

Strategic Delegation and the Administrative Presidency Strategy: How Strong is the Ally Principle?

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Prepared for an invited seminar, Department of Political Science, University of South Carolina, October 13, 2003. The author would like to thank Gary Miller, Randall Calvert, Charles Cameron, Jeffrey Lax, Christian Grose, Noah Kaplan, Richard Waterman, Laurence E. Lynn, Jr., Sven Feldmann, Kishore Gawande, Lori Taylor, Holly Goerdel, and David Leal for helpful suggestions and reactions. Eric Gonzalez Juenke provided expert and essential research assistance. An earlier version of this manuscript was presented at the Annual Meetings of the Midwest Political Science Association, Chicago, IL, April 2003.

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Abstract

Through a spatial bargaining model of delegation, this paper examines the mechanism underlying the “administrative presidency strategy.” It demonstrates that the preferences of a quasi-autonomous administrative agent can be very different than that of an appointing president while still making improvements to the president’s well-being solely from policy selection. Choosing such a “strategic agent” is tantamount to misrepresenting preferences in a policy area, and such misrepresentation becomes a credible commitment with the appointment of the agent. Some suggestive empirical evidence is offered using presidential appointment data from 1964-82. Our result implies that the administrative presidency strategy is more nuanced than a straightforward “ally principle,” but is not contrary to observations that recent presidents are motivated by loyalty in their appointments.

After his election in 1988, George Bush appointed ostensibly dueling extremists to head the Environmental Protection Agency (EPA) and the Department of the Interior. Candidate Bush had dubbed himself an “environmentalist,” making these appointments a focal point of his early days in office. On the one hand, there was Manuel Lujan, Jr., nominated to become Secretary of the Interior. A former New Mexico congressman, Lujan had voted his way to a very low sixteen percent favorable vote rating from the League of Conservation in 1985-86, down from a hardly more enthusiastic nineteen percent during 1981-85 (*New York Times*, January 12, 1989, A27). On the other, William Reilly, the nominee for EPA administrator, had spent years as the president of the Conservation Foundation, an environmental research group, and had also headed the World Wildlife Fund. While Lujan had established a registry of votes against endangered species protections, acid rain controls, and energy-conservation programs, Reilly was promising a “new and constructive course” for an EPA that had been in a firestorm under the Reagan administration (*Los Angeles Times News Service*, December 23, 1988). These contradictory choices left even insiders wondering about the direction of environmental policy.

These nominations are “odd” in that they suggest that presidents (as well as governors, who face similar appointment decisions), clearly aware of, and held electorally responsible for, the perils of policy drift (Moe 1995, 238), make high-level appointments to non allies—individuals who do not share the president’s policy preferences. Should administrative appointments turn solely, or even primarily, on policy ideology? Aside from “throwing bones” to interest groups, is the president made better off in terms of policy outcomes by appointing only ideological allies?

An influential segment of the presidency literature has argued that the selection of ideological allies is central to what Richard Nathan (1983) called the “administrative presidency strategy” of crafting administrative compliance with presidential policy goals. Articulations of this strategy often have overtones of policy allegiance. Richard Waterman (1989, 29) writes that after the creation in 1948 of the Office of Presidential Personnel, “presidents were in a better position to appoint individuals who shared their political philosophy” across the many appointments for which they had become responsible. Terry Moe (1995, 239) has argued that “the modern president is driven by . . . formidable expectations to seek control over the structures and processes of government.” To do so, Moe (1995, 245) continues, the president will in significant part rely on the tactic of “appointing individuals on the basis of loyalty, ideology, or programmatic support.”

Political scientists have, however, explored the incentives for “strategic” agency choices in Congressional-bureaucratic delegation. Recent work in political science by Jonathan Bendor and colleagues (e.g., Bendor, et al. 2003; Bendor, Glazer, and Hammond 2001) analyzes delegation incentives through the spatial model. They show that “[d]elegating to a competent subordinate, even one with different preferences, can make bad outcomes much less likely than if the boss made the decision herself” (Bendor et al. 2003, 26). In the context of legislative coalition formation, Hammond and Miller (1987) have shown a similar incentive scheme under which “a coalition leader may be forced to construct a coalition which includes relatively ‘distant’ legislators and which excludes ‘nearby’ legislators.” These papers stand in important contrast to the loyalty view of the administrative presidency.

As is true of the delegation literature more generally (e.g., Epstein and O'Halloran 1999; Gailmard 2002), Bendor et al. (2003) proceed from an assumption that delegations are made for informational reasons, namely that outcomes are defined by the equation $x = p + \epsilon$, “where p stands for the policy passed and ϵ represents other factors that might impact real-world outcomes—for instance, the weather affecting next year's crops” (Epstein and O'Halloran 1999, 54). The agent then develops expertise by collecting and processing information about ϵ .¹

The present paper uncovers a result, which we shall see is common in the economics literature on delegation, that strategic delegation—delegation to non-allies—can be beneficial to a principal for the simple (and powerful) reason that it maximizes his utility. The very simple model presented below holds even under the restrictive assumption of complete information. As a consequence, the incentives and systematic drift discussed here occur *in the absence* of ex ante uncertainty over implementation. Strategic delegation, writes Gary Miller (2000, 300, emphasis in original), “contrasts sharply with the view offered by principal/agency theory, which insists that the principal's problem is to *align* the preferences of agent with principal by the appropriate incentive system.”

Central to the reasoning of the model presented below is that when employing delegated powers, administrative agencies are only *quasi-autonomous*. In the archetypal model of delegation and administrative discretion (i.e., Calvert, McCubbins, and Weingast 1989), the delegation game ends with the agent choosing policy, and in information models (i.e., Epstein and O'Halloran 1999) this policy choice is conditioned

¹ The informational approach to delegation is also found in the congressional literature, with delegation problems arising when Congress as a whole makes a decision to delegate (i.e., gatekeeping) authority to a committee (Krehbiel 1991).

on the real-world knowledge about \square that the agent collects. In the reality of administrative life, such autonomy is a rather restrictive construction. Our present model allows the agency to bargain with constituent interests (i.e., a regulated company) when implementing a policy, and its quasi-autonomy arises from the fact that (a) the legislature and executive set the reversion point for policy bargaining in enacting statutes—ex ante political control (e.g., McCubbins, Noll, and Weingast 1987)—and (b) interest groups remain active in the policymaking process even at the “street level” of the administrative state. Constituent interests do not “lobby” the bureaucracy (e.g., Bennesen and Feldmann 2003) in the principal model, but rather have a place at the bargaining table when enforcement decisions are made.

