

Transparency and Capture in Federal Advisory Committees

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Abstract

This paper tests for a relationship between interest group influence and administrative closure in federal advisory committees. Specifically, it examines group affiliation of advisory committee members, committee authorization, and meeting closure in advisory committees in recent years. Using this data, it sets up and runs a horse race between three distinct versions of capture theory (the notion that special interests have ‘captured’ policymaking): Congressional Capture Theory, Agency Capture Theory, and Iron Triangle Theory. It finds some support in the aggregate for Iron Triangle Theory, but localizes this support to committees in two agencies: USDA and DOC. Finally, the paper expands the findings to historical data using agency-aggregated numbers spanning from 1974 to 2000. It further concludes that present patterns of authorization and closure changed drastically in the six years since 1994, over which time the number of closed meetings tripled.

Author’s Note: Kevin Karty received his PhD in Political Science from MIT in 2001, and is currently working on a book about advisory committees. He warmly thanks Brandice Canes and Michael Piore for their valuable comments and advice, and especially thanks Steven Ansolabehere for informative discussions and insightful comments.

Introduction

Beginning in the early 1970s, the Harris Polls track a stark decline in the percentage of the US voting age population that expressed a “great deal of confidence” in the federal bureaucracy from over 40% in 1966 to under 10% in 1996. National Election Study data indicate that people have come to see government as an inefficient bureaucracy dedicated to serving big interests who look out for themselves. (Nye, Zelikow and King, 1997) Yet in spite of this, US citizens often see few alternatives to state action, and continue to place strong demands on the federal government.¹

In academia, scholars have likewise expressed doubt about government’s ability to serve the common good effectively and fairly. Two primary lines of argument have eroded the once-dominant public interest paradigm of government administration: self-serving agencies and ‘capture’ of agencies by special interests. Sadly, the remedies for each of these problems tend to exacerbate the other problem.

Niskanen first brought widespread attention to the issue of self-serving agencies. Unlike Weber, who credited bureaucratic expertise as a source of efficiency, Niskanen argued that bureaucracies used their knowledge to extract rents from Congress and the public. The typical response to this problem was more intense oversight by Congress, but this becomes increasingly costly as information grows more complex. Alternative oversight mechanisms involved enlisting private actors to subsidize the cost of oversight, a method that has since been nicknamed “fire-alarms”, in contrast to traditional “police-patrol” style oversight. (McCubbins and Schwartz, 1984)

Fire-alarms are costly, however. An old and distinguished literature warns us about the threat of co-optation of bureaucratic agencies by private interest groups, in which agency dependence on cooperation by interest groups leads to the development of patron-client relationships. (Kaufman, 1960; Selznick, 1949) In more recent work, scholars have turned their attention from ‘capture through co-optation’ to ‘capture through legislation’. (Stigler, 1971; Posner, 1974; Peltzman, 1976) In the most extreme cases, Congress may even empower privileged interest groups with direct or indirect control over an agency, effectively abdicating some of its own power. (McCubbins, Noll and Weingast, 1987)

Typical responses to the threat of capture have focused on rules – election campaign rules, reporting rules, transparency rules, *ex parte* contact rules, and so forth. (Kerwin, 1999) Yet these rules can grow hideously costly. (Chubb and Peterson, 1989) Indeed, some scholars have argued that rules are designed precisely to impose such costs. (Moe, 1990) Within the agencies themselves, costly rules have a name – red tape – and are hated by agency personnel. The National Performance Review, for example, blamed the excessive red tape in government on a monitoring system that encouraged mediocrity rather than risk-taking, and was pre-occupied with avoiding scandal.²

This paper examines one particular sort of costly rule, the open meetings requirement of the Federal Advisory Committee Act (FACA) of 1972, and asks whether this rule helps accomplish what it was designed to do. Although not as commonly used as other government-society interfaces (such as informal notice and comment procedures under APA), federal advisory committees (FACs) have long been an important part of the US government. (Flitner, 1986)³

