistently find that whether the respondent is represented by counsel during the proceedings has the greatest effect on the likelihood of removal. Removal proceedings are civil proceedings. Unlike in criminal proceedings, respondents in removal proceedings are not entitled to a public defender. Represented respondents are between three and five times more likely to receive relief from removal than unrepresented respondents (Chand, Schreckhise & Bowers 2017, Eagly 2015, Ramji-Nogales, Schoenholtz & Schrag 2007, Ryo 2016). Yet the IJ's conduct during the proceeding may shape whether the respondent has an opportunity to find counsel (Hausman & Srikantiah 2016).

Only one known study has examined the relationship between EOIR's capacity and outcomes in removal proceedings. In a forthcoming study, Hausman, et al., examine whether increased hiring of IJs during the Trump Administration increased removals. Their study finds that "[t]he Trump Administration's hiring spree led to more case completions and therefore to more removal orders, because most cases end with removal orders." This finding makes intuitive sense. However, their study does not address how variation in the resources provided to individual IJs shapes outcomes.

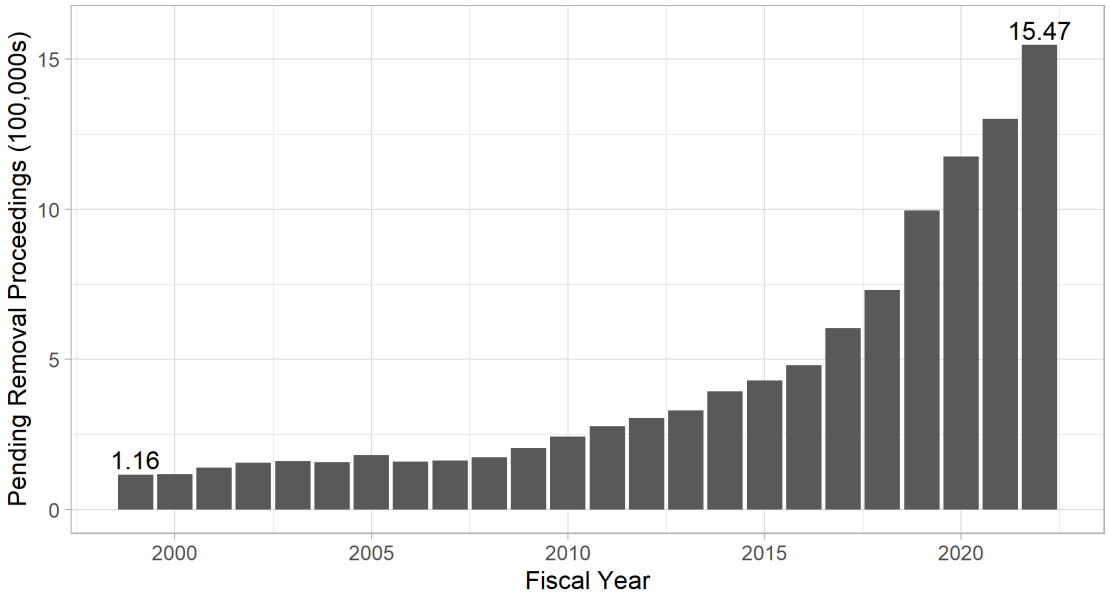
To be clear, an "accurate" decision does not mean that the IJ issues a decision that favors the respondent. An accurate decision faithfully applies the law to the facts in the administrative record. An inaccurate decision also occurs when an IJ grants asylum to an applicant who faces no risk of persecution if removed from the United States. Increases in asylum grants by IJs faced with low capacity would also signify an adjudicatory system plagued by inaccuracy.

7.4.2 EOIR's Workload and Capacity

In recent decades, the Executive Office of Immigration Review has experienced an unprecedented growth in its caseload. Three phenomena have contributed to this growing backlog. First, DHS has drastically increased enforcement activities over the past two decades. Second, the United States has experienced a surge of migrants fleeing gang violence in Central America since 2014. Third, the partial shutdown of immigration courts and the mismanagement of schedules during the COVID-19 Pandemic stymied efforts to reduce the backlog. The combination of increased enforcement, the Border Crisis, and the COVID-19 Pandemic has increased workload pressures on IJs.

Figure 7.1 plots the number of proceedings pending before the Immigration Courts at the beginning of each fiscal year. Since 2007, the Immigration Courts have experienced a steadily increasing workload. At the start of FY 2007, the Immigration Courts had 116,000 pending proceedings. By the start of FY 2022, the backlog had surpassed 1.5 million cases—a nearly 1,200% increase. New cases far outpace case completions. The highest number of cases that the Immigration Courts has ever completed in a single fiscal year is just shy

Figure 7.1: Removal Proceedings Pending at the Beginning of the Fiscal Year, FY 1999–2022



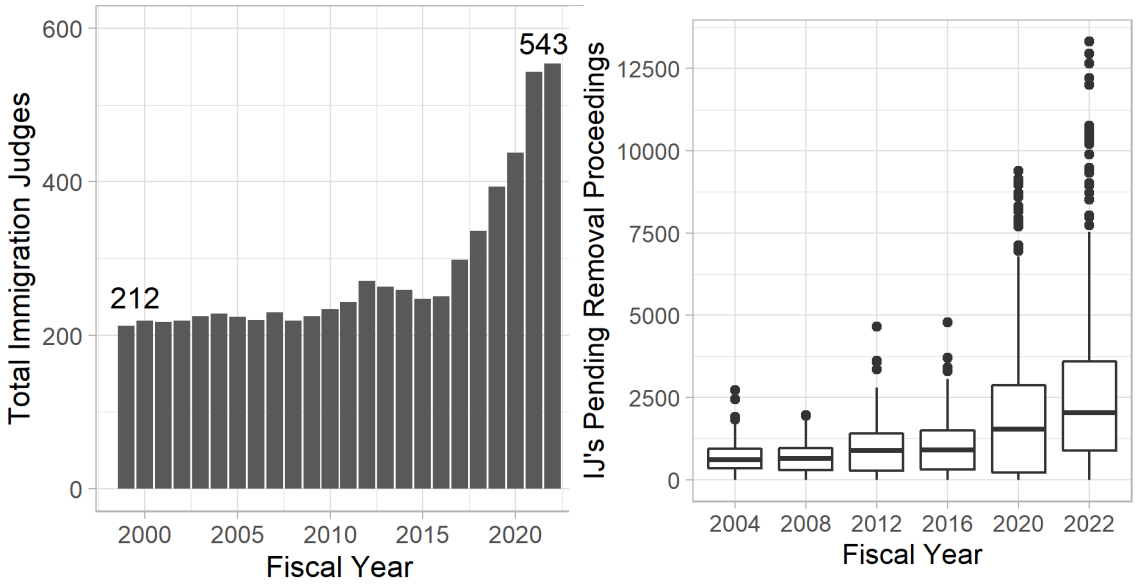
Source: Executive Office of Immigration Review's Case Data (April 2022) (*N*=24).

of 400,000 cases (FY 2019).

Although EOIR has received modest increases in its budget during this period, EOIR has struggled to keep pace with its growing workload. The left plot of Figure 7.2 shows IJ employment from 1998 to 2021. From September 1998 to September 2016, the total number of IJs fluctuated between 212 and 300 judges. In September 2022, EOIR employed a total of 543 IJs. Yet EOIR has a reputation for inefficient hiring practices. In 2017, EOIR took more than two years (742 days) to hire new IJs. These inefficient hiring practices have prevented EOIR from attaining the number of IJs authorized by congressional appropriations.

Still, the increased hiring of IJs has not kept pace with EOIR's growing workload. The right plot of Figure 7.2 shows the distribution of backlogs for individual IJs at the start of the fiscal year. At the start of FY 2005, the average IJ had a backlog of 851 pending cases. By the start of FY 2021, the average IJ had a backlog of nearly 3400 cases—a 300% increase. Due to geographic disparities in DHS enforcement efforts, EOIR's growing workload has affected some IJs more than others. At the start of FY 2021, 144 IJs (25.6%) had a backlog exceeding 5,000 cases, and 49 IJs (8.7%) had a backlog exceeding 10,000 cases. Yet other IJs have experienced relatively little increase in their backlogs. As in all adjudicatory agencies, increasing workloads pressure IJs to increase case completions at the expense of quality. IJs have spoken openly about their concerns. In a March 2021 interview, NPR asked one IJ, "What is the effect [of the backlog] on you as

Figure 7.2: Total Number of Immigration Judges Employed by EOIR and Pending Cases for Each Immigration Judge



Source: Immigration Judge data from Office of Personnel Management's Enterprise Human Resources Integration (April 2022) (*N*=24). An individual is categorized as an "Immigration Judge" if OPM codes their pay plan as "IJ." Pending removal cases from Executive Office of Immigration Review's Case Data (April 2022) (*N*=5513).

someone who wants to administer justice?" She responded, "Extreme frustration."[16]

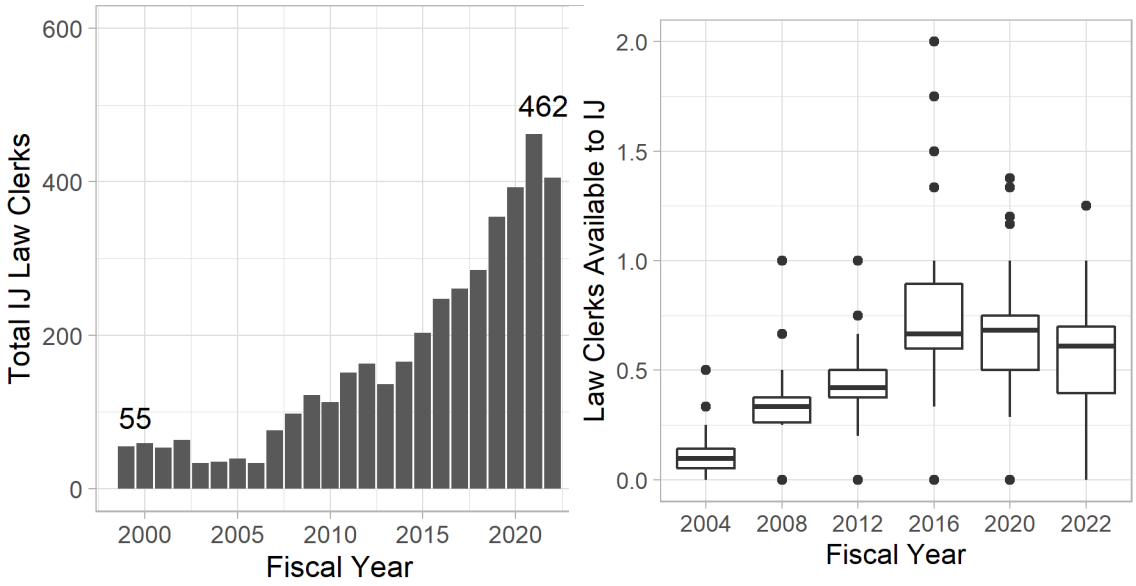
The degree to which growing workloads affect IJ decision-making depends on the resources provided to these adjudicators. EOIR has failed to hire adequate support staff to aid its growing IJ workforce. EOIR intends for each IJ to receive dedicated support from one attorney, one legal assistant, and two additional full-time employees. In budget requests to Congress, EOIR has consistently requested additional attorney positions to move toward a one-to-one ratio of law clerks to IJs. EOIR has never attained this benchmark. According to the National Association of Immigration Judges, even this benchmark would prove insufficient to address the current backlog.[17]

In Figure 7.3, the plot on the left shows the total number of law clerks working in the Immigration Courts in each fiscal year. At the start of FY 1999, EOIR employed 55 full-time law clerks. By FY 2021, it employed 462 law clerks. Still, this number does not reach the one-to-one ratio sought by EOIR. The average IJ shares a law clerk with at least one other member of their court. But the disparities in staffing are not spread evenly across EOIR. The plot on the right shows the estimated number of law clerks available to each IJ. At the start

[16]Inskeep, Steve. 2021. "Judge Dana Marks on How the Biden Administration Can Address Immigration Backlogs." NPR. https://www.npr.org/2021/03/26/981486753/judge-dana-marks-on-how-the-biden-administration-can-address-immigration-backlog.

[17]National Association of Immigration Judges. 2019. *The Immigration Court: In Crisis and In Need of Reform*. National Association of Immigration Judges. https://www.naij-usa.org/images/uploads/publications/Immigration_Court_in_Crisis_and_in_Need_of_Reform.pdf.

Figure 7.3: Total Number of Immigration Judges Employed by EOIR and Pending Cases for Each Immigration Judge



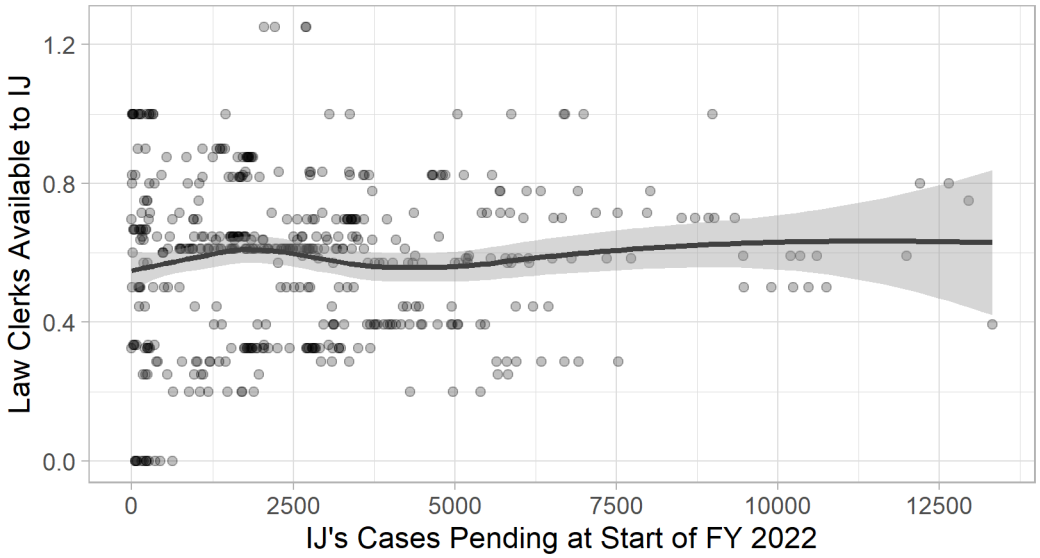
Source: Law Clerk data from Office of Personnel Management's Enterprise Human Resources Integration (April 2022) ($N = 24$). Individual categorized as a "Law Clerk" if OPM codes occupation as a "general attorney" or "law clerk." Law clerks available to IJ estimated as the ratio between the number of law clerks working within an Immigration Court to the number of IJs based at that court ($N = 5513$). Data excludes law clerks assigned to EOIR headquarters.

of FY 2022, only 103 IJs (18.3%) worked in an Immigration Court with at least a one-to-one ratio. Most IJs pooled law clerks. Other IJs, however, have more than one dedicated law clerk. For example, in the Miami Immigration Court, each IJ has a dedicated law clerk, and the court employs several additional law clerks capable of helping across the court.

Although EOIR faces staffing shortages, an effective management strategy would distribute more staff to the IJs in the greatest need (i.e., those with the largest backlogs). If EOIR effectively manages its workforce, then one would expect to observe a high correlation between staffing and the size of an IJ's backlog. As shown in Figure 7.4, there is no meaningful relationship between the ratio of law clerks and backlogs. The correlation between the ratio of law clerks and backlogs is negative and near zero ($\rho : -0.05$).

What factors explain law-clerk assignment if not workload? Unfortunately, anecdotal and empirical evidence point to systemic mismanagement rather than a meaningful human-capital plan. EOIR's struggle to manage personnel has earned it a place on the Government Accountability Office's (GAO) high-risk list. According to the GAO report, "EOIR has not developed and implemented a workforce plan to guide its effort for identifying and addressing staffing needs" and, instead, "estimates staffing needs using an informal approach." GAO found that EOIR does not account for "long-term staffing needs," "differences in the com-

Figure 7.4: Correlation Between Law Clerks And IJ's Pending Cases, FY 2022



Note: Pending removal cases from Executive Office of Immigration Review's Case Data (April 2022) ($N = 5513$). Law Clerk data from Office of Personnel Management's Enterprise Human Resources Integration (April 2022). Trend line produced using local regression (LOESS).

plexity of different types of cases immigration judges are required to complete," or the "resources needed to achieve the agency's case completion goals." EOIR blames its inability to create staffing plans on its "lack of resources."[18]

IJs blame systemic mismanagement on agency leaders: "You can see that the people in Falls Church don't really have much idea of what's [going on]... They're always hiring analysis, statistics, personnel specialists. Immigration courts are dying and these guys are hiring more bureaucrats" (Jain 2019, p. 296). Another IJ laments, "EOIR is not run like a court; the necessary structure and infrastructure that's supposed to be in place hasn't been put in place."[19] Therefore, both external and internal observers believe EOIR suffers from mismanagement and a lack of capacity.

Quantitative analyses provide little insight into EOIR's "informal" approach to personnel management. Pending cases, city populations, vote shares, and IJ experience have no statistically significant effect on the ratio of law clerks to IJs within an Immigration Court. Only two variables have a substantively meaningful effect. First, Immigration Courts situated in cities with high unemployment rates have a smaller ratio of law clerks to IJs. Although EOIR hires clerks through the DOJ Honors Program, this finding may reflect that EOIR struggles to place law clerks in cities with few post-clerkship opportunities. Second, and more

[18]Government Accountability Office. 2017. *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*. Government Accountability Office. https://www.gao.gov/assets/gao-17-438.pdf.

[19]Southern Poverty Law Center. 2021. The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool. Southern Poverty Law Center.

interestingly, Immigration Courts along the Southern Border have a smaller ratio of law clerks to IJs. This finding poses concern since these courts often have the highest caseloads. EOIR's failure to adequately staff Immigration Courts in need of surge capacity reinforces concerns of systemic mismanagement.

7.4.3 Pressure to Perform

Rising workloads and deficiencies in capacity occur against a backdrop of political interference in the day-to-day activities of the Immigration Courts (Cox & Rodriguez 2020, Family 2019). Long delays in the adjudication of removal proceedings have increased public and political scrutiny of the Immigration Courts. For better or worse, the Department of Justice has interfered to increase case throughput in hopes of decreasing the growing backlog. Reflecting on the differences between agency managers and the IJs conducting hearings, one IJ states, "[Management was] busy concentrating on, how do we get these numbers down? For the judges . . . these numbers are people" (Jain 2019, p. 301).

One method for increasing the speed of cases has been the implementation of stricter performance metrics. In 2018, EOIR Director James McHenry announced new performance metrics for IJs beginning in FY 2019.[20] To attain a "satisfactory rating," IJs would need to complete a minimum of 700 cases per year and complete certain types of hearings within shortened timeframes. IJs expressed frustration with these new metrics. One IJ stated that the performance metrics "turn[ed] immigration judges into assembly-line workers."[21] Another reported that the metrics required IJs to schedule multiple hearings in the same calendar slot to satisfy demands.[22] The same IJ stated, "The pressure to complete cases made me less patient and less able to uphold the constitutional protections required to properly adjudicate cases." Scholars too have raised concerns that the implementation of these new performance metrics may have interfered with the quality of proceedings (Jain 2019, Koh 2017).

The general focus on case completions rather than the quality of dispositions shapes the behaviors of IJs. Like all civil servants, IJs want to demonstrate "satisfactory" performance to agency management to advance their careers. When agency management focuses on the quantity of cases completed rather than the quality of decisions, IJs adjust their behaviors to fit this vision of "satisfactory" performance. The lack of capacity requires IJs to resort to coping mechanisms to achieve these performance metrics. Proposals to transfer the Immigration Courts to an Article I court may rectify some of these concerns but these proposals may have limited effect without additional investments in the capacity of the Immigration Courts.

[20] E-Mail from EOIR Director James McHenry, "Immigration Judge Performance Metrics" (Mar. 30, 2018), https://www.justice.gov/eoir/page/file/1356096/download.

[21] Sacchetti, Maria. 2017. "Immigration Judges Say Proposed Quotas from Justice Dept. Threaten Independence." *Washington Post*. https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-aee1-11e7-be94-fabb0f1e9ffb_story.html.

[22] Shugall, Ilyce. 2019. "Op-Ed: Why I Resigned as an Immigration Judge." *LA Times*. Aug. 4. https://www.latimes.com/opinion/story/2019-08-03/immigration-court-judge-asylum-trump-policies.

7.4.4 Empirical Predictions

The evidence presented in this Section demonstrates several problems with the administration of the Immigration Courts. First, IJs possess significant discretion over their decisions, and wide disparities exist in the outcomes of removal proceedings. Second, IJs face increasing workloads and organizational pressures to expedite the completion of their workloads. Third, IJs do not have sufficient law clerks to aid in the management of these workloads. Accordingly, the Immigration Courts exhibit the sort of maladministration that Section I predicts leads to overreliance on coping mechanisms.

Hypothesis 1 (Coping Mechanisms). *As organizational pressures increase, IJs increase their use of coping mechanisms to manage their caseloads. However, IJs with more law clerks rely less on these coping mechanisms.*

For these coping mechanisms to affect the accuracy of outcomes, they must lead to increased errors in the disposition of removal proceedings. The wide discretion afforded to IJs makes it easy for them to employ coping mechanisms because they are not guided by strong, formalist rules for assessing the credibility of evidence. In the Immigration Courts, these errors most often bias in favor of removal and against relief for respondents because respondents carry the evidentiary burden to show their eligibility for relief.

Anecdotes demonstrate the rise of procedural shortcuts in recent years. Attorney focus groups report that IJs discourage respondents from seeking relief, eliminating the need to review additional evidence or conduct lengthy hearings. They also describe how IJs inform asylum-seekers that their claims will likely fail and encourage them to accept voluntary departure. At times, IJs do not respect statutory provisions about the length of time between the master hearing and the individual-merits hearing. IJs themselves acknowledge that these pressures prevent them from conducting thorough hearings and lead them to seek ways to shorten proceedings. These procedural shortcuts shorten the time that IJs spend with each case and increase the likelihood that the IJ overlooks a key piece of evidence submitted by the respondent.

Heuristics also seem to affect IJ decision-making in ways that bias against relief for respondents. Respondents appearing before Immigration Courts often belong to marginalized racial, ethnic, and religious groups subject to systemic biases. Attorneys appearing before IJs note that some judges state stereotypes on the record. Circuit courts have excoriated IJs for relying on impermissible stereotypes instead of the evidence presented in the record. The use of heuristics increases the likelihood that the IJ discredits the respondent's evidence based on a false stereotype.

These examples are extreme. Many IJs express sincere concerns for the respondents appearing in removal proceedings. Many want to conduct fair hearings and deliver due process. Certainly, some IJs error in favor of respondents. These too are inaccuracies. Nevertheless, most of the anecdotal evidence suggests that reliance

on these coping mechanisms biases outcomes against respondents in removal proceedings. The presence of a law clerk, however, may prevent IJs from making these errors by alleviating the need for the IJ to conduct clerical work and by providing an independent review of the administrative record.

Hypothesis 2 (Outcomes). *All else equal, IJs with more law clerks are less likely to order the removal of a respondent and are more likely to grant an application for asylum.*

7.5 Analysis

Broadly, I predict that the availability of law clerks affects the thoroughness with which IJs review the administrative record which, in turn, affects the accuracy of IJs' decisions. Some IJs may make errors that bias against the respondent; others may make errors that bias in favor of the respondent. Both are symptomatic of an adjudicatory system prone to inaccuracy. The fact that errors may be either pro-respondent or anti-respondent makes it difficult to statistically measure inaccuracy. If both pro-respondent and anti-respondent errors occur at equal rates, then the average "error" identified by any statistical test will be "zero." Accordingly, the EOIR presents a difficult test of this theory. Any anti-respondent effect of law clerks will necessarily be a conservative estimate of these inaccuracies because pro-respondent errors will bias the estimates downward.

I exploit variation in the assignment of law clerks to test my hypotheses. I consider the hypotheses in reverse order. First, I examine whether the number of law clerks assigned to an IJ affects outcomes—removal orders and asylum grants—in removal proceedings. This analysis estimates the effect of law clerks on these outcomes using a multivariate regression on over 1.5 million cases decided between 2008 and 2022. Second, I examine whether increased organizational pressures cause IJs to use coping mechanisms and whether IJs with more law clerks are less likely to use these coping mechanisms. Using a regression-discontinuity design, I test whether the implementation of new performance metrics during the Trump Administration reduced hearing times. This design establishes a causal relationship between organizational pressures, law clerks, and the use of coping mechanisms by IJs. Collectively, the findings support both the coping-mechanism hypothesis and the outcome hypothesis.

7.5.1 Relationship Between Law Clerks and Removals

During removal proceedings, IJs must decide whether to order the removal of the respondent. To withstand removal, respondents must convince the IJ that they are entitled to some form of relief. At times, respondents submit thousands of pages of evidence to support their claims. Yet the ability of an IJ to thoroughly consider this evidence depends on whether they have sufficient capacity. Accordingly, the outcome hypothesis predicts

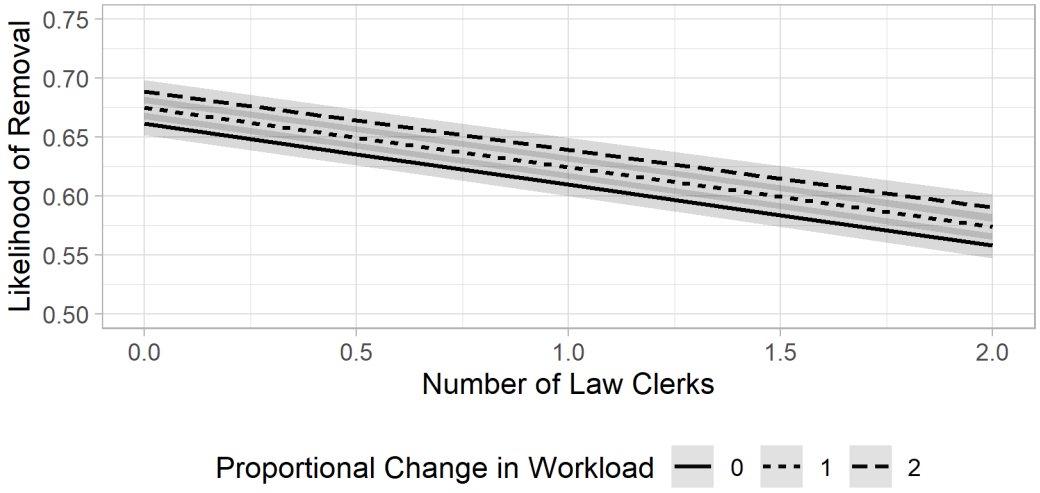
that IJs with more law clerks have greater assistance in reviewing the administrative record and are therefore less likely to overlook key evidence that would result in the removal of the respondent.

This analysis examines removal orders decided between 2004 to 2022. Each observation in the dataset is an individual removal proceeding (N=1,525,972). The dependent variable of interest is a binary indicator of whether the IJ ordered the removal of the respondent (Proportion: 0.77). By theoretical and empirical necessity, the data excludes several classes of cases. First, the analysis excludes any case where (1) the IJ ordered the respondent removed in absentia (i.e., the respondent did not appear for the hearing) or (2) the respondent stipulated to removal. Removal orders in these cases result from alternative legal processes that do not reflect the IJ's exercise of discretion. Second, the analysis excludes any case heard by an IJ based at the EOIR headquarters. The staffing dataset provided by the Office of Personnel Management does not disaggregate between subunits at the EOIR headquarters and, therefore, inflates the estimated number of law clerks available to IJs working at headquarters. Third, the analysis excludes cases of additional family members (i.e., rider cases) who are in removal proceedings with the lead respondent. The outcome of rider cases depends on the result of the lead case and, therefore, the decision in these cases does not reflect the discretion of the IJ.

