The Federal Design Dilemma: Congressional Intergovernmental Delegation

by

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Dedicated To Those Who Left Us Way Too Soon

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INTRODUCTION

When policymakers craft and consider legislation, they make decisions about who is responsible for the implementation of the policy. Congress delegates authority not just to the national executive branch agents, but also to state and local entities (Epstein and O'Halloran 1999).[1] Delegation to national and state actors is a choice about which level of government is responsible for the policy, or how centralized or decentralized a policy is. The variety of federal delegation options offers a number of intergovernmental design alternatives for policymakers. In particular, how much authority should Congress delegate to the states versus the national executive branch? If the states are charged with more authority in implementing a law, the national executive branch receives less of that responsibility. Alternatively, if more authority is centralized in the national executive branch, the state allocation of authority in the national law decreases. Choosing how much authority to decentralize to the states versus keep at the national level is what I refer to as the *federal design dilemma* Congress faces.

Public health scholars often refer to the variation in federal design choices as a "patchwork" of national and state authority across health policies (Institute of Medicine,

[1] In this dissertation, I discuss authority, responsibility, and execution from the perspective of congressional delegation of implementation. As a result, I use these terms inter-changeably.

IOM, 1988 and 2002). This patchwork of authority is identified by the IOM as a major problem for public health due to overlapping authority in some areas and gaping holes in others. Baker et al. (2005) warns "the division of authority among governments at the state, federal, and local levels has often led to inconsistency, ineffective resource allocation, and uncertainty about their respective roles and responsibilities." Health policies, though, are not unique in this respect; education, social welfare, transportation, environmental and energy policies exhibit variation in the decentralization of authority across policies and over time (van Horn 1979, Wong 1994, Potoski and Woods 2002, Scheberle 2005).

For example, in the 1971 Water Pollution Control amendments, an approved House bill centralized power with the Environmental Protection Agency (EPA). In contrast, a parallel Senate bill delegated more authority to the states than to the EPA. Similarly, as Congress crafted the No Child Left Behind Act of 2001, a contentious issue was the degree of state and local control over national dollars allocated to them for educational spending. The House version of the bill gave states and local school districts "unprecedented" flexibility in contrast to Senators who were concerned that this discretion could alter the intent of national education programs (Congressional Quarterly Almanac 2001). In both policies, the final law included a compromise between the chambers over how much authority over implementation was given to the states versus the national executive branch. Adjustments in state versus national executive branch authority in Medicaid and the State Children's Health Insurance Program (SCHIP) have also occurred over time and variation in state responsibility is evident across national environmental laws, such as the Clean Water and Air Acts (Holahan et al. 2003, Nathan 2005, Lambrew 2007, Rabe 2008, Scheberle 2005).

A look at the language of national policy debates reveals the amount of authority allocated to states evolves as bills progress through Congress. In addition, state roles in national policy are closely monitored by legislators and can be contentious. Political elites use language such as "turn back to the states a greater measure of responsibility" (Nixon 1969), "new concepts of cooperation, a creative federalism" (Johnson 1964), "the greatest grab for power ever made by the federal government" (Ervin 1972), and "[t]he only question is at what level [the policy] should be done" (Castle 1999).[2] More recently, Senator Snowe commented on the various policy options and degree of responsibility the states have in national health insurance reform. She remarked, "I think it is clear we all struggle with the appropriate equilibrium [of state and national authority]."[3] These quotes demonstrate the importance of and struggle over the intergovernmental delegation of policy authority in policy debates.

Whether discussing big government, unfunded mandates, federal grants-in-aid, or pre-emption of state regulation authority, the structure of federal delegation choices may be the crux of the policy debate and has even been called the "the cardinal question."[4] Are changes in the design of federal delegation the result of random choices by national legislators as Graves (1964) posits or are they deliberate choices with respect to the

[2] All quotes were taken from the Congressional Quarterly Almanac On-line edition (various years). Nixon and Johnson's statements were in the 1973 article entitled "Nixon's New Federalism Debated in Senate Hearings", Ervin in 1972 "Equal Jobs: Approval of Court Enforcement Approach" and Castle's remark was in the 1999 article "New 'Ed-Flex' Bill Allows States To Grant Waivers from Some Federal Regulations."
[3] Senator Snowe's quote is from an October 13, 2009 Finance Committee hearing on national health insurance reform, which will be discussed at length in Chapter 5.
[4] Wilson (1917) remarks that the relationship between the national and state governments is the cardinal question that faces each generation.

location of policy authority? This dissertation seeks to explain why and how national legislators use federal delegation in policy design. Two major questions are addressed:

- What does federal delegation within and across policies look like?
- Under what conditions do national legislators choose to delegate more or less responsibility to the states?

In order to maintain a degree of clarity in this project, I refer to *joint-partnership* decisions, policies, and programs as those characterized by a sharing of authority between the national and state levels of governance. *National* programs and policies are those specifically at the national level and *state* programs and policies are those with authority delegated mainly to the state (or local) levels.[5] The term *federal* is used more generally to refer to characteristics of policies or responsibilities within the entire governance system. This use of the term is a departure from conventional usage, where *federal* typically refers to the national government. I follow Peterson's (1995) narrowing of the definition to reduce confusion in this intergovernmental study of policymaking. For instance, the federal delegation of authority for policies refers to the designation of which level (national, state, or both) is in charge of a policy. This assignment includes responsibility for making rules, oversight, translating policies into action, and financing. Responsible parties can include national bureaucracies, independent commissions, state and local actors (such as their legislatures or bureaucracies), and even private entities.

IMPORTANCE

The structural choices Congress makes have "important consequences for the content and direction of policy" (Moe 1989). The federal design, or intergovernmental

[5] I assume local policies are subsumed into state policies. Local governments also likely play an important role in intergovernmental relations and the decisions of policymakers. Narrowing the scope of the study in this way will miss some of the nuances of intergovernmental relations that require further study.

structure, of policies, therefore, is fundamental for at least three major reasons. First, the delegation of policy responsibility across levels of government yields different policy outcomes because different actors with different ideas about the best policy outcome are involved.[6] Second, the design of federal authority delegation crucially affects policy winners and losers because altering the federal location of policy responsibility changes the scope of the issue (Schattschneider 1975) and creates opportunities for policy entrepreneurs to change “the distribution of advantage” (Baumgartner and Jones 1993). Policy actors may increase or decrease the scope of the policy to achieve the ends they specifically want (Nice 1987, Baumgartner and Jones 1993).

Third, and from the perspective of public health and health policy, changes in the federal design of authority result in changes in population health outcomes for the two reasons listed above and their impact on the delivery of public health and health care programs and services. Whether states or the federal government are the lead, the support, or sole actors involved in public health policy, whether states can tailor policies to their population, and whether national law sets a ceiling or a floor for policy alter the ability of public health practitioners to do their work. These choices lay the foundation for which entity has power, which in turn has a direct effect on the choices made over the intent of programs, distribution of resources and, ultimately, on health outcomes. Although states were traditionally considered the core actor responsible for health policy, the national legislature has utilized a combination of grants-in-aid, unfunded mandates, and lenient judicial interpretations of the Constitution to dominate most policy areas, including health (Gostin 2000).

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[6] The “best policy outcome” loosely describes actors’ preferences over policy outcomes or ideal policy outcome. This terminology is sharpened in the theoretical chapter.

Despite the importance of these authority alternatives, we do not yet fully understand why legislators choose to delegate authority for some policies more to the national executive branch and others more heavily to the states. In public health scholarship, for instance, although the patchwork of authority is often discussed, few undertake research about the underlying causes of the mélange of intergovernmental relationships. Because of the significance of federal delegation of authority and our inability to pinpoint its determinants, this dissertation addresses how Congress solves its federal design dilemma.

Previous policy and political science scholars have also noted the importance of federal delegation. In 1984 Ripley and Franklin wrote that virtually all policies are a mix of national and state actors following similar statements made by Elazar (1962). More recently, Conlan and Posner observe that most domestic policies include a mixture of responsibilities for national and state actors (2008) and Epstein and O'Halloran (1992) coin the term *federal delegation* (which they define in their study as delegation from Congress to the states). Although details about state and local actors are not included in Epstein and O'Halloran's (1999) study, delegation to state and local actors represents a significant portion of congressional choices about where to locate policy authority. As detailed in Table 1-1, state actors are mentioned in 31% and local actors in 13% of Mayhew's important laws from 1947 through 1992.[7]

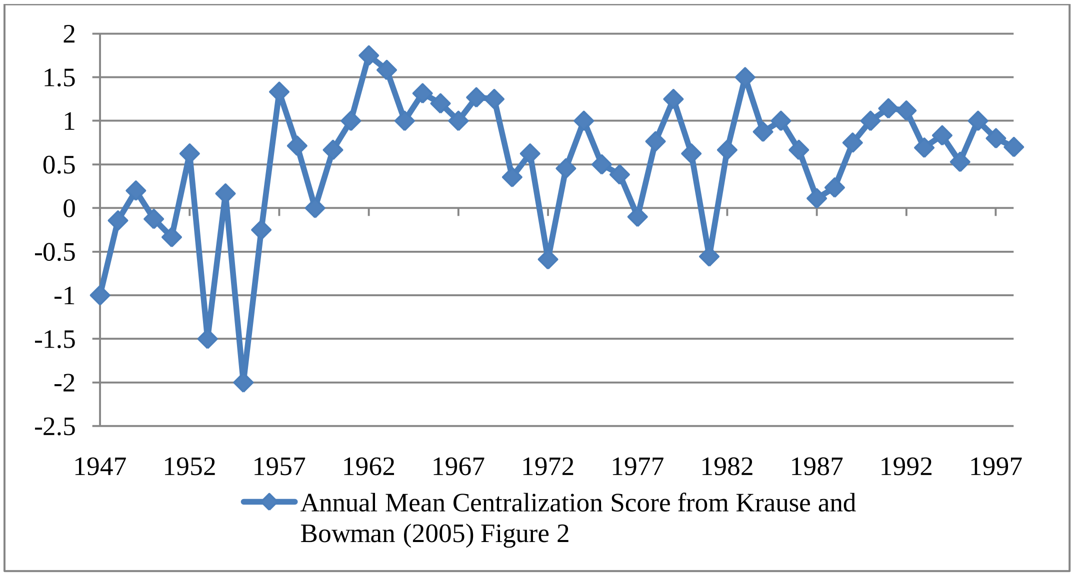
[7] The degree of overlap in these two categories cannot be determined from details provided in text accompanying their table.

Table 1-1: Authority Location (Epstein and O'Halloran 1999)		
Location	**# Laws Mentioning (n=257)***	**% of Laws Mentioning**
Cabinet Departments	208	80.9
Executive Office of the President	105	40.8
Independent Regulatory Agencies	98	38.1
State Level Actors	80	31.1
Judicial Actors	41	16
Independent Commissions	41	16
Local Actors	34	13.2
Government Corporations	21	8.2

*The numbers do not add to 257 due to provisions that delegate to actors in multiple locations. Data was extracted from Epstein and O'Halloran's Table 5.4 (99, 1999).

Krause and Bowman take a slightly different angle on the issue and provide an empirical account of delegation to national and state actors via the centralization and decentralization of policy authority in national law. The authors find that average centralization varies over time (2005). The substance centralization score, or the degree to which policy authority is delegated to the states, ranges from -2 (decentralized) to 2 (centralized). The authors demonstrate annual variation in decentralization, as shown by data abstracted from their study in Figure 1-1. They find the lowest level of centralization occurred in 1955 and the highest in 1964. From the 1970's onward, centralizing years (e.g., 1967, 1974, 1985, or 1990, each with scores of 1) are followed closely by decentralizing years (1972, 1977, or 1981 with -0.588, -0.100, -0.556, respectively).

Figure 1-1: Policy Centralization (Krause and Bowman 2005)



Synthesizing these findings, federal design decisions are important, ubiquitous, and vary in interesting ways. Previous literature, though, has bypassed how strategic national actors make these intergovernmental delegation choices. For instance, federalism scholars provide theories of accountability, efficiency, and equity with respect to the structure and operations of federal governments but only rarely consider the strategies, incentives, and constraints of policymakers (see Peterson 1995, Volden 2005, and Bednar 2010 for exceptions). Similarly, congressional scholars have illuminated how the strategic interaction between policymakers leads to various substantive outcomes but have overlooked the influence federal structures may have on those strategies and outcomes (e.g., see Shepsle and Weingast 1995, edited volume).

MOTIVATING LITERATURE

Although this project is the first theoretical and empirical investigation of national legislators' intergovernmental delegation choices, work from a variety of scholars sheds light on the puzzle of federal policy design. Specifically, previous research is enlightening with respect to fluctuations in the centralization (nationalization) and decentralization of policies over time, the incentives political actors face when considering devolving policy authority to the states or centralizing authority with the national executive branch, and the reasons for and ways in which legislators delegate policy authority to another entity.

Centralization versus Decentralization

Explanations for variation in the decentralization of policies include party or ideology with Republicans or conservatives favoring decentralized policies and Democrats or liberals favoring centralization (empirical studies reviewed in Peterson 1995, also see Krause and Bowman 2005). Modernization, complexity, and specialization (Beer 1978, Bowman and Krause 2003) and growth of the interest group system (Baumgartner and Jones 1993, Walker 1981) are considered culprits for the increasing interdependence and intergovernmental nature of national policies. Other scholars cite randomness and lack of order for the reasons decentralization of authority varies across laws (van Horn 1979, Graves 1964). The conventional wisdom is that Republicans prefer to devolve authority to the states and Democrats prefer centralization. This well-accepted argument appears to be based on conservative rhetoric, not on policy actions (Scheiber 1996). As an example, the devolution revolution during the Reagan administration is described by scholars in the following way: "the concept of federalism guiding their decisions remains as inconsistent and incoherent as it ever has been" (Peterson, Rabe and Wong 1986). In other words, empirical evidence shows Republicans do not consistently devolve authority to the states.

Krause and Bowman add nuance to the conventional wisdom with a thoughtful view of the influence of partisan preferences on decentralization (2005). They argue and find empirically Republicans do not just devolve authority, but instead, Republicans at the national level are more likely to decentralize authority to the states when the states are more Republican and Democrats do the same when the states are more heavily Democratic (what they term partisan congruence).[8] In their view, national legislators scan the average partisan makeup of states before choosing the degree of centralization of policies and then decentralize when the states, on average, are of the same majority party as the combined national institutions of governance.

Scholarship in fiscal federalism, alternatively, suggests policymakers design authority structures to fit the situation or policy area at hand (see Oates 2005 for a review or Peterson 1995 for an explication of "functional federalism"). Those policies best (often defined as most efficiently) implemented at the state level are decentralized to the states and those more efficiently handled by the central government are kept at the national level. For instance, Peterson argues that national legislators craft decentralized developmental policies and centralized redistributive policies since the states are more competent at development than at redistribution (1995).[9] Economic analyses similarly focus on the most efficient division of responsibilities in a federal system (Tiebout 1956, Olson 1969, Chubb 1985, Oates 2005). The classic result is that the central government should deal with redistributive policies and local governments should concern themselves

[8] In their study, the authors include controls for federal government spending growth, mean annual growth of state revenue from the previous year, Krehbiel's gridlock interval measure, and a dummy variable for civil rights and welfare issues (Krause and Bowman, 2005).

[9] Peterson argues that after the 1970's, national legislators began to craft legislation with policy function in mind. He defines developmental policies as those that "provide the physical and social infrastructure necessary to facilitate a country's economic growth" and redistributive policies as those that "reallocate societal resources from the haves to the have-nots" (17, 1995). Although Peterson's earlier work emphasizes centralization from a local to state perspective (1981), in *The Price of Federalism* he focuses on state to national concerns. For instance, in his formulation of the functional theory of federalism he argues "the national government should assume the primary responsibility for redistribution, while state and local governments assume primary responsibility for development" (18, 1995). Peterson juxtaposes this theory to a legislative theory of federalism (where political actors are driven by self interest instead of efficiency) and concludes that post-1970's the functional theory is most consistent with the data.

with developmental policies (Chubb 1985, Oates 2005).[10] Yet, as Chubb puts it, federalism is not "an efficient system for sharing the economic, political, and administrative responsibilities of modern government, but rather, one that, through the initiative of the national government, has become wasteful, cumbersome, and, as often as not, unsuccessful" (994, 1985). Chubb's perspective casts doubt on intergovernmental delegation for reasons of efficiency.

Policy Actors' Incentives

In other words, efficiency may not be the determining factor in how national legislators design federal policies. In fact, many of the researchers discussing decentralization point to legislators' incentives when making policy decisions (e.g., see Krause and Bowman 2005, Peterson 1995, and Chubb 1985). Other scholars focus on these incentives and find that state and national governments have logical reasons to enter policy realms where the other level would more efficiently legislate. These reasons include uncertainty in policy outcomes and opportunities to claim credit and shift blame (Volden 2005 and Bednar 2010). Intergovernmental policies afford politicians the ability to take credit for successes as well as shift the fiscal burden and blame for policies (Weissert 2007). Yet, Peterson finds that the theoretical story that legislators design policies to claim credit for successes and off-load as much of the resource burden of policies onto other levels of government, only matches pre-1970's policy design choices empirically (1995). In other words, conclusions regarding the influence of actors' incentives on federal policy design are contradictory.

[10] The central government (a benevolent central planner) serves the role of internalizing any externalities that may occur through the use of fiscal stabilization schemes (such as grants) (Oates 2005).

Additionally, scholars have begun to parse how policy actors' incentives work in the context of federal institutions such as elections. Nicholson-Crotty (2008) argues that national legislators refrain from using policy devices to infringe on state authority during election years because citizens have preferences over federalism (such as states' rights), but short memories. If legislators preempted state authority through national legislation, citizens would punish them at the ballot box. A concern with the logic behind this analysis, though, is it assumes legislators have preferences over policy outcomes, not federalism as their constituency does. In addition, Nicholson-Crotty's defense of his assumption about citizen preferences over federalism is based on a study from Mikos and Kam (2007). This experiment demonstrated subjects' *a priori* beliefs about federalism were activated when exposed to an argument about physician-assisted suicide and state-rights (2007). This activation may have been more about morality than federalism. The federalism treatment in the experiment included mention of abortion as well as other medical procedures.

Delegation

Considerations of national policymaking typically involve examinations (often implicitly) of policy delegation from the national government to state governments. I turn now to research on the legislature-bureaucratic relationship and delegation studies. Work on bureaucratic delegation highlights the conflicts in interest that exist between the legislature (often styled as the principal) and executive agencies (e.g., Kiewet and McCubbins 1991). Both theoretical and empirical investigations have concluded that legislators can mitigate many (but not all) of their concerns about information and agency policy manipulation by changing the amount of discretion afforded bureaucrats (Epstein and O'Halloran 1999), writing detailed statutes (Huber and Shipan 2002), using competitive or redundant bureaucratic structures (Kunioka and Rothenberg 1993 and Ting 2003), carefully crafting administrative procedures, involving specific interests in agency processes (McCubbins, Noll, and Weingast 1987 and 1989) and utilizing different types of oversight and monitoring mechanisms (McCubbins and Schwartz 1984 and Lupia and McCubbins 1994). None of these scholars considered the importance of the states as potential participants in administrative procedures, agency processes, or oversight and monitoring. How would their conclusions change if they had taken an intergovernmental perspective?

The important variables in delegation decisions include the costs and benefits of the transaction between legislators and the bureaucrats under various political conditions. These conditions include the degree of preference conflict between legislators and the president, the structure of committees, the degree of uncertainty regarding policy outcomes, and the difference in the expertise level of the legislature and the agency (Epstein and O'Halloran 1999). In addition, the political capacity of legislators and their policy bargaining environment, as well as other factors outside of statutes, which constrain bureaucrats after policy enactment, are crucial factors (Huber and Shipan 2002). Incorporating the states as agents would likely change the bargaining environment in crucial ways.

As uncertainty, oversight costs, and legislator risk aversion increase, the set of actors to whom Congress will delegate increases (Bendor and Mierowitz 2004). As legislator information decreases, the delegation set decreases (Bendor and Meirowitz 2004). There are important tradeoffs between many of these factors, such as control (amount of discretion allowed) and expertise (Bawn 1995), credible credit claiming for successes and reduced traceability (Arnold 1990), or oversight and cost (Epstein and O'Halloran 1999).[11]

Unanswered Questions[12]

Although research on bureaucratic delegation is voluminous, surprisingly little has been said about delegation to the states and no explanations for delegation to the states exist. Huber and Shipan (2002) consider federalism as one of the possible extra-statutory controls substituting for lower levels of policy discretion and posit national legislators will constrain implementation by state-level actors by including more statutory details. When is it, though, that national legislators decide to involve state-level actors in implementation as opposed to a national entity?

Epstein and O'Halloran (1999) claim that when forming policies, national level actors must first answer the "*federalism* question" (whether to delegate to states or not) before they decide whether and the conditions of delegation to national agencies (emphasis from original, 153). In their view, legislators first answer the question of whether to delegate to the states or not. Once it has been decided that delegation to the states does not occur, their theory of delegation to national agencies is in play. The authors fail to tackle the federalism question and how delegation to national executive branch agencies changes when delegation to the states is included and yet their empirical evidence (Table 1-1) reveals the commonality of the states in national law. If preferences at the national and state levels matter for decentralization of authority (as in Krause and

[11] This study cannot incorporate every aspect of delegation as it widens the perspective to include the states as potential agents. It does, however, take the first step in such a consideration.
[12] Many gaps still remain in this area (and are not filled by this current project) including the influence of the president, the courts, the Congressional committee system, etc.

Bowman 2005), how do decentralization of authority and the preferences of the national executive branch influence bureaucratic delegation?

There are three major issues with most of these arguments and their analyses. First, delegation scholars fail to account theoretically for the states as potential agents. As mentioned above, no previous scholars have incorporated the states as an option in models of delegation. If delegation models were to incorporate the states, it is likely that the design of delegation will change. For instance, state and national agents may offer benefits to Congress through competition for scarce resources (e.g., funding) and they may create concerns by increasing oversight challenges due to the number and geographic distance of the states and the possibility of collusion between national and state agents.

Second, much of the research considering the states and decentralization of authority only obtains empirical support periodically. As an example, that policy type determines which authority structure is designed has been an accepted theory for more than two decades. Unfortunately, empirical scholars have had to redefine different types of federalism to fit with how different types of policies are delegated to the states during different time periods (e.g., layer cake federalism, marble cake federalism, picket fence federalism, and so forth).[13]

The third concern is methodological. All studies of decentralization of authority evaluate their theories using a subset of data selected because the policies deal specifically with state pre-emption, federalism, or specific intergovernmental content. These studies, in other words, select on the dependent variable leaving uncertainty with

[13] See Nice (1987) for an overview of the different types of federalism and time periods and Wright (1973) regarding cycles of state mandates.

respect to how the findings apply outside of their individual studies. This study attempts to circumvent this issue by considering all significant pieces of legislation regardless of their intergovernmental, federalism, or states' rights content.

In sum, previous literature has, for the most part, separately considered delegation of policy authority to the states and strategic politicians centralizing and decentralizing policies. These studies have often narrowly focused on just grants-in-aid (e.g., Peterson 1995) or confined definitions of mandates or delegation in their theories and empirics. Formal theoretical work has begun to combine these policy actions and political motivations (Volden 2005, Bednar 2010), but a broad analysis of federal design decisions and national policymaking has not been undertaken. This project addresses the intergovernmental design choices national legislators make when crafting policies. I investigate why national legislators choose one type of federal design over another and under what conditions they do so.

CONTRIBUTION

By providing an understanding of federal policy design, this dissertation will inform legislative behavior, federalism, and health policy literatures. First, this project illuminates current models of national legislative behavior by placing congressional actions in a more realistic federal structure. Congress chooses the allocation of authority between national and state agents and attempts to pull policy outcomes closer to its ideal point by delegating to the closest actor, or to both jointly. Interestingly, if this simple model underlies how Congress bargains in its chambers, the Senate and the House exhibit extremely different situations due to their unique majoritarian thresholds (i.e., simple majority in the House and supermajority due to the filibuster in the Senate). Specifically, Senators must balance the authority allocation they prefer with the ability to appeal to members from a minority intergovernmental team in order to successfully move policy through the chamber. Second, this research builds on existing literature by providing theoretical and empirical answers to the question of how legislators delegate in a federal system as well as the conditions under which we should see centralization versus decentralization. Finally, I inform public health scholarship by providing insight into the strategies and actions of legislators as they make crucial policy design choices.

Theoretically, I develop formal models of legislators delegating authority to actors at the national and state levels. I extend current theories of delegation and formulate testable hypotheses. These conjectures are analyzed empirically using a new policy-level dataset that encodes federal authority decisions as well as existing secondary data. I ultimately argue that in making the federal delegation decision for a policy, legislators' *intergovernmental context* matters. By intergovernmental context, I mean that legislators come from specific states and consider how their state will implement policy if authority is delegated to that level. Legislators compare potential policy outcomes at the state and national level to their own preferences over outcomes. Scholars studying legislative behavior often ignore that Congress is comprised of individual legislators elected from their own states; the addition of this factor changes the way we view delegation. And, the addition of intergovernmental context alters ideas about who is pivotal in voting decisions.

From an empirical perspective, I create the first dataset of its kind that broadly considers the intergovernmental delegation decisions Congress makes. This dataset is the centerpiece of my dissertation and includes all significant pieces of domestic legislation from 1973-2008. Over 24,000 provisions within those laws were coded to understand which entity –national, state, or joint—received authority. By carefully collecting this data, I am able to test, not only my theoretical explanations, but also rival arguments regarding decentralization and centralization of policy over time and across laws. Thus, I am able to understand the federal design of authority by examining how various factors influence decentralization without selecting on the dependent variable.

In this study, I find most laws include the states as an agent of implementation. Specifically, out of the 179 significant pieces of legislation, 102 delegated at least some portion of the provisions to the states. This novel dataset allows for a more careful and comprehensive study of federal policy design and intergovernmental delegation than is found in any previous study. I demonstrate empirically not only do most domestic policies involve delegation to the states, but there is a systematic explanation of variation in the degree of state-level authority over time.[14]

To preview my results, I find the party difference between pivotal legislators in Congress and their state governors is a crucial determinant to how much authority states are given in national policy. When the pivotal legislator's party in Congress is different from his state's governor's party, less authority is delegated to all states in national law. In addition, the party difference between pivotal legislators and the president also matter. Moreover, these intergovernmental structural choices are tempered by political uncertainty at the state and national level. A case study brings to light the importance of intergovernmental delegation in the health insurance reform process and provides evidence supporting the mechanisms relied on in the formal models. In addition, the

[14] Elazar (1962), Ripley and Franklin (1982), and Conlan and Posner (2008) (among others) suggest that the majority of domestic policies are intergovernmental—requiring state participation in implementation. These authors, though, do not demonstrate this as an empirical fact. This dataset does so.

results of this study show that the intergovernmental context of legislators influences how they form coalitions to pass policy in the House and the Senate.

The dissertation proceeds as follows. Chapter 2 presents a theory of intergovernmental policy design and delegation relying on two simple formal models. Chapter 3 describes the data collected and coded to test this theory and Chapters 4 and 6 provide different levels of empirical analyses. In Chapter 4, I consider the choices of Congress in the aggregate across time. In Chapter 5, I detail the mechanisms at play in the empirical analyses through a study of the 2009-2010 health insurance reform process and consider the usefulness of the assumed mechanisms from the theory in Chapter 2 through an in-depth consideration of the 2009-2010 health reform political process. This case study also highlights the importance of individual legislators' choices and coalition formation in the House and Senate leading into the second empirical analysis in Chapter 6. In Chapter 6, I empirically examine individual legislators' voting behavior in the House and Senate to examine whether intergovernmental context matters in determining vote choice. Finally in Chapter 7, I summarize the entire project and lay the groundwork for future research in this area.

In the end, the motivation for this project is not on which level of government *should* have responsibility for what policies. Instead, I focus on one step of the process: the intergovernmental policy decisions made by national legislators in a federal structure. By concentrating on the decisions of one set of policymakers, I develop and test a positive theory of federal delegation decisions. This focus bypasses considerations of efficiency and normative issues in federal stability.

Throughout this dissertation, I follow the logic of the statement of Nice (1987) who said that beliefs about federalism are “policy in disguise.” He notes that states’ rights rhetoric is just that, rhetoric. Legislators who vehemently oppose tromping on state authority in one policy were found to call for centralization in another and legislators asking for decentralization in a particular policy decide in favor of its centralization in later years. Or put similarly by Stewart (2011) in writing for the Huffington Post about banking policy:

> Most of the time, it turns out, federalism is the ultimate lip-service doctrine. If state's rights get you to the outcome you want, then you support state's rights. If not, well, federal power's good, too. And it's not just self-interested economic actors like banks who dance this dance.

In other words, the guiding force behind this dissertation is that debates about centralization and decentralization are not simply debates about the appropriate level of government. Instead, they are debates about the underlying policy itself and legislators are dancing “the dance” as they pursue their own ideal policy ends. This project delves into the “disguise” and “the dance” and explains when the chosen option for Congress is keeping authority at the national level versus giving some of it to the states.

The support I find in this project for the theory of intergovernmental delegation provides an alternate empirical and theoretical explanation to literatures studying delegation, policy and federalism, as well as health politics. The extensive data effort combined with comprehensive empirical analyses, illuminative case study and theoretical insight provide answers as to how Congress solves its policy design dilemma.

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Chapter 2
A Theory of Intergovernmental Delegation

INTRODUCTION

Congress faces a federal policy design dilemma: how much authority should be delegated to the states versus kept at the national level? Our current explanations fall short because they neglect crucial features about the way in which Congress makes policy decisions. These arguments about partisanship, policy type, or elections do not include strategic delegation of authority, the institutional constraints of the House and the Senate, and uncertainty over policy implementation. In this chapter I provide a framework for understanding why Congress varies the intergovernmental architecture of the policies it makes and include these features in my theory. I argue the answer to the design dilemma lies in understanding that Congress perceives of itself as the principal and the states and the national executive branch as potential agents. Congress determines how much authority to delegate to the states by comparing the outcomes that would result from giving the states more or less authority in a policy and chooses the delegation option that provides the most preferred outcome, or the outcome closest to its ideal point.

To draw out the logic of this comparison, I present two formal theoretic models. The first, which I refer to as the "aggregate-level model," uses a decision theoretic model of a pivotal legislator in Congress deciding to delegate to state and national-level agents. This model highlights the intergovernmental nature of delegation and provides a perspective of how Congress as a whole makes federal design choices. Congress, though, is made up of individual legislators representing their own states. I provide a foundation for the aggregate model with an additional model of individual-level legislative behavior. In this "individual-level" model, I demonstrate how legislators coalesce to form successful policy coalitions altering the degree of state responsibility in bills in the House and in the Senate. These coalitions provide the key for understanding the implications of the initial aggregate model, because they identify who, or more accurately what, is pivotal. Together, the aggregate and individual-level models produce a set of hypotheses about the conditions under which Congress will increase or decrease the authority delegated to the states in national policy and how individual legislators vote with respect to intergovernmental delegation. These models, though, are short-sighted in that they deal only with one time period. I conclude this theoretical chapter by informally discussing the impact of uncertainty over the future preferences of the implementing agents on delegation choices.

There are three key components to the entire theory (the two models, plus informal insights): preferences, intra-chamber congressional institutions, and electoral uncertainty. The outcome of the aggregate model is straightforward—Congress prefers to delegate to the closest agent. In other words, if the preference of Congress lines up closer to those of the national executive branch, Congress prefers to centralize authority; but when Congress is aligned more closely with the states, devolution to the states is the preferred choice. These simple conclusions, though, result in non-intuitive results when played out under different circumstances. For instance, contrary to the conventional wisdom that Republicans devolve and Democrats centralize authority, there are conditions under which Republican majorities choose to centralize authority with national executive branch agencies and other conditions where Democrats prefer to devolve authority to the states. In addition, my theory offers an explanation for differences in authority delegation decisions across chambers of Congress.

My aggregate model hinges on a pivotal legislator in Congress. The pivotal legislator represents the "outcome of how individual legislator preferences and the existing legislative institution [interact] to produce a single legislative preference ordering over the possible alternatives" (100, Lupia and McCubbins 1994). Many scholars assume this pivotal legislator is the median legislator and assume away how legislative preferences are aggregated within the institutional constraints of Congress (e.g., McCarty and Meirowitz 2007). The individual-level model explicitly considers how policy coalitions form in the House and in the Senate given the possibility of intergovernmental delegation and who is pivotal, or which legislator's ideal point will determine voting outcomes, in each chamber. The focus on intergovernmental delegation at the individual level highlights how legislators' intergovernmental context and institutional rules of each chamber influence coalition formation and state authority allocation.

This chapter proceeds as follows: I begin by discussing the assumptions and elements of the aggregate model, provide its solution, and discuss the logically coherent hypotheses that follow. Next, I build on the aggregate model and detail the set-up and solution of the individual-level model in each chamber of Congress. This second model offers additional hypotheses about the choices legislators make. Finally, I discuss the importance of uncertainty about who will be in power in the states and in the national executive branch during policy implementation.

FOUNDATIONAL ASSUMPTIONS

Before showing the aggregate model, I describe several key assumptions of both formal models. These assumptions frame the discussion of the model because they narrow the focus to the intergovernmental aspects of federal policy design.

Delegation

First, I assume Congress always delegates authority for policy.[15] There may be rare instances where the legislature does not delegate authority, such as in the declaration of the Martin Luther King Jr. Public Holiday (PL 98-144) or the Civil Rights Restoration Act of 1987 (PL 100-259).[16] For the most part, though, delegation occurs. The reasons why Congress may delegate authority are wide ranging and include reliance on the greater expertise of specialists to evaluate alternative policies, freeing up legislators' time to engage in other activities (such as constituency service or campaigning), or shifting blame to the administrators of the law instead of Congress (Kiewit and McCubbins 1991, Weingast and Marshall 1988, Fiorina 1977)

This delegation assumption is in contrast to some scholars who assume Congress makes a choice about whether or not to delegate (e.g., Weingast 1984 or Epstein and O'Halloran 1992). Epstein and O'Halloran, for instance, provide a table of twenty-five

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[15] This is not to say that delegation means regulation. Instead, delegation could mean that an agent has received authority for (or over) a variety of policy instruments including regulation, taxation, grants-in-aid, etc.

[16] For Martin Luther King Jr. Public Holiday, the law simply states that it is a public holiday. For the Civil Rights Restoration Act, the text of the law defines what is meant by "program or activity" in response to Supreme Court decisions that "unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and (2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered." (PL 100-259, March 22, 1988).

acts with no executive delegation (95, 1992). According to the authors, this table includes nineteen laws with no delegation and six with delegation to non-executive branch actors. In this list they include the two laws mentioned above as well as Public Health Cigarette Smoking Act of 1970 (PL 91-222),[17] the State and Local Fiscal Assistance Act of 1972 (PL 92-512), and the Fair Labor Standards Amendments of 1989 (PL 101-157).

A thorough reading of these three laws reveals delegation occurs in each case. In the Public Health Cigarette Smoking Act, for instance, a national comprehensive labeling program for cigarettes was established. The Federal Trade Commission (FTC) was then constrained in its actions with respect to this law. The fact that the FTC's actions were limited by the law implies that the FTC was involved in some way with its execution.[18] In the State and Local Fiscal Assistance Act, the Secretary of the Treasury was put in charge of considering state and local applications for money and transmitting it to successful applicants (within specified boundaries of action) and the states (and local units) were given broad authority to use the money for a variety of purposes.[19] Finally, in the Labor amendments, the Secretary of Labor was given constrained authority to

[17] Although enrolled by Congress in 1969, President Nixon did not sign the bill into law until 1970.

[18] Specifically, FTC actions related to cigarette advertising regulations could not occur before July 1, 1971. After this date, the FTC had to notify Congress that it determined action was necessary with respect to the regulation. This notification had to include the text of the regulation rule and "a full statement of the basis for such determination. No such trade regulation rule adopted in such proceeding may take effect until six months after the Commission has notified the Congress of the text of such rule, in order that the Congress may act if it so desires." (Section 7a, PL 91-222, 1970).

[19] "Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay out of the Trust Fund to- (1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and (2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period. … the Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress…" (Section 101-107, PL 92-512, 1972).

develop regulations within the definitions set by Congress.[20] In sum, even in cases that previous scholars consider non-delegation, Congress does in fact delegate.[21]

Not only does the legislature delegate authority, but I also assume it has alternatives over the recipients of that authority, the states or the national executive branch. Empirical evidence provided by Epstein and O'Halloran (1999) demonstrate Congress delegates to national-level actors (such as the Executive Office of the President or cabinet departments) and state and local actors, to name a few. The focus of this project is on that choice to include delegation to the states in national-level laws and how much of the authority is delegated to the states. This delegation choice rests upon the assumption that Congress is the principal and the states, the national executive branch, or some combination of the two are potential agents. In other words, Congress can alter the amount of authority delegated to the states versus kept at the national level along a continuum. If all responsibility for a policy is delegated to national executive branch actors, no authority is delegated to the states (and vice versa). Additionally, Congress can delegate a portion of the authority to the states and the remaining amount to the national executive branch. These design choices result in diverse outcomes since different actors are involved to varying extents.

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[20]"If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage. … The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof. " (Sections 2-6, PL 101-157, 1989).

[21] Moreover, the data coding process of this project (chapter 3) did not reveal any additional instances where delegation did not occur. The differences between Epstein and O'Halloran's coding of non-delegation and my reading of the full text of the laws is most likely due to the coding process Epstein and O'Halloran used. Specifically, they relied on Congressional Quarterly Almanac (CQ) summaries of the laws included in their analyses. In the data chapter, I discuss the problems that arose when I utilized these same summaries and the reasons why I chose to use Congressional Research Service (CRS) summaries instead. In brief, I found that CRS summaries consistently provided more specific information about what entities were charged with implementation of which provisions than did the CQ summaries.

Yet, it is not obvious that Congress is in a position to require the states to participate in national policy. Specifically, Article I, Sections 8 and 9 of the Constitution, as well as the10th amendment, circumscribe the limited power of the national government and the immeasurable, residual power of the states (and the people). The flexibility of the Constitution, though, with respect to delegation of authority and expansive federal judicial decisions have allowed national authority to extend across all areas of policy (Posner 1998, Eskridge and Ferejohn 1994, Harvard Law Review 1994). Furthermore, from the New Deal forward national dollars have become a crucial part of state-level policy activities, giving Congress the power of the purse (Nathan 1983, Chubb 1985, Rosenthal 1987, Inman 1988 McCoy and Friedman 1988, Harvard Law Review 1994, Zimmerman 2005). This sprawl and brawn of the national legislature have offered Congress the opportunity to consider itself as the principal—with the states and the national executive branch as potential agents—while crafting policy.

Principal Agent Framework

Because Congress delegates authority and because the states and the national executive branch have the potential to receive that authority, I stylize the relationship among Congress, the national bureaucracy, and the states as a simplified principal agent model. In a standard principal agent model, a principal faces a choice about how much authority to delegate to an agent (e.g., see McCubbins, Noll, and Weingast 1987; 1989; Lupia 2001; or Alesina and Tabellini 2005). Problematic is that an agent may implement the policy in a way that is dissimilar from what Congress itself would have done had it chosen to retain authority for the policy. Agency problems occur because the agent (the entity given control over the policy) prefers to act on its own behalf instead of for

Congress. This could entail shirking (not doing the work required in the policy) or bureaucratic drift (also known as slack or slippage) where the agent implements a policy that differs from that enacted (Kiewiet and McCubbins 1991).

Principal-agent problems arise when the principal has incomplete information about an agent's actions and the principal has preferences that diverge from the agent. One solution is that the legislature, as the principal, can attempt to structure the policy and delegation relationship in such a way as to create incentives for the agent to do exactly what Congress would do if they could implement the policy on their own either through ex ante or ongoing controls (e.g., see McCubbins, Noll, and Weingast 1987, 1989). A common arrangement is the inclusion of oversight and monitoring mechanisms—either directly to Congress, via an advisory committee, or by the inclusion of interest groups in agency decisions. Unfortunately, from Congress' perspective, monitoring is never perfect and both slippage and shirking remain.

In my model, I assume complete information to focus specifically on the influence of preference divergence across governmental levels.[22] Congress, as the principal, faces a choice between delegating policy authority to a national agent, a state agent, or some combination of the two (what I refer to as joint partnership policies). In essence, Congress can choose to centralize authority with a national executive branch actor (e.g., the Department of Health and Human Services or the Environmental Protection Agency) or devolve more authority to the states.

Although the principal agent model is a dominant choice of Congress-centric bureaucratic delegation scholars, my application of it is new because I add the states as

[22] Future work should incorporate incomplete information to assess the extent to which congressional uncertainty over policy outcomes, for instance, influences intergovernmental delegation choices.

potential agents to specifically consider *intergovernmental delegation*. Just as in other principal agent models, goal conflict between the principal and agent is an important factor (Waterman and Meier 1998, Bendor, Glazer, and Hammond 2001). With respect to goal conflict, Congress, the national executive branch, and the fifty states may all have different preferences when it comes to what they consider ideal policy outcomes. For instance, Congress may prefer a liberal policy, the national executive branch may favor a conservative approach, and the states may be heterogeneous with some states preferring extremes (liberal or conservative) and others wanting more centrist outcomes. The extent to which the goals of these three sets of actors diverge varies over time.

Legislator Motivations

In addition to assumptions about delegation and the relationship and potential challenges between the states and Congress, I assume individual legislators are motivated by policy outcomes and concerns about re-election.[23] Legislators make choices about policies, but have personal preferences over the outcomes produced by these policies. Outcomes are the result of the actions of agents (the states and the national executive branch) assigned the authority to implement the policy. When the states are given more authority, state-level actions more heavily influence policy outcomes than when the national executive branch is given more authority. When both the states and the national executive branch are given approximately the same amount of authority, their actions weigh equally on the outcome. In terms of the outcomes legislators prefer, they may be motivated by re-election or even personal policy preferences (Mayhew 1974, Arnold

[23] In addition, in the individual-level model discussed later, legislators receive a utility boost from forming a successful coalition with their co-partisans. Thus, legislators are also motivated by partisan preferences, just not by assumption.

1990).[24] Because legislators worry more proximally about re-election, though, and are re-elected by their congressional district, legislators in the model consider only those outcomes in their individual state.[25] In other words, a legislator in Massachusetts almost certainly cares more what happens in his state than what happens in Wyoming or Georgia.[26]

Discretion and Implementation

In contrast to Huber and Shipan (2002), who rely on a principal agent model to examine the factors that influence how legislatures craft the boundaries of agent discretion, I assume agents implement their own ideal point.[27] Huber and Shipan argue that legislators deliberately craft the amount of discretion given to agencies conditioned on an array of factors, such as policy preferences, technical complexity, legislative capacity, and the political environment (2002). Discretion is how much leeway an actor has to make choices, or “the policy latitude intentionally left to executive agents in the implementing legislation” (57, Epstein and O’Halloran 1999). A consideration of discretion presupposes an agent has the authority to make those choices in the first place. Epstein and O’Halloran describe the relationship such that the number and type of

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[24] These scholars also suggest legislators may be motivated by career advancement. In this study, I assume re-election is the necessary condition for career advancement, and therefore, do not consider it as an explicit motive.

[25] District is equal to the entire state for senators and at large representatives. I consider alternatives such as concern over all states, which is more similar to personal policy preferences in Chapter 4 and find that this motivation is not supported by the data.

[26] In a later chapter, I describe interviews I conducted with health policy staffers regarding the health reform debate during the summer of 2010 in detail. Statements made by these elites emphasized how outcomes in their states were foremost in the minds of legislators as they constructed health reform proposals, corroborating this assumption. Although legislators were interested in national outcomes, they focused mainly on the policy outcomes that would occur in their state as they crafted the various provisions of the health reform bills. In addition, getting re-elected (and the fact that outcomes were related to elections) was listed as a concern.