Ostensibly, most FACs exist to gather information. This simple function was best described by a 1970 Congressional report. Expounding on a phrase used in a 1957 Department of Justice report, which called advisory committees the “Fifth Branch of Government,” the 1970 report wrote:

“The advisory body creates a contribution by the governed to the Government. It provides a means by which the best brains and experience available in all fields of business, society, government and the professions can be made available to the Federal Government at little cost. Our Government and leaders are continually in need of advice on a variety of problems at all times in their attempts to find answers to the problems of our increasingly diversified and complex society.” (H.R. 91-1731)

As Congress and others recognized, advisory committees are an extremely flexible and diverse administrative tool for both the legislature and the executive. Thus, we observe some advisory committees mandated in Congressional legislation, some created solely by an act of agency discretion, some authorized (but not mandated) by Congressional legislation, and some created directly by the President. Figure 1 illustrates the number of committees of each type over the last 28 years, since the GSA started tracking this data. Three features stand out: First, a sharp drop in non-mandated committees in the middle of the 1970’s as the GSA tightened the reigns on defunct and redundant committees. Second, a shift from Congressionally authorized committees to Congressionally mandated committees in the late Reagan years. Third, another drop in non-mandated committees in the early Clinton years as the General Services Agency (GSA) enforced Executive Order 12838 which set ceilings on the number of discretionary committees. Clearly, authorization patterns of advisory committees have seen substantial variation over time.

[Insert Figures 1 and 2 Here]

Currently, about 1,000 advisory committees exist in any given year, of which only a few dozen are ad hoc committees. Most are ‘continuing’ committees. Of the total, the President directly creates about fifty committees, while Congress and agencies create the remainder. Many committees, like the National Petroleum Council, have existed since World War II. Others are more recent. Some appear new, but actually trace their existence to older committees under different names. Old or new, however, advisory committees have seen consistent use in every federal department and in most of the larger agencies over the last three decades. Figure 2 ranks the twenty agencies with the most advisory committees in 1974 and 1998. The graphs demonstrate considerable continuity in advisory committee usage over time, with a few exceptions – the reduction in the number of Department of Agriculture (USDA) committees, for instance.

Advisory committees are also used in several different capacities, from providing scientific advice on drug approval to managing federal lands. Figure 2 breaks down committees in 1998 by their purpose. Interestingly, regulatory negotiation committees, which have received considerable attention both in the legal literature and by Congress and President Clinton, actually account for only a tiny fraction of all advisory committees. (Harter, 1982; Coglianese, 1997)⁴ The rest fill other functions – often more

than one. This diversity of committees warns us to apply our standard toolbox of political theories with great care.

Although GSA lacks precise data before 1974, other historical work confirms that the federal government used advisory committees sparingly prior to the Great Depression. For the most part, presidents invoked FACs according to their personal tastes. Some presidents, like Theodore Roosevelt, made extensive use of them. Others did not. A few of these commissions, such as the Brownlow Commission of 1937, have had an important and lasting effect on the history of the United States.⁵ Others faded without a trace. Yet the use of FACs did not skyrocket until the Great Depression and World War II, when Congress and the President granted quasi-governmental committees extraordinary influence over the entire economy, drawing heavy criticism from anti-New Deal forces. (Levine, 1973) By some estimates, federal use of advisory committees peaked at 35,000 citizen advisory committees, many operating at a state or local level. (H.R. 85-576)

In the Post-World War II era, Congress disassembled much (but not all) of the World War II control apparatus. The apparent success of the committee system in WWII had legitimized advisory committees. FACs remained prolific and soon became integral to the functioning of government. For most of the early post war period, they also remained unregulated - a matter of Congressional or bureaucratic discretion.