The independent variable of interest is number of law clerks available to the IJ (Mean: 0.41, SD: 0.31). This is a continuous measure that ranges from zero law clerks to two law clerks. Figure 5 shows the variation in removal outcomes based on the number of law clerks assigned to the IJ. IJ workloads may influence the assignment of law clerks and the likelihood of removal. Although I find no meaningful relationship between IJ workloads and the assignment of law clerks, it remains possible that these workloads influence assignment in some unobserved way. Likewise, the theory predicts that workload pressures encourage the use of coping mechanisms. Therefore, increasing workloads may directly affect IJ decision-making. I measure workload as the proportional change in the IJ's backlog from the previous fiscal year to the current fiscal year (Mean: 0.14; SD: 1.14). Proportional change is the appropriate measure because it captures the magnitude of change for an individual IJ whereas the raw increase does not. An IJ based along the Southern Border may be unphased by a 500 case increase in her docket, but an IJ based in Fishkill, New York, may be overwhelmed by such a staggering increase. Additionally, the effect of more law clerks may vary depending on the IJ's workload. Therefore, the model includes an interaction term between the number of law clerks and the change to the IJ's workload.

Other confounders relate to geographic and temporal variables that determine the pool of immigrants likely to appear in removal proceedings before the Immigration Court and the willingness of EOIR to assign law clerks to certain Immigration Courts. Accordingly, the model includes controls for the IJ's base city. The model also includes time-varying characteristics in the IJ's community such as the total population,

Figure 7.5: Predicted Effect of Law Clerks on Likelihood of Removal



Note: N=1,538,587. All discrete variables held at their proportions. Standard errors clustered at the IJ level. Full discussion of the empirical analysis available in Appendix A.4.

the total immigrant population, the unemployment rate, and the democratic vote share from the most recent presidential election. Likewise, temporal trends may influence law-clerk hiring and migration to the United States. Therefore, the model controls for the fiscal year in which the IJ issued their decision.

Other IJ and respondent characteristics may influence case outcomes. For respondents, the model controls for whether the respondent was represented in removal proceedings, whether the respondent filed an asylum claim, whether the respondent is a national of a country described as "not free" by Freedom House, whether the respondent is a national of Mexico or Central America, and whether the respondent speaks English. For IJs, the model controls for whether the IJ was previously employed by the Department of Justice, the Department of Homeland Security, or the Department of State, whether the IJ is a woman, whether the IJ was appointed during a Republican administration, and the number of years that the IJ has practiced law.

Complete results are found in Appendix A.4. Figure 7.5 plots the estimated effect of the number of law clerks on the likelihood of removal. Relative to a respondent whose case is decided by an IJ with no law clerks, a respondent whose case is decided by an IJ with one law clerk is 5.2 percentage points less likely to be removed. The estimated effect is statistically significant. In addition, the model finds a statistically significant relationship between the proportional increase in the IJ's workload and the likelihood of removal. Doubling the IJ's workload increases the likelihood of removal by 1.4 percentage points. Doubling—and even tripling—of an IJ's workload is not unprecedented.

Although this model finds evidence of a direct effect between workload and outcomes, there is no statistically significant evidence of an interaction effect between law clerks and workload. In other words, increasing the size of an IJ's workload does not change the marginal effect that law clerks have on case outcomes.

One question is whether the effects are different for individuals who have applied for asylum. Asylum cases have large administrative records and, therefore, the use of coping mechanisms caused by an absence of law clerks should have a greater effect on the likelihood of error in these cases. Indeed, the results support this conjecture. Relative to a respondent whose case is decided by an IJ with no law clerks, an asylum applicant whose case is decided by an IJ with one law clerk is 8.1 percentage points less likely to be removed. The effects of workload on the results are larger as well. Doubling the IJ's workload increases the likelihood that an asylum applicant is removed by 3.1 percentage points. These findings suggest that cases with larger administrative records are more prone to experiencing error.

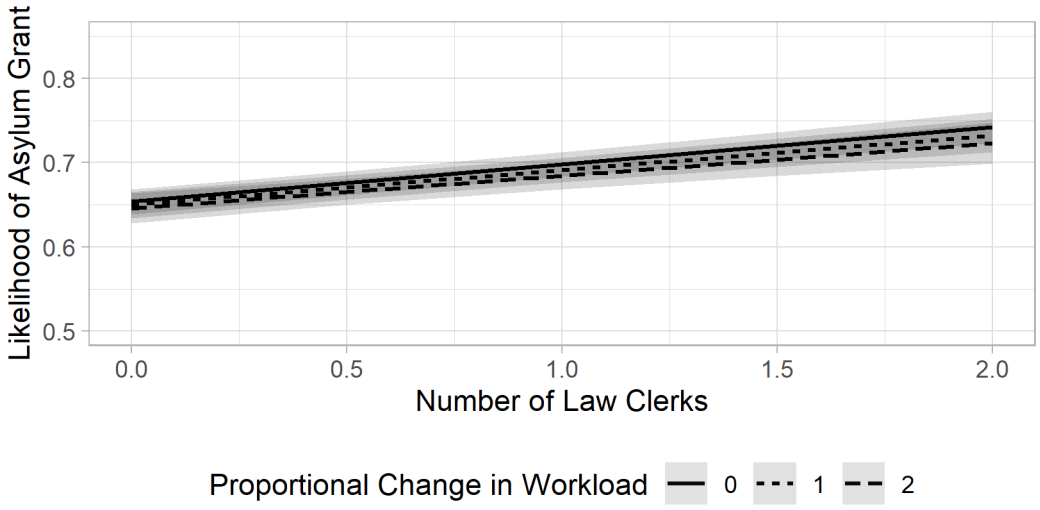
Another question is whether these results apply equally to removal proceedings conducted in Immigration Courts along the Southern Border. As a result of the Border Crisis, the Southern Border has experienced a greater increase in workloads and organizational pressures relative to other Immigration Courts. Indeed, estimating the model on the subset of removal proceedings heard at Immigration Courts along the Southern Border returns stronger results. Relative to a respondent whose case is decided by an IJ with no law clerks, a respondent whose case is decided by an IJ with one law clerk is 8.9 percentage points less likely to be removed. By contrast, the results are weaker when the model is estimated on the subset of removal proceedings heard at Immigration Courts in other parts of the country. Relative to a respondent whose case is decided by an IJ with no law clerks, a respondent whose case is decided by an IJ with one law clerk is 2.4 percentage points less likely to be removed. Regardless of where an IJ resides, they are statistically more like to remove a respondent when they have fewer law clerks.

7.5.2 Relationship Between Law Clerks and Grants of Asylum

IJs also adjudicate claims for relief from removal, such as asylum, adjustment of status, or cancellation of removal. Respondents applying for asylum must demonstrate a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." Respondents who receive asylum cannot be removed from the United States. For many respondents, the evidentiary demands of an asylum application are steep, often requiring hundreds of pages of country reports, eye-witness affidavits, and expert testimony. These evidentiary burdens translate into longer, more complicated hearings for IJs. Attaining accurate results in asylum proceedings is essential to protecting the lives of respondents who face persecution if returned to their home countries.

This analysis examines the relationship between law clerks and grants of asylum. It follows the same

Figure 7.6: Predicted Effect of Law Clerks on the Likelihood of Asylum Grant



Note: N=273,402. All discrete variables held at their proportions. Standard errors clustered at the IJ level. Full discussion of the empirical analysis available in Appendix A.4.

general structure as the previous analysis. The dependent variable is a binary indicator of whether the IJ granted the respondent's application for asylum (Proportion: 0.34). Each observation in the dataset is a single asylum application filed by a respondent in a removal proceeding (N=306,855). This analysis uses the same multivariate model as the previous analysis.[23] The model estimates the effect of law clerks on the likelihood that the IJ grants the respondent's asylum application, controlling for possible sources of confounding.

Figure 7.6 plots the estimated effect of law clerks on the likelihood that the IJ grants the respondent's asylum application. Relative to a respondent whose case is decided by an IJ with no law clerks, a respondent whose case is decided by an IJ with one law clerk is 4.4 percentage points more likely to receive asylum. The estimated effect is statistically significant. Unlike the removal analysis, workload has no statistically significant effect on the likelihood of receiving asylum.

As before, heterogeneous effects may exist between removal proceedings conducted in Immigration Courts along the Southern Border and removal proceedings conducted elsewhere. Again, the effect of law clerks is stronger when the model is estimated on removal proceedings heard in Immigration Courts along the Southern Border. For removal proceedings heard near the Southern Border, a respondent is 14.7 percentage points more likely to receive asylum if their case is heard by an Immigration Judge with one law clerk. Again, the results are weaker when the model is estimated on removal proceedings heard in other parts of the

[23]One adjustment is made to the model specification. I remove the control for whether the respondent applied for asylum. By definition, all respondents in this analysis have applied for asylum. Therefore, it is not possible to estimate the effect of "not applying for asylum" on the likelihood of receiving asylum.

country. In other Immigration Courts, a respondent is 2.8 percentage points more likely to receive asylum if their case is heard by an Immigration Judge with one law clerk.

The results of these analyses support the theory in two ways. First, IJs with more law clerks are less likely to order the removal of the respondent and more likely to grant asylum. These findings comport with the expectations of the outcomes hypothesis. Second, IJs with increasing workloads are more likely to order the removal of the respondent. Although increasing workloads do not appear to influence grants of asylum, other evidence suggests that organizational pressures play a role. Law clerks have a greater effect in Southern Border states, which is consistent with the fact that the Border Crisis has increased organizational pressures on these IJs. In addition, law clerks have a greater effect in cases that involve an asylum application, which are the most administratively burdensome cases decided by IJs.

Although these findings support the outcome hypothesis, they do not provide evidence of the causal mechanism. Specifically, these results do not show that the influence of law clerks is attributable to their importance in reviewing the administrative record. The next analysis offers causal evidence to support this mechanism.

7.5.3 Causal Evidence of Coping

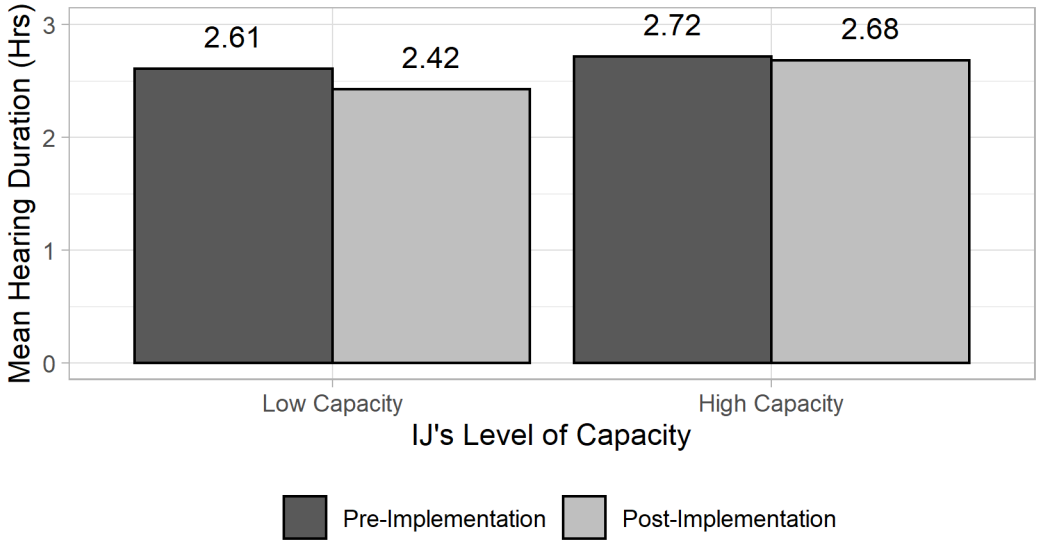
The coping-mechanism hypothesis posits that adjudicators with higher levels of capacity rely less on coping mechanisms as workloads and organizational pressures increase. IJs with more law clerks receive more help in reviewing the administrative record and, therefore, are more resistant to organizational pressures.

This analysis leverages the implementation of new performance metrics during the Trump Administration. IJs report that these performance metrics caused them to feel immense pressure to increase the speed of removals. Additionally, IJs state that the Immigration Courts manipulated their schedules to accomplish this goal. The new performance metrics are the sort of organizational pressures that the theory predicts would cause increased reliance on coping mechanisms. If the theory holds, then IJs should have more readily used procedural shortcuts, such as shortening hearings, following the implementation of the performance metrics. However, IJs with more law clerks should rely on these procedural shortcuts less than IJs with fewer law clerks.

This analysis looks at the duration of individual-merits hearings pre- and post-implementation of the new performance metrics.[24] If IJs relied on coping mechanisms following the implementation of the performance metrics, then we should observe a sudden decrease in hearing duration following implementation of the performance metrics. Each observation in the dataset is an individual-merits hearing conducted between

[24] I define "pre-implementation" as hearings conducted 180 days before the start of FY 2019 and "post-implementation" as hearings conducted 180 days after the start of FY 2020.

Figure 7.7: Average Hearing Duration (Hours) By IJ Capacity



Note: N=80,938. Hearings from Executive Office of Immigration Review's Case Data (April 2022).

April 2018 and March 2019 (N=74,272). The dependent variable of interest is the duration of an individual-merits hearing in hours (Mean: 2.60, SD: 1.09). Again, the independent variable of interest is the number of law clerks available to the IJ.

Figure 7.7 shows the difference in hearing duration for IJs with fewer law clerks than the mean ("low-capacity IJs") and IJs with more law clerks than the mean ("high-capacity IJs"). These simple statistics provide initial evidence in support of the coping-mechanism hypothesis. Before the implementation of the performance metrics, hearings conducted by high-capacity IJs were about seven minutes longer than hearings conducted by low-capacity IJs. Both high-capacity and low-capacity IJs reduced the duration of hearings following the implementation of the performance metrics. However, the implementation of the performance metrics did not affect IJs equally. Following the implementation of the performance metrics, high-capacity IJs shortened hearings by only two minutes. By comparison, the average low-capacity IJ shortened hearings by more than ten minutes.

I use a regression-discontinuity design to produce causal evidence that the implementation of the performance metrics caused IJs to reduce the duration of hearings. The date that the Trump Administration implemented the new performance metrics—October 1, 2018—forms the cut-off. Hearings scheduled for September 30th and October 1st should be similar except for whether the hearing occurred pre- or post-implementation. This assumption would be violated if, for example, IJs scheduled hearings they expected to be longer on September 30th and hearings they expected to be shorter on October 1st. However, the assump-

Figure 7.8: Predicted Hearing Duration Pre- and Post-Implementation

Note: N=74,272. Standard errors clustered at the IJ level. Full discussion of the empirical analysis available in Appendix A.4.

tion seems plausible since IJs schedule individual hearings years in advance, and EOIR did not announce the new metrics until March 2018. If the implementation of the performance metrics created new organizational pressures that caused IJs to shorten hearings, then we should observe a sudden decrease in hearing duration around October 1st. To estimate the regression discontinuity, I use a linear regression with standard errors clustered at the IJ level.

Figure 7.8 plots the predicted duration of an individual hearing pre- and post-implementation of the performance metrics. The findings comport with the expectations of the coping-mechanism hypothesis. Prior to the implementation of the performance metrics, hearings conducted by IJs with one law clerk were 21 minutes longer on average than hearings conducted by IJs with no law clerks. Following the implementation of the performance metrics, hearings conducted by IJs with no law clerks declined by 24 minutes around October 1st. However, hearings conducted by IJs with at least one law clerk experienced no change to hearing duration. These findings suggest that (1) organizational pressures cause IJs to resort to coping mechanisms and (2) IJs with greater capacity rely less on coping mechanisms when they have higher levels of capacity.

These results provide causal evidence that adjudicators with higher levels of bureaucratic capacity have less need to resort to coping mechanisms. This finding warrants a brief discussion. First, this analysis offers strong, causal evidence in support of the proposed theoretical mechanism. Bureaucratic capacity acts as an effective moderate of organizational pressure. Second, these effects are likely conservative because they only

measure one type of coping mechanism that IJs may use. We cannot observe the other coping mechanisms, such as a reliance on stereotypes or a failure to prepare for hearings, that IJs may have used to manage the new expectations of the performance metrics. If the twenty-minute decline in hearing duration is symptomatic of a broader trend of coping mechanisms, the implementation of the new performance metrics substantially reduced the thoroughness with which IJs reviewed the administrative record.

7.6 Discussion

The results provide strong evidence that the number of law clerks influences IJ behavior and decision-making. On average, appearing before an IJ with one law clerk reduces the likelihood of removal by 5.2 percentage points and increases the likelihood of receiving asylum by 4.4 percentage points. However, these effect sizes are conservative estimates of inaccuracies in removal proceedings for two reasons. First, some IJs may make errors that benefit respondents. Rather than reviewing the entirety of the administrative record, these IJs may grant asylum applications for fear of being reversed on appeal. Pro-respondent errors bias the estimated effect of law clerks downward and, therefore, these tests produce conservative estimates of inaccuracies in removal proceedings. Second, law clerks are just one element of bureaucratic capacity. Estimated with more comprehensive measures, perhaps these effect sizes would be larger.

How should we think about capacity in relation to other potential sources of bias? Many sources of bias stem from the IJ's demographics or past experiences. Scholars consistently find that female IJs are less likely to order removal and are more likely to grant asylum. That finding holds here. According to the regression models, female IJs are 4.4 percentage points less likely to remove the respondent and 4.3 percentage points more likely to grant asylum. These effect sizes are on par with the effect sizes of having one law clerk.

Other scholars focus on the IJ's former employment. Scholars predict that IJs formerly employed by immigration-enforcement agencies produce less favorable outcomes for respondents and IJs formerly employed by nonprofits produce more favorable outcomes for respondents. Again, these findings hold. Former enforcement-agency employees are 3.6 percentage points more likely to order asylum and 2.2 percentage points less likely to grant asylum. In contrast, former nonprofit employees are 2.2 percentage points less likely to order removal and 2.6 percentage points more likely to grant asylum. Here, the effect size of law clerks is noticeably larger. To the extent we believe these sources of bias are worth studying and remedying, bureaucratic capacity raises similar concerns. Moreover, these findings suggest that increasing capacity would better improve accuracy within removal proceedings relative to changing the hiring pool of IJs.

Scholars have called into question whether IJ ideology plays a significant role in removal proceedings. The analyses find no significant relationship between the appointing administration and outcomes in removal proceedings. These findings are consistent with the research of Hausman et al. Hausman et al. find that IJs

appointed by different presidents make relatively similar decisions, but that the pattern of decision-making changes over time. Similarly, the multivariate models in this article show near-linear increases in the likelihood of removal over time. Additional tests suggest that the effect of law clerks does not vary based on whether the IJ is liberal or conservative. The absence of heterogeneous effects suggest that law-clerk ideology is not the mechanism that influence outcomes. In sum, IJs appear to respond to constraints in their capacity and increases in their workloads rather than their own ideological preferences or the ideological preferences of their law clerks. At the very least, ideology plays an insignificant and substantively small role relative to capacity.

Of course, law clerks do not have the largest impact on removal-proceeding outcomes. Like other studies, the analyses demonstrate the importance of legal representation. Respondents with legal representation are 29.2 percentage points less likely to be removed than respondents without representation. They are also 14.3 percentage points more likely to receive asylum. Seemingly, government-provided counsel would remedy the harm caused by an absence of bureaucratic capacity. Yet providing counsel to every respondent also necessitates investments in EOIR. These investments are unlikely to occur.

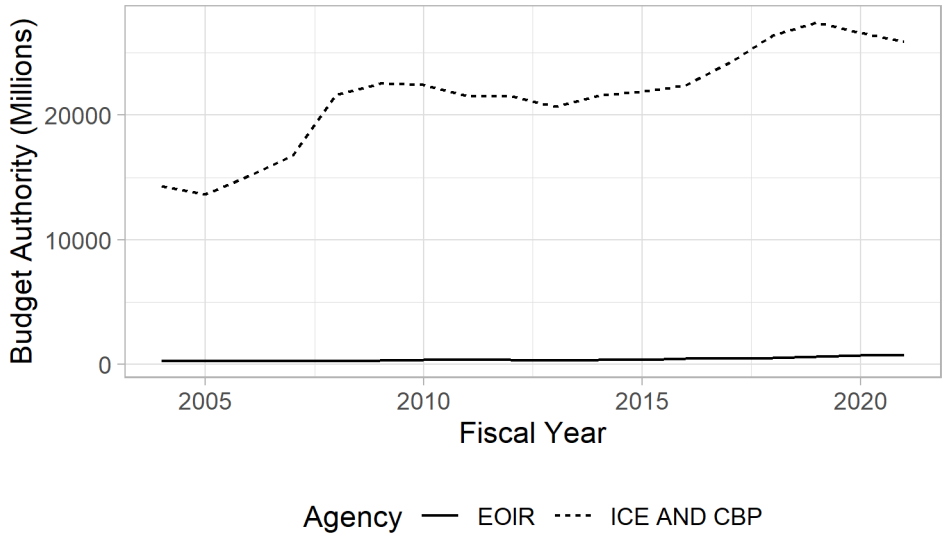
7.7 Conclusion

The Immigration Courts fall victim to the trends identified by this book. The Executive Office of Immigration Review does not offer the electoral benefits needed to incentivize members of Congress and the president to invest in its capacity. Indeed, most respondents appearing before EOIR will never be able to vote. Even when immigration policy becomes salient to voters, voters rarely think about the *management* of the agencies engaged in immigration adjudication. Instead, they picture Customs and Border Patrol apprehending smugglers at the U.S.–Mexico Border or overcrowded detention facilities administered by Immigration and Customs Enforcement. In the minds of voters and political elites, immigration politics is defined by border protection and relief programs—not court hearings.

EOIR offers a prime example of this problem. At the start of the Obama Administration, only 1.2% of the public stated that immigration was the "most important problem" facing the United States.[25] Figure 7.9 plots the budget authority for immigration-enforcement agencies and EOIR. A moderate correlation exists between public opinion and the funding of EOIR (ρ : 0.28) and the immigration-enforcement agencies (ρ : 0.36). Until FY 2014, EOIR's budget remained relatively flat with only minor increases in 2009 and 2010. These increases followed a publicly salient scandal in which the Bush Administration was accused of considering political ideology in the hiring of IJs. Nevertheless, the number of IJs and law clerks remained stable during

[25]Comparative Agenda Project. 2022. Dataset: Gallup's Most Important Problems. Comparative Agenda Project. https://www.comparativeagendas.net/us.

Figure 7.9: Immigration Agencies' Budget Authority (2021 Dollars), FY 2004–2022



Note: Office of Management and Budget (2022).

this same period. These trends also affected ICE and CBP. Following an initial build-up of DHS's capacity, the budgets of ICE and CBP show little change from FY 2010 to FY 2014. The trends for both EOIR and the immigration-enforcement agencies comport with the expectation that Congress and presidents pay little attention to the capacity of agencies when their policy areas are not politically salient.

Public demand for both immigration benefits and enforcement increased following the 2014 Border Crisis. At that time, 6.6% of the public stated that immigration was the most important problem. The proportion of respondents concerned with immigration remained between 5.1% and 6.6% during the 2016 campaign and the first year of the Trump Administration. Consistent with rising public interest in immigration, both parties pursued visible immigration policies that aligned with their ideological leanings. President Obama sought to balance increased enforcement with programs of prosecutorial discretion (Cox & Rodriguez 2020). President Trump invested in enforcement activities by increasing enforcement resources at the Southern Border and banning immigrants from certain countries from entering the United States (Wadhia 2019).

Rising public interest in immigration policies resulted in expansive funding of ICE and CBP. Comparatively, Congress and presidents starved EOIR. Figure 7.9 shows the large disparities between the funding for EOIR and enforcement agencies. In FY 2021 alone, Congress appropriated $25.9 billion to ICE and CBP. By comparison, EOIR only received a cumulative sum of $7.7 billion from FY 2004 to FY 2021. Although EOIR is crucial to the implementation of any enforcement or relief policy, it is less traceable to immigration problems in the minds of voters and, therefore, an afterthought for most elected officials.

Adjudicatory agencies require proactive rather than reactive management. It takes time to build capacity within any administrative agency. Introducing new technologies, updating agency procedures, and building new courtrooms take years of planning and implementation. Hiring new adjudicators takes months of recruiting, interviewing, and on-boarding. While Congress may prefer to wait until a government failure brings mismanagement to light, reforms may take years to diminish the agency's backlog. By the time these problems become salient to the public, thousands of respondents will have already received inadequate hearings conducted by underfunded and understaffed adjudicators. Only proactive management protects due process for all present and future respondents.

Of course, the results here describe only one type of interaction between the mass public and bureaucratic agencies. Moreover, they measure only one metric of performance: accuracy. Yet we should be unsurprised to find if these results carry to other agency tasks or performance metrics.

CHAPTER 8

Conclusion

In *Federalist* No. 68, Alexander Hamilton wrote, "the true test of a good government is its aptitude and tendency to produce a good administration." The Founders of the United States anticipated that the institutions of the federal government would have little difficulty developing the capacity necessary to manage the nascent republic. In *Federalist* No. 3, John Jay prophesized

> Because when once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it . . . Hence, it will result that the administration, the political counsels, and the judicial decisions of the national government will be more wise, systematical, and judicious than those of individual States, and consequently more satisfactory with respect to other nations.

The Founders' aspirations for the United States were tied to the willingness of its elected officials to engage in good administration.

The modern United States performs more functions than it did in the Seventeenth Century. But the Founders provided opportunities for members of Congress and presidents to build capacity across the executive branch. Article I affords Congress the opportunity to create agencies and to appropriate money to these agencies and their programs. Article II entrusts the president to manage the day-to-day activities of the executive branch and to appoint its leaders. Over time, Congress and the president have expanded their own powers vis-à-visa the administrative state, creating additional opportunities for investment. These additional opportunities, such as those afforded by the centralization of budget and procurement functions, are consistent with but not enumerated by the Constitution.

Today, members of Congress and presidents do not use these powers to uniformly build capacity across the administrative state. Unlike the Founders, politicians are not motivated to preserve good administration across government. Instead, narrow electoral margins encourage politicians to prioritize campaigning and policymaking over remote and long-term investments in bureaucratic capacity. Politicians choose to invest in agencies when they believe doing so will significantly improve their chances of reelection in future electoral cycles but will avoid giving their opponents an undue electoral edge. As a result, neglect of bureaucratic capacity has become the dominant strategy for politicians in the United States.

The lack of investment is not without consequence for both political elites and individuals. Presidents struggle to use the administrative state to implement their policy agendas when agencies lack sufficient pol-

icymaking capacity. Adjudicatory agencies struggle to provide fair hearings to individuals. Bureaucratic capacity has a meaningful impact of policy implementation at all times—not just in the middle of a crisis.

References

Abelson, Reed. 2020. "U.S. Mail Delays Slow Delivery of Medicines." *New York Times* .
URL: *https://www.nytimes.com/2020/08/20/health/Covid-us-mail-prescription-drugs.html*

Achen, Christopher H. & Larry M. Bartels. 2016. *Democracy for Realists: Why Elections Do Not Produce Responsive Government*. Princeton, NJ: Princeton University Press.