[27] Other well-known models considering agent discretion include Epstein and O’Halloran (1999) or Bawn (1995).

constraints on an agent's authority are inversely related to the amount of discretion an agent has.

By assuming total discretion, my model fails to capture the effect of discretion on implementation. What it does portray, nevertheless, is that Congress delegates contingent on the knowledge the agent will implement its ideal point. This does not mean to say that Congress has no disciplinary actions that could be utilized. With respect to the national bureaucracy, for instance, punishment can include forcing oversight hearings, reducing budgets, amending legislation, etc. (Aberbach 1990, 2002). Congress also has fiscal power with respect to the states. National dollars are doled out to states in a variety of ways, including grants-in-aid and direct budget allocations for inter-governmental programs. The legislature can add crossover sanctions or crosscutting requirements to grants-in-aid or they can eliminate or reduce direct allocations to punish deviators, or those who do not implement in the way the legislature wants (Posner 1998, Zimmerman 2005).[28] The ability to punish, though, must be backed up with the capacity and willingness to monitor missteps and appropriately administer the penalty.

By assuming full agent discretion, I assume Congress cannot monitor or appropriately punish the offender(s). There are myriad reasons for this inability. For example, although Congress has hearings, crossover sanctions, and so forth, it cannot effectively monitor all fifty states. And, oversight of the relationships among these fifty states and the national executive branch is also extremely difficult, if not impossible. My assumption matches empirical insights that the states are often able to find loopholes or just simply do what they want in national programs (Anton 1997). In addition, Congress

[28] Posner defines crosscutting requirements as conditions that cut across all or most grants (as of Posner's 1998 book, the Office of Management and Budget had categorized 60 different cross-cutting requirements). Crossover sanctions are when mandates for states are sanctioned by removal of assistance.

may have difficulty determining whether national executive branch actions or state behaviors were outside the bounds of discretion. Moreover, a new policymaking coalition with different preferences—unwilling to punish deviators from the previous policy—may exist at the national-level. As a result of this assumption, this model focuses on the intergovernmental aspects of delegation, not on the degree of discretion the agents have to exercise that authority. [29]

Federalism Beliefs

I also assume legislators are not motivated by beliefs about federalism or upholding the appropriate balance of state and national constitutional authority, where the central government has limited and defined authority and the states have less restrained residual powers.[30] This assumption is supported by Nice (1987), who demonstrates that policy actors focusing on states' rights or decentralized policy at one time in one policy area are found to advocate for national policy at another time in the same area. Alternatively, he finds those same actors vigorously opposing centralization in one policy will demand it in another (Nice 1987). Nathan (2005) also states "[w]here one stands [on federalism] depends on where one has power. Although it might be easier and more efficient for a political faction to advance its goals centrally, when one's faction is out of power at the center, it is equally logical to advance them from the periphery" (1459).

Other scholars' support for a federalism belief includes an experiment and partisan platform statements. Specifically, Mikos and Kam conduct an experiment that Nicolson-Crotty (2008) uses to support preferences over federalism. Mikos and Kam

[29] Future work should consider the influence of discretion on intergovernmental authority delegation—including the variation in monitoring difficulty between the national executive branch and the states and the difference in the power that the states versus the national executive branch may have to reject the dictates of Congress.

[30] Although I do not include federalism beliefs theoretically, I assess them empirically in Chapter 4.

demonstrated that subjects' *a priori* beliefs about federalism were activated when exposed to an argument about physician-assisted suicide and state-rights (2007). This activation may have been more about morality than federalism. The federalism treatment in the experiment included mention of abortion as well as other medical procedures. Furthermore, legislators may have a different perception of federalism than citizens, given their occupational exposure to intergovernmental affairs. In my health policy interviews, for example, one respondent said, "We don't talk about whether a policy fits with beliefs about federalism" and another commented that experts—including the parliamentarians and constitutional scholars—helped to refine the language of the law to fit within the constraints of the Constitution.

Finally, a review of party platforms over the last forty years reveals ambiguity in how states' rights, big government, and even grants-in-aid are discussed from a federalism perspective, leaving room and rhetoric upon which a legislator could build an argument about why delegation to the national executive branch (centralizing authority) is within their own party's principles. For instance, in 1964 the language of the Republican party's platform read: "Within our Republic the Federal Government should act only in areas where it has Constitutional authority to act, and then only in respect to proven needs where individuals and local or state governments will not or cannot adequately perform" (Republican Platform 1964). Whereas the Democratic platform of the same year uses the following language: "The Democratic Party holds to the belief that government in the United States—local, state and federal—was created in order to serve the people. Each level of government has appropriate powers and each has specific responsibilities. The first responsibility of government at every level is to protect the basic freedoms of the people. No government at any level can properly complain of violation of its power, if it fails to meet its responsibilities. The federal government exists not to grow larger, but to enlarge the individual potential and achievement of the people. The federal government exists not to subordinate the states, but to support them" (Democratic Platform 1964).[31] No specific beliefs about federalism are clearly stated in either platform. The 1964 Republican platform offers rhetoric both for why Congress could centralize authority (inadequate performance) and why Congress could choose to decentralize (constitutional constraints on action). The 1964 Democratic platform similarly offers ambiguous support for legislators' positions on centralization or decentralization—failure to meet responsibilities versus appropriate powers of each level of government.

In sum, party platforms and fundamental beliefs about federalism and the horizontal division of authority in the U.S. do not provide a solid foundation for choices about whether to delegate authority to the states, to the national executive branch, or to both through a joint partnership. Instead, legislators can use rhetoric to support almost any delegation choice. For these reasons, I stylize the motivation of Congress as that of re-election. In the following sections, I build on these assumptions and consider the influence of preferences and, later, electoral uncertainty on intergovernmental delegation of authority choices in a formal decision theoretic model and a coalition bargaining model.

[31] More recent platforms indicate a continuation of the same rhetoric: "Republicans will uphold and defend our party's core principles: Constrain the federal government to its legitimate constitutional functions "(Republican Platform 2008). "Given the economic crisis across the country, states, and territories today face serious difficulties…states have had to innovate and take matters into their own hands—and they have done an extraordinary job. Yet they should not have to do it alone…We will give these governmental entities a partner in the federal government" (Democratic Platform 2008).

THE MODELS

Aggregate Model of Congress

In the aggregate model of Congress, the players include a unitary Congress, represented by a pivotal legislator, *L*, the pivotal legislator's state, *S*, and the national executive branch, *N*. Congress makes decisions about how much authority to delegate to the states, or α, versus delegate to the national executive branch, or 1-α. Although the pivotal legislator in Congress makes a choice over α, he has preferences over policy outcomes, *x*. Policy outcomes are the result of how much authority state and national actors have in a policy; specifically, , where *S* represents the ideal point of the pivotal legislator's state and *N* the ideal point of the national executive branch.

I theorize when faced with the federal design dilemma, Congress ponders the potential outcomes that would result from delegation directly to the states, delegation directly to the national executive branch, and delegation simultaneously to both before making a decision about how to structure authority in the policy. The best possible policy outcome for Congress is defined as the delegation choice that yields an outcome as close to a pivotal legislator's ideal point (or the pivotal legislator's most preferred outcome) as possible.

The pivotal legislator's utility is a quadratic loss function, , where *L* is the legislator's ideal point.[32] Thus, a pivotal legislator prefers policy outcomes closer to his ideal point to those farther away. As described above, the policy outcome is simply a weighted combination of the pivotal legislator's state's actions and

[32] In fact, I assume all legislators in Congress have this same utility function. I consider how utility maximizing individual legislators in Congress coalesce in the next model.

the national executive branch's actions as they implement the policy. The weight assigned to state-level actions, α, is the choice variable for the legislature. When Congress decides to decentralize more authority to the states, α increases and when Congress chooses to centralize authority to the national executive branch, α decreases. Substituting the weighted combination of state and national executive branch actions for the policy outcome yields:

(Equation 1).

This equation represents the utility the pivotal legislator derives from allocating authority between state- and national-level institutions. Authority refers to how much of the policy for which the states are responsible as opposed to national-level institutions. When a national law includes no state authority, or total centralization, the national executive branch implements the policy and α is zero. When states have total authority in national law, α is one. Table 2-1 shows the key variables and their descriptions.

Table 2-1: Aggregate-level Model Theoretic Variables and Descriptions

Variable Name	Symbol	Description
State-level authority	α	The amount of responsibility allocated to the states in national law
National executive branch authority	1-α	The amount of responsibility allocated to the national executive branch in national law.
Congress	L	The pivotal legislator, L, represents Congress
National executive branch	N	National-level actors chosen to implement law.
States	S	State-level actors chosen to implement law. Specifically, S refers to the pivotal legislator's state.
Policy outcome	x	The outcome of the policy once it is implemented. Specifically, .

Given this stylized set-up with a quadratic utility function, the pivotal legislator's optimal choice over the weight of state actions, α*, or optimal state authority allocation, can be found by taking the derivative of the utility function with respect to α and setting the resulting equation equal to zero. The optimal state authority allocation is shown in Equation 2:

$$— \qquad \text{(Equation 2).}$$

This result shows that the optimal level of state authority allocation depends on the combined location of the national executive branch and the legislator's state's ideal points in relation to his or her own ideal point.

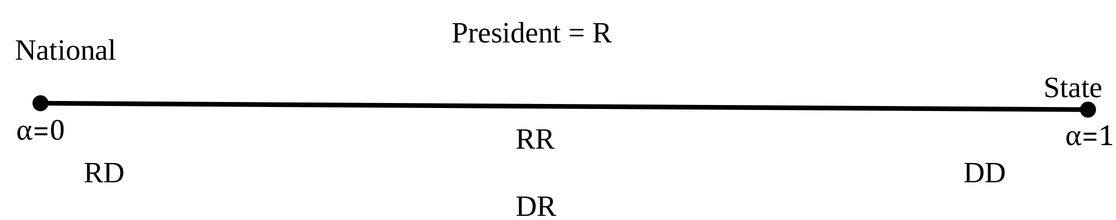
The second order conditions provide information about whether the optimal state authority allocation is a maximum or a minimum. The second order conditions for a maximum are fulfilled when: <0 or when $N \neq S$. When $N=S$, the pivotal legislator would be indifferent over the degree of state authority allocation and the aggregate-level model has no unique solution. The individual-level model returns to this indifference issue and finds that the indifferent legislators are not pivotal in a bargaining framework.

Evaluating the legislator's utility at the boundaries of the choice variable, $\alpha=0$ and $\alpha=1$, yields: and .
Comparing this utility to that obtained from unsurprisingly reveals that when preferences are aligned with the pivotal legislator to the far left or the far right of the national executive branch and his state (and $N \neq S$), the legislator's utility is highest if he delegates solely to the closest of the two agents. When $N=S$, the legislator is indifferent to delegating to one, the other, or both of the agents. I return to more specific predictions that can be generated from this result, but first highlight the implications of this model.

Figure 2-1 illustrates the implications of this simple model using party label as a shortcut for the approximate location of preferences (e.g., Democrats are left-leaning and

Republicans are right-leaning).[33] The line represents the continuum of state authority allocation with exclusive delegation to the national executive branch shown at the left (α=0) and total decentralization to the states (α=1) on the right. Individual legislators are depicted by their party (R or D) and by their state governor's party (R or D).[34] For example, legislator RD is a Republican legislator from a state with a Democratic governor. Under a Republican president, these Republican legislators from states with Democratic governors prefer complete delegation to the national executive branch.[35] Democratic legislators from states with Democratic governors (DD), in contrast, prefer to devolve authority to the states.[36] Republican and Democratic legislators from states with Republican governors (RR and DR) are indifferent over state authority allocation because the national and state-level executive branches have approximately the same ideal points (N=S). Alternatively, if a Democrat were in the White House, DR prefers centralization, RR decentralization, and DD and RD are indifferent.

Figure 2-1: Aggregate Model Implications



[33] I describe the benefits and limitations of this proxy in detail in Chapter 3.
[34] I simplify the description by discussing state level leaders as "governors." It would also be possible to consider state level leaders as a combination of the state governor and the legislature, the state governor and other elected executive branch leadership, etc.
[35] More formally if N = +1, L = +1, and S = -1: $\alpha^* = \frac{1-1}{1-(-1)} = 0.$
[36] More formally if N = +1, L = -1, and S = -1: $\alpha^* = \frac{1-(-1)}{1-(-1)} = 1.$

Table 2.2 provides detail about the frequency with which the partisanship of members of Congress does not match that of their governors, or how often we see RD and DR legislators. I obtained the partisanship and state of individual legislators from Congress from Voteview.com and matched these to the partisanship of their states' governors from the National Governors Association website for 1973 through 2010. On average, the mismatch rate is 48% in both the Senate and the House, ranging from a high of 57% in the Senate (2003) and 53% in the House (1997-2000 and 2004) to a low of 39% (2009) and 35% (1977-78) in the Senate and House respectively.

Table 2-2: Match Between Party of Legislator and of State Governor by Year for Selected Years

Year	Same Party	Different Party	% Mismatch	Same Party	Different Party	% Mismatch
		Senate			House	
1973	53	47	47%	224	210	48%
1976	50	50	50%	256	178	41%
1977	56	44	44%	284	150	*35%*
1978	56	44	44%	282	152	*35%*
1983	54	46	46%	232	202	47%
1984	57	43	43%	236	198	46%
1985	53	47	47%	227	207	48%
1990	57	42	42%	228	205	47%
1995	54	46	46%	207	227	52%
1996	50	50	50%	208	226	52%
1997	47	53	53%	202	232	**53%**
1998	47	53	53%	202	232	**53%**
1999	48	52	52%	206	228	**53%**
2000	46	54	54%	206	228	**53%**
2001	52	48	48%	214	220	51%
2002	52	48	48%	211	223	51%
2003	43	57	**57%**	215	219	50%
2004	47	53	53%	204	230	**53%**
2005	49	51	51%	209	225	52%
2006	49	51	51%	209	225	52%
2007	57	43	43%	234	201	46%
2008	54	46	46%	219	215	50%
2009	61	39	*39%*	234	200	46%
2010	57	43	43%	230	203	47%
Total	***1,977***	***1,821***	***3,798***	***8,557***	***7,934***	***16,491***
	52.05%	***47.95%***		***51.89%***	***48.11%***	

What do this highly stylized model and simple diagram reveal about intergovernmental delegation of authority? First, as mentioned in the introductory remarks, in contrast to conventional wisdom, Republicans do not always prefer to decentralize authority and Democrats do not always want to centralize. Figure 2-1 illustrates this by showing a condition under which Republican legislators prefer centralization (a Republican president with a Democratic state). Republican legislators from states with Democratic governors strictly prefer centralization of authority over devolution to the states and if these legislators have enough votes to pass a policy, delegation to the national executive branch would result.

Second, the model shows the optimal level of state authority changes as the distance between the legislator and his or her state increases or as the distance between the legislator and the national executive branch increases. In general, as the distance between the legislator and his state increases (or as S moves holding N and L constant), the expression is decreasing, or state authority allocation is expected to decrease. As the distance between the legislator and the national executive branch increases (or as N moves holding N and L constant), the expression is increasing, or state authority allocation is expected to increase.

Formally, I take the derivative of the expression in Equation 2 with respect to the state, S, and then with respect to the national executive branch, N, yielding:

(Equation 3),

(Equation 4),

and —— ———— (Equation 5).

This calculation captures how the optimal level of state authority allocation changes as the preferences of the national executive branch, the pivotal legislator, and the pivotal legislator's state vary.

Evaluating the expression leads to the following conclusion: when the distance between the pivotal legislator and his state is increases by one unit, but is still smaller than the distance between the pivotal legislator and the national executive branch, regardless of how the ideal points are arrayed, state authority allocation is increasing ($\alpha^*\uparrow$), unless the state is located between the legislator and national executive branch, where state authority allocation would remain at 1. If that same distance increases by one unit and becomes larger than the distance between the pivotal legislator and the national executive branch, state authority allocation is decreasing ($\alpha^*\downarrow$). Intuitively, as long as the state stays closer to the pivotal legislator, state authority allocation increases for the most part, otherwise it decreases.

If, however, as the distance between the state and the legislator and the legislator and the national executive branch move such that they become equal, the conclusions are slightly more complicated. If the movement is from a closer state (than national executive branch) to an equidistant state, state authority allocation decreases ($\alpha^*\downarrow$). On the other hand, if the movement is from a farther state to an equidistant state, state authority allocation increases ($\alpha^*\uparrow$). Finally, if the movement is from one configuration where they state and national executive branch are equally distant from the pivotal legislator to another equidistant configuration (e.g., they switch sides), this model provides no solution.

If I assume a pivotal legislator represents the decisions of Congress, these comparative statics yield the first two testable hypotheses:

- Hypothesis 1: As the distance between the pivotal legislator and his state increases, state authority allocation decreases except when the distance between that legislator and the national executive branch is greater.

- Hypothesis 2: As the distance between the pivotal legislator and the national executive branch increases, state authority allocation increases except when the distance between that legislator and his state is greater.

The aggregate model allows for a focus on intergovernmental delegation by incorporating the states into a principal agent decision theoretic model of Congress and offers a set of testable hypotheses. Yet, the question remains, who is pivotal? The figure and the model reveal that there are four types of legislators in Congress with distinct preferences over state authority allocation. I refer to these four categories of legislators as *intergovernmental* teams. In a legislature in which one of these four intergovernmental teams has the majority, the choice over state authority allocation would be that team's α^*, as that team is pivotal. But, in a legislature in which one team does not have the majority, what is the choice? Returning to Figure 2-1, if RD must partner with another intergovernmental team to successfully pass a bill (i.e. forms a majority coalition), there are three choices: RR, DR, and DD. A bargain must be struck with at least one, if not more of the other intergovernmental teams to pass a bill. Therefore, I rely on a bargaining game with complete information and utility maximization as before to structure a consideration of how these four teams would coalesce around a bill.

Individual-level Bargaining Model[37]

In this individual-level model of legislative coalition formation between the four intergovernmental teams, I rely on the same variables used in the aggregate model, with a few notable additions as listed in Table 2-3. Specifically, the individual-level model includes the previous variables plus a status quo level of state authority allocation, q, a partisan benefit term, P, a transaction cost of making proposals, k_n, a frequency of each intergovernmental team in a chamber, w_{i}, and a majoritarian threshold for a chamber, M, or the number of legislators needed to successfully pass a policy. In addition, I utilize party A to represent the majority party and party B for the minority party.

There are also four additional assumptions needed. First, given the power and committee leadership positions of the majority party, I assume majority teams have agenda control and the initial proposal power, but that minority teams are free to reject initial offers and respond with an alternative offer. This is a one-period bargaining game, but teams that receive the initial offer have the opportunity to make an alternative offer to any of the other teams. Instead of an ultimatum game, though, this structure represents both the agenda power of the majority party and the potential for political maneuvering of the other members of Congress. Second, I assume voting in the House can be stylized as a simple majority, but the Senate must be concerned about the ability to invoke cloture (reach 60 votes) given the possibility of a filibuster, represented by M, the majority threshold, in the game. This assumption is not to say that filibusters must always occur in the Senate, just that the threat of them carries weight in the coalition formation process.

[37] This coalition model is loosely based on Lupia and Strom's model of coalition bargaining and termination (1995). The Lupia Strom model begins with an exogenous event and includes complete information regarding setting up a coalition government with different partners. I substitute the quadratic utility function typical of U.S. delegation models and include linear transaction costs and partisan benefit.

Third, I assume there is a transaction cost to offering a proposal, k_i, and that this cost increases in the number of groups in the coalition ($k_{i2} < k_{i3} < k_{i4}$). This increasing cost assumption is based on the idea that as diverse members are added to a coalition, it is more difficult to maintain the coalition as well as to attract the members in the first place.

Table 2-3: Individual-level Theoretic Variables and Descriptions

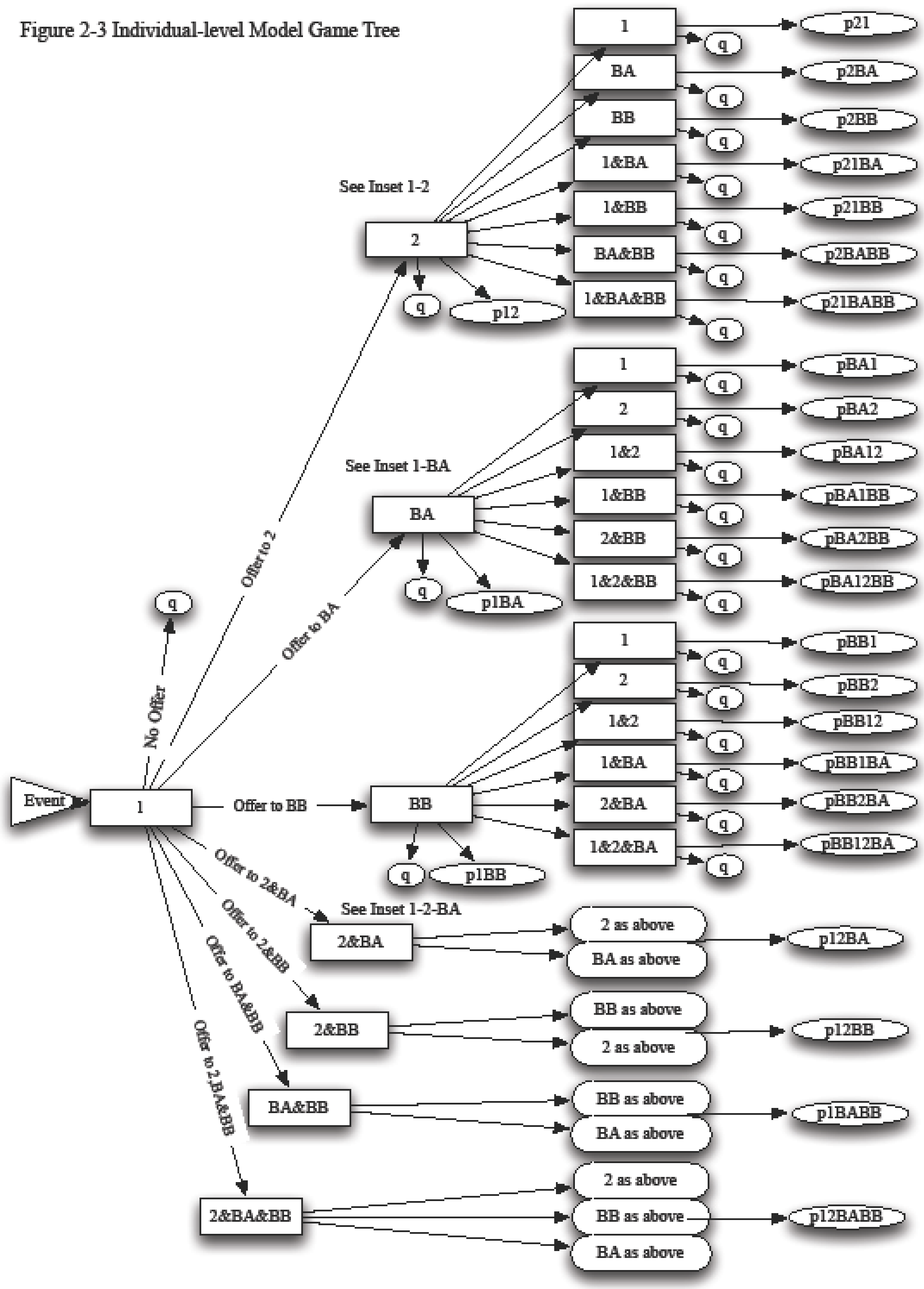
Variable Name	Symbol	Description
National executive branch authority	$1-\alpha$	The amount of responsibility allocated to the national executive branch in national law.
Congress	L	The pivotal legislator, L, represents Congress
National executive branch	N	National-level actors chosen to implement law.
States	S	State-level actors chosen to implement law. Specifically, S refers to the pivotal legislator's state.
Policy outcome	x	The outcome of the policy once it is implemented. Specifically, .
State authority	α	The amount of responsibility allocated to the states in national law. Variants include: α^* (optimal authority allocation), $\alpha_{proposed}$ (initial proposal in the legislature), and α' (alternative proposal in the legislature).
Status quo policy	q	The status quo policy, or status quo level of state authority allocation. State authority allocation in the status quo policy = α_q.
Partisan benefit	P_i	The benefit, or added utility, to be gained from making a new policy with the other intergovernmental team of the same party (e.g., DD & DR or RR & RD). The partisan benefit is subscripted by the party (A or B).
Transaction cost	k_n	The cost of offering a proposal that includes n total teams.
Frequency of intergovernmental team *i*.	w_i	The number of members of intergovernmental team *i*, where *i* = team AA, AB, BB, or BA. The total weight of a policy coalition = $\sum w_n$.
Intergovernmental teams	AA, AB, BB, BA.	Majority party is party A and minority party is party B.
Majoritarian threshold	M	The number of legislators needed to successfully pass policy, with a simple majority, M >0.5.
New policy	$p_{\circ}$	The new policy that results from a successful policy coalition that includes $\circ$ specific teams.

The fourth assumption is that legislators are members of parties and seek to improve the fortunes of their own parties. The motivation behind a partisan bias is that a strong party label could aid in re-election and provide direct member benefits while in office, among other things. The implication of this assumption is that if legislators are faced with a choice over partnering with other legislators from their own party versus coalescing with another party, they would choose to partner with their own party. I conceptualize this as an added benefit rather than a decision rule in the individual-level model to provide an understanding of the importance of balancing a partisan benefit with the benefit of reforming existing policies. Formally, this is captured with a policy benefit term (*P*). In other words, this assumption does not mean that legislators simply vote with their party. It means that there are potential benefits to be gained from party membership, such as leadership roles, committee assignments, ability to influence a party's agenda, and so forth.

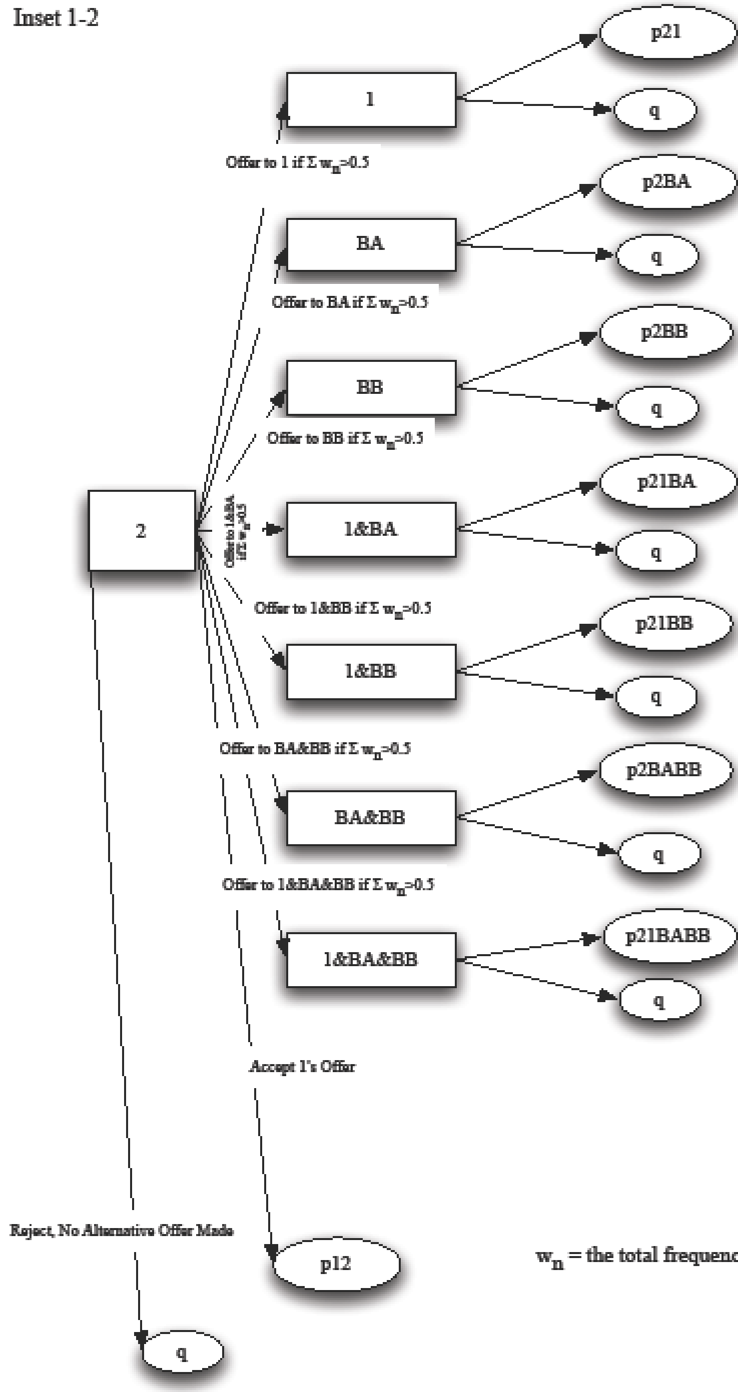
In the game there are four unitary actors representing each of the four intergovernmental teams. In order to generalize the game, I use A and B to represent the majority and minority party, respectively, in the legislature. Thus, if Democrats have the majority in the Senate, a DD senator will be represented as an AA in the model and a DR Senator as an AB. Similarly, if Republicans have a majority in the Senate, an RR senator would also be represented as an AA in the model and an RD legislator as an AB. This generalization works because the model is symmetric with respect to Democrats and Republicans and I consider the House and the Senate separately. I transition back to Republicans and Democrats when I discuss the implications of this model.

Figure 2-2 (with insets 2-2a through 2-2c) displays the extensive form of the bargaining game in each chamber where the teams are assumed to bargain over the amount of state authority allocated, or α, as they attempt to form a successful policy coalition.

Figure 2-3 with insets a-c: Individual Bargaining Model Game Tree

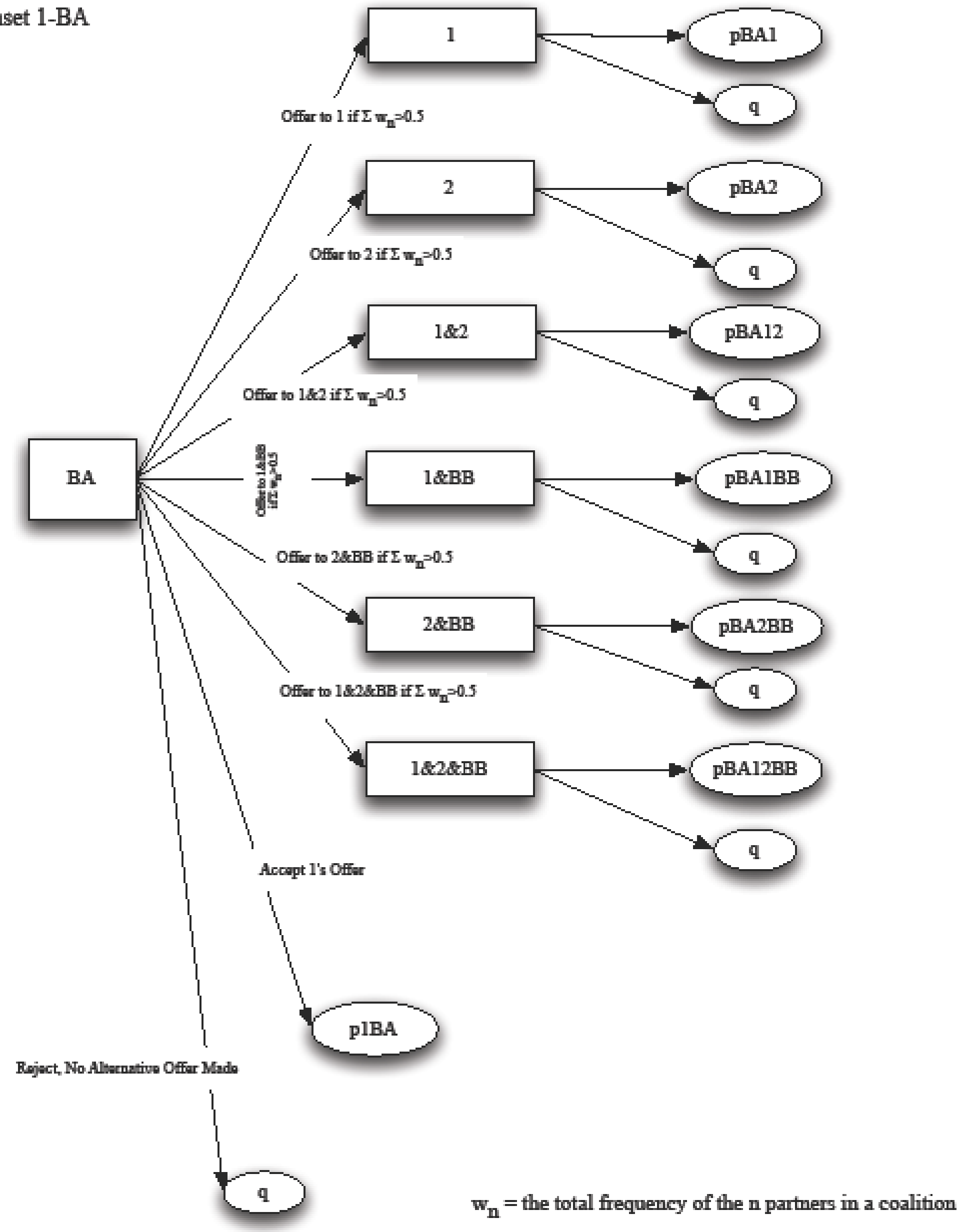


Inset 1-2



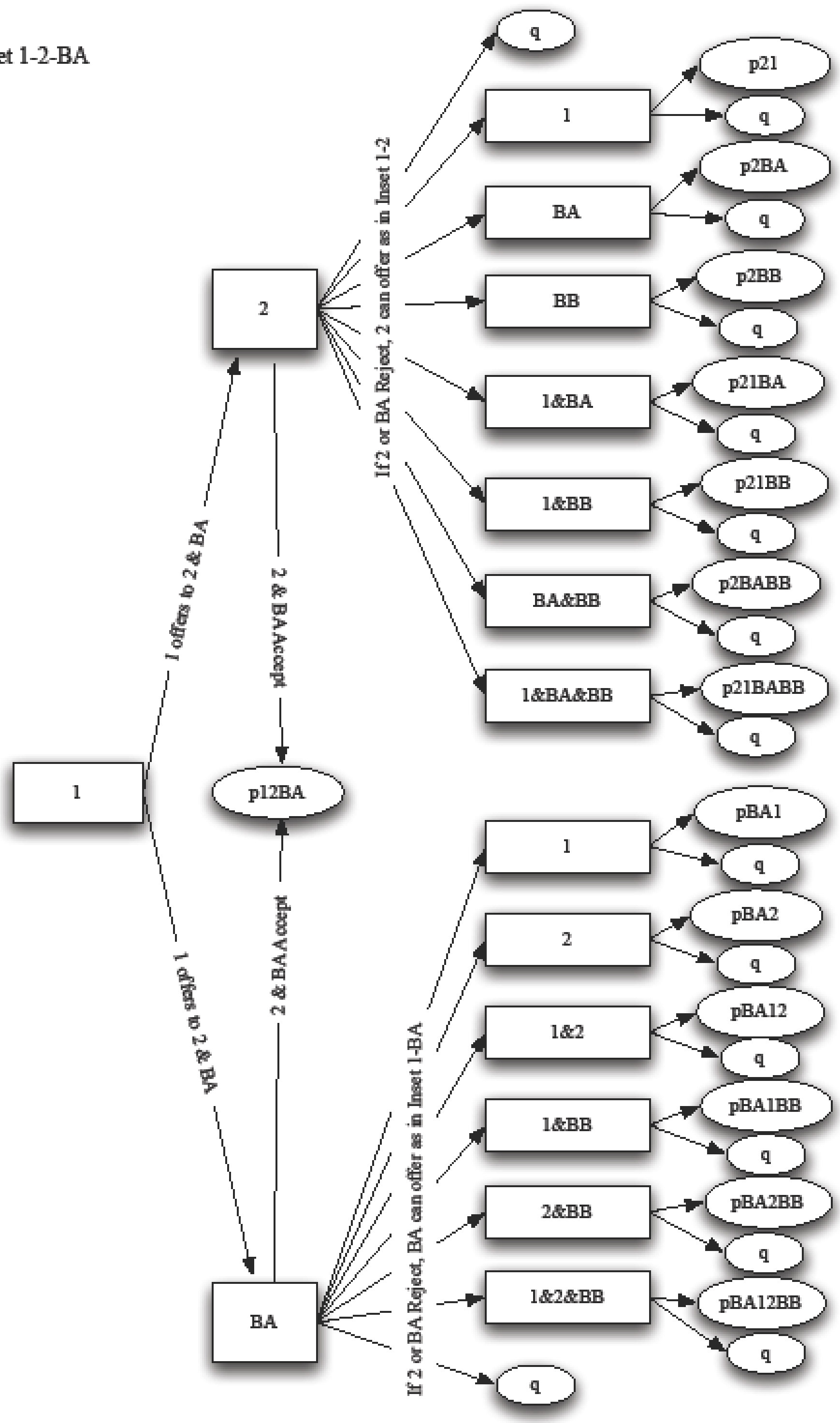
w_n = the total frequency of the n partners in a coalition

Inset 1-BA



**1-BB is the same, just switch actors BB and BA.

Inset 1-2-BA



q
1
p21
q
BA
p2BA
q
2
BB
p2BB
q
1&BA
p21BA
q
1&BB
p21BB
q
BA&BB
p2BABB
q
1&BA&BB
p21BABB
q
If 2 or BA Reject, 2 can offer as in Inset 1-2
1 offers to 2 & BA
2 & BA Accept
1
p12BA
1 offers to 2 & BA
2 & BA Accept
1
pBA1
q
2
pBA2
q
1&2
pBA12
q
1&BB
pBA1BB
q
2&BB
pBA2BB
q
1&2&BB
pBA12BB
q
BA
If 2 or BA Reject, BA can offer as in Inset 1-BA
q

The unitary actors (more specifically, the intergovernmental teams) make an offer to one or more of the other actors (where $w_i + w_j + w_k + \ldots \geq M$ and w is the frequency of the intergovernmental team for that time period). The other team(s) can accept or reject the offer. If a team j accepts the offer from team i, and $w_i + w_j \geq M$, the new policy is passed, the new allocation of authority is implemented, outcomes and payoffs are realized. If the team rejects the offer, that team has the option of making an offer to any of the other team(s) or making no offer in favor of the status quo. If more than one team receives an offer, the offer is only successful and outcomes and payoffs realized if $w_i + w_j + w_k + \ldots \geq M$ and all of the teams receiving the offer accept. If any one team rejects the multiple-team offer, all of the teams receiving the offer have the option of making offers to any one or more of the teams. If no teams form a policy coalition, the status quo, q, prevails. If any one team forms the majority requirement on their own, they can allocate authority according to their preferences, such as in the House in 1977-1978 when DD members occupied 230 seats.

The game begins with some critical event. Perhaps a new administration takes its place in the White House, a federal agency's missteps are widely publicized, the states find themselves facing economic disaster, or some other exogenous push creates an atmosphere of policy possibility in Congress. The majority party intergovernmental teams (AA or AB) consider whether to offer a new division of authority between the national executive branch and the states through a change in α from the status quo level. Either team AA or team AB makes an offer first. This first mover team (or team 1 in the extensive form) also contemplates to whom it will offer this division: to team 2 (the other majority party intergovernmental team), team BB, team BA, or some combination of the three. Since this is a complete information game, team 1 knows how each team (or set of teams) will react to the proposal and makes a decision based on this knowledge. To solve the game I use backward induction beginning at the final nodes and working my way up through the game tree. The mathematical details are provided in the Appendix.

The solution to the bargaining game implies that when a chamber's majority party is the same as the national executive branch and a simple majority is required to successfully pass a bill, a policy coalition will include the two majority intergovernmental teams. This result is due to the fact that in the finite model, there is complete knowledge and the majority party teams receive a partisan benefit from coalescing with each other (see Proposition 4, Appendix). The majority party intergovernmental team will make an offer to the other majority team such that the recipient will accept and play ends. If the first mover did not make an acceptable offer to the other majority party team, the transaction costs would make it not in their interest to offer anything at all and the status quo would prevail. Thus, the degree of state authority included in the policy will be crafted to satisfy the mismatched majority party intergovernmental team (team AB) under an A president and the matched team (team AA) under a B president.

Consider that under an A president, the AA team is indifferent, but must craft a proposal to gain AB's approval (if AA is the first mover). If AB is the proposer, though, that team knows that AA will accept any offer they make. Since AB has strict preferences over state authority allocation under an A president (α* for team AB is 0, or centralization), AB can offer its most preferred allocation of state authority. Under a B president, alternatively, team AB is indifferent and team AA strictly prefers to decentralize authority to the states. Thus, regardless of which of these majority teams is the first mover, a proposal is only made that will satisfy AA's preference over state delegation, otherwise the proposal is rejected and the first mover is out the costs of making a proposal in the first place. In sum, the policy will centralize authority to a greater extent than the current degree of state responsibility in the policy in the first case and decentralize it in the second.

For example, when a Republican is the president and there is a Republican majority in the House, a successful House bill would centralize authority with the Republican national executive branch. The same is true when there is a Democrat in the White House and a Democratic majority in the House. Alternatively, if a Democrat were president with a Republican House majority, the bill would decentralize authority to the states. If a Republican were president with a Democratic House majority, the bill would also decentralize authority. In these last two cases, the majority party must cater to the AA intergovernmental team within the coalition (RR for the Republican House majority and DD for the Democratic House majority). Under the conditions cited, these AA legislators strictly prefer to decentralize authority to their states rather than centralize authority under the opposing party's leadership in the national executive branch.

Given the supermajority requirements in the Senate, the solution to this model suggests that successful policy coalitions look slightly different than in the House. Specifically, when the Senate majority and the president are of the same party, the policy coalition will include both majority intergovernmental teams (teams AA and AB in the model) as well as the matched minority intergovernmental team (team BB) (see Proposition 5 in the Appendix). When the Senate majority and the President are from opposing parties, the policy coalition will include teams AA, AB and team BA (see Proposition 6 in the Appendix). For instance, under a Republican president and Republican majority in the Senate, a successful policy coalition will include Republican senators from states with Republican governors (RR), Republican senators from states with Democratic governors (RD), and Democratic senators from states with Democratic governors (DD). Under a Republican president and Democratic majority, though, this policy coalition will include RR, RD, and DR Senators.

These last two results, focusing on the Senate are presented in Table 2-5. The first row shows when the two majority party intergovernmental teams have enough legislators to reach the supermajority threshold, the coalitions have the same composition as in the House. Under an A president, the coalition includes both majority party intergovernmental teams and the Senate bill centralizes authority ($\alpha \rightarrow 0$). Under a B president, the coalition includes the same two teams, but the Senate bill decentralizes authority ($\alpha \rightarrow 0$). If, however, the majority party does not have enough members to successfully invoke cloture (i.e. 60 votes), then the coalition under an A president will also include the BB minority intergovernmental team and the state authority allocation will decentralize authority just enough to entice some BB legislators to vote to invoke cloture without losing AB legislators. Under a B president, the Senate coalition will include the BA minority intergovernmental team and authority will be centralized just enough to entice some BA legislators to vote to invoke cloture without losing AA legislators.

Table 2-4: Individual-level Bargaining Model Senate Coalitions		
Party of President	A	B
Senate Majority Party	A	A
Coalition when AA+AB≥M	AA+AB	AA+AB
Output	$\alpha \rightarrow 0$	$\alpha \rightarrow 1$
Coalition when AA+AB<M	AB+AA+BB	AA+AB+BA
Output	$\alpha \rightarrow 1$*	$\alpha \rightarrow 0$*

*Refer to Proposition 5 and 6 in the appendix for the specific threshold conditions for state authority allocation, also see ft 24.