The Department of Justice (DOJ) made the first serious attempt to regulate advisory committees in 1950 and again in 1957, to prevent collusive behavior by large firms which participated on industry advisory boards. The DOJ specifically advised executive agencies against the inclusion of members of industry trade associations.⁶ After the DOJ's 1957 report, Congress introduced a bill similar in many ways to FACA. The President evaded the legislation by signing Executive Order (E.O.) 11,007 in 1959, specifically regulating industry advisory boards. However, E.O. 11,007 allowed agency heads to waive the rules at their discretion. In the 1960s Congress took up Justice's cause again, but was again deterred from passing legislation by more executive promises to reform the advisory committee process. The Bureau of the Budget (predecessor of the Office of Management and Budget, OMB) failed to carry through, however, and advisory committees proliferated in an unregulated manner.

The issue of advisory committee influence faded in the latter 1960s, but Senator Metzenbaum and others reintroduced it in 1970, during the heyday of the 'Good Government' era and right in the middle of a growing conflict between President Nixon and a hostile Congress. After over a year of hearings, Congress heard witnesses calling advisory committees a "headless monster", the "whipping boys" of the bureaucracy, and "the last refuge of incompetence." (Markham, 1974) After months of hearings and yet another attempt by the Executive to stave off legislation, Congress finally passed FACA in 1972. In conjunction with the Freedom of Information Act (FOIA) of 1966 (with subsequent amendment), the Privacy Act of 1974, and the Sunshine Act of 1976, FACA expresses and attempts to enforce several desirable qualities in institutions that mediate contact between government agencies and society. (Croley and Funk, 1997)

Information, Influence, and Openness

This paper addresses two of FACA's most important and controversial mandates: open meetings and balanced membership. In FACA's 28 years, they have spawned over two score precedent-setting lawsuits and a dozen articles in law journals. Legal scholars have debated at length the questions of law and precedent surrounding the open meetings and balanced membership requirements, but have offered little hard data about the prevalence and severity of alleged problems, except by anecdote.

The emphasis on open meetings and balanced membership emerged directly out of capture theory. Only a few years after Anthony Downs' classic 1951 work, a 1957 House Report recognized the inherent potential for advisory committees to facilitate inappropriate influence.

“All members of advisory committees to some degree represent segments of special interest which frequently do not coincide with the interests of the country as a whole. An advisory body composed of members outside the Government and not answerable to the people or to the Congress for their actions should never be placed in a position where it can assume the functions of a board of directors or indirectly usurp the managerial functions which are the responsibility of the governmental agency.” (H.R. 85-576)

Congress expressed deep concern about unrepresentative advisory committees, and especially about those committees with an explicitly biased membership. Membership bias thus seems to offer a reasonably good indicator of biased influence.

[Insert Figures 3 and 4 Here]

Actually measuring 'biased membership' is a difficult matter, however. The narrowest interpretation of capture theory contends that 'bias' really means 'bias toward privileged economic interests.' (Downs, 1957; Olson, 1965) As Figures 3 and 4 demonstrate, members affiliated with private businesses and trade associations do account for a sizeable proportion (18%) of the overall membership of advisory committees. In addition, they constitute 24% of the average advisory committee's membership. Yet business membership is far smaller than academic and research membership. Indeed, 58% of advisory committee members belong to universities or independent research institutes. Raw membership data thus offers little support for broad capture of advisory committees by business interests, suggesting that FACA has either been effective or was never necessary to begin with.

A somewhat more flexible approach to testing the explanatory power of capture theory would examine the relative levels of membership by business interests across committees. Capture Theory suggests that those committees with higher levels of business membership are more likely to be captured by business interests, all else held equal. Yet this test also remains weak, because mere membership of business groups cannot alone signal capture by those groups. Business groups, like other groups, are legitimate stakeholders and participants in the democratic process, and Congress specifically did not define "fair balance" in a way that limited participation by economic interests, as the original 1957 Department of Justice rules recommended.⁷ To truly prove capture, one must show that certain members wield "inappropriate influence".⁸

Measuring inappropriate influence presents a difficulty, of course. Fortunately, the administrative law literature suggests one easy, intuitive indicator – closure.