Adcock, Robert & David Collier. 2001. "Measurement Validity: A Shared Standard for Qualitative and Quantitative Research." *American Political Science Review* 95(3):529–546.

Ames, David, Cassandra Handan-Nader, Daniel E. Ho & David Marcus. 2020. "Due process and mass adjudication: Crisis and reform." *Stanford Law Review* 72(1):1–78.

Arnold, R. Douglas. 1979. *Congress and the Bureaucracy: A Theory of Influence*. New Haven, CT: Yale University Press.

Arnold, R. Douglas. 1990. *The Logic of Congressional Action*. New Haven, CT: Yale University Press.

Barkow, Rachel E. 2013. "Prosecutorial Administration: Prosecutor Bias and the Department of Justice." *Virginia Law Review* 99:271–342.

Barnett, Kent & Russell Wheeler. 2018. "Non-ALJ Adjudicators in Federal Agencies: Status, Selection, Oversight, and Removal." *Georgia Law Review* 53:1–128.

Bednar, Nicholas R. 2023. "The Public Administration of Justice.".

Bednar, Nicholas R. & David E. Lewis. 2023. "Presidential Investments in Administrative Capacity." *American Political Science Review* .

Benn, Annie. 2019. Tying Hands : Strategic Incentives to Undermine Bureaucratic. Technical report UC Berkeley.

Bersch, Katherine, Sérgio Praça & Matthew M. Taylor. 2017*a*. "Bureaucratic capacity and political autonomy within national states: Mapping the archipelago of excellence in Brazil." *States in the Developing World* pp. 157–183. ISBN: 9781316665657.

Bersch, Katherine, Sérgio Praça & Matthew M. Taylor. 2017*b*. "State Capacity, Bureaucratic Politicization, and Corruption in the Brazilian State." *Governance* 30(1):105–124.

Bertelli, Anthony & Sven E Feldmann. 2007. "Strategic Appointments." *Journal of Public Administration Research and Theory* 17(1):19–38.

Besley, Timothy & Torsten Persson. 2014. "The Causes and Consequences of Development Clusters: State Capacity, Peace, and Income." *Annual Review of Economics* 6(1):927–949.
URL: *https://www.annualreviews.org/doi/10.1146/annurev-economics-080213-041128*

Binder, Sarah & Mark Spindel. 2017. *The Myth of Independence: How Congress Governs the Federal Reserve*. Princeton, NJ: Princeton University Press.

Blake, Aaron. 2020. "Trump Just Comes Out and Says It: The GOP Is Hurt When It's Easier to Vote." *Washington Post* .
URL: *https://www.washingtonpost.com/politics/2020/03/30/trump-voting-republicans*

Bogage, Jacob. 2020*a*. "Postal Service Workers Quietly Resist DeJoy's Changes With Eye on Election." *Washington Post* .
URL: *https://www.washingtonpost.com/business/2020/09/29/usps-workers-election-mail*

Bogage, Jacob. 2020*b*. "Trump Says Postal Needs Money For Mail-In Voting, But He'll Keep Blocking Funding." *Washington Post* .
URL: *https://www.washingtonpost.com/business/2020/08/12/postal-service-ballots-dejoy/*

Bogage, Jacob & Abha Bhattarai. 2020. "Prime Day, Early Holiday Sales Create New Potential for USPS Ballot Delivery Tie-Ups." *Washington Post* .
URL: *https://www.washingtonpost.com/business/2020/10/14/amazon-prime-day-usps-ballots*

Bogage, Jacob & Christopher Ingram. 2020. "Key Swing States Vulnerable to USPS Slowdowns as Millions Vote by Mail, Data Shows." *Washington Post* .
URL: *https://www.washingtonpost.com/business/2020/10/20/swing-states-election-usps*

Bolton, Alexander, Rachel Augustine Potter & Sharece Thrower. 2015. "Organizational Capacity, Regulatory Review, and the Limits of Political Control." *Journal of Law, Economics, and Organization* 32(2):242–271.

Bolton, Alexander & Sharece Thrower. 2021. *Legislative Capacity , Executive Power , and the Dynamics of Separation of Powers Politics*.

Brehm, John & Scott Gates. 1999. *Working, Shirking, and Sabotage: Bureaucratic Response to a Democratic Public*. Ann Arbor, MI: The University of Michigan Press.

Bremer, Emily S. 2021. "The Rediscovered Stages of Agency Adjudication." *Washington University Law Review* 99:377–448.

Bressman, Lisa Schultz & Michael P. Vandenbergh. 2006. "Inside the Administrative State: A Critical Look at the Practice of Presidential Control." *Michigan Law Review* 105(1):47–99.

Bronstein, Scott & Drew Griffin. 2014. "A Fatal Wait: Veterans Languish and Die on a VA Hospital's Secret List.". **URL:** *https://www.cnn.com/2014/04/23/health/veterans-dying-health-care-delays/*

Bureau of Prisons. 2021. "About Our Facilities.". **URL:** *https://www.bop.gov/about/facilities*

Bürkner, Paul-Christian. 2019. Bayesian Item Response Modeling in R with brms and Stan. Technical report. arXiv: 1905.09501. **URL:** *http://arxiv.org/abs/1905.09501*

Canfield, Clarke. 2005. "Some Truckers Frosted by Shipments of Ice to Northeast.". **URL:** *https://www.southcoasttoday.com/story/news/nation-world/2005/09/21/some-truckers-frosted-by-shipments/50354935007/*

Carpenter, Daniel P. 2001. *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive agencies, 1862-1928*. Princeton, NJ: Princeton University Press.

Chabot, Christine Kexel. 2022. "Interring the Unitary Executive." *Notre Dame Law Review* 98(1):129–209.

Chand, Daniel E., William D. Schreckhise & Marianne L. Bowers. 2017. "The Dynamics of State and Local Contexts and Immigration Asylum Hearing Decisions." *Journal of Public Administration Research and Theory* 27:182–196.

Cingolani, Luciana, Kaj Thomsson & Denis de Crombrugghe. 2015. "Minding Weber More than Ever? The Impacts of State Capacity and Bureaucratic Autonomy on Development Goals." *World Development* 72:191–207. Publisher: Elsevier Ltd.

Clinton, Joshua D. & David E. Lewis. 2008. "Expert Opinion, Agency Characteristics, and Agency Preferences." *Political Analysis* 16(1):3–20.

Clinton, Joshua D., David E. Lewis & Jennifer L. Selin. 2014. "Influencing the Bureaucracy: The Irony of Congressional Oversight." *American Journal of Political Science* 58(2):387–401.

Cohen, Jeffrey E. 2012. *The President's Legislative Policy Agenda, 1789-2002*. Cambridge, UK: Cambridge University Press.

Congress. 2015*a*. "An Overview of the U.S. Coast Guard's Missions.".

Congress. 2015*b*. "President's Fiscal Year 2016 Budget Request for Coast Guard and Maritime Transportation Programs.".

Cox, Adam B. & Cristina M. Rodriguez. 2020. *The President and Immigration Law*. New York City, NY: Oxford University Press.

Cramton, Roger C. 1964. "Administrative Procedure Reform: The Effects of S. 1663 on the Conduct of Federal Rate Proceedings." *Administrative Law Review* 16:108–156.

Cruz, Cesi & Philip Keefer. 2015. "Political Parties, Clientelism, and Bureaucratic Reform." *Comparative Political Studies* 48(14):1942–1973.

Davidson, Joe. 2023. "IRS Tech Is So "Archaic" The Agency Struggles to Find People to Work It." *The Washington Post* .

Delli Carpini, Michael X. & Scott Keeter. 1996. *What Americans Know About Politics and Why It Matters*. New Haven, CT: Yale University Press.

Derthick, Martha. 1990. *Agency Under Stress*. Washington, DC: Brookings Institution Press.

Devins, Neal & David E. Lewis. 2008. "Not-so independent agencies: Party polarization and the limits of institutional design." *Boston University Law Review* 88(2):459–498.

Devins, Neal & David E. Lewis. 2022. Rethinking Independent Agencies. Technical report.

Diermeier, Daniel & Keith Krehbiel. 2009. "Institutionalism as a Methodology." *Journal of Theoretical Politics* 15(2):123–144.

DiIulio, John J. Jr. 2014. *Bring Back the Bureaucrats: Why More Federal Workers Will Lead to Better (and Smaller!) Government*. West Conshohocken, PA: Templeton Press.

Dilulio, John D. 1994. "Principled agents: The cultural bases of behavior in a federal government bureaucracy." *Journal of Public Administration Research and Theory* 4(3):277–318.

Diminished Capacity: Can the FDA Assure the Safety and Security of the Nation's Food Supply. 2007.

Document Tampering and Mishandling at the U.S. Department of Veterans Affairs. 2009.

Dooling, Bridget C.E. & Rachel Augustine Potter. 2022. "Rulemaking By Contract." *Administrative Law Review* 74.

Downs, Anthony. 1964. *Inside Bureaucracy*. Boston, MA: Little, Brown, and Company.

Drolc, Cody A & Lael R Keiser. 2020. "The Importance of Oversight and Agency Capacity in Enhancing Performance in Public Service Delivery." *Journal of Public Administration Research and Theory* pp. 1–17.

Eagly, Ingrid V. 2015. "Remote Adjudication in Immigration." *Northwestern University Law Review* 109:933–1020.

Engel, Christoph & Lilia Zhurakhovska. 2017. "You Are in Charge: Experimentally Testing the Motivating Power of Holding a Judicial Office." *Journal of Legal Studies* (46):1–50.

Epstein, David & Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*. Cambridge, UK: Cambridge University Press.

Evans, Peter B. 1995. *Embedded Autonomy: States and Industrial Transformation*. Princeton, NJ: Princeton University Press.

Evans, Peter & James E Rauch. 1999. "Bureaucracy and Growth: A Cross-National Analysis of the Effects of "Weberian" State Structures on Economic Growth Author." *American Sociological Review* 64(5):748–765.

Family, Jill E. 2019. "Immigration Adjudication Bankruptcy." *Journal of Constitutional Law* 21(4):1025–1050.

Fazekas, Mihály, Romain Ferrali & Johannes Wachs. 2022. "Agency Independence, Campaign Contributions, and Favoritism in US Federal Government Contracting." *Journal of Public Administration Research and Theory* p. muac026.
URL: *https://academic.oup.com/jpart/advance-article/doi/10.1093/jopart/muac026/6586849*

Federal Emergency Management Agency. 2007. FEMA Ice Disposition. Technical Report FNF-07-043 Federal Emergency Management Agency Washington, DC: .

Federal News Network Staff. 2016. "More Federal Employees Who Went On To Become Famous." *Federal News Network* .
URL: *https://federalnewsnetwork.com/people/2016/09/famous-federal-employees/slide/13/*

Fiorina, Morris P. 1981. *Retrospective Voting in American Elections*. New Haven, CT: Yale University Press.

Fiorina, Morris P. 1989. *Congress: Keystone of the Washington Establishment*. New Haven, CT: Yale University Press.

Fisher, Elizabeth & Sidney A. Shapiro. 2020. *Administrative Competence: Reimaging Administrative Law*. Cambridge, UK: Cambridge University Press.

Frakes, Michael & Melissa F. Wasserman. 2013. "Does Agency Funding Affect Decisionmaking?: An Empirical Assessment of the PTO's Granting Patterns." *Vanderbilt Law Review* 66:67–148.

Frakes, Michael & Melissa F. Wasserman. 2017. "Is the Time Allocated to Review Patent Applications Inducing Examiners to Grant Invalid Patents? Evidence from Microlevel Application Data." *Review of Economics and Statistics* 99:550–563.

Freeman, Jody & Sharon Jacobs. 2021. Structural Deregulaton. Technical report. Publication Title: Harvard Law Review Volume: 135.

Fukuyama, Francis. 2013. "What Is Governance?" *Governance* 26(3):347–368.

Gailmard, Sean. 2002. "Expertise, Subversion, and Bureaucratic Discretion." *Journal of Law, Economics, and Organization* 18(2):536–555.

Gailmard, Sean. 2014. Accountability and Principal–Agent Theory. In *The Oxford Handbook of Public Accountability*, ed. Mark Bovens, Robert E. Goodin & Thomas Schillemans. Oxford, UK: Oxford University Press pp. 1–18. Issue: December.

Gailmard, Sean & John W. Patty. 2007. "Slackers and Zealots: Civil Policy and Bureaucratic Expertise." *American Journal of Political Science* 51(4):873–889.

Geddes, Barbara. 1994. *Politician's Dilemma: Building State Capacity in Latin America*. Berkeley, CA: University of California Press.

Gelman, Andrew, John B Carlin, Hal S Stern, David B Dunson, Aki Vehtari & Donald B Rubin. 2021. *Bayesian Data Analysis Third edition (with errors fixed as of 6 April 2021)*. Issue: April.

General Services Administration. 2022. Fiscal Year 2021 Federal Fleet Open Data Set. Technical report General Services Administration Washington, DC: .
URL: *https://www.gsa.gov/policy-regulations/policy/vehicle-management-policy/federal-fleet-report-ffr-open-data-set-library*

Gerring, John. 1999. "What Makes a Concept Good? A Criterial Framework for Understanding Concept Formation." *Polity* 31(3):357–393.

Godfrey, Elaine. 2018. "What Abolish ICE Actually Means." *The Atlantic* .
URL: *https://www.theatlantic.com/politics/archive/2018/07/what-abolish-ice-actually-means/564752/*

Golden, Marissa Martino. 1992. "Exit, Voice, Loyalty, and Neglect: Bureaucratic Responses to Presidential Control During the Reagan Administration." *Journal of Public Administration Research and Theory* 2(1):29–62.

Government Accountability Office. 2011. Managing Service Contracts: Recent Efforts to Address Associated Risks Can Be Further Enhanced. Technical Report GAO-12-87 Government Accountability Office Washington, DC: .

URL: *https://www.gao.gov/products/gao-12-87*

Government Accountability Office. 2013. VA Health Care: Reliability of Reported Outpatient Medical Appointment Wait Times and Scheduling Oversight Need Improvement. Technical Report GAO-13-130 Government Accountability Office.

URL: *https://www.gao.gov/assets/gao-13-130.pdf*

Government Accountability Office. 2017. Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges. Technical Report GAO-17-438 Government Accountability Office.

URL: *https://www.gao.gov/assets/gao-17-438.pdf*

Government Accountability Office. 2020. U.S. Postal Service: Congressional Action Is Essential to Enable a Sustainable Business Model. Technical Report GAO-20-385 Government Accountability Office.

URL: *https://www.gao.gov/assets/gao-20-385.pdf*

Government Accountability Office. 2021*a*. High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas. Technical Report GAO-21-119SP Government Accountability Office.

Government Accountability Office. 2021*b*. Operation Warp Speed: Accelerated Covid-19 Vaccine Development Status and Efforts to Address Manufacturing Challenges. Technical Report GAO-21-319 Government Accountability Office Washington, DC: .

URL: *https://www.gao.gov/assets/gao-21-319.pdf*

Grindle, Merilee S. 1997. "Divergent cultures? When public organizations perform well in developing countries." *World Development* 25(4):481–495.

Guthrie, Chris, Jeffrey J. Rachlinski & Andrew Wistrich. 2003. "Judging by Heuristic: Cognitive Illusions in Judicial Decision Making." *Judicature* 86:44–50.

Guthrie, Chris, Jeffrey J. Rachlinski & Andrew Wistrich. 2009. "The "Hidden Judiciary": An Empirical Examination of Executive Branch Justice." *Duke Law Journal* 58:1477–1530.

Haeder, Simon F. & Susan Webb Yackee. 2015. "Influence and the Administrative Process: Lobbying the U.S. President's Office of Management and Budget." *American Political Science Review* 109(3):507–522.

Haeder, Simon F & Susan Webb Yackee. 2018. "Presidentially Directed Policy Change: The Office of Information and Regulatory Affairs as Partisan or Moderator?" *Journal of Public Administration Research and Theory* 28(4):475–488.

Hammond, Ben & Leah Rosenstiel. 2020. "Measuring the Influence of Political Actors on the Federal Budget." *American Political Science Review* 114(2):603–608.
URL: *https://www.cambridge.org/core/product/identifier/S0003055419000881/type/journal$_a$rticle*

Hanson, Jonathan K. & Rachel Sigman. 2021. "Leviathan's Latent Dimensions: Measuring State Capacity for Comparative Political Research." *The Journal of Politics* 83(4):000–000.

Hausman, David, Daniel E. Ho, Mark Krass & Anne M. McDonough. 2023. "Executive Control of Agency Adjudication: Capacity, Selection and Precedential Rulemaking." *Journal of Law, Economics, and Organization* 40.

Hausman, David & Jayashri Srikantiah. 2016. "Time, Due Process, and Representation: An Empirical and Legal Analysis of Continuances in Immigration Court." *Fordham Law Review* 84:1823–1843.

Healy, Andrew & Neil Malhotra. 2009. "Myopic voters and natural disaster policy." *American Political Science Review* 103(3):387–406.

Healy, Jake. 2020. "The Chick's in the Mail? Rural America Faces New Worries with Postal Crisis." \textit{New York Times." *New York Times* .
URL: *https://www.nytimes.com/2020/08/21/us/postal-service-mail-rural.html*

Heck, Cheva. 2013. "Super-Sized Goldfish Pose Giant Problem for Lake Tahoe.".
URL: *https://srs.fs.fed.us/news/2013/stories/03/big-goldfish.shtml*

Herd, Pamela & Donald P. Moynihan. 2018. *Administrative Burden: Policymaking by Other Means*. New York, NY: Russell Sage Foundation.

Hickman, Kristin E. 2015. "The (Perhaps) Unintended Consequences of King v . Burwell." *Pepperdine Law Review* 2015(1).

Hickman, Kristin E. 2016. "Pursuing a Single Mission (or Something Closer to It) For the IRS." *Columbia Journal of Tax Law* 17:169–193.

Hickman, Kristin E. 2018. "Symbolism and Separation of Powers in Agency Design." *Notre Dame Law Review* 93(4):1475–1500.

Hill, Kim Quaile. 1998. "The Policy Agendas of Presidents and the Mass Public: A Research Validation and Extension." *American Journal of Political Science* 42(4):1328–1334.

House Committee on Oversight and Reform. 2020. "Postmaster General Warns Committee of Dire Consequences Without Congressional Action.".
URL: *https://oversight.house.gov/news/press-releases/postmaster-general-warns-committee-of-dire-consequences-without-congressional*

Huang, Bert I. 2011. "Lightened Scrutiny." *Harvard Law Review* 124:1109–1152.

Huber, Gregory A & Sanford C Gordon. 2004. "Accountability and Coercion : Is Justice Blind." 48(2):247–263.

Huber, John D & Nolan Mccarty. 2004*a*. "Bureaucratic Capacity, Delegation, and Political Reform." *American Political Science Review* 98(3):481–494.

Huber, John D & Nolan McCarty. 2004*b*. "Bureaucratic Capacity, Delegation, and Political Reform." *Americal Political Science Review* 98(3):481–494.

Hudak, John. 2014. *Presidential Pork: White House Influence Over the Distribution of Federal Grants*. Washington, DC: Brookings Institution Press.

Jacobs, Lawrence R. & Robert Y. Shapiro. 1994. "Issues, Candidate Image, and Priming: The Use of Private Polls in Kennedy's 1960 Presidenital Campaign." *American Political Science Review* 88(3):527–540.

Jain, Amit. 2019. "Bureaucrats in Robes: Immigration "Judges" and the Trappings of "Courts"." *Georgetown Immigration Law Review* 33:261–325.

Kagan, Elena. 2001. "Presidential administration." *Harvard Law Review* 114(8):2246–2320.

Kasara, Kimuli & Pavithra Suryanarayan. 2020. "Bureaucratic capacity and class voting: Evidence from across the world and the united states." *Journal of Politics* 82(3).

Katrina Committee. 2006. A Failure of Initative. Technical Report 109-377 Select Bipartisan Commitee to Investigate the Preparation for and Response to Hurricane Katrina Washington, DC: .
URL: *https://www.govinfo.gov/committee/house-katrina?path=/browsecommittee/chamber/house/committee/katrina*

Katz, Eric. 2019. "Interior Department Delivers Hundreds of Relocation Notices to Employees.".
URL: *https://www.govexec.com/workforce/2019/11/interior-department-delivers-hundreds-relocation-notices-employees/161246/*

Katz, Eric. 2020. "Most Interior Employees Reject Mandatory Reassignments, Secretary Says.".
URL: *https://www.govexec.com/workforce/2020/03/most-interior-employees-reject-mandatory-reassignments-secretary-says/163524/*

Katz, Eric. 2023. "It's Glacial: One Agency is Still Struggling to Overcome the Assault on Its Workforce.".
URL: *https://www.govexec.com/workforce/2023/03/one-agency-struggling-overcome-assault-workforce/383509/*

Kaufman, Herbert. 1960. *The Forest Ranger: A Study in Administrative Behavior*. Baltimore, MD: Johns Hopkins University Press.

Keith, Linda Camp, Jennifer S. Holmes & Banks P. Miller. 2013. "Explaining the Divergence in Asylum Grants: Rates Among Immigration Judges: An Attitudinal and Cognitive Approach." *Law and Policy* 35:261–289.

Keyes, Elizabeth. 2012. "Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System." *Georgetown Immigration Law Review* 26:207–256.

Kim, Catherine Y & Amy Semet. 2020. "An Empirical Study of Political Control over Immigration Adjudication." *Georgetown Law Journal* 108(3):579–647.

Kinane, Christina M. 2021. "Control without Confirmation: The Politics of Vacancies in Presidential Appointments." *American Political Science Review* pp. 1–16.

King, Gary, Robert O. Keohane & Sidney Verba. 1994. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press.

Kjær, Anne Mette, Ole Therkildsen, Lars Buur & Michael Wendelboe Hansen. 2021. "When 'Pockets of effectiveness' matter politically: Extractive industry regulation and taxation in Uganda and Tanzania." *The Extractive Industries and Society* 8(1):294–302.
URL: *https://linkinghub.elsevier.com/retrieve/pii/S2214790X20303270*

Koh, Jennifer Lee. 2017. "Removal in the Shadows of Immigration Court." *Southern California Law Review* 90:181–236.

Kopan, Tal. 2021. "Exclusive: Outgoing SF Immigration Judge Blasts Courts as 'Soul-Crushing,' Too Close to ICE." *San Francisco Chronicle* .
URL: *https://www.sfchronicle.com/politics/article/ Exclusive-Outgoing-SF-immigration-judge-blasts-16183235.php*

Krause, George A. & Anne Joseph O'Connell. 2016. "Experiential Learning and Presidential Management of the U.S. Federal Bureaucracy: Logic and Evidence from Agency Leadership Appointments." *American Journal of Political Science* 60(4):914–931.

Krause, George A. & Anne Joseph O'Connell. 2019. "Loyalty–Competence Trade-offs for Top U.S. Federal Bureaucratic Leaders in the Administrative Presidency Era." *Presidential Studies Quarterly* 49(3):527–550.

Krehbiel, Keith. 1996. "Institutional and Partisan Sources of Gridlock: A Theory of Divided and Unified Government." *Journal of Theoretical Politics* 8:7–40.

Kriner, Douglas L. & Andrew Reeves. 2015. *The Particularistic President: Executive Branch and Political Inequality*. New York, NY: Cambridge University Press.

Lee, Frances E. 2016. *Insecure Majorities: Congress and the Perpetual Campaign*. Chicago, IL: University of Chicago Press.

Leonnig, Carol. 2021. *Zero Fail: The Rise and Fall of the Secret Service*. New York City, NY: Random House.

Lewis, David E. 2003. *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997*. Palo Alto, CA: Stanford University Press.

Lewis, David E. 2008. *The Politics of Presidential Appointments*. Princeton, NJ: Princeton University Press.

Lewis, David E. 2019. "Deconstructing the Administrative State." *Journal of Politics* 81(3):767–789.

Lewis, Michael. 2018. *The Fifth Risk*. New York, NY: W. W. Norton & Company.

Light, Paul C. 2008. *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It*. Cambridge, MA: Harvard University Press.

Light, Paul C. 2014. "A Cascade of Failures: Why Government Fails, and How to Stop It." *Center for Effective Public Management at Brookings* (July):11.

Light, Paul C. 2019. *The Government-Industrial Complex: The True Size of the Federal Government, 1984-2018*. Oxford, UK: Oxford University Press.

Lipsky, Michael. 1980. *Street-Level Bureaucracy: The Dilemmas of the Individual in Public Service*. New York, NY: Russell Sage Foundation.

Lowande, Kenneth. 2019. "Politicization and Responsiveness in Executive Agencies." *Journal of Politics* 81(1):33–48.

Lowi, Theodore J. 1987. "Two Roads to Serfdom: Liberalism, Conservativism, and Administrative Power." *American University Law Review* 36(2):295–323.

MacDougall, Ian. 2021. "McKinsey Never Told the FDA It Was Working for Opioid Makers While Also Working for the Agency.".
URL: *https://www.propublica.org/article/mckinsey-never-told-the-fda-it-was-working-for-opioid-makers-while-also-working-for-the-agency*

Malhotra, Neil & Alexander G. Kuo. 2008. "Attributing blame: The public's response to Hurricane Katrina." *Journal of Politics* 70(1):120–135.

Mann, Michael. 1984. "The Autonomous Power of the State: Its Origins, Mechanisms and Results." *European Journal of Sociology* 25(2):185–213.

March, James C. & James G. March. 1977. "Almost Random Careers: The Wisconsin School Superintendency, 1940-1972." *Administrative Science Quarterly* 22(3):377.
URL: *https://www.jstor.org/stable/2392180?origin=crossref*

Mashaw, Jerry L. 1974. "Management Side of Due Process: Some Theoretical and Litigation Notes on the Assurance of Accuracy Fairness and Timeliness in the Adjudication of Social Welfare Claims." *Cornell Law Review* 59:772–824.

Mashaw, Jerry L. 1983. *Bureaucratic Justice: Managing Social Security Disability Claims*. New Haven, CT: Yale University Press.

Mashaw, Jerry L. 2012. *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law*. Hartford, CT: Yale University Press.

Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.

McCubbins, Mathew D. & Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms." *American Journal of Political Science* 28(1):165–179.

McCubbins, Matthew D, Roger G Noll & Barry R Weingast. 1989. "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies." *Virginia Law Review* 75(2):431–482.

McDonnell, Erin Metz. 2017. "Patchwork Leviathan: How Pockets of Bureaucratic Governance Flourish within Institutionally Diverse Developing States." *American Sociological Review* 82(3):476–510. ISBN: 0003122417.

McDonnell, Erin Metz. 2020. *Patchwork Leviathan: Pockets of Bureaucratic Effectiveness in Developing States*. Princeton, NJ: Princeton University Press.

McGarity, Thomas O. 1991. *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*. Cambridge, UK: Cambridge University Press.

Mettler, Suzanne. 2011. *The Submerged State*. Chicago, IL: University of Chicago Press.

Metzger, Gillian E. 2015. "The Constitutional Duty to Supervise." *Yale Law Journal* 124(6):1836–2201.

Metzger, Gillian E. 2017*a*. "1930s Redux: The Administrative State Under Siege." *Harvard Law Review* 131(1):1–95. ISBN: 9025078555840.

Metzger, Gillian E. 2017*b*. "1930s Redux: The Administrative State Under Siege." *Harvard Law Review* 131(1).