In sum, the pivotal teams in the House and the Senate depend upon what party is in the majority, how many members are needed to form a successful policy coalition, and the party of the president. Based on the model, the pivotal team in the House is the mismatched majority party team AB under an A president and the matched majority party team AA under a B president. In the Senate, the pivotal team is the matched minority party team BB under an A president and the mismatched minority party team BA under a B president. The pivotal teams from the 93rd through the 110th Congresses are listed in Table 2-4.

In addition to providing information about the pivotal teams, this model provides insights about the struggles the Senate majority party faces as they consider the need for supermajorities to overcome one Senator's filibuster. For example, consider the implications of unified government for intergovernmental delegation. In the House, the AA and AB teams prefer to centralize authority with a national executive branch under an A president. Although this centralization may also be the first choice of the majority party teams in the Senate, a successful Senate bill must balance the BB team's preference for decentralization. In other words, legislators must find the line between the benefits gained from successfully making policy with movement in α.[38]

[38] Formally,

Table 2-5: Pivotal Intergovernmental Teams

Congress	President	Senate	House
93	R	RD	DD
94	R	DD	DD
95	D	DR	DD
96	D	RR	DR
97	R	DD	DD
98	R	DD	DD
99	R	DD	DD
100	R	RD	DD
101	R	RD	DD
102	R	RD	DD
103	D	RR	DR
104	D	DR	RR
105	D	DR	RR
106	D	DR	RR
107	R	RD	RD
108	R	DD	RD
109	R	DD	RD
110	R	RR	DD
111	D	RR*	DR

*In the 95th Congress, Senate Democrats had > 60 votes.

**In the 111th Congress Democrats had 60 votes for 3 months, during which DR legislators were pivotal.

Another implication of the model includes the conditions under which the Senate and the House differ in the degree of authority allocated to the states. In fact, the model predicts that Senate bills and House bills will have a more similar allocation of authority under a divided legislature than a unified one. Table 2-5 presents the results for the bargaining model of the House and Senate together. In the top half of the table, with a unified legislature and an A president, the Senate bill will decentralize authority and the House bill will centralize it and under a B president, the Senate bill will centralize authority and the House bill decentralize it. On the contrary, when there is a divided legislature and a president with the same party label as the Senate majority, both chamber's bills will decentralize authority versus a president with the same party label as the House majority, both chamber's bills will centralize authority.

Table 2-6 Individual-level Bargaining Model House-Senate Differences

Unified Legislature	Senate Majority = A	House Majority = A
President = A	AA+AB+BB	AA+AB
Output	decentralize*	centralize
President = B	AA+AB+BA	AA+AB
Output	centralize*	decentralize
Divided Legislature	Senate Majority = A	House Majority = B
President = A	AA+AB+BB	BB + BA
Output	decentralize*	decentralize
President = B	AA+AB+BA	BB + BA
Output	centralize*	centralize

*Refer to Proposition 5 and 6 in the appendix for the specific threshold conditions for state authority allocation, also see ft 24.

For instance, under a Republican president, a Democratic Senate, and a Republican House, the Senate will choose to centralize authority due to the pivotal RD team, the House will also choose to centralize authority due to the simple majority requirements. Alternatively, if the House is Democratic, the House bill would decentralize authority to the states. Since this model does not expressly consider bicameralism, though, these findings should be taken as suggestive only. A model that explicitly includes bicameralism will better define the conditions under which the chambers may agree or disagree on state authority allocation, as well as how potential disagreements are resolved.

In summary, the aggregate and individual models provide propositions about state authority allocation and policy coalitions that would be formed in the House and Senate under a variety of conditions. The next section informally considers one additional attribute of intergovernmental policymaking, uncertainty about the ideal points of future implementers of a policy.

Political Uncertainty

The formal models discussed to this point have implicitly assumed that policies are implemented under the same political conditions in which they are enacted. Policy implementation, though, may occur years in the future. As a result, the current preferences of the agents may not be the only concern legislators have as they consider the downstream outcomes of their upstream policy decisions. More specifically, there is a risk of national- or state-level executive replacement. This replacement could result in a new administration in charge of implementing the policy with different preferences. For instance, when legislators pass a law under a Republican president as he is leaving office, they know implementation may be different under the incoming Democratic president. The same is true at the state-level; changes in state governors will result in changes in implementation.[39] Uncertainty, then, refers to the chance of executive replacement with a different party.

The influence of this political uncertainty depends on the relationship between the legislator's partisanship and the party of the executive. If a legislator shares partisanship with his state's governor, the influence of political uncertainty on state authority allocation is negative. For instance, a Democratic legislator from a state with a Democratic governor will choose to delegate less responsibility to the state as uncertainty over the next executive's partisanship increases. On the other hand, if a legislator's party

[39] I assume for simplicity that governors represent the ideal point of state agencies. Some governors, of course, have more authority than others. In some states governors have the power to reorganize their executive branches, spend federal money without legislative consent, etc. (National Association of Budget Officers annual fiscal surveys and the Book of the States). In future work, scholars should include indices of governor versus state legislative power.

label does not match that of his state governor's party, the influence of political uncertainty on state authority allocation is positive. A Republican legislator from a state with a Democratic governor may choose to delegate more responsibility to the states if there is a high degree of political uncertainty over whether a Democratic will still be governor during implementation.

The logic is the same for national political uncertainty. For legislators in the same party as the president, as political uncertainty over what party will hold the presidency during implementation increases, those legislators will prefer to delegate away from the national executive branch (or increase state authority allocation). For legislators in the opposing party, the effect of national political uncertainty is to reduce the state authority allocation in favor of national executive branch implementation. Overall, as a legislator becomes less certain that his party will be in power or more certain that the opposing party will be in power, he decreases delegation of authority to that particular level.

THEORETICAL PREDICTIONS

This discussion over current and future preferences of legislators, the national executive branch, and the states yields a set of testable predictions. In general, the distance from the pivotal legislator in Congress to her pivotal state governor, the distance between the pivotal legislator and the national executive branch, and state and national political uncertainty—influence the level of state authority allocation in national law. The specific hypotheses from the aggregate model are:

- Hypothesis 1: As the distance between the pivotal legislator and his state increases, state authority allocation decreases except when the distance between that legislator and the national executive branch is greater.

- Hypothesis 2: As the distance between the pivotal legislator and the national executive branch increases, state authority allocation increases except when the distance between that legislator and his state is greater.

Adding the informal influence of political uncertainty on state delegation choices:

- Hypothesis 3: As state political uncertainty increases, state authority allocation decreases for legislators that match their governor's party and increase for legislators that do not match their governor's party.

- Hypothesis 4: As national political uncertainty increases, state authority allocation increases for legislators that match the president's party and decreases for legislators that do not match the president's party.

From the bargaining model, a different set of hypotheses are indicated, including:

- Hypothesis 5: Under a Republican president, Republican legislators from states with Democratic governors (RD legislators) prefer to *centralize* authority to a national Republican-led executive branch.

- Hypothesis 6: Republican legislators from states with Republican governors (RR legislators) prefer to *decentralize* policy under a Democratic president.

- Hypothesis 7: Democratic legislators from states with Democratic governors (DD legislators) prefer to *decentralize* authority to the states under a Republican president.

- Hypothesis 8: Democratic legislators from states with Republican governors (DR legislators) prefer to *centralize* authority to the states under a Democratic president.

- Hypothesis 9: When the Senate majority party is of the same party as the president, a successful policy coalition will include the two majority party intergovernmental teams and the matched minority party intergovernmental team (i.e., team BB).

- Hypothesis 10: When the Senate majority party is different than that of the president, a successful policy coalition will include the two majority party intergovernmental teams and the mismatched minority party intergovernmental team (i.e., team BA).

To conclude, the theory of intergovernmental delegation specifically takes into account the role of preferences over policy outcomes and the location of individual legislators' preferences vis a vis the national executive branch and their own specific state executive branch, the institutional voting rules of the House and the Senate, and uncertainty over the preferences of future implementers of the policy in the determination of how much authority is delegated to the states versus kept at the national level. Two simple models, one at the aggregate level and the second at the individual level, combined with an informal consideration of political uncertainty structure these considerations and result in both intuitive and counter-intuitive predictions about which legislative teams coalesce with each other and when Congress centralizes versus decentralizes authority under different conditions.

The findings contrary to accepted wisdom are that Republicans prefer to centralize and Democrats prefer to decentralize under a Republican president. Additionally, successful policy coalitions in the Senate will include different types of minority legislators depending upon the party of the president. For instance, under a Democratic president and Democratic Senate majority, the policy coalition will include RR legislators, but under a Republican president the coalition will include RD legislators. The next chapter provides a descriptive of the data gathered to assess this theory of federal policy design.

APPENDIX

Mathematical Appendix:

Aggregate Congress Model

Actors
There are three unitary actors: a pivotal member in Congress (L), that pivotal member's State (S), and a National Executive Branch (N). There is common knowledge of the game, actor preferences, etc.

Preferences
Actors are utility maximizers and have single-peaked preferences, each with an ideal point in one-dimensional policy space and quadratic preferences over outcomes: where i = L, S, or N for legislator, state, and national executive branch, respectively and .

Play
I assume that Congress delegates to both the states and the national executive branch and gives these agents complete discretion, meaning that agents implement their ideal point. The total degree of authority in a law is equal to 1, the amount of that authority delegated to the states is equal to α, and that to the national executive branch is 1-α. Congress makes choices over policy authority but has preferences over outcomes. Outcomes are a convex combination of state and national executive branch choices such that Substituting this equation into the utility function for the pivotal legislator yields Equation 1: .

<u>Proposition 1:</u>
Given the quadratic utility function of the pivotal legislator and the fact that α is bounded by 0 and 1, the optimal choice of α is found by taking the derivative of Equation 1: and then setting this equation equal to zero. Solving for α yields the optimal level of authority for Congress to allocate to the state, or (Equation 2) and , indicating a maximum.

The second order conditions are fulfilled when: <0 or when N≠S. Evaluating the legislator's utility at α=0 and α=1 yields: and . Comparing this utility to that obtained from shows that the best choice of the pivotal legislator is to delegate to the closest agent unless he is located between the agents, then the best choice is to delegate to both. In other words, when |L-N|>|L-S| and when |L-N|<|L-S| as long as L is located outside of the N-S interval.

<u>Proposition 2: L-S Distance:</u>
As the distance between the pivotal legislator and his state increases, the optimal level of state authority, α decreases except when the state's ideal point is internal to the*

legislator and the national executive branch (L<S<N or N<S<L), as is found by taking the derivative of α with respect to S and to N (Equation 5):* .

Proposition 3: L-N Distance:
Also based on Equation 5, as the distance between the pivotal legislator and the national executive branch increases, the optimal level of state authority, α decreases except when N is internal to the legislator and his state (L<N<S or S<N<L).*

Individual Level Bargaining Game

Actors
There are four unitary intergovernmental teams: AA, AB, BB, and BA, where team A represents the majority team in a chamber and B the minority team. The first letter represents the party of the legislator and the second the party of that legislator's state governor. In addition, as above in the Congress game, States (S_i) and the National Executive Branch (N) implement policies. There is common knowledge of the game, actor preferences, etc.

Preferences
Actors are utility maximizers and have single-peaked preferences, each with an ideal point in one-dimensional policy space and quadratic preferences over outcomes: where *i* = AA, AB, BB, or BA for the legislator and . P represents partisan benefits which are positive if the other partisan intergovernmental team (e.g., if both BB and BA are in the coalition) is present in the coalition and zero if not. The transaction costs of formulating policy and making an offer to other teams is represented by k, which is subscripted by the particular team making the offer and the number of teams in the coalition. Transaction costs are assumed to be zero for the recipients of the offer. In addition, the costs of crafting policy and maintaining a coalition increase as the number of partners increases, such that: .

Play
An exogenous critical event begins the game and one of the majority party intergovernmental teams considers making an offer to team 2 (the other majority intergovernmental party team), team BB, team BA, or some combination of the teams. The recipients of the initial offer decide whether to accept 1's offer or reject it for either the status quo or to make an alternative offer to any of the other teams. An offer, though, is only made to a team or combination of teams, where . The recipients of the second offer, or alternative plan, decide whether to accept the alternative or reject it for the status quo.

Solution
The solution to this 4-person bargaining game is found via backwards induction using the subgame perfect Nash equilibrium concept, beginning with the final nodes in the extensive form. There are four separate conditions to assess: an A president with team AA offering first, an A president with team AB offering first, a B president with team

AA making the first offer, and a B president with team AB as the initiator. For example, under an A president with AA making the first move and at the lowest tier in the game tree, team AA considers AB, BB, and BA's singleton proposals separately by evaluating the value of each offer compared with that of the status quo in the following way: if (or the value of the alternative to AA versus the value of the status quo, q, to AA), AA accepts the offer, otherwise AA rejects it for the status quo.

The value of each option is:

. Since AA is the recipient of the offer, the costs are zero and the policy term is only positive for alternatives that also involve the AB team. In addition, the terms for the state, legislator, and national executive branch can be substituted and the value can be rewritten as: . In other words, for team AA, the benefit of making policy under an A president is the benefit gained from making policy with other members of the A party. Under a B president, though, these values look considerably different: . Rearranging yields: . Under a B president, team AA is now concerned not just with the party benefit, but also with the distance between the team and the national executive branch and how much authority is given to that level (1-α).

<u>Proposition 4:</u> *A policy coalition will include only the majority party intergovernmental teams (AA and AB) when , such as in the House, and the new α is contingent on team AB's preference for centralization under an A president* *( ) and AA's preference for decentralization under a B president (* .

This result is due to the complete knowledge and finite nature of the game, in addition to the partisan benefits assumption and that the initial proposer (either AA or AB) will offer the other majority party intergovernmental team a change in α such that the recipient accepts the offer and play ends at round one. The result does not depend on which majority party intergovernmental team is the first mover.

<u>Proposition 5</u>: *A policy coalition will include the majority party intergovernmental teams (AA and AB) and the minority intergovernmental party team BB under an A president.*

When , the majority party intergovernmental teams are faced with a dilemma: accept the status quo or include a minority party intergovernmental team in the policy coalition in order to overcome the threat of a filibuster by any one legislator. Yet, under an A president, the AB team and the BB team disagree on α*: team AB prefers to centralize ( ) and team BB to decentralize ( ). To build a successful policy coalition, the majority party teams must balance movement in status quo with the costs and benefits of making a new policy. Team AB will only accept (or propose) a change in the degree of state authority if and team BB will

only accept a change where and is either the

status quo or another offer made by the recipient (either AA, AB, or BB).

Proposition 6: *A policy coalition will include the majority party intergovernmental teams (AA and AB) and the minority intergovernmental party team BA when and there is a B president.*

In this case, teams BA and AA have opposing preferences (for centralization and decentralization, respectively) and the following condition results:

.

Propositions 5 and 6 rely on the subgame perfect equilibrium solution concept and the assumption that a team rejects an offer for the status quo if it is indifferent. Specifically, at the lowest tier in the game tree, teams 1 (the first mover majority team) and BB both accept team 2's offer of α under certain circumstances. For the majority party team AB, and for BB if , BB accepts. Team BA, though, will only accept an offer that includes team BB, since BA is indifferent over α and will only accept if the value of a policy change also includes partisan benefits.[40] Similarly, at the other nodes along this lowest tier, team AA accepts any offer of , team AB only accepts offers that include team AA, and team BA only accepts offers that include team BB. The choices are made because of the following values (focusing on one condition as an example, the other conditions can be found by substituting the new values of the legislator, state, and presidential ideal points and using α' to generalize the various alternative proposed across the extensive form):

Under an A president with team AA as the first mover, for the bottom tier of the extensive form:

<u>Team AA</u>: V(α') versus V(q)

. The parenthetical indicates that partisan benefits only occur when the policy coalition includes team AB as well. Reducing this equation yields 0>0 when the policy coalition does not include team AB and AA or , when it does. In other words, since the partisan benefit term is positive by definition, team AA only accepts an offer that also includes team AB.

[40] Alternatively, if I assume policy change wins at indifference, two things change: 1) team BA is in the final policy coalition under an A president and team B under a B president and the policy change in both instances is only constrained by the majority party intergovernmental teams. This assumption seems less realistic than to assume a team rejects at indifference, given both the conventional wisdom regarding the stability of the status quo and the influence of the minority party in the Senate. In the aggregate empirical analysis chapter I provide the results relying on this alternative choice for indifference, which do not alter the conclusions I draw.

Team AB: V(α') versus V(q) =

. Rearranging and reducing this equation yields: , or that team AB will accept an alternative proposal iff if team AA is involved, or iff , if not.

Team BA: V(α') versus V(q) =

. Reducing this equation yields 1<1 (when team BB is not included in the coalition) and when team BB is included in the policy coalition. Thus, team BA rejects all offers unless team BB is included. As long as there is a positive partisan benefit, team BA accepts all offers that also include team BB.

Team BB: V(α') versus V(q) =

. Rearranging and reducing (relying on the fact that) this equation yields the following conclusion: as long as , BB accepts any offer that does not include team BA, if not, BB rejects in favor of the status quo. If team BA is also included, BB accepts any offer such that .

In the middle tier of the game tree, recipients of the initial proposal decide whether to accept team 1's offer, to reject it for the status quo, or to reject 1's offer and make an alternative offer given the known choices that will be made at the lowest tier. As an example, team 2 must consider whether to accept team 1's proposal versus reject it to make an alternative offer to any one or more of the teams (including back to team 1), or even reject team 1's proposal and make no alternative offer in favor of the status quo. Continuing the example from above (with an A president and team AA as the first mover, which means team AB is team 2), team AB considers

.

These values can be read in the following manner: the value to team AB of the proposal from AA to AB alone (, the value to team AB of the proposal from AB to AA alone (, and the value to team AB of the proposal from AB to teams AA, BA, and BB ( ).

The value of each option to AB is: . In other words, the value of the options depends on the state authority allocation offered, the potential partisan benefits, and the costs of making an offer. If team AA's offer is , AB accepts AA's offer. If not, AB makes an alternative offer to team AA as long as < . If not, AB chooses the status quo.

At the top node of the game tree, team 1 decides whether to make an offer to another team or set of teams, and if so, which team(s). Due to the partisan benefit of offer to team 2, the higher costs of maintaining a larger coalition, and team AA's indifference over the level of state authority (under an A president), if team AA moves first, it offers a change in state authority such that team AB accepts. If AB moves first, it only makes a proposal if it can offer a change in state authority that has value given the costs and benefits of policymaking. The same is the case under a B president, but given AB's indifference and AA's preference over .

In detail, under an A president with team AA as the first mover, AA knows that AB will accept a proposal where , that BA will only accept an offer that also includes team BB, and that team BB will only accept an offer if if team BA is included). If , AA will offer a proposal to team AB such that AB accepts. If , AA will offer a proposal to teams AB and BB (since k is increasing in the number of teams included and team BA rejects offers that do not also include team BB) iff and both teams accept. In order for both teams to accept, AA must offer the following proposal:

.

This result above suggests that the first mover team in the Senate (where is likely) must balance the non-indifferent majority party team's preference and the non-indifferent minority party team's preference over α with the costs and benefits of changing the status quo policy leading to the final proposition.

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Chapter 3

Measuring the Federal Allocation of Authority

INTRODUCTION

The first two chapters presented an empirical and theoretical puzzle: national policy varies in the amount of responsibility given to the states both over time and across laws. State involvement in policy can result in different policy outcomes than when the states are not involved. Thus, what are the conditions under which Congress opts to delegate more or less authority to the states? Using formal models of Congress delegating authority to the national executive branch and the states, I derived a number of hypotheses with respect to the effect of policy preferences of the states, Congress, and the national executive branch. This theory of intergovernmental delegation must be tested against current arguments related to the decentralization of authority. Conventional wisdom, for instance, is that Republicans prefer to devolve authority while Democrats opt to centralize. Scholars also posit the following three arguments: 1) when the party of the national government is more similar to that of all state governments, decentralization is more likely (partisan congruence) (Krause and Bowman 2005), 2) policy type determines decentralization choices, where redistributional policies are more efficiently implemented by a central government and developmental policies by subunit governments (Peterson 1995), and 3) Congress is less likely to decentralize during elections (Nicholson-Crotty

2008).[41] In order to test the theory of intergovernmental delegation against these alternative explanations, the concepts of federal delegation of authority, policy actor preferences, political uncertainty, partisanship, partisan congruence, policy type, and election timing must be operationalized.

DATA

Dependent Variable

Unit of Analysis and Selection of Data

To evaluate the conditions under which national legislators delegate authority to federal actors, this study utilizes the law as the unit of analysis. The dataset includes significant pieces of legislation from Mayhew's list of major laws from the 93rd through the 110th Congresses (2005). The list of important laws was downloaded and crosschecked with Mayhew's Table 4.1 for the years 1973-2002 (2005).[42] This list contains a total of 208 separate listings (from 1973-2008). Non-domestic legislation was excluded from this list including 22 of Mayhew's entries.[43] I also excluded D.C. Home Rule and the declaration of Martin Luther King Jr. Birthday as a national holiday since the first is specifically related only to the governance of the District of Columbia and the second is a formal statement of a holiday. I counted each law as one unit, which means each omnibus piece of legislation is counted as one enactment. This, for example, combines Mayhew's listings of Omnibus Deficit Reduction Act of 1993 with a separate

[41] Peterson defines developmental policies as those that "provide the physical and social infrastructure necessary to facilitate a country's economic growth" and redistributive policies as those that "reallocate societal resources from the haves to the have-nots" (17, 1995).
[42] Downloaded from http://pantheon.yale.edu/~dmayhew/datasets.html on September 2008 and again March 2010.
[43] These included, for example, the Comprehensive Anti-Apartheid Act, 2002 Authorization for Use of Force against those Responsible for Recent Terrorist Attacks, 2002 Authorization for Use of Force against Iraq, HIV/AIDS funding for Africa and the Caribbean, 2008 Nuclear Trade Agreement with India, 1997 Chemical Weapons Convention ratification, and the 1978 Panama Canal treaties ratification.

entry of Reform for College Student Loan Financing (PL 103-066) and the Deficit Reduction Package of 1990 with the Child Care Package (PL 101-508). After these exclusions and mergers, there were a total of 179 significant laws enacted from 1973-2008.

The years of this study provide variation in partisan majorities across branches of the national government, as shown in Table 3-1, allowing me to consider how preferences affect intergovernmental policy design. For instance, Republicans controlled all three institutions in the 108th and 109th Congresses, just the presidency and Senate in the 97th-99th Congresses, the presidency and House in the 107th Congresses, and both House and the Senate in the 104th-106th Congresses. Democrats, alternatively, controlled House and Senate in the 93rd-94th, the 100th-102nd, and the 110th Congresses and all three institutions during the 95th, 96th, and 103rd Congresses.

Table 3-1: Partisan Makeup of National Institutions

Year	Congress	President	Senate Majority	House Majority	Overall
73-75	93	Ford, R	Democrat (56 seats, R 42)	Democrat (242 seats, R 192)	RDD
75-77	94	Ford, R	Democrat (61 seats, R 37)	Democrat (291 seats, R 144)	RDD
77-79	95	Carter, D	Democrat (61 seats, R 38)	Democrat (292 seats, R 143)	DDD
79-81	96	Carter, D	Democrat (58 seats, R 41)	Democrat (277 seats, R 158)	DDD
81-83	97	Reagan, R	Republican (53 seats, D 46)	Democrat (242 seats, R 192)	RRD
83-85	98	Reagan, R	Republican (54 seats, D 46)	Democrat (269 seats, R 166)	RRD
85-87	99	Reagan, R	Republican (53 seats, D 47)	Democrat (253 seats, R 182)	RRD
87-89	100	Reagan, R	Democrat (55 seats, R 45)	Democrat (258 seats, R 177)	RDD
89-91	101	Bush, R	Democrat (55 seats, R 45)	Democrat (260 seats, R 175)	RDD
91-93	102	Bush, R	Democrat (56 seats, R 44)	Democrat (267 seats, R 167)	RDD
93-95	103	Clinton, D	Democrat (57 seats, R 43)	Democrat (258 seats, R 176)	DDD
95-97	104	Clinton, D	Republican (52 seats, D 48)	Republican (230 seats, D 204)	DRR
97-99	105	Clinton, D	Republican (55 seats, D 45)	Republican (228 seats, D 206)	DRR
99-01	106	Clinton, D	Republican (55 seats, D 45)	Republican (223 seats, D 211)	DRR
01-03	107[44]	Bush, R	Democrat (50 seats, R 50)	Republican (221 seats, D 212)	RDR
03-05	108	Bush, R	Republican (51 seats, D 48)	Republican (232 seats, D 202)	RRR
05-07	109	Bush, R	Republican (55 seats, D 44)	Republican (232 seats, D 202)	RRR
07-09	110	Bush, R	Democrat (49 seats, R 49)	Democrat (257 seats, R 178)	RDD

Shaded lines indicate Republican presidency.

[44] In the 107th Congress the partisan majority in the Senate was as follows: 1/3/01-1/20/01 Democrat (D) 50 seats, Republican (R) an 50 seats (D majority due to outgoing Vice President Al Gore), 1/20/01-6/6/01 R 50 seats, D 50 (R majority due to incoming Vice President Richard Cheney), 6/1/01-11/12/02 D 50 seats, R 49 (D majority due to James Jeffords, Vermont, switch to Independent and caucus with D), and 11/12/02-1/3/03 R 50 seats, D 48 (R majority due to a death and replacement but no reorganization was completed). Information on majorities was abstracted in December, 2008 and April 2011 from http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm & http://clerk.house.gov/art_history/house_history/partyDiv.html.

Source

To measure the dependent variable of intergovernmental delegation, I created a new dataset of policy authority delegation across federal actors. I obtained a summary of each law's major provisions from the Congressional Research Service (CRS) through the Library of Congress THOMAS on-line service.[45] CRS provides a summary of each introduced bill and each enactment into law. Previous studies often utilize Congressional Quarterly (CQ) Almanac summaries of laws (e.g., Epstein and O'Halloran 1999, Maltzman and Shipan 2008). A comparison coding of CQ summaries and CRS summaries revealed that CQ summaries often provided ambiguous information on the specific federal entity that received authority in each provision. CRS summaries, alternatively, provided more details about which entities were responsible for each provision included in the summary.

As a result, for this project, I used the CRS summary for the final enrolled enactment for each major law.[46] Given the structure of the summaries, each provision of every law in the dataset was coded for delegation of responsibility. In each summary, the provisions are demarcated by CRS as a new bullet in the text and each provision separated by a blank line. The average number of provisions in a CRS summary is 134. The summaries of significant legislation range from 1 to 1066 provisions—where the large summaries included omnibus and budget reconciliation legislation (see Table 3-2).

[45] Accessed November 2008-June, 2010 from http://thomas.loc.gov/home/bills_res.html. Please refer to THOMAS "About Summaries" website at http://thomas.loc.gov/bss/abt_dgst.html for more information.
[46] Wawro (2001) also uses CRS summaries. In 1970 the Congressional Research Service (then named the Legislative Reference Service) received additional resources through the Legislative Reorganization Act of 1970. Prior to this time, CRS summaries are extremely brief and often only provide a 2-3-sentence summary of an entire bill.

Table 3-2: Descriptive Statistics for Dependent Variables (unit of analysis = law)					
Variable	N	Mean	Standard Deviation	Min	Max
Proportion of National Provisions	179	0.751	0.274	0	1
Proportion of Joint Provisions	179	0.22	0.257	0	1
Proportion of State Provisions	179	0.029	0.119	0	1
Degree of Decentralization	179	0.249	0.274	0	1
Total Number of Provisions	24,012	134.067	168.382	1	1066

In 1973, for example, Congress amended the Economic Stabilization Act of 1970 (PL 93-028). The CRS summary of this law included four provisions giving the President authority (after public hearings) to set priorities and usage of petroleum products, changing the definition of "working poor," delineating that the President's authority does not include the ability to withhold or reserve obligated authority or funds, and requiring industry to make their price reports public. At the other end of the spectrum is the Omnibus Consolidated Appropriations Act of 1998 (1066 provisions), which includes provisions related to agriculture, Medicare, foreign aid, the Food and Drug Administration, the Post Office, the Child Online Privacy Act, and others. In total, 24,012 provisions were coded.

Coding Choices

To be able to later examine congressional delegation choices, the laws must be coded as to which entity receives authority in a policy. A minimum of two coders relied on specific definitions of authority and delegation to guide their coding processes. Authority was defined as the power to determine, judge, enforce, and conduct the activities laid out in a policy—or when Congress empowers another actor/group to make choices and complete the tasks necessary to result in an outcome from the delegated work. Congress relies upon this other entity (its agent, in a broad sense) to provide a set of functions or to implement the policy. The conduct of activities included in this definition included technical assistance, training, filling out paperwork, research, and the provision of care or services as detailed in the policy, among others.

The coding procedures included assigning a provision as “national” when a new national agency was created, when an existing national agency or group was required to perform a duty or implement the provision, or when the president was made responsible for specific actions.[47] “State” provisions were those that required state or local-level action with no national involvement.[48] “Joint” provisions included those where both state- and national-level entities were assigned responsibility or required to establish or maintain a state-national partnership.[49]

There were a number of “other” categories that were also coded including public-private partnerships, delegation to private contractors, delegation to the judiciary, and delegation to international agents. When delegation categories were not obvious based on the CRS summary, coders referred to the full text of the law and the appropriate year’s United States Code to assign delegation.

After two coders completed a law, a separate third coder reviewed the two previous decisions and in cases where there were discrepancies, the differences were aired at a conference where all coders discussed how the decision rules applied in that situation, reviewed the full text of the law (for that provision), the text of the correct United States Code, and any additional background material (such as agency websites).

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[47] When Congress retained authority, the provision was coded as “no authority delegated.” If Congress assigned an independent commission’s membership, the commission was coded as “other”, if the membership was assigned by the President (or national executive branch agency) they were categorized as national and if by a combination of the state governors (or other state-level actors) and national actors, it was categorized as joint.

[48] I assume that local policies are subsumed into state policies. Local governments also likely play an important role in intergovernmental relations and the decisions of policymakers. Narrowing the scope of the study in this way will miss some of the nuances of intergovernmental relations that require further study in future projects.

[49] Please refer to the appendix for a detailed description of the coding rules.

After each law was coded, summary measures for that law were calculated including: the total number of provisions in the law, the total number of national provisions, the total number of joint provisions, the total number of state provisions and the total number of other provisions. The percent agreement on the coding of national, state, and joint authority between the initial two coders averaged 78.35%. Any law with less than 70% agreement between those two coders was re-coded by the author.

We confined our determination of whom or what was given authority to each individual provision unless it was apparent that a series of provisions were linked. In the Education Flexibility Partnership Act of 1999 (P.L. 106-025), for instance, the first summarized provision authorizes the Secretary of Education to allow states to participate in the Education Flexibility Partnership program (Ed-Flex). The next seven provisions set forth requirements, authorizations, and prohibitions for states that participate in the program; therefore, even though these provisions circumscribe the authority of states, they are not direct mandates for the states. Instead, these provisions refer to the authority of the Secretary of Education in overseeing the entire program and are coded as joint delegations of authority.

This coding provides a dramatic departure from previous empirical tests of centralization and decentralization. Previous studies have either used preemption data compiled by the National Conference of State Legislatures (mostly based on Congressional Budget Office data) (Nicholson-Crotty 2008), data on grants-in-aid (Peterson 1995), or have limited their coding to laws that specifically deal with states (Krause and Bowman 2005).[50] These datasets cover limited time periods (e.g. CBO only

[50] CBO data is compiled as a result of the 1995 Unfunded Mandate Reform Act and is available from 1997 onward. Their data includes mandates on states, localities, tribes, and private entities. Mandates are

covers 1997 onward) and do not consider legislation that does not delegate authority to the states—in other words, for my project they select on the dependent variable. For instance, Krause and Bowman (2005) examined all public laws passed between 1947-1998 (excluding appropriations bills, omnibus bills, and land transactions). Laws were excluded if there was no intergovernmental content. This project, with its broader perspective regarding the uses of federal delegation options for Congress, must consider all designations of authority within legislation, whether they be grants-in-aid, mandates, direct orders to states, traditional delegation to the national executive branch, or otherwise.

Next, I create an overall federal delegation measure that takes into account both joint and state delegation choices. For this variable, I create a blunt measure of overall state policy delegation, or decentralization, by collapsing the categories of delegation into a continuous measure within the bounds zero to one. This measure captures the degree of authority delegated to the states in a law (the degree of decentralization) and is calculated by adding the proportion of state provisions in a law (provisions that delegate entirely to the states) to one-half the proportion of joint provisions (provisions that delegate partially to the states and partially to the national executive branch).[51] For example, a law with 100 provisions: 50 national, 40 joint, and 10 state would receive a decentralization score of .30 (which is equal to (50*0 + 40*0.5 + 10*1)/100). Table 3-2 lists the descriptive statistics for all four measures for the dependent variable.

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defined as any duty imposed on these units. Excluded from this definition are voluntary grants-in-aid. See CBO website for more details at http://www.cbo.gov/.

[51] By using a measure that considers ½ of joint provisions, I implicitly assume that joint partnerships allocate approximately half of the authority to the states and half to the national agents. Although this is not necessarily true for each individual case, as an overall average it is a rough approximation. In the empirical analyses, I consider a variety of other specifications and find my results are robust to changes in this measure, including counting joint provisions as equal to state provisions, dichotomizing the delegation into "mostly state" versus not (and utilizing various thresholds of "mostly state").

This choice implicitly treats all provisions summarized by the CRS as equally important. While ideally I would weight by the importance of the provision, this choice would be impractical given the scope of the study. This equality of provisions summarized, though, is not a big problem because CRS is comprised of policy experts who "describ[e] the measure's most significant provisions."[52] In other words, CRS has already chosen the significant provisions. The coding team then codes those provisions and I treat each of them equally.

Descriptive Statistics

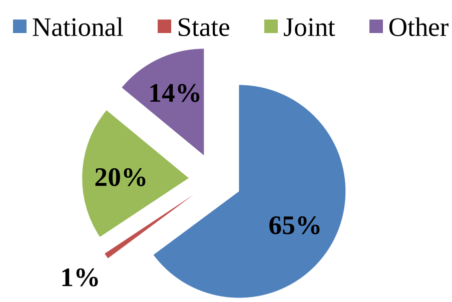
As Table 3-2 indicates, the most common type of delegation in the dataset is national with on average 75% of provisions (excluding "other") delegated to national entities, fitting the traditional perspective of bureaucratic delegation. The mean proportion of provisions delegated to the states, in combination with national actors and alone, is 0.22 and 0.03 respectively. Furthermore, the mean degree of decentralization in a law is 0.249, which demonstrates that on average a quarter of the implementation responsibility in significant national laws is delegated in some way to the states. In other words, delegation of authority occurs not just to national actors, such as national-level agencies, but also to the states.

Overall, I show federal delegation choices in Figure 3-1 (across all provisions and including the "other" category) and federal delegation choices for each year in the dataset

[52] The quote is from the THOMAS website listed below. The Congressional Research Service has existed since its statutory establishment in 1914 (then called the Legislative Reference Service). A major reorganization occurred in 1970 with the Legislative Reorganization Act expanding the duties of the department and changing the name. A consideration of CRS summaries prior to 1970 reveals substantial differences in the amount of information provided in those summaries from those post-1970. The span of this study is 1973-2008 due to these variations and the ability to access them electronically through THOMAS. Some changes over subsequent years have likely occurred in CRS as well and will result in measurement/coding errors. No changes have been publicized such that scholars can review the potential impact of any changes. Information about CRS can be found at http://www.loc.gov/crsinfo/whatscrs.html and information about the summaries at http://thomas.loc.gov/bss/abt_dgst.html.

in Figure 3-2 (across all laws). In Figure 3-1, which summarizes delegation choices overall, national delegation is the most common federal design choice, accounting for 65% of all provisions in the dataset.[53] Direct mandates for the states comprise 1% and joint partnerships 20% of authority design. In the remaining 14% of provisions, delegation occurred to other entities (e.g., the judiciary, non-profit groups, industry, etc.). Thus, although Congress delegates implementation responsibility to the states, it rarely does so by crafting a law where the states act alone.

Figure 3-1: Overall Delegation Choices 1973-2008

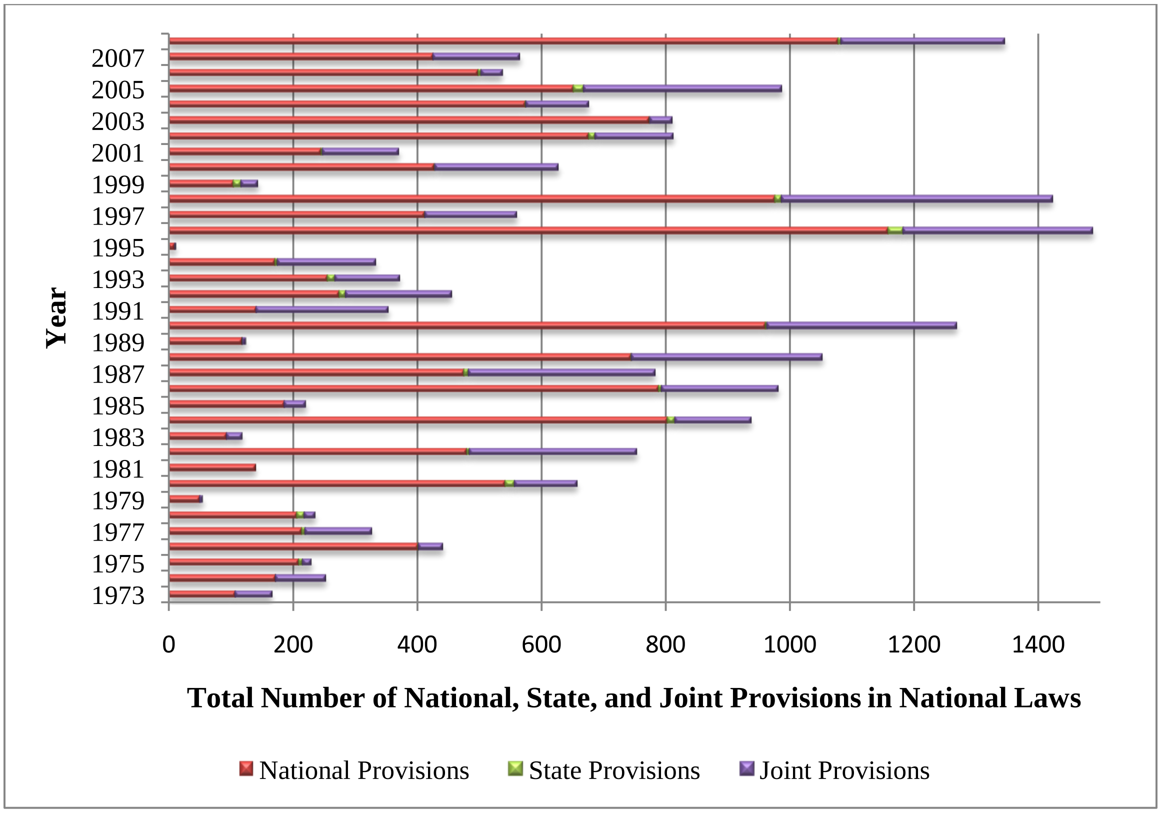


In Figure 3-2, variation across the years in these design choices is evident. For instance, 1996 is the year with the largest total number of summarized provisions in significant legislation with 1,489 national, state, or joint summarized provisions in that year (1,845 provisions including “other”). Of these provisions 1,159 were delegated to national-level actors, 305 to joint partnerships, and 25 directly to the states for implementation. That year also has the greatest number of national delegation provisions and the greatest number of state delegation. The maximum number of joint delegations, though, occurred in 1998, when 436 provisions out of 1,678 total (including “other”)

[53] This number is less than in Table 3-2 because it incorporates the “other” category.

provisions were delegation to joint partnerships. The fewest number of total provisions in significant legislation occurred in 1995 where of 98 provisions, 10 were national delegation, 2 joint partnerships, and zero direct state delegation (the remainder of the provisions were delegated to other actors).

Figure 3-2: Variation in Federal Delegation Choices

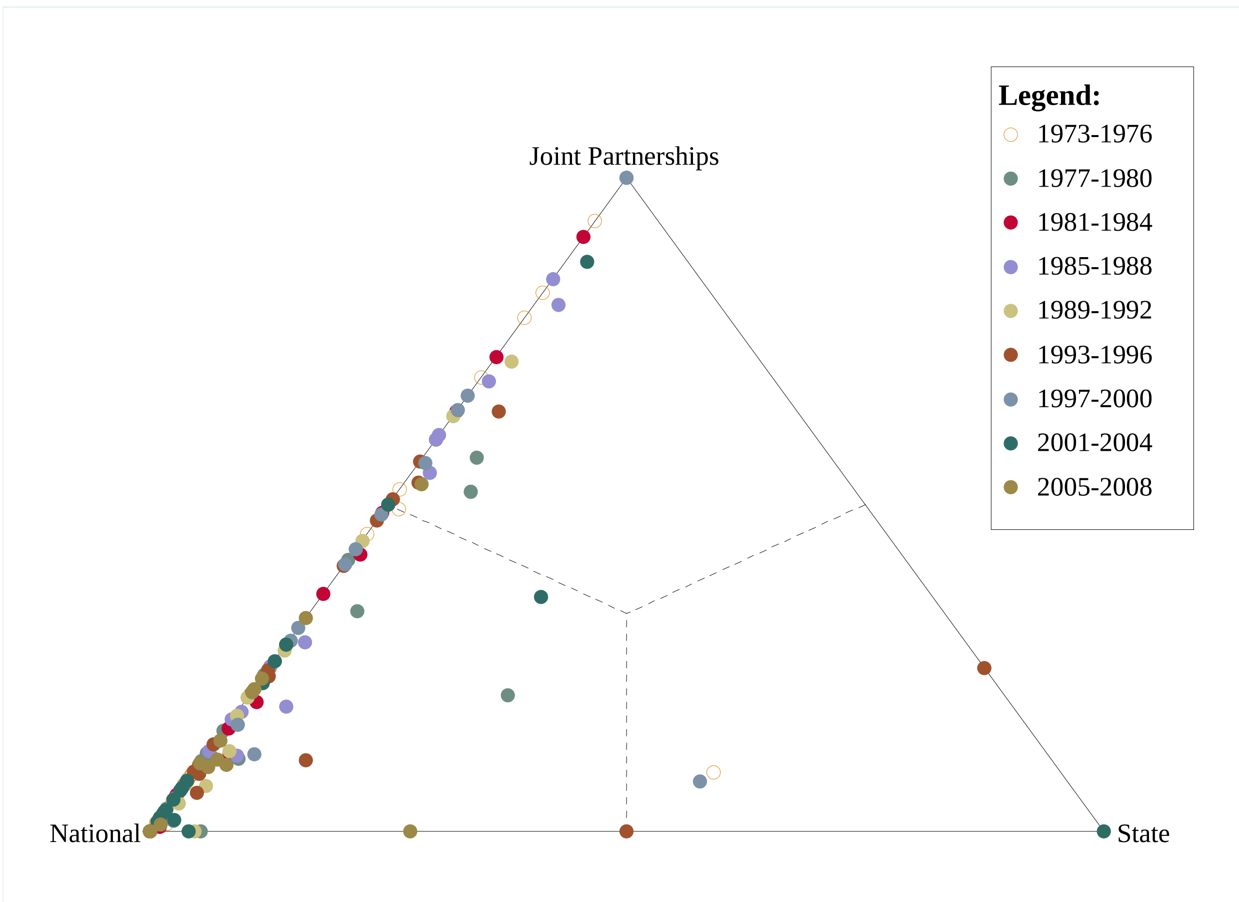


A consideration of year-to-year variation in Figure 3-2 reveals that from 1976-1977, from 1991-1992, and from 2002-2003 the total number of provisions changed only slightly from 464 to 349, 400 to 496, and 895 to 859 respectively. The division of delegation choices, though, varies tremendously. In 1976 the delegation design included 401 provisions to national actors, 39 to joint partnerships, and two directly to the states. In contrast to 1977 where the breakdown is 214 national, 108 joint, and six state delegation. Similarly from 1991 to 1992 and from 2002 to 2003, the design choices differ. Specifically, 141 of the provisions were delegated to national actors and 213 to joint partnerships (zero to the states alone) in 1991, but in 1992 national, joint, and state delegation occurred in 275, 169, and 11 provisions. And, from 2002 to 2003 the delegation choices changed from 676 national, 126 joint, and 11 state to 777 national, 36 joint, and one state.