[Insert Figure 5 Here]

As a measure of closure, we examine the frequency of closed meetings, which has been tracked at the agency level in annual reports since 1974. Figure 5 displays the total number of open, closed, and partly closed meetings each year, revealing considerable variation over time. In recent years especially, advisory committees have seen an alarming growth in the number of closed meetings. While most of this growth in closed meetings has been concentrated in HHS and NSF committees, the findings in this paper control for committee function (such as grant-making) and agency effects, and are entirely robust to dropping committees from these two agencies.

Our focus on closed meetings as an indicator of the potential for capture has a strong basis in historical fact. When the Congress first became concerned about advisory committees in 1957, it clearly believed that closure often harms the public interest. The 1957 Congressional report wrote,

“...under the veil of secrecy which now surrounds the activities of these groups, it is possible and entirely probable that some of them are established not for the primary purpose of giving advice.” (H.R. 85-576)

The frequency of closed, secretive meetings weighed heavily on Congress’ mind and helped spur such major legislation as FOIA (1966), FACA (1972), and the Sunshine Act (1976). These three pieces of legislation came at a real transitional period in Congress. (Stewart, 1975) Struggling to ‘clean up’ the bureaucratic process (and perhaps strengthen its weakened position against what was then perceived as an imperial presidency), Congress hit upon a number of mechanisms to reform the bureaucracy. Congress relied especially heavily on open meetings as a major remedy for collusion between agencies and special interests. Openness seemed inexpensive and easy to enforce compared to direct oversight and/or balanced representation.⁹ Moreover, openness did not appear to impair the desirable sort of cooperation between agencies and the private sector that Congress encouraged. ‘Sunshine’, as Congress sometimes called it, was easy to administer, easy to measure, and by all accounts effective. In Justice Brandeis’ often cited words, “Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.” (cited in Bradley, 1997).

Sadly, later research suggests that openness comes with a price after all. (Lawrence, 1995; Bradley, 1997) At the worst, releasing sensitive information may threaten national security and destabilize financial markets. (DuVal, 1986) Even in less extreme circumstances, transparency may hinder the free exchange of ideas, stifle creativity, weaken the feeling of collegiality and the sense of teamwork, and induce private actors to withhold embarrassing information. (Faure, 1996) Thus, even those committees trying to serve the public interest might loathe the open meeting requirement from time to time. However, all things being equal, captured committees should prefer closure more than other committees.

Closure and Capture: A Three-Theory Horse Race

In addition to testing for the hypothesized relationship between business group membership and closed meetings, this paper also seeks the source of this relationship. That is, it asks which private-public interface – Congress or the bureaucracy – is more vulnerable to special interest influence. The importance of this question points to disagreements over modern efforts to reform the government: Should we take greater care to insulate agencies from political pressures through expansion of Civil Service laws and other measures, or should we instead focus on reigning in runaway agencies? The answer depends on which version of capture theory we believe.

Generally, capture of government programs and policies occurs through one of two interfaces: Congress or agencies. The other two branches of government are less vulnerable. The President, as a representative of all of the people, has greater incentives to resist particularistic influence. (Neustadt, 1984) The lifetime tenure of the federal judiciary also renders it more resistant to inappropriate influence, though many have derided the courts for ideological capture.¹⁰ This paper thus focuses on the interactions between Congress, the bureaucracy, and the advisory committee system.

Three different versions of capture theory appear in the literature: Congressional Capture Theory, Agency Capture Theory, and a combination of the two – Iron Triangle Theory – which posits that both are subject to capture. All of these theories argue that narrow, compact groups dominate broad-based, diffuse groups in seeking political influence. (Olson, 1965) From here, however, the theories diverge in describing the mechanism of capture, and hence in proscribing recommendations for fixing the process.