We turn next to a discussion of this type of negotiated policymaking in the American administrative state. This is followed by a brief review of the economics literature on strategic delegation in which our delegation model is rooted. The bargaining model is then presented and subsequently discussed. Some suggestive (and, indeed, supportive) empirical evidence is then presented, analyzing data on presidential appointments between 1964-82. The paper concludes with a discussion of omitted augmentations of the bargaining model and some brief implications for future research.

Negotiating Administrative Policy Choices

Much of what constitutes policymaking in regulatory and service provision settings is determined by simple negotiation between agency officials, on the one hand, and regulated entities or agency clients, on the other. At both state and federal levels, bargaining outcomes, such as those discussed in this paper, are generally available to

administrative agencies. Both the Model State Administrative Procedure Act² and the federal Administrative Procedure Act (APA)³ endorse bargaining.

The District Court in *Pinkus v. Reilly* (178 F. Supp. 399, D.C.N.J. 1959) noted that the APA requires an agency to consider any reasonable offer, but does not require that the agency accept that offer if it thinks such action unwise. This implies bargaining. Administrative agencies also have significant authority to implement policy bargains as settlement agreements and consent decrees---both of which can be enforced in court---even in the face of opposition.⁴ This additionally supports the requisite notion that bargains struck between the agency and constituents are credible.

In regulatory domains, voluntary product safety standards and environmental compliance monitoring exemplify the fruits of policy bargaining.

- The Consumer Product Safety Commission (CPSC) has negotiated guidelines for mitigating risks from specific products with their manufacturers since 1973. Field surveillance can bring information of violations of standards or regulations to CPSC attention, and bargaining over compliance measures also occurs under the threat of cease and desist orders, civil suits, or civil fines. Consent decrees are frequently negotiated with violating manufacturers.
- The Office of Enforcement and Compliance Assurance (OECA) of the Environmental Protection Agency (EPA) is the general locus of environmental enforcement at the federal level. Most statutes administered by the EPA mandate the following process. First, a polluter is ordered to cease and desist. If the

² Section 1-106 of the Act provides that “informal settlement of matters that may make unnecessary more elaborate proceedings under this Act is encouraged. Agencies shall establish by rule specific procedures to facilitate informal settlement of matters.”

³ The APA has been interpreted to permit an agency that has begun formal proceedings to conclude them with an informal settlement that can also resolve ancillary matters not the subject of formal proceedings (*Secretary of Labor v. Davies Can, Co.*, 40 Ad. L. 2d 154, 1976).

⁴ The court in *Halstead v. Dials* (391 S.E. 2d 385, W.Va. 1990) held that where intervening parties object to the terms of an administrative consent decree or settlement, the agency is required to make an independent assessment of the agreement. If it finds the agreement to be “just and reasonable,” it can approve the agreement or enter the decree without the approval of the dissenters.

violations continue, the OECA begins informal negotiations with the polluter, and a policy bargain can occur. If bargaining breaks down, the EPA has the authority to sue the polluter in civil court.

Threats of judicial recourse or concrete judicial action make courts a constant presence in the policy process, since they provide constituent interests with a *credible commitment* to affect policy outcomes. Interest groups can perform “fire extinguisher oversight,” wherein clients or regulatees of government agencies “bring agency malfeasance to the attention not of Congress but to the federal courts instead. Congressional rules, in effect, give various categories of [clients or regulatees] legal standing to sue in court for agency abuses” (Shepsle and Bonchek 1997, 369).

Judicial review of agency action is the most common form of court oversight in the regulatory state.⁵ Judicial recourse for constituent interests both enhances, even creates, constituents’ place with the administration at the policy bargaining table. It also buttresses the importance of the statutes defining agency authority, which create a reversion point to which groups have recourse and agencies are held if bargaining breaks down.

Strategic Delegation

In addition to the informational rationale discussed above, delegation can be important for a variety of reasons, for example, to counteract the limitation of spans of control, to make a collective principal (i.e., an electorate) more decisive, and to relocate blame and credit among decisionmakers. In bargaining scenarios, such as the negotiated

⁵ An interest group, for example, successfully challenged a decision of the Secretary of Labor to in which she refused to reopen a prior investigation into allegations of safety defects in vehicles manufactured by Ford Motor Company. Their standing was due to language in the Motor Vehicle Safety Act giving citizens the right to petition the Secretary to investigate such violations of vehicular safety standards and requiring the Secretary to provide written responses to any refusals to investigate. (*Center for Auto Safety v. Dole*, 846 F.2d 1532, D.C.Cir. 1988). Shipan (2000) provides a formal model of the impact of judicial review on legislative policy choices.

policymaking arrangements introduced in the preceding section, employing delegation as a commitment device may be a beneficial bargaining strategy. *Strategic delegation* is a rationale for delegating authority in which the delegation itself represents a commitment by the principal to act in a particular way that may have outcome benefits.

Consider Thomas Schelling's (1960, 142) dramatic examples of using "thugs or sadists for the collection of extortion or the guarding of prisoners" as credible commitments to violent, unconventional treatment that the crime boss and prison warden have no inclination, or even ability to implement.⁶ A strategically chosen agent may be sufficient to credibly commit a principal to some action that goes against both the reality and the perception of that principal's preferences. Strategic delegation, if credible,⁷ is tantamount to preference misrepresentation. In our model, credibility is not difficult for a president to achieve, since the appointment of an individual to a senior administrative position constitutes a significant political investment. The result is a failure of *strategyproofness* in the policy process. The president can "rig" the administrative policymaking setting to his advantage against Congress, even though the Senate must approve nominees.⁸

The notion of strategic delegation is effectively characterized *as a strategy* by John Vickers (1985, 138): "If control of my decisions is in the hands of an agent whose preferences are different from my own, I may nevertheless prefer the results to those that would come about if I took [*sic*] my own decisions." Gary Miller (2000, 300) continues:

⁶ Reputation effects may check the boss, while the eighth amendment constrains the warden.

⁷ Corts and Neher (2003) show that even *unobservable* contracts can create credible strategic delegations when (a) there is an observable commitment to multi-agent delegation, and (b) multiple "ownership" of the subject of the delegation (i.e., the presence of redundant jurisdictional authority).

⁸ The Gibbard-Satterthwaite theorem, which is technically identical to the Arrow theorem, is the classic strategyproofness result in majority rule voting, and is analogous to the result of our model. See Danilov and Sotskov (2002, 37-40) for a formal treatment.

“[T]he usefulness of the agent depends on the agent having preferences and pursuing goals that are quite different from those of the principal.”