Miller, Gary J. & Andrew B. Whitford. 2016. *Above Politics: Bureaucratic Discretion and Credible Commitment*. New York City, NY: Cambridge University Press.

Miller, Mark. 2020. "Is Social Security Becoming a Pawn in the Postal Service Crisis?" *New York Times* . **URL:** *https://www.nytimes.com/2020/08/27/business/post-office-social-security-checks-mail.html*

Milward, H. Brinton & Keith G. Provan. 2000. "Governing the Hollow State." *Journal of Public Administration Research and Theory* 10:359–379.

Moe, Terry M. 1985. The Politicized Presidency. In *The New Direction in American Politics*, ed. John Chubb & Paul E. Peterson. Washington, DC: The Brookings Institution pp. 235–71.

Moe, Terry M. 1989. "The Politics of Bureaucratic Structure." *Can the Government Govern?* (May 1989):267–329. ISBN: 978-0-8157-1407-1.

Moe, Terry M. 1990. "Political Institutions: The Neglected Side of the Story–Comment." *Journal of Law, Economics, and Organization* 6(Special):213–253.

Moore, Colin D. 2020. "Innovation without Reputation :." 13(2):327–344.

Mortenson, Julian Davis & Nicholas Bagley. 2021. "Delegation at the founding." *Columbia Law Review* 121(2):277–368.

Moynihan, Donald. 2022. "Why is American administrative capacity in decline?". **URL:** *https://donmoynihan.substack.com/p/why-is-american-administrative-capacity*

Murphy, Paul P. & Marshall Cohen. 2020. "Fact-Check: USPS Head De Joy's Misleading Testimony About OVertime Changes He Oversaw.".
URL: *https://www.cnn.com/2020/08/24/politics/usps-dejoy-misleading-testimony-overtime-fact-check/index.html*

National Park Service. 2023. "Visitation Numbers.".
URL: *https://www.nps.gov/aboutus/visitation-numbers.htm?eType=EmailBlastContenteId=6d0cc408-7354-4327-8bcc-114696087bba*

Nou, Jennifer & Edward H Stiglitz. 2016. "Strategic Rulemaking Disclosure." *Southern California Law Review* 89:733–792.

O'Connell, Anne Joseph. 2009. "Vacant Offices: Delays in Staffing Top Agency Positions." *Southern California Law Review* 82(5):913–999.

O'Connell, Anne Joseph. 2011. "Agency Rulemaking and Political Transitions." *Northwestern University School of Law* 105(2):471–534. ISBN: 2008121902898.

O'Connell, Anne Joseph. 2014. "Bureaucracy at the boundary." *University of Pennslyvania Law Review* 162(4):841–927.

O'Connell, Anne Joseph. 2020. "Actings." *Columbia Law Review* 120:613–728.

Office of Personnel Management. 2023. "FedScope.".
URL: *https://www.fedscope.opm.gov.*

Office of the Inspector General. 2016. HealthCare.Gov: CMS Management of the Federal Marketplace. Technical Report OEI-06-14-00350 Department of Health and Human Services.
URL: *https://oig.hhs.gov/oei/reports/oei-06-14-00350.asp*

Office of the Inspector General. 2020. Service Performance of Election and Political Mail During the November 2020 General Election. Technical Report 20-319-R21 United States Postal Service Washington, DC: .
URL: *https://www.uspsoig.gov/document/service-performance-election-and-political-mail-during-november-2020-general-election*

Oppel, Jr., Richard A. & Abby Goodnough. 2014. "Doctor Shortage is Cited in Delays at V.A. Hospitals." *New York Times* .
URL: *https://www.nytimes.com/2014/05/30/us/doctor-shortages-cited-in-va-hospital-waits.html*

Pacific Fishery Management Council & National Marine Fisheries Service. 2021. Pacific Sardine Rebuilding Plan. Technical Report NA15NMF4410016 National Oceanic and Atmospheric Administration Portland, Oregon: .

URL: *https://media.fisheries.noaa.gov/2021-06/FinalEA$_S$ardineRebuilding$_2$021.pdf?null*

Panagopoulos, Costas. 2012. "Ex-Presidential Approval: Retrospective Evaluations of Presidential Performance." *Presidential Studies Quarterly* 42(4).

Parrillo, Nicholas R. 2019. "Federal agency guidance and the power to bind: An empirical study of agencies and industries." *Yale Journal on Regulation* 36(1):165–271.

Parrillo, Nicholas R. 2021. "A critical assessment of the originalist case against administrative regulatory power: New evidence from the federal tax on private real estate in the 1790s." *Yale Law Journal* 130(6):1288–1455.

Parshall, Lisa K. & Jim Twombly. 2020. *Directing the Whirlwind: The Trump Presidency and the Deconstruction of the Administrative State*. New York, NY: Peter Lang Inc.

Partnership for Public Service. 2002. The Federal Government: A Nobel Profession. Technical report Partnership for Public Service Washington, DC: .

URL: *content/uploads/2002/12/193690852dfe6b696a3d8216af41ee89-1414079066.pdf*

Pasachoff, Eloise. 2016. "The President's Budget as a Source of Agency Policy Control." *Yale Law Journal* 125:2182–2290.

Peer, Eyal & Eyal Gamliel. 2013. "Heuristics and Biases in Judicial Decisions." *Court Review* 49:114–118.

Pew Research Center. 2019. "Public Expresses Favorable Views of a Number of Federal Agencies.".

URL: *https://www.pewresearch.org/politics/2019/10/01/public-expresses-favorable-views-of-a-number-of-federal-agencies/*

Piper, Christopher. 2021. Presidential Strategy Amidst the Broken Appointments Process. Technical report.

Posner, Richard A. 2010. *How Judges Think*. Cambridge, MA: Harvard University Press.

Potter, Rachel Augustine. 2019. *Bending the Rules: Procedural Politicking in the Bureaucracy*. Chicago, IL: University of Chicago Press.

Potter, Rachel Augustine. 2020. "Providing Political Guidance? Agency Politicization and "As If" Policymaking." *Journal of Political Institutions and Political Economy* 1(1):1–26.

Potter, Rachel Augustine & Charles R. Shipan. 2019. "Agency Rulemaking in a Separation of Powers System." *Journal of Public Policy* 39(1):89–113.

Rabinowitz, Kate & Brittany Renee Mayes. 2020. "At Least 83% of American Voters Can Cast Ballots By Mail in the Fal." *Washington Post* .
URL: *https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states*

Rachlinski, Jeffrey J., Chris Guthrie & Andrew Wistrich. 2007. "Heuristics and Biases in Bankruptcy Judges." *Journal of Instittuional and Theoretical Economics* pp. 167–186.

Ramji-Nogales, Jaya, Andrew I. Schoenholtz & Philip G. Schrag. 2007. "Refugee Roulette: Disparities in Asylum Adjudication." *Stanford Law Review* 60:295–412.

Rassin, Eric, Anieta Eerland & Ilse Kujipers. 2010. "Let's Find the Evidence: An Analogue Study of Confirmation Bias in Criminal Investigations." *Journal of Investigative Psychology and Offender Profiling* 7:231–246–.

Redish, Martin J. & Lawrence C. Marshall. 1986. "Adjudicatory Independence and the Values of Procedural Due Process." *Yale Law Journal* 95:455–505.

Repanshek, Kurt. 2008. "Park Lands For Sale: Can the National Park Service Afford Them.".
URL: *https://www.nationalparkstraveler.org/2008/04/park-lands-sale-can-national-park-service-afford-them*

Richardson, Mark D. 2019. "Politicization and Expertise: Exit, Effort, and Investment." *Journal of Politics* 81(3):878–891.

Richardson, Mark D., Joshua D. Clinton & David E. Lewis. 2017. "Elite Perceptions of Agency Ideology and Workforce Skill." *Journal of Politics* 80(1):303–308.

Ritchie, Melinda N. & Hye Young You. 2019. "Legislators as Lobbyists." *Legislative Studies Quarterly* 44(1):65–95.

Rubin, Edward L. 1984. "Due Process and the Administrative State." *California Law Review* 72:1044–1179.

Rudalevige, Andrew. 2002. *Managing the President's Program: Presidential Leadership and Legislative Policy Formation*. Princeton, NJ: Princeton University Press.

Rudalevige, Andrew. 2021. *By Executive Order: Bureaucratic Management and the Limits of Presidential Power*. Princeton, NJ: Princeton University Press.

Ryo, Emily. 2016. "Detained: A Study of Immigration Bond Hearings." *Law and Society Review* 50:117–153.

Sale, Hillary A. 2002. "Judging Heuristics." *UC Davis Law Review* 35:903–963.

Sartori, Giovanni. 1970. "Concept Misformation in Comparative Politics." *American Political Science Review* 64(4):1033–1053. ISBN: 0003-0554.

Scott, James C. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale University Press.

Selin, Jennifer L. 2015. "What Makes an Agency Independent?" *American Journal of Political Science* 59(4):971–987.

Selin, Jennifer L. & David E. Lewis. 2018. *Sourcebook of United States Executive Agencies*. Washington, DC: Administrative Conference of the United States.

Shah, Bijal. 2023. "The Harms of Administrativism for Marginalized Communities.".

Shapiro, Stuart. 2007. "The role of procedural controls in OSHA's ergonomics rulemaking." *Public Administration Review* 67(4):688–701.

Skocpol, Theda. 1995. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States*. Cambridge, MA: Belknap Press.

Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1820*. Cambridge, UK: Cambridge University Press.

Skowronek, Stephen, John A. Dearborn & Desmond King. 2021. *Phantoms of a Beleaguered Republic: The Deep State and the Unitary Executive*. New York, NY: Oxford University Press.

Stiglitz, Edward H. 2022. *The Reasoning State*. New York, NY: Cambridge University Press.

Teles, Steven M. 2009. "Transformative Bureaucracy: Reagan's Lawyers and the Dynamics of Political Investment." *Studies in American Political Development* 23(1):61–83. Publisher: Vanderbilt University Library.

Tennessee Valley Authority. 2018. Strategic Plan: FY 2018-2022. Technical report Tennessee Valley Authority.

Teodoro, Manuel P. 2011. *Bureaucratic Ambition: Careers, Motives, and the Innovative Administrator*. Baltimore, MD: Johns Hopkins University Press.

Thompson, Daniel M., Jennifer A. Wu, Jesse Yoder & Andrew B. Hall. 2020. "Universal Vote-By-Mail Has No Impact on Partisan Turnout or Vote Share." *Proceedings of the National Academy of Sciences of the United States of America* 117(25):14052–14056.

Thrower, Sharece. 2017. "To Revoke or Not Revoke? The Political Determinants of Executive Order Longevity." *American Journal of Political Science* 61(3):642–656.

Thrower, Sharece. 2018. "Policy Disruption Through Regulatory Delay in the Trump Administration." *Presidential Studies Quarterly* 48(3):517–536.

Ting, Michael M. 2011. "Organizational capacity." *Journal of Law, Economics, and Organization* 27(2):245–271.

Transportation Security Agency. 2022. "TSA Highlights the Top 21 Accomplishments in Transportation Security to Close Out 2021.".
URL: *https://www.tsa.gov/news/press/releases/2022/01/18/tsa-highlights-top-21-accomplishments-transportation-security-close*

Treier, Shawn & Simon Jackman. 2008. "Democracy as a latent variable." *American Journal of Political Science* 52(1):201–217.

Turner, Ian R. 2020. "Policy Durability, Agency Capacity, and Executive Unilateralism." *Presidential Studies Quarterly* 50(1):40–62.

US Postal Service. 2022*a*. "Number of Postal Employees Since 1926.".
URL: *ttps://about.usps.com/who/profile/history/employees- since-1926.htm.*

US Postal Service. 2022*b*. "Size and Scope.".
URL: *https://facts.usps.com/size-and-scope*

US Postal Service. 2022*c*. "Top Facts You Should Know.".
URL: *https://facts.usps.com/top-facts*

Verkuil, Paul R. 2017. *Valuing Bureaucracy: The Case for Professional Government*. New York, NY: Cambridge University Press.

Vike, James. 2007. "The Bureaucracy as a Battleground: Contentious Politics Surrounding OSHA 1980-2004." *Politics & Policy* 35(3):570–607.

von Helversen, Bettina & Jorg Rieskamp. 2009. "Predicting Sentencing for Low-Level Crimes: Comparing Models of Human Judgment." *Journal of Experimental Psychology Applied* 15:375–395.

Wadhia, Shoba Sivaprasad. 2019. *Banned: Immigration Enforcement in the Time of Trump*. New York, NY: New York University Press.

Walker, Christopher J. 2013. "Inside Agency Statutory Interpretation." *Stanford Law Review* 67:999–1079.

Walker, Christopher J. 2016. "Toward a Context-Specific Chevron Deference." *Ssrn* .

Walker, Christopher J. 2017. "Legislating in the Shadows." *University of Pennslyvania Law Review* 165(6):1377–1433.

Washington Post & University of Maryland. 2020. "August 24-31 Washington Post-University of Maryland Poll by IPSOS on Voting Issues." *Washington Post* .

URL: *https://www.washingtonpost.com/context/washington-post-university-of-maryland-poll-by-ipsos-on-voting-issues-aug-24-31/d0ca1dc3-4b85-40b1-92b1-4c91986d0be3/?itid=*$lk_inline_manual_2itid = lk_inline_manual_6itid = lk_inline_manual_3$

Weber, Max. 1978. *Economy and Society: An Outline of Interpretive Sociology*. Berkeley, CA: University of California Press.

West, E. Garrett. 2018. "Congressional Power over Office Creation." *Yale Law Journal* 128(1):166–230.

White, Leonard D. 1948. *The Federalists: A Study in Administrative History*. New York, NY: MacMillan Company.

White, Leonard D. 1954. *The Jacksonians: A Study in Administrative History 1829-1861*. New York City, NY: MacMillan Company.

Wildavsky, Aaron. 1984. "The Politics of the Budgetary Process.".

Williams, Martin J. 2021. "Beyond state capacity: Bureaucratic performance, policy implementation and reform." *Journal of Institutional Economics* 17(2):339–357.

Wilson, James Q. 1982. The Politics of Regulation. In *The Politics of Regulation*. New York, NY: Basic Books pp. 357–394.

Wilson, James Q. 1989. *Bureaucracy: What Government Agencies Do and Why They Do It*. New York, NY: Basic Books.

Wood, B. Dan & Richard W. Waterman. 1991. "The Dynamics of Political Control of the Bureaucracy." *American Political Science Review* 85(3):801–828.

Yackee, Susan Webb. 2006. "Sweet-talking the fourth branch: The influence of interest group comments on federal agency rulemaking." *Journal of Public Administration Research and Theory* 16(1):103–124.

Appendix A

Appendix

A.1 Chapter 3 Appendix

A.1.1 Period 2 Behavior

Lemma 1. *Suppose Actor j has the following preference ordering: $\gamma_m^j > \gamma_n^j$. If $c_2 = \lambda$ and Actor j has an opportunity to allocate the Agency's capacity, Actor j allocates*

$$a_2^j(x_m, x_n | c_2 = \lambda) = \begin{cases} (1,0) & \text{if } \gamma_m^j \geq 0; \\ (0,0) & \text{Otherwise.} \end{cases} \tag{A.1}$$

Suppose $c_2 = \lambda$. Consider two cases.

Case 1. Agency's Allocation Decision

Suppose $\gamma_m^A > \gamma_n^A$. Consider the Agency's allocation strategy when the incumbent does not control the Agency. For a proof by contradiction, suppose an equilibrium exists where the Agency allocates $a_2^A(x_m, x_n) = (1-\varepsilon, \varepsilon)$. The Agency expects to receive

$$\delta\Big[\lambda\gamma_m^A(1-\varepsilon) + \lambda\gamma_n^A\varepsilon\Big]. \tag{A.2}$$

Consider a deviation where the Agency allocates $a_2^A(x_m, x_n) = (1,0)$. Now, the Agency expects to receive

$$\delta\Big[\lambda\gamma_m^A\Big]. \tag{A.3}$$

The Agency prefers its original strategy of $a_2^A(x_m, x_n) = (1-\varepsilon, \varepsilon)$ when

$$\begin{gathered} \delta\Big[\lambda\gamma_m^A(1-\varepsilon) + \lambda\gamma_n^A\varepsilon\Big] > \delta\Big[\lambda\gamma_m^A\Big] \\ \gamma_n^A > \gamma_m^A. \end{gathered} \tag{A.4}$$

Because we have assumed that $\gamma_m^A > \gamma_n^A$, the Agency always has a profitable deviation to $a_2^A(x_m, x_n) = (1,0)$. This contradicts the supposed equilibrium and, therefore, the Agency will not allocate $a_2^A(x_m, x_n) = (1-\varepsilon, \varepsilon)$ in equilibrium.

Consider an allocation strategy of $a_2^A(x_m, x_n) = (0,0)$. Now, the Agency expects to receive

$$0. \tag{A.5}$$

The Agency prefers to allocate $a_2^A(x_m, x_n) = (0,0)$ when

$$\begin{aligned} 0 &> \delta\left[\lambda\gamma_m^A\right] \\ 0 &> \gamma_m^A. \end{aligned} \tag{A.6}$$

Therefore, in any equilibrium, the Agency allocates $a_2^A(x_m, x_n|\lambda) = (0,0)$ when $\gamma_m^A < 0$ and $a_2^A(x_m, x_n|\lambda) = (1,0)$ when $\gamma_m^A \geq 0$.

Case 2. Incumbent's Allocation Decision

Suppose $\gamma_m^i > \gamma_n^i$. For a proof by contradiction, suppose an equilibrium exists where the incumbent allocates $a_2^i(x_m, x_n) = (1-\varepsilon, \varepsilon)$. The incumbent expects to receive

$$h\left[1 + \delta\left(\rho + \lambda\gamma_m^i(1-\varepsilon) + \lambda\gamma_n^i\varepsilon\right)\right] - \delta k. \tag{A.7}$$

Consider a deviation where the incumbent allocates $a_2^i(x_m, x_n) = (1,0)$. The incumbent expects to receive

$$h\left[1 + \delta\left(\rho + \lambda\gamma_m^i\right)\right] - \delta k. \tag{A.8}$$

The incumbent prefers its original strategy of $a_2^i(x_1, x_2) = (1-\varepsilon, \varepsilon)$ when

$$\begin{aligned} h\left[1 + \delta\left(\rho + \lambda\gamma_m^i(1-\varepsilon) + \lambda\gamma_n^i\varepsilon\right)\right] - \delta k &> h\left[1 + \delta\left(\rho + \lambda\gamma_m^i\right)\right] - \delta k \\ \gamma_n^i &> \gamma_m^i \end{aligned} \tag{A.9}$$

Because we have assumed that $\gamma_m^i > \gamma_n^i$, the incumbent always has a profitable deviation to $a_2^i(x_m, x_n) = (1,0)$. This contradicts the supposed equilibrium and, therefore, the incumbent will not allocate $a_2^i(x_m, x_n) = (1-\varepsilon, \varepsilon)$ in equilibrium.

Consider an allocation strategy of $a_2^i(x_m, x_n) = (0,0)$. Now, the incumbent expects to receive

$$h\left[1 + \delta\rho\right] - \delta k. \tag{A.10}$$

The incumbent prefers to allocate $a_2^i(x_m, x_n) = (0,0)$ when

$$\begin{aligned} h\Big[1+\delta\rho\Big] - \delta k &> h\Big[1+\delta\big(\rho+\lambda\gamma_m^i\big)\Big] - \delta k \\ 0 &> \gamma_m^i. \end{aligned} \tag{A.11}$$

Therefore, in any equilibrium, the incumbent allocates $a_2^i(x_m, x_n|\lambda) = (0,0)$ when $\gamma_m^i < 0$ and $a_2^i(x_m, x_n|\lambda) = (1,0)$ when $\gamma_m^i \geq 0$. This completes the proof.

Lemma 2. *Suppose Actor j has the following preference ordering: $\gamma_m^j > \gamma_n^j$. If $c_2 = -\lambda$ and Actor j has an opportunity to allocate the Agency's capacity, Actor j allocates $a_2^j(x_m, x_n|c_2 = -\lambda) = (0,1)$.*

Suppose $c_2 = -\lambda$. Consider two cases.

Case 1. Agency's Allocation Decision Suppose $\gamma_m^A > \gamma_n^A$. Consider the Agency's allocation strategy when the incumbent does not control the Agency. For a proof by contradiction, suppose an equilibrium exists where the Agency allocates $a_2^A(x_m, x_n) = (\varepsilon, 1-\varepsilon)$. The Agency expects to receive

$$-\delta\Big[\lambda\gamma_n^A(1-\varepsilon) + \lambda\gamma_m^A\varepsilon\Big]. \tag{A.12}$$

Consider a deviation where the Agency allocates $a_2^A(x_m, x_n) = (0,1)$. Now, the Agency expects to receive

$$-\delta\Big[\lambda\gamma_n^A\Big]. \tag{A.13}$$

The Agency prefers its original strategy of $a_2^A(x_m, x_n) = (\varepsilon, 1-\varepsilon)$ when

$$\begin{aligned} -\delta\Big[\lambda\gamma_n^A(1-\varepsilon) + \lambda\gamma_m^A\varepsilon\Big] &> -\delta\Big[\lambda\gamma_n^A\Big] \\ \gamma_n^A &> \gamma_m^A. \end{aligned} \tag{A.14}$$

Because we have assumed that $\gamma_m^A > \gamma_n^A$, the Agency always has a profitable deviation to $a_2^A(x_m, x_n) = (1,0)$. This contradicts the supposed equilibrium and, therefore, the Agency allocates $a_2^A(x_m, x_n| - \lambda) = (0,1)$ in any equilibrium.

Case 2. Incumbent's Allocation Decision

Suppose $\gamma_m^i > \gamma_n^i$. For a proof by contradiction, suppose an equilibrium exists where the incumbent

allocates $a_2^i(x_m, x_n) = (\varepsilon, 1-\varepsilon)$. The incumbent expects to receive

$$h\Big[1+\delta\big(\rho-\lambda\gamma_n^i(1-\varepsilon)-\lambda\gamma_m^i\varepsilon\big)\Big]-\delta k. \tag{A.15}$$

Consider a deviation where the incumbent allocates $a_2^i(x_m, x_n) = (0,1)$. The incumbent expects to receive

$$h\Big[1+\delta\big(\rho-\lambda\gamma_n^i\big)\Big]-\delta k. \tag{A.16}$$

The incumbent prefers its original strategy of $a_2^i(x_1, x_2) = (\varepsilon, 1-\varepsilon)$ when

$$\begin{gathered} h\Big[1+\delta\big(\rho-\lambda\gamma_n^i(1-\varepsilon)-\lambda\gamma_m^i\varepsilon\big)\Big]-\delta k > h\Big[1+\delta\big(\rho-\lambda\gamma_n^i\big)\Big]-\delta k \\ \gamma_n^i > \gamma_m^i \end{gathered} \tag{A.17}$$

Because we have assumed that $\gamma_m^i > \gamma_n^i$, the incumbent always has a profitable deviation to $a_2^i(x_m, x_n) = (0,1)$. This contradicts the supposed equilibrium and, therefore, the incumbent allocates $a_2^i(x_m, x_n | -\lambda) = (0,1)$ in any equilibrium. This completes the proof.

Lemma 3. *If $c_2 = \lambda$ and $k < h\lambda\gamma^i(a_2^i - a_2^A)$, then the incumbent controls the Agency. If $c_2 = -\lambda$ and $k < h\lambda\gamma^i(a_2^A - a_2^i)$, then the incumbent controls the Agency. Otherwise, the incumbent does not control the Agency.*

Consider two cases.

Case 1. $c_2 = \lambda$

Suppose $c_2 = \lambda$. If the incumbent controls the Agency, they expect to receive

$$h\Big[1+\delta\big(\rho+\lambda\gamma^i a_2^i\big)\Big]-\delta k. \tag{A.18}$$

If the incumbent does not control the Agency, they expect to receive

$$h\Big[1+\delta\big(\rho+\lambda\gamma^i a_2^A\big)\Big]. \tag{A.19}$$

The incumbent prefers to control the Agency when

$$\begin{gathered} h\Big[1+\delta\big(\rho+\lambda\gamma^i a_2^i\big)\Big]-\delta k > h\Big[1+\delta\big(\rho+\lambda\gamma^i a_2^A\big)\Big] \\ \lambda h\gamma^i(a_2^i - a_2^A) > k. \end{gathered} \tag{A.20}$$

Case 2. $c_2 = -\lambda$

Suppose $c_2 = -\lambda$. If the incumbent controls the Agency, they expect to receive

$$h\Big[1+\delta\big(\rho-\lambda\gamma^i a_2^i\big)\Big]-\delta k. \tag{A.21}$$

If the incumbent does not control the Agency, they expect to receive

$$h\Big[1+\delta\big(\rho-\lambda\gamma^i a_2^A\big)\Big]. \tag{A.22}$$

The incumbent prefers to control the Agency when

$$\begin{gathered} h\Big[1-\delta\big(\rho+\lambda\gamma^i a_2^i\big)\Big]-\delta k > h\Big[1+\delta\big(\rho-\lambda\gamma^i a_2^A\big)\Big] \\ \lambda h\gamma^i(a_2^A-a_2^i) > k. \end{gathered} \tag{A.23}$$

This completes the proof.

Definition 1. If the incumbent neglects the Agency in period $t=1$, then they expect to receive

$$EU^{iN} = \Big(\rho\Big)\Big[h+\delta h\rho\Big]+\Big(1-\rho\Big)\Big[\delta h\big(1-\rho\big)\Big]. \tag{A.24}$$

A.1.2 Homogeneous Preferences

Proposition 1. *Suppose all actors value the agency's policies at* $\gamma_1 > \gamma_2 > 0$*. In equilibrium, the actors play the following collection of strategies:*

- *If* $z \leq \delta h\lambda\gamma_1(2\rho-1)$*, then the incumbent builds the Agency's capacity in period* $t=1$*. If* $z \leq \delta h\lambda\gamma_2(1-2\rho)$*, then the incumbent deconstructs the Agency's capacity in period* $t=1$*. Otherwise, the incumbent neglects the Agency in period* $t=1$*.*
- *The incumbent does not control the Agency.*
- *If* $c_2=\lambda$*, then the Agency allocates* $a_2^A(x_1,x_2)=(1,0)$*. If* $c_2=-\lambda$*, then the Agency allocates* $a_2^A(x_1,x_2)=(0,1)$*.*[1]

Suppose all actors value the agency's policies at $\gamma_1 > \gamma_2 > 0$. If $c_2=\lambda$, then the incumbent in period $t=1$ anticipates that the incumbent in period $t=2$ will not control the Agency, and the Agency will allocate $a^A(x_1,x_2)=(1,0)$ (Lemmas 1-3). If $c_2=-\lambda$, then the incumbent in period $t=1$ anticipates that the incum-

[1] Off path, the incumbent uses the same allocation strategy as the Agency.

bent in period $t = 2$ will not control the Agency, and the Agency will allocate $a^A(x_1, x_2) = (1, 0)$ (Lemmas 1-3).