Capture via Congress works through legislation and oversight. Stigler gives Congressional Capture Theory its strongest statement in his famous 1971 piece. He argues that special interests dominate the legislature through propaganda-like control of information and access. Thus, capture of government policies and programs emerges directly from the law itself. "...as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit." Those interests which are organized and wealthy enough to pay the "costs of obtaining legislation" get it. Stigler argues that Congress specifically creates agencies to regulate industry for the benefit of industry by restricting competition and providing subsidies.

Agency Capture Theory contends that Congress may write legislation with good intentions, but that special interests subvert laws during implementation. Due to the complexity of the issues, Congress grants agencies wide discretion in crafting policy. This discretion enhances agency effectiveness, but at the cost of allowing agency drift. (Bawn, 1995) Agencies use this discretion to pay private groups and constituents for the support that agencies need to fulfill their mission or preserve their funding levels. (Niskanen, 1971) Selznick provided one of the earliest examples of such behavior in his description of the TVA. (Selznick, 1949) Kaufman likewise discussed this danger in his treatment of the Forest Service. (Kaufman, 1960) Finally, Congress itself marshaled this argument in its 1957 report:

"...the advisory committee system as it now operates may be channeled into a convenient and effective source of support for established programs or policies or

those contemplated by the Government administrators. Under the ostensible objective of seeking advice and counsel, the real purpose may be in many instances to enlist support of the regulated in the process of regulation.” (H.R. 85-576)

The third version of capture theory, Iron Triangle Theory, charges both Congress and agencies as vehicles of special interest influence. Special interests seek influence in Congress by funding Congressional campaigns, but they also lobby Congress in support of regulatory agencies. As before, they derive benefits from the actions of Congress and agencies through beneficial regulation, subsidies, and the letting of lucrative contracts.

Although the term “iron triangle” first entered common parlance in the 1970s, the idea has been around for a while – at least since 1955, when Freeman identified them as “subsystems”. (Davidson, 1976; Ripley and Grace, 1976; Freeman, 1955) Aberbach and Rockman later addressed them again in 1978 as “clientele groups”, and iron triangles surfaced as a hot topic of political debate during the latter part of the 1980s, attracting the attention of Ronald Reagan himself. (Aberbach and Rockman, 1978; Reagan, 1988) However, academics paid little attention to iron triangles in the last two decades. Indeed, using extensive interviews with Congressman and in-depth case studies, two separate studies concluded that the era of issue-domination by specialized interests is over. (Peterson, 1990-1991; Browne and Paik, 1993) Some scholars suggest that the old iron triangle dynamic has been replaced, either by a more entrepreneurial, mass-constituent driven Congress or by networks of elite experts upon whom agencies increasingly rely. (Browne and Paik, 1993; Hecl, 1978) Nonetheless, the theory certainly merits testing.

Finally, standing against all three versions of capture theory, Public Interest Theory denies the allegation that special interest influence riddles and corrupts the government. Public Interest Theory argues that government tries to serve the common good and generally does a decent job given the constraints it faces. Although not as glamorous or scandalous as other theories of governance, Public Interest Theory retains a strong following both in and out of administrative circles. (For instance, Goodin, 1996)

This paper tests these three versions of capture theory by examining the relationship between committee authorization and closed committee meetings. It asks, who creates the committees with the most closed meetings, and who sits on committees with closed meetings? In answering these questions, it controls for committee purpose and for agency-specific effects, and then observes the actual relationship between committee authorization, group affiliation of members, and closed meetings. Figure 4 below summarizes the theories and their predictions.

[Insert Table 1 Here]

Data Description and Empirical Results

A full empirical test of the hypotheses above would require complete data on committees, and all their characteristics, spanning from 1950 to the present. This data simply does not exist. Although the Committee Management Secretariat (CMS) has some committee level data for some years in archives, only the full data for 1997 through 2000 is available electronically. Fortunately, annual reports do present annual, agency-

aggregated data back to 1974, but this data suffered in the first few years as the executive branch struggled to identify all committees and refine its conceptual definitions. Although crude, the cross-time data reveals committee trends during periods of different political climates, including years of split and unified government.