Another way to look at the data is that a law can be characterized by all three values: proportion national delegation, proportion joint partnership delegation, and proportion state delegation. These three proportions are the federal authority composition of each law in the dataset and are more easily visualized in a ternary diagram as shown in Figure 3-3. Each of the 179 laws is represented by one dot in the diagram (dots are colored by the 4-year time period in which the law was made), where the left lower corner represents laws mainly delegated to national executive branch agents, the right lower corner delegation directly to the states, and the apex represents delegation via joint partnerships. A law that delegates equally to the states, national agents, and joint partnerships (33.3% state, 33.3% national, and 33.3% joint) would be represented by a dot in the exact center of the triangle.

There are three petals defined by the dotted lines meeting in the center and the three outside edges. Laws that fall within the left petal represent those laws where the delegation of the provisions is mostly to national level agents. The farther a law is located from the lower left corner within this petal, the more the delegation design includes state delegation, either through joint partnerships (as the dots drift upward) or direct state delegation (as the dots fall to the right). The right-most petal includes laws where direct delegation to the states is the most common choice, which are only five laws in the dataset. These laws include the Partial Birth Abortion Ban Act of 2003 (turquoise dot at the lower right vertex), the Freedom of Access to Reproductive Health Services Clinics Act of 1994 (orange dot on the bottom axis on the dotted line), the Y2K Act (blue dot), the Voting Rights Amendments of 1975 (open circle orange dot), and the National Voter Registration Act of 1993 (orange dot on the right axis). Abortion laws and voting laws populate this rare choice of delegation directly to the states with no national involvement as well as one law devoted to delineating legal responsibility (and state versus national jurisdiction) in the event that massive failures resulted in 2000.

Figure 3-3: Federal Authority Composition



The final upper central petal includes laws delegated mostly through joint partnerships between the states and national-level actors and includes laws from each four-year increment. The variation in all petals in Figure 3-3 demonstrates that scholars who ignore the states as a delegation choice neglect aspects of the laws that do not fall exactly on the lower left hand point of the triangle. Furthermore, by looking at the delegation of authority in individual laws, across all laws, and over time, it is apparent that not only do existing bureaucratic delegation arguments overlook an important delegation choice in the states; but also this choice exhibits variation in need of an explanation.

Focusing on specific examples of delegation choices and the degree of decentralization provides evidence of the variation of federal design choices and what these aggregate numbers look like from a different angle. In an act that amends the Civil Rights Act of 1964 (PL 102-166), Congress gave the Equal Employment Opportunity Commission (EEOC) the authority to establish the Technical Assistance Training Institute, which provides technical assistance and training for the laws that the EEOC enforces. It also requires the EEOC to carry out these activities and target specific groups of individuals (e.g., those who have not been "equitably served by the EEOC"). The states are only mentioned once in this law—in title I: "Amends Federal law to declare that: (1) for purposes of provisions relating to equal rights under the law, the right to make and enforce contracts includes…; and (2) the rights protected by the amended provisions are protected against impairment by nongovernmental discrimination and impairment under color of State law." This law is 100% national and has a decentralization score of zero. Similarly, the Family and Temporary Medical Leave Act (PL 103-003) is also 100% national, with a decentralization of zero. In this law, Congress delegated authority to the Secretary of Labor to prescribe regulations, investigate, and enforce the provisions of the Act, but gave no authority to the states. Interestingly, the Act also established a Commission on Leave to research (among other things) alternative and equivalent state enforcement of the Act.

Other laws give the states either partial or complete responsibility. For example, in contrast to the Civil Rights Act amendment and the Medical Leave Act, joint partnership policies are dominant choices in the Brady Handgun Violence Prevention Act (PL 103-159) and in the No Child Left Behind Act (PL 107-110). In the Brady Handgun Act, the Attorney General is directed to determine deadlines by which states should provide an on-line system for documents and permits grants to states for such record systems. This law codes at 8% national, 91% joint, and 1% state yielding a decentralization score of 0.465 (0.8*0 +0.91*0.5 + 0.01*1). In No Child Left Behind, the majority of the provisions establishes procedures, planning, and reporting and provides allocation requirements for the states and the Secretary of Education (10.6% national, 87.1% joint, and 2.3% state with a decentralization score of 0.459).

Direct delegation to the states is the most prevalent choice in the Partial Birth Abortion Ban (PL 108-105), as well as the National Voter Registration Act of 1993 (PL 103-031). In the Partial Birth Abortion Ban a defendant accused under the Act could seek a hearing before the State Medical Board on the physician's conduct (not a national or joint body). This law has a decentralization score of 1 and is 100% state delegation. The National Voter Registration Act set forth a variety of requirements and permissions for the states but provided little national involvement in the implementation of the Act (0% national, 25% joint, and 75% state with a decentralization score of 0.875).

Limitations

While this method provides an excellent measure of decentralization of authority, one that compares with general views of these laws, it does have flaws. The decentralization score is a blunt measure of responsibility for implementation, not a measure of true authority over the policy. I do not measure the amount of discretion each actor has over the provisions for which it is responsible, nor do I attempt to measure the amount of national control versus state control in each of the joint provisions. In effect, then, this measurement strategy provides a view of implementation responsibility—not specific determinations of actor authority and discretion. From a theoretical perspective, I do not consider discretion.[54] Empirically I consider different versions of the measure, including assigning joint provisions the same value as state provisions and dichotomizing the delegation into mostly state versus mostly national laws. The results reported in Chapter 4 are robust to these changes.

Joint Policies

To my knowledge, this is the first study to consider and separately analyze joint partnership policies. Scholars in federalism and bureaucratic delegation hint at two potential relationships that may be at the heart of the delegation of a federal combination of policy authority. First, along the lines of Chubb's double pyramid of federal actors, national legislators may delegate first to a national agency that is then authorized to sub-delegate authority to state-level agencies (1985). Alternatively, national legislators may

[54] With respect to discretion, it is as if I have held discretion constant across laws. In the aggregate empirical analyses, I conducted one simple test of the effects of variation in discretion, by incorporating a variable in the empirical analyses measuring the number of words per law as a rough proxy for discretion (Huber and Shipan 2002, Randazzo et al., 2006). This variable was not statistically significant, did not improve the fit of the models, and did not change the substantive findings reported.

delegate authority to state-level agencies, but “hire” national agencies as their 3rd party monitor of the states’ outputs (based on Tirole 1986).

Both of these scenarios are distinctly different from delegation directly to the states with little or no national involvement (a direct mandate for the states). In the first instance, the national executive branch (most often through national-level agencies) sub-contracts implementation to the states and, then, is responsible for the details of “hiring” the states to do the policy work (an internal supervisory role). In the second case, the national executive branch plays more of an external supervisory role with respect to the states.

In the coding process we attempted to pay particular attention to the structure of the joint partnership policies to consider whether sub-contracting versus supervising was the more common role of the national executive branch in joint partnership policies. It was immediately evident that there were many more than two relationship structures in joint partnership policies. What the coding process uncovered, is that some policies delegated authority for implementation to the states with a national-level agency acting as the overall administrator (such as serving as the repository of reports, disseminator of information and grants-in-aid, as well as training and technical assistance) as evidenced in Medicare Prescription Drug Improvement, and Modernization Act (MMA) of 2003’s (PL 108-173) rural hospital flexibility program. The MMA established this grant-in-aid program with specific requirements states must fulfill, plus consultation with the state hospital association and rural hospitals on the best way to use the funds. The Health Resources and Services Administration (within the Department of Health and Human Services) was authorized as the administrator of this grant program with responsibility for ascertaining the states met the requirements set forth in the law, disseminating the funds, and reporting back to Congress.

A different authority relationship (but still a grant program) was described in the National Inter-modal Surface Transportation System Act (PL 102-240). The Secretary of Transportation was directed to establish the grant program and apportion money for all states, as opposed to running a program that was already established, as in the MMA. Alternatively, other provisions required a national executive branch actor to establish a competitive grant program or pilot projects among a few states, as in the Violent Crime Control and Law Enforcement Act of 1994.

The structure of joint-partnership policies varies across regulatory programs as well. In the Safe Drinking Water Act, the states were granted primary enforcement responsibility as long as a state had adopted more stringent standards than the national standards as determined by the Environmental Protection Agency. The Telecommunications Act of 1996, though, required the Federal Communications Commission to create a Federal-State Joint Board to perform oversight. In the Health Insurance Portability and Accountability Act, the Secretary of Health was required coordinate federal, state, and local programs to control health care fraud.

Furthermore, in other types of policies, such as the Healthy Forests Restoration Act, the Superfund Amendments and Reauthorization, or the Water Resources Development Act, there are still other types of joint-partnership policies. In the Healthy Forests Restoration Act of 2003, the Secretary was required to facilitate collaboration among the states in preparing for fuel projects that would be planned and conducted by the Secretary. Alternatively, in the Superfund Amendments and Reauthorization Act of

1986 the President was permitted to enter into cooperative agreements with states for hazardous waste cleanups. The Water Resources Development Act of 1986 directed the Secretary to survey rehabilitation methods for former industrial sites only upon the request of local officials and to provide technical assistance, only upon request of the states.

In Table 3-3, I provide a summary of these types of joint partnership policies identified and their examples. Although for this study we coded all joint partnership policies as one category, due to the number and variety of relationships identified in the joint partnership policies, this is an avenue for further research.

Table 3-3: Categories of Joint Delegation

National Role vis-à-vis the States	Example
Subcontract	National Inter-modal Surface Transportation System Act
Supervise/Administrate	Medicare Prescription Drug Improvement and Modernization Act
Substitute/Contingency	Safe Drinking Water Act
Cooperate	Telecommunications Act of 1996
Facilitate	Health Forests Restoration Act of 2003
Assist/Support	Water Resources Development Act of 1986

In all, I have created measures of national allocation of authority to the states, or intergovernmental delegation. This intergovernmental delegation of authority exhibits variation in the degree of state authority over time and across laws. What explains this variation in federal delegation? In the next section, I discuss the measurement of three categories of independent variables. First, as outlined earlier, my primary theoretical variables require measures of legislative, national executive branch, and state preferences along with political uncertainty. Second, I elaborate the control variables included in the analysis. Third, alternative arguments require measures of policy type, Republican national government, partisan congruence, and election year. I now discuss the measurement and operationalization of these variables.

Intergovernmental Delegation Theoretical Explanators

Preferences

The preferences of Congress, the national executive branch, and the states play a crucial role in the theoretical model. Unfortunately, one problem I face is the need to use the same metric for the preferences of Congress, the national executive branch, and the states—particularly because I need to calculate distances between these entities to test the implications of the theory. No such measure exists across my entire sample. Although at the national level I could use DW-NOMINATE scores, averaged across both chambers and for the president, the same measure does not exist across time for the states.[55]

One possible operationalization of preferences is to use a blunt measure of partisanship for the legislature, party of the president for the executive branch, and the parties of the governors for the states. Other scholars have used partisanship as a proxy for preferences, such as Berry et al. (2007) and Lupia et al. (2009) as well as all studies that use divided government as a variable (e.g., Epstein and O'Halloran 1999, Huber and Shipan 2002, etc.). The benefit of using party is that the measure exists for all actors in my model. The weaknesses of this approach include the following: (1) party may not mean the same thing cross-sectionally and inter-temporally—a Democrat in Mississippi

[55] Clinton and Lewis characterized national agency preferences using expert opinions and agency attributes but the measures are not comparable to NOMINATE scores (2008). Nixon (2004) provides estimates of the ideal points of the national legislature, agency commissioners (using service in both as the bridge) as do Bailey and Chang (2001) but neither provides state-level ideal point estimates. Wright and Osborn (2002) provide roll call data for state legislatures for 1999-2000 only. Shor et al. (2011) have spent many years delineating a common space measure for presidents, Congress, and state legislatures, but this data was not available for use at the time this study was completed.

may not mean the same thing as a Democrat in Massachusetts and a Republican in 1973 may not be the same as a Republican in 2003, (2) I will need to assume a dichotomous measure of party can be meaningfully aggregated for the states, and (3) to assume this measure can provide information about distances between actors. Each of these issues is discussed below.

<u>The Concept of Party</u>

Does party actually measure the same phenomenon across the units (e.g., states, executive branch, and Congress) and over the time period of my study? The answer is that it does not—the Democratic and Republican parties have changed over time and never truly represent the same thing from state to state. Does this issue create a major problem for the empirical analysis of a formal model based on distances between the preferences of the actors involved? My model does not include temporal considerations of preferences—so movement of the parties across time does not impede my cross-sectional empirical analysis. Also, due to the theoretical framework I compare distances between actors in the same state, not Democrats in Massachusetts to Democrats (or Republicans) in Mississippi. In short, no it does not create a major problem for the empirical analyses.

Thus, the party of the current president is used as a proxy for national executive branch preferences. Although this measure misses nuances of agency preferences (that can vary across agencies), it incorporates presidential power over agency leadership and agency outputs (via review of rules and regulations, for instance). In addition, the national executive branch includes not just delegation of authority to national agencies but also to the president or independent commissions appointed by either the president or heads of agencies.[56] Additionally, I use the party of the governor of the pivotal legislator's state to measure the partisanship of the state. The pivotal legislator is derived from the model described in the preceding chapter and is matched to the empirical data across the years of the study. Party is coded as a -1 for Democrats, 0 for Independents, and +1 for Republicans.

Measuring Distance

Using these three proxies for the preferences of Congress, the national executive branch, and the states, I approximate the distance between them as the absolute value of the difference between the pivotal House and Senate member and his or her state, as well as that between House and Senate member and the president. These values are the same for all members of the pivotal intergovernmental team.[57] I take the mean of these distances across the House and Senate to derive the congressional distances. For example, when the pivotal intergovernmental team in the House is DR legislators and the pivotal team is RR legislators in the Senate under a Democratic president, the distance measures would be calculated as follows (with examples outlined in Table 3-4):[58]

Distance between House (HR) and State$|-1-1| = 2$

Distance between HR and National Executive Branch (NEB)$|-1-(-1)| = 0$

Distance between Senate and State = $|1 - 1| = 0$

[56] Although one option would be to consider a measure that incorporates both governors and state legislative majorities, interviews conducted during the summer of 2010 with legislative staffers revealed that congresspersons mainly considered their governors when thinking about state implementation of law. These interviews are detailed in Chapter 5.

[57] Recall in Chapter 2, I described the pivotal "legislator" as a pivotal legislative team. Each member of that team is a specific type of legislator, which includes the party of that legislator and the party of his governor. I use the pivotal legislative team to provide the identity of the party of the "pivotal legislator" and the party of his governor.

[58] Recall from Chapter 2, DR legislators are Democratic legislators from states with Republican governors, DD legislators are Democratic legislators from states with Democratic governors, RD legislators are Republican legislators from states with Democratic governors, and RR legislators are Republican legislators from states with Republican governors.

Distance between Senate and NEB = | 1 – (-1)| = 2

Distance between Congress and State = (2+0)/2 = 1

Distance between Congress and NEB = (0+2)/2 = 1

Table 3-4: Example Distance Calculations

Party of Median Member in Congress	Party of Governor of State of Median Member in Congress	Party of President	Congress-State Distance	Congress-Agency Distance
D	D	D	|-1- -1| = 0	|-1- -1| = 0
D	D	R	|-1 - -1| = 0	|-1 - +1| = 2
R	R	R	|+1-+1| = 0	|+1-+1| = 0
R	D	D	|+1- -1| = 2	|+1- -1| = 2

The implication of this operationalization is that I use blunt measures of preferences (i.e., partisanship) to create a measure of distance. A problem with this approach, of course, is that it can provide only a general approximation for the actual distance between the preferences of the actors involved, which translates into a difference of how coefficients on such measures can be interpreted. More specifically, I cannot interpret a one-unit change in the distance as a one-unit change between the preferences of Congress and the other actors. Instead, this change must be interpreted as a change from closer to farther or vice versa.

Political Uncertainty

In my theoretical model, political uncertainty is the likelihood that the party of the president or governor at time t+1 will be different than the current leader's party in the context of a legislator's partisanship. A typical measure of a related concept, state political competition, is the folded Ranney index. I do not utilize this measure because it is based on the proportion of seats in the upper and lower chambers of a state's legislature held by the Democratic party, the Democratic proportion of the gubernatorial vote, and the proportion of terms of office for the three institutions during which the Democratic party was in control. Instead, I need a measure of uncertainty over the partisanship of the governor and the president.

To operationalize political uncertainty at the national and state level, therefore, I begin by collecting the margin of electoral victory for each governor's race and each presidential race from 1968 through 2008.[59] The margin of victory is measured as the absolute difference between the votes obtained by the top two opposing party candidates for the governor. Specifically, I take the number of votes for the winning candidate, subtract those for the second place candidate (as long as that candidate is from a different party) and then divide by the total number of votes placed in that race to yield an electoral margin score. Next, I create a rolling average of the past three elections' electoral margin for each year in the dataset.

Finally, I produce a separate column that includes the electoral margin in executive election years and a 1 in the off election years (a dummy variable). To measure state political uncertainty, I take the average of the rolling average column and the electoral margin with dummy variables for the off election years' column. Recall, though, that the theoretical model is based on a pivotal intergovernmental team of legislators. Thus, I take the mean of the individual legislators' governors' political uncertainty for each pivotal intergovernmental team of legislators across the years in the dataset. As an example, if there are three legislators in the pivotal intergovernmental team, I take the average of the political uncertainty of all three states during those years.

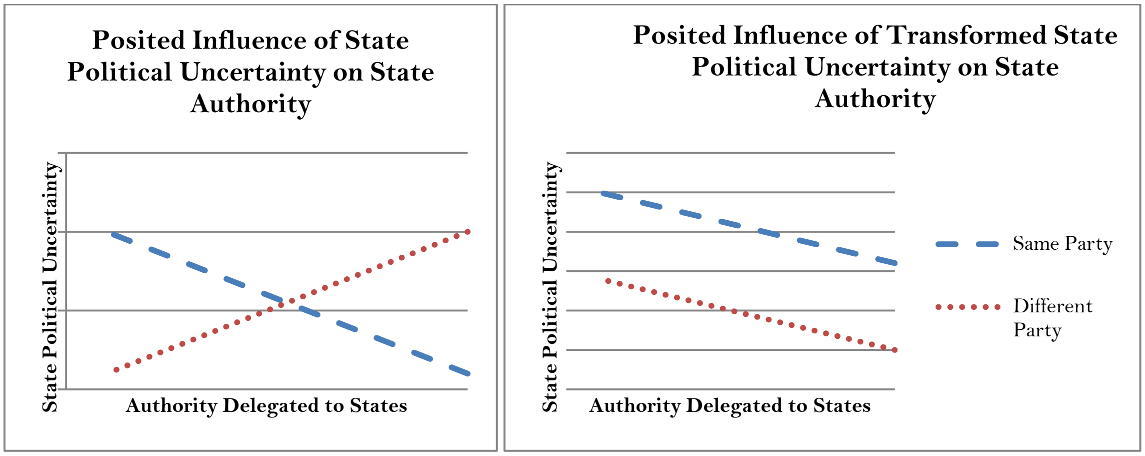
[59] As an alternative, I measure the duration of a governor/President's political party in the executive branch. For each year in the dataset, this measure is calculated as the pivotal legislator's governor's party duration in years (the same is done for the president's party).

For national political uncertainty, the same process is used with one exception; I use the margin of electoral college votes instead of the popular vote.

In addition, the context of political uncertainty is crucial. If a Democratic legislator considers his Republican governor's seat unsafe, political uncertainty is a positive factor. On the other hand, if a Republican may soon replace a Democratic legislator's Democratic governor, political uncertainty is a negative factor. To address this issue, I normalize political uncertainty. To do so, I multiply each executive's political uncertainty by an indicator that is equal to -1 if the legislator and the state governor are of different parties and a +1 if they share partisanship. This simple transformation of the measure of political uncertainty does two related things: 1) it incorporates the context of the legislator's party with that of the executive's party and 2) it simplifies the hypotheses to be tested.

Focusing on the state, because I have already accounted for the similarity or difference of the legislator's party with that of the governor, the direction of the influence of state political uncertainty is now negative. Figure 3-4 shows that by multiplying state political uncertainty by -1 for those legislators from a different party, the influence of political uncertainty runs in the same direction. Now, the effect of increasing transformed political uncertainty is to temper delegation to the states.

Figure 3-4: Political Uncertainty Transformation[60]



Alternative Arguments' Variables

To consider alternative arguments, I include measures for partisan congruence, Republican control of national institutions, election year, and policy type. I use Krause and Bowman's (2005) vertical partisan congruence variable to consider their adverse selection hypothesis (where Congress decentralizes authority when the states share similar partisanship to the Congress and the president and centralizes otherwise). To measure the congruence between the partisan makeup of the national and state governments, Krause and Bowman interact two categorical variables measuring partisan balance at each level. At the national level, a -1 captures when all three institutions (executive, and both legislative chambers) are majority Democratic, +1 when all three are Republican, and 0 in cases of divided government.[61] At the state-level a similar process ensues: the states are weighted by their electoral college votes and aggregated to create a single state partisan balance variable. As these partisan control variables increase, Republican control increases.

[60] The gap between same and different party in the right-hand graph is for illustration only. In truth, the expectation is that these lines lie on top of each other.
[61] Additionally, divided-divided government is measured as a -0.5 when Democrats control two of the three institutions and +0.5 when Republicans do.

In addition, I interact these national and state partisan balance variables following Krause and Bowman to "create a comprehensive national-state partisan interaction term [that] taps into the degree of vertical partisan congruence between national and state level political institutions" (372, Krause and Bowman 2005). Conventional wisdom suggests that as Republican control increases (or as the national partisan balance measure increases), state authority delegation will also increase.[62] The interactive argument forwarded by Krause and Bowman conjectures that as partisan congruence increases, decentralization of authority to the states also increases.

To consider Nicholson-Crotty's (2008) contention that Congress refrains from state mandates during election years, I create a variable coded as one during election years (every two years) and zero otherwise. Finally, for Peterson's (1995) argument that federal delegation is based on the type of policy considered, I create a variable using the Policy Agenda's project topic and subtopic codes and Peterson's policy coding scheme (198-201, 1995).[63] Redistributive policies, according to Peterson, are those that "reallocate societal resources from the haves to the have-nots," in comparison to developmental policies that "provide the physical and social infrastructure necessary to facilitate a country's economic growth" (17, 1995).[64] He argues that redistributive policies are more efficient if centralized and developmental policies are more efficient if

[62] I also utilize simple dummy variables of party for the majority in the House, majority in the Senate, and party of the president as well as categorical measures for when Republicans control these three institutions at the national level. The results do not differ dramatically from using national partisan balance.
[63] The Policy Agenda's Project Topic Codebook was accessed from the Fall, 2008 through the Fall, 2009 at http://www.policyagendas.org/codebooks/topicindex.html.
[64] Peterson includes transportation, natural resources, safety, education, and utilities as developmental policies and redistributive policies as pensions/medical insurance, welfare, health and hospitals and housing. I checked the robustness of the findings with respect to including education as a developmental policy and then as a redistributive policy and found no significant difference in the results. I include education as a redistributive policy in the reported analysis. Policy areas are obtained from the Policy Agendas Project (Jones, Wilkerson, and Baumgartner 2008).

decentralized. For efficiency reasons, then, legislators will opt to centralize redistributive policies and decentralize developmental policies (Peterson 1995). For this variable, developmental policy is coded as 0 and a redistributive policy as 1. The descriptive statistics for each of these variables are summarized in the appendix.

Control Variables

There are a variety of other variables that are expected to influence the delegation of authority to the states. Scholars commonly control for the federal deficit, state fiscal health, traditional state policies, an activist national government, and unified government (Krause and Bowman 2005, Nicholson-Crotty 2008).[65] The federal deficit or surplus measure was obtained from the Budget of the United States Government, Fiscal Year 2008 Historical Tables. I utilize the previous year's surplus or deficit as a percentage of the gross domestic product measured in constant fiscal year 2000 dollars. As the federal deficit increases, if national legislators are off-loading some costs to the states, state responsibility will increase. State fiscal status is measured as the previous year's percent change in revenues as obtained from the U.S. Census Bureau State Government Finances website (in addition to archived historical data provided via email from the Census Bureau). I use state own-source revenues at time t and derive the percent change in these revenues (100*[revenue at time t – revenue at time t-1]/revenue at t-1). As state revenues increase, state responsibility is expected to increase.

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[65] Although not commonly included in studies of decentralization, I also incorporated controls for heterogeneity of state governors, heterogeneity of the majority party in each chamber, percent majority in each chamber, a blunt dichotomous measure of the technical uncertainty of the policy, and various time trends as these factors could potentially account for differences in delegation strategies. These variables were statistically insignificant (with the exception of percent majority in the Senate) and did not alter the empirical results reported in Chapter 4. Moreover, I included a temporal variable that measures years from 1973 that ranges from zero (at 1973) to 34 (at 2007) (as well as nonlinear versions of a time trend) but dropped this variable from the analysis due to lack of improvement in the models and high correlation with many of the other variables such as federal deficit.

As for traditional state policies, an activist public, and unified government, I include a rough proxy for the status quo level of state authority by including a dummy for policies that are considered to be traditional state policies (Gostin, 2002). These policies include education, health, and social welfare, which are coded as 1, while other policy areas are coded as 0. During the time span of my study, the federal government had already entered these traditional realms of state policy. I expect, though, that state authority delegation will be positively associated with traditional state policy areas in comparison to other types of policies.

I use Krehbiel's (1998) version of a public mood variable to control for more activist years in the study. This variable is coded as a 4 in 1973 and decrements one step each year until reaching a 1 in 1976 and a 0 for each year thereafter. I expect these years to be associated with centralization of authority at the national level (due to an activist public), thus the direction of the effect of this variable on state authority allocation will be negative. Finally, I incorporate unified government by coding a dummy variable that is one during times of unified government (when the House, Senate, and president are of the same political party) and zero otherwise. Based on speculations that legislators may use delegation to the states in order to move policy forward during politically contentious times, I expect movement from a unified government to a divided government to be associated with an increase in delegation to the states. The descriptive statistics for all right-hand side variables are shown in Tables 3-5 through 3-7.

Table 3-5: Descriptive Statistics for Dichotomous Variables		
Variable	# of 0's	# of 1's
Unified	138	41
Technical Uncertainty	148	31
Election Year	73	106
Redistributive Policies	157	21
Traditional State Policies	136	43

Table 3-6: Descriptive Statistics for Other Categorical Variables							
	Frequency						
Variable	-1	-0.5	0	0.5	1	1.5	2
National Partisan Balance	29	9	86	34	21		
House to President Distance			63				116
House to State Distance			162				17
Senate to State Distance			94		25		60
Senate to President Distance			94				85
House to Senate Distance			59				120
Congress to President Distance			13		131		35
Congress to State Distance				11	100	14	54

Table 3-7: Descriptive Statistics for Continuous Variables					
Variable	N	Mean	Std. Dev.	Min	Max
Political Uncertainty of State Executives (Congress)	179	-0.040	0.075	-0.164	0.063
Political Uncertainty of State Executives (House)	179	-0.111	0.072	-0.170	0.166
Political Uncertainty of State Executives (Senate)	179	0.031	0.145	-0.167	0.228
Political Uncertainty of National Executive (Congress)	179	-0.062	0.410	-0.600	0.543
Political Uncertainty of National Executive (Senate)	179	0.094	0.511	-0.638	0.785
Political Uncertainty of National Executive (House)	179	-0.227	0.467	-0785	0.638
State Revenue as a % of GDP	179	0.007	0.067	-0.187	0.165
Deficit as a % of GDP	179	-2.331	1.876	-6	2.4
Years Since 1945	179	44.793	11.123	28	63
Total # of Provisions in Law	179	134.067	168.382	1	1066
State Partisan Balance	179	-0.434	0.209	-0.772	-0.148
Partisan Congruence	179	0.039	0.295	-0.321	0.772
Congress to State Distance	179	1.310	0.492	0.5	2
Congress to President Distance	179	1.123	0.504	0	2
House to Senate Distance	179	1.341	0.943	0	2
Senate to State Distance	179	0.810	0.910	0	2
Senate to President Distance	179	0.950	1.002	0	2
House to State Distance	179	0.190	0.588	0	2
House to President Distance	179	1.296	0.958	0	2

CONCLUSION

In summary, I have created an innovative approach to studying federal delegation of authority or centralization and decentralization decisions empirically by coding significant legislation from 1973 through 2009. I have utilized publicly available data to collect the remaining parameters of interest to evaluate the factors I argue are related to Congress' decision about when the states are given more or less authority in national law. These parameters include the distance between the preferences of Congress and the states, Congress and the national executive branch, and state and national political uncertainty. I have also collected the variables necessary to test existing theories of centralization as competing hypotheses. Later chapters provide large-N and small-N analyses incorporating these measures.

APPENDIX

Coding Rules

Inclusion/Exclusion Criteria additional information: Non-domestic legislation was excluded from this list including: Public Law Numbers: 99-440, 107-040, 107-243, and 108-025 (The Comprehensive Anti-Apartheid Act, Authorization for Use of Force against those Responsible for Recent Terrorist Attacks, Authorization for Use of Force against Iraq, and HIV/AIDS funding for Africa and the Caribbean).

Other Categories of Delegation: There were a number of “other” categories that were also coded including public-private partnerships, delegation to private contractors, delegation to the judiciary, and delegation to international agents. This other category was not included in the total number of provisions and was not analyzed in this project.

Coding Rules
National
Policy authority is given to any national entity (e.g., president, independent commission, agency), including when a new national program/agency is created & when a program is transferred between agencies.
State
Policy authority is given to state entities (state entities are defined to include: state legislature, state agencies, local government, school boards, township actors, metropolitan planning organizations, tribal actors, rural areas, urban centers, etc.). No national authority or funds are mentioned in that provision.
Joint
If policy authority is given to both national and state actors (e.g., grants- in-aid to states, state-national programs, national-tribal partnerships), including when states have authority for a program but national money is authorized. This code also includes when national money is withheld from states that don’t meet certain standards, when state actors can offer alternatives that national agencies must accept, and when a national entity provides training or technical assistance to the states or vice versa.
Other
If authority is delegated to the judiciary, to private actors, to a public- private partnership, or to actors external to the U.S. (national-foreign partnerships) the provision is coded as “other.” Party committees are defined as private actors. In addition, if the provision (1) doesn't give authority to any actor (e.g. definitions of terms in the policy), (2) mentions a project or program but no specific responsible entity is described, (3) appropriates (or earmarks) money but not for a specific entity/program, or (4) when "the sense of Congress" is invoked, the provision is marked as “no authority.”

Coding Protocol for Federal Policy Delegation

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This protocol introduces: (a) the criteria for classifying key concepts related to delegation of authority to entities in a federation; and (b) the coding procedures that will allow us to generate variables that operationalize these concepts.

1. **Concept of Delegation**

Delegation of Authority is the assignment of authority and responsibility to another entity. This is when Congress empowers another actor/group to make choices and complete the tasks necessary to result in an outcome from the delegated work. Delegation is the shift of decision-making authority from Congress to some other person/group—the assignment of power to another. Congress relies upon this other entity (its agent, in a broad sense) to provide a set of functions or to implement the policy. Congress can delegate to a wide variety of people, groups, and organizations in the United States including: the national executive branch (this includes the president and federal agencies), the states, joint partnerships between the states and the national agents, the judiciary, private corporations or non-profit groups, to partnerships between national agents and private/non-profit entities, or even to foreign countries or international organizations.

Possible Agents of Congress	Examples
National	A national agency, the president, a national commission
State	Governors, one or more states, states in general
Joint	States and a national agency, governors and the president
Judiciary	Courts or law enforcement in general
Private/Non-Profit	Industry, non-profit foundations
Private-National Partnership	National agency and a non-profit foundation
Foreign/International/-National Partnership	World Health Organization, NATO, etc.

2. **Concept of Authority**

Authority (as defined by West's Encyclopedia of American Law): is the (right of) power to enforce laws, exact obedience, command, determine, or judge. This can also be referred to as the power or right to give orders or make decisions or the responsibility of administrative control over others. Along with authority is accountability—those entities that receive a delegation of authority are ultimately accountable for their actions and the outcomes that may result. The extents to which oversight is conducted and clear demarcations of accountability are available differ widely across policies and over time.

2. Concept of Policy Area

Policy Area is the categorization of policy types according to the Policy Agenda Project's (PAP) definitions. These include economic, health, environment, among others. Please refer to the PAP website for the full listing of policy areas, subtypes and definitions at: http://www.policyagendas.org/codebooks/topicindex.html

3. Coding Delegation and Policy Area

Coders obtain evidence of delegation of authority and the policy types by reviewing Congressional Research Service (CRS) summaries of public laws from 1973 through 2010. The laws coded include significant legislation and a random sample of non-significant legislation over this time period.

Unit of Data Collection: The unit of observation is each provision summarized by CRS. Consequently, each law coded will have multiple provisions that are coded.

Date: Fill in the date you coded the law & your initials in the top left-most cell in the Excel spreadsheet.

Authority: Designate whether no, national, state, joint, or other entity is delegated responsibility (see details below).

Policy Type: Use Policy Agenda's Project's Master Topics Codebook to assign policy area coding. The codebook is found at http://www.policyagendas.org/page/topic-codebook.

Authority:

0. ***No Authority:*** Mark the provision as a 0 or "no authority" if no agent/entity received a delegation of power in that provision's summary.

1. ***National:*** Designate a 1 if Congress delegates authority to a national agent (the President, national agency, commission, etc.)

includes when a national actor is responsible for listing state agencies (but the states are not responsible for anything specific in that provision)
includes when a new program is authorized and created but no mention of where it is located (assume it means a national agency)
includes when agencies are transferred to a national agency
includes when national actor's authority is limited (but no other entity is mentioned as taking more responsibility)
includes when a national actor is jointly responsible with a private entity

2. ***State****:* If Congress delegates authority to the states (or agents of the states), mark that provision with a 2.

state entities are defined to include: governors, state legislatures, state agencies, local government, school boards, township actors, metropolitan planning organizations, tribal actors, rural areas, urban centers.
Includes explicit mention that states assume federal duties (as long as no national agencies are involved in that provision and no money from national entities)
Does not include mentions of states within joint partnership policies (see #3)

3. ***Joint***: When Congress creates (or continues) a partnership between national and state-level agents, indicate that this is a "joint" provision or a 3. A partnership includes cases when both sets of entities are each given authority but no relationship between the two is described.

includes national-tribal partnerships
includes when national actors withhold money from states that don't do X or provisions that provide states with money that do Y.
includes when state actors can offer alternatives to those mentioned in the provisions, but that the national agency must accept the alternative if it determines that it would provide certain things
Includes when state actors and private actors are responsible or eligible for grants/demo projects from national entities

4. ***Other:*** When a provision delegates authority to any other entity (law enforcement, courts, private, non-profit corporations, groups, industry).

99. ***Unknown***: When a provision appears to imply that an entity is responsible but a reading of the full text of the legislation and/or the relevant year's U.S.C. (United States Code) do not provide any certainty over what/who that entity is.

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Chapter 4

Congressional Intergovernmental Delegation of Authority from 1973-2008: An Empirical Analysis of Federal Policy Design

INTRODUCTION

In the first three chapters I introduced the federal policy design dilemma and provided a framework for considering intergovernmental delegation. The theoretical argument examines how policymaker preferences and political uncertainty with respect to implementation influence congressional intergovernmental delegation choices. In this chapter, I analyze the main arguments of this theory at the aggregate level of Congress using the novel dataset developed in the previous chapter. Specifically, I study how the distance between the ideal points of a pivotal legislator in Congress and his state and that pivotal legislator and the national executive branch, along with state and national executive branch political uncertainty, influence the degree of decentralization in significant national laws from 1973-2008. In addition to conducting systematic empirical tests of my theory, I test alternative hypotheses by incorporating factors including policy type, partisan ideology, federalism-related electoral concerns, and average partisan congruence of the national political institutions with the state-level political institutions.

I begin by specifying the hypotheses to be tested in this chapter, then describe the research design and variables used in this study. After setting up the research design, I present the results of the analyses and conclude by discussing the implications of the empirical results in light of my theory, rival arguments, and the limitations of the data.

TESTING THE THEORY

In Chapter 2, I begin with an aggregate model of how Congress decides the degree of authority to allocate to the states versus the national executive branch in policy. Congress perceives of itself as the principal and optimizes the eventual policy outcome by choosing the degree of authority to delegate to the states and the national executive branch. The authority ranges from zero (complete centralization with the national executive branch) to one (complete decentralization to the states). This initial model provides a framework for understanding the intergovernmental delegation choices made in national laws. Specifically, I propose four inter-related hypotheses:

- <u>Hypothesis 1</u>: As the distance between the pivotal legislator and his state increases, state authority allocation decreases except when the distance between that legislator and the national executive branch is greater.

- <u>Hypothesis 2</u>: As the distance between the pivotal legislator and the national executive branch increases, state authority allocation increases except when the distance between that legislator and his state is greater.

- <u>Hypothesis 3:</u> As transformed state political uncertainty increases, state authority allocation decreases.

- <u>Hypothesis 4:</u> As transformed national political uncertainty increases, state authority allocation increases.

DATA AND MEASUREMENT

As described in detail in Chapter 3, to evaluate the conditions under which national legislators delegate authority to intergovernmental actors, this study utilizes the law as the unit of analysis and includes 179 significant pieces of legislation from Mayhew's list of major laws from the 93rd through the 110th Congresses.

Dependent Variable

To measure the dependent variable of intergovernmental delegation, I utilized the new dataset of policy authority delegation in laws delegated to national, state, and joint actors to create a decentralization proportion that collapses these three categories, where decentralization is the combination of the proportion of provisions delegated directly to the states plus one-half of the proportion of provisions delegated to both the national executive branch and the states. The degree of decentralization ranges from zero to one, with a mean of 0.249 and a standard deviation of 0.274. Thus, on average, national laws delegate about a quarter of their provisions to the states. Stated another way, 25 of the 179 laws delegated solely to the national executive branch and 102 delegated at least some portion of the provisions to the states, either alone or in combination with national executive branch actors.

Independent Variables

What explains variation in intergovernmental delegation over time? In this section, I review the measurement of the independent variables. First as outlined earlier, my primary theoretical variables require measures of legislative, national executive branch and state preferences along with political uncertainty. Second, I elaborate the control variables included in the analysis. Third, alternative arguments require measures of policy type, Republican national government, partisan congruence, and election year. I now discuss the measurement and operationalization of these variables.

Preferences

The preference distance of legislators from their states and the national executive branch are fundamental in the theoretical model. Recall from Chapter 3, however, that no accurate measure of these ideal points on the same scale currently exists. Shor, Berry and McCarty (forthcoming) have been developing this measure for many years, but it is not available at the time of this study. Instead, I use party labels as a proxy for the approximate location of the actors' ideal points. As discussed in previous chapters, this introduces concerns about how to interpret the coefficients of any estimation.

Specifically, I cannot assume an increase in distance is truly a one unit increase; rather it is a move from closer to farther. Additionally, it is important to note the first two hypotheses from the theoretical chapter are generated only when the state and national executive branch are not equally distant from the pivotal legislator. Using party as the blunt measure of ideal points yields the possibility that, indeed, they are. Since I assume theoretically Independents align with one of the parties, there are four possible configurations of party labels as is shown in Table 4-1, where L is the pivotal legislator, S is the pivotal legislator's state, and N is the national executive branch.

Table 4-1:	**Configuration of Party Labels**
1	L=S=N
2	L=S≠N
3	L=N≠S
4	L≠N=S

First, the pivotal legislator may have the same party label as both his state and the national executive branch. Second, he may have the same party label as his state, but differ from that of the national executive branch. Third, the legislator may differ in partisanship from his state, but have the same party label as the national executive branch. And, fourth, the legislator may have a different party label as both the national executive branch and his state. Fortunately, the individual bargaining model provides information about the identity of the pivotal intergovernmental team, or the party labels of the actors (L,N,S) while using party label as a proxy for ideal points.

According to the results of the bargaining model, under no condition (e.g., any configuration of party of the president, the Senate majority, and House majority) will the party label of the national executive branch match that of the pivotal legislator's state. This result is due to the fact that when N=S, legislators are indifferent over authority allocation and are not pivotal in the House (only the majority party team with strict preferences is pivotal) nor in the Senate (the non-indifferent minority party intergovernmental team is pivotal, unless the majority party has enough votes to meet the super-majoritarian threshold). Thus, in the House and in the Senate, the hypotheses are expected to hold.[66]

As discussed in Chapter 3, though, I average the distance between the House and Senate to yield an average congressional distance to the state and congressional distance to the national executive branch. This process implicitly assumes the enacted degree of state authority allocation is located about halfway between what the House and Senate choose in their own separate bills, as is shown in Table 4-2.[67] In the table, I present the distance between the House pivotal legislator and his state and the House pivotal legislator and the national executive branch on vertical axis and the same Senate distance measures on the horizontal axis.

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[66] In the analyses, I conduct separate analyses considering the indifferent team as pivotal. These results are reported in the appendix.
[67] Although scholars have typically assumed conferences between the House and Senate result in a compromise between the two chambers (e.g., Lupia and Sin (2010)), see Magelby (2011) for a consideration of why this may not be the case.

Table 4-2 Effect of Averaging House & Senate

		Senate		
	Distance	L=S	L=N	
House	L=S	H:$\alpha \rightarrow 1$	H:$\alpha \rightarrow 1$	
		S:$\alpha \rightarrow 1$	S:$\alpha \rightarrow 0$	
	L=N	H:$\alpha \rightarrow 0$	H:$\alpha \rightarrow 0$	
		S:$\alpha \rightarrow 1$	S:$\alpha \rightarrow 0$	
Congress:	C-S: 0 C-N: 2	**$\alpha \rightarrow 1$**	C-S: 1 C-N: 1	$\alpha \rightarrow 0.5$
	C-S: 1 C-N: 1	$\alpha \rightarrow 0.5$	C-S: 2 C-N: 0	**$\alpha \rightarrow 0$**

When the House pivotal member is aligned with his state, the House bill will decentralize authority (top shaded gray row); since, by assumption, the preferences of the national executive branch and the state are not equal, making the state the closer agent. Similarly, when the House pivotal member is aligned with the national executive branch, the House bill will centralize authority (bottom shaded gray row). For the Senate, the same outcomes are expected (non-shaded rows). When arrayed with the possible House outcomes, as in Table 4-2, the House and Senate bills may agree or disagree on state authority allocation. For instance, when the bills agree (the left to right diagonal demarcated by the bold dotted border), the enacted legislation is expected to carry forth that choice (e.g., the left to right diagonal below the double line). When they disagree, by averaging the distance measures, I also average the expectation with respect to the authority allocation (to a mostly joint partnership, or $\alpha \rightarrow 0.5$).

After this process, the prediction with respect to how state authority allocation is expected to change as the distance between Congress and the state and Congress and the national executive branch changes must be altered as well. As the Congress to state distance increases in Table 4-2, state authority allocation decreases, regardless of movement in the legislator to national executive branch distance. This conjecture can be seen by moving from C-S:0 (where $\alpha \rightarrow 1$) to any other C-S distance (at 1, $\alpha \rightarrow 0.5$ and at 2, $\alpha \rightarrow 0$). As the Congress to national executive branch distance increases, given the Congress to state distance, state authority allocation increases. This increase is shown by moving from C-N: 0 to C-N:1 or 2, where $\alpha \rightarrow 0$ becomes $\alpha \rightarrow 0.5$ and $\alpha \rightarrow 1$ respectively. These expectations are in line with the previous hypotheses 1 and 2. Thus, Hypotheses 1 and 2 can be restated for Congress in the following manner:

- Hypothesis 4-1: As the Congress to state distance increases, given changes in the Congress to national executive branch distance, decentralization decreases.