First, consider the decision of the incumbent to build capacity in period $t = 1$. If the incumbent builds the Agency's capacity, then they expect to receive

$$EU^{L1} = \Big(\rho\Big)\Big[h + \delta h\big(\rho + \lambda\gamma_1\big)\Big] + \Big(1-\rho\Big)\Big[\delta h\big(1-\rho-\lambda\gamma_1\big)\Big] - z. \tag{A.25}$$

The incumbent prefers to build the Agency's capacity when

$$\begin{aligned} EU^{i1} &\geq EU^{iN} \\ \delta h\lambda\gamma_1(2\rho - 1) &\geq z \end{aligned} \tag{A.26}$$

Second, consider the decision of the incumbent to deconstruct capacity in period $t = 1$. If the incumbent deconstructs the Agency's capacity, then they expect to receive

$$EU^{i2} = \Big(\rho\Big)\Big[h + \delta h\big(\rho - \lambda\gamma_2\big)\Big] + \Big(1-\rho\Big)\Big[\delta h\big(1-\rho+\lambda\gamma_2\big)\Big] - z. \tag{A.27}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{i2} &\geq EU^{iN} \\ \delta h\lambda\gamma_2(1 - 2\rho) &> z. \end{aligned} \tag{A.28}$$

Because $\gamma_1 > \gamma_2 > 0$, the incumbent only builds capacity when $\rho \geq 0.5$ and only deconstructs when $\rho < 0.5$. This completes the proof.

A.1.3 Heterogeneous Preferences

Proposition 2. *Suppose the Agency is an Independent Agency. Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > \gamma_2 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$ and $-\gamma_2$. In equilibrium, the actors play the following collection of strategies:*

- *If $\delta h\lambda\gamma_1 \geq z$, then the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. If $\delta h\lambda\gamma_2 \geq z$, then the Rightwing Politician deconstructs the Agency's capacity. Otherwise, the Rightwing Politician neglects the Agency.*
- *The incumbent does not control the Agency.*

- *The Agency allocates* $a_2^A(x_1,x_2|\lambda) = (1,0)$ *and* $a_2^A(x_1,x_2|-\lambda) = (0,1)$.[2]

Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > \gamma_2 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$ and $-\gamma_2$. In addition, assume that $k \geq h\lambda\gamma_1$ such that the Rightwing Politician never controls the Agency. Therefore, any incumbent anticipates that neither politician will control the Agency in period $t = 2$ and the Agency will allocate $a^A(x_1,x_2|\lambda) = (1,0)$ and $a^A(x_1,x_2|-\lambda) = (0,1)$. Consider two cases.

Case 1. Leftwing Incumbent

Suppose the Leftwing Politician is the incumbent in period $t = 1$. If the Leftwing Politician builds the Agency's capacity, then they expect to receive

$$EU^{L1} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_1)\Big] + (1-\rho)\Big[\delta h(1-\rho+\lambda\gamma_1)\Big] - z. \tag{A.29}$$

The Leftwing Politician prefers to build the Agency's capacity when

$$\begin{aligned} EU^{L1} &\geq EU^{LN} \\ \delta h\lambda\gamma_1 &\geq z. \end{aligned} \tag{A.30}$$

Consider the Leftwing Politician's decision to deconstruct the Agency's capacity. If the Leftwing Politician deconstructs the Agency's capacity, then they expect to receive

$$EU^{L2} = (\rho)\Big[h + \delta h(\rho - \lambda\gamma_2)\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_2)\Big] - z. \tag{A.31}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{L2} &> EU^{LN} \\ -\delta h\lambda\gamma_2 &> z. \end{aligned} \tag{A.32}$$

Because $z > 0$, this condition never holds. The Leftwing Politician always has a profitable deviation to neglect. Therefore, in any equilibrium, the Leftwing Politician never deconstructs the Agency's capacity.

Case 2. Rightwing Incumbent

Suppose the Rightwing Politician is the incumbent in period $t = 1$. If the Rightwing Politician builds the

[2]Off path, the Leftwing Politician uses the same allocation strategy as the Agency. The Rightwing Politician allocates $a_2^R(x_1,x_2|\lambda) = (0,0)$ and $a_2^R(x_1,x_2|-\lambda) = (1,0)$.

Agency's capacity, then they expect to receive

$$EU^{R1} = (\rho)\Big[h + \delta h(\rho - \lambda\gamma_1)\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_1)\Big] - z. \tag{A.33}$$

The Rightwing Politician prefers to build the Agency's capacity when

$$\begin{aligned} EU^{R1} &\geq EU^{RN} \\ -\delta h\lambda\gamma_1 &\geq z \end{aligned} \tag{A.34}$$

Because $z > 0$, this condition never holds. Therefore, the Rightwing Politician always has a profitable deviation to neglecting the Agency in any equilibrium.

Consider the Rightwing Politician's decision to deconstruct the Agency's capacity. If the Rightwing Politician deconstructs the Agency's capacity, then they expect to receive

$$EU^{R2} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_2)\Big] + (1-\rho)\Big[\delta h(1-\rho+\lambda\gamma_2)\Big] - z. \tag{A.35}$$

The Rightwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{R2} &\geq EU^{RN} \\ \delta h\lambda\gamma_2 &\geq z. \end{aligned} \tag{A.36}$$

This completes the proof.

Proposition 3. *Suppose the Agency is an Executive Agency. Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > \gamma_2 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$ and $-\gamma_2$. In equilibrium, the actors play the following collection of strategies:*

- *If $\delta h\lambda\gamma_1\rho \geq z$, then the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. If $\delta h\lambda\big(\gamma_1\rho + \gamma_2(1-\rho)\big) - \delta\rho k \geq z$, then the Rightwing Politician deconstructs the Agency's capacity. Otherwise, the Rightwing Politician neglects the Agency.*
- *The Leftwing Politician does not control the Agency. The Rightwing Politician controls the Agency.*
- *The Agency allocates $a_2^A(x_1,x_2|\lambda) = (1,0)$ and $a_2^A(x_2,x_2|-\lambda) = (0,1)$. The Rightwing Politician allocates $a_2^R(x_1,x_2|\lambda) = (0,0)$ and $a_2^R(x_1,x_2) = (1,0)$.*[3]

[3] Off path, the Leftwing Politician uses the same allocation strategy as the Agency.

Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > \gamma_2 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$ and $-\gamma_2$. In addition, assume that $k < h\lambda(\gamma_1 - \gamma_2)$ such that the Rightwing Politician never controls the Agency. Therefore, any incumbent anticipates that (1) the Leftwing Politician will not control the Agency in period $t = 2$, and the Agency will allocate $a^A(x_1, x_2|\lambda) = (1,0)$ and $a^A(x_1, x_2|-\lambda) = (0,1)$ and (2) the Rightwing Politician will control the Agency in period $t = 2$ and the Rightwing Politician will allocate $a^A(x_1, x_2|\lambda) = (0,0)$ and $a^A(x_1, x_2|-\lambda) = (1,0)$. Consider two cases.

Case 1. Leftwing Incumbent

Suppose the Leftwing Politician is the incumbent in period $t = 1$. If the Leftwing Politician builds the Agency's capacity, then they expect to receive

$$EU^{L3} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_1)\Big] + (1-\rho)\Big[\delta h(1-\rho)\Big] - z. \tag{A.37}$$

The Leftwing Politician prefers to build the Agency's capacity when

$$\begin{aligned} EU^{L3} &\geq EU^{LN} \\ \delta h\lambda\gamma_1\rho &\geq z. \end{aligned} \tag{A.38}$$

Consider the Leftwing Politician's decision to deconstruct the Agency's capacity. If the Leftwing Politician deconstruct the Agency's capacity, then they expect to receive

$$EU^{L4} = (\rho)\Big[h + \delta h(\rho - \lambda\gamma_2)\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_1)\Big] - z. \tag{A.39}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{L4} &> EU^{LN} \\ -\delta h\lambda\left(\gamma_2\rho + \gamma_1(1-\rho)\right) &> z. \end{aligned} \tag{A.40}$$

As $\gamma_2 > 0$ and $\gamma_1 > 0$, this condition never holds. The Leftwing Politician always has a profitable deviation to neglect. Therefore, in any equilibrium, the Leftwing Politician never deconstructs the Agency's capacity.

Case 2. Rightwing Incumbent

Suppose the Rightwing Politician is the incumbent in period $t = 1$. If the Rightwing Politician builds the

Agency's capacity, then they expect to receive

$$EU^{R3} = (\rho)\Big[h + \delta h\rho - \delta k] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_1)\Big] - z. \tag{A.41}$$

The Rightwing Politician prefers to build the Agency's capacity when

$$\begin{aligned} EU^{R3} &\geq EU^{RN} \\ -\delta h\lambda\gamma_1(1-\rho) - -\delta\rho k &\geq z. \end{aligned} \tag{A.42}$$

As $\gamma_1 > 0$, this condition never holds. The Righwing Politician always has a profitable deviation to neglect. Therefore, in any equilibrium, the Rightwing Politician never builds the Agency's capacity.

Consider the Rightwing Politician's deconstruct the Agency's capacity. If the Rightwing Politician deconstructs the Agency's capacity, then they expect to receive

$$EU^{R4} = (\rho)\Big[h + \delta h(\rho+\lambda\gamma_1) - \delta k\Big] + (1-\rho)\Big[\delta h(1-\rho+\lambda\gamma_2)\Big] - z. \tag{A.43}$$

The Rightwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{R4} &> EU^{RN} \\ \delta h\lambda\left(\gamma_1\rho + \gamma_2(1-\rho)\right) - \delta\rho k &> z \end{aligned} \tag{A.44}$$

This completes the proof.

Proposition 4. *Suppose the Agency is an Independent Agency. Assume the Leftwing Politician and the Agency have a preference of $\gamma_1 > 0$, and the Rightwing Politician has a preference of $-\gamma_1$. In addition, the Rightwing Politician has a preference of $\gamma_2 > 0$, and the Leftwing Politician and the Agency have a preference of $-\gamma_2$. In equilibrium, the actors play the following collection of strategies*

- *If $\delta h\lambda\gamma_1 \geq z$, the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. The Rightwing Politician neglects the Agency.*
- *The Incumbent does not control the Agency.*
- *The Agency allocates $a_2^A(x_1,x_2|\lambda) = (1,0)$ and $a_2^A(x_1,x_2|-\lambda) = (0,1)$.*[4]

Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$. In addition, the Rightwing Politician has a preference of $\gamma_2 > 0$, and the Leftwing

[4]Off path, the Leftwing Politician uses the same allocation strategy as the Agency. The Rightwing Politician allocates $a_2^R(x_1,x_2|\lambda) = (0,1)$ and $a_2^R(x_1,x_2|-\lambda) = (1,0)$.

Politician and the Agency have a preference of $-\gamma_2$. Assume that $k \geq h\lambda\left(\gamma_2 - \gamma_1\right)$ such that the Rightwing Politician never controls the Agency. Therefore, any incumbent anticipates that neither politician will control the Agency in period $t = 2$ and the Agency will allocate $a^A(x_1, x_2|\lambda) = (1,0)$ and $a^A(x_1, x_2|-\lambda) = (0,1)$. Consider two cases.

Case 1. Leftwing Incumbent

Suppose the Leftwing Politician is the incumbent in period $t = 1$, If the Leftwing Politician builds the Agency's capacity, then they expect to receive EU^{L1}. Therefore, by Proposition 2, the Leftwing Politician prefers to build the Agency's capacity rather than neglect when $\delta h\lambda\gamma_1 \geq z$.

Consider the Leftwing Politician's decision to deconstruct the Agency's capacity. If the Leftwing Politician deconstructs the Leftwing Politician's capacity, then they expect to receive

$$EU^{L5} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_2)\Big] + (1-\rho)\Big[\delta h(1 - \rho + \lambda\gamma_2)\Big] - z. \tag{A.45}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{L5} &> EU^{LN} \\ \delta h\lambda\gamma_2 &\geq z. \end{aligned} \tag{A.46}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity instead of build capacity when

$$\begin{aligned} EU^{L5} &> EU^{L1} \\ \gamma_2 &> \gamma_1. \end{aligned} \tag{A.47}$$

By assumption, this condition never holds. The Leftwing Politician always has a profitable deviation to building the Agency's capacity. Therefore, in any equilibrium, the Leftwing Politician does not deconstruct the Agency's capacity.

Case 2. Rightwing Incumbent

Suppose the Rightwing Politician is the incumbent in period $t = 2$. If the Rightwing Politician builds the Agency's capacity, then they expect to receive EU^{R1}. Therefore, by Proposition 2, the Rightwing Politician never builds the Agency's capacity in equilibrium.

Consider the Rightwing Politician's decision to deconstruct the Agency's capacity. If the Rightwing

Politician deconstructs the Rightwing Politician's capacity, then they expect to receive

$$EU^{R5} = (\rho)\Big[h + \delta h(\rho - \lambda\gamma_2)\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_2)\Big] - z. \tag{A.48}$$

The Rightwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{R5} &> EU^{RN} \\ -\delta h\lambda\gamma_2 &> z \end{aligned} \tag{A.49}$$

As $\gamma_2 > 0$, this condition never holds. The Rightwing Politician always has a profitable deviation to neglecting the Agency. Therefore, in any equilibrium, the Rightwing Politician neglects the Agency. This completes the proof.

Proposition 5. *Suppose the Agency is an Executive Agency. Assume the Leftwing Politician and the Agency have a preference of $\gamma_1 > 0$, and the Rightwing Politician has a preference of $-\gamma_1$. In addition, the Rightwing Politician has a preference of $\gamma_2 > 0$, and the Leftwing Politician and the Agency have a preference of $-\gamma_2$. Suppose $k < h\lambda(\gamma_2 - \gamma_1)$. In equilibrium, the actors play the following collection of strategies*

- *If $\delta h\lambda\big(\gamma_1\rho - \gamma_2(1-\rho)\big) \geq z$. the Leftwing Politician builds the Agency's capacity. Otherwise, the Leftwing Politician neglects the Agency. If $\delta h\lambda\big(\gamma_1\rho - \gamma_2(1-\rho)\big) - \delta\rho k \geq z$. the Rightwing Politician deconstructs the Agency's capacity. Otherwise, the Rightwing Politician neglects the Agency.*
- *The Leftwing Politician does not control the Agency. The Rightwing Politician controls the Agency.*
- *The Agency allocates $a_2^A(x_1,x_2|\lambda) = (1,0)$ and $a_2^A(x_1,x_2|-\lambda) = (0,1)$. The Rightwing Politician allocates $a_2^R(x_1,x_2|\lambda) = (0,1)$ and $a_2^R(x_1,x_2|-\lambda) = (1,0)$.*[5]

Assume the Leftwing Politician and the Agency have preferences of $\gamma_1 > 0$, and the Rightwing Politician has preferences of $-\gamma_1$. In addition, the Rightwing Politician has a preference of $\gamma_2 > 0$, and the Leftwing Politician and the Agency have a preference of $-\gamma_2$. Assume that $k < h\lambda\big(\gamma_2 - \gamma_1\big)$ such that the Rightwing Politician always controls the Agency. Therefore, any incumbent anticipates that (1) the Leftwing Politician will not control the Agency in period $t = 2$ and the Agency will allocate $a^A(x_1,x_2|\lambda) = (1,0)$ and $a^A(x_1,x_2|-\lambda) = (0,1)$, and (2) the Rightwing Politician will control the Agency in period $t = 2$ and allocate $a^R(x_1,x_2|lambda) = (0,1)$ and $a^R(x_1,x_2|-\lambda) = (1,0)$. Consider two cases.

Case 1. Leftwing Incumbent

[5] Off path, the Leftwing Politician uses the same allocation strategy as the Agency.

Suppose the Leftwing Politician is the incumbent in period $t = 2$. If the Leftwing Politician builds the Agency's capacity, then they expect to receive

$$EU^{L6} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_1)\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_2)\Big] - z. \tag{A.50}$$

The Leftwing Politician prefers to build the Agency's capacity when

$$\begin{aligned} EU^{L6} &\geq EU^{LN} \\ \delta h\lambda\left(\gamma_1\rho - \gamma_2(1-\rho)\right) &\geq z \end{aligned} \tag{A.51}$$

Consider the Leftwing Politician's decision to deconstruct the Agency's capacity. If the Leftwing Politician deconstructs the Agency's capacity, they expect to receive

$$EU^{L7} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_2)\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_1)\Big] - z. \tag{A.52}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{L7} &> EU^{LN} \\ \delta h\lambda\left(\gamma_2\rho - \gamma_1(1-\rho)\right) &\geq z \end{aligned} \tag{A.53}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity instead of build capacity when

$$\begin{aligned} EU^{L7} &> EU^{L6} \\ \gamma_2 &> \gamma_1 \end{aligned} \tag{A.54}$$

By assumption, this condition never holds. The Leftwing Politician always has a profitable deviation to build the Agency's capacity. Therefore, in any equilibrium, the Leftwing Politician does not deconstruct the Agency's capacity.

Case 2. Rightwing Incumbent

Suppose the Rightwing Politician is the incumbent in period $t = 2$. If the Rightwing Politician builds the Agency's capacity, then they expect to receive

$$EU^{R6} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_2) - \delta k\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_1)\Big] - z. \tag{A.55}$$

The Rightwing Politician prefers to build the Agency's capacity when

$$\begin{aligned} EU^{R6} &\geq EU^{RN} \\ \delta h\lambda\left(\gamma_2\rho - \gamma_1(1-\rho)\right) - \delta\rho k &\geq z \end{aligned} \tag{A.56}$$

Consider the Rightwing Politician's decision to deconstruct the Agency's capacity. If the Rightwing Politician deconstructs the Agency's capacity, they expect to receive

$$EU^{R7} = (\rho)\Big[h + \delta h(\rho + \lambda\gamma_1) - \delta k\Big] + (1-\rho)\Big[\delta h(1-\rho-\lambda\gamma_2)\Big] - z. \tag{A.57}$$

The Rightwing Politician prefers to deconstruct the Agency's capacity when

$$\begin{aligned} EU^{L7} &> EU^{LN} \\ \delta h\lambda\left(\gamma_1\rho - \gamma_2(1-\rho)\right) - \delta\rho k &\geq z \end{aligned} \tag{A.58}$$

The Leftwing Politician prefers to deconstruct the Agency's capacity instead of build capacity when

$$\begin{aligned} EU^{R7} &> EU^{R6} \\ \gamma_2 &> \gamma_1 \end{aligned} \tag{A.59}$$

By assumption, this condition always holds. The Rightwing Politician always has a profitable deviation to deconstructing the Agency's capacity. Therefore, in any equilibrium, the Rightwing Politician does not build the Agency's capacity. This completes the proof.

A.2 Chapter 5 Appendix

A.2.1 Policymaking-Capacity Scores

This Appendix describes the development of the policymaking-capacity scores. The data comes from the Office of Personnel Management's (OPM) Fedscope database. A Bayesian factor analysis uses this data to estimate policymaking capacity as a latent concept from correlated variables. This method overcomes three problems with measuring policymaking capacity. First, this method incorporates multiple variables of policymaking capacity, avoiding the reliance on a single, crude indicator as a proxy for the complex latent concept (Bolton, Potter & Thrower 2015). Second, it avoids costly and infrequent survey techniques by using publicly available data from OPM to produce time-series measures for 266 agencies (Richardson, Clinton & Lewis 2017). Third and finally, OPM's *Handbook of Occupational Groups and Families* makes it possible to identify which occupations engage in policymaking and tailor the measures to that specific activity (O.A. 2).

The result is 5,590 yearly policymaking-capacity scores for 266 agencies from 1998 to 2021.

A.2.1.1 Data

Since 1998, the Office of Personnel Management—the federal government's human-resources department—has published its Fedscope database, which includes over 190 million personnel records of civilian employees working in over 750 federal agencies.[6] Each entry in Fedscope includes information about the employee's agency, age, gender, salary, education, occupation, length of service, location, and supervisory status. The regular publication of Fedscope permits development of time-series measures of bureaucratic capacity by aggregating this data into agency–year units.

Certain occupations play a particular role in developing agency policies. For example, most individuals engaged in drafting rules have a background in law (Walker 2013). Other occupations advise agency policymakers by sharing their expertise about the policy area. I identify staff engaged in policy development by coding the descriptions of all white-collar occupations listed in OPM's *Handbook of Occupational Groups and Families*. I code occupations described as developing regulations, programs, policies, or standards as policymaking occupations (O.A. 2). In addition, I include occupations described as conducting scientific research because these researchers may assist policymakers working in highly technical issue areas.[7] Unless specified otherwise, I refer to these groups collectively as "policymaking occupations" or "bureaucratic policymakers."

For each agency, I aggregate the individual-level data at the agency–year level. I also create department-level measures for certain agencies.[8] I exclude any agency that averaged fewer than 15 total employees from 1998 to 2021.[9] Additionally, I exclude any agency that averaged less than 5 policymaking employees during the same period and exclude any agency–year in which the agency had no policymaking employees.

[6]OPM has published this data annually since 1998 and quarterly since 2009. I use the annual data published in September for all years, which syncs the measure with the fiscal year of the federal government. While it is possible to produce quarterly measures for some years, I do not produce these measures for this paper because it would necessitate a greater understanding of seasonal trends in agency employment. Notable agencies excluded from Fedscope include the Federal Reserve, most intelligence agencies, the U.S. Postal Service, and the White House Office. Office of Personnel Management. "Fedscope." https://www.fedscope.opm.gov.

[7]In alternative specifications, I exclude these researcher positions but validation suggests the broader definition of policymaking occupations produces more reliable measures.

[8]I estimate department-level policymaking-capacity scores for the following agencies by aggregating the employment records for all of the department's bureaus and offices: the Air Force, the Army, the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Health and Human Services, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of the Interior, the Department of Justice, the Department of Labor, the Department of Transportation, the Department of the Treasury, the Department of Veteran Affairs, the General Services Administration, the National Aeronautics and Space Administration, and the Navy. Fedscope already reports employment for the Department of Energy and the Department of State at the department level. The department-level scores include employees in all subunits regardless of whether those subunits appear on the narrowed list of agencies. The department-level scores for the Department of Defense do not include the Air Force, the Army, or the Navy.

[9]This excludes eight agencies: the Administrative Conference of the United States, the Appalachian Regional Commission, the James Madison Memorial Fellowship Foundation, the Farm Credit System Insurance Corporation, the Barry Goldwater Scholarship Foundation, the Harry S. Truman Scholarship Foundation, the Center for Faith-Based and Community Initiatives, and the Marine Mammal Commission.

Fedscope reports most data at the bureau level. However, wide variation exists in bureau-level reporting.[10] For example, Fedscope only includes department-level data for the Department of Energy but includes 96 different offices within the Airforce. Of the hundreds of agency–year entries for offices in the Air Force, over 10% have fewer than twenty employees and over 6% have fewer than five employees. Most of these offices are inconsequential for political-science research, and their inclusion may bias estimates for larger bureaus and departments. Accordingly, I create a narrower list of agencies.[11]

Table A.1: Variables of Workforce Capacity

Indicator	**Mean**	**SD**
Logged Number of Policymaking Employees (Thousands)	6.16	2.40
Proportion of Employees Involved in Policymaking	0.49	0.24
Mean Salary of Policymaking Employees (Thousands of 2021 Dollars)	115.72	21.49
Mean Length of Service of Policymaking Employees (Years)	15.55	3.45
Proportion of Policymaking Employees with a College Education	0.74	0.17

Note: All variables are normalized before estimation. Averages calculated before normalization.

As discussed in the main text, five variables are constructed based on their theoretical relationship to policymaking capacity. Table A.1 reports summary statistics for each of these variables. While the Fedscope data allows for the construction of a wide variety of variables, it lacks meaningful data on the workforce's ability to engage in team production. The *Proportion of Employees Involved in Policymaking* comes closest to proxying this characteristic if we assume that an agency with a higher proportion of policymaking employees is more likely to have organized the workforce in ways that promote effective policymaking (Bersch, Praça & Taylor 2017*a*, Wilson 1989). Validation reveals a positive correlation between the policymaking-capacity scores and measures of teamwork within the agency (O.A. 3).

A.2.1.2 Bayesian Factor-Analysis Model

In recent decades, political scientists have turned toward Bayesian models to estimate measures from a set of variables theorized to correlate with a latent concept (Clinton & Lewis 2008, Richardson, Clinton & Lewis 2017, Selin 2015). In particular, Bayesian factor-analysis models have been used to produce unit–year measures from observable variables with continuous values (Bersch, Praça & Taylor 2017*a*, Treier & Jackman 2008).

Let $i = 1,\ldots,n$ index agency-years and $j = 1,\ldots,m$ index the variables correlated with policymaking capacity. I assume that each observed indicator y_{ij} is a function of the agency's latent policymaking capacity

[10] Notable exceptions to this rule include the Department of Energy, the Department of State, and the Environmental Protection Agency.

[11] I first selected all agencies cited in the *Sourcebook of United States Executives Agencies* (Selin & Lewis 2018). I added a number of bureaus abolished before the publication of the *Sourcebook*, including agencies that were merged into the Department of Homeland Security. I also added a number of bureaus that have published regulations in the last twenty years.

x_i and that $y_{ij} \sim \mathcal{N}(\gamma_j(\alpha_j + \beta_j x_i), \sigma_i^2)$.[12] Functionally, the model operates as a two-parameter item-response model like those commonly used in educational testing. The $\beta_j \geq 0$ parameter allows the relationship between x_i and y_{ij} to vary across indicators, the α_j intercept estimates the value of indicator j when $x_i = 0$, and the $\gamma_j \geq 0$ parameter informs how well each indicator differentiates between the latent capacity of agencies (Bürkner 2019).

I constrain γ_j and β_j to positive values because policymaking capacity should be increasing in each indicator (Bürkner 2019).[13] The most likely violation of this assumption concerns the experience of policymaking employees and a worry that their skills dull overtime. However, theoretical research suggests that individuals in these positions actually invest in their expertise and hone their procedural knowledge throughout their careers (Gailmard & Patty 2007, Miller & Whitford 2016, Potter 2019). Therefore, the assumption that policymaking capacity is monotonically increasing in expertise appears satisfied at least with respect to policymaking employees. This restriction would need to be reevaluated for other agency tasks, such as enforcement. A set of uninformed priors completes the model.[14]

All variables have positive and substantively meaningful coefficients. The resulting policymaking-capacity scores range from -2.38 (low policymaking capacity) to 3.59 (high policymaking capacity), with a mean of zero and a standard deviation of 0.68. There are a total of 5,590 scores for 266 agencies from 1998 to 2021.

[12] I estimate the parameters by sampling from the approximate posterior distribution with a Hamiltonian Monte Carlo algorithm. I use the No-U-Turn Sampler extension to the Hamiltonian Monte Carlo algorithm (Gelman, Carlin, Stern, Dunson, Vehtari & Rubin 2021). The model is constructed in probabilistic-programming language Stan and implemented in R. As policymaking capacity may vary across time, the model pools all agency–years, which is the approach taken by Treier and Jackman (2008). Each run includes four chains with 10,000 iterations and a 5,000 iteration burn-in phase, consistent with the approach advocated by Gelman et al. (2021). Standard metrics of Bayesian modelling suggest that the chains converge. The model ends with zero divergences. For all parameters, $\hat{R} \approx 1$. Trace plots illustrate mixing between the chains. I post-process the estimates of policymaking capacity iteration-by-iteration so that the samples are distributed according to a standard normal distribution $\mathcal{N} \sim (0,1)$ (Clinton & Lewis 2008).

[13] Another possible violation of this assumption is that a greater number of policymaking employees inhibits agency coordination. That is possible. Excluding this variable has no impact on the scores. The correlation between the chosen measure and the measure that excludes the number of policymaking employees is $\rho \approx 1$.