The point here is that strategic delegation *may* be helpful when bargaining is undertaken by an agent on behalf of a principal. The formal conditions under which strategic delegation is beneficial are discussed by John Vickers (1985), and in the context of bargaining by Björn Segendorff (1998). Stephen Jones (1988; 1989) examines a client’s strategic choice of a lawyer as a bargaining agent, and the union negotiator chosen by the rank and file in collective bargaining, respectively. Heather Eckert (2003) shows that regional, rather than federal, governments can create national-level policy advantages in the negotiation of international environmental agreements.

Jones (1989) and others have shown that when the opponent in bilateral bargaining—the constituent interest (as against the executive) in our model—*also* delegates in an attempt to make a strategically advantageous credible commitment, inefficiencies and, in some cases, disagreement or breakdown of bargaining can result. We offer two reasons for why this is not likely in the delegation scenario analyzed here. First, as noted, the appointment of a senior administrative official is a credible commitment by the chief executive that the agency’s preferences will be represented in any policy bargaining that occurs. Second, interest groups have special-interest constituencies while governors and presidents have general-interest constituencies. A strategic misrepresentation by an interest group would likely alienate the group’s membership, and any generalized attempt to inform the membership of the untruthful strategy, i.e., a mass mailing, would make the strategy public, thus, removing the strategic advantage vis à vis the chief executive.

We now present our very simple delegation model, followed by a discussion of its primary result.

Model

Policy is made in two generic dimensions, x_1 and x_2 , and we constrain those dimensions, for simplicity, to positive values. We say that a policy, \mathbf{x} , is a pair, (x_1, x_2) in

\mathbb{R}_+^2 . There are four (unitary) actors in this complete information, spatial delegation game: A single-member legislature, L, a chief executive, E, an administrative agency, A, and an interest group (or regulated constituent), G. Each of these actors has Euclidean preferences, meaning that the utility these actors draw from some policy \mathbf{x} is a function of the distance between \mathbf{x} and the actor's ideal point, $\mathbf{x}_i = (x_{1i}, x_{2i})$. For simplicity, we assume preferences to be separable in the dimensions x_1, x_2 , and assume that actors make tradeoffs such that their indifference curves are concentric circles.

The Legislature and Executive choose a statute ex ante through bargaining, and this status quo statute represents a compromise between the branches, i.e., neither gets its ideal value on either dimension. This statute may be closer to either branch's ideal point depending on the relative bargaining power when it was created.

Following Ferejohn and Shipan (1990), the executive chooses an administrative agent in the first round of the delegation game. In the second round, the administrative agent and interest group achieve a bargain through some bargaining process and under such conditions, i.e., alternating offer bargaining with a de minimis probability of breakdown (Rubinstein 1982; Binmore, Rubinstein, and Wolinsky 1982), that the agreement is a Nash Bargaining Solution (NBS). The reversion point for this policy bargaining is the status quo ante statute, \mathbf{R} . A mechanism that permits such an

assumption is that the group has standing⁹ to sue the administrative agency in court as discussed above.¹⁰ Since the location of the reversion statute partly determines the policy bargaining outcome between the group and agency, writing the statute is a measure of “structure and process” control (McCubbins, Noll, and Weingast 1987; Moe 1995).

The policy established in the second round becomes the prevailing policy and the actors draw payoffs from that outcome. This game has a unique subgame perfect Nash equilibrium characterized by the following proposition:

Proposition 1. The policy outcome \mathbf{N}^* is a unique subgame perfect equilibrium in the delegation game and has the following characteristics:

- (a) \mathbf{N}^* is preferred by the chief executive to the policy that could be implemented if the chief executive were to bargain with the interest group in the absence of delegation (when $\mathbf{A} = \mathbf{E}$).
- (b) \mathbf{N}^* is implementable by a *set* of agents whose marginal rate of substitution of x_1 for x_2 is identical.

Proposition 1 states that there is a unique NBS that maximizes the chief executive’s utility, and this policy is implementable by a range of agents whose ideal points differ from \mathbf{E} . Part (b), in other words, suggests that the equilibrium agent is *not unique*. A formal proof is presented in the Appendix, but the intuition is discussed presently.

⁹ A group has standing when, for example, it has members that have been harmed by government action, or is granted standing explicitly by statute (see Sunstein 1992).

¹⁰ We assume that the court simply implements the statute, which, to avoid statutory interpretation difficulties, can be modeled as a bijection (a function that is one-to-one and onto) mapping of policies to the set of legal actions (Kornhauser 1992).

To see this graphically, we normalize interest group and chief executive preferences along x_2 to zero without loss of generality and assume a conflict of interest between the legislature and chief executive in both dimensions. We then find as a benchmark the NBS in the absence of delegation, where $\mathbf{A} = \mathbf{E}$. In Figure 1, our preference assumptions guarantee that the NBS in the absence of delegation, \mathbf{N}_1 , is found by drawing the perpendicular projection of the statute \mathbf{R} onto the contract curve between \mathbf{E} and \mathbf{G} (Nash 1953; see also Binmore 1992). We can see part (a) of Proposition 1 by selecting some agent $\mathbf{A} \neq \mathbf{E}$ and projecting the NBS, \mathbf{N}_2 , in similar fashion from the reversion point to the contract curve between the \mathbf{A} and \mathbf{G} . We notice that the Euclidean distance between \mathbf{E} and \mathbf{N}_2 is less than that between \mathbf{E} and \mathbf{N}_1 , and from our Euclidean preference specification, the chief executive draws greater utility from \mathbf{N}_2 than the non-delegation policy choice.