Committee Level Data

The committee-level data for 1997-2000 has two advantages. First, it contains data for a thousand distinct committees that existed during that part or all of that time, as well as a larger number of meetings per committee (thus improving precision). Second, the 1997-2000 data includes information on other aspects of the committees (such as their purpose, authorizing legislation, and status as a continuing or ad hoc committee). However, because committee characteristics rarely change over time (if a committee is mandated by law, it usually remains that way throughout its existence), a year-by-group panel regression offers little purchase, limiting one to cross-sectional analysis. Third, the committee level data contains information on the 41,000 individual FAC members.¹

Table 2 summarizes the variables in the combined dataset for 1997-2000.

[Insert Table 2 Here]

Table 4 below presents the results of the combined 1997-2000 regressions.^{11 12} Since all of the regressions use a linear model, coefficients can be interpreted as changes in the average proportion of closed meetings. The default category for committee function is *National Policy*, and the default category for authorization is *Sole Agency Discretion*, so the coefficients measure differences from this baseline. For example, the coefficient of 0.15 on the *Congressionally Authorized* variable in the fixed effects regression means that committees authorized by Congress have (on average) 15% more closed meetings than those sponsored solely by agencies. This interpretation holds true in both the committee-level data and the 27 year panel data.

[Insert Tables 3 and 4 Here]

Surprisingly, the committee-level battery of regressions strongly supports the Iron Triangle hypothesis – the notion that meeting closure and capture emerge primarily through close cooperation between Congress and federal bureaucracies. In the panel data regressions, committees authorized by Congress had meeting closure rates at least 15% higher than those created by solely by agencies or Congress. Both the fixed and random effects regressions identify strong coefficients, but the between effects regression yields even stronger ones. The between effects model estimates that Congressionally authorized committees have meeting closure rates 45% higher than agency sponsored committees, and 60% higher than Congressionally mandated committees. This indicates that the explanatory power of the different types of capture theory varies across different agencies. Thus, political subsystems or ‘iron triangles’ may have more purchase in some

¹ Given the time-intensity of coding this data, however, I have only coded it into categories for the year 1998, but this still proves adequate to generate significant results, especially given that most members serve terms of 2-3 years or more.

agencies than in others. In further support of this contention of cross-agency differences, note that the ‘weak’ result in the OLS regression results entirely from the above average openness of Congressionally authorized committees in the Department of Health and Human Services – which contains a third of all committees. Dropping HHS committees from the regression yields estimates almost identical to those in the random effects regression (which partially controls for agency specific effects). Table 4 also presents results for a random effects regression excluding Department of Commerce (DOC) and USDA committees, which yields strikingly different results that I discuss later in this paper.

The between effects regression results and the sensitivity of the regressions to the exclusion of USDA and DOC committees suggest a new line of inquiry: If different theories have more or less explanatory power in different agencies, Congress and bureaucrats should use committees differently within different agencies. Clearly, different agencies have different average levels of committee closure – the Wald statistic for significance of the fixed effects confirms this ($p < 0.0001$). However, the fixed effects model does not test for differences in the effect of the independent variables *within* panels.¹³ A separate analysis of four agencies, all of which have at one time or another come under heavy criticism as vehicles for special interest influence, emphasizes just how idiosyncratic agencies can be. This paper thus ran four separate closed meeting regressions, limiting the sample to those committees within each of four agencies: DOC, the Department of Defense (DOD), USDA, and the Environmental Protection Agency (EPA). Table 5 presents the results, which include a surprising number of significant coefficients in spite of the small sample sizes.

[Insert Table 5 Here]

The differences between the agencies are striking. Congressionally mandated committees in DOC have a very high rate of closure, suggesting that powerful economic interests work through Congress to embed their influence in DOC committees. This evidence supports Congressional capture theory. In DOD, on the other hand, Congressionally mandated committees have a very low rate of closure, suggesting that Congress uses advisory committees to shed a little sunlight into the dusty corridors of the Pentagon. In both USDA and DOD, Congressionally authorized committees have the highest rate of closure. In fact, Congressionally authorized committees in USDA have meeting closure rates that are over 75% higher than committees created solely by Congress or agencies. This data strongly supports the hypothesis that dense subsystems (“iron triangles”) remain strong in some – but not all – branches of the federal bureaucracy.