- Hypothesis 4-2: As the Congress to national executive branch distance increases, given changes in the Congress to state distance, decentralization increases.

As a reminder, the distance measures have the following properties in the dataset:

Distance between Democratic (D) House and Republican (R) State|-1-1 | = 2

Distance between R Senate and R State = |1 – 1| = 0

Distance between R Senate and D National Executive Branch = | 1 – (-1)| = 2

Distance between Congress and State = (2+0)/2 = 1

Distance between Congress and NEB = (0+2)/2 = 1

In the House, the distance measures reveal that the legislator-to-state distance is perfectly negatively correlated with the legislator-to-national executive branch distance. Of the 179 laws examined in this study, 63 are cases where the legislator-to-state distance measures two and the legislator-to-national executive branch measures zero. The remaining 116 laws are cases where the legislator-to-state distance measures zero and the legislator-to-national executive branch measures two. In the average congressional distance models reported below, the Senate variation allows both distances to be included in the analysis. For the models including Senate and House measures, I create a dummy variable that codes a zero for when the states are closer to the pivotal House member and a one when the national executive branch is closer (and the states are more distant).

Political Uncertainty

Political uncertainty refers to the likelihood that the party of the president or governor will be different during implementation than at enactment. As discussed in detail in Chapter 3, I measure political uncertainty as the rolling average of the past three elections' electoral margin for the top two opposing candidates for the governor for election years. I use the average of the past three elections in order approximate legislators' perceptions about how uncertain the party of the executive branch at the national and state levels may be.[68] For off-election years, I use the mean of this rolling average and one (representing perfect certainty). In order to normalize the hypotheses (e.g., the direction of the effect of the political uncertainty is the same for all legislators), this measure is then transformed by multiplying by 1 if the pivotal legislator and his state have the same party label and -1 if they do not.

To measure national political uncertainty, I create a variable in the exact same manner (using electoral college vote margins) and an alternative dummy variable for presidential election years, where election years are coded as a zero and off-election years as a one.[69] This second measure approximates the situation when national political uncertainty is zero during off election years (or that the party of the president is known

[68] The results are robust to changing this timeframe to 4, 5, and 6 years.
[69] Since this measure is a proxy for legislators' perceptions of uncertainty over the preferences of the implementing executive, the electoral vote margin provides a closer approximation of this concept. I also utilize the population vote margin in the analyses and find the coefficient on the variable is near zero, insignificant, and does not improve model fit in any of the specifications.

with certainty) and one during election years (or that the party of the incoming president is completely uncertain). The national political uncertainty measures are transformed in the same manner as the state political uncertainty measures.

Alternative Arguments' Variables

To consider alternative arguments, I include measures for partisan congruence, Republican control of national institutions, election year, and policy type. I use Krause and Bowman's (2005) vertical partisan congruence variable to consider their adverse selection hypothesis (where Congress decentralizes authority when the states share similar partisanship to the Congress and the President and centralizes otherwise). To measure the congruence between the partisan makeup of the national and state governments, Krause and Bowman interact two categorical variables measuring partisan balance at each level. At the national level, -1 captures when all three institutions (executive, and both legislative chambers) are majority Democratic, +1 when all three are Republican, and 0 for cases of divided government.[70] At the state-level a similar process ensues: the states are weighted by their electoral college votes and aggregated to create a single state partisan balance variable. As these partisan control variables increase, Republican control increases.

In addition, I interact these national and state partisan balance variables, following Krause and Bowman, to "create a comprehensive national-state partisan interaction term [that] taps into the degree of vertical partisan congruence between national and state level political institutions" (Krause and Bowman 2005, 372). Conventional wisdom suggests that as Republican control increases (or as the national partisan balance measure

[70] Additionally, divided-divided government is measured as a -0.5 when Democrats control two of the three institutions and +0.5 when Republicans do.

increases), state authority delegation will also increase.[71] The interactive argument forwarded by Krause and Bowman conjectures that as partisan congruence increases, decentralization of authority to the states also increases.

To consider Nicholson-Crotty's (2008) contention that Congress refrains from state mandates during election years, I create a variable that is coded as one during election years (every two years) and zero otherwise. Finally, for Peterson's (1995) argument that federal delegation is based on the type of policy considered, I create a variable using the Policy Agenda's project topic and subtopic codes and Peterson's policy coding scheme (198-201, 1995).[72] Redistributive policies, according to Peterson, are those that "reallocate societal resources from the haves to the have-nots" in comparison to developmental policies that "provide the physical and social infrastructure necessary to facilitate a country's economic growth" (17, 1995).[73] For this variable, developmental policy is coded as 0 and a redistributive policy as 1.

Control Variables

There are a variety of other variables expected to influence the delegation of authority to the states. Scholars commonly control for the federal deficit, state fiscal health, traditional state policies, an activist national government, and unified government

[71] I also utilize simple dummy variables of party for the majority in the House, majority in the Senate, and party of the President as well as categorical measures for when Republicans control these three institutions at the national level. The results do not differ dramatically from using national partisan balance, therefore, I include that measure here.
[72] The Policy Agenda's Project Topic Codebook was accessed from the Fall, 2008 through the Fall, 2009 at http://www.policyagendas.org/codebooks/topicindex.html.
[73] Peterson includes transportation, natural resources, safety, education, and utilities as developmental policies and redistributive policies as pensions/medical insurance, welfare, health and hospitals and housing. I checked the robustness of the findings with respect to including education as a developmental policy and then as a redistributive policy and found no significant difference in the results. I include education as a redistributive policy in the reported analysis. Policy areas are obtained from the Policy Agendas Project (Jones, Wilkerson, and Baumgartner 2008).

(Krause and Bowman 2005, Nicholson-Crotty 2008).[74] The federal deficit or surplus measure was obtained from the Budget of the United States Government, Fiscal Year 2008 Historical Tables. I utilize the previous year's surplus or deficit as a percentage of the gross domestic product measured in constant fiscal year 2000 dollars. As the federal deficit increases, previous scholars argue that state responsibility will increase. State fiscal status is measured as the previous year's percent change in revenues as obtained from the U.S. Census Bureau State Government Finances website (in addition to archived historical data provided via email from the Census Bureau). I use state own-source revenues at time t and derive the percent change in these revenues (100*[revenue at time t – revenue at time t-1]/revenue at t-1). As state revenues increase, state responsibility is expected to increase.

As for traditional state policies, an activist public, and unified government, I include a rough proxy for the status quo level of state authority by including a dummy for policies that are considered to be traditional state policies (Gostin, 2002). These policies include education, health, and social welfare (and are coded as a 1) and other policy areas as a 0. During the time span of my study, the federal government had already entered these traditional realms of state policy. I expect, though, that state authority delegation will be positively associated with traditional state policy areas in comparison to other types of policies.

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[74] Although not commonly included in studies of decentralization, I also incorporated controls for heterogeneity of state governors, heterogeneity of the majority party in each chamber, percent majority in each chamber, a blunt dichotomous measure of the technical uncertainty of the policy, and various time trends as these factors could potentially account for differences in delegation strategies. These variables were statistically insignificant (with the exception of percent majority in the Senate) and did not alter the empirical results. Moreover, I included a temporal variable that measures years from 1973 that ranges from zero (at 1973) to 34 (at 2007) (as well as nonlinear versions of a time trend) but dropped this variable from the analysis due to lack of improvement in the models and high correlation with many of the other variables such as federal deficit.

I use Mayhew's (1992) activist public mood variable to control for more activist years in the study. This variable is coded as 1 in 1973-1976, and 0 thereafter.[75] I expect these years to be associated with centralization of authority at the national level (due to an activist public), thus the direction of the effect of this variable on state authority allocation will be negative. Finally, I incorporate unified government by coding a dummy variable that is one during times of unified government (when the House, Senate, and president are of the same political party) and zero otherwise. It is possible that legislators may use delegation to the states in order to move policy forward during politically contentious times. I expect movement from a unified government to a divided government to be associated with an increase in delegation to the states.

EMPIRICAL ANALYSES

Given the structure of the dependent variable as a proportion that ranges from zero to one, estimation can be challenging, particularly since my variable includes values that are zero or one. I approach this problem from two different angles. First, I proceed with OLS using the continuous variable (proportion of delegation to the states) as the dependent variable and cluster by year, to address the potential that errors may be correlated within years. Second, I estimate the model using a fractional logit (Papke and Woolridge 1996, Ye and Pendyala 2004). By using a fractional logit, the predictions lie in the range of the dependent variable and the model specification takes into account the heteroskedastic errors. The statistical and substantive conclusions are consistent across both estimation strategies. I report OLS results in the next section, followed by the fractional logit results.

[75] Krehbiel (1998) also uses a version of a public mood variable that is coded as a 4 in 1973 and decrements one step each year until reaching a 1 in 1976 and a 0 for each year thereafter. I examine the models using this alternative measure and find no substantive or statistically significant difference in the results.

RESULTS

In Table 4-3, I present three models using the average distance between the House and Senate (i.e., Congress) and their intergovernmental agents. The first model includes only the key variables from the theoretical argument, the second adds controls, and in the third model, I assess alternative arguments. In Model 1, as the theory predicts, I find as the distance between the pivotal members in Congress and their states increases, delegation to the states decreases. Additionally, as state political uncertainty increases, delegation to the states also decreases, all else constant. The addition of the control variables in Model 2 does not alter the direction of the effect of these theoretical variables, although they both increase in magnitude.

In Model 1, the magnitude of the coefficient on the distance between Congress and the states is such that given a bill with 100 provisions, a regime with similar Congress and state partisanship would centralize authority with the national executive branch for more than 16.4 of those provisions (as opposed to delegate them to the states), when the distance between the national executive branch and the pivotal legislator is zero, but would centralize authority in 12.5 provisions when the national executive branch to Congress move farther apart (-16.4+3.9). This result is statistically significant at the $p<0.001$ level. Also in line with expectations, as state political uncertainty increases, delegation to the states decreases in a statistically significant manner (by about 13.4 provisions in a 100 provision bill). What this means is that for a Democratic legislator with a Democratic state governor, as state political uncertainty increases by one unit, authority will be delegated to the national executive branch alone (instead of to the states or via joint partnership policies) for more than 13 provisions in a 100 provision law. As national political uncertainty increases, delegation to the states increases by about 3.1 provisions, but this finding is not statistically significant.

Table 4-3 Congressional Distance & Degree of Decentralization using OLS

	d.v. = decentralization proportion (0 is total centralization and 1 is total decentralization)	Predictions	Model 1 Theory	Model 2 Theory & Controls	Model 3 Alternatives
Theory	Congress to State Distance	-	-0.164***	-0.232*	-0.358**
			(0.043)	(0.090)	(0.116)
	Congress to President Distance	+	-0.089*	-0.132*	-0.200*
			(0.035)	(0.057)	(0.093)
	Interaction of State & National Distance		0.039	0.046^	0.091*
			(0.024)	(0.028)	(0.040)
	State Political Uncertainty	-	-0.134*	-0.174*	-0.121
			(0.050)	(0.078)	(0.084)
	National Political Uncertainty	+	0.031	0.026	0.004
			(0.027)	(0.024)	(0.030)
Controls	Traditional State Policies (0,1)	+		0.124***	0.109*
				(0.031)	(0.046)
	Unified Government (0,1)	+		-0.048	-0.211*
				(0.030)	(0.078)
	Activist Public Mood	-		-0.055*	-0.072**
				(0.021)	(0.025)
	Federal Deficit as a % of GDP (lagged)	+		0.006	0.011
				(0.008)	(0.010)
	State Revenue Growth as % of GDP (lagged)	+		-0.002	-0.131
				(0.208)	(0.218)
Alternatives	Election Year (0,1)	-			-0.011
					(0.027)
	Redistributive Policies (0,1)	-			0.03
					(0.063)
	National Partisan Balance	+			0.342*
					(0.144)
	State Partisan Balance	+			-0.031
					(0.121)
	Partisan Congruence (NPB x SPB)	+			0.730*
					(0.353)
	Constant		0.336***	0.449**	0.634**
			(0.082)	(0.153)	(0.201)
	N		177	177	177
	Adjusted R2		0.02	0.141	0.128

Model standard errors are clustered by year. p values: ^≤0.10, *≤0.05, **<0.01, ***<0.001.

In contrast to expectations, when the distance between the state and the pivotal legislator is zero, as the distance between the national executive branch and the pivotal legislator increases, decentralization also decreases (by about 8.9 provisions for a 100 provision bill). And when the distance between the state and pivotal legislator is moves farther apart, as the distance between the national executive branch and Congress increases, decentralization decreases (by about 3.9 provisions).

With the addition of control variables in Model 2, the size of the coefficients on the distance variables increases (from 16.4 to 23.2 provisions for the Congress-to-State distance, 8.9 to 13.2 provisions for the Congress-to-National distance, and 3.9 to 4.6 provisions for the coefficient on the interaction between the two distance measures), as it does for the state political uncertainty variable (from 13.4 to 17.4 provisions). The precision of these estimates decreases, although the results still reach traditional levels of significance.

Of the control variables, traditional state policies are more likely to be delegated to the states. Moving from policy areas that are not traditionally delegated to the states to those that are (e.g., education, health) is associated with an increase of about 12.4 provisions in a 100 provision bill that would be decentralized to the states. In addition, less authority was delegated to the states during more activist years (1973-1976) than post-1976 years (approximately 5.5 provisions). The coefficients on movement from unified to divided government at the national level, the federal deficit, and states' fiscal health are not statistically different from zero, indicating, at least in these specifications, the possibility they are unrelated to federal delegation design cannot be rejected.

What Model 3 reveals is slightly different. First, the theoretic variables still perform as they did in Models 1 and 2, with the exception of an increase in the standard error of state political uncertainty. Second, the rival arguments' variables perform as expected by their authors' and are statistically significant with the exception of election year and policy type, which are both not statistically different from zero in the model. As the national political institutions become more Republican, more provisions are delegated to the states (34 more provisions in a 100 provision law when State Partisan Balance is 0) and when the national and state political institutions are more similar in average partisanship, more provisions are delegated to the states.

Due to the high degree of multicollinearity, however, there is a problem with estimating Model 3 and including my theoretical variables and the alternative arguments. The variance inflation factor after the analysis reveals that the Congress to state and Congress to national distance measures along with the partisan congruence and state and national partisan balance measures have a VIF greater than 100, indicating a high degree of multicollinearity. A model including only the rival arguments and controls find that the coefficients for the alternative arguments have the same sign, but the magnitude is reduced and they are no longer statistically significant. Furthermore, the adjusted R^2 indicates that Model 2 (my theory with controls) accounts for more of the variation in the dependent variable than this larger model (alternatives with controls)—14.1% versus 12.8%. Thus, the more parsimonious and theoretically driven model provides a better fit with the data.

In summary, the aggregate analysis of the determinants of congressional intergovernmental authority provides a degree of support for the theory of federal policy design. In particular, as the distance between Congress and the state increases, state delegation of authority decreases and as state political uncertainty increases, state delegation of authority also decreases. Not as consistent with the theoretical expectations is the finding that as the Congress to national executive branch distance increases, delegation to the states decreases. One potential reason for this finding may be measurement error in the preference distance.

Another potential issue is the need to account for the proportional nature of the dependent variable in the estimation. The results reported above are based on OLS estimation. Yet, with a dependent variable that is a proportion that ranges from zero to one, there are flaws in using OLS, such as heteroskedastic errors and results that lie outside of the range of the dependent variable.[76] Fractional logit modeling techniques provide a framework for considering the unique issues of an outcome variable that represents fractions of a quantity of interest (Papke and Wooldridge 1996, Ye and Pendyala 2004). In my model, the dependent variable represents the fraction of the proportions in a law delegated to the states (either directly or via joint partnerships). I provide the results from using fractional logit estimation in Table 4-4. Overall, the fractional logit reveals the same findings with respect to my theory of intergovernmental delegation as did the OLS regression.

[76] Tobit analyses of the same model as OLS with 0 and 1 boundaries have results consistent with those reported for OLS.

Table 4-4 Congressional Distance & Degree of Decentralization with Fractional Logit

	d.v. = total joint & state provisions/total provisions	Predictions	Model 5 Theory& Controls	Model 6 Theory vs. Rivals	Model 7 Rivals & Controls
Theory	Congress to State Distance	-	-1.495*	-1.091	
			(0.732)	(1.185)	
	Congress to President Distance	+	-1.296*	-1.044	
			(0.517)	(0.896)	
	Interaction of State & National Distance		0.284	0.239	
			(0.163)	(0.333)	
	State Political Uncertainty	-	-0.967	-1.26	
			(0.743)	(0.820)	
	National Political Uncertainty	+	-0.206	0.269	
			(0.176)	(0.223)	
Controls	Traditional State Policies (0,1)	+	0.835***	0.607*	0.618*
			(0.217)	(0.270)	(0.271)
	Unified Government (0,1)	+	-0.822***	-0.370	-0.850
			(0.241)	(0.587)	(0.460)
	Activist Public Mood	-	-0.378	-0.56	-0.689*
			(0.226)	(0.311)	(0.304)
	Federal Deficit as % of GDP (lagged)	+	0.006	0.041	0.064
			(0.063)	(0.081)	(0.072)
	State Revenue Growth as % of GDP (lagged)	+	3.758**	4.876**	4.892***
			(1.353)	(1.714)	(1.398)
Alternatives	Election Year (0,1)	-		0.061	-0.086
				(0.220)	(0.214)
	Redistributive Policies (0,1)	-		0.581	0.608
				(0.426)	(0.334)
	National Partisan Balance	+		-1.039	0.24
				(1.074)	(0.774)
	State Partisan Balance	+		-0.596	-0.265
				(0.860)	(0.660)
	Partisan Congruence (NPB x SPB)	+		-2.400	0.951
				(2.362)	(1.750)
	Constant		1.094	0.238	-1.263***
			(1.247)	(1.925)	(0.232)
	N		179	179	179
	Wald Chi		152.275	229.265	130.389

Model standard errors are clustered by year. p values: ^≤0.10, *≤0.05, **<0.01, ***<0.001.

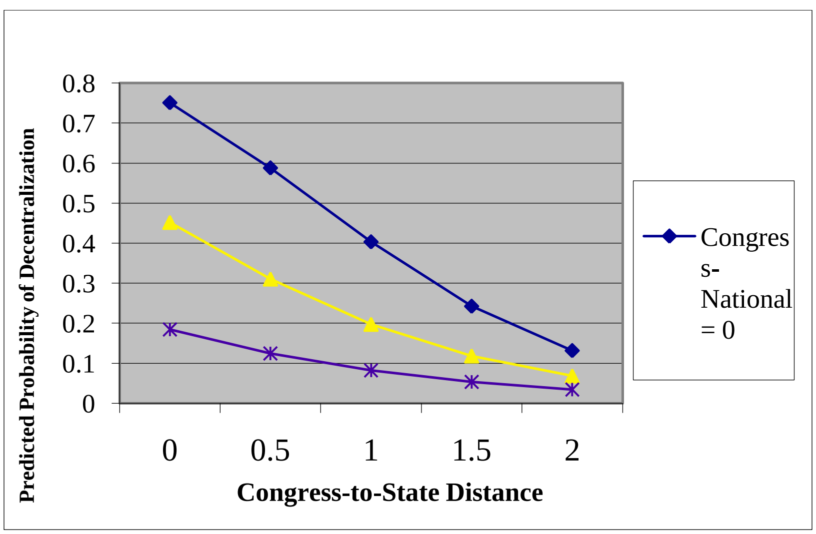
Specifically, the state distance and national distance measures are negatively related to state authority allocation and are statistically significant in Model 5 (although not in Model 6, again likely due to the severe multicollinearity). Unexpectedly and in view of the coefficients on the national-to-Congress distance and the interaction between national and state distance, as the distance between the pivotal legislator and the national executive branch increases, delegation to the states decreases in a statistically significant manner and regardless of the value of the distance between the states and the pivotal legislator.

In other words, across all specifications, even when the distance between Congress and the states is zero, as the distance between Congress and the national executive branch increases, delegation to the states *decreases*. This finding holds across specifications and indicates that contrary to my positive prediction for this coefficient, Congress delegates fewer provisions to the states as the distance between Congress and the National Executive Branch increases. This finding may point to the limitations in using a blunt joint partnership measure in the data coding process for the dependent variable (see Chapter 3) or it may indicate the complexity of the relationships between Congress, the national executive branch and the states inherent in these joint partnerships. Specifically, perhaps it is more difficult for Congress to monitor and control national executive branch agencies if the states are also included as an agent. This result indicates that further research in this area is needed.

A closer look at the interactive effects of these distance measures through a graph reiterates the finding that as the distance measures between the pivotal legislator in Congress and his state increases that the predicted proportion of decentralization decreases. This decrease is evident across all levels of distance between that pivotal legislator and the national executive branch (see Figure 4-1). At each national distance level, the slope of the line is negative. Furthermore, as this national distance increases, the predicted proportion also decreases as can be seen with the step down pattern of the three lines. The coefficient on the interaction, though, is not statistically significant.

The results of fractional logit models also indicate that the alternative arguments do not explain state authority allocation in a statistically significant manner. The signs on the coefficients for election year, national partisan balance, state partisan balance, and partisan congruence flip from Model 6 to Model 7 in Table 4-4. Model 6 includes both my theoretical variables and the variables for the rival arguments as well as controls. Model 7 excludes my argument's variables to assess the effect of the rival arguments on decentralization in the data. The flip in signs is most likely due to inflated standard errors in the presence of severe multicollinearity between my argument's variables and those of the alternatives. When I exclude my theoretical variables, though, the rival arguments do not reach statistical significance. Election year, policy type, Republican national political institutions, and average partisan congruence between the states and national institutions fail to significantly explain how Congress delegates across this broader dataset.

Figure 4-1: Fractional Logit Interaction of Congress-State & Congress-National Distances



The model in Table 4-5 considers the possibility that averaging the distance between pivotal House members and their states with the distance between pivotal Senators and their states to create congressional distances may hide crucial chamber differences.[77] The results in Model 8 (using OLS) show that as the Senate becomes more distant from the states, they decentralize fewer provisions to them and as state political uncertainty increases, decentralization decreases, although the sign on both of these coefficients are positive in Model 9 (the fractional logit model).

Table 4-5 Senate & House Distance Measures

	OLS Model 8 d.v. proportion	Fractional Logit Model 9 d.v. #state&joint provisions/total provisions
Senate More Distant (0,1)	-0.140*	1.37
	(0.062)	(0.711)
Senate State Political Uncertainty	-0.43	2.717
	(0.249)	(2.557)
House More Distant (0,1)	0.188	0.89
	(0.189)	(1.524)
House State Political Uncertainty	0.583	2.835
	(0.622)	(4.994)
National Political Uncertainty	0.035	0.246^
	(0.020)	(0.186)
Constant	0.075	-2.887***
	(0.098)	(0.742)
N	177	179
Adjusted R2	0.134	
Wald Chi2		108.885

Model standard errors are clustered by year. p values: ^≤0.10, *≤0.05, **<0.01, ***<0.001

The coefficient on the difference between the pivotal House member and his state governor's partisanship is not statistically different from zero according to the results across model specifications. Model 9 is also the only model that finds a statistically significant and positive effect of national political uncertainty on delegation choices. The

[77] Although, as discussed earlier, there is no theoretical basis in this project to understand how the House and Senate bills ultimately combine into an enactment. This consideration deserves further attention and I refer back to it in the concluding chapter.

concern in Models 7 and 8 is multicollinearity between the Senate and House distance measures, to which the fractional logit is more sensitive. Therefore, I rely on the average distance measures for Congress.

Additionally, I model the House and Senate separately in Table 4-6. The findings for the Senate and House independently are consistent with those reported in the previous tables. In the OLS model of the Senate, as the distance between the pivotal senator and his state increases, delegation to the states decreases and as state political uncertainty increases, state delegation also decreases. The coefficients in the House are not statistically different from zero. Whether these findings can lead to the conclusion that the Senate holds more sway over federal policy design, though, remains to be seen. A better measurement of ideal points will offer more variety in the House distance measures, thereby providing more leverage for the analyses. In addition, there may be certain circumstances when one or the other chamber is more crucial, such as whether the policy area is more local than state-based (e.g., education), where the House may be more important. Furthermore, models utilizing an alternative indifference assumption as discussed in Chapter 2 (i.e., the indifferent majority party team in the House and the indifferent minority party team in the Senate are the pivotal teams) reveal that House-to-State and –National distances perform as expected in those models (see Appendix). There are two possible reasons for this result: 1) the additional variation gained by using the indifferent pivot aids in the estimation or 2) the House forms coalitions differently than the Senate. Either way, House and Senate interactions deserve additional attention in the future and the conclusions of this study still stand.

In summary, although the findings are not consistent with expectations about national executive branch distances and national political uncertainty, across models and estimation strategies, the hypotheses with respect to state distance and state political uncertainty receive strong support. Taking these findings together, the theory of federal policy design provides insight into how Congress delegates authority intergovernmentally.

Table 4-6: House and Senate Individual Models

	OLS	OLS
	Senate	House
Senate-to-State Distance	-0.152***	
	(0.036)	
Senate-to-National Distance	-0.052	
	(0.026)	
Senate State Political Uncertainty	-0.542*	
	(0.200)	
House-State (0,1) Distance	0.188	0.178
	-0.189	(0.191)
House State Political Uncertainty	0.583	0.517
	-0.622	(0.607)
National Political Uncertainty	0.02	0.024
	(0.021)	(0.017)
Other Chamber's Majority Party	0.008	0.007
	(0.013)	(0.012)
Constant	0.332***	0.018
	(0.076)	(0.103)
N	177	177
Adjusted R2	0.141	0.127
Wald Chi2		

Model standard errors are clustered by year. p values: ^£0.10, *£005, **<0.01, ***<0.001. Control variables included traditional state policies, unified government, activist mood, federal deficit, and state fiscal health.

DISCUSSION AND CONCLUSION

The results of this chapter reveal that previous ideas about federal delegation to state-level actors are, at best, incomplete and, at worst, misleading. Instead, hypotheses based on the logic of federal delegation with intergovernmental teams find support across a variety of models, specifications, and estimation techniques. The laws included in the current analysis span three decades and indicate that a consideration of individual legislators in Congress and their relationships with their individual states and that of the national executive branch is informative for how Congress delegates authority. This novel dataset reveals that although delegation from Congress to national entities is the most frequent strategy, delegation to state-level agents occurs commonly and in concert with national delegation. A focus on horizontal delegation misses these frequent state-level agents and the importance of intergovernmental delegation options.

What the empirical results in this chapter indicate is the importance of a consideration of both the national and state political context of national policy. More specifically, a consideration of national legislators' choices over intergovernmental delegation of authority must consider 1) the relationship between individual legislators and their individual states, 2) the relationship between legislators and the national executive branch, and 3) political uncertainty at both levels.

When the proportional nature of the dependent variable is taken into account, in contrast to commonly held beliefs, Republican administrations don't devolve authority more than Democrats. Moreover, partisan congruence between the states and the national institutions is not found to be a statistically significant factor. In addition, the size of the federal deficit and timing of elections do not explain the choice of Congress to create provisions that delegate power away from Washington. As expected, as the states do better financially, the national government relies more on them to implement national laws.

There are some limitations to the state authority allocation with intergovernmental teams model and the empirical analyses. First, the intergovernmental delegation argument and preference distance empirics rely on the assumption that partisanship provides cues as to the preferences of the actors in the model. As more refined measures of preferences at the different levels (national and state) become available later this year, this stylization can be relaxed. Second, I collapse measures of federal delegation into a proportion that varies from 0 to 1. Altering the degree of state authority captured in joint delegations does not change the findings reported here. Future work should take a closer look at how joint partnerships are structured and how Congress may use these joint structures under different conditions. Third, I have not included interactions with the judiciary, an important agent in concerns over federalism. Future work should consider the influence of court preferences and/or decisions on state authority allocation as well.

Overall, this chapter tests a theory of intergovernmental delegation against rival arguments using a novel dataset of delegation of authority across 35 years. I show that many of the components in the theory of intergovernmental delegation are supported in the analyses whereas other arguments fail to explain the variation in authority centralization in this broader dataset. The theory of intergovernmental delegation with state authority allocation incorporates state implementers and explicitly considers legislators' incentives given they are elected from state-level constituencies and better explains delegation choices than previous arguments.

A fascinating divergence from my hypotheses about intergovernmental delegation is that as the distance between Congress and the national executive branch increases, even contingent on the state distance, Congress delegates *fewer* provisions to the states.

This finding indicates the need to consider more specifically the structure of joint partnership policies and how these structures may be used differently when the preferences of Congress are less in line with that of the national executive branch.

APPENDIX

Table 4A-1: Multivariate Analysis of State Allocation of Authority in National Legislation **using alternative assumption regarding indifference**

d.v. =decentralization proportion (0 total centralization and 1 total decentralization, thus + coefficient = increasing state allocation of autho Robust s.e. in () with clustering by year.		Model 2A Theor Controls	Model 3A Alterna
Theory	Congress to State Distance	-0.221***	-0.209**
		-0.061	-0.065
	Congress to President Distance	0.029	0.053
		-0.042	-0.053
	State Political Uncertainty	-0.025**	-0.024**
		-0.009	-0.008
	National Political Uncertainty	0.006	0.007
		-0.007	-0.007
Controls	Unified Government (0, 1)	-0.051*	-0.1
		-0.025	-0.058
	Federal Deficit as a % of GDP (lagged)	0.009	0.007
		-0.01	-0.01
	State Revenue Growth as a % of GDP (lagged)	0.495*	0.405
		-0.218	-0.22
	Traditional State Policies (0,1)	0.119***	0.083*
		-0.032	-0.04
	Activist Public Mood	-0.013*	-0.013
		-0.006	-0.007
Alternatives	Redistributive Policies (0,1)		0.06
			-0.045
	State Partisan Balance		0.035
			-0.087
	National Partisan Balance		0.076
			-0.099
	Partisan Congruence		0.213
			-0.241
	Election Year		-0.007
			-0.022
	Constant	0.340***	0.317**
		-0.089	-0.088
	N	177	176
	Adjusted R^2	0.102	0.083

Table 4A-2: House and Senate in State Allocation of Authority in National Legislation using Alternate Indifference Assumption		
d.v. =decentralization proportion (0 total centralization and 1 total decentralization, thus, + = increasing state allocation of authority). Robust s.e. in () with clustering by year.		Model 4 b/se
House		-
	House to State Distance	0.098***
		-0.025
	House to President Distance	0.017
		-0.019
	House State Political Uncertainty	-0.027**
		-0.008
	House National Political Uncertainty	0.012
		-0.007
Senate	Senate to State Distance	-0.434**
		-0.158
	Senate to President Distance	0.372**
		-0.135
	Senate State Political Uncertainty	-0.019**
		-0.006
	Senate National Political Uncertainty	0.029**
		-0.01
Controls	Unified Government (0, 1)	
	Federal Deficit as a % of GDP (lagged)	0.008
		-0.008
	State Revenue Growth as a % of GDP (lagged)	0.436*
		-0.183
	Traditional State Policies (0,1)	0.120***
		-0.031
	Activist Public Mood	-0.003
		-0.008
	Constant	0.12
		-0.111
	N	177
	Adjusted R^2	0.109

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Chapter 5

Health Insurance Reform and Intergovernmental Delegation

INTRODUCTION

Most national laws include delegation of authority to the states, either alone or in partnership with national-level actors. The amount of state-level responsibility in national laws varies over time and in ways that current arguments about Republican devolution, aggregate partisanship, the timing of elections, and the type of policies fail to explain. I contend that previous arguments miss a crucial feature of American politics, namely the intergovernmental context of national legislators, and that intergovernmental policy design is based upon this context, in combination with the rules governing each legislative chamber. By intergovernmental context I mean that state-level constituents elect legislators *and* the partisanship of a state's leadership is paramount to how the policy will be implemented when the states receive authority in national law. Thus, individual legislators are concerned about what their state will do with the policy when considering various national proposals with intergovernmental delegation.

After developing a theory of intergovernmental delegation based on this intergovernmental context and creating a database of intergovernmental delegation, I conducted a large-N aggregate analysis, which reveals support for my argument. Specifically, I find that as a pivotal intergovernmental group of legislators becomes more distant from their states, delegation to the states decreases and that as uncertainty over the partisanship of the next term's state leadership increases, state delegation decreases. In this chapter, I use a case study to extend this analysis by providing an in-depth consideration of the national politics of the 2009-2010 health insurance reform, which eventually yielded the 2010 Patient Protection and Affordable Care Act (ACA). The intergovernmental delegation within the ACA and the voting rules and processes of the House and Senate ultimately resulted in health insurance reform that involves both national and state policy implementers on a massive scale and in uncharted territory.

By focusing on the nuances of the politics surrounding one policy, I gain a closer look of how and why Congress created the intergovernmental structural choices it did. Underlying the wheeling, dealing, and partisan bickering was the strategic and careful use of state and national delegations of authority in House and Senate proposals. Policymakers mindfully created the architecture of responsibility within the myriad policies debated where states or national-level bureaucrats had authority within the policy. A close consideration of these bills reveals that they differed significantly in the degree of authority delegated to the states. The central question of this chapter is a consideration of why policymakers crafted proposals with such variation in the extent to which authority was delegated to the states. Specifically, I consider three crucial components of the theory of intergovernmental design from Chapter 2, the states as a viable agent for Congress, legislators' intergovernmental context, and the importance of the institutional rules of each chamber in determining the bills each produced.

The case study method allows me to consider if real-world legislators behave in the way I hypothesize they do and if the posited mechanism is at work in national policymaking. The benefits of focusing on health insurance reform are twofold: the recent process was fresh in the minds of staffers and numerous different reform proposals were voted on, each varying in the extent of intergovernmental delegation. The limitations, of course, include the focus on one policy area and one time period, limiting my ability to consider whether policy type or the passage of time influence intergovernmental delegation. Further, there is the problem of the relative constant partisanship of the national and state-level executive branches (only two states changed governors during the voting on health insurance reform measures), a key element in my argument. Thus, the counterfactuals of how legislators would behave if a Republican was in the White House and/or their state governor was of a different party are unavailable. Due to the lack of counterfactuals, this case study does not fully test my theory.

In sum, this case study of health insurance reform allows me to examine three aspects of my theory: intergovernmental delegation strategies used by legislators, how legislators' intergovernmental context contributes to state authority allocation, and the effect of institutional differences between the House and Senate on proposals and legislative behavior (e.g., statements or voting). I am unable, however, to check whether legislators would have chosen different delegation options under a Republican president or alternative governor. I can, though, examine the machinations of policy actors with respect to the mechanisms underlying my theory and compare the theoretical expectations with those of rival arguments to see which hypotheses provide a better fit with the data.[78]

[78] One of the rival explanations is that policy type determines delegation choices, since I only consider one policy type in this chapter, I cannot examine this particular argument.

I analyze, using the coding processes elaborated in Chapter 3, the structure of delegation in the bills voted on in the House and the Senate including the Health, Education, Labor and Pensions (or HELP) and Finance committee bills from the Senate, the Patient Protection and Affordable Care Act (or ACA), the Tri-Committee House bill, and the Health Education and Reconciliation Act (or HERCA), as well as the patterns of voting and signs of support on measures by legislators in both chambers. I utilize archival resources including votes cast, transcripts of committee hearings and floor debates, news media, memos, blogs, and reports issued by key players such as congressional elite, the Congressional Budget Office, the Governmental Accountability Office, the Joint Committee on Taxation, and the Office of Management and Budget. In addition, I code the results of anonymous interviews conducted from July through September 2010 with current and former Democratic and Republican congressional staffers.

This chapter proceeds first by briefly setting the context for health insurance reform in the United States. Second, I consider my theory of federal policy design in the context of health insurance reform. Third, I elaborate the methods and analyses employed in this case study. Fourth, I analyze crucial aspects of my theory regarding how legislators delegate authority across federal levels. Finally, I consider alternative arguments about centralization and decentralization of policy authority in comparison to intergovernmental delegation hypotheses.

CONTEXT OF HEALTH INSURANCE REFORM

Reforming the health care system played a large role during the 2008 presidential campaigns and particularly in the Democratic primaries (Reichard 2008, Cooley 2008).

Data on the vast amounts of money sunk into health care in the United States compared to other developed nations, yielding shockingly poorer health outcomes, the lack of any or adequate insurance for millions of Americans, and the rapid increase in health care costs were emphasized repeatedly (see Murray and Frenk 2010 for an overview of the data and trends from the World Health Organization data). A Commonwealth Fund (2010) report on the congressional bills as of December 2009 summarizes the prevailing conditions on the minds of policymakers:

> In September, the Census Bureau reported that 46.3 million people lacked health insurance in 2008, up from 45.7 million in 2007. The Commonwealth Fund estimates that in 2007 an additional 25 million insured adults under age 65 had such high out-of pocket costs relative to their income that they were effectively underinsured, an increase from 16 million people in 2003… An estimated 79 million adults, both with and without health insurance, reported problems paying their medical bills in 2007 and 80 million reported a time that they did not get needed health care because of cost… At current cost trends, average family premiums in employer plans are expected to nearly double by 2020.

Coupled with the ever-increasing out-of-pocket expenses insured workers were being asked to pay, increasing 8.5% between 2004-2006, the Democratic base (and the majority of all Americans) expressed dissatisfaction with the current system and the need to change the status quo (Fuchs and Emanuel 2005, Farley 2009, Cunningham 2010).

With big wins at the polls in November 2008, it was possible that Democrats would take on the challenge of reforming the "broken" health care system. Yet, the cry for change had been present for decades, and policymakers had repeatedly failed to deliver (Gray et al. 2009, Light 2011, Skocpol and Williamson 2010). The collapse of the Clinton administration's massive effort and eventual health proposal in 1993-1994 and the difficulties encountered in passing and sustaining other health-related legislation (for instance the Medicare Catastrophic Care Act in 1988 and subsequent repeal) led many in the health policy community to take the "believe it when I see it" perspective.[79]

In addition, those knowledgeable about the system of health care and public health in this country expressed the dire need to overhaul the organization, financing and delivery of health and public health services (Chassin et al 1998), including the employer-based health insurance system, the fractured public and private health care funding, and the organization of local health departments, to name a few (Jacobson and Gostin 2010, Fuchs and Emanuel 2005). Such a large upheaval seemed politically impossible in a society with strong, organized, and vested interests in the current system and with the enormous price tag and uncertainty accompanying such an effort.

Jacobs and Skocpol (2010) discuss the expert advice given to Obama that he should only work for incremental changes in health care and health insurance, if any at all. Yet, Ted Kennedy's plea that Obama make health reform an agenda priority, along with the Democratic majorities in the House and Senate seemed to work together to make the initial presidential push for health insurance reform along with the extended sideline cheering from the White House to Congress (Jacobs and Skocpol 2010).[80] Instead of pursuing the Clinton strategy of assembling experts knowledgeable about the nuances of the public health and health care system, writing a detailed bill, and then giving it to Congress for debate and hopeful passage, Obama outlined broad principles of reform and left Congress with the work of crafting and deliberating the specific contours of health insurance reform (Oberlander 2009). Jacobs and Skocpol (2010) add that "it was not that

[79] See Light(2011) for a brief review of the organization and financing of health care along with reform efforts over the decades and Gray et al. (2009) regarding state policy advances and failures.
[80] The authors, based on interviews with staffers, cite Kennedy's losing battle with brain cancer as a key motivating factor.

different from what always happens when [fashioning] major legislation… [following] the paths and practices used for years [by Republicans and Democrats alike]…building the necessary coalitions to enact it through five committees and the entire House and Senate in less than a year."

The ACA, as modified by HERCA, is a law with hundreds of provisions touching on various aspects of health care, health insurance, and public health in the United States (Kaiser Family Foundation 2010).[81] The law requires U.S. citizens and legal residents to have health insurance (the individual mandate) or pay a monetary penalty, and requires employers to offer their employees coverage, both with certain exceptions and specifications. ACA also creates state-based health insurance exchanges (or organized marketplaces for private insurance) and small business health options program (SHOP) exchanges with specifications regarding benefits, options, and rating rules and increases the rules and regulations over the health insurance industry with greater national-level involvement.

The law expands Medicaid to all under the age of 65 with incomes up to 133% of the federal poverty level with additional funds to aid states in the expansion. The ACA supports comparative effectiveness research, provides demonstration grants to states regarding medical malpractice alternatives to current tort litigations, and improves preventative services and long-term care coverage. Additionally, it provides limitations to ensure that federal funds are not used for abortions. The ACA is expected to cost approximately one trillion dollars and is projected to reduce the federal deficit by $143 billion over the next ten years" (Hacker 2010, Cutler, Davis, and Stremikis 2010).

[81] The Kaiser Family Foundation provides a summary of the ACA as modified by HERCA (as well as the Senate and House bills and ACA alone) at http://www.kff.org/healthreform/upload/8061.pdf.

During the debate and since the passage of the health insurance reform law, policy elites and public health scholars have remarked on the potential and magnitude of the reform calling it “the most important piece of health care legislation since the creation of Medicare and Medicaid” (Cutler 2010), “the most sweeping reform in health insurance since the creation of Medicare…and Medicaid” (Light 2011), “a remarkable policy breakthrough” (Hacker 2010), and “a historic health care reform law that will help ensure that all families are able to get the care they need, as well as financial security and relief from rising premiums…the first step toward bending the health care cost curve for the federal government and families” (Cutler, Davis and Stremikis 2010).

The recent health insurance reform legislation does not lack for its critics, though. Jacobson and Lawrence (2011), for instance, say that “[d]espite its innovation in health care access, prevention and wellness, the [the health insurance reform law] takes the existing system as a given and does little to change the fundamental dynamic on how public health is organized, financed, and delivered” and Ruger (2010) states that “the Act is primarily about health insurance, not health care delivery.”[82] Light (2011) also discusses the failure of policymakers to deal with “the increasingly unreliable foundation of employer-based health insurance.” In the end, the success of health insurance reform depends upon three things: the ability of Congress to fund the existing pieces of the legislation, the capability of current and future politicians to fine-tune the policy, and the commitment of implementers, including the Department of Health and Human Services, the America’s Health Insurance Plans, health care practitioners, and state policymakers and bureaucrats, to name a few.

[82] See also Jacobson and Lauer (2010) for an interesting assessment of Skocpol and Williamson (2010) and potential pitfalls related to whether ACA “will be a transformational event.”

What is interesting, from the perspective of this chapter, about the context of health insurance reform legislation in 2009 and 2010, is the fact that although federalism and intergovernmental issues were foundational in how the various pieces of legislation were crafted, few scholars and pundits have remarked on their significance during the debates and passage. In fact, federalism has only taken on importance as states have filed suit against the federal government for encroaching on state sovereignty with respect to Medicaid expansion and as states began working with the Department of Health and Human Services (or HHS) to implement various provisions (Chollet 2010, Nichols 2010, Jennings and Hayes 2010, Iglehart 2011, Hodge et al. 2010, yet see Jost 2010 or Rosenbaum 2010 for an earlier consideration). And yet, this study's closer look reveals that crafting the intergovernmental nature of health insurance reform played a key role in this policymaking venture.

THEORETICAL FRAMEWORK

Intergovernmental Policy Design

Recall the answer as to why Congress varies the intergovernmental structure of policies, according to my theory, is that legislators prefer to delegate to the closest agent, either the states or the national executive branch. This consideration of the leadership in the states from which legislators hail creates four types of legislators in Congress: Democratic legislators from states with Democratic governors (DD legislators), Democratic legislators from states with Republican governors (DR legislators), Republican legislators from states with Democratic governors (RD legislators), and Republican legislators from states with Republican governors (RR legislators). The majoritarian rules of each chamber, the frequency of the intergovernmental teams, and the party of the president determine which of these teams is pivotal to policy success in a chamber, or around which team's preferences voting for a policy depends.