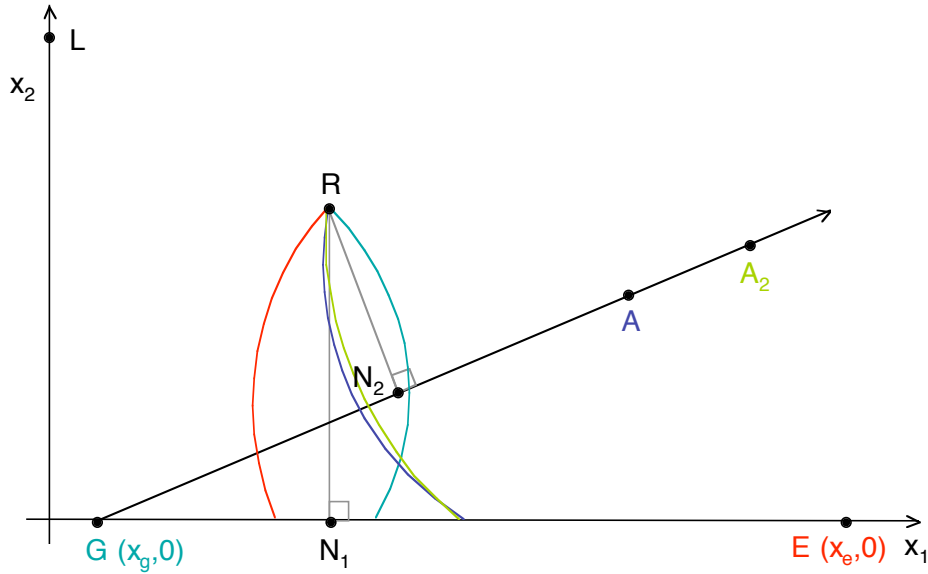


Figure 1: Bargaining Outcomes and Strategic Agents

To see part (b) of Proposition 1, we first examine the effect on the location of N_2 of the selection of agents farther to the northeast than A , such as A_2 . Such movements make no difference in the position of N_2 and thus are not policy-relevant. One can see that as the administrative agency ideal point moves farther along ray GA , its indifference curve passing through R “flattens,” approaching, in the limit, a straight line passing through N_2 . As a consequence, very extreme agents that trade off policy dimensions with the same marginal rate of policy substitution (angle AGE remains unchanged) leave policy bargains unchanged.

However, an agent that lies between N_2 and G presents a problem, since the group prefers such an agent’s ideal point to the reversion. This agent would be *captured* by the

group, but would never be appointed by the executive, since \mathbf{N}_2 is preferred by the legislature.

Agents \mathbf{A} and \mathbf{A}_2 were arbitrarily selected from a set of agents satisfying Proposition 1(a). In Figure 2, we observe that these feasible agents trace an expansion path of Nash bargains denoted by the thick curve that connects \mathbf{N}_1 and \mathbf{R} . If one draws the Pareto set for the legislature, chief executive, and group (triangle \mathbf{LGE}), it is easily seen that though the agents' ideal points fall outside the Pareto set, the bargains they strike lie within it. This graphically demonstrates the effect of quasi-autonomy, since an autonomous \mathbf{A} or \mathbf{A}_2 would be "vetoed" by the group's legal action or a new bill in the legislature. Thus, the chief executive would be constrained to executive appointments in the Pareto set *if they were autonomous*, as in Calvert, McCubbins, and Weingast (1989).

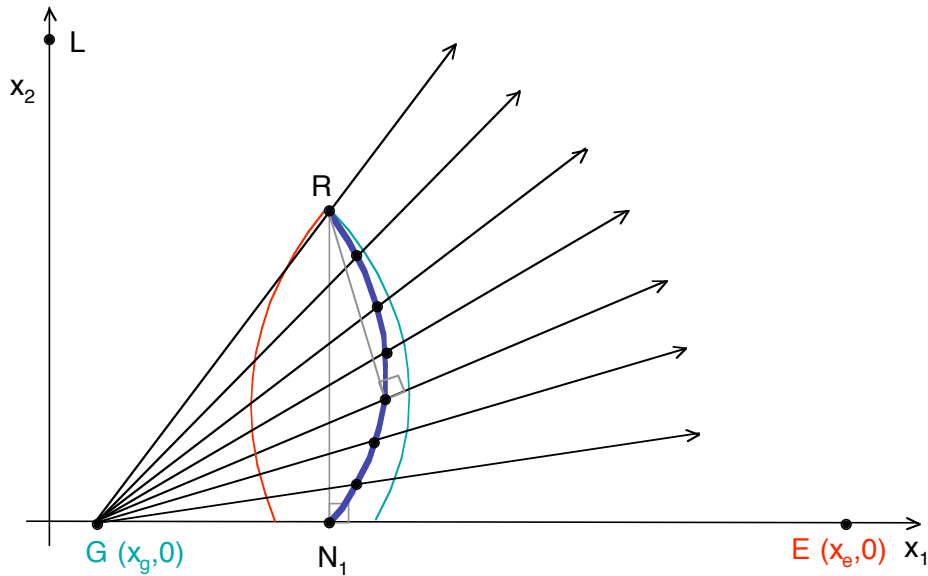


Figure 2: The Expansion Path of Nash Bargains

The locations of points **E** and **L** are sufficient to determine **R**, and the addition of **G** is sufficient to fully determine the expansion path. Because we have assumed complete information, the chief executive knows all of these locations, and chooses *some* agent that facilitates the *unique* policy bargain along the expansion path that maximizes the chief executive's utility. This is shown in Figure 3 by the location of \mathbf{N}^* at the tangency of the expansion path with the lowest of the chief executive's indifference curves. Given \mathbf{N}^* as chosen by the chief executive, angle **AGE** is equal to angle $\mathbf{N}^*\mathbf{GE}$. Thus, we see the result in Proposition 1(b). The unique equilibrium policy choice \mathbf{N}^* can be facilitated by an agent with an ideal point at \mathbf{N}^* or at any point to the northeast along ray \mathbf{GN}^* . Thus, the policy outcome is unique, though the chief executive's equilibrium agent is not.

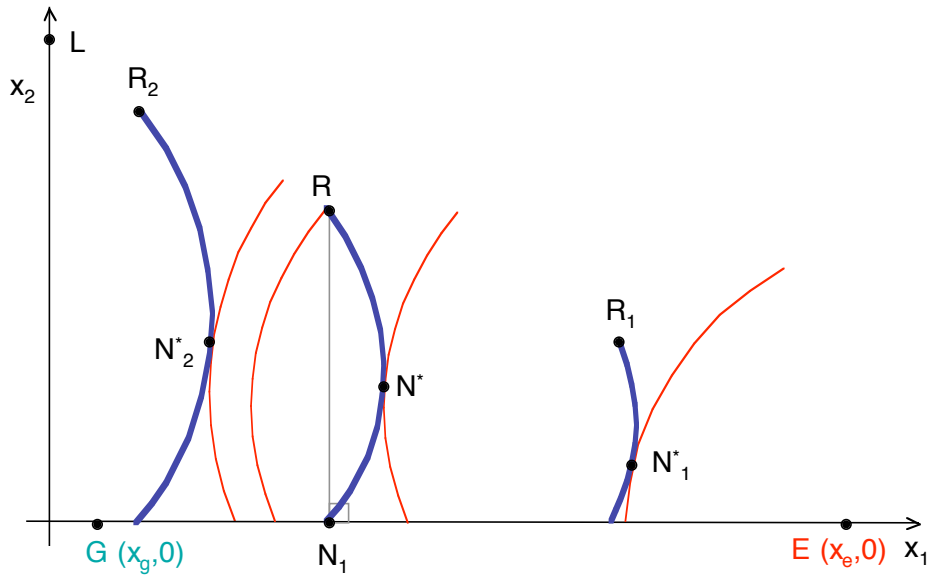


Figure 3: The Unique Subgame Perfect Policy Outcome

Figure 3 also shows the effect of the status quo ante statute on the bargaining outcome. The bargains systematically drift, but still favor the branch with a relative bargaining advantage at the time the statute was written.