[14] Specifically, I assume $\alpha_j \sim \mathcal{N}(0,100)$, $\beta_j \sim \mathcal{N}(0,100)$, $x_i \sim \mathcal{N}(0,100)$ and $\sigma_i^2 \sim \mathcal{U}(0,100)$.

A.2.1.3 Stan Model

The model was constructed in the Stan probabilistic programming language and implemented in R. The following code was used to estimate the parameters of the model:

```
data{
  int<lower=1> J; // Total Number of Agency--Years
  int<lower=1> K; // Total Number of Indicators
  int<lower=1> N; // Total Number of Observations
  int<lower=1,upper=J> jj[N]; //Agency--Year for Observation N
  int<lower=1,upper=K> kk[N]; //Indicator for Observation N
  real y[N]; //Value of indicator for Observation N
}
parameters{
    vector[J] alpha; //Capacity for Agency-Year J
    vector<lower=0>[K] beta1; //Intercept
    vector<lower=0>[K] beta2; //Difficulty for Indicator K
    vector<lower=0>[K] gamma; //Discrimination of K
    real<lower=0, upper=10> sigma; //Population SD
}
transformed parameters{
    vector[N] theta; //Agency--Year Effects
    real tau;
    theta = gamma[kk] .* (beta1[kk]+(beta2[kk] .* alpha[jj]));
    tau = pow(sigma,-2);
}
model{
    alpha ~ normal(0,10); //Priors for Capacity
    beta1 ~ normal(0,10); //Prior of Intercept
    beta2 ~ normal(0,10); //Prior of Difficulty
    gamma ~ normal(0,10); //Prior of Discrimination
    sigma ~ uniform(0,10); //Prior for Sigma
    y ~ normal(theta,tau);
 }
```

A.2.1.4 Alternative Specifications

In order to identify the best possible measure of policymaking capacity, I run multiple specifications of the model, validate each measure, and select the model that performs best on these validation metrics. Table A.2 lists the different specifications. I select the specification that performs best on the validation exercises discussed in Online Appendix 3.

Table A.2 lists the variables included in each specification. Model (1) is the primary specification chosen

Table A.2: Alternative Specifications

	Model								
	1	2	3	4	5	6	7	8	9
Number of Policymaking Employees (Logged)	✓	✓	✓		✓				✓
Proportion of Workforce in Policymaking Occupations	✓	✓		✓		✓			✓
Proportion of Policymaking Employees with College Education	✓		✓	✓			✓		✓
Proportion of Policymaking Employees with Graduate Education		✓			✓	✓		✓	
Mean Length of Service of Policymaking Employees	✓	✓	✓	✓	✓	✓	✓	✓	✓
Cumulative Length of Service of Policymaking Employees (Logged)									
Mean Salary of Policymaking Employees	✓	✓	✓	✓	✓	✓	✓	✓	
Policymaking and Research Employees	✓	✓	✓	✓	✓	✓	✓	✓	✓
Only Policymaking Employees									
Only Policymaking and Research Employees in Washington DC									

	10	11	12	13	14	15	16
Number of Policymaking Employees (Logged)	✓			✓	✓	✓	✓
Proportion of Workforce in Policymaking Occupations	✓	✓	✓	✓	✓	✓	✓
Proportion of Policymaking Employees with College Education		✓		✓		✓	
Proportion of Policymaking Employees with Graduate Education	✓		✓		✓		✓
Mean Length of Service of Policymaking Employees	✓			✓	✓	✓	✓
Cumulative Length of Service of Policymaking Employees (Logged)		✓	✓				
Mean Salary of Policymaking Employees		✓	✓	✓	✓	✓	✓
Policymaking and Research Employees	✓	✓	✓				
Only Policymaking Employees				✓	✓		
Only Policymaking and Research Employees in Washington DC						✓	✓

after validation. Different specifications were chosen to address various substantive concerns that the inclusion (or exclusion) of a certain variable or subset of data may bias results. Although it would be onerous to test every permutation of these variables, the high correlation between all specifications mitigates concerns that any one specification significantly outperforms the others.

Correlations across specifications are reported in Table A.3. All models are highly correlated with one another. Some models have a correlation of $\rho > 0.999$. The lowest correlation between any two specifications is $\rho = 0.66$. Accordingly, the measures are robust to alternative specifications. Nevertheless, I take the opportunity to walk through the various specifications and the concerns addressed by each one. Correlations reported in this discussion reflect the correlation with the primary specification: Model (1).

First, the specifications vary whether education is measured as the proportion of employees with a college education or the proportion of employees with a graduate education. Employees with a graduate education often have greater expertise than individuals with a college education and belong to professional organizations that shape their behavior (Miller & Whitford 2016). Other research demonstrates the importance of individuals with law degrees to the policymaking process (Walker 2013). However, other occupations—especially those in the sciences—do not necessarily require a graduate-level education for employees to demonstrate expertise. Accordingly, measuring education at the graduate level may bias the policymaking scores in favor of agencies operating in certain policy areas. There is a high correlation between the primary specification (which uses the college-education measure) and Model (2) (which uses the graduate-education measure) ($\rho = 0.93$).

Table A.3: Correlations of Model Specifications

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	1	0.93	0.93	1	0.84	0.93	0.93	0.84	0.84	0.87	1	0.93	0.80	0.75	0.84	0.81
2	0.93	1	0.91	0.93	0.96	1	0.91	0.96	0.96	0.86	0.93	1	0.80	0.84	0.79	0.88
3	0.93	0.91	1	0.93	0.93	0.91	1	0.93	0.93	0.67	0.93	0.91	0.81	0.77	0.79	0.79
4	1	0.93	0.93	1	0.84	0.93	0.93	0.84	0.84	0.87	1	0.93	0.81	0.75	0.84	0.81
5	0.84	0.96	0.93	0.84	1	0.96	0.93	1	1	0.69	0.84	0.96	0.78	0.84	0.73	0.85
6	0.93	1	0.91	0.93	0.96	1	0.91	0.96	0.96	0.86	0.93	1	0.80	0.84	0.79	0.88
7	0.93	0.91	1	0.93	0.93	0.91	1	0.93	0.93	0.67	0.93	0.91	0.81	0.77	0.79	0.79
8	0.84	0.96	0.93	0.84	1	0.96	0.93	1	1	0.69	0.84	0.96	0.78	0.84	0.72	0.85
9	0.84	0.96	0.93	0.84	1	0.96	0.93	1	1	0.69	0.84	0.96	0.78	0.84	0.72	0.85
10	0.87	0.86	0.67	0.87	0.69	0.86	0.67	0.69	0.69	1	0.87	0.86	0.63	0.64	0.71	0.76
11	1	0.93	0.93	1	0.84	0.93	0.93	0.84	0.84	0.87	1	0.93	0.81	0.75	0.84	0.81
12	0.93	1	0.91	0.93	0.96	1	0.91	0.96	0.96	0.86	0.93	1	0.80	0.84	0.79	0.88
13	0.80	0.80	0.81	0.81	0.78	0.80	0.81	0.78	0.78	0.63	0.81	0.80	1	0.95	0.70	0.72
14	0.75	0.84	0.77	0.75	0.84	0.84	0.77	0.84	0.84	0.64	0.75	0.84	0.95	1	0.66	0.77
15	0.84	0.79	0.79	0.84	0.73	0.79	0.79	0.72	0.72	0.71	0.84	0.79	0.70	0.66	1	0.91
16	0.81	0.88	0.79	0.81	0.85	0.88	0.79	0.85	0.85	0.76	0.81	0.88	0.72	0.77	0.91	1

Second, the specifications vary whether the model includes the number of policymaking employees and/or the proportion of the workforce in policymaking occupations. Models (3) ($\rho = 0.93$) and (5) ($\rho = 0.84$) exclude the proportion of the workforce in policymaking positions. Models (4) ($\rho = 1$) and (6) ($\rho = 0.93$) exclude the number of policymaking employees. Models (7) ($\rho = 0.93$) and (8) ($\rho = 0.84$) exclude both of these variables. The concern here is that model may bias in favor of agencies that simply have a large number of employees. For example, the Department of Defense may appear to have greater policymaking capacity than the Securities and Exchange Commission simply because it has more people. Figure 5.1 alleviates concerns that the primary specification simply proxies the size of the agency's workforce. Moreover, Table A.3 illustrates the high correlation between models regardless of whether the model includes the number of policymaking employees and/or the proportion of the workforce in policymaking occupations.

Third, we may have concerns that the inclusion of salary incorporates racial and gender biases unrelated to the expertise of these groups. Racial minorities in federal government are systemically underrepresented at higher salary levels.[15] If an agency employs a greater proportion of minorities and the salaries of these minorities are systemically smaller than non-minorities in similar policymaking positions, then the scores may undervalue the relative policymaking capacity of agencies with high levels of minority employment. On the other hand, adequate financial remuneration is necessary for expert civil servants to remain in government service (Downs 1964, Gailmard & Patty 2007, Lewis 2019). To account for this possibility, Models (9) ($\rho = 0.84$) and (10) ($\rho = 0.87$) exclude the salary variable. Again, we observe a high correlation between the primary specification and the specifications that exclude the salary measures.

Fourth, measuring experience as the mean length of service reflects the experience and procedural expertise of the average policymaking employee. Yet this measure may penalize agencies that suddenly hire many policymaking employees. An alternative variable measures the cumulative experience of all policymaking employees. Models (11) ($\rho = 1$) and (12) ($\rho = 0.93$) use this alternative measure. Again, we observe a high correlation between the primary specification and the specifications that uses cumulative experience.

Fifth and finally, the inclusion of research occupations as policymaking employees likely overestimates the involvement of some occupations in policymaking (O.A. 2). For example, the occupational descriptions for medical professionals include individuals who regularly see patients and those who conduct scientific research relevant to various agencies' policymaking activities. Capacity concerns the agency's prospective ability to engage in policymaking. Although physicians in an agency like the Department of Veterans Affairs may not regularly participate in policymaking activities, these individuals could—theoretically—contribute their expertise if called upon to do so. The inclusion of individuals not actively involved in policymaking

[15]"A Revealing Look at Racial Diversity in the Federal Government." *Partnership for Public Service* (Aug. 26, 2021), https://ourpublicservice.org/blog/a-revealing-look-at-racial-diversity-in-the-federal-government.

poses little concern for a measure of prospective capacity. Nevertheless, Models (13) ($\rho = 0.80$) and (14) ($\rho = 0.75$) use a more restrictive classification of policymaking occupations and exclude individuals whose occupations are described as engaged in scientific research (O.A. 2). These specifications have the lowest correlations with the primary specification. However, Table A.8 also shows that these are some of the worst performing measures in the validation exercises.

An alternative way to address this problem is to assume that policymaking employees likely reside in the D.C. metro area. This is a faulty assumption for many agencies, because many agencies have sizeable offices located outside of D.C. metro area. For example, the Centers for Disease Control is headquartered in Atlanta, Georgia—not Washington, D.C. Models (15) ($\rho = 0.84$) and (16) ($\rho = 0.81$) estimate measures on the subset of policymaking employees located in Washington D.C. Again, these measures do not perform well in validation exercises.

A.2.2 Classification of Occupational Codes

This Appendix explains the classification of occupations as policymaking occupations. As described in O.A.1, the policymaking-capacity scores require identifying the portion of the agency's workforce that performs tasks related to policymaking. To identify individuals likely involved in policymaking activities, I code all occupations listed in *The Handbook of Occupational Groups and Families*. The Office of Personnel Management publishes *The Handbook of Occupational Groups and Families*, which provides job descriptions for all occupational codes used by federal agencies. The Office of Personnel Management periodically adjusts these classifications and, therefore, it is necessary to code all of the handbooks published since 1998. OPM graciously provided me with all handbooks published since 1998.[16]

I code each occupation in each handbook for whether the position mentions developing, advising, or researching policy. A position is coded as a policymaking position so long as it appears as a policymaking position in any one of the handbooks.[17] Key phrases include "developing regulations," "planning policies," "advising on programs," "conducting studies related to policy," and other similar language that indicates that the individual participates in policymaking activities. Additionally, I code occupations described as conducting scientific or technical research as policymaking positions, because individuals in these occupations may also contribute to policymaking in more technical agencies. For example, the 2018 *Handbook* describes the "Fish and Wildlife Administration Series" occupation as "cover[ing] all classes of positions that involve professional and scientific work in administering, directing, or exercising administrative and technical control over programs, regulatory activities, projects, or operations that are concerned with the conservation and management of fishery resources, wildlife resources, or fish and wildlife resources." The description does not state that the occupation develops regulations or advises on the creation of new programs. However, agencies like the National Oceanic Atmospheric Administration and the Fish and Wildlife Service enact dozens of regulations a year related to fishing limits. While lawyers may draft these regulations (Walker 2013), they must rely on the technical expertise of individuals in "Fish and Wildlife Administration" occupations to develop the substance of the policies. Exclusion of these scientific and technical positions would exclude a significant source of an agency's technical expertise.

Table A.4 provides two examples of these occupational codes and how they map onto different tasks performed by an agency. The Tax Law Specialist Series performs tasks involving the creation and interpretation of policies. In contrast, the Tax Examining Series performs tasks related to the adjudication of tax returns. By categorizing occupational codes by whether the occupation performs a particular type of task, such as

[16] I received eight handbooks: 1998, 2001, 2002, 2004, 2008, 2009, 2010, 2018.

[17] I do not allow positions to vary across time because OPM updates the handbook infrequently and only after conducting occupational studies about the tasks people in these positions are performing. Accordingly, when OPM updates the handbook to say that a position advises on policy, it is after having already observed people in that position conducting that activity.

Table A.4: Example of Occupational Category from the *Handbook*

Tax Law Specialist Series (0987) This series covers all classes of positions, not classifiable in any other series, the principal duties of which are to administer, supervise, or perform quasi-legal technical tax work requiring analysis and application of tax principles and specialized knowledge of the Internal Revenue Code and related laws, court decisions, regulations, and precedent rulings of the Internal Revenue Service, not requiring legal training equivalent to that represented by graduation from a recognized law school; in such functions as: (1) interpreting the Internal Revenue Code, related laws, regulations, rulings, and precedents; (2) preparing regulations, rulings, and technical guides; and (3) making or reviewing determinations and decisions in such matters.
Tax Examining Series (0592) This series covers all positions the paramount duties of which are to perform or supervise work in the Internal Revenue Service involving the processing of original tax returns, establishing tax account records or changing such records based on later information affecting taxes and refunds; collecting some taxes and/or obtaining tax returns; computing or verifying tax, penalty and interest; and determining proper tax liability. This work requires knowledge of standardized processing and collection procedures to record tax information and knowledge of applicable portions of tax laws and tax rulings to accept, request proof of or reject a variety of taxpayer claims, credits and deductions.

Descriptions from the December 2018 *Handbook of Occupational Groups and Families*.

policymaking or adjudication, we can attain estimates of policymaking capacity attuned to particular tasks.

The following tables list all agencies classified as policymaking positions.

Table A.5: Occupations Coded as Policymaking Positions

Correctional Institution Administration Series	Paralegal Specialist Series
Bond Sales Promotion Series	Pension Law Specialist
Safety and Occupational Health Management	Tax Law Specialist
Community Planning Series	Social Insurance Claims Examining Series
Environmental Protection Specialist Series	Public Affairs Series
Chaplain Series	Art Specialist Series
Security Administration Series	Writing and Editing Series
Fire Protection and Prevention Series	Technical Writing and Editing Series
Social Insurance Administration Series	Contracting Series
Unemployment Insurance Series	Agricultural Program Specialist Series
Health Insurance Administration Series	Industrial Specialist Series
Foreign Affairs Series	Crop Insurance Administration Series
International Relations Series	Housing Management Series
International Cooperation Series	Patent Classifying Series
Manpower Research and Analysis	Librarian Series
Manpower Development Series	Actuary Series
Civil Rights Analysis Series	Printing Management Series
Archaeology Series	Training Instruction Series
Personnel Management Series	Vocational Rehabilitation Series
Military Personnel Management Series	Education Program Series
Position Classification Series	Public Health Educator Series
Occupational Analysis Series	Education Services Series
Labor Relations Series	Instructional Systems Series
Apprenticeship and Training Series	Air Safety Investigating Series
Wage and Hour Compliance Series	Mine Safety and Health Series
Equal Employment Opportunity Series	Aviation Safety Series
Federal Retirement Benefits Series	Alcohol, Tobacco and Firearms Inspection Series
Management and Program Analysis Series	Quality Assurance Series
Management and Program Clerical and Assistance	Transportation Industry Analysis Series
Logistics Management Series	Railroad Safety Series
Telecommunications Series	Motor Carrier Safety Series
Rangeland Management Series	Highway Safety Series
Financial Management Series	Traffic Management Series
Accounting Series	Air Traffic Control Series
Auditing Series	Aircraft Operation Series
Budget Analysis Series	Human Resources Management Series
Dietitian and Nutritionist Series	Tax Specialist Series
Speech Pathology and Audiology Series	Railroad Retirement Claims Examining Service
Medical Records Administration Series	Information Technology Management Series
Prosthetic Representative Series	Printing Services Series
Hospital Housekeeping Management Series	Equipment Services Series
Public Health Program Specialist Series	Employee Benefits Law Series
Sanitarian Series	Workforce Research and Analysis Series
Consumer Safety Series	Workforce Development Series
Aerospace Engineering Series	Environmental Engineering Series
Welding Engineering Series	Mine Safety and Health Inspection Series
Industrial Engineering Technician Series	Wage and Hour Investigation
General Attorney Series	Grants Management
Government Information	Dietetics and Nutrition Series

Table A.6: Occupations Coded as Policymaking Positions for Scientific or Technical Expertise

Safety Technician Series	Computer Engineering Series
Community Planning Technician Series	Electronics Engineering Series
Foreign Law Specialists	Biomedical Engineering Series
Social Science Series	Naval Architecture Series
Economist Series	Mining Engineering Series
Economics Assistant Series	Petroleum Engineering Series
Intelligence Series	Agricultural Engineering Series
Intelligence Aide and Clerk Series	Chemical Engineering Series
Foreign Agricultural Affairs Series	Industrial Engineering Series
Geography Series	Museum Curator Series
History Series	Trade Specialist Series
Psychology Series	Agricultural Marketing Series
Psychology Aide and Technician Series	Agricultural Market Reporting Series
Sociology Series	Financial Analysis Series
Social Work Series	Insurance Examining Series
General Anthropology Series	Loan Specialist Series
Equal Opportunity Compliance Series	General Physical Science Series
General Biological Science Series	Health Physics Series
Microbiology Series	Physics Series
Biological Science Technician Series	Geophysics Series
Pharmacology Series	Hydrology Series
Agricultural Extension Series	Hydrologic Technician Series
Ecology Series	Chemistry Series
Zoology Series	Metallurgy Series
Physiology Series	Astronomy and Space Science Series
Entomology Series	Meteorology Series
Toxicology Series	Geology Series
Plant Protection Technician Series	Oceanography Series
Botany Series	Navigational Information Series
Plant Pathology Series	Cartography Series
Plant Physiology Series	Geodesy Series
Plant Protection and Quarantine Series	Geodetic Technician Series
Horticulture Series	Forest Products Technology Series
Genetics Series	Food Technology Series
Rangeland Technician Series	Textile Technology Series
Forestry Series	Photographic Technology Series
Forestry Technician Series	Operations Research Series
Soil Science Series	Mathematics Series
Agronomy Series	Mathematics Technician Series
General Fish and Wildlife Administration Series	Mathematical Statistician Series

Table A.7: Occupations Coded as for Scientific or Technical Expertise

Fishery Biology Series	Statistician Series
Wildlife Refuge Management Series	Statistical Assistant Series
Wildlife Biology Series	Cryptography Series
Animal Science Series	Computer Science Series
Budget Clerical and Assistance Series	Equipment Specialist Series
General Health Science Series	Education Research Series
Medical Officer Series	Game Law Enforcement Series
Nurse Series	Consumer Safety Inspection Series
Occupational Therapist Series	General Natural Resources Management and Biological Sciences Series
Medical Technologist Series	Fish and Wildlife Administration Series
Medical Technician Series	Fish Biology Series
Pharmacist Series	Industrial Engineering Technical
Optometrist Series	General Mathematics and Statistics
Podiatrist Series	Mathematical Statistics
Medical Records Technician Series	Statistics
Dental Officer Series	Safety Engineering Series
Industrial Hygiene Series	Landscape Architecture
General Engineering Series	Architecture Series
Fire Protection Engineering Series	Bioengineering and Biomedical Engineering
Material Engineering Series	Investigative Analysis
Civil Engineering Series	General Medical and Healthcare Series
Environmental Engineering Series	Physician Series
Mechanical Engineering Series	Clinical Laboratory Science Series
Nuclear Engineering Series	Pharmacy Series
Electrical Engineering Series	Optometry Series
Dentistry Series	Podiatry Series

A.2.3 Validation with Survey Measures

This Appendix validates the different model specifications against civil-servant perceptions of agency capacity. One means of assessing validity is to compare the policymaking-capacity scores to alternative measures of policymaking capacity (Adcock & Collier 2001). Of course, one difficulty with this form of validation is the lack of alternative measures for comparison. If great alternatives to the policymaking-capacity scores existed, we would not need to develop new measures. Nevertheless, I compare the measures with agency-aggregated responses to certain questions on the Federal Employee Viewpoint Survey (FEVS) that tap concepts related to policymaking capacity. An important caveat to this exercise: The FEVS asks questions of *all agency employees*. The survey does not include a variable that would allow scholars to subset the data to policymaking employees. While we should expect a positive correlation between perceptions of capacity and policymaking capacity, these correlations may be weaker than if FEVS surveyed just policymaking employees.[18]

The Office of Personnel Management has administered the FEVS annually since 2010.[19] Many of the questions relate to the recruitment, training, and organization of the workforce.[20] For each agency, I measure the proportion of respondents who "strongly agree" or "agree" with the following statements: (1) "The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals" (Mean: 0.74,

[18]Likewise, it is inappropriate to include average responses to the FEVS in estimating the policymaking-capacity scores.

[19]OPM administers the FEVS between April and July. The FEVS began as the Federal Human Capital Survey (FHCS) in 2002. OPM fielded the FHCS in 2002, 2004, 2006, and 2008.

[20]Office of Personnel Management. "About." https://www.opm.gov/fevs/about/

SD: 0.09), (2) "Employees in my work unit share job knowledge with each other" (Mean: 0.75, SD: 0.06), (3) "Managers support collaboration across work units to accomplish work objectives" (Mean: 0.60, SD: 0.09), (4) "The people I work with cooperate to get the job done" (Mean: 0.77, SD: 0.06), (5) "My work unit is able to recruit people with the right skills" (Mean: 0.47, SD: 0.11), and (6) "Employees in my work unit produce high-quality work." (Mean: 0.51, SD: 0.10).[21] The first question taps the expertise and skills of the agency's workforce. The next three questions tap different attributes of workforce teamwork and organization. Ensuring a positive correlation with these attributes is particularly important since the measures do include a direct measure of team production. The fifth question taps workforce recruitment and retention. The final question measures the performance of employees within the agency. For all survey questions, there should be a positive correlation between the policymaking-capacity scores and the survey questions.

Table A.8: Correlations Between Scores and FEVS Questions

	Sufficient Knowledge	Share Knowledge	Collaboration	Cooperate	Recruit	Quality	Avg.
1	0.32	0.33	0.33	0.37	0.49	0.41	0.38
2	0.33	0.31	0.28	0.36	0.50	0.41	0.36
3	0.30	0.30	0.25	0.32	0.51	0.38	0.34
4	0.32	0.33	0.33	0.37	0.49	0.41	0.38
5	0.30	0.28	0.21	0.30	0.50	0.37	0.33
6	0.33	0.31	0.28	0.36	0.50	0.41	0.36
7	0.30	0.30	0.25	0.32	0.51	0.38	0.34
8	0.30	0.28	0.21	0.30	0.50	0.37	0.33
9	0.30	0.28	0.21	0.30	0.50	0.37	0.33
10	0.32	0.31	0.34	0.37	0.41	0.40	0.36
11	0.32	0.33	0.33	0.37	0.49	0.41	0.38
12	0.33	0.31	0.28	0.36	0.50	0.41	0.36
13	0.28	0.32	0.26	0.34	0.48	0.36	0.34
14	0.30	0.31	0.23	0.33	0.47	0.36	0.33
15	0.29	0.32	0.26	0.32	0.46	0.34	0.33
16	0.32	0.32	0.24	0.32	0.48	0.36	0.34

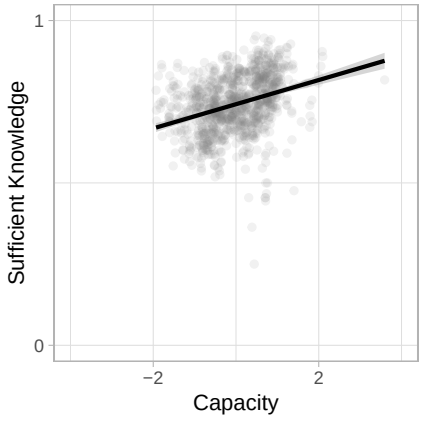
Table A.8 reports the correlations between the scores attained from each model specification (Table A.2) and the FEVS questions. As expected, all scores exhibit moderate, positive correlations with the FEVS questions. Again, it unsuprising that these correlations are not stronger. The FEVS surveys all civil servants, including enforcement officers, adjudicators, and office staff. These individuals do not work in policy shops and, therefore, their aggregated responses only reflect the average level of teamwork, recruitment, and work quality across all tasks performed by the agency. Aggregate responses of agencies with a high-capacity policy unit may be distorted by the presence of a low-capacity enforcement unit. Nevertheless, it is equally

[21] I chose these questions because they (1) capture different characteristics of workforce organization, (2) these characteristics are those commonly described as important within the literature on bureaucratic capacity, and (3) these questions have been asked consistently across time.

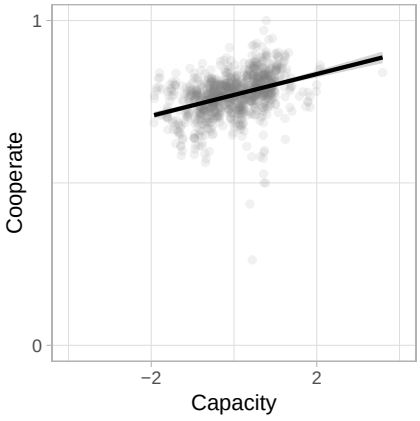
unsurprising that agencies with higher organizational capacity overall exhibit higher levels of policymaking capacity. Model (1)—the primary specification—and models correlated with Model (1) at $\rho > 0.99$ have the highest correlations with the FEVS questions.

Collectively, these correlations suggest that the policymaking-capacity scores capture the key component of an agency's policymaking capacity. According to these survey responses, agencies with higher policymaking-capacity scores exhibit greater knowledge, engage in more team work, and produce higher quality work. These results alleviate concerns that the policymaking-capacity scores fail to tap a key attribute of policymaking capacity.