The predictions that surface from the theory of intergovernmental delegation under a Democratic president, as in the 111th Congress, are equivalent to the conventional wisdom that Republicans prefer to devolve authority to the states (unlike those under a Republican president). The mechanisms at work, though, are different. With respect to intergovernmental delegation, the intergovernmental context of legislators is crucial. Namely, DR legislators want to centralize authority, RR legislators push for decentralization, and DD and RD legislators are indifferent between the two choices, but align with their co-partisans. The pivotal team in the House was the DR legislators' team and in the Senate, for the majority of the 111th Congress, was the RR legislators' team.

Given the array of institutional actors, this theory predicts that a Democratic House under a Democratic president will centralize authority in House bills. In contrast, the Democratic Senate, constrained by super-majoritarian requirements to overcome real or potential filibusters will decentralize authority just enough to get 60 votes by attracting some RR legislators, but not enough to lose DR Senators. This theory also provides predictions about how individual legislators will behave, on average:

- DR legislators in the House and Senate will voice a preference to centralize and vote accordingly.
- DD legislators in the House and Senate will be indifferent regarding centralization, but will likely vote with DR legislators.
- RR legislators in the House and Senate will state and vote for a preference for decentralization.
- RD legislators in the House and Senate will be indifferent regarding centralization, but will likely vote with RR legislators.

The following section describes the data collected in order to examine the mechanisms and predictions of the theory and rival arguments.

RESEARCH DESIGN AND METHODS

For this in-depth qualitative project, I utilize an explanatory case study design and consider the mechanisms underlying the theory of federal policy design versus rival explanations of policy decentralization for explaining the state allocation of authority in the various health insurance reform policy proposals. Within the single case of the 2009-2010 health insurance reform policy, there are multiple subunits for analysis. Specifically, I define my case to be the congressional health insurance reform process from November, 2008 through March, 2010 and a subunit to be a national legislative package debated and voted on in at least one venue. This definition yields five separate subunits within the health insurance reform case: the Health Care and Education Reconciliation Act (HERCA), the Patient Protection and Affordable Care Act (ACA), the House Tri-Committee bill, the Senate HELP Committee bill, and the initial Senate Finance bill.

I utilize multiple sources of evidence including documents, archival records, and semi-structured interviews with policy elites. By triangulating these data sources, I attempt to uncover the preferences of legislators with respect to intergovernmental delegation of authority. Legislators may use rhetoric (to the media, during committee hearings, or on the floor) to discuss how they feel about a measure, they may use actions (committee or floor voting, in addition to the rhetoric), and they may privately discuss strategies with their policy staffers. Triangulation of the data over time is crucial, since members of Congress may also use rhetoric to hide their preferences or their voting behavior from their constituents (or others) or they may feel forced to vote in particular ways due to partisan pressures.

I analyze the resulting data for overarching themes, the calculus of individual legislators, and important features of the negotiation and crafting of the legislative packages in the House, in the Senate, and between national-level institutions. Next, I delineate the process used to access archives, obtain documents, and conduct the interviews.

Archival records include votes cast, party identification, dates of election, and data on state governors and elections (see appendix for details on collection).[83] For each national legislator the following archival data was utilized: name, chamber, district, state, election year, party, governor's name, governor's election date, governor's party, votes cast on the floor, and votes cast in committee. Committee votes were captured from the transcripts of committee markups and voting sessions. The documents examined for this project included media outlets such as blogs, newsprint (online and hard copy sources), television and radio transcripts, as well as transcripts of committee meetings, roundtables, hearings, and floor debates. These data sources were searched for the terms "congress," "legislat," "house," "senat," "member," and "rep" and reviewed for content related to legislative decision-making. In addition, I searched for "state," "federal," "intergov," "preempt," and "mandate" in order to examine intergovernmental and federalism considerations. Please refer to Appendix A-1 for additional details on the collection process.

In June of 2010, three months following the passage of the ACA and HERCA, I emailed key committee staff in the House and Senate with a one page description of my

[83] The United States Senate and House of Representatives online current legislator listings were used to capture each legislator's date of election. The National Conference of State Legislators election data (gubernatorial results and election dates) were collected from their website and matched to each national legislator using Excel.

research and a request for an interview (see Appendix A-2). In addition, due to concerns about a possible lack of response and the likely research and health policy fatigue of staffers, I individually emailed identifiable staff of all 535 members of Congress (using members' website information) instead of a sampling. In all, over 650 emails were sent in the final two weeks of the month.[84] Once in Washington, I used a snowball sampling technique whereby I asked each participant to provide a list of names of additional staffers I should contact. I chose to interview staff and not legislators for two reasons: I assumed that staffers would have more available time in Washington during the summer months than would legislators and, more importantly, I thought I would be able to get to the heart of the mechanisms of why legislators made the decisions they did about what to support, not what rhetoric they used, by speaking with key members of their staff. In the end, I was able to interview via phone, email or in-person, twelve policy staffers.

In order to gauge the way in which members of Congress thought about intergovernmental delegation, I created a list of open-ended questions and prompts to use in conversational interviews with the participants. This list was short (see Table 5-1) and, due to the massive nature of the policy, focused on two aspects of health insurance reform: health insurance exchanges and Medicaid. The degree of state authority in both policy instruments was contentious and the narrowing of the interview allowed us to delve into specifics of delegation to the states, ideology, and federalism concerns.

The conversational nature of the interviews allowed staffers to tell the story behind the scenes. Interviews lasted between 45-90 minutes and every staffer had

[84] The overwhelming response from emails was "no response," an out of the office reply, or an error message (those staffers no longer worked for those offices). Approximately 50 staffers emailed back that they had nothing to do with the process and I should contact the relevant committee staff instead. Four replies from these emails were affirmative and I began the interviews in early July with the hope that I could increase the number of participants while on site.

engaging and interesting stories and anecdotes about the process to relay. At the end of each interview I asked for the names of key individuals with whom I should speak while in Washington and assured them their name would not be identified as the referral. Although this strategy meant I spent many hours sitting on couches and waiting in hallways for staff members to find a few minutes to spare of their time (perhaps to get me out of the office), it meant that I ended with a consensus list of key players from both parties and chambers.

Table 5-1: Staff Interview Prompts
To what do you attribute the ultimate passage of health reform?
What were particularly difficult parts of (1) and how were they overcome?
Where intergovernmental issues identified (especially exchanges & Medicaid)?
If yes, how did these issues surface? How were they dealt with? If participant mentions governors/state leaders, the states, elections, ideology/partisanship, or policy type, prompt for more information.
How about federalism?
What benefits were there to the way the Senate Finance bill state exchanges?
What detriments?
What about the House national exchange?
What key points were there in the Medicaid expansion?
What are your future concerns for health reform?
How do expect these will be dealt with?
Are there other issues with health reform you would like to discuss?

Immediately following each interview, an individual interview report was generated, making certain to use unabbreviated language and to highlight any questions I had about any particular comments in my notes. I emailed these questions to the interviewees and filled in their responses on the report. I would then contact or re-contact (if I had already sent them an email) individuals who had been listed as key to the process. Once in Washington, I found a positive response to my invitations for an interview from all but one member's office. The staffer from that office responded that he or she "was not comfortable talking about [health insurance reform] and federalism." Another key office was positive in their response but could not find time in their calendar to meet with me during my time in town.

Staffers who opted to participate in the study were highly involved in the process of health insurance reform either in one of the relevant House or Senate committees or in their individual member's offices. Only one staffer had not been either at the table while the bills were crafted in the committees or in numerous meetings with their boss discussing plans of action.[85] At the time of the interviews (July and September 2010), these staffers were carefully watching implementation and some were in the midst of re-election campaigns. Participants included Republicans and Democrats from both the House and the Senate.

Following my week of interviews, I assessed the interview documents for overarching themes derived from the theoretical argument, rival explanations, as well as any additional crucial issues that had emerged in conversations with the staffers. The results of these interviews, the coding of the bills and laws, and archival review are described in detail in the Data Analysis section. In particular, the critical aspects of the theory of intergovernmental delegation I examine include:

- Legislators' perceptions regarding delegation of authority to the states
- The influence of chamber rules for who is pivotal in voting, and
- The nature and influence of legislators' intergovernmental context on state authority allocation.

[85] That staffer had recently joined the member's office, but had discussions with the previous occupant of that position and felt comfortable answering the questions provided. The responses of that staffer align with those of the other participants and remain in the results reported here.

The intergovernmental context of legislators refers to the fact that when national policy is delegated to state implementers, individual legislators in Congress must consider how the leadership in their own state will implement the policy. This implementation is vital because the way the language of statutes maps into policy actions determines the ultimate policy outcomes. Prior to analyzing the data from the various sources, I discuss the operationalization and measurement techniques used for state authority allocation and intergovernmental delegation.

Federal Authority Allocation

To measure intergovernmental delegation I followed the procedures outlined in Chapter 3 and obtained a summary of the major provisions of each law and bill from the Congressional Research Service (CRS) through the Library of Congress THOMAS on-line service.[86] I used the CRS summary for the enacted legislation and for each bill that received action and coded each summarized provision for delegation of responsibility according to the set procedures of Chapter 3. These procedures included assigning a provision as "national" when a new national agency was created or an existing national agency or group was required to perform a duty or implement the provision, "state" when provisions required state or local-level action with no national involvement, and "joint" when both state- and national-level entities were assigned responsibility or required to establish or maintain a state-national partnership. After each law or bill was coded, summary measures for that law were calculated including: the total number of

[86] Accessed July 2010-February 2011 from http://thomas.loc.gov/home/bills_res.html. Previous studies often utilize Congressional Quarterly (CQ) Almanac summaries of laws (e.g. Epstein and O'Halloran 1999 and Maltzman and Shipan 2008). A comparison coding of CQ summaries and CRS summaries revealed that CQ summaries often provided ambiguous information on the specific federal entity that received authority in each provision. CRS summaries, alternatively, provided details about which entities were responsible for each provision included in the summary.

summarized provisions in the law or bill, the number of national provisions, the number of joint provisions, the number of state provisions and the number of other provisions.

To operationalize federal delegation, I first created three continuous measures of the proportion of federal delegation in the provisions within each law or bill. The proportion of national provisions is the number of national provisions within a law or bill divided by the total number of provisions (excluding those that do not delegate authority and that delegate to the "other" category) within the measure. Similarly, the proportion of joint-partnership provisions and proportion of state provisions are the number of joint (or state) provisions divided by the total number of provisions (excluding as above) in a law or bill. For instance, a law that has a total of 100 provisions with 50 that delegate authority to national-level actors, 40 provisions that utilize joint partnerships, and 10 that are coded as direct state delegation would be 0.5 national, 0.4 joint-partnership, and 0.1 state delegation.

The overall federal delegation measure, or degree of decentralization, takes into account both joint and state delegation choices by collapsing the categories of delegation into a continuous measure within the bounds zero to one. The degree of decentralization is calculated by adding the proportion of state provisions in a law (provisions that delegate entirely to the states) to one-half the proportion of joint provisions (provisions that delegate partially to the states and partially to the national executive branch). For example, a law with 100 provisions: 50 national, 40 joint, and 10 state would receive a decentralization score of .30 (50 * 0 + 40 * ½ + 10 *1).

Table 5-2 lists the descriptive statistics for all four measures for federal authority allocation for each health insurance reform bill and law. Two prominent features of this table include the extensive variation in the degree of authority delegated to the states across the proposals and the differences in the House versus Senate choices with respect to intergovernmental delegation. The degree of state authority in the national health insurance reform packages ranges from 8.3-42.2%, compared to the average decentralization across all laws from 1973-2008 of 24.9%.[87]

Table 5-2: Intergovernmental Delegation of Provisions in Health Insurance Reform

	Provisions						Proportion			Degree of Decentralization
	total	none	national	state	joint	other	National	State	Joint	
HELP Bill	146	8	92	0	41	5	0.69173	0	0.308	30.80%
TriCommittee	13	0	11	0	1	1	0.91667	0	0.083	8.30%
Finance bill	66	2	37	6	21	0	0.57813	0.09	0.328	42.20%
ACA	558	31	349	0	168	10	0.67505	0	0.325	32.50%
HERCA	77	0	63	0	14	0	0.81818	0	0.182	18.20%

Provisions refer to the number of provisions, total, no authority delegation, national authority delegation, etc. Proportion is the number of national (or state or joint) provisions divided by the total number of national, state, and joint provisions.

The House's Tri-Committee bill, as predicted by the theory of intergovernmental delegation, exhibits the least degree of decentralization of authority to the states or, alternatively, the highest degree of centralization with only one of eleven summarized provisions including state-level implementation (decentralization score of 8.3%). The next most centralized measure is the Reconciliation package (HERCA), which many pundits and policymakers define as the House fix for the Senate-written ACA, scoring a decentralization degree of 18.2%. On the opposite end of the spectrum, the Senate Finance bill is the most decentralized of the policy packages, with a decentralization score of 42.2%, followed by the Senate HELP committee package with a decentralization score of 30.8%. In other words, the House proposal and fixer bill were more centralized

[87] The standard deviation for this cross-year average is 27.4 and the range is from 0-100% (see Chapter 3 for additional details).

than the Senate options, which fits with the expectations of the theory of intergovernmental policy design.

This coding provides a skeleton or a summary measure for bills and laws that took thousands of hours of work to pass (just including the time during the 111^{th} Congress). The remaining sections consider this effort and how these measures and their diverse delegation choices came into being.

DATA ANALYSIS

In this section I describe the findings from the various data sources described above with respect to three components of the theory including, state delegation, intergovernmental context, and chamber rules. Prior to discussing these concepts, I provide details about the makeup of the national legislative chambers during the 111^{th} Congress.

Institutions and Actors in the 111^{th} Congress

In the first session of the 111^{th} Congress, DD legislators were in the majority. Specifically, 157 House members and 38 Senators hailed from states with Democratic governors and were also themselves Democrats. The remainder of the Democratic party caucus in Congress included twenty Senators (including Lieberman, D-CT) and 93 House members who were DR legislators, ten Representatives from states with Independent governors, and one Independent Senator from a state with a Republican governor (Sanders, I-VT).[88] These numbers indicate that in the House there were 250 members of the Democratic caucus, a comfortable majority given the rules of that institution. What they also reveal is that DD legislators could not pass a bill alone; they needed to gain the support of at least one other intergovernmental team in each chamber. In the House, the

[88] Lieberman can also be coded as an Independent legislator.

157 DD legislators needed 61 additional DR legislators (or DI or IR legislators) in order to pass a bill on the floor.[89]

The Senate, given its rules and the potential need for 60 votes to invoke cloture and overcome a filibuster by any one senator, faced more of a challenge, in that at least three intergovernmental teams were often needed to successfully pass a Senate bill on the floor. From January through April, 28 2009, Senate Democrats comprised only 58 of the 100 legislators (including Sanders, who caucused with the Democrats). There were 38 DD Senators and 20 DR or DI Senators. With Arlen Specter's switch to the Democratic party on that date, the Senate reached 59 votes and with the seating of Al Franken of Minnesota in July the threshold of 60 votes (Specter became a DD Senator, with the Pennsylvania Democratic governor, Ed Rendell and Franken was a DR Senator, with a Republican governor, Tim Pawlenty). Edward Kennedy's death in August of that year, followed by the election of Scott Brown on January 19, 2010 lowered the Democratic majority to 59 votes once again.[90] In terms of my theory of intergovernmental design, the pivotal federal team in the Senate was the team of DR legislators for a scant few months in 2009.[91] For the rest of the 111th Congress, the pivotal team in the Senate was the team comprised of RR legislators.

[89] In the 111th Congress, there are two (if Lieberman is counted) Independent legislators. The theory of intergovernmental delegation assumes these legislators fit with one of the majority or minority intergovernmental teams and does not provide specific predictions for them. In this chapter, I consider Independents separately to assess whether these legislators act differently than my model suggests.

[90] Paul Kirk was appointed to fill Senator Kennedy's position and was in office from Sept 24, 2009 through Senator Brown's seating on February 4, 2010. After the special election, though, Senate leaders agreed to delay a vote on health care reform until after Brown was seated.

[91] The time specifically included: July 7 2009 – August 25, 2009, which I do not count since Kennedy's last floor vote was on April 27, 2009 (60 votes were needed), and September 24, 2009-February 4, 2010 (when Paul Kirk filled Kennedy's seat). I only count the time period up through the Massachusetts election on January 19, 2010, since Senators expressed the commitment (in the Congressional Record) to not pass significant legislation until Brown could be seated in February. Thus, only for the months of October, November, and December did the Senate truly have 60 Democratic Senators, and that was only if the ailing Senator Byrd was in attendance. Byrd's health declined through the 111th Congress.

In the House, the changes between the first and second session of the 111th Congress included 24 members with new governors in 2010. New Jersey and Virginia elected Republican governors in 2009 where Democrats had previously been in power. These changes yielded no differences in the pivotal federal team in the House, though there were slight changes in the sizes of the teams. For both sessions, the pivotal team was made of Democratic members from states with Republican governors. According to the theory, these differences in the pivotal teams in the Senate and the House resulted in different preferences over whether the states would be given more authority in policy or not. The House's pivotal team of Democrats from states with Republican governors preferred to centralize power with the national bureaucracy under a Democratic president. The Senate, on the other hand, preferred to decentralize authority to the states due to the pivotal team of Republicans from states with Republican governors.

Just prior to the first meeting of the 111th Congress and immediately following the 2008 elections, media sources began to discuss the potential difficulties Obama would have negotiating differences between two powerful committee chairmen in the Senate, Baucus (D-MT) and Kennedy (D-MA), and how these same challenges were a problem for Clinton's health plan (Frates 2008a, 2008b). These concerns were soon put aside for more interesting stories as Obama provided the major principles to be addressed in health insurance reform, but left the details up to Congress. These scintillating issues included closed-door health insurance reform proposal negotiations in the Senate with Senator Baucus and his "Gang of Six," Blue Dog Democrats concerns with liberal Democrats in the House, and the role of abortion policy in health insurance reform. The next section provides an analysis of the data from archives, documents, and interviews with respect to state delegation, intergovernmental context, and chamber rules as the national health insurance reform political process unfolded.

In the House, three committees—Education and Labor, Energy and Commerce, and Ways and Means—worked together to craft a single proposal that would eventually reach the House floor for a vote. Other committees and subcommittees also held hearings and roundtables on various aspects of health insurance reform during the 111th Congress, including the Committee on Small Business, the Committee on the Judiciary, the Committee on the Budget, and the Committee on Financial Services, to name a few. The House debated and passed their version of health insurance reform (Tri-Committee bill, HR 3962) on November 7, 2009.

Although similar to the House, in that a number of committees held roundtables and hearings on health care reform topics including the Committees on the Judiciary, Commerce, Science and Transportation, and a Special Committee on Aging, the process in the Senate was quite different. Specifically, in the Senate, two committees marked up two different bills—the HELP and Finance committees—instead of the three House committees working together on one proposal. The Senate debated the revised version of the Finance committee bill (what would eventually become ACA, HR 3590) for 21 days in November and December, 2009. The successful final passage vote took place late on December 24, 2009.

On March 21, 2010, after the special election of Scott Brown (R-MA) to fill the vacancy left by the death of Senator Kennedy, the House considered and approved the Senate passed ACA bill, immediately followed by a reconciliation package (HERCA, HR 4872). President Obama signed the ACA (HR 3590; PL 111-148) on March 23, 2010.

The Senate raised procedural concerns with HERCA and sent it back to the House with amendments on March 25, 2010, where it passed and was sent to the President to be signed (on March 30, 2010), thus ending this episode in modern health insurance reform. Although the saga of health insurance reform continues as political actors mount challenges to the ACA as modified by HERCA and the states and national executive branch are fully engaged in implementation of many of its provisions, this chapter only considers the strategic crafting of the health insurance reform proposals in order to successfully enact a national law.

In all, in the House, given the closed rule consideration of health insurance reform, thirteen votes in 2009-2010 were on health insurance reform specifically (or less than 0.8% of all votes). Of those votes, Republicans maintained a united front, voting together against the House bill, the ACA, and HERCA, with one exception. Louisiana's Joseph Cao voted in favor of the House bill on the final passage of the Affordable Health Choices Act. Cao told a Louisiana paper that "[m]y commitment is to support the President in his reform bill" (Tidmore 2009). The Representative, though, voted against the health insurance reform measures throughout the rest of the 111th Congress. In comparison, there was variety in the voting behavior of House Democrats. Forty-six House members voted against one or more of the health insurance reform proposals.[92]

On the Senate floor, there were thirty-four votes cast with respect to the ACA during the debate that lasted from November 21 through December 24, 2009 and forty-four votes on HERCA from March 23-25, 2010. These votes included motions to invoke

[92] For instance, Mitchell of Arizona's 5th district voted against the reconciliation measure that returned amended from the Senate, but voted in favor of all other measures and Teague of New Mexico's 2nd district is one of four members who voted for the Senate amended HERCA, but against all other health care reform measures. Kucinich of Ohio is one of eight Representatives who voted against the House bill, but in support of the ACA and HERCA.

cloture (except on HERCA, since it was time-limited to begin with) and various amendments. This number means that out of the entire 696 votes cast on the floor during the 111th Senate, 11.2% were on the ACA or HERCA. All Democrats and Independents voted in favor of ACA on final passage. For HERCA, since it was a reconciliation measure, which sidestepped the filibuster, a simple majority was all that was needed for passage. Even so, only three Democratic Senators changed their votes from aye to nay: Lincoln and Pryor of Arkansas and Nelson of Nebraska (who no longer received the Cornhusker kickback in HERCA).

The preceding committee votes had also been straight party-line votes with Democrats voting to report the bill and Republicans voting against doing so, with the exception of Olympia Snowe (RD, Maine) on the Finance committee. Snowe voted in favor of reporting the bill, though she voted against the technical corrections and modifications the chair had made and stated that her vote in committee was only that and her vote on the floor would not necessarily be the same.

These votes provide a glimpse at the behavior of legislators during the process of crafting health insurance reform. In the following sections, I rely on the actions of legislators, their statements, and the strategies discussed by their staffers and examine the extent to which I find support for assumptions underlying and hypotheses derived from the theory of intergovernmental delegation. In particular, I assess whether delegation to the states is used as a strategy to craft successful policies, whether legislators intergovernmental context, or more specifically their partisan relationship with their governors, influences the optimality of delegation to the states, and whether the institutional rules of each chamber influenced which legislators were pivotal during proposal passage.

State Delegation

One staffer remarked that a crucial question was, “are we going to let the states have any power” as various proposals were vetted among committee leadership and staff. According to the theory, under a Democratic president, Republican legislators prefer delegation to the states and Democratic legislators prefer centralization to a national executive branch. One Republican staffer went on to say that legislators “gave up long ago respecting the whole concept of the states.” Delegation to the states, according to staffers, was more of a political strategy than based on any specific beliefs about federalism and the appropriate division of authority. “The Gang of Six crafted the role of the states” commented one staffer, a second participant added that “to get Snowe’s vote, [the Finance Committee] made [health insurance exchanges] state based,” and “Nelson gave states more control to soften bill and make it more conservative,” said another. On the House side, staffers commented that the centralization of authority to the national executive branch was because legislators were concerned about what the states would do with the policy. Thus, delegation to the states versus to the national executive branch was a strategic feature of both House and Senate proposals. The next question, is why legislators used intergovernmental delegation as a strategy.

Although staffers remarked that legislators crafted the House and Senate proposals based on “a function of what you can do politically,” legislators’ rhetoric on the floor and in committees suggest a variety of possible reasons why the House bill was centralized and the Senate bill decentralized. An examination of the transcripts from

House hearings reveals that Democratic House members were dubious of the capability, potential for success, and usefulness of delegating authority to the states for health insurance exchanges. "Given that consolidation [of insurance companies] threatens to eliminate competition in the State insurance markets, why would the State-based connector be better?" (Velazquez, D-NY).[93] Concerns about state-based exchanges included that some states weren't performing well currently, that disparities in health and services would continue to exist, and that continuing the patchwork health policies in existence would lead to worsening health outcomes.

Moreover, House Democrats extolled the virtues of one national exchange, including the benefit of transparency and the ability for genuine reform. A handful of Democrats also discussed the importance of allowing states the flexibility of further reform and innovation above the floor set by the national policy: "… I do celebrate the fact that our colleague from Ohio, Dennis Kucinich, was able to get through an amendment that allows states to use single-payer, to experiment with it, which they cannot do now without this amendment. And I am fighting to keep that in the bill" (Conyers, D-MI). Conyers and Kucininch were both DD legislators and, according to my theory, would be indifferent between centralization and decentralization.

Health policy staffers provided additional details into what was progressing behind the scenes of House deliberations. One participant stated that Democrats did not want to decentralize authority to the states because the states had "not done well" with other health policies in the past. Specifically, the concern was that some states implement national laws poorly, such as "by not drawing down all their Medicaid funds"

[93] Health insurance exchanges were also called connectors and organized insurance markets, among other things.

(meaning that a state did not invest enough state resources to be able to receive all of the federal money available to that state for the Medicaid program). House Democrats, according to all Democratic House staffers, were worried about inequities across the states and exacerbating health disparities if the states were given authority over the health insurance reform implementation. Republican House staffers, during the interviews, decried the lack of ability of the states in the Tri-Committee bill to tailor the health insurance reform to their population.

Republicans in the House also revealed frustration and a powerlessness against the Democratic majority. Representative Kline (R-MN), for instance, stated, “What we do know about the Democrats’ plan, [is] it is the Democrats’ plan. We haven’t seen it until we got a glimpse of the 852-page monster on Friday. The Democrats’ plan is it increases the role of the Federal Government through a new government-run plan and an expansion of Medicaid.” Republicans overwhelmingly agreed that health reform was needed, but voiced concern about the choices of House Democrats. Specifically, their comments repeatedly denounced the centralization of the House plan and the failure of House Democrats to include their perspective in the proposal. According to my theory, though, due to the simple majority needed to pass a House bill, there was no need for House Democrats to engage with Republicans in order to pass their health insurance reform bill.

The Senate bill, on the other hand, did include a degree of Republican input through the select group of legislators in the “gang of six” on the Finance committee and a number of Republican amendments. The specific reason for the difference between the House and Senate perspectives regarding including Republican preferences in their proposals is discussed in a later section. One reason for Senate decentralization, though, provided by staffers, and backed by the language used by legislators in debates was a "benefits of federalism" argument where the "states are better informed about their own particular population and needs," "more in tune and locally accountable," said another, and "technically better" said a third. These three respondents were all Republican staffers. Orrin Hatch (R-UT) backs up these staffers' statements as he describes his version of a better health reform proposal in a 12/2/2009 floor speech:

> We could give States flexibility to design their own unique approaches to health care reform. Utah is not New York, Colorado is not New Jersey, New York is not Utah, and New Jersey is not Colorado. Each State has its own demographics and its own needs and its own problems. Why don't we get the people who know those States best to make health care work? I know the legislators closer to the people are going to be very responsive to the people in their respective States. I admit some States might not do very well, but most of them would do much better than what we will do here with some big albatross of a bill that really does not have bipartisan support. There is an enormous reservoir of expertise, experience, and field-tested reform. We should take advantage of that by placing States at the center of health care reform efforts so they can use approaches that best reflect their needs and their challenges.

Democratic staffers, though, point to either a "blame avoidance" reasoning or, alternatively, a "build on the status quo" argument instead. In particular, legislators "wanted states to have skin in the game. [Democrats] don't want the government to be held responsible for everything," said one staffer and legislators "don't want all their eggs in one basket," remarked another. In other words, Democratic legislators hoped that by incorporating delegation to the states in the Senate plan, they would be able to deflect blame for any problems down the road and possibly be able to avoid the "too big government" claims of Republicans. In hindsight, Democratic staffers found it notable that decentralization was under the radar of the public and that the common perception of the law was of a national government in charge of everything.

One committee staffer remarked that "building on state-based policies and regulations in existence made more sense." This participant illuminates yet another reason for decentralization, using the status quo policies to craft reform proposals. Specifically, health care and health insurance policies have traditionally been in the purview of the states. For instance, since the time Congress delegated regulation of the insurance industry to the states in the McCarran Ferguson Act of 1945, states have been in charge of overseeing the health insurance industry.[94] To keep such regulation at the state-level in national reform made sense to legislators according to this staffer.

Although staffers offered many different reasons for delegation to the states, using federalism as a guiding principle was not one of them. Senator Snowe (R-ME) remarks in a transcript of a Finance hearing on October 13, 2009, "We have heard legitimate proposals from both sides about the proper role of Government in providing the answers. I think it is clear we all struggle with the appropriate equilibrium." Snowe appears to be referring to legislators' struggles over when to centralize versus decentralize authority. One Senate staffer said once legislators chose the delegation strategies to be used, they "worked with constitutional scholars and the parliamentarian such that the language [of the policies and delegation options chosen by legislators] did not overstep the federal government's role." In other words, that legislators first chose the decentralization

[94] In brief, following a Supreme Court ruling (United States versus South-Eastern Underwriters Association) that Congress (based on the Commerce clause) could regulate insurance, Congress passed the McCarran Ferguson Act of 1945, which gives states authority to do so. This law does not mandate the states regulate insurance, instead, it expressly does not preempt relevant states laws that do such regulation.

strategy and then made sure it was worded appropriately. Thus, it was not a question of what is the appropriate balance of state versus federal control or what are national versus state boundaries of action, it was about political strategy.[95]

"At the end of the day a lot of [who gets authority] depends on how you get votes [in Congress]," remarked one staffer. In other words, although there were many reasons for and against the different delegation options proposed in the health insurance reform bills, the underlying motivation for the delegation choices was how to form successful policy coalitions, or coalitions of legislators that could move a policy through a chamber to the end result of enacted legislation. The theory of intergovernmental delegation offers a perspective on how this coalition formation occurs. In particular, legislators' preferences in favor of centralization versus decentralization in national law depend on their intergovernmental context.

A legislator's intergovernmental context refers to the fact that when considering the outcomes that will result from delegation to national actors versus state actors, a legislator must consider the distance between his own ideal point with that of the national executive branch and his state's executive branch. Thus, a legislator's partisan agreement or disagreement with their governor is a critical aspect of the theory. In the next section, data on the importance of intergovernmental context is discussed. An added benefit of this examination is that it suggests a few distinguishing points between the conventional wisdom that Republicans devolve and the intergovernmental theory.

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[95] One staffer digressed to talk about how different the practice of policymaking is from the way it is taught in political science classes. "In school you learn about the principles of federalism and when centralization versus decentralization is better. But, that's not at all how it works here."

Intergovernmental Context

In the previous section, I examined the centralization and decentralization strategies and choices of legislators. Legislator actions with respect to delegation to the states, according to the intergovernmental theory, are contingent upon the party of the president *and* the party of their state governor. Since health insurance reform proposals were debated under a Democratic president, Democrats, both DD and DR legislators, in the 111th Congress were in favor of centralization and Republicans, RD and RR legislators, preferred decentralization. On the surface, then, delegation to the states appears to fit with the conventional wisdom that Republicans prefer to devolve authority and Democrats are more comfortable with a large centralized government. In this section, I assess whether these partisan issues were just about the partisan ideology of legislators or if, as my theory predicts, it was more about their intergovernmental context, namely taking into consideration the partisan relationship between legislators and their governors.

Media reporting of the hearings provided little discussion of the intergovernmental possibilities for health insurance reform, instead, focusing on whether the process was bipartisan or purely partisan, open and transparent or behind closed-doors, how Obama's performance rated with respect to health reform, and whether special deals were wrought and with whom. From my interviews, one staffer remarked that the media "had it all wrong," in terms of the negotiations and focused "way too much on partisan issues." The participant elaborated by stating that although there were definite and challenging partisan differences, it was not the horse race as depicted in the media. Instead, the process was a grueling foray into a complicated and fractured health care system that relied on a number of substantive experts on Medicaid, health insurance, public health, health law, and constitutional law, to name a few. One staffer described the process as involving "silos of people working on different issues" and another further emphasized that although "policy was important, the politics were important, too." Thus, political maneuvering existed that was not highlighted by the media.[96]

All twelve staffers declared that dealing with Democrat versus Republican issues was "challenging" during negotiations and that Democrats have more faith in a central government and Republicans "are generally more for state based" approaches. Every Senate and House staffer mentioned this partisan difference as important with respect to intergovernmental delegation, seemingly in support of the Republican devolution argument. But, when I would question them as to what would happen if there were a Republican president and Democratic leadership in the states, most staffers agreed that it was more nuanced than Republicans prefer to devolve.[97] One staffer even mentioned that they have an example of this in "No Child Left Behind, where Republicans under a Republican president took authority away from the states."

"Republicans are generally more for state based policies. Republicans, though, will nationalize if they feel like states are not doing what they want," stated one staffer. "It is a political calculus vis-à-vis the position [of the states] to the federal government," said a second. In other words, whether or not a legislator prefers to centralize authority

[96] Throughout the fall of 2009, media reports on House negotiations focused on Blue Dog Democrats who "remained on the fence" regarding health care reform (Bettelheim and Hunter 2009) and discussed Pelosi's strategy with respect to the "end game of the conference" and staking out a bargaining position with the Senate (Pelosi quoted in Norman 2009). Reports on the Senate focused on Kennedy's health, Byrd's health, 60 votes, and, later, on Brown's win in a liberal state, which was described by one reported as "a bolt of lightning [that] has struck the entire American political system" (Maddow 2010) and by another as a race that "could literally decide the fate of the Democrats' health care reform legislation" (Baier 2010).
[97] One staffer refused to consider the implications of the counterfactual of a Republican president during health insurance reform. That staffer said that it was not a useful way to spend time, since so many factors go into what happens politically.

with the national executive branch or decentralize policy to the states actually depends upon whether the states will provide outcomes the legislators favor. "If the governor is of a different party, there is concern when doling out authority to the states….What the governor will do with the policy matters," commented one participant, which was supported by another remarking that "the relationship between governor and legislator is critical." Both Democratic and Republican staffers expressed these sentiments. One Republican staffer elaborated, "partisanship is an issue, if your governor is a D and you are an R, it's very different than if your governor is an R."

These staffer statements provide strong support for the idea that intergovernmental context matters, using a similar language as the intergovernmental theory to describe the partisan relationship. Specifically, DD, DR, RD, and RR legislators face different strategic calculations as they consider whether to support national policies that centralize versus decentralize authority. The differences in these strategies can be further viewed by considering committee actions and votes.

The three committees' markups of the single House bill, for instance, present one perspective on some of this maneuvering. In particular, a number of amendments provide insight into possible differences in how Democrats felt about yielding authority to the states in national health insurance reform. The votes on amendments in the committees are compiled in Table 5-3. For all three committees, the pattern of choices generally matches with that of my argument, with a few exceptions as noted below.

In the Energy and Commerce Committee, there were 35 Democratic members, 16 of which represented states with Republican governors (DR legislators, or mismatches). As shown in the table, all Democrats voted against the amendment that decreased the

Table 5-3 House Democrats’ Votes in Committees

Member	State	Governor's Party	Committee	Report to Floor	Increase State	Decrease National
STUPAK	Michigan	D	ec	0		0
BOUCHER	Virginia	R	ec	0		.
ESHOO	California	R	ec	1		0
GREEN	Texas	R	ec	1		0
CAPPS	California	R	ec	1		0
HARMAN	California	R	ec	1		0
GONZALEZ	Texas	R	ec	1		0
MATHESON	Utah	R	ec	0		0
MELANCON	Louisiana	R	ec	0		0
BARROW	Georgia	R	ec	0		0
HILL	Indiana	R	ec	1		0
MATSUI	California	R	ec	1		0
CASTOR	Florida	R	ec	1		0
MURPHY	Connecticut	R	ec	1		0
MCNERNEY	California	R	ec	1		0
WELCH	Vermont	R	ec	1		0
KILDEE	Michigan	D	ed	1	0	0
ANDREWS	New Jersey	D	ed	1	0	0
MCCARTHY	New York	D	ed	1	0	0
BISHOP	New York	D	ed	1	0	0
SESTAK	Pennsylvania	D	ed	1	0	0
ALTMIRE	Pennsylvania	D	ed	0	0	0
HARE	Illinois	D	ed	1	0	0
MILLER	California	R	ed	1	0	0
WOOLSEY	California	R	ed	1	1	0
HINOJOSA	Texas	R	ed	1	0	0
DAVIS	California	R	ed	1	0	0
GRIJALVA	Arizona	R	ed	1	1	0
HIRONO	Hawaii	R	ed	1	0	0
COURTNEY	Connecticut	R	ed	1	0	0
TITUS	Nevada	R	ed	0	0	0
CHU	California	R	ed	1	0	0
TANNER	Tennessee	D	wm	0	0	
KIND	Wisconsin	D	wm	0	0	
STARK	California	R	wm	1	0	
LEWIS	Georgia	R	wm	1	0	
BECERRA	California	R	wm	1	0	
DOGGETT	Texas	R	wm	1	0	
POMEROY	North Dakota	R	wm	0	0	
THOMPSON	California	R	wm	1	0	
LARSON	Connecticut	R	wm	1	0	
BERKLEY	Nevada	R	wm	1	0	
MEEK	Florida	R	wm	1	0	
DAVIS	Alabama	R	wm	1	0	
SANCHEZ	California	R	wm	1	0	

Committees: ec, Energy and Commerce, ed, Education and Labor, wm, Ways and Means. Votes are: yea, 1 and nay, 0.

authority of HHS (Barton Amendment on Day 5), as would be expected by the theory. And, of the five Democrats who voted nay to report the amended bill to the floor, all but one were DR legislators, or partisan mismatches with their state governors. This last point is in contrast to that expected by the theory of intergovernmental design if I assume voting against the bill reveals that it is distant from their preferred choice (those legislators should prefer centralization); however, the other 12 DR legislators and 18 DD legislators voted in accordance with the intergovernmental theory.[98] Moreover, no Republicans voted to report the bill and all voted in favor of decreasing the authority of HHS. Thus, votes in the Energy and Commerce committee suggest support of the hypotheses regarding DD, DR, RD, and RR legislators' choices.

In Education and Labor, one amendment increased state flexibility (Kucinich amendment for state waivers) and one amendment decreased the authority of Health and Human Services (Thompson amendment to strike the national health insurance exchange). Of the 14 Democrats who voted in favor of increasing state-level authority, only two were DR legislators (Woolsey, D-CA and Grijalva, D-AZ). In addition, all Democrats voted against decreasing the authority of the Secretary of Health and Human Services. In Ways and Means, 11 of 26 members were DR legislators. Three Democrats voted against reporting the bill to the floor (see Table 5-3): Tanner (D-TN, a DD legislator), Kind (D-WI, a DD legislator), and Pomeroy (D-ND, DR legislator).[99] Thus,

[98] A simple logistic regression with committee member's votes as the dependent variable and the intergovernmental team as the categorical independent variable reveals that DR legislators are significantly less likely (at the $p \leq .05$ level) to vote in favor of amendments that increase the authority of the states in comparison to DD legislators. The odds ratio is 0.204 (with a standard error of 0.169) for DR legislators compared to DD legislators as the base category.

[99] If I assume once again that a vote against reporting the bill to the floor is an action suggesting these legislators felt the bill was too distant from their ideal point, the intergovernmental design theory would predict that legislators voting against the bill would more likely be DD legislators. There is, of course, a

although not true for every single legislator, on average the hypotheses regarding how legislators would vote regarding centralization and decentralization hold across all three House committees: Democrats voted in favor of and Republicans against centralization.

An examination of Senate committee votes in the HELP and Finance committees presents more of a challenge. Unfortunately, the text of the HELP amendments could not be located via electronic searches and the language and delegation choices specifically examined. Over 788 amendments were filed for the HELP bill markup, 721 of which were offered by Republicans. Of the Republican amendments, 161 were accepted (36 of the 67 Democratic-authored amendments were also accepted), although see Enzi's (R-WY) statement regarding the lack of Republican involvement in proposal formation in his Finance committee statements. On July 15, 2009 the HELP committee voted to report their version of the health insurance reform package to the floor on a straight party line vote (13 to 10). Although the HELP proposal includes state-based health exchanges (in contrast to the House nationalized health insurance exchange), it appears that it did not decentralize authority enough to attract any Republican votes.

The Finance committee bill also created state-based health insurance exchanges and, according to the decentralization measure described above, is more decentralized than the HELP plan. The Republican-filed amendments in the Finance bill during committee negotiations included many that provided expansions in the authority of the states in the overall bill. There were over 564 amendments filed for the Finance bill markup, of which 302 included at least one Republican author.[100] The Finance

difficulty in ascertaining whether a vote against reporting a bill to the floor is actually a vote against centralization.

[100] These amendments were obtained from Slate.com's website.

committee voted to report their proposal to the floor of the Senate on October 13, 2009 with a 14-9 vote. The only Republican voting with the Democrats on the committee was Olympia Snowe (R-ME), an RD legislator. Snowe's support of the Finance bill is in contrast to the intergovernmental theory, where RR legislators are pivotal with respect to decentralization and RD legislators are indifferent (but prefer to vote with their co-partisans). Overall, Senators' actions in committees are not consistent with the theoretical hypotheses—RR legislators were not included in the Senate coalition. Only staffer comments about the deliberations behind those actions suggest support for the intergovernmental theory.

Recall also, the coalition bargaining theory expressly points to the process of invoking cloture where Republicans would be necessary in the Senate—not where a simple majority is needed, such as to either pass a proposal out of committee or votes on final passage on the floor. Furthermore, the theory is even more specific with respect to the fact that those Republican votes would only be needed if DD and DR legislators in the Senate together do not equal 60 votes. In the next section, I examine the extent to which the differences in chamber rules and majoritarian thresholds influenced the proposals that emerged from the House and Senate, as well as the final enacted health insurance reform package.

Chamber Rules

In the last few months of 2009 when committee deliberations and floor votes took place, DD and DR legislators did have the 60 votes needed to close debate on the floor, although, earlier in the process this fact was not clear. For the first four months of 2009, Democrats had only 58 votes, which increased to 59 when Specter (R→D-PA) switched from the Republican to the Democratic party, and finally 60 when Franken (D-MN) was seated. To invoke cloture, the 60 votes derives from the rule that three-fifths of the Senators duly chosen and sworn must vote in favor of a motion to close debate. Byrd (D-WV) and Kennedy (D-MA), due to ill health, were often not present in 2009. Only after Kennedy's death in August and the appointment of Paul Kirk (D-MA) to fill the vacancy, were Democratic senators able to reach the "razor edge of 60 votes" on days when Byrd was strong enough to be present for a vote. The "razor edge" quote is taken from a staffer who remarked that the opportunity of any one senator to obstruct policy on the floor by filibustering created challenges for the health insurance reform process in the Senate. In this section, I examine the extent to which inter-chamber differences in the majority thresholds required to make progress on reform influenced the packages they developed.

Health policy staffers emphasized differences in the House and Senate voting processes. Senate "structure" and "the 60 votes needed" gave Republicans more leverage during proposal negotiations in the Senate than in the House, according to staffers. This influence led to the crafting of proposals in both the HELP and Finance committees that were much more decentralized than the House package. The Finance committee chairman, Baucus (D-MT), for instance, included three Republicans in the group of six Senators who hashed out the Finance package over months of negotiation through 2009.[101] It is only in hindsight that Democrats, in the brief time span in which the Senate bill (consisting mainly of the Baucus Finance proposal) was debated and passed on the

[101] The group of six senators ("Gang of 6") included Democratic Max Baucus (Montana), Jeff Bingaman (New Mexico) and Kent Conrad (North Dakota); and Republicans Charles Grassley (Iowa), Mike Enzi (Wyoming) and Olympia Snowe (Maine). Senator Hatch dropped out in July, 2009, later stating that he had left the group because he knew it would not be a true bipartisan effort (see Hatch's comments in Finance Committee markup).

floor, did not need to rely on Republicans to move the policy out of the chamber. While various packages were considered and amended, Democrats would need at least one or two Republicans to join them or the policy could have been obstructed by one Senator with a filibuster. In other words, finding less support for the theoretical hypotheses about how legislators should vote in the Senate, given the frequency of the DD and DR teams across the 111th Congress is expected.