To summarize, our model shows that the incentive exists for strategic delegation by the chief executive. The selection of an agent in this way is tantamount to misrepresentation of executive preferences, which, of course, the interest group could also do in theory. Should the group choose to misrepresent, the chief executive's strategic advantage in certain cases would be lost in our complete information setting (e.g., Jones 1989). As noted in the preceding section, it is unlikely that in real-world politics the constituent interest can be misrepresented.

Discussion

The incentives of chief executives to engage in strategic delegation described above have several implications for the existing literature. Most obviously, they suggest that the administrative presidency strategy does not simply imply ideological congruence on relevant policy spaces between presidents and their administrations. Non-allies can, in certain circumstances, maximize the president's utility, quite apart from any political gains from patronage, "throwing bones" to interest groups, and so forth. Such ancillary gains—though they surely exist—would not be represented on the policy space we have seen, and would give our chief executive no utility given the pure policy specification of his or her utility function. This principle and other relevant details are given further consideration in the remainder of this section.

Agency Creation

It is fruitful, though outside our model, to briefly consider legislative anticipation of the systematic "drift" observed here. Banks and Weingast (1992) present an information model of delegation and bureaucratic drift that begins with the legislative choice of whether to create an agency in the first instance. Drift occurs for informational reasons in their model, but importantly for our purposes, an administrative agency is not created if the policy drift it could affect is too large for the legislature to accept. Since the legislature and executive bargain over the *reversion* statute that operates on policy bargaining between the agency and interest group, any agency creation choice occurs in the statutory writing stage. With systematic drift and depending on the outcome of the statutory bargaining stage, N^* represents the best the legislature can do.

Given the change in outcome by reversion depicted in Figure 3, we might hypothesize that if the president's bargaining power is too strong, the enabling legislation would never be written. Correspondingly, if the legislature has the edge in statutory bargaining, the president would veto such legislation. Any agency relationships would then result from informational imperfections that run counter to our assumptions. However, since our agency is quasi-autonomous and we have assumed complete information, both the legislature and executive are aware of the location of the constituent characterized by \mathbf{G} . In essence, then, the legislature knows that when it agrees to \mathbf{R} , the executive can improve upon it, as can the group. Anything on the expansion path is preferred by the legislature to \mathbf{N}_1 . The legislature can foresee this *institutional* (as opposed to informational) drift and would only veto legislation or refuse to confirm a strategic agent that would make it worse off than it is at \mathbf{N}^* .

The Mechanism of the Administrative Presidency Strategy

The marginal rate of substitution (MRS) between the policy dimensions defines agent "type." It represents the policy tradeoffs between relevant policy dimensions that an agent makes. We have seen that agents who make the tradeoffs in an identical way—whose MRS is identical—do not upset bargains with constituent interests, though the *values* of policy ideally preferred by these agents may diverge wildly (along ray \mathbf{AG}). Thus, in the language of the principal-agent model, type screening of administrators by the president should consider the *policy tradeoffs* of the agent, rather than his or her *policy extremism*. However, there is a limit to the irrelevance of this extremism. Recall that the executive will choose no agent that facilitates a policy worse than the expansion

path. This eliminates the set of “captured” agents that lie between the expansion path and **G** in the figures.

Thus, the model suggests a more refined definition of the administrative presidency strategy: *When administrative agencies are quasi-autonomous the chief executive has the incentive to choose an administrative on the basis of that agent’s marginal rate of policy substitution, but not in regard to the extremism of his or her ideal policy arrangements, so long as that extremism does not lead to agency capture.*

We would expect empirically that all appointments would satisfy this articulation of the administrative presidency strategy, while there may be instances in which the (ideological) ally principle would not guide executive agency selection. Specifically, *when Congress and the president are ideologically divided on a policy dimension important to the interest group, an incentive exists for strategic delegation. Otherwise, the ideological ally principle describes the prevailing incentives.* This implies, for example, in along the dimension of business regulation, the interbranch division would be of importance to corporations, the Chamber of Commerce of the United States, and so forth.

This point is crucial. The kind of “divided government” to which we attribute the incentives for strategic agency is *policy-oriented*, rather than political, i.e., when the Republican party controls the legislature and the president is Democratic and vice versa. Of course, these kinds of divisions may exhibit strong correlation (i.e., Poole and Rosenthal 1997, 166-74), but such overlap is not directly relevant to the implications presently discussed.

Suggestive Evidence

One important general implication of the model is that in contrast to previous articulations of the administrative presidency strategy, the ideology of Congress is a determinant of the ideology of an administrator chosen by the president. In particular, as the ideological division between the president and Congress on a dimension relevant to the interest group widens, the incentive for strategic delegation increases. Though not meant as a rigorous test of the implications of the formal model, this section presents some suggestive quantitative evidence of the importance of Congressional ideology in agent selection. Bertelli and Juenke (2003) present an extensive empirical inquiry into the implications of the principal model with data on presidential appointments in the United States. Bertelli and Grose (2003) further evaluate the model using ideal points generated from Senate roll call data with Markov Chain Monte Carlo methods.

The primary data sources presently employed are MacKenzie and Light (1985) and Congressional Quarterly, Inc. (2000), which provide information on personal and professional background of presidential appointees that have been confirmed by the Senate and Congressional voting scores respectively. The dataset analyzed here consists of background information and proxies for spatial distances between appointing presidents and confirming Congresses for 444 appointees to the U.S. departments of Commerce, Labor, and Treasury, as well as the federal regulatory commissions¹¹ between 1964 and 1982. Since our model includes a unitary actor agency, we expect that any strategic delegation incentives will apply to agency appointments generally, not simply to

¹¹ Among others, “regulatory commissions” the Commodities Futures Trading Commission, Consumer Products Safety Commission, Federal Communications Commission, Food and Drug Administration, Securities and Exchange Commission, Environmental Protection Agency, Nuclear Regulatory Commission, and Federal Energy Regulatory Commission.

high-level appointments (Krutz, et al. 1998). These agencies and commissions were chosen because of their connection to business regulation and regulatory policy, which identifies the preferences of business interest groups and corporations as the interest group in our formal model.

One dependent variable in the empirical models estimated in this section, **ALLY**, is a three-valued, ordered measure of the ideological allegiance of appointees to presidents.¹² The measure is admittedly rough, so our results are to be construed as suggestive. Moreover, our interests in the regressions are limited to signs and significance. For Republican appointing presidents, the variable **ALLY** is coded 3 if the nominee is a Republican whose stated profession in the Mackenzie and Light (1985) survey *does not* include business or banking, 2 if the nominee is a Republican and a business or banking professional, and 1 if the nominee is a Democrat. For Democratic appointing presidents, **ALLY** is coded in the reverse, taking a value of 3 if the nominee is a Democrat who is not a business or banking professional, 2 if the nominee is a Democrat and a business or banking professional, and 1 if the nominee is a Republican.