Nonetheless, Iron Triangle Theory finds no purchase in the EPA, nor does any other version of capture theory. Indeed, EPA has almost no meeting closure at all, even though its committees routinely deal with sensitive economic and scientific matters.

Opacity and Interest Group Influence: A Closer Look

Skeptics of Iron Triangles may take issue with the assumption that opacity is an indicator (even a weak one) of improper influence in government. They may note that

FOIA, the Sunshine Act, and the Privacy Act all set forth several valid exceptions to open meeting requirements, even though agencies can easily abuse these exceptions.¹⁴

In order to further test the model, the next set of regressions adds several group membership variables. The membership variables report the percentage of each committee's membership constituted by each category of member, and were constructed by hand-coding the 41,000 individual FAC members in 1998.¹⁵ Table 6 lists these variables.¹⁶

[Insert Table 6 Here]

The next set of regressions adds the membership variables and a variable to code for the handful of Ad Hoc committees, but limits the analysis to 1998 only. The coefficients on the membership category variables measure the expected percentage increase in the number of closed meetings predicted by a one percent increase in a given membership category. The default membership category is Business membership, so positive and negative coefficients should be judged against this baseline.

Table 7 presents results from five models. The estimates are strong, significant, and relatively stable in all of the models except the between effects model, and they are unsurprisingly largest in magnitude in the Tobit model which corrects for truncation in the percentage of meetings that are closed.¹⁷ Readers should take caution in imputing causality to the estimates due to the potential for simultaneity and reverse causation, and should instead interpret these regressions as predictive tools.

[Insert Table 7 Here]

The estimated relationships between membership category and meeting closure are solidly predicted by capture theory. Members of non-profit associations, public interest groups, medical research groups, and even government all consistently participate in advisory committees that are more open than those on which business members sit. Although not statistically significant (probably due to lack of observations), membership by non-profit research organizations, the press, and charitable organizations also appear related to open meetings. Unlike other associational groups, however, labor unions does not correlate with meeting openness, and may even correlate with meeting closure.

On the other side of the aisle, industry group members, and to a lesser extent consultants, participate in the most closed committees. The random effects regression estimates that an increase in industry group membership of 10% (about one standard deviation) predicts a 9.3% increase in closed meetings. This result is entirely consistent with the original DOJ allegations that industry group participation in advisory committees was especially prone to undemocratic behavior.

The coefficient on the Balance variable, an interaction term between Industry and Public that measures the combined presence of both groups, offers some further insight. Balance is both negative and significant in most of the regressions above, indicating that the presence of public interest groups seems to counterbalance the presence of industry groups, lending some validation to pluralist visions of democratic representation.

But what of the as-yet unproven relationship between closed meetings and capture? The tests above rely on an imputed relationship between special interest (i.e.

industry group) influence and closed meetings – that is, the use of closure as an (imperfect) indicator of capture. If this relationship stands, then closed meetings should predict industry group membership, even after controlling for committee authorization. Table 8 reports these regressions, and support this hypothesized relationship. However, the partial regression scatterplot of industry group membership against closed meetings (Figure 6), shows that the committees generating the relationship are largely concentrated in two agencies – DOC and USDA.

[Insert Table 8 and Figure 9 Here]

After excluding committees in USDA and DOC, the capability of closed meetings to predict industry group membership disappears.¹⁸ While this conforms to expectations of capture theorists, it also reinforces the striking disparity across agencies observed above.

DOC and USDA committees are not simply influential data clusters. They are statistical and theoretical outliers with (controlling for committee function) far higher levels of meeting closure and industry group membership than one finds in other FACs. This explains the final regression in Table 4 (above).