Staffers perspectives on the differences between the House and Senate and the strategies senators used to craft their proposals provide support for an assumption upon which the individual-level coalition bargaining model is built, that the majoritarian threshold in a chamber is critical for passing policy. For instance, one House Democratic staffer remarked that the House “can be more aggressive [than the Senate] because of rules and procedure.” All staffers from the House and Senate also commented on the “challenge of 60” in the Senate versus the simpler majority rules process in the House. [Senators] “got things through [via] the power of delegation—because you can’t get things through the Senate without it. In the House it’s different, since majority rules. One member doesn’t have the power [like in the Senate], it’s more of a ‘go along to get along’ place.”

In other words, the higher majoritarian threshold in the Senate has consequences for the delegation strategies employed in Senate packages in comparison to the House. In the House, the pivotal legislator in the intergovernmental theory under a Democratic majority party and Democratic president are DR legislators, who strictly prefer centralization. In the Senate, when Democrats have the 60 votes to invoke cloture, the DR legislators are also pivotal, but when they do not, the pivotal legislator, or legislator who must be enticed to vote to invoke cloture, is an RR legislator. To appeal to RR legislators, the Senate must craft a policy that is decentralized enough to get the needed votes, but not decentralized as much as to lose critical DR legislator votes. Thus, the differences in House and Senate proposals and a potential reason why Baucus courted Republican legislators as his committee crafted a proposal can be explained by the intergovernmental theory.

Of course, however, there were many other features of the process that emerged in discussions with staffers. Next, I discuss the interesting attributes of the process that were not included in the intergovernmental theory of federal delegation design, including pre-emptive strategies regarding House-Senate compromises, differences in House versus Senate electoral concerns, and the trouble with governors.

Other Concerns

"The Senate bill was a bitter pill to swallow, but the best [the House] could get." This quote from one staffer highlights the interesting inter-chamber dynamics that were in play throughout the 111th Congress. For example, early in 2009 the House included reconciliation instructions in their budget bill, specifically mentioning health policy. This strategic step by House Democrats offered an alternative for the Democratic majorities in both chambers. By using the reconciliation process, which is subject to time limits (i.e., cannot be filibustered), only a simple majority is needed to pass such a package in both the House and the Senate.

For most of the health insurance reform process, however, reconciliation was not considered to be a serious alternative for two major reasons. First, Democrats expressed the desire for bipartisanship. Relying on reconciliation would eliminate bipartisanship and possibly give Republicans ammunition to alienate voters from Democrats. And, second, is the fact that reconciliation is not an easy process. Reconciliation bills cannot be used to build new policies or programs, only to "reconcile" existing programs with the budget. Specifically, each provision in a reconciliation package must have a current budgetary effect (the Byrd Rule). I return to how reconciliation offered opportunities for Democrats in 2010 below, but first discuss other inter-chamber dynamics.

Health policy staffers, for example, highlighted a difference in how Senators versus House members feel about the states. "There is a comfort in the Senate regarding the states that's not there for the House," said one staffer. "Senators are just more inclined [than House members] to give discretion to the states," said one participant. "In the Senate there's more of a desire to isolate states…[you] can rummage through [any number] of laws and find the formulas that do so…." This special deals for special states difference in the Senate may be due to the fact that "governors and Senators share the same constituents" or because "what works in New York or Florida, won't work in [that staffer's member's dissimilar state]." Although it is possible that there is a difference in the "comfort-level" of the Senate with delegation to the states, this explanation does not hold up to a brief comparison with the No Child Left Behind Act of 2002, where Senate debate highlighted concerns over delegating expansive authority to the states (in comparison to the House which included unprecedented state flexibility in its bill).

Instead, I argue that decentralization of policy in the Democratic Senate, given the Democratic president, sets the stage for policy coalition formation in that chamber where Republican senators are needed to pass policy; coalitions that can be formed by decentralizing certain aspects of the policy to states, or even "isolating" certain states. In addition, though, a staffer mentioned that Senators and governors have "the same issues,…but [House members] are much more concentrated [in one area of a state] and face different concerns." In a similar vein, a Senate staffer added that "getting re-elected is different for House members." These remarks bring up a potentially key facet of national legislators' constituencies, namely, that Senators represent an entire state and House members (with the exception of At-Large members) only a portion of the state.

It is possible that House members view state delegation differently, and with more alarm about the potential outcomes, than do Senators. Governors will lead a state-level executive branch in implementing a policy with an eye toward the entire population of their state. House members, though, may prefer an even more localized approach, since their district may differ substantially from the rest of the state.[102] This difference may, for instance, be due to crucial rural-urban differences between districts in certain states. Staffers mentioned, for instance, that Senators with urban-rural splits, for the most part, stayed out of the health insurance reform debate.[103] This aspect of intergovernmental delegation is not considered in this study but deserves additional scholarly attention in the future.

Finally, many health policy staffers brought up the idea that House members, in particular, were concerned about compromise legislation that would emerge from a House-Senate conference even before either chamber had successfully voted for a bill. In particular, House members were worried that the Senate would decentralize authority to the states too much for their tastes. In order to combat this potential Senate bill, House

[102] This could even explain why the House decentralized No Child Left Behind, since many provisions were delegated to local education agencies.
[103] Interestingly, the one member's staffer who refused to discuss federalism issues and health insurance reform is from a state with an urban/rural split.

members preemptively structured their bill with strong centralization provisions in the hope that the compromise between the two chambers in a conference would result in legislation they would prefer. In the end, given the structure of the Senate in the 111th Congress and the contentiousness of the policy debate, the House became concerned instead with the ability to get a compromise conference report back through the Senate. If the approved House bill and approved Senate bill went to a conference, the resulting committee report aligning the two into one piece of legislation would need to go up for another vote in both chambers. Given the lack of the 60 votes needed by the Democrats in the Senate after January 19th (and the fact that the Senate bill had only been approved December 24th), the House needed to consider a new strategy.

Since the House had included reconciliation instructions in the enacted budget bill from the early days of the 111th Congress, one option remained. House members could "swallow" the "bitter pill" that was the approved Senate bill, pass a careful reconciliation bill that modified the new legislation, and hope that the Republicans in the Senate could not find procedural concerns with the reconciliation package, allowing for a simple majority in the Senate to pass the reconciliation measure.[104] What these interesting dynamics between the House and Senate suggest, though, is that future work should take into account bicameral differences in the pivotal actors and how such differences may influence strategic policymaking choices.

Theory of Federal Policy Design versus Rival Arguments

In summary, a review of information accessed in congressional archives, obtained through document review, and garnered through elite interviews is, for the most part, consistent with the theory of federal policy design and intergovernmental delegation.

[104] In fact, the Senate did find procedural concerns necessitating a return to the House with another vote.

The House produced a centralized policy, the Senate a more decentralized proposal, legislators were concerned about the partisan relationship between themselves and their governors and the policy outcomes that governors would yield, in addition to the criticality majoritarian thresholds in the House and Senate.

There are also alternative arguments for why Congress centralizes and decentralizes authority. These include the following:

- Policy type determines delegation options, where redistributive policies are centralized and developmental policies are decentralized (Peterson 1995).
- Republicans prefer to devolve and Democrats to centralize (empirical studies reviewed in Peterson 1995, also see Krause and Bowman 2005)
- Republicans (Democrats) prefer to devolve only when the states are mostly Republican (Democrat), otherwise they centralize, also known as partisan congruence (Krause and Bowman 2005).
- Congress will refrain from state mandates during election years, what I refer to as electoral trepidation (Nicholson-Crotty 2008).

In Table 5-4, the predictions from the various arguments with respect to 111th Congress and health insurance reform are detailed. As discussed earlier, the House, based on the DR pivotal legislative team, is expected to choose to delegate authority to the national executive branch and the Senate, with the possible RR pivot, to allocate more authority to the states. In addition, these chamber-level predictions are based on individual-level behavior of legislators as delineated in Chapter 2. Specifically, and in the context of the 111th Congress, DR legislators prefer to centralize authority, or delegate to the national executive branch, DD legislators are indifferent, but prefer to side with their co-partisans, RR legislators prefer to decentralize or delegate authority to the states, and RD legislators vote with their co-partisans.

Since my case involves only one policy type, I cannot examine the extent to which policy type determined delegation strategies in health insurance reform, but the predictions are listed (redistributive policies would centralize and developmental policy decentralize). As described in the previous section, the Republican Devolution argument predicts the House and Senate would nationalize authority, since they had Democratic majorities even though the individual legislators prefer national delegation if they are Democrats and state delegation if they are Republicans.

Table 5-4: Differences in Theoretical Predictions for Health Insurance Reform and the 111th Congress

Theory	House	Senate	Individual Members
Intergovernmental Design	National	States	DR: National DD: Indifferent RR: States RD: Indifferent
Policy Type* -----------Redistributive ----------Developmental	National States	National States	National States
Republican Devolution	National	National	D: National R: States
Partisan Congruence	States	States	no prediction
Electoral Trepidation	National	States	House: National Senate Class I: States Senate Class II: States Senate Class III: National

*In the case of health insurance policy reform, I am unable to examine how policy type influenced delegation strategies

On the next row, the Partisan Congruence argument predicts that both the House and the Senate, with their Democratic majority party and the Democratic president would prefer to decentralize authority to the states because the states in 2009 were predominantly led by Democratic governors. The partisan congruence theory does not offer predictions as to what individual legislators would prefer. The Electoral Trepidation predicts that the House will prefer to centralize, since every member faces an upcoming election, but that the Senate will prefer to decentralize, since only members from Class III face an election soon after enactment.

Of note, is that these theories differ in three ways. First, only the theories of intergovernmental design and electoral trepidation expect there to be differences in delegation choices between the Senate and the House. Second, under electoral trepidation, but not the other three arguments, there should be differences in delegation *preferences* between the House and the Senate (specifically those Senators not facing an election in November 2011). Last, the delegation choices do differ between the theories. Specifically, decentralization to the states is the choice of the Senate as predicted by intergovernmental design, partisan congruence (due to the preponderance of Democratic states), and electoral trepidation, but not Republican devolution. Centralization of the policy by the House with implementation to the national executive branch is the prediction of intergovernmental design, Republican devolution, and electoral trepidation.

Overall, the partisan congruence theory does not fit well with the finding that the House and Senate bills differed in the degree of decentralization, in particular that the House would choose to centralize authority. The choices of individual legislators do align with the Republican devolution argument, though. As previously noted, under a Democratic president the predictions of the theory of intergovernmental delegation and Republican devolution are observationally equivalent. Republicans will prefer to delegate to the states and Democrats will prefer to centralize. Where these two theories differ, is in the expectation for the Senate and House bills. Since Democrats prefer to centralize, according to the Republican devolution hypothesis, then the Democratic Senate bill should centralize authority, which it does not.

In fact, the only other theory that would predict chamber bills that differ in authority allocation is the electoral trepidation argument. I turn to additional data from staffer interviews to examine whether there was a difference in how Senators delegated contingent upon when they would be elected.

Electoral Concerns

According to staffers, election and electoral concerns played a lesser role in the process of crafting the health insurance reform bills and laws. Only three respondents made mention of the importance of elections and none of them were with respect to worrying about the repercussions from having overstepped the role of the national government. One respondent discussed the results of the next election as a crucial issue for implementation of health insurance reform, but no staffers mentioned any differences between Senators who were facing an election in 2010 and those who were not.

This data could be viewed as unsupportive of the electoral uncertainty hypothesis. It is also possible; however, that with elections looming for House members and some Senators, staffers chose not to discuss these issues, or felt they were moot so close to an election. In the transcript of the March 2010 floor debate, one House member remarked on electoral concerns. Scott (D-VA) said "[t]here are many people out here who have been warning and threatening us as to, if we vote on this bill, what will happen to us in the November elections. Well, that is not the question…the question is, what will happen to the American people if we do not vote on this bill?"

This is not to say that electoral concerns did not figure into the calculus of legislators. Instead, legislators did not voice a concern that stepping on states toes with an unfunded mandate would have electoral repercussions; or that even if it did, they would have done things differently. Moreover, stepping out of the health insurance reform debate, electoral trepidation cannot explain why the House decentralizes and the

Senate centralizes under other majorities and presidents. Overall, the theory of intergovernmental delegation most consistently fits with the stories told indirectly by legislators through their actions and rhetoric and directly by the health policy staffers.

Data Analysis Summary

Overall, archives, documents and interviews provide support for the theory of intergovernmental policy design and strong evidence for crucial pieces of my theory—the perceptions of legislators regarding delegation to the states, the importance of voting rules in determining who is pivotal, and the necessity of considering how state leaders (in particular, governors) will implement national policies delegated to them. First, Congress considers the states as one delegation option, and crafts policies involving delegation to both the national executive branch and the states as joint partnership policies. Second, the relationship between legislators and their governors is a key aspect to federal policymaking. And, third, the majoritarian requirements in the House and the Senate are crucial to negotiations. Strong support for electoral trepidation was not found in the data. On the surface, there was support for Republican devolution, but additional questioning of staffers calls that into question. Finally the partisan congruence argument does not provide specific hypotheses about Senate choices, and yet those choices were crucial for health insurance reform.

DISCUSSION AND CONCLUSION

The majority of scholarly work following the recent health insurance reform process has focused on the role of Obama and his decisions with respect to setting the agenda and then handing the reins to Congress to fill in the details of the policy (e.g., Jacobs and Skocpol 2010 or Oberlander 2010). Yet, few have studied how Congress worked out these details. This study focuses on a crucial aspect of this process—the congressional intergovernmental design of health insurance reform. The media portrayal of health insurance reform negotiations and actions was one of partisan bickering, Democratic infighting, and strict vote counting, with arm-twisting, when needed. An analysis of the final floor votes and committee reports to the floor validate these claims. Democrats and Republicans in the House and the Senate were almost completely unified in committee and final floor votes.

A more thorough inspection of voting on amendments and what legislators said in committees in the House and the Senate, however, reveals that although electioneering and partisan issues likely played a role in health insurance reform votes, there were intergovernmental nuances at work also. Specifically, the states heavily influenced the crafting of the health insurance reform, even though, as one staffer remarked, there was a relative dearth of lobbying efforts on the part of the states.[105] Individual legislators considered the impact of policies on their own states during committee meetings where various solutions and options were hashed out with experts. And, based on interview data, the ideological match between a state's leadership and the legislator was important for legislators as they considered what would happen if states implemented various features of health insurance reform.

Interestingly, these interviews also touched on a rival explanation—partisan ideologies. In the opinion of the staffers, across time Republicans prefer to devolve authority to the states and Democrats are more comfortable with centralizing authority. When further questioned about what differences there may be if a Republican resided in

[105] Jacobs and Skocpol (2010) posit that the Obama administration effectively neutralized lobbying efforts, including engaging directly with governors. One Republican staffer backed up this claim and stated that because the governors could never form one collective voice, the cacophony resulted in no action at all.

the White House, such as during No Child Left Behind, staffers responded that of course things would be different and this comfort level would disappear for Democrats.

So, although ideology is important, it is the congruence (borrowing Krause and Bowman's term) that matters. My argument differs from Krause and Bowman, though, by saying that individuals within Congress and their states matter (not the aggregate partisanship of Congress and the states)—and that pivotal members in House and Senate are crucial for intergovernmental delegation choices. The differences in the House and Senate state versus national delegation choices in this respect provide support for my intergovernmental delegation theory compared to Krause and Bowman's partisan congruence argument.

Specifically, Krause and Bowman's theory conjectures that when the average aggregate partisanship of national political institutions is more in line with the average partisanship of all states, we will see decentralization. If this is taken to mean that Democrats prefer to decentralize during the 111th Congress with the mostly Democratic states in 2009-2010, the differences in the House and Senate choices remain unexplained. My argument about intergovernmental context begins from the foundation provided by Krause and Bowman—a preference for closer agents—but adds institutional complexity and considers individual legislators in the House and the Senate and the implications of their constraints and choices.

The lack of differences in the preferences of the various classes of senators does not support the electoral trepidation hypothesis either. Finally, a limitation of studying one policy is that I cannot consider whether policy type matters for delegation to the states versus national actors. Interview responses point to the possibility that it is not the type of policy, per se, but the historical context or status quo of the policy. The fact that the states had been regulating insurance markets for many years meant that the states would likely be chosen to regulate them in the 2009-2010 health insurance reform policy. The influence of the status quo delegation choice is not evaluated in this project and deserves additional attention in the future.

There are two issues not highlighted in this chapter, but that deserve mention—the role of the executive branch in crafting legislation and the individual mandate. First, although Obama's team may have lent a helping hand as various proposals were considered, the proposals considered here are those that received a vote in either a committee or on the floor, thus needing to pass muster with legislators. In other words, whether from the White House or other policy consultants, a proposal would still need to be considered by legislators and either supported or rejected. My theory hinges on this consideration and decision process, not on how legislators got ideas for the structuring and language of the policies in the first place.

Second, I do not delve into the crafting of the individual mandate, which is the key that holds the entire health insurance reform package together. Without the individual mandate, the necessary spreading of risks across the population will not occur, only those who need insurance will buy it, insurance companies will need to increase costs to consumers, and the downward spiral of insurance and health care commences (when the people who need insurance the most cannot afford it). There are two reasons why there was no need to investigate the role of the individual mandate for intergovernmental delegation: 1) both centralized proposals and decentralized proposals included some type of mandate for the population and 2) the authority overseeing the implementing of each mandate was included in the coding of the bills and laws.

In addition, this chapter sidesteps whether liberals wanted a public option and conservatives wanted a lower price tag. Instead, I focus on the intergovernmental architecture of the overarching policy solutions—a state-based versus national-level health insurance exchange (perhaps states could obtain a waiver to include a public option in their exchange) or the Medicaid expansion (increasing the national government's role in state Medicaid programs), for instance.

Finally, what does it mean that I interpret legislators' voting behavior and committee actions as preferences over the delegation of authority? In short, a policy problem often has multiple specific solutions. Some of those solutions may be favored by liberals, others by centrists, and still some by conservatives. The set of actors placed in charge of implementing those solutions play a distinct role in the way, shape, and form of the policies as they play out in the real world. Congress can create a health insurance exchange program that is run by the states, resulting in fifty different varieties of health insurance exchanges as they did or choose to create one national health insurance exchange run solely by the national executive branch, resulting in a different outcome. Those states with preferences for a significant role of the health insurance exchange will likely implement their policy differently than will states that prefer a minimal exchange. By focusing on national versus state delegation choices, I consider the extent to which whether legislators' preferences align with those of their state's matters and find here that, indeed, it does.

APPENDIX

Case Study Data Collection Methods

Archival records include resources from the Congressional Research Service, Voteview.com, the National Conference of State Legislators, and United States Senate and House of Representatives online data. For the purpose of this analysis, legislators' floor votes on the Tri-Committee bill (House votes on H Res 903 and HR 3962 on 11/7/2009), ACA (Senate votes on HR 3590 on 12/23-24/2009), ACA (House votes on HR 3590 3/21/2010), HERCA (House votes on HR 4872 on 3/25/2010), and HERCA (Senate votes on HR 4872 on 3/23-3/25/2010), including the various procedural votes on these measures were collected from all floor votes cast in the 111th Congress from Voteview.com.

From November 1, 2008 through April 1, 2010 Robert Wood Johnson Foundation (RWJ) Daily News Digests and the Commonwealth Fund Washington Health Policy Week in Review were archived. The RWJ daily digest provides summaries and links to selected articles from major journals and news publications and the Commonwealth Fund's weekly review provides stories from the Congressional Quarterly's CQ Health Beat. The full texts of the stories within both digests were saved and all were reviewed for content related to how a legislative package was written and amended, as well as how individual legislators described their support or rejection of the provisions therein. To examine these same features within news and related documents, a LexisNexis search of major news sources was employed using the search terms: "health care reform", "health insurance reform", or "health overhaul" and "congress" or "legislat." Major news sources included the New York Times, the Washington Post, Fox News Network, National Public Radio, MSNBC, and CNN. In addition the Office of Management and Budget and the Congressional Budget Office Director blogs during the time span were examined and saved if found to be relevant to the health care reform and the legislative processes. Finally, the same search procedure was used with Google's search engine and restricting results to the time period of January 1, 2009 through April 1, 2010.

The LexisNexis search resulted in the following sample from the: New York Times 641 pages, Washington Post 863 pages, Fox News Network 127 pages, National Public Radio 552 pages, MSNBC 267 pages, and CNN 393 pages. The Google search resulted in 422 non-similar pages that included results from Huffington Post, the National Review, and various advocacy groups, among others. These pages were then searched for the terms "congress," "legislat," "house," "senat," "member," and "rep" and reviewed for content related to legislative decision-making.

To collect the transcripts of the relevant floor debates and hearings, I began with the Congressional Research Service summaries of each measure. Within these summaries, the debates and hearings are listed. In addition, I used LexisNexis to search for legislative action in the 111th Congress and searched the websites of the committees with jurisdiction for relevant hearings. The transcripts were searched for the terms "congress," "legislat," "house," "senat," "member," and "rep" and reviewed for content related to legislative decision-making. Unfortunately, as of March 1, 2011, some congressional hearing transcripts remain unavailable. These include a handful of Ways and Means committee meetings, though not markups, and HELP markups. Video archives of the HELP panels are available, but were not reviewed for this project. After deleting action less relevant for overall health care reform (e.g. teen pregnancy, veteran health), this resulted in a collection of seventy five hearing documents and twenty days of floor debate. Hearing documents included multiple and single sessions, depending upon how they were archived. Floor debates were read in their entirety from the Congressional Record obtained through HeinOnline for the same features as described above.

One Page Information Sheet Used Prior to Interviews (original in 12 pt font):

THE UNIVERSITY OF MICHIGAN
SCHOOL OF PUBLIC HEALTH
DEPARTMENT OF HEALTH MANAGEMENT & POLICY
1420 WASHINGTON HEIGHTS
ANN ARBOR, MICHIGAN 48109-2029

University of Michigan Doctoral Dissertation Title: *The Federal Policy Design Dilemma: The Structure of Federal-State Policy Authority*

Project Overview:

- A major problem identified in public health is the "patchwork" of state and federal policies: some federal laws give authority to implement a policy to both the state and federal agencies, while other laws leave gaping holes with respect to responsibility of implementation.

- This is important because it affects health outcomes for our population: Whether states or the federal government are the lead, the support, or sole actors involved in a policy, whether states can tailor policies to their population, and whether federal law sets a ceiling or a floor for policy alter the ability of public health practitioners to do their work.

- This project untangles this governmental structure of authority by moving upstream from the problems practitioners face to the **decisions made by policy actors** who shape authority in the language of the law.

> *For example, in the 1965 Social Security Amendments two health care programs were created—Medicare, a national policy of health insurance for the elderly, and Medicaid, a national-state partnership of health insurance for the poor. What forces or ideas drove the decisions to structure these programs in this way?*

Background—there is tremendous variation among who receives authority in federal law and how much authority they receive:

- From 1973 through 2008, on average 3 out every 4 significant national laws delegated some of its provisions to the States.
- The authority in provisions varied dramatically from year to year and law to law and included 100% delegation to the States, 100% joint federal-state partnerships, 100% delegation to national-level actors, and almost everything in between.
- **We are left with an open question: what considerations do policy makers make when deciding who gets the authority to implement a policy?**

Research Process—By shedding light on how authority decisions are made as laws are crafted, the federal and intergovernmental design of policies can be understood and improved to provide better population health outcomes including reducing health disparities across states. As part of my doctoral dissertation, I am examining the design of federal-state authority in the recent health care reform bills and final law. Two sets of questions are asked:

1. What was the process of crafting the authority structure of the health insurance exchanges in the House bill and the Senate bill (federal versus state-based)?
2. Please describe any negotiations regarding state-based versus federal authority in the time leading up to and after passage of 2010 **Patient Protection and Affordable Care Act**.

Pam Clouser McCann, University of Michigan Doctoral Student
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Chapter 6

Individual Legislators and Intergovernmental Delegation

INTRODUCTION

In Chapter 2, I developed a theory of how Congress delegates policy responsibility across federal levels. There are three components to the theoretical argument—an aggregate-level model of Congress making decisions, an individual-level model of how legislators bargain over the decentralization of authority to form successful policy coalitions, and an informal consideration of the influence of uncertainty over the partisanship of national and state implementers during implementation. Earlier chapters examine the aggregate-level model and national and state political uncertainty through a large-N analysis, as well as the underlying mechanisms in both models via an in-depth case study of health insurance reform. A closer analysis of the individual-level model and theoretical implications remains. By studying legislators' voting behavior, I assess whether policy coalitions in the House and Senate include the participants the intergovernmental theory of federal policy design predicts.

In particular, the individual-level theory is based on how legislators compare their most preferred policy outcome to that of their state leadership and the national executive branch to determine how much authority is delegated to the states. As legislators attempt to successfully pass a policy in their chamber, they bargain over how much authority the states receive in national law. This process of legislative coalition formation reveals a pivotal intergovernmental team in the House and the Senate. In the House, the pivotal team is the non-indifferent majority intergovernmental team. In the Senate, the pivotal team, due to the threat or presence of a filibuster, is the non-indifferent minority party intergovernmental team.

By non-indifference, I refer to the fact that in the model an intergovernmental team may strictly prefer centralization, decentralization, or they may be indifferent.[106] The indifferent teams are those where the location of the ideal point for the national and state implementers is the same. Since I use party labels as the legislators' proxy for the ideal points of these actors, this means that when there is a Republican president, those intergovernmental teams that also have Republican governors (Republican legislators from states with Republican governors, RR legislators, and Democratic legislators from states with Republican governors, DR legislators) are indifferent over state authority allocation. The teams that are not indifferent, though, are those teams with the opposite party label as that of the president. Thus, when there is a Republican president, the non-indifferent teams are DD and RD legislators and when there is a Democratic president, the non-indifferent teams are DR and RR legislators.

In Chapter 2, by relying on these preference alignments, majority party agenda setting, and the assumption that intergovernmental teams receive a utility boost when they form coalitions with their co-partisans (e.g., RR with RD or DD with DR), the individual-level model provides information about the makeup of policy coalitions in the House and the Senate under different conditions. For example, under a unified

[106] Recall from Chapter 2, the optimal state authority allocation (α*) = (N-L)/(N-S), where N represents the location of the national executive branch's ideal point, L, the legislator's ideal point, and S, the legislator's state governor's ideal point. In this equation, when the legislator is of the same party as the national executive branch, α*=0 (centralization), when the legislator is of the same party as his state, α*=1 (decentralization), and when N=S, the legislator is indifferent over α.

Democratic government, successful House coalitions will include DD and DR legislators and will centralize authority with the national executive branch. Success, in this case, is defined as the ability to garner enough votes on the floor to pass the policy. A successful Senate bill, on the other hand, will have the support of DD and DR legislators plus some RR legislators in order to reach 60 votes and invoke cloture, if needed. Even when filibusters are not realized, Senators must concern themselves with the possibility that any one legislator can block legislation on the floor. By having at least 60 votes available in a policy coalition, Senators are prepared to face this threat of obstruction.

TESTING THE THEORY

In this chapter, I conduct systematic empirical tests of the arguments in the individual-level model across two separate novel data sets spanning congressional policymaking from 1973-2008. The first dataset is an extension of the data developed in Chapter 3. I collect data on individual legislators' party, vote choice, and state governor's party and analyze the vote on final passage for each of the laws coded from 1973 through 2008 in both the House and the Senate. This dataset provides information about which legislators voted for and against final passage. The set of legislators voting for passage indicates the composition of successful policy coalitions in the House and Senate across the laws included. By analyzing vote choice, in the context of the intergovernmental party teams of the legislators, I can assess the individual-level hypotheses from Chapter 2. These hypotheses include:

<u>Hypothesis 6-1</u> (from Hypotheses 5-8 in Chapter 2): When the House majority party is Republican; both Republican intergovernmental teams (RD and RR) will be more likely to vote for a measure on the floor, regardless of the party of the president.

Hypothesis 6-2 (from Hypotheses 5-8 in Chapter 2): When the House majority party is Democratic; both Democratic intergovernmental teams (DD and DR) will be more likely to vote in favor of measures on the floor, regardless of the party of the president.

Hypothesis 6-3 (from Hypothesis 10 in Chapter 2): In the Senate, under a Democratic president and a Republican majority party, DR legislators will more likely vote with Republicans than will DD legislators.

Hypothesis 6-4 (from Hypothesis 9 in Chapter 2): In the Senate, under a Democratic president and a Democratic majority party, Republican legislators from states with Republican governors (RR legislators) will more likely to vote with the majority party than will RD legislators (Republican legislators from states with Democratic governors).

Hypothesis 6-5 (from Hypothesis 9 in Chapter 2): In the Senate, under a Republican president and a Republican majority party, Democratic legislators from states with Democratic governors (DD legislators) will more likely vote with the Republican party than will DR legislators (Democratic legislators from states with Republican governors).

Hypothesis 6-6 (from Hypothesis 10 in Chapter 2): In the Senate, under a Republican president and a Democratic majority party, RD legislators will more likely vote with Democrats than will RR legislators.

In the Senate, the theoretical model is based specifically on the ability to invoke cloture. Previous studies have shown that a substantial percentage of legislators switch their votes between cloture and final passage (Butler and Sempolinski 2010).[107] Since my theory specifically deals with cloture coalitions in the Senate, I narrow the focus of the tests of the Senate hypotheses by just considering voting behavior on the motion to invoke cloture from the 93rd-110th Congresses.[108] In this second dataset, I consider Senator voting behavior across all cloture votes from 1973-2008, given their intergovernmental team, the majority party in the Senate, and the party of the President. By studying cloture votes, I more closely examine hypotheses 6-3 through 6-6.

[107] Butler and Sempolinksi (2010) find that 11.5% of votes on successful cloture motions are switched to "nay" at final passage.
[108] Although cloture procedures were changed in 1975 (the 94th Congress), the conclusions of my theory do not change based on whether a 2/3 or a 3/5 majority is needed due to the frequency of the intergovernmental teams in the 93rd Congress, so I include all Congresses. Analyses excluding the 93rd Congress do not noticeably alter the findings or conclusions drawn.

Although the theoretical model in Chapter 2 assumes 4 unitary actors representing the 4 intergovernmental teams (DD, DR, RD, and RR legislators), the likelihood that all DD legislators or all RD legislators act en bloc is low. Rather, myriad pressures buffet legislators as they determine how to vote on a particular motion or measure. What I do in the analyses below is to assume the formal individual-level model provides a foundation for how legislators vote. Thus, the hypotheses listed above assume a higher probability, instead of a deterministic prediction, that particular legislators act in the predicted ways given the intergovernmental teams of which they are a part.

A second assumption is needed to move from the theoretical model to an empirical analysis. Specifically, I assume that the majority party in a chamber controls the agenda and is more likely to bring motions and measures to the floor that are in the party's interest (Cox and McCubbins 2007). This does not assume that all Democrats under a Democratic majority vote for a measure. Instead, I assume that if a bill is brought up for a vote under a Democratic majority, Democrats, on average, are more likely to vote in favor of the measure than against it. This assumption, though, creates a problem for assessing my theoretical argument in the House, which I discuss in detail below. In the following section, I describe the research design and data used to test the hypotheses above.

DATA AND MEASUREMENT

By looking at the voting behavior of legislators, given their intergovernmental team, this chapter examines whether the pivotal team identified by the theory is actually more likely to vote with the enacting coalition than a comparison team. To evaluate which intergovernmental teams populate successful policy coalitions, this study utilizes a recorded vote as the unit of analysis. The votes on final passage include 75,958 votes on 172 separate measures from 1973-2008 for the significant legislation described in Chapters 3 and 4.[109] The votes on motions to invoke cloture include 65,724 votes on 686 motions across the time period. For each of the analyses, the dependent variable is a dichotomous "yea" or "nay" vote choice by each legislator voting on that measure or motion.[110] The analyses begin with an examination of votes on final passage (*Final Passage*) and conclude with cloture vote choices in the Senate (*Cloture Vote*).

Conditional Analyses

To examine the theoretical predictions above, it is necessary to collect the partisanship of the president and Senate and House majority party for each year in the dataset for both types of analyses. I collect this information from the House and Senate Archives and Woolley and Peters (2009-2011).[111] Republicans are coded as a 1, Democrats as a -1 and Independents as a 0. These party labels provide the conditions under which the various hypotheses are expected to hold, which I discuss in detail below.

Dependent Variable

For both analyses, the dependent variable is the vote choice of each voting legislator. In the *Final Passage* analysis, the choice is either a "yea" or a "nay" on the final floor vote for the significant legislation across the time period (coded 1 and 0,

[109] Seven measures from Chapters 3 and 4 did not receive a recorded vote in either the Senate or the House and passed each chamber with a voice vote. These measures include the Omnibus Reconciliation Act of 1982 (P.L. 97253), the Nuclear Waste Policy Act of 1982 (P.L. 97425), the Government Securities Act of 1986 (P.L. 99570), the Hurricane Katrina Emergency Relief Act (P.L. 109061), the Tax Relief and Health Care Act of 2006 (P.L. 109432), and the Postal Accountability and Enhancement Act (P.L. 109435) and are not included in the analyses in this chapter.

[110] If a legislator did not vote "yea" or "nay" on the measure, for whatever reason, I coded the vote as missing.

[111] The House historical party divisions were found at http://artandhistory.house.gov/house_history/partyDiv.aspx and the Senate at http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm. Both websites were last accessed on May 17, 2011. The party of the president was collected from The American Presidency Project's website at http://www.presidency.ucsb.edu/data/presparty.php last accessed on May 17, 2011.

respectively). Using THOMAS, I created a list of major actions of each law in the dataset. From this list, I collected the date of votes on final passage (and the specific measure voted on) in the House and the Senate. These votes on final passage were then matched to the appropriate vote in Voteview.com, yielding a collection of legislator's votes on final passage for each law in the dataset. In total, of the 75,958 votes cast, 62,870 were in the House and 13,088 in the Senate. In sum in this dataset, I have a collection of vote choices for legislators, the intergovernmental team for each legislator, and the majority party in the House and Senate, as well as the party of the President.

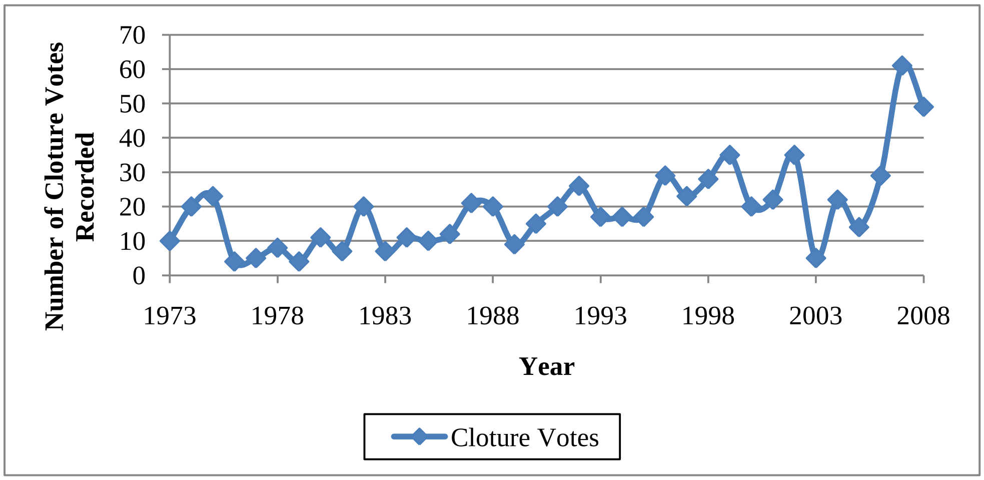
In the *Cloture Vote* analysis, I collected information on all cloture votes taken in the 93rd through the 110th Congresses from the Senate Virtual Reference Desk Cloture List Tables.[112] These cloture votes were matched with the Voteview.com roll call votes by name of the motion or measure, motion or measure number, vote tally, and date. The information provided by these two resources includes how each Senator voted on all cloture votes across the period. These Senators were then matched by year to their state governor using Klarner's (2007) data on state political institution's partisanship for 1973-2007 and the National Governors Association lists of governors for 2008.

Thus, for each cloture vote taken in the time period of the study, I have an individual legislator's vote choice coded as 0 or 1 for "nay" and "yea," the legislator's party, his or her governor's party, and the party of the president and Senate majority for the year the vote was recorded. In the *Cloture Vote* analysis data, 27,878 of the total 65,724 votes to invoke cloture were successful.[113] As can be seen in Figure 6-1, of the

[112] Accessed at http://www.senate.gov/pagelayout/reference/cloture_motions/clotureCounts.htm from April 15-May 15, 2011.
[113] Across this time period there were an additional 6,619 votes on nominations, which I excluded from my analyses.

686 total motions to invoke cloture over the time period, the most frequent were recorded in 2007 (61 votes in total), followed by 2008, 2002, and 1999 (49, 35, and 35 total votes on motions to invoke cloture, respectively).

Figure 6-1: Cloture Votes from 1973-2008



Explanatory Variable

To assess whether or not there is support for the hypotheses in the voting behavior of legislators, I examine whether those legislators who vote with the enacting coalition in the *Final Passage* analysis or with the majority party in the *Cloture Vote* analysis are from the intergovernmental team predicted to be pivotal by the theory. I assume the enacting coalition includes the majority of the majority party. This assumption can be examined empirically by considering the coefficients and significance on the majority party intergovernmental team variables in comparison to the baseline minority party team. Under a Democratic majority, Democratic intergovernmental teams DD and DR, on average, should have higher odds than either minority party intergovernmental team of voting to enact legislation or close debate such that the policy agenda can progress through a chamber.

To analyze how each intergovernmental team votes, on average, the main explanatory variable is a categorical measure of intergovernmental teams. I construct this intergovernmental team variable by matching each legislator to his or her governor for every year in the dataset and create a categorical coding for legislators, where DD, DR, RD, and RR legislators are coded as 1, 2, 3, and 4 respectively. In addition, I code independent legislators and governors as a 5.[114]

By constructing the explanatory variable in this manner, I can assess the extent to which a pivotal team is more likely to vote "yea" than another comparison team. Although the comparison in the House is whether Democrats from either intergovernmental team (DD and DR) are more likely to vote for enactment than their Republican counterparts when in the majority (and vice versa), in the Senate one particular minority party intergovernmental team is theoretically considered to be pivotal and the other minority party intergovernmental team is not. By separating the intergovernmental teams in this categorical fashion, I can assess the extent to which legislators in the pivotal minority intergovernmental teams are more likely to vote for enactment or to invoke cloture than the other minority intergovernmental team. Which team is considered to be pivotal in the Senate is dependent on the conditions noted in Hypotheses 6-3 through 6-6. Pivotal members, therefore, are defined by the fact that without those particular members, a motion or measure will not secure the needed votes for passage.

[114] In addition, I create a second coding where these independent legislators are folded into the 4-categorical variable depending on the party with which the legislators caucused. Thus, an IR legislator (an independent legislator from a state with a Republican governor) is coded as RR if the legislator caucused with the Republicans and a DR if he caucused with the Democrats. If an actor could not be assigned as more left leaning versus right leaning, they were dropped from the analysis. Analyzing the data in this way does not change the substantive findings. It does, however, prohibit an opportunity to consider how independents vote; therefore, I use the 5-category variable in the results section.

For example, when there is a Republican president and a Democratic majority in the Senate, the pivotal minority team is that of RD legislators and not RR legislators. This means that without RD legislators, the motion or measure in the Senate will not pass. Hypothesis 6-6 predicts that RD legislators, then, are more likely to vote with Democrats instead of with their co-partisans. To examine whether this prediction is supported in the data, I analyze whether the likelihood that RD legislators vote for enactment or to invoke cloture is greater than that of the appropriate comparison group. The appropriate comparison group is that of RR legislators, since they are co-partisans, or from the same party. If intergovernmental teams do not influence voting, the coefficient on the RD team variable would not be significantly different from zero.

The expectations for the intergovernmental team categorical variable under the various conditions detailed in the hypotheses are summarized in Table 6-1. The theoretical argument posits that the party of the president does not matter for how the majority party forms successful policy coalitions in the House, but does matter for the Senate (first row of the table). For Hypothesis 6-1, in the House under a Democratic majority party, the prediction is that Democrats vote more often with each other, or for enactment, than with the Republican intergovernmental teams (first column in Table 6-1).

In other words, I expect that when Republicans are in power in the House, a comparison of the likelihood of voting for final passage on a bill is higher for Republicans (both RD and RR intergovernmental teams) than for Democrats (both DD and DR teams). For Hypothesis 6-2 (second column, Table 6-1), under a Democratic majority, the expectation is that Democratic House members vote more often for enactment than do the Republican teams (the baseline category). For the House analysis, I fold the two Democratic intergovernmental teams and the two Republican intergovernmental teams into one measure, to assess this party influence.

Recall, however, that I assume the majority party sets the agenda. In the House, Hypotheses 6-1 and 6-2 refer to the combination of Republican intergovernmental teams (6-1) and Democratic teams (6-2); therefore, for these two hypotheses, I combine intergovernmental teams into a simple party dummy (0 for Democrats and 1 for Republicans). Testing the House hypotheses in this dataset is problematic. First, because the coefficients should be positive by assumption given that the dependent variable is an up or down vote on the floor, and second, because my theory is indistinguishable from voting along party lines in this particular chamber. Thus, this analysis simply assesses whether or not the majority party is likely to vote for the measures brought to the floor by party leaders. Examining the Senate hypotheses, though, can reveal support for the Senate predictions that differ substantially from party line voting.

Table 6-1 Theoretical Expectations for Intergovernmental Team Variable

President	R or D	R or D	D	D	R	R
Majority Party	R	D	R	D	R	D
Pivot	R	D	DR	RR	DD	RD
Chamber	House	House	Senate	Senate	Senate	Senate
Hypothesis:	6-1	6-2	6-3	6-4	6-5	6-6
DD	baseline	+	baseline	majority	+	majority
DR	baseline	+	+	majority	baseline	majority
RD	+	baseline	majority	baseline	majority	+
RR	+	baseline	majority	+	majority	baseline

Baseline is the comparison category for each analysis and majority refers to the majority party intergovernmental teams. The majority teams are expected to have a positive and statistically significant coefficient for each model. The direction of these coefficients simply means that the majority party is more likely to enact (in the *Final Votes* analysis) or vote in favor of motions to close floor debate (in the *Cloture Vote* analysis).

In contrast to the House, the theory suggests specific findings in the Senate that differ from straight party line voting. Columns 3 through 6 in Table 6-1 summarize the theoretical expectations in the Senate under different conditions. Specifically, a unique intergovernmental team is posited as pivotal under each set of conditions. A pivotal team, from the theory, is that team necessary to form a successful policy coalition and is shown in the table as a gray shaded cell.

Beginning with Column 3, under a Democratic president and a Republican majority party, DR legislators are pivotal and, in Column 4, under a Democratic president and Democratic majority, RR legislators are pivotal. This means that under a Democratic president and Republican majority DR legislators would be expected to have higher odds of voting for the measure or motion than DD legislators. With a Democratic president and Senate majority, RR legislators would have higher odds of voting for the measure or motion than RD legislators. Switching to the expected pivots under Republican presidents, in Column 5 with a Republican majority, DD legislators are pivotal (positive coefficient in comparison to DR legislators) and in Column 6 with a Democratic Senate majority, RD legislators are pivotal (positive coefficient in comparison to RR legislators).

What voting behavior is expected of the pivotal intergovernmental teams? As discussed above, outside of the formal model not every legislator within a team is expected to vote in the same fashion. Instead, legislators within a team are predicted to be more likely to vote in a particular way. Moreover, to reach 60 votes and maintain the supermajority needed to invoke cloture if one Senator mounts a filibuster, the majority party (comprised of both majority intergovernmental teams) need only entice enough legislators from the pivotal minority intergovernmental team to join the policy coalition to reach that threshold (given, of course, the possibility that some majority party members may not vote along with the party). The expectation, then, is that legislators from the pivotal minority party intergovernmental team, under each condition, will be more likely to vote with the majority party than the other minority intergovernmental team (the non-pivotal minority team).