The ideas driving this coding scheme are party policy allegiance and expertise. We assume that a Republican president appointing a non-business professional to a business-related position sees that individual as a strong policy ally. With business experience, the individual brings expertise to bear on the job and may not be as reliable as an ally in any given policy decision, but is still more reliable than a party opponent.

¹² Initially, a four-valued measure was attempted as a dependent variable, with a value of 4 issued to a same party non-business professional, 3 issued to a same party business professional, 2 issued to an opposing party business professional and 1 to an opposing party non-business professional. A Wald test of the parallel regression assumption for this model was significant at the .05-level with $\chi^2(8 df) = 30.660$ (Long 1997, 143-145). Since there were only 7 observations for which this four-valued variable took a value of 2, categories 1 and 2 were merged to create **ALLY**. In a second Wald test for **ALLY**, $\chi^2(4 df) = 8.78$ was insignificant at the .05-level, suggesting that the parallel regression assumption is not violated and ordered logistic regression is appropriate.

The opposite logic is employed in the coding choices for Democratic presidents. Given the data limitations, a second dependent variable, **PARTYALLY**, taking a value of 1 when the appointee and president are of the same party and 0 when they are of opposing parties, is also examined.

We construct ordered logistic and logistic regressions as empirical models to examine the effect of the spatial policy preferences of the president and Congress on the odds that an ally is chosen. Table 1 summarizes the variables used in the models.

NPRES represents the median number of times in a session that the Senate¹³ voted against a presidential position in roll calls selected in the Congressional Quarterly, Inc. (2000) data. This serves as a proxy for the spatial distance between the president and Congress such that higher values represent a greater spatial distance. **ADA** is the Senate session median percentage of votes with the position of the Americans for Democratic Action, **COPE** is the Senate session median rating of votes with the position of the AFL-CIO's Committee on Political Education, and **PRESPARTY** is a dichotomous variable valued at 1 if the appointing president is Republican and 0 if Democratic.

¹³ Though our model presumes a unitary actor legislature, we use Senate data due to the role of that body in providing "advice and consent" on nominations.

	Variable Description	Mean	S.D.	N.	Min.	Max.
<i>Dependent Variables</i>						
ALLY	3=same party, non-business, 2=same party, business, 1=opposing party	2.422	0.788	389	1	3
PARTYALLY	1=same party, 0=opposing party	0.837	0.370	447	0	1
<i>Covariates</i>						
NPRES	Median number of Senate votes against the president	29.934	6.772	446	21	44.5
ADA	Median ADA score	45.874	7.722	435	35	59
COPE	Median COPE score	58.572	11.726	405	32	75

Table 1: Descriptive Statistics

Though the spatial proxies are rough approximations, Figure 4 shows that throughout the period of our sample, these measures are useful for our purposes. The positions of the Senate on union and general liberal issues as measured by **COPE** and **ADA** are distinct throughout the Johnson administration, but diverge only early in the Nixon, Ford, and Carter administrations. Both sets of scores relate a conservative shift in Senate voting in 1981, as the Reagan administration began. The spatial distances between Nixon (particularly in the aftermath of Watergate), Ford and their respective Senates are the greatest in the sample as measured by the **NPRES** variable, while Carter, Johnson, and Reagan faced less Senate opposition.

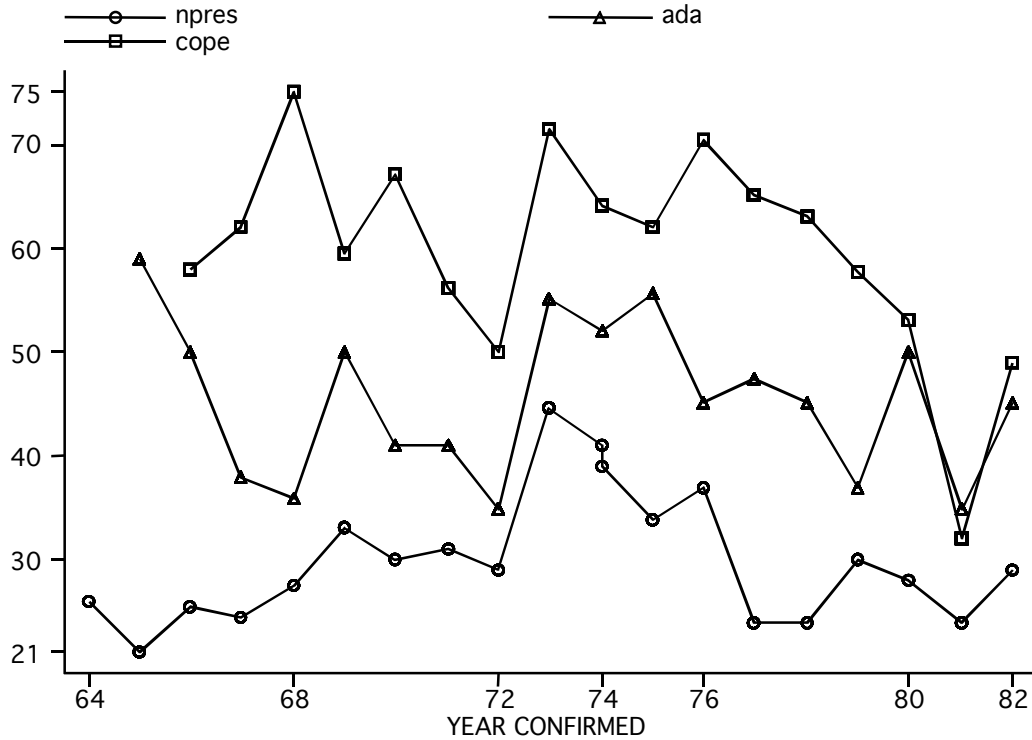


Figure 4: Trends in Congressional-Presidential Ideology

Since the bulk of administrative appointments occur early in a president’s term, the picture of American politics in Figure 4 and our formal model imply that Reagan, Carter, and Johnson would have the least incentive to make strategic appointments. This is true for the most part, with **ALLY** taking a value of 1 (opposing party) in 16% and 15% of Carter and Reagan appointments, and in 18% and 23% of Nixon and Ford appointments respectively. Though Johnson appointed a party opponent in 23% of the cases in our sample, given the assassination that brought him to office in 1963, it might also be expected that his appointments would include more continuations from the Kennedy administration than the others. Indeed, 62% of all reappointments in the sample were made by President Johnson. Thus, we anticipate that our inferential statistics will support the following hypothesis: *As the ideological distance between Congress and the*

president grows, the president will be more likely to make strategic (non-ally) appointments.