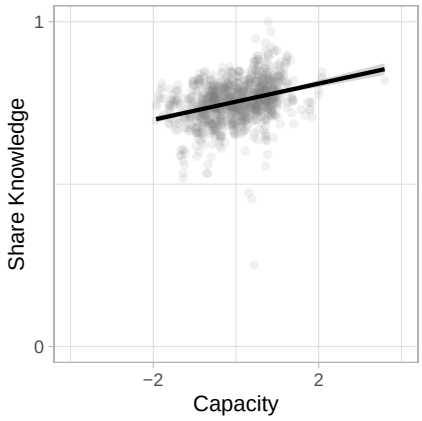
Figure A.1: Relationships between Model (1) and FEVS Questions



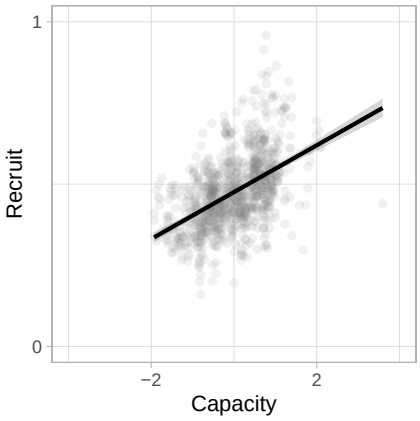
Workforce Has Sufficient Knowledge



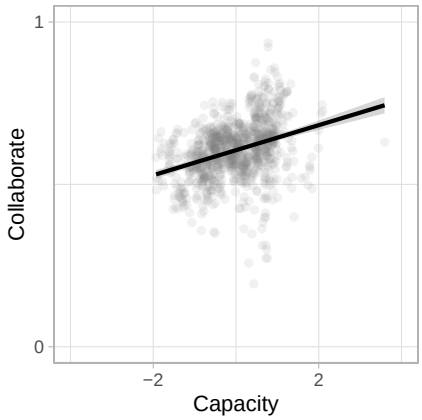
Coworker Cooperate



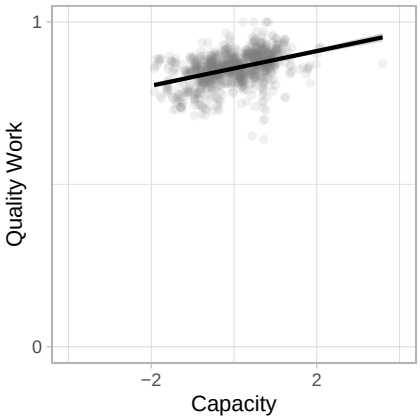
Employees Share Knowledge



Able to Recruit



Managers Support Collaboration



Produce High-Quality Work

A.2.4 Validation with Rulemaking Data

This Appendix assess the construct validity of the policymaking-capacity scores to determine whether the scores capture the policymaking capabilities of the agency. As policymaking capacity describes the ability of agencies to produce policy, the same agency should produce more policy when it has higher levels of policymaking capacity. I test the validity of the policymaking-capacity scores in the rulemaking context.

Using the *Unified Agenda* from fiscal years 2002–2021, I create a panel data set of the number of rules finalized by each agency during each presidential term.[22] To check for potential errors (O'Connell 2009, Nou & Stiglitz 2016), I compare the *Unified Agenda* to the *Federal Register*. I test the effect of policymaking capacity on two measures of rulemaking production: (1) the total number of rules finalized during the term (Mean: 401.1, SD: 455.88 and (2) the total number of economically significant rules finalized during the term (Mean: 9.12, SD: 10.72).[23] Economically significant rules require agencies to engage in additional analyses and, therefore, expend additional resources (Bolton, Potter & Thrower 2015, Potter 2019). Therefore, the relationship between the scores and the number of economically-significant rules provides an important test of the measures. For each agency–term, I measure capacity in the fall before the start of the next presidential administration. If the policymaking-capacity scores adequately capture the agency's ability to produce policy, then we should observe a positive effect of capacity on the total number of completed rules.

I estimate the model using a within-estimator.[24] For each dependent variable, I estimate both a bivariate model and a model with controls traditionally included by other scholars studying rulemaking (Potter 2019).

Table A.9 reports the results. In all models, capacity has a positive and statistically significant effect on the number of rules the agency completes during a president's term. A one-unit increase in capacity increases rulemaking output within an agency by 31 total rules and 2 economically-significant rules. This analysis illustrates that the policymaking-capacity scores measure the ability of an agency to produce policy. As policymaking capacity increases within an agency, the agency produces more rulemakings. Recall, however, that the policymaking-capacity scores were not designed to target rulemaking specifically. Therefore, the utility of these measures should extend to other forms of administrative policymaking.

[22] I exclude any agency that promulgated no rules during this period based on the assumption that these agencies either lack statutory authority to engage in rulemaking or choose to create policy through some alternative process.

[23] I paired each agency with its relevant RIN code. For the Environmental Protection Agency and the Department of Energy, I created new RIN codes since each subcomponent of those agencies has a unique RIN but the agency has only one policymaking-capacity score.

[24] Since the model includes agency fixed-effects, collinearity prevents the inclusion of stable agency characteristics, such as agency independence.

Table A.9: Model Estimates of Effect of Capacity on Rule Output

	Rules Finalized		Significant Rules Finalized	
	(1)	(2)	(3)	(4)
Capacity	26.78*	31.15**	1.65*	1.95*
	(11.23)	(11.86)	(0.76)	(0.86)
Politicization		−19.06		−1.22
		(31.73)		(1.74)
Opposed		25.04**		1.01**
		(8.67)		(0.38)
Agency Fixed Effects	✓	✓	✓	✓
President Fixed Effects		✓		✓
Observations	812	764	812	764
R^2	0.01	0.14	0.01	0.08

Note: *p<0.05; **p<0.01; ***p<0.001
Standard errors clustered at agency level.

A.2.5 Structural Independence and Policymaking Capacity

This Appendix provides additional information about the measures in the structural-independence analysis and two robustness checks for the relationship between structural independence and policymaking capacity.

Age (Hundreds of Years) is measured by subtracting the year corresponding to the policymaking-capacity score from the year Congress created each agency. I use the *Sourcebook of United States Executive Agencies* to identify the year Congress created each agency (Selin & Lewis 2018).

A.2.5.1 Estimates on Subsets of Agencies

This first robustness check examines whether the results for structural independence hold for two subsets of agencies: (1) bureaus within the fifteen executive departments and (2) independent agencies. I include an agency within the department subset if it is a bureau within one of the fifteen executive departments. I include an agency within the independent subset if it is not a bureau within one of the fifteen executive departments. As with the specifications in the main article, I control for the age of the agency (in hundreds of years) because newer agencies have had less time to build capacity than older agencies. Finally, I include year fixed effects to account for time trends that influence policymaking capacity in all agencies. The model is estimated using an OLS regression with standard errors clustered at the agency level.

Table A.10 reports the results. Recall from the main analysis that a one-unit increase in decision-maker independence increases an agency's policymaking-capacity score by 0.24. The result is substantively the

Table A.10: Model Estimates of Effect of Independence on Capacity, Agency Subsets

	Policymaking Capacity			
	(1)	(2)	(3)	(4)
Decision-Maker Independence	0.29***		0.31**	
	(0.04)		(0.11)	
Political-Review Independence		0.06**		0.17**
		(0.02)		(0.06)
Age (Hundreds of Years)	−0.30***	−0.27***	−0.14	−0.21
	(0.02)	(0.02)	(0.36)	(0.33)
Constant	0.00	−0.18***	−0.27	−0.06
	(0.06)	(0.05)	(0.16)	(0.13)
Year Fixed Effects	✓	✓	✓	✓
Observations	3,405	3,405	1,293	1,293
R^2	0.08	0.07	0.18	0.18

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001

same for both agency subsets. However, we observe significant differences in the effect of political-review independence between the department agencies and the independent agencies. Recall from the main analysis that a one-unit increase in political-review independence increases an agency's policymaking-capacity score by 0.19. For both the department-agency and independent-agency subsets, the estimated effect remains statistically significant and positive. However, the effect is substantively smaller for the department-agency subset. This difference is attributable to the relative lack of variation in political-review independence (SD: 0.48) compared to the independent-agency subset (SD: 1.31). Overall, the results suggest that structural independence is important for the capacities of both independent agencies and agencies within the executive departments.

A.2.5.2 Alternative Measure of Independence

As an alternative to Selin's (2015) measures, I estimate the model using an indicator for whether the agency is classified as an independent regulatory commission or board in the *Sourcebook of United States Executive*

Table A.11: Model Estimates of Effect of Independence Commissions on Capacity

	Policymaking Capacity
Independent Commission	0.53^{***}
	(0.11)
Age (Hundreds of Years)	-0.19^{*}
	(0.08)
Constant	-0.20^{***}
	(0.06)
Year Fixed Effects	✓
Observations	5,574
R^2	0.12

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001

Agencies (Selin & Lewis 2018).[25] Scholars generally describe this class of independent agencies as possessing greater autonomy than other agencies (Devins & Lewis 2008, Hickman 2018, Selin 2015). Therefore, if the theory holds true, then we should expect that these agencies have higher levels of policymaking capacity relative to other agencies.

Table A.11 reports the results. As anticipated independent commissions have far higher levels of policymaking capacity than other agencies. On average, independent commissions are almost a standard deviation higher in policymaking capacity than other agencies. The estimated effect is far greater than the effects of either decision-maker independence or political-review independence, demonstrating the robustness of these findings to alternative measures of structural independence.

[25]The following agencies within the data set are classified as independent commissions: Consumer Financial Protection Bureau, Chemical Safety and Hazard Investigation Board, Commodity Futures Trading Commission, Consumer Product Safety Commission, the Defense Nuclear Facilities Safety Board, Election Assistance Commission, Equal Employment Opportunity Commission, Farm Credit Administration, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Election Commission, Federal Labor Relations Authority, Federal Maritime Commission, Federal Mine Safety and Health Review Commission, Federal Retirement Thrift Investment Board, Federal Trade Commission, Inter-American Foundation, Merit Systems Protection Board, National Credit Union Administration, National Mediation Board, National Labor Relations Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Privacy and Civil Liberties Oversight Board, Railroad Retirement Board, Securities and Exchange Commission, Surface Transportation Board, and United States International Trade Commission.

A.2.6 Politicization and Policymaking Capacity

This Appendix provides a greater discussion of the politicization analysis and offers three robustness checks.

All models presented in the main text and this paper include agency fixed effects because the theory concerns changes *within* an agency. Cross-sectional results produce the opposite of the hypothesized effect. Exclusion of agency fixed effects results in a positive coefficient on politicization. In other words, policymaking capacity appears to increase as politicization increases. This effect is driven by the fact that independent agencies have relatively high levels of politicization and high levels of capacity.

A.2.6.1 Estimates on Subsets of Agencies

This first robustness check examines whether the results for structural independence hold for two subsets of agencies: (1) bureaus within the fifteen executive departments and (2) independent agencies (O.A. 5). As in the main analysis, I control for the agency's age and estimate the model using a within estimator with clustered standard errors.

Table A.12: Model Estimates of Effect of Politicization on Capacity, Agency Subsets

	Policymaking Capacity			
	(1)	(2)	(3)	(4)
Politicization	-0.23^{**}	-0.22^{**}	0.19^{*}	0.19^{*}
	(0.08)	(0.08)	(0.07)	(0.08)
Opposed		0.03^{*}		-0.01
		(0.01)		(0.03)
Politicization × Opposed		-0.15		-0.04
		(0.08)		(0.18)
Age (Hundreds of Years)	2.43^{***}	2.41^{***}	1.87^{***}	1.87^{***}
	(0.16)	(0.16)	(0.27)	(0.27)
Agency Fixed Effects	✓	✓	✓	✓
Year Fixed Effects	✓	✓	✓	✓
Observations	4,066	4,066	1,038	1,038
R^2	0.28	0.28	0.43	0.43

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001

Table A.12 reports the results. The result for agencies within the executive departments is substantively the same as the main analysis. However, the results do not hold for independent agencies. Within independent agencies, politicization has a positive and statistically significant effect on policymaking capacity. The results suggest that structural independence plays a significant role in preventing the erosion of bureaucratic capacity by politicization. Many of these independent agencies have partisan-balancing requirements (Selin 2015).

Partisan balancing may temper ideological pressures on civil servants in the agency, preventing the deleterious effects that occur from the politicization of agencies within the executive departments.

A.2.6.2 Two-Way Fixed Effects

The second robustness check uses a two-way fixed effects estimator to estimate the effect of politicization within agencies over time. This specification cannot include any measure for ideological alignment between the president and agency due to colinearity. Table A.13 demonstrates that the effect of politicization is robust to this estimator.

Table A.13: Model Estimates of Effect of Politicization on Capacity, Two-Way Fixed Effects

	Policymaking Capacity
Politicization	-0.18^{*}
	(0.08)
Opposed	2.53^{***}
	(0.14)
Two Way Fixed Effects	✓
Observations	5,104
R^2	0.02

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001

A.2.6.3 Alternative Measure of Ideology

The third and final robustness check substitutes the indicator of ideological opposition for a continuous measure of ideological distance from the president. The measure is constructed using the Richardson, Clinton, and Lewis (2017) ideology measures (Mean: 1.99, SD: 1.05). This measure assumes that the sitting president is more liberal (conservative) than the most liberal (conservative) agency. An agency with an ideological distance of zero is the closest agency to the president. Table A.14 reports the result. The interaction term has a negative coefficient smaller than $\beta < -0.01$. Therefore, this alternative measure does not provide meaningful support for the theorized interaction between politicization and ideological distance.

A.3 Chapter 6 Appendix

A.3.1 Estimated Effects by Presidency

Table A.14: Model Estimates of Effect of Politicization on Capacity, Ideological Distance

	Policymaking Capacity
Politicization	-0.17^{*}
	(0.08)
Ideological Distance	0.01^{*}
	(0.00)
Politicization × Ideological Distance	-0.00
	(0.05)
Age (Hundreds of Years)	2.52^{***}
	(0.14)
Agency Fixed Effects	✓
Year Fixed Effects	✓
Observations	5,104
R^2	0.30

Note: Standard errors clustered at agency level. *p<0.05; **p<0.01; ***p<0.001

Table A.15: Estimated Days to Rulemaking Finalization By President: First Terms of the Bush, Obama, and Trump Administrations

	Hazard Rate of Finalization		
	(1)	(2)	(3)
Capacity	0.79	0.98^{**}	0.20
	(0.47)	(0.33)	(0.40)
Ideological Distance	0.04	-0.10	-0.05
	(0.12)	(0.09)	(0.14)
Capacity × Ideological Distance	-0.20	-0.19	0.12
	(0.15)	(0.11)	(0.15)
Independence	-0.14	-0.06	-0.06
	(0.17)	(0.13)	(0.17)
Capacity × Independence	-0.13	-0.36^{*}	-0.20
	(0.19)	(0.17)	(0.16)
Workload	0.03	0.05	0.02
	(0.09)	(0.12)	(0.10)
Contractors	-0.03	-0.09	-0.06
	(0.05)	(0.05)	(0.04)
President	Bush	Obama	Trump
Capacity (Wald P-Value)	0.316	0.022^{*}	0.299
Ideological Distance (Wald P-Value)	0.162	0.05	0.705
Independence (Wald P-Value)	0.553	0.031^{*}	0.32
Estimator	Cox	Cox	Cox
N	1,685	1,846	1,621

*p < .05; **p < .01; ***p < .001
HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

Table A.16: Estimated Significant NPRMs by Presidency: First Terms of the Bush, Obama, and Trump Administrations

	Number of Significant NPRMs		
	(1)	(2)	(3)
Capacity	−1.59	19.33	4.88
	(9.52)	(12.46)	(5.14)
Ideological Distance	11.51*	−7.16	1.82
	(4.77)	(4.14)	(1.76)
Capacity × Ideological Distance	3.99	−1.51	0.45
	(4.09)	(4.50)	(2.26)
Independence	−4.29	0.61	0.24
	(3.18)	(3.45)	(2.08)
Capacity × Independence	−2.03	−6.89	−5.49*
	(5.09)	(5.45)	(2.68)
Workload	15.05***	12.91***	8.31***
	(3.48)	(3.47)	(1.77)
Contractors	3.19*	2.28	1.14
	(1.58)	(1.52)	(0.80)
Obama	−47.08**	−6.89	−16.19*
	(17.92)	(4.57)	(7.58)
President	Bush	Obama	Trump
Capacity (Wald P-Value)	0.573	0.085	0.15
Ideological Distance (Wald P-Value)	0.086	0.157	0.554
Independence (Wald P-Value)	0.294	0.523	0.115
Estimator	OLS	OLS	OLS
N	112	120	126
R-Squared	0.42	0.31	0.38

*p $<$ .05; **p $<$ .01; ***p $<$ .001

HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

A.3.2 Estimated Effects with Duration Measured Beyond First Term

Table A.17: Estimated Days to Rulemaking Finalization: First Terms of the Bush, Obama, and Trump Administrations

	Hazard Rate of Finalization
Capacity	0.63^{***}
	(0.18)
Ideological Distance	-0.003
	(0.04)
Capacity $\times$ Ideological Distance	-0.10^{*}
	(0.04)
Independence	-0.05
	(0.12)
Capacity $\times$ Independence	-0.24^{**}
	(0.08)
Workload	-0.04
	(0.08)
Contractors	0.14
	(0.08)
Obama	0.03
	(0.09)
Trump	-0.03
	(0.03)
Capacity (Wald P-Value)	0.002^{**}
Ideological Distance (Wald P-Value)	0.051
Independence (Wald P-Value)	0.009^{**}
Estimator	Cox
N	5,152

$^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

A.3.3 Estimated Effects on Subset of Priority Agencies

One possible concern is that the sample of rulemakings in this study is broader than rulemakings related to presidential priorities. Controlling for priority, however, may threaten inference in this study. If presidents consider bureaucratic capacity in selecting policy priorities during their campaign, then no suitable measure of presidential priority may exist. Admittedly, this seems unlikely. Presidents' campaign priorities are shaped by the public's policy interests rather than concerns about agency management (Hill 1998, Jacobs & Shapiro 1994, Panagopoulos 2012). Moreover, it is unclear that presidents have a good understanding of the health of the administrative state prior to entering office. Presidents may observe fuzzy signals, such as government failures, about an agency's capability of implementing policy. However, those same failures are likely a source of presidential priorities. Yet given concerns about post-treatment bias, I do not include this analysis in the main results, and I produce it with some trepidation.

I estimate models on a subset of agencies tasked with administering policies related to the president's priorities. To measure priority, I code each agency for whether the president mentioned a policy related to the agency's jurisdiction in their first speech before Congress. This first speech occurs shortly after the inauguration and reflects the priorities presidents discuss on the campaign trail (Krause & O'Connell 2019).[26] Within the rulemaking data, the correlation between priority and policymaking capacity is -0.24. If presidents were prioritizing higher capacity agencies, we would expect this coefficient to be positive. This alleviates some concerns that presidents are selecting high-capacity agencies.

The tables below report the results. As expected, they are consistent with the main results.

A.4 Chapter 7 Appendix

A.4.1 Data Assembly and Codebook

The following Appendix describes the assembly of the two main datasets for the empirical analyses performed in Part III: (1) the removal-proceedings dataset and (2) the individual hearings dataset. I use the procedures described by Kim and Semet as a guide in assembling the data (Kim & Semet 2020). The majority of the data comes from the Executive Office of Immigration Review's (EOIR) Case Data (April 2022). The data is supplemented with data from other sources for independent variables and control variables. EOIR's Case Data includes dozens of files that require meticulous assembly. The assembly of the data follows the recommendations of Kim and Semet. Additional instruction comes from questions submitted to EOIR via FOIA reques

[26] This subset cannot convincingly test the importance of presidential control in the rulemaking process. Because presidents overwhelmingly prioritize policies related to the jurisdictions of the executive departments, this subset is biased toward agencies exhibiting higher levels of presidential control.

Table A.18: Estimated Days to Rulemaking Finalization for Priority Agencies: First Terms of the Bush, Obama, and Trump Administrations

	Hazard Rate of Finalization			
	(1)	(2)	(3)	(4)
Capacity	0.30^{*}	0.59^{**}	0.41^{*}	0.63^{**}
	(0.14)	(0.21)	(0.18)	(0.23)
Ideological Distance	0.01	0.04	0.01	0.04
	(0.05)	(0.05)	(0.05)	(0.05)
Capacity × Ideological Distance		−0.14		−0.12
		(0.08)		(0.07)
Independence	-0.56^{***}	-0.54^{**}	-0.49^{*}	-0.49^{*}
	(0.16)	(0.17)	(0.20)	(0.20)
Capacity × Independence			−0.14	−0.10
			(0.16)	(0.15)
Workload	0.13	0.12	0.12	0.12
	(0.09)	(0.09)	(0.09)	(0.09)
Contractors	−0.02	−0.01	−0.03	−0.02
	(0.03)	(0.03)	(0.03)	(0.03)
Obama	0.001	−0.02	0.01	−0.02
	(0.12)	(0.13)	(0.12)	(0.13)
Trump	0.27^{**}	0.31^{**}	0.26^{*}	0.30^{**}
	(0.10)	(0.11)	(0.10)	(0.11)
Capacity (Wald P-Value)	–	0.014^{*}	0.06	0.045^{*}
Ideological Distance (Wald P-Value)	–	0.099	–	0.11
Independence (Wald P-Value)	–	–	$< 0.001^{***}$	0.001^{**}
Estimator	Cox	Cox	Cox	Cox
N	3,937	3,937	3,937	3,937

$^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

Table A.19: Estimated Significant NPRMs for Priority Agencies: First Terms of the Bush, Obama, and Trump Administrations

	Number of Significant NPRMs			
	(1)	(2)	(3)	(4)
Capacity	10.43	21.37*	14.01*	13.69
	(5.63)	(9.79)	(6.11)	(7.41)
Ideological Distance	0.21	0.33	0.58	0.63
	(0.98)	(1.22)	(1.20)	(0.85)
Capacity × Ideological Distance		−4.67		−0.66
		(2.50)		(1.39)
Independence	−3.36	−4.20	−2.60	−1.57
	(5.41)	(5.51)	(5.46)	(2.39)
Capacity × Independence			−5.13	−7.20
			(5.77)	(3.69)
Workload	15.23***	14.12***	14.08***	11.94***
	(3.73)	(3.43)	(3.42)	(2.75)
Contractors		2.44	2.17	1.81
		(1.38)	(1.37)	(1.03)
Obama	−6.26*	−7.63*	−6.37*	−3.46
	(2.65)	(3.15)	(2.96)	(2.29)
Trump	−8.93**	−9.60**	−10.86**	−10.62***
	(2.96)	(3.33)	(3.56)	(3.02)
Constant	−12.36*	−14.81*	−15.38*	−11.71*
	(5.93)	(7.50)	(7.43)	(5.90)
Capacity (Wald P-Value)	–	0.027*	0.009**	0.011*
Ideological Distance (Wald P-Value)	–	0.258	–	0.756
Independence (Wald P-Value)	–	–	0.489	0.013*
Estimator	OLS	OLS	OLS	OLS
N	263	249	249	358
R-Squared	0.35	0.36	0.35	0.32

*p $<$ .05; **p $<$ .01; ***p $<$ .001

HC1-type heteroskedastic-consistent standard errors clustered at the agency level. Joint hypothesis tests performed using the Wald test.

A.4.1.1 Assembly of the Removal-Proceedings Dataset

Assembly of the removal-proceedings dataset proceeds as follows. Individual characteristics of the respondent are extracted from the case file in EOIR's Case Data. This data is subset to only removal cases. Dates, outcomes, and the name of the IJ who decided the case are extracted from the proceedings file and merged with the respondent characteristics.

Each row in the dataset is the first outcome in a removal proceeding. In EOIR's Case Data, an individual removal proceeding may include multiple entries because of transfers and remands from appeals. The results in these cases are not representative of the Immigration Judge's (IJ) discretion and, instead, are influenced by other factors. First, the dataset excludes any entry that ended in a transfer to another Immigration Court because it does not result in a substantive outcome for the removal proceeding. Second, the dataset excludes any removal proceeding where the IJ ordered the individual removed in absentia. When an individual fails to appear before an IJ for a scheduled removal proceeding, IJs have little discretion to afford relief to the individual. Third, for each removal proceeding, I subset the data to include the first entry that resulted in a substantive outcome. Outcomes in cases decided on remand are a function of the appellate decision and, therefore, constrain the discretion of the IJ. Fourth, I include only cases categorized as the "lead" case in a removal proceeding and exclude any "rider" cases associated with the lead case. In general, rider cases involve immediate family members of the lead case. The outcomes in these "rider" cases are generally determined by the outcome of the lead case.

Several other categories of cases are excluded from the dataset to strengthen the reliability of the empirical estimates and remove outliers that are likely to bias the estimated treatment effects. First, the dataset excludes any cases completed before 2004. The Homeland Security Act of 2002 reorganized the U.S. immigration system in ways that may affect the comparability of pre-Act cases to post-Act cases. Second, I exclude any case heard by an IJ located in Falls Church, Virginia. EOIR's headquarters are in Falls Church. It is not possible to attain a reliable estimate of the number of law clerks assigned to each IJ seated in Falls Church because the law-clerk data does not disaggregate between clerks working for the Falls Church Immigration Court, the Board of Immigration Appeals, and EOIR's headquarters. Accordingly, estimates of the number of law clerks assigned to each IJ working in Falls Church far exceed the actual number assigned to these IJs.

The removal-proceedings dataset includes two dependent variables of interest:

Removed:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.77)

Whether the IJ ordered the removal of the respondent. Removed takes a value of "1" if the IJ ordered the respondent removed, excluded, or deported. It also takes a value a "1" if the IJ granted a request for voluntary

departure. Removed takes a value of "0" if the IJ admitted the respondent, granted relief, or terminated or closed the case.

Asylum Granted:

(Indicator Variable) (Min: 0, Max: 1, Mean: 0.34)

Whether the IJ granted the respondent's asylum application. Asylum Granted takes a value of "1" if the IJ issued a grant or conditional grant of the asylum application. Asylum Granted takes a value of "0" if the IJ denied the application or the respondent withdrew the application.

A.4.1.2 Assembly of Individual-Hearings Dataset

Assembly of the individual-hearings dataset proceeds as follows. The dataset of individual hearings uses the schedule dataset from EOIR's Case Data. This dataset is subset to individual-merits hearings. The individual-hearings dataset includes one dependent variable of interest:

Hearing Duration (Hours):

(Continuous Variable) (Min: 0, Max: 14, Mean: 2.60, SD: 1.08)

The duration of an individual hearing as measured in number of hours. The length of the hearing is calculated by subtracting the end time of the hearing from the start time of the hearing.

A.4.1.3 Ratio of Law Clerks to Immigration Judges

The primary independent of interest in all analyses is the number of law clerks assigned to each IJ. I submitted a Freedom of Information Act request to the Office of Personnel Management (OPM) for all personnel records of EOIR from Fiscal Year 1998 to Fiscal Year 2022. OPM returned over 32,000 personnel records retrieved from its Enterprise Human Resources Integration database. These records are reported as of September each year. The personnel records are anonymized but include the duty station of each employee and their position. Therefore, it is possible to estimate the number of law clerks assigned to each IJ for each Immigration Court i in Year t using the following formula:

$$Ratio_{it} = \frac{\Sigma Clerk_{it}}{\Sigma IJ_{it}} \tag{A.60}$$

where an individual is classified as a "clerk" if they are in a "law clerk" occupation (Occupational Code: 0904) or a "general attorney" occupation (Occupational Code: 0905). The number of IJs working in an Immigration Court is identified using a pay schedule because IJs are on a separate pay schedule from other

EOIR employees. Using this measure for the law clerks assumes that an Immigration Court evenly distributes its allotted law clerks among IJs. This is a reasonable assumption based on other personnel records that detail the assignment of law clerks to IJs.