These expectations are included in the table as a positive sign, or that a positive and statistically significant coefficient is expected, in comparison to the baseline group:

- Column 3: DR legislators will vote with the Republican majority more often than DD legislators under a Democratic president (Hypothesis 6-3).
- Column 4: RR legislators will vote with the Democrat majority more often than RD legislators when there is a Democratic president (Hypothesis 6-4).
- Column 5: DD legislators will vote with the Republican majority more often than DR legislators when there is a Republican president (Hypothesis 6-5).
- Column 6: RD legislators are more likely to vote with the Democratic majority than RR legislators when there is a Republican president (Hypothesis 6-6).

This chapter analyzes two separate datasets of vote choices in the Senate. One dataset is on the final passage of significant legislation and the other is on motions to invoke cloture. Given the theoretical focus on coalitions able to invoke cloture, I expect to find stronger results in the *Cloture Vote* analysis than in the *Final Passage* analysis. Specifically, in votes on final passage in the Senate, a simple majority is all that is required, thus, at this stage of voting the pivotal minority intergovernmental teams in the Senate are less informative. This is not to say that legislators from the pivotal team are not considered to be important at the earlier stages of congressional action for these measures. On the contrary, if a legislator mounted a (or threatened to) filibuster earlier in the process, the pivotal minority intergovernmental team is crucial to a successful policy coalition. Since these votes are on final passage, which assume or select away the earlier stages of legislative action, and because legislators can switch their votes at any time, I expect the influence of the pivotal minority intergovernmental team to be diluted in the *Final Passage* analysis.

These theoretical predictions also require partisan labels of the president and Senate and House majority party for each year in the dataset. With these partisan labels, I run each analysis given the various conditions of government (see Table 6-1). In the House, these conditions include a model under Republican majority and another under Democratic majority. In the Senate, there are four conditions to assess: Democratic president with Republican Senate majority, Democratic president with Democratic Senate majority, Republican president with Republican Senate majority, and Republican president with Democratic Senate majority.

Control Variables

I do not include control variables in the *Final Passage* and *Cloture Vote* analyses reported in the tables.[115] Given the variety of underlying policy areas and different annual environmental conditions, those factors expected to explain legislative voting behavior, such as constituency pressures or personal preferences are expected to wash out and not influence the substantive conclusions of the analyses.[116]

EMPIRICAL ANALYSES

I estimate three overarching models, two for the *Final Passage* analysis (one in the House and one in the Senate) and one model for the *Cloture Vote* analysis.

- *Final Passage* Analysis: Logit (p_i) = log [p(vote "yea")/1-p(vote "nay")]$_{i,t}$ = β_0 + β_1INTERGOVERNMENTAL TEAM$_{i,t}$ + ε, if majority party is

[115] In the *Final Passage* analysis, I also run a set of models that include various controls from Chapter 4. These variables include the explanatory variables from that chapter's empirical analyses: preference distance from pivotal legislative team to the state and the president, as well as state and national political uncertainty. In addition, I include the same control variables as in Chapter 4: lagged federal deficit as a percent of GDP, lagged state fiscal health (operationalized as state revenue growth as a percent of GDP), traditional state policies (0,1), and activist public mood (0,1). I omit unified government, since this variable is collinear with the conditions of national government needed to assess the hypotheses. The results of these models are not significantly different from those discussed in this chapter, thus, I report the parsimonious theoretic model instead.

[116] Environmental conditions can include diverse factors such as fads that increase the consumption of certain goods or products, climate, monetary concerns, or even a variety of disasters, among other things.

Republican/Democrat for the House and if majority party is Republican/Democrat & if party of President is Republican/Democrat in the Senate.

- *Cloture Vote* Analysis: Logit (p_i) = log [p(vote "yea")/1-p(vote "nay")]$_{i,t}$ = β_0 + β_1INTERGOVERNMENTAL TEAM$_{i,t}$ + ε, if majority party is Republican/Democrat & if party of President is Republican/Democrat.[117]

Given the various conditions to be assessed, these models result in two equations in the House:

1. *Final Passage* logit under Republican majority and
2. *Final Passage* logit under a Democratic majority.

And eight equations in the Senate:

1. *Final Passage* logit under a Democratic president with a Republican majority,
2. *Final Passage* logit under a Democratic president with a Democratic majority,
3. *Final Passage* logit under a Republican president with a Republican majority,
4. *Final Passage* logit under a Republican president with a Democratic majority,

5. *Cloture Vote* logit under a Democratic president with a Republican majority,
6. *Cloture Vote* logit under a Democratic president with a Democratic majority,
7. *Cloture Vote* logit under a Republican president with a Republican majority, and
8. *Cloture Vote* logit under a Republican president with a Democratic majority.

Each equation estimated in this chapter serves a particular purpose, to assess one of the theoretical hypotheses. The number of equations derives from the variety of conditions to be assessed and the different baseline comparison groups needed in the Senate. It is possible to analyze these different conditions and groups with one interactive model, where the intergovernmental team variable is interacted with the majority party (for the House model) or the majority party and the party of the President (for the Senate model). Interpreting the three (and four)-way interactions, given the categorical nature of the intergovernmental team variable, though, seems both more cumbersome and less useful.

[117] The final set of models also includes the condition: if the majority party of the House is Republican/Democrat.

First, the coefficients from a three- or four-way interactive logit model are less than informative. Second, comparing the appropriate baseline group with the particular pivotal team in each condition would require algebraic manipulation to report the log odds of probability of voting in favor over the probability of voting against for each pivot versus comparison group. By estimating each condition separately with the appropriately selected comparison group, the coefficient on the pivotal team under that particular condition is that of the pivotal team votes with the enacting coalition, or with the majority party, compared to the other minority intergovernmental team. In sum, separately analyzing each condition allows for a straightforward picture of the different comparison groups and eases the presentation of the findings in a simple regression output table.

RESULTS

In Table 6-2, I display the results of the two models examined in the House of Representatives for the *Final Passage* Analysis. The models in this table allow me to assess the hypothesis that the majority intergovernmental teams are the participants in successful policy coalitions in the House. The majority intergovernmental teams are considered pivotal by my theory and are shaded in the table. Models H-1 and H-2 in Table 6-2 provide support for the House hypotheses (Hypotheses 6-1 and 6-2). As expected, in Model H-1 under a Republican majority party in the House, the Republican intergovernmental party teams together are more likely than the base Democratic teams to vote for passage with log odds of 1.983 for Republican legislators. This finding is highly statistically significant and reveals that Republicans are 627% (exp(1.983)=7.267) more likely to vote for passage than Democrats when Republicans are in the majority, suggesting support for Hypothesis 6-1. In Model H-2, the odds ratio is 3.427

(exp(1.232)=3.427) and statistically significant, meaning that Democrats have 243% higher odds of voting for final passage than Republicans when Democrats have the majority in the House.

Table 6-2: House Votes on Final Passage

	Model H-1	Model H-2
President Majority Pivot	 Republican R	 Democrat D
Teams DD & DR	(base) (base)	1.232**** (0.195)
Teams RD & RR	1.983**** (0.390)	(base) (base)
Independents	-0.019 (0.610)	
Constant	0.425* (0.217)	0.596**** (0.138)
N	21797	41071
Wald Chi^2	42.588	40.085

Analyses are logit with standard errors clustered by public law number and p-values noted as ^p≤0.10, *p≤0.05, **p≤0.01, ***p≤0.001, ****p≤0.0001.

Taken at face value, the results in Table 6-1 provide support for the House hypotheses derived from my theoretical model. It is important to remember, however, that the results in Table 6-1 also support the assumption that the majority party is more likely the enacting coalition than the minority party, or that members of parties vote together. As described above, in the House, my theory cannot be distinguished from straight party line voting, because I expect no difference in how co-partisan intergovernmental teams vote. In my theory, DD and DR legislators should vote together as should RR and RD legislators. I must turn to the Senate to assess whether the intergovernmental theory of coalition formation holds any traction in the data.

In Table 6-3, I present the findings for the analysis of votes on final passage for the 172 pieces of significant legislation in the Senate. At a glance, the results from the Senate models of votes on final passage align with the findings from the House analyses. Specifically, majority party intergovernmental teams across all four models, though not grouped together as in the House, are significantly more likely to vote for passage than the baseline minority party intergovernmental team across all four models. This finding supports the enacting coalition assumption. In particular, in each model, both majority party intergovernmental teams are significantly more likely to vote in favor of final passage (and in later models to invoke cloture) than the excluded minority team. Across the four specifications, the log odds range from a low of 0.8 (in Model S-4 for Democratic teams) up to 2.2 (in Model S-3 for Republican teams), indicating that majority teams have much higher odds of voting for passage than the minority team (and if the comparison group is converted to the other minority party team, similar large positive and significant results hold). These findings are all statistically significant beyond the $p \leq 0.0001$ level.

The Senate models, though, are designed to test whether the pivotal intergovernmental team has a positive and statistically significant coefficient in comparison to the other minority intergovernmental team. I discuss the findings related to these hypotheses, specifically Hypotheses 6-3, 6-4, 6-5, and 6-6, next. The pivotal team in each model in Table 6-3 is demarcated by gray shading. The expectation is that these pivotal teams, which are minority party intergovernmental teams, should have a positive coefficient when compared to the other minority party intergovernmental team (the baseline). Model S-1 assesses Hypothesis 6-3, Model S-2 examines Hypothesis 6-4, and Models S-3 and S-4 consider Hypotheses 6-5 and 6-6, respectively.

Table 6-3: Senate Votes on Final Passage and Pivotal Party 1973-2008

DV: final passage vote (0,1)	Model S-1	Model S-2	Model S-3	Model S-4
President Majority Pivot	Democrat Republican DR	Democrat Democrat RR	Republican Republican DD	Republican Democrat RD
Team DD	(base) (base)	1.830**** (0.137)	0.125 (0.127)	0.841**** (0.094)
Team DR	-0.162 (0.150)	2.070**** (0.192)	(base) (base)	0.995**** (0.109)
Team RD	1.527**** (0.224)	(base) (base)	1.457**** (0.153)	0.268** (0.092)
Team RR	1.654**** (0.198)	-0.030 (0.134)	2.244*** (0.207)	(base) (base)
Team Independent		0.413 (0.532)	-0.084 (0.516)	-0.345 (0.362)
Constant	1.102**** (0.121)	0.542**** (0.077)	0.690**** (0.094)	0.995**** (0.067)
N	2154	2611	2515	5806
Wald Chi^2	148.85	282.39	201.10	133.03

Analyses are logit with robust standard errors and p-values noted as ^p≤0.10, *p≤0.05, **p≤0.01, ***p≤0.001, ****p≤0.0001.

As can be seen in the table, only those models under Republican presidents have a positive coefficient. And, of those two models, only Model S-4 (Republican president with a Democratic majority party) has a pivotal team with a statistically significant positive coefficient. Specifically, RD legislators have 30.6% (exp(0.268)=1.306) higher odds of voting for final passage under a Republican president with a Democratic majority than RR legislators, providing support for Hypothesis 6-6, but not for Hypotheses 6-3 through 6-5. The model estimating the influence of the DD pivotal team on the likelihood of final passage (Model S-3) fails to reject the null that DD pivotal legislators, on average, do not vote in a significantly different manner than DR legislators. Models S-1 and S-2 similarly fail to reject the null hypothesis for the pivotal team variables.

Although the findings in Table 6-3 provide no support for Hypotheses 6-3 through 6-5, since those particular analyses focus on votes on final passage, they are not particularly surprising. As explained earlier, the influence of the pivotal minority intergovernmental team on votes over final passage are expected to be more dilute than in votes on motions to invoke cloture. Table 6-4 presents the empirical results to specifically explore whether the pivotal minority party team votes in a significantly different manner than the other minority intergovernmental team on cloture votes.

Column 1 presents the results for the model estimated under a Democratic president and Republican Senate majority, with the left-hand side of the column including all cloture votes and the right-hand side only successful cloture votes. As before, the pivotal intergovernmental team is shaded dark gray, with the baseline comparison group a lighter gray. The results in this analysis of cloture votes are highly consistent with the theoretical expectations. As predicted by the theory, the pivotal DR team, the pivotal RR team, and the pivotal RD team have statistically significant higher odds of voting to close debate than their co-partisan baseline group in each specific model. In model S-1, the model of all cloture votes under Democratic presidents when there is a Republican Senate majority, there is a 9.2% (exp(0.088)=1.092) higher odds that pivotal DR legislators will vote with Republicans on motions to invoke cloture than do DD legislators (with a p-value = 0.094). The sign on the coefficient for this variable is still positive in model S-2 of only successful cloture votes, but is not statistically significant.

Under a Democratic president and Democratic Senate majority (model S-3), the odds are 16.6% (exp(0.154)=1.166) higher that pivotal RR legislators will vote with Democrats to close debate than RD legislators. This finding increases in size and precision in the model of only successful cloture votes (Model S-4), where the higher odds increase to 35.4% (exp(0.303)=1.354). Similarly, in Model S-7, the pivotal RD legislator variable under Republican presidents and Democratic Senate majorities has a positive coefficient and is statistically significant, yielding 16.6% (exp(0.154)=1.166)higher odds that RD legislators vote to close debate than do RR legislators. Again, restricting the analysis to successful cloture votes results in a positive, but not statistically significant, coefficient (Model S-8).

In other words, for the most part, as Senators attempt to create a policy coalition which would allow them to close debate on the floor, the majority party more often entices the intergovernmental pivot to join their coalition than the other minority intergovernmental team. This finding is in accordance with the conclusions of the formal coalition bargaining model in Chapter 2. The results from one condition, Republican Presidents with Republican Senate majorities; however, does not support this claim and specifically fails to demonstrate support for Hypothesis 6-5. In the model assessing all cloture votes, the coefficient is close to zero (Model S-5) and in the estimation including only successful cloture votes, the coefficient is in the opposite direction than expected (negative) and is statistically significant. This finding indicates that, contrary to Hypothesis 6-5 where pivotal DD legislators are expected to vote more often with Republican legislators than do DR legislators, DD legislators vote less often to close debate with Republicans than do DR legislators. This finding suggests that DR legislators may represent the pivotal vote under this particular condition.

Table 6-4: Senate Votes on Cloture and Pivotal Party 1973-2008

DV: cloture vote (0,1)	Model S-1 all	Model S-2 success	Model S-3 all	Model S-4 success	Model S-5 all	Model S-6 success	Model S-7 all	Model S-8 success
President / Majority / Pivot	Democrat / Republican / DR		Democrat / Democrat / RR		Republican / Republican / DD		Republican / Democrat / RD	
Team DD	(base)	(base)	2.570****	2.474****	0.005	-0.207*	1.925****	1.234****
	(base)	(base)	(0.081)	(0.161)	(0.052)	(0.091)	(0.037)	(0.065)
Team DR	0.088^	0.056	2.971****	2.299****	(base)	(base)	2.095****	1.573****
	(0.053)	(0.119)	(0.102)	(0.181)	(base)	(base)	(0.042)	(0.080)
Team RD	2.267****	0.979****	(base)	(base)	1.278****	0.813****	0.154***	0.061
	(0.066)	(0.151)	(base)	(base)	(0.056)	(0.104)	(0.033)	(0.056)
Team RR	2.334****	1.263****	0.154^	0.303*	1.269****	0.918****	(base)	(base)
	(0.060)	(0.145)	(0.093)	(0.149)	(0.058)	(0.109)	(base)	(base)
Team I			0.105	0.168	0.100	-0.346	0.443	-0.724**
			(0.425)	(0.639)	(0.214)	(0.344)	(0.193)	(0.276)
Constant	-0.468****	1.572****	-0.970****	-0.168^	0.099*	1.358****	-0.207****	1.054****
	(0.042)	(0.096)	(0.056)	(0.090)	(0.038)	(0.068)	(0.024)	(0.040)
N	14774	4940	5922	1890	13115	6323	31913	14725
Wald χ^2	3030.75	128.549	1649.54	342.54	1047.35	188.82	4918.42	741.75

Analyses are logit with robust standard errors and p-values noted as ^p≤0.10, *p≤0.05, **p≤0.01, ***p≤0.001, ****p≤0.0001. Cloture votes on nominations are excluded from the analyses.

Another notable set of findings in Table 6-4 are those regarding the difference between all cloture votes (the odd numbered models) and successful ones (even numbered models). I expected that an analysis of successful cloture coalitions would reveal stronger results than estimations including both successful and unsuccessful attempts to close floor debate. The results with respect to this consideration are inconsistent with that expectation. In the central set of columns (Models S-3 through S-6), the coefficients for the variables of interest, as expected, gain strength and precision. The results from the outermost columns (S-1, S-2, S-7, and S-8), though, do not. These findings suggest that Senators may first rely on each other's intergovernmental context (DD, DR, RD, and RR), given the President's party, as they go about overcoming a filibuster. Perhaps in the end, though, other factors come into play, such as buying off certain senators with distributive goods in their district or deleting provisions of interest to a particular legislator.

In summary, the results reported in Table 6-4 indicate three overall conclusions. First, in general, the hypotheses derived from the intergovernmental bargaining coalition model are supported. Specifically, across all but one condition I find support for the hypotheses. Only Hypothesis 6-5 is contradicted by the estimation results. Second, and unexpectedly, there may be variation in the formation of cloture coalitions that are successful versus all attempts to invoke cloture. This potential difference is suggested by the loss of significance in the pivotal team variable's coefficient under both sets of "divided" government, or Democratic presidents with a Republican Senate majority and Republican presidents with a Democratic Senate majority (Models S-1 to S-2 and S-7 to S-8) and gain in precision under both sets of "unified" government, or Democratic presidents with a Democratic Senate majority and Republican presidents with a Republican Senate majority (Models S-3 to S-4 and S-5 to S-6).

Third, when the Senate majority and president are both Republican, the cloture coalition appears to include the indifferent minority party intergovernmental team, DR legislators instead of members from the predicted pivotal team of DD legislators. To investigate this finding further, I consider the other national institution heretofore ignored in these analyses—the House. In the case study from Chapter 5, elite interviews indicate the importance of designing policy in one chamber in anticipation of a conference and the need to compromise with the other chamber.

Table 6-5 shows a cross-tabulation of House and Senate majorities under different presidential parties in the 93rd to 110th Congresses. Under Democratic presidents, when there is a Democratic Senate, all Houses also have Democratic majorities and when there is a Republican Senate, all Houses also have Republican majorities. Under Republican presidents, a divided legislature occurs for 13,253 votes (6,183+7,070). In the estimation of the models that produced the results in the previous table (Table 6-4), I do not account for the majority party in the House. In the models in Table 6-6 and 6-7, I do.

Table 6-5: Party Configuration of National Institutions

	Democratic President		Republican President	
	Democratic Senate	Republican Senate	Democratic Senate	Republican Senate
Democratic House	7,757	0	28,898	7,070
Republican House	0	16,366	6,183	10,354

Cell numbers indicate the number of votes on cloture taken under the various configurations.

Given the lack of a divided legislature under Democratic presidents, Tables 6-6 and 6-7 replicate the models from Table 6-4 under Republican presidents (Models S-5 through S-8), but with the addition of the House majority.[118] The results of this initial analyses including the House majority simply as a control variable in Table 6-6 indicate that the majority party in the House is a crucial factor in the likelihood that legislators vote for cloture in the Senate under Republican presidents, as is evidenced by the statistically significant and positive coefficient on the House variable under Republican presidents with either a Republican majority or a Democratic majority in the Senate. The positive and significant coefficient on the House majority party indicates that moving from a Democratic to Republican House majority party is associated with positive log

[118] The analyses restricted to successful cloture votes are not significantly different from those for all votes. Thus, I report votes on all motions to invoke cloture, excluding nominations, in Tables 6-6 and 6-7.

odds of Senators voting to close debate. The actual meaning of this result for the pivotal team in each model is unclear, since it is the interactive model, where the House is a contingency, which is needed.

Table 6-6: House as a Control in Senate Cloture Votes

President Senate Pivot	Republican Republican DD	Republican Democratic RD
Team DD	0.069	1.957***
	(0.054)	(0.037)
Team DR	.	2.103***
	.	(0.042)
Team RD	1.331***	0.179***
	(0.056)	(0.033)
Team RR	1.289***	.
	(0.058)	.
Team I	0.077	0.367*
	(0.218)	(0.185)
House Majority	0.133***	0.136***
	(0.020)	(0.018)
Constant	0.062	-0.134***
	(0.039)	(0.026)
N	13115	31913
Wald Chi^2	1120.92	4933.717

Analyses are logit with robust standard errors and p-values noted as ^p≤0.10, *p≤0.05, **p≤0.01, ***p≤0.001, ****p≤0.0001.

Table 6-7, therefore, examines the extent to which the House majority influences cloture coalition formation, by including the House majority as an additional contingency. In particular, the models investigate the influence of the theoretically expected pivotal team (DD under Republican presidents with a Republican Senate majority and RD under Republican presidents with a Democratic Senate majority, highlighted with dark gray shading), given a Democratic or Republican House majority. The results show that when there is a Republican president, Republican Senate majority, and Democratic House majority, Hypothesis 6-5 is supported, due to the positive and statistically significant coefficient on the pivotal DD team variable. Under this condition, there are 14.7% (exp(0.137) = 1.147) higher odds that DD legislators vote to close debate with the Republican majority than do DR legislators. The positive coefficient and supportive findings for Hypothesis 6-6 from the earlier estimation with regards to the RD pivot (Model S-7 in Table 6-4) are replicated here, but the coefficient is only statistically significant under a Democratic House majority.

Table 6-7: Cloture Votes under Republican Presidents given House Majorities

DV: cloture vote (0,1) President Majority Pivot	Model S-9 all Republican Republican DD	Model S-10 all Republican Republican DD	Model S-11 all Republican Democrat RD	Model S-12 all Republican Democrat RD
HOUSE	Democratic	Republican	Democratic	Republican
Team DD	0.137^	-0.159*	1.969***	1.951***
	(0.079)	(0.074)	(0.040)	(0.101)
Team DR	(base)	(base)	2.175***	1.829***
	(base)	(base)	(0.048)	(0.090)
Team RD	1.017****	1.699****	0.206***	0.065
	(0.082)	(0.085)	(0.037)	(0.079)
Team RR	0.899****	1.617****	(base)	(base)
	(0.087)	(0.080)	(base)	(base)
Team I	1.092*	-0.241	-1.075**	2.078***
	(0.473)	(0.251)	(0.339)	(0.434)
Constant	0.061	0.120*	-0.288***	0.062
	(0.064)	(0.048)	(0.027)	(0.049)
N	6370	6745	26379	5534
Wald Chi^2	273.03	855.24	4253.30	734.86

Analyses are logit with robust standard errors and p-values noted as ^p≤**0.10, *p≤0.05, **p≤0.01, *****p≤**0.001, ****p≤0.0001.**

Model S-10 in Table 6-6 further clarifies the unexpected result from the previous estimation that had excluded the House. In particular, when there is unified Republican government, Republican Senators appear to court DR legislators more so than DD and Independent legislators, given the negative and statistically significant coefficient on the Team DD variable. In other words, members from team DD in Model S-10 are significantly less likely to vote for cloture than members from the pivotal team DR (odds ratio = 0.853, exp(-0.159)=0.853).

One additional finding remains to be discussed—the voting behavior of Independents across the estimation results. In all but a handful of the models estimated across Tables 6-2 (House, *Final Passage*), 6-3 (Senate, *Final Passage*), 6-4 (Senate, *Cloture Votes*), and 6-7 (Senate, *Cloture Votes* with House contingency), I cannot reject the null hypothesis that the coefficient on the odds that Independents vote differently than the baseline group is zero (even if I widen the confidence intervals to 90%). Those few models where the coefficient is statistically significant, though, deserve to be highlighted and their implications considered. In the Model S-8 from Table 6-4 on Senate cloture votes, the results indicate that under a Republican president and Democratic Senate majority that Independent legislators are less likely to vote for cloture than the baseline RR team (log odds =-0.724). A negative and statistically significant coefficient on Independents is evident in Model S-11 from Table 6-7 as well. In this model of cloture voting given a Republican president, Democratic Senate, and Democratic House reveals log odds of -1.075 for Independents in comparison to RR legislators. These results imply that under these particular conditions Independent legislators are not part of the cloture coalition.

Alternatively, two models from Table 6-7 demonstrate positive and statistically significant coefficients on the Independent legislators' variable (Models S-9 and S-12). In other words, under a Republican president and Senate with a Democratic House (Model S-9) or a Republican president with a Democratic Senate and Republican House (Model S-12), the odds ratio that Independents vote with the majority party in the Senate to close debate on the floor are higher than the pivotal legislators (DR legislators in the first model and RR legislators in the second). In both models, the coefficient on Independent legislators is larger and more precise than for the theoretically expected pivotal team (DD for Model S-9 and RD for Model S-12). In other words, it appears that the majority party in the Senate under these particular conditions may entice Independent legislators to aid them on motions to invoke cloture instead of the predicted minority party intergovernmental team. These findings are only suggestive, though, since the number of senators who identify as Independents and place votes under these conditions across the time span of the study is low (27 votes for Model S-9 and 144 votes for Model S-12, in comparison to >1,000-2,000 votes for the four intergovernmental teams for both models).

In this results section, I have estimated a number of different models assessing the various configurations of national institutions and theoretical pivotal intergovernmental teams. Overall, I find support for five of my six hypotheses across the House and the Senate for how individual legislators cast their votes and the resulting policy and procedural coalitions. In addition, I find the strongest evidence for the Senate in the examination of cloture votes, which is the basis of the theoretical argument. The results are not completely supportive of the theoretical argument, however. In particular, Independent legislators and unified Republican government appear to defy the theory. The two likely reasons for these challenges are that the individual-level theory assumes away Independent legislators and ignores the influence of bicameralism on policy coalition formation in each chamber—two potential areas of future research.

DISCUSSION AND CONCLUSION

In this chapter I undertake an analysis of two separate datasets to test the individual-level hypotheses that emerge from the theory of intergovernmental delegation in Chapter 2. Overall, I find support for the hypotheses, with one exception: when there is a Republican president, a Republican Senate majority, and a Republican House majority. In this circumstance, DR legislators help Republicans close floor debate more so than do DD legislators, which were the expected pivotal legislators.

The results from this chapter are a useful addition to the literature on centralization and decentralization by providing an examination of the extent to which state authority allocation in national law influences policy and procedural coalition formation. Specifically, hypotheses generated from a formal model focused exclusively on state authority allocation and intergovernmental delegation by House and Senate members are supported. The consistent findings suggest the need for work on the extent to which this type of coalition formation and the resulting pivots influences the degree of decentralization in national law. In fact, Chapter 4 does just this by examining the impact of these pivotal legislators on decentralization over time and across policies. Taken together, then, these empirical analyses point to the likelihood that if intergovernmental context is overlooked in policymaking, that pivotal legislators and federal delegation design will be misidentified.

This chapter also contributes to a growing body of literature on cloture voting in the Senate. Early scholars focused on why legislators would choose to incorporate cloture into the procedures of the chamber, the history of filibustering and invoking cloture, and the benefits of changing the size of policy coalitions for individual legislators and minority parties (e.g., see Oppenheimer 1995, Binder 1998, Groseclose and Snyder 2000, Wawro and Schickler 2006, and Koger 2010). Scholars who assess, either theoretically, empirically, or both, which legislators vote to close debate have included Cox and Poole (2002) with party effects, Lee (2006) with regional coalitions, and Butler and Sempolinski (2010) based on non-policy determinants. In addition, and often less directly, many spatial voting models such as Krehbeil (1997) or Enelow and Henich (1984) consider the identification of the pivotal legislator, including the filibuster pivot. By including a consideration of legislator's intergovernmental context, the filibuster pivot is not the legislator just beyond some median when the legislator's ideal points are aligned from left to right. Instead, the filibuster pivot depends on which legislators are on the pivotal intergovernmental team.

The limitations of this chapter are related to the fact that I use party labels as a proxy for the location of the ideal points of the legislators, the state leadership, and the national executive branch and that the previously constructed theory ignores bicameralism. A more refined measure, if incorporated into the theory, may be able to more specifically determine the pivotal legislators, instead of a team of potentially pivotal legislators, as is done here. To be able to assess the predictive power of my theory in comparison to Krehbiel's (1998) pivotal politics theory with respect to the filibuster pivot, though, requires more precise estimations of ideal points across all three sets of actors. Shor, Berry, and McCarty (forthcoming) may provide just such data.

Regardless, in most of the analyses, I find the Senate majority party gains the additional votes needed to invoke cloture from the pivotal teams predicted by my theory of intergovernmental delegation. In only one model—that of a unified Republican government—is there little support in the data for the theory. Perhaps under unified government, Republican senators can more easily compel DR legislators to vote alongside them on motions to invoke cloture when a Republican is in the White House and the House majority is also Republican than DD legislators. This pressure may be more credible because a Republican House is less likely to balk at the provisions in a Republican Senate bill. Alternatively, perhaps DR legislators, during periods of unified Republican national government, must strive to look more conservative, or more Republican-like, to retain elected office. Underlying this alternative coalition formation process is the opportunity for the Republican majority to centralize authority with the national executive branch without having to decentralize some portions of the policy to appease the pivotal DD legislators (who strictly prefer to decentralize in this condition).

There are two problems with the aforementioned possibilities. First, why is majority pressure on mismatched (DR legislators, or alternatively, RD legislators) more credible under unified Republican government and not under unified Democratic government? Models S-3 and S-4 in Table 6-4 indicate that the Democratic majority under unified Democratic national government gains the support of the predicted RR legislators more often than RD legislators. And, second, if Republicans are somehow better at pressuring these mismatched DR legislators, since in Models S-1 and S-2 from Table 6-4 reveal a positive coefficient on the pivotal DR legislators under a Democratic president with a Republican Senate majority, why do Republican majorities with a Democratic House (Model S-9, Table 6-7) not work in the same fashion? In sum, this chapter produces almost as many questions as it addresses, particularly with respect to coalition formation in the Senate and bicameralism, that deserve further study.

Finally, the tests included in this chapter span, not only three decades, but also many different policies with a broad range of degrees of decentralization of authority to the states. What this study fails to do is to assess whether particular legislators vote for centralization versus decentralization. There is one major reason for this omission. In the intergovernmental theory in Chapter 2, coalition formation depends on the difference in state authority allocation between a status quo and the policy reform offered in a bill. Since I do not have the change in decentralization, I cannot analyze the extent to which different types of legislators vote for or against a bill. This type of study deserves further attention.[119]

In conclusion, the findings in this chapter suggest that previous studies ignoring the intergovernmental context of coalition bargaining in Congress may overlook a significant determinant of policy and cloture coalition formation—bargaining over the degree of authority allocated to the states. This conclusion has significant implications for specific policy areas, such as public health policy, including that a health policy, while possibly expertly crafted with respect to techniques to improve health care, public health outcomes, or specific prevention goals, may also need to be designed (with respect to the intergovernmental nature of the authority relationships in it) to deal with how the House majority party faces only a simple majority vote for final passage, but that the Senate majority party must bargain with a pivotal minority party intergovernmental team to successfully pass a policy.

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[119] In the empirical analyses of votes on final passage in the House and Senate, I include a control variable of the degree of decentralization in the law and find that the coefficient on the variable is positive but not statistically significant across any of the models. This finding suggests that it is the change in state authority allocation that influences how individual legislators vote.

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Chapter 7

Conclusion

SUMMARY

In my dissertation, I study the conditions under which Congress allocates more or less policy authority to the states. The flexibility of the Constitution along with expansive judicial interpretations allow Congress to act as the principal, where the states along with the national executive branch act as potential agents, as they craft policy. This creates a federal design dilemma. How much authority should Congress keep at the national level versus delegate to the states? Although many scholars study how Congress delegates authority, no previous work considers how this delegation changes when the fifty states are also considered as agents of Congress. Scholars in federalism and public policy, who provide explanations for decentralization of authority, fail to consider what I call the intergovernmental context—namely legislators come from specific states and consider how their state will implement policy if authority is delegated to the states.

Legislation and delegation of authority provide the context for the operation of the public health system (Wing 2003, Turnock 2004), but the specific ways in which this legal framework shapes public health practice remain understudied. Which level of government has policy authority is central to public health practice and the structure of public health systems. Whether states or the federal government are the lead, the support, or sole actors involved in a policy alters the ability of public health practitioners to do their work. Varying the amount of authority of federal and state bureaucracies changes the intent, the services, and the outputs of the underlying program. For instance, when the states have more authority in a program, the average number of eligible individuals tends to be smaller (with variance across states) than when the federal government has more authority (Rom, 2004).

In this study, I carefully considered how Congress makes decisions about whether to give the states more or less authority in public health, health, and other national policies. In Chapter 2 of my dissertation, I developed two formal models of how Congress (aggregate-level model) and how individual legislators in Congress (individual-level model) intergovernmentally delegate authority to the states and the national executive branch. I argued that the location of the ideal points of the actors involved and uncertainty over these ideal points during implementation were crucial to how legislators formed successful policy coalitions in the House and the Senate, and how Congress allocated authority to the states in national law.

To be able to test this theory across a sample of laws that delegate authority to state and national actors, I developed a novel dataset in Chapter 3. This dataset included 179 pieces of significant legislation from 1973 through 2009 containing over 24,000 coded provisions. My data indicate that delegation to state level implementers occurs in almost every significant piece of domestic legislation passed in the time period of the study.

After constructing this dataset, I tested the hypotheses that result from the aggregate Congressional delegation model and found that, as expected, as the distance between a pivotal legislator in Congress and his state increases, less authority is delegated to the states. The results in Chapter 4 also indicate support for hypotheses about state and national political uncertainty. Specifically, as uncertainty over the party that will be in power in the pivotal state during implementation of the law increases (state political uncertainty), significantly less authority is delegated to the states. There was also minimal support for the fact that as national political uncertainty increases, more authority is delegated to the states. I also found, unexpectedly, that as the distance between Congress and the national executive branch increases that delegation to the states also decreases. This result, which is contrary to my theoretical argument may be the result of the blunt measure of either ideal points (party label) or joint partnerships (one category)—both of which I discuss in detail below.

Although the aggregate analyses exhibited support for the theory, I also relied on an in-depth examination of one case in order to gain insight into whether the mechanisms in the theory are at work in an actual case and to more fully appreciate what the large-N results mean in the complex world of politics and health policy. By looking at the process of how legislators crafted and debated health insurance reform in 2009-2010, I discovered that the relationship between individual legislators and their governors was paramount, as was the difference in ideal outcomes of legislators and the national executive branch. Congress did think of the states as potential implementers of national law and considered them an alternative to national executive branch agencies. Moreover, changing the structure of intergovernmental delegation options offered legislators in the House and the Senate opportunities to coalesce around policy choices.

In addition to support for the underlying mechanisms of my theory, the case study highlighted the importance of intergovernmental context, delegation to the states, and differences in the institutional rules between the House and the Senate for policy outcomes. The differences in the House and Senate health insurance reform proposals and ultimate degree of state authority allocation in the law are consistent with the intergovernmental theory of federal policy design. Namely, because of the "razor edge" 60 votes in the Senate and unified Democratic government, the Senate bill decentralized authority and due to the simple majority procedures in the House, the House bill centralized authority for the provisions in health insurance reform. One component of the health insurance reform debate—the dynamics of the interaction between the House and Senate emerged from the interviews with key policy elites as crucial to the resulting policy. I returned to these House-Senate differences at the end of the second empirical chapter (see below).

What remained in this project was to test the individual-level implications of the theoretical argument, given the insights afforded by the aggregate analyses and the case study. In particular, the hypotheses that emerged from the theory included the intergovernmental team makeup of successful policy coalitions in the House and the Senate under different conditions. In Chapter 6, I collect additional data on how individual legislators vote across the significant laws from Chapter 3, as well as how Senators vote on cloture across the same time frame. I find strong support for the individual-level hypotheses in this final chapter. In the House, majority party intergovernmental teams form successful policy coalitions more often than other groups of teams.

In the Senate, across all but one condition, majority party intergovernmental teams gain the votes needed from specific minority party legislators to reach 60 votes and successfully invoke cloture—those from the pivotal minority intergovernmental team identified in my theory. Only when there is a unified Republican government, does my argument fail to find support in this diverse data, leaving an interesting puzzle. In particular, when there is a Republican in the White House and Republican majorities in the House and the Senate, Senators work to gain votes from Democrats from states with Republican governors (DR legislators), instead of the predicted Democrats from states with Democratic governors (DD legislators). Under this particular condition, DD legislators prefer to decentralize authority and DR legislators are indifferent because, when using party label as a shortcut for preferences, the national executive branch and the state are located in the same place. Why is it that Senators in a unified Republican government bargain or entice other legislators differently than Senators within a unified Democratic government? And, why is it that when there is a Republican in the White House, a Republican majority in the Senate, and a Democratic majority in the House—for which my theory predicts the same outcome as under unified Republican government—do I find support for my theory, since it is, in this instance, DD legislators whom I find vote more often for cloture with the Republicans?

Although this puzzle remains, overall, I find that my theory of intergovernmental delegation better explains how Congress chooses to delegate authority in national law than previous explanations, including that Republicans devolve, that partisan congruence between national institutions and the average partisanship of the states matters for decentralization of authority, that policy type determines delegation choices, and that election years matter. Instead, it is a simple comparison (in the context of political uncertainty) by a pivotal legislator as to whether his state, the national executive branch, or a combination of the two will provide an outcome closer to his ideal point that provides the best explanation in this new dataset.

CONTRIBUTION

My contribution to the political science literature, therefore, is to incorporate a consideration of the intergovernmental context—namely that legislators come from specific states and consider how their state will implement policy if authority is delegated to the state level. Legislators compare potential policy outcomes at the state and national level to their own preferences over outcomes. These preferences along with uncertainty (as described below) determine their actions with respect to the federal design dilemma. My results demonstrate the importance of recognizing the impact of national and state political contexts in delegation decisions and explicitly modeling state and national agents theoretically and empirically. This contribution informs scholarship in congressional delegation, federalism, and public policy.

In addition to the contribution to the political science literature, the theory, data, and results provide a foundation upon which additional scholarship in public health politics and policy can be built. Intergovernmental partnerships are increasingly common in public health policies. Since policy design affects implementation, it is crucial that public health scholars and practitioners understand the politics that create these federal partnerships. This project systematically investigated how Congress makes legislative decisions in establishing federal-state partnerships. I delineated the conditions under which Congress provides the states with more authority than the national executive branch in federal-state partnerships. This project provides a first step to understanding congressional intergovernmental strategies—informing research about how changes in policy design influence population health outcomes over time. Without the conclusions of this study, public health policy scholars overlook the importance of the intergovernmental context of legislators in Congress in determining the national side of the patchwork of public health policies.

In both sets of literatures, political science and public health, I also contribute to a growing mixed methods approach to research. In this study I rely on an intensive coding process of national laws, formal theoretic models, large-N aggregate and individual-level analyses, and in-depth qualitative work to structure an examination of how Congress deals with their federal design dilemma, using the strengths of each approach to address the others weaknesses.

NEXT STEPS

This project leaves as many, if not more, questions than it answers. In particular, there are three main areas of research I would like to explore in the future. First, I would like to incorporate more complexity with respect to state responses to congressional delegation. Second, it is important to gain a more nuanced understanding of the design of joint partnership policies. And third, intra- and inter-chamber bargaining process with respect to invoking cloture and designing policies should be explored further. I discuss each of these next steps in more detail below.

Passive States

To the extent that this project assumes the states are passive recipients of national dictates, I ignore the complexity and potential influence of state responsiveness to Congress. Evidence from my case study provides support for my theoretical assumption that Congress perceives of itself as the principal and the states as one potential implementation agent, but I assume away any influence the states may have on this process. In addition, if the states really are only passive actors in this process, why do they—collectively through the National Governors Association, the National Conference of State Legislatures, or individually—lobby Congress (e.g. see Haider 1974)? In addition, why do the states actively lobby national executive branch agencies? The obvious answer is that they either want to be winners or they are afraid of losing in policy contests.

This intergovernmental lobbying activity has been described as a bargaining process (Elazar 1972, Ingram 1977, Chubb 1985, Agranoff 2001, Woods and Bowman 2011). But, bargaining between which actors and at what time—the states and Congress, the states and national executive branch agencies within previously formed joint partnership policies, or bargaining between all three?

Moreover, the states have more than one tool at their disposal for pressuring or bargaining with national institutions of government, including, federal lawsuits, ignoring federal-grants-in-aid, and ignoring (or attempting to redefine) national regulations. Each of these instruments of state rejection of national law has been demonstrated in the aftermath of the national health insurance reform of 2009-2010. The states filed federal lawsuits regarding the constitutionality of the individual mandate for health insurance coverage and burden on the states for the Medicaid expansion, many state legislatures and public ballot measures attempted to change the individual mandate implementation in their state, and many states refused to implement other portions of the law, such as the high-risk pool.

Overall, is this bargaining done *ex ante,* such as lobbying or filing lawsuits before a policy is passed, *ex post*, such as lobbying during implementation, filing lawsuits after enactment, refusing to act as implementers, or both? And, to what extent does bargaining influence how Congress delegates authority across governmental levels and how much discretion agents are given? In future work, I would like to delve into this interaction between the states and national institutions by first conducting case studies comparing how the health reform implementation unfolds with other policies, such as No Child Left Behind or the American Recovery and Reinvestment Act, which also incurred state-level resistance. In this project, I would like to use insights gained from the case studies to develop a formal theoretic model of the three sets of actors bargaining over state-level authority, and finally test the hypotheses that emerge on data that build on my dataset in Chapter 3.

Joint Policies

The process of constructing the dataset in Chapter 3 revealed the variety of joint partnerships that Congress has crafted over the years. As described in that chapter, Congress can delegate implementation to the states and use national executive branch agencies simply to dole out federal money, or it can delegate implementation to national-level actors and require sub-delegation to the states, or even delegate to both sets of actors different aspects of a policy, among other options. The ways in which Congress structures these joint policies is likely to be crucial for the ultimate policy outcomes, and, therefore, is an additional avenue of for future research. In fact, initial work on Congress-National-State bargaining described in the previous section indicates the possibility that understanding these joint policies is crucial for modeling the interactions between these actors (and the resulting policy outcomes). For instance, if Congress fails to delineate the boundaries and timing of each agent's actions, there can be an unending cycle of strategic choices on the part of the states and the national agents resulting in no implementation.

Building on the data in Chapter 3, I plan to incorporate more information about the structure of joint partnership provisions. This coding process will need to include how much discretion the states and the national actors have in these provisions and which agent acts first as defined by law. The coding must rely on improved definitions of discretion and delegation from previous studies and has not yet been undertaken.

Cloture, Bargaining, and the House

Although seemingly unrelated to the previous sections, Chapter 6 left us with a puzzle—why is it that a Republican House can change cloture bargaining in only one circumstance, unified Republican government, but not in others. The two previous avenues for research emerge from the aggregate-level model, which in turn, relies on a pivotal legislator. To identify this pivotal legislator, I utilize an individual-level model of legislators bargaining in the House and the Senate in Chapter 2. I assume these chambers operate in a vacuum, when in fact they often interact with each other. The results from Chapter 6 point to the importance of considering how the House and Senate interact may influence Senate bargaining and coalition formation with respect to attaining 60 votes to invoke cloture. The final plan for next research steps includes a more thorough consideration of super-majoritarian coalition formation in the Senate, given future interactions with the House over the policy.

CONCLUSION

In this project, I examine what determines whether Congress keeps authority at the national level or sends it out to the states? The degree of state authority in a policy is an issue that touches on many topics of interest; yet political science, public policy, and public health scholars have failed to give it serious consideration both theoretically and empirically. By using multiple methodological approaches, I find that Congress allocates authority to the states based on their intergovernmental context—including the relationship between individual legislators and their states, legislators and the national executive branch, and uncertainty over the party that will be in power at each level during implementation of a policy.

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