We estimate an ordered logistic model¹⁴ for the dependent variable **ALLY** and a logistic regression model for the dependent variable **PARTYALLY** to test this hypothesis. In each model, we expect the coefficient of **NPRES** to be negative and significant. Given the negative effect of **NPRES**, we anticipate that the coefficients on the interest group scores will be significant, though we have no prior belief regarding the sign. In other words, the probability that a president *of either party* appoints an ally should be significantly affected by Congressional policy preferences. We also expect that **PRESPARTY** has no effect on the president's choice of allies, and its coefficient should, consequently, be insignificant. This is because the primary theoretical expectation is caught in the spatial distance between the policy preferences of the president and Congress (**NPRES**). Having controlled for this effect, presidential preferences should not exert any independent effect.

¹⁴ Ordinary least squares regression results are not significantly different from the ordered logit results.

Parameter Estimate	Dependent Variable (std. err. in parentheses)	
	ALLY ¹	PARTYALLY ²
Senate votes against the president (NPRES)	-0.101** (0.036)	-0.114** (0.043)
ADA scores	0.064** (0.023)	0.069** (0.028)
COPE scores	0.013 (0.016)	0.002 (0.020)
Party of the president (PRESPARTY)	0.253 (0.407)	0.502 (0.474)
Intercept	-	1.736 (0.922)*
Cutpoint 1	-0.884 (0.697)	-
Cutpoint 2	0.203 (0.695)	-
Number of observations	351	405
χ^2 (4 <i>df</i>)	14.57**	11.85**
pseudo-R ² _{M&Z}	0.052	0.064
BIC	-1377.649	-2059.936

¹ Ordered Logistic Regression
² Logistic Regression
** Significant at the .05-level
* Significant at the .10-level, one-tailed test

Table 2: Results

The estimates in Table 2 confirm our hypothesis that Congress matters in the appointment of presidential allies, suggesting that the bargaining model developed in this paper captures a mechanism underlying the selection of bureaucrats. As appropriate to regressions using ordered dependent variables, the McKelvey and Zavoina (1975) pseudo-R² is reported for each model. The Bayesian Information Criterion (BIC) is also

presented for model comparison. The binary model is much more informative, though both are significant and display equivalent signs and significance.

As the spatial distance between the president and Congress (**NPRES**) increases, the odds of a presidential ally appointment decrease. By itself, presidential influence (**PRESPARTY**) does not matter, but Congressional influence as measured by ADA, but not COPE scores, is significant and positive in both models. The latter result suggests that *both* parties are more likely to appoint allies as Congress becomes more liberal. Upon reexamining Figure 5, we see that this finding is sensible. ADA scores drop in the 1960s until the election of Richard Nixon, they rise in the 1970s into the beginning of the Carter administration, and fall once again as Ronald Reagan takes office. Conservative congressional trends for Republican presidents and the obverse for Democratic presidents reduce the agency problem, and as our bargaining model suggests, increase the selection of allies (the president becomes indifferent between N_1 and N^*).

These findings represent an interesting element in the story of the administrative presidency. Scholars observe the strategy in its most vigorous form since the beginning of the Nixon administration (e.g., Waterman 1989), and this is precisely the era through which our results suggest that agency problems in the bargaining model were smallest, as was, it follows, the incentive for strategic delegation.¹⁵ Thus, the strategic delegation story, which on its face seems at odds with the administrative presidency strategy, should be seen as an enhancement, not a contrary position.

¹⁵ Recall that it is the agent's marginal rate of policy substitution that defines him as an ally in the bargaining model. Thus, what the ally measure captures might be strategically irrelevant moves along ray GN^* . These may, of course, occur during times where the distance between congress and the president is small, though other political factors—patronage, etc.—would likely keep the ideal points of the appointments relatively close to that of the president.

Further Extensions of the Model

An intuitive extension of the model would be to add information asymmetries among the parties. Uncertainty over the location of ideal points on the policy space, the agent's marginal rate of policy substitution (even strategic misrepresentation by the agent), judicial understanding of the location of the reversion point, and so forth, can mute the incentives discussed above. Consider the following case. The chief executive, legislature, and group do not precisely know the location of the agency's ideal point. Each branch, then, in bargaining over the location of **R** (the enabling statute) would have an incentive to control for the selection of an agent that has preferences in an incompatible direction.¹⁶ Relative risk aversion levels for the chief executive and legislature can also change the position of **R** (e.g., Bendor, Taylor, and Van Gaalen 1987). The agency will reveal its preferences to the group in ex post bargaining over individual policy outcomes.

Additionally, the group or chief executive may know the agency's type, but not the legislature, for example, because of screening in the White House Office of Presidential Personnel, or previous close dealings between an interest group and a senior administrative nominee. This information could be exploited in a screening version of the delegation game. Moreover, given uncertainty over agent traits, it may also be useful to consider the effect of legislative lobbying by the group (or multiple groups) in a signaling framework.

Making the group's access to the reversion costly, i.e., through litigation, is another straightforward extension. With complete information over costs, this would

¹⁶ With the caveat, of course, that the strategic delegation story suggests that the agent need not be an ideological ally.

only make it impossible for the group to commit to the reversion in policy bargaining. It would, alternatively, tradeoff costs for policy, moving any Nash bargains with the agency along the contract curve (segment AG in Figure 2) in the direction of the agency's ideal point. If the costs were *political*, there may be reason to complicate the model by considering the amount of those costs to be private information for the group in a signaling model. These extensions are left for future research.

The Politics of Appointments

The model implies that centralized control over appointments—such as the increasing importance of the White House Personnel Office (Weko 1995)—is not simply a mechanism to solicit allies, but rather a graphic illustration of the president's incentive to assess the political environment when selecting nominees. Calvin Mackenzie (1997) has written that individual senators have become increasingly aggressive in resisting presidential appointments. Moreover, he notes that “the insertion of the Congress into the nomination as well as the confirmation process” has become particularly important (Mackenzie 1997, 29). In the Clinton administration, the Federal Communications Commission (FCC), among regulatory commissions, gained a central place in the politics of nomination, with four vacancies of five seats. Mackenzie (1997, 29) notes that “[m]embers [of Congress] not only recommended candidates of their own . . . they quickly made it clear that no one would be confirmed to any vacancy on the FCC until all the nominees had been designated and their composition reflected congressional interests.”