Number of Law Clerks Assigned to IJ:

(Continuous Variable) (Min: 0, Max: 2, Mean: 0.41, SD: 0.31)

The estimated number of law clerks assigned to an individual IJ at the start of the fiscal year.

A.4.1.4 Independent Variables for Regression Discontinuity Design

Section III.A uses a regression-discontinuity design to estimate the causal effect of the implementation of new performance metrics on the length of individual hearings. The implementation of the performance metrics creates a discrete cut-off that distinguishes between hearings conducted before the implementation of the performance metrics (i.e. untreated hearings) and hearings conducted after the implementation of the performance metrics (i.e. treated hearings). This design requires three independent variables: (1) a discrete treatment variable that measures whether the hearing occurred before or after the implementation of the performance metrics, (2) a running variable that measures the number of days before or after the implementation, and (3) an interaction between the discrete variable and the running variable.

Post-Implementation:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.55)

Whether the hearing was held after the start of Fiscal Year 2019 when the Trump Administration implemented the new performance metrics. Post-Fiscal Year 2019 takes a value of "1" if the hearing was held after October 1, 2018. Otherwise, takes a value of "0." This is the discrete treatment variable for the regression-discontinuity design and is only used in the regression-discontinuity design.

Time to Implementation:

(Continuous Variable) (Min: -180, Max: 180, Mean: 9.82, SD: 105.1)

The number of days from the hearing date to October 1, 2018. A value of "0" indicates a case heard on October 1, 2018. A positive value indicates a case heard after October 1, 2018, and a negative value indicates a case heard before October 1, 2018. This is the running variable for the regression-discontinuity design and is only used in the regression-discontinuity design.

A.4.1.5 Controls for Ommitted Variable Bias and Court-Level Controls

To properly estimate the treatment effect of law clerks, the model should include all variables that correlate with both (1) the assignment of law clerks to an Immigration Court and (2) the outcome of the removal proceeding. In the removal and asylum analyses, the following controls are included to reduce the risk of omitted-variable bias.

Year Fixed Effects:

(Categorical Fixed Effects)

The fiscal year in which the removal proceeding had its first substantive outcome. These fixed effects account for annual trends that may affect law clerk assignments and outcomes, such as increases in the number of migrants arriving in the United States each year.

IJ Base City Fixed Effects:

(Categorical Fixed Effects)

The city in which the IJ is based. The IJ's base city is identified by examining the Immigration Court Listing Page on EOIR's website across time. Previous versions of this webpage are identified using the Wayback Machine. To ensure the composition of each Immigration Court reflects its composition at the start of the fiscal year, I use the version of this webpage closest to the start of the fiscal year.

Proportional Change in IJ Workload:

(Continuous Variable) (Min: -1, Max: 49, Mean: 0.12, SD: 0.78)

The proportional change in the IJ's backlog from the previous fiscal year to the current fiscal year.

Base City Population (Logged):

(Continuous Variable) (Min: 14,834; Max: 10,094,865; Mean: 2,146,938; SD: 2,577,601)

The estimated population living in the county of the IJ's base city. This data comes from the U.S. Census Bureau.

Base City Immigrant Population (Logged):

(Continuous Variable) (Min: 746; Max: 105,642; Mean: 32,569; SD: 31,500)

The estimated immigrant population living in the state where the IJ's base city is located. In the analysis, the natural log of these measures is taken to correct skewness. This data comes from the Migration Policy

Institute, which used the U.S. Census Bureau's American Community Survey to tabulate state-level measures of immigrant populations.

Unemployment Rate:

(Continuous Variable) (Min: 1.90; Max: 29.40; Mean: 6.81; SD: 3.04)

The unemployment level in the county of the IJ's base city. This data comes from the Bureau of Labor Statistics.

Democratic Vote Share:

(Continuous Variable) (Min: 0.09; Max: 0.87; Mean: 0.59; SD: 0.15):

The vote share of the Democratic candidate in the previous presidential election in the county of the IJ's base city. This data comes from the MIT Election Lab.

A.4.1.6 Respondent-Level Controls

The analyses include a variety of controls related to individual respondents. The data for these controls comes from EOIR's case database.

Represented:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.38)

Whether the respondent was represented in removal proceedings. Represented is coded as "1" if an attorney filed a E-28 with EOIR before the completion of the proceeding. Otherwise, takes a value of "0."

Asylum Applicant:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.21)

Whether the respondent filed an asylum application in their first proceeding. Asylum Applicant takes a value of "1" if the respondent filed an asylum application in their first proceeding. Otherwise, takes a value of "0."

Home Country Not Free:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.10)

Whether Freedom House describes the respondent's country of nationality as "Not Free" in the fiscal year in which the respondent's case was decided. Home Country Not Free takes a value of "1" if Freedom House describes the respondent's country as "Not Free." Otherwise, takes a value of "0."

Central American:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.71):

Whether the respondent is a national of a landlocked Central American country or Mexico. Central American takes a value of "1" if the respondent is a national of Mexico or a landlocked Central American country. Otherwise, takes a value of "0."

English Speaker:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.15)

Whether the respondent spoke English as their primary language during removal proceedings. English Speaker takes a value of "1" if the respondent spoke English during removal proceedings. Otherwise, takes a value of "0."

A.4.1.7 IJ-Level Controls

Characteristics of IJs are found in press releases about the appointment of IJs and on the TRAC website. If the press release announcing the appointment of the IJ cannot be found, then alternative biographies are searched for on Google and LinkedIn.

Republican Appointee:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.46)

Whether the IJ was appointed by a Republican president.

Former Government Employee:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.69)

Whether the IJ previously worked for a federal agency related to immigration policy. Former Government Employee takes a value of "1" if the biography describes the IJ as working for Department of Homeland Security, Department of State, or Department of Justice. No biography describes an IJ as working for an immigration component of the Department of Labor. Otherwise, takes a value of "0."

Former Judge:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.08)

Whether the IJ previously worked as a state, local, or administrative judge. Former Judge takes a value of "1" if the biography describes the IJ as working as a state, local, or administrative judge. Otherwise, takes a

value of "0."

Former Nonprofit Employee:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.11)

Whether the IJ previously worked for a nonprofit organization, regardless of the policy focus of the nonprofit organization. Former Nonprofit Employee takes a value of "1" if the biography describes the IJ as working for a nonprofit organization. Otherwise, takes a value of "0."

Female IJ:

(Indicator Variable) (Min: 0, Max: 1, Proportion: 0.29)

Whether the IJ is female. Female IJ takes a value of "1" if the IJ's biography uses "she/her" pronouns. Otherwise, takes a value of "0."

Years of Practice:

(Continuous Variable) (Min: 8.34, Max: 69.38, Mean: 27.03, SD: 7.86)

The number of years that the IJ has practiced law as of the start of the Fiscal Year. This variable assumes that the IJ has practiced law since they received their law degree and that the IJ graduated in May of the year the IJ received their law degree. The date the IJ received their law degree is determined using the IJ's biography.

A.4.2 Analysis of Law Clerk Assignment

Qualitative evidence suggests that EOIR lacks a meaningful personnel plan and uses "informal" methods to decide which Immigration Courts should receive additional support staff. As the analysis in the main text shows, there is no correlation between the number of cases an IJ has pending and the number of law clerks available to them. This Appendix examines whether other factors may explain the level of law clerks assigned to a particular judge.

The unit of analysis is an Immigration Court in a given fiscal year. I conduct the analysis at the Immigration Court-level since the ratio of law clerks to IJs is a court-level measure. The dependent variable of interest is the *Ratio of Law Clerks to IJs*. The model includes a variety of possible explanatory variables including the *Total Pending Cases*, *Base City Population*, *Base City Immigrant Population*, *Southern Border*, *Unemployment Rate*, *Democratic Vote Share*, *Median IJ Experience*, *Proportion of IJs with Government Experience*, and the *Proportion of IJs Hired During Democratic Administration*. All continuous dependent variables are normalized to allow for comparisons across coefficients. The model includes year-fixed effects to examine law clerk assignment within the year. I estimate the model using an ordinary least squares (OLS) regression.

Standard errors are clustered at the court level.

Table A.20 reports the results. Consistent with the qualitative evidence reported in the main text, the model reveals a weak relationship between *Total Pending Cases* and the *Ratio of Law Clerks to IJs*. Although the relationship is positive, it is statistically insignificant and substantively small. A one standard deviation increase in the number of pending cases increases the *Ratio* by only 0.03.

Only three coefficients reach statistical significance. First, Immigration Courts located at the Southern Border have a smaller *Ratio* than other Immigration Courts. Given the surge of migrants at the Southern Border, the lack of sufficient support staff for IJs in courts along the Border provides further evidence of mismanagement. Second, Immigration Courts in cities with higher unemployment rates have a lower *Ratio of Law Clerks to IJs*. Although EOIR recruits law clerks through the Department of Justice Honors Program, it may have a harder time placing individuals in cities with lower economic opportunities. Third, Immigration Courts with a greater proportion of IJs who have served in government service has a lower *Ratio*. However, the substantive size of this effect is small.

A.4.3 Removal Analysis

The outcome hypothesis predicts that respondents appearing before IJs with fewer law clerks are more likely to be ordered removed. The dependent variable is a binary indicator of whether the IJ ordered the removal of the respondent (*Removed*). The independent variable of interest is a continuous variable of the number of law clerks assigned to the IJ (*Law Clerks*, τ) in the IJ's base city. To test whether the marginal effect of Law Clerks declines as the IJ's workload increases, I interact Law Clerks with *Workload* (ω). To test this hypothesis, I use a multivariate linear probability model. I estimate the following model:

$$Removed_i = \alpha + \beta_1 \tau_i + \beta_2 \omega_i + \beta_3 \tau_i \omega_i + \gamma x_i + \varepsilon_i \tag{A.61}$$

where $_i$ is the *Law Clerks* for the IJ who decides the removal proceeding for respondent i, ω_i is the *Workload* for that IJ, and x_i is the vector of additional controls described in Appendix D.1. If the estimate of the coefficient β_1 is negative and statistically significant, then we may reject the null hypothesis that the number of law clerks has no effect on the likelihood that a respondent is removed. The model is estimated using a linear probability model. Consistent with most studies examining individual outcomes in adjudicatory proceedings, I cluster standard errors at the IJ level. Table A.21 reports the results. Model (3) is reported in the main text of the paper.

Table A.22 estimates the model on three subsets of interest: (1) proceedings conducted at an Immigration Court along the Southern Border, (2) proceedings conducted at an Immigration Court not along the Southern

Table A.20: Model Estimates of Ratio of Law Clerks to IJs

	Dependent variable:
	Ratio of Law Clerks to IJs
Total Pending Cases	0.031
	(0.044)
Base City Population (Logged)	−0.012
	(0.030)
Base City Immigrant Population (Logged)	0.030
	(0.026)
Southern Border	−0.123**
	(0.051)
Unemployment Rate	−0.111**
	(0.053)
Democratic Vote Share	−0.018
	(0.018)
Median IJ Experience	−0.008
	(0.022)
Proportion of IJs with Government Experience	−0.032*
	(0.018)
Proportion of Democratic-Hired IJs	0.012
	(0.023)
Constant	0.149***
	(0.046)
Year Fixed Effects	Yes
Estimator	OLS
Observations	425
R^2	0.367
Note:	*p<0.1; **p<0.05; ***p<0.01

Border, (3) proceedings in which the respondent filed an asylum application.

Table A.21: Model Estimates of Likelihood of Removal

	Dependent variable:		
	Removed		
	(1)	(2)	(3)
Law Clerks	-0.12^{***} (0.01)	-0.06^{***} (0.01)	-0.05^{***} (0.01)
Workload		0.01^{*} (0.01)	0.01^{***} (0.005)
Law Clerks*Workload		0.01 (0.01)	0.001 (0.01)
Population		0.08^{*} (0.04)	0.14^{***} (0.04)
Immigrant Population		0.24^{***} (0.07)	0.22^{***} (0.05)
Unemployment Rate		-0.01^{**} (0.003)	-0.004^{**} (0.002)
Democratic Vote Share		0.07 (0.10)	-0.03 (0.07)
Represented			-0.29^{***} (0.01)
Asylum Applicant			0.04^{***} (0.01)
Not Free Country			-0.15^{***} (0.01)
Central American			0.14^{***} (0.01)
English Speaker			-0.05^{***} (0.004)
Republican Appointee			0.01 (0.01)
Female			-0.04^{***} (0.01)
Government Employee			0.04^{***} (0.01)
Judge			0.02 (0.02)
Nonprofit			-0.02 (0.02)
Years of Practice			0.0002 (0.0005)
Constant	0.81^{***} (0.75)	-2.89^{***} (1.02)	-3.48^{***} (0.75)
Estimator	OLS	OLS	OLS
IJ Location Fixed Effects	Yes	Yes	Yes
Year Fixed Effects	No	Yes	Yes
Note:			*p<0.1; **p<0.05; ***p<0.01

A.4.4 Asylum Analysis

The outcome hypothesis predicts that respondents appearing before IJs with fewer law clerks are more likely to receive a grant of asylum. Additionally, the hypothesis predicts that the marginal effect of law clerks declines as the IJ's workload increases. The dependent variable is a binary indicator of whether the IJ ordered the removal of the respondent (*Asylum Granted*). The independent variable of interest is a continuous variable of the ratio of law clerks to IJs (*Law Clerks*, τ) in the IJ's base city. To test whether the marginal effect of Law Clerks declines as the IJ's workload increases, I interact *Law Clerks* with *Workload* (). To test this hypothesis, I use a multivariate linear probability model. I estimate the following model

$$AsylumGranted_i = \alpha + \beta_1 \tau_i + \beta_2 \omega_i + \beta_3 \tau_i \omega_i + \gamma x_i + \varepsilon_i, \tag{A.62}$$

Table A.22: Model Estimates of Likelihood of Removal, Data Subsets

	Dependent variable:		
	Removed		
	Border Courts	Non-Border Courts	Asylum Cases
Law Clerks	-0.09^{***} (0.02)	-0.02^{***} (0.01)	-0.08^{***} (0.02)
Workload	-0.004^{***} (0.01)	0.03^{***} (0.01)	0.03^{***} (0.01)
Law Clerks*Workload	0.02 (0.01)	-0.01^{**} (0.01)	-0.01 (0.01)
Population	0.06^{**} (0.10)	0.11 (0.10)	0.24^{**} (0.10)
Immigrant Population	0.82^{*} (0.06)	0.15^{***} (0.05)	0.10^{*} (0.06)
Unemployment Rate	-0.003 (0.003)	-0.01^{**} (0.002)	-0.004 (0.003)
Democratic Vote Share	-0.51^{***} (0.15)	0.13 (0.10)	0.52^{***} (0.15)
Represented	-0.24^{***} (0.01)	-0.30^{***} (0.01)	-0.21^{***} (0.01)
Asylum Applicant	0.07^{***} (0.01)	0.03^{***} (0.01)	
Not Free Country	-0.22^{***} (0.01)	-0.14^{***} (0.01)	-0.15^{***} (0.01)
Central American	0.01^{***} (0.01)	0.15^{***} (0.01)	0.09^{***} (0.01)
English Speaker	-0.06^{***} (0.01)	-0.05^{***} (0.004)	-0.02^{***} (0.01)
Republican Appointee	0.01 (0.01)	0.003 (0.01)	0.01 (0.01)
Female	0.01^{***} (0.02)	-0.05^{***} (0.01)	-0.06^{***} (0.02)
Government Employee	-0.02^{*} (0.02)	0.05^{***} (0.01)	0.03^{*} (0.02)
Judge	0.002 (0.02)	0.02 (0.03)	0.03 (0.02)
Nonprofit	0.003 (0.02)	-0.02 (0.02)	-0.02 (0.02)
Years of Practice	-0.0002 (0.001)	0.001 (0.001)	-0.001 (0.001)
Constant	-8.78^{***} (1.35)	-2.34^{*} (1.31)	-3.83^{***} (1.35)
Estimator	OLS	OLS	OLS
IJ Location Fixed Effects	Yes	Yes	Yes
Year Fixed Effects	No	Yes	Yes
Note:			*p<0.1; **p<0.05; ***p<0.01

where τ_i is the *Law Clerks* for the IJ who decides the removal proceeding for respondent i, ω_i is the *Workload* for that IJ, and x_i is the vector of additional controls described in Appendix D.1. If the estimate of the coefficient β_1 is positive and statistically significant, then we may reject the null hypothesis that the ratio of law clerks to IJs has no effect on the likelihood that a respondent is granted asylum. If the estimate of the coefficient β_3 is negative and statistically significant, then we may reject the null hypothesis that the marginal effect of *Law Clerks* decreases as *Workload* increases. As in the removal analysis, I cluster standard errors at the IJ level. Table A.23 reports the results. Model (3) is reported in the main text of the paper.

Table A.24 estimates the model on two subsets of interest: (1) proceedings conducted at an Immigration Court along the Southern Border and (2) proceedings conducted at an Immigration Court not along the Southern Border.

Table A.23: Model Estimates of Likelihood of Asylum Grant

	Dependent variable:		
	Asylum Granted		
	(1)	(2)	(3)
Law Clerks	-0.02^{***} (0.01)	0.05^{***} (0.02)	0.04^{***} (0.01)
Workload		0.001 (0.01)	-0.004 (0.01)
Law Clerks*Workload		-0.02^{*} (0.01)	-0.003 (0.01)
Population		0.11 (0.11)	0.09 (0.09)
Immigrant Population		-0.17^{***} (0.06)	-0.01 (0.05)
Unemployment Rate		-0.01^{***} (0.004)	-0.01^{***} (0.003)
Democratic Vote Share		-1.04^{***} (0.17)	-0.66^{***} (0.14)
Represented			0.14^{***} (0.01)
Not Free Country			0.21^{***} (0.01)
Central American			-0.24^{***} (0.01)
English Speaker			-0.05^{***} (0.01)
Republican Appointee			0.0002 (0.01)
Female			0.04^{***} (0.01)
Government Employee			-0.02 (0.01)
Judge			-0.03^{*} (0.02)
Nonprofit			0.03 (0.02)
Years of Practice			-0.0000 (0.001)
Constant	0.35 (1.24)	0.99 (1.62)	-0.79 (1.24)
Estimator	OLS	OLS	OLS
IJ Location Fixed Effects	Yes	Yes	Yes
Year Fixed Effects	No	Yes	Yes
Note:			*p<0.1; **p<0.05; ***p<0.01

A.4.5 Performance Metrics Analyses

The performance-metrics analyses use a regression-discontinuity design to test whether IJs shortened hearings following the implementation of the Trump Administration's performance metrics. The dependent vari-

Table A.24: Model Estimates of Likelihood of Asylum Grant, Data Subsets

	Dependent variable:	
	Asylum Granted	
	Border Courts	Non-Border Courts
Law Clerks	0.15^{***} (0.02)	0.03^{**} (0.01)
Workload	0.01 (0.01)	-0.01 (0.01)
Law Clerks*Workload	-0.03 (0.02)	0.001 (0.01)
Population	0.17 (0.24)	0.12 (0.13)
Immigrant Population	-0.01 (0.21)	-0.003 (0.05)
Unemployment Rate	-0.003 (0.01)	-0.01^{***} (0.003)
Democratic Vote Share	-0.59 (0.56)	-0.64^{***} (0.14)
Represented	0.11^{***} (0.01)	0.15^{***} (0.01)
Not Free Country	0.34^{***} (0.03)	0.20^{***} (0.01)
Central American	-0.10^{***} (0.01)	-0.25^{***} (0.01)
English Speaker	-0.04^{***} (0.01)	-0.05^{***} (0.01)
Republican Appointee	-0.06^{***} (0.02)	0.01 (0.01)
Female	0.05^{*} (0.03)	0.04^{***} (0.01)
Government Employee	-0.05 (0.03)	-0.02 (0.01)
Judge	-0.05 (0.03)	-0.03 (0.02)
Nonprofit	0.07^{*} (0.04)	0.02 (0.02)
Years of Practice	0.0003 (0.001)	0.0001 (0.001)
Constant	-2.18 (4.12)	-1.30 (1.67)
Estimator	OLS	OLS
IJ Location Fixed Effects	Yes	Yes
Year Fixed Effects	No	Yes
Note:		*p<0.1; **p<0.05; ***p<0.01

able is a continuous variable of the duration of the individual hearing (*Duration*). To test this hypothesis, I use ordinary least squares (OLS) regression. I estimate the following models:

$$Duration_i = \alpha + \beta_1 \tau_i + \beta_2 r_i + \beta_3 \tau_i r_i + \beta_4 g_i + \beta_5 \tau_i g_i + \varepsilon_i, \tag{A.63}$$

where τ_i is an indicator for Post-Implementation, r_i is the running variable (i.e. *Days Since Implementation*), and g_i is an indicator of whether the IJ had Law Clerks Above the Mean. The model includes an interaction term between *Post-Implementation* and *Days Since Implementation* to allow the slope of the lines to vary pre- and post-implementation. The model also includes an interaction between *Post-Implementation* and *Law Clerks Above the Mean* to assess the marginal effect of law clerks on implementation of the performance metrics. I also estimate the model with the continuous measure of *Law Clerks*. If the estimate of the coefficient β_1 is negative and statistically significant, then we may reject the null hypothesis that the performance metrics had no effect on the dependent variables. If the estimate of the coefficient β_5 is statistically significant, then we may reject the null hypothesis that Law Clerks has no interactive effect with the treatment. I cluster standard errors at the IJ level. Table A.25 reports the results. Model (2) is reported in the main text of the paper.

Table A.25: Regression Discontinuity Estimates of Hearing Duration

	Dependent variable:	
	Hearing Duration	
	(1)	(2)
Law Clerks Above Mean	-0.17^{***} (0.05)	-0.39^{***} (0.11)
Law Clerks	0.11 (0.13)	
Post-Implementation	0.15^{**} (0.07)	
Running Variable		0.36 (0.46)
Post-Implementation*Law Clerks Above Mean		0.40^{**} (0.16)
Post-Implementation*Law Clerks	-0.0002 (0.0003)	0.0001 (0.0002)
Post-Implementation*Running Variable	0.0004 (0.0004)	0.0001 (0.0003)
Constant	2.59^{***} (0.09)	1.87 (1.17)
Estimator	OLS	OLS
IJ Location Fixed Effects	No	Yes
Note:		*p<0.1; **p<0.05; ***p<0.01

A.4.6 Political Ideology as an Alternative Mechanism

The analyses in Appendices D and E suggest that IJs with more law clerks are (1) less likely to order the removal of a given respondent and (2) more likely to grant asylum applications. The proposed theory claims that IJs with more support staff do not rely as heavily on coping mechanisms and, therefore, their decisions

are less biased against respondents. An alternative explanation attributes these results to the political leanings of law clerks. If law clerks are consistently more liberal than IJs, then the dispositions of IJs with law clerks may be more favorable to respondents in removal proceedings. This Appendix provides several reasons to doubt this alternative mechanism.

First, IJs report that the absence of capacity—and, most specifically, law clerks—impacts their ability to conduct fair, unbiased hearings. IJs express concern that mismanagement of the Immigration Courts increases their likelihood of error. Therefore, the theoretical account offered in this paper comports with the beliefs of those with experience within the immigration system.

Second, the regression-discontinuity design provides causal evidence that IJs with fewer law clerks are more prone to coping mechanisms. Although law clerks may assist IJs during hearings, their primary responsibilities involve preparing the administrative record and drafting opinions. IJs conduct individual hearings, and there is no theoretical reason to believe that the presence of a liberal law clerk would lengthen the hearing. If a law clerk reduces an IJ's likelihood of shortening a hearing, then the better explanation is that they perform the IJ's ministerial and preparatory work that would otherwise cause them to shorten hearings. The fact that we observe that IJs without law clerks shorten hearings provides evidence that these IJs conduct a less thorough review of the administrative record, which increases the likelihood of error.

Third, as Section II.B discusses, evidence of ideological effects in removal proceedings are empirically weak across studies. Recent work by Hausman et al. confirms that IJs with different ideological leanings make similar decisions when controlling for time and location. Although folk wisdom suggests that IJs are relatively conservative, there is no empirical evidence that IJs are more conservative than the general population of attorneys. Like other attorneys, IJs skew slightly more liberal than the general public. Likewise, there is no reason to believe that EOIR law clerks are more liberal than the general population of attorneys. The Department of Justice recruits law clerks using its Honors Program. This program is competitive and prestigious, and there is no reason to believe it skews more liberal than the general population of attorneys.

Although empirical trends cast doubt on this alternative theory, there are ways to test it. If the effect of law clerks is best explained through the liberalness of law clerks, then the effect of law clerks should vary with the ideology of IJs. This interaction could work in either direction. Law clerks may drag liberal IJs toward more pro-respondent outcomes but prove less effective with conservative IJs. Alternatively, liberal IJs may already be predisposed toward pro-respondent outcomes and, therefore, these law clerks have a greater effect on the dispositions of conservative IJs. Regardless of the theoretical direction of this relationship, an estimated effect near zero would suggest that the liberalness of law clerks does not explain pro-respondent outcomes.

I estimate IJ ideology using DIME scores. DIME scores use 130 million campaign donations to estimate

ideological scores for millions of Americans and organizations. I follow the method of Hausman et al. to pair IJs with DIME Scores (Hausman et al. 2023). Specifically, I identify IJs in the DIME dataset using their name, location, and their self-reported employment. To test whether liberal or conservative IJs shift their decisions when they have more law clerks, I re-estimate Model (3) from both the removal and asylum analyses, including an interaction term between *IJ Ideology* and *Law Clerks*. Table A.26 reports the results, which show there is no statistically significant interaction between *IJ Ideology* and *Law Clerks*.

Table A.26: Model Estimates of Ideology on Removal and Asylum Grants

	Dependent variable:	
	Removed	
	(1)	(2)
Law Clerks	-0.03^{*} (0.02)	0.07^{**} (0.03)
IJ Ideology	0.001 (0.01)	-0.02 (0.02)
Law Clerks*IJ Ideology	0.01 (0.02)	0.01 (0.02)
Workload	0.01 (0.01)	-0.02 (0.03)
Law Clerks*Workload	-0.004 (0.01)	0.003 (0.02)
Population	0.26^{***} (0.09)	0.24 (0.16)
Immigrant Population	-0.04 (0.09)	-0.02 (0.13)
Unemployment Rate	-0.01^{**} (0.005)	-0.02^{**} (0.01)
Democratic Vote Share	0.11 (0.20)	-0.59^{***} (0.22)
Represented	-0.29^{***} (0.02)	0.14^{***} (0.01)
Asylum Applicant	0.04^{**} (0.02)	
Not Free Country	-0.14^{***} (0.02)	0.19^{***} (0.02)
Central American	0.12^{***} (0.01)	-0.26^{***} (0.02)
English Speaker	-0.07^{***} (0.01)	-0.06^{***} (0.01)
Republican Appointee	-0.002 (0.02)	0.01 (0.02)
Female	-0.08^{***} (0.03)	0.05^{**} (0.02)
Government Employee	0.02 (0.02)	-0.04^{**} (0.02)
Judge	0.01 (0.04)	-0.05 (0.04)
Nonprofit	-0.03 (0.02)	0.002 (0.02)
Years of Practice	-0.002 (0.001)	-0.0004 (0.001)
Constant	-2.16^{*} (1.27)	-2.66 (2.22)
Estimator	OLS	OLS
IJ Location Fixed Effects	Yes	Yes
Year Fixed Effects	Yes	Yes
Note:	*p<0.1; **p<0.05; ***p<0.01	