Since the strategic delegations discussed here also provide Pareto gains to the legislature over ideological allies of the executive (see Figure 3), the president can claim

credit for moderating his policy choice, even accepting the suggested nominees of legislators (or making “sympathetic” choices). The president’s strategic misrepresentation can be mutually beneficial. Of course, in many cases, the agents serve at the pleasure of the president, whether or not they are strategic. Nonetheless, in equilibrium, the model predicts that policy will moderate” into the Pareto set for the group, president, and legislature. Our restrictive informational assumptions would not predict any firings, but the model could easily be extended—as described in the preceding section—to study such events.

Conclusion

William Reilly remained EPA Administrator throughout the first Bush administration. He developed a reputation of being at odds with business lobbyists, though his policy performance was moderate. He was irate when Vice-President Quayle’s Council on Competitiveness required the EPA to allow emissions permit holding companies to make “minor” amendments to their permits without public notice and comment, after the Clean Air Act was reenacted in 1990. When the Earth Summit in Rio de Janeiro ended in Bush refusing to sign a biodiversity treaty, Reilly wrote a letter to all 12,000 EPA employees criticizing the president’s actions (*New York Law Journal*, September 25, 1992).

Was Reilly strategic appointment? The model presented here suggests that a general incentive exists for strategic delegation in the administrative state. The statistical evidence suggests that the incentive operates generally in presidential appointments during the period that scholars have considered dominated by the administrative

presidency strategy. What seems clear is that appointments cannot be studied without attention to Congressional-presidential policy preferences.

Appendix (Proof of Proposition 1)

We first show that for a reversion point in $\frac{2}{+}$, the expansion path of Nash bargains is a convex set. This implies that every point in that set is a Pareto improvement for the chief executive over its own Nash bargain with the group. We then show that all collinear agents having ideal points to the northeast of the expansion path implement the identical Nash bargain, which completes the direct proof.

Figure 5 illustrates the proof of Proposition 1(a). Without loss of generality, we normalize the group's ideal point to $(0,0)$, the legislature's ideal point to $(0,\square)$ and the executive's ideal point to $(e,0)$, where $\square, e > 0$. The reversion is a point (x_1, x_2) in $\frac{2}{+}$, and under our statutory compromise assumption, $\square > x_2$ and $e > x_1$. To show that the expansion path is convex, we must show that some point (x_1, y_1) on the path is a convex combination of the reversion point and its projection onto segment **GE** (shown in Figures 1-3), the latter being, by definition, the location of the Nash bargain between the group and chief executive (Nash 1953; see also Binmore 1992). This projection is labeled point **B** in Figure 5. Given our normalization, this projection lies on the abscissa at $(x,0)$. The definition of the Nash bargain also requires that $e > x > 0$. We thus are only required to show that $x_1 > x$ for every angle \square , such that $0 < \square < \square$, where \square is the inclination of a ray (which we shall call ray **GN**) from the origin through the projection of **R** on ray **GN** (point **N** in Figure 5).

Since **N** lies on both the expansion path and ray **GN**, it is by definition the projection of **R** onto ray **GN**, and thus meets the ray from the origin through **R** with angle $\square > 0$. Likewise, the projection of **R** onto the abscissa defines angle \square at the reversion point. We have now defined triangles **RGB** and **RGN** in Figure 5. Since \square is positive,

we know that angle $\mathbf{RGN} = (\alpha - \alpha_r) < \alpha_r$. Since the sum of the angles in a triangle is 180° and angles \mathbf{RNG} and \mathbf{RBG} are right angles, we know that $\alpha > \alpha_r$. Since triangles \mathbf{RGB} and \mathbf{RGN} share a hypotenuse (c), but $(\alpha - \alpha_r) < \alpha_r$, we know that $a_1 / \cos(\alpha - \alpha_r) = a / \cos \alpha_r$ and that $\cos(\alpha - \alpha_r) > \cos \alpha_r$. Thus, $a_1 > a$, and by the distance formula and definition of a projection onto the abscissa, $x_1 > x$. The expansion path satisfies convexity.

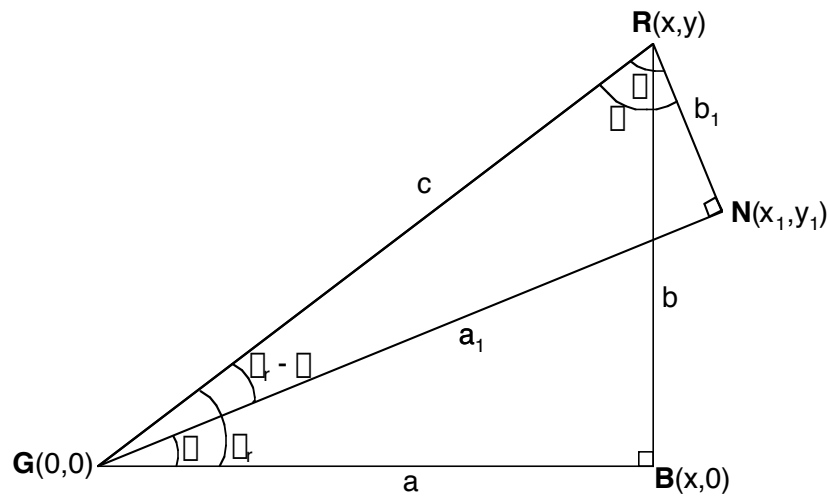


Figure 6: Proof of Proposition 1(a)

By backward induction, in Round 1, the chief executive maximizes his utility in selecting an agent. Given Euclidean preferences, $e > x$, and the fact (just shown) that any agent on the expansion path provides $|e - x_N| < |e - x|$, the chief executive selects an agent that will facilitate that bargain on the path that minimizes $|e - x_N|$. Since the chief

executive's circular indifference curve is tangent to the convex expansion path at a single point, that optimal bargain, which we have called \mathbf{N}^* is unique.

To show Proposition 1(b), we again let ray \mathbf{GA} be a ray from the origin having inclination $0 < \theta < \theta_r$ containing agent ideal points $\mathbf{A}_1(x_{11}, x_{21}), \mathbf{A}_2(x_{21}, x_{21})$. Let $\mathbf{R}(x_{1r}, y_{2r})$ be the projection of the reversion point onto ray \mathbf{RA} such that $x_{12} > x_{11} > x_{1r}$ and $x_{22} > x_{21} > y_{2r}$. Since $\mathbf{A}_1, \mathbf{A}_2$, are collinear with \mathbf{R} , the location of \mathbf{R} is, quite obviously, identical for each of the agents. Thus, \mathbf{A}_1 and \mathbf{A}_2 implement the identical Nash bargain \mathbf{R} , and the chief executive's choice of agent is nonunique.

Q.E.D.

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