Careful examination of DOC and USDA committees isolates most of the relationship between closed meetings and industry group membership to a specific set of committees – industry and agricultural technical and trade advisory committees. An in depth search of authorizing legislation for all committees in 1998 reveals that these committees share similar or the same authorizing legislation, and that this legislation is unique in one key aspect. This is the only legislation requiring an agency to set up a committee at the request of a segment of industry. In addition, the authorizing legislation rings a few other alarms: First, it requires that the majority of the committee consist of non-federal members drawn from the particular industry of concern. Second, the legislation mandates that the agency provide the committee with information it requests. Third, the law requires that the committee elect a chair (and thus that the chair not be appointed by the agency). Fourth, the agency is required to meet at least 4 times a year. Fifth, using the Trade Act of 1974 as justification, DOC has issued blanket approval for closing all meetings to these committees under the FACA trade negotiation exemption.¹⁹ Taken together, these qualities raise severe misgivings about the underlying purpose of these committees.

Given the legal background behind these committees, it is not surprising that the membership of these committees includes a surprising number of vice-presidents and program directors of major corporations and trade groups: from the Director of Commercial Programs at Boeing to the President of the Petroleum Equipment Suppliers Organization. These committees, which are given explicit permission by law to comment on and advise the agency with respect to trade matters and policies, have no members who can claim to represent the general public or consumer groups. Moreover, it is precisely committees like these that originally inspired the Department of Justice in 1957 to raise objections to the advisory committee structure based on the opportunities for collusion that it created. Thus, while these thirty or so advisory committees are largely generating the relationship between closure and industry membership, they also provide strong evidence of exactly the sort of influence that capture theory predicts.

27 Year Panel Data Evidence

This section examines agency-level data drawn from the 27 Federal Advisory Committee Annual Reports, including information on committee establishment authority and duration (ad hoc vs. continuing). The annual reports do not include information on committee type, as these records were not gathered for most of the period, and are not recorded at agency-aggregated levels (they can be constructed from committee level data for 1997-2000, but not for earlier years). Also, many of the agencies in the data set have no committees during some parts of the time period, thus further restricting the types of models one can use to fit the data.

On the positive side, the 27 year span does allow us a glimpse at the overall trends in committee authorization and closure over time. In addition, it spans two periods during which control of the Congress and the President was fully split: 1974-1976 (Ford with Democratic House and Senate) and 1995-2000 (Clinton with Republican House and Senate). It also contains one period in which the executive and legislature were partly split: 1981-1986 (Reagan with Democratic House). This allows us to code for Split Government. However, regressions using the Split Government dummy and interaction variables invariably yielded unstable and mostly insignificant coefficients, and compounded existing collinearity problems. Rather than further refine an arbitrary specification, this paper adopts a more empirical approach. Using a set of yearly dummy variables and interactions, it constructs a seemingly unrelated regression for all variables in all years. The coefficients from this regression thus indicate the predicted percentage of closed meetings an agency will hold in a given year as a function of who authorized that agency's committees. Figure 7 plots these coefficients over time. The results immediately show why the Split-Government interaction terms fail to describe the changing patterns of advisory committee behavior.

[Insert Figure 7 Here]

First, Figure 7 reiterates the findings of the committee-level regressions for the years 1997-2000. During those years, Congressionally authorized committees have an exceptionally high level of meeting closure, and Congressionally mandated committees are slightly more open than agency-sponsored committees. The fact that the agency level findings are consistent with the committee level findings is encouraging. Moreover, the patterns in Figure 7 are fairly robust, and change little with the exclusion of one or two agencies from the model. This is true even when we exclude DOC and USDA committees (which generate much of the relationship between Congressionally Authorized and Percent Closed Meetings in the committee-level regressions), as well as when we exclude HHS and NSF committees (which account for most of the increase in closed meetings in the last five years of the sample).

Second, 1997-2000 are extremely anomalous years. Prior to 1994, the differences in committee closure levels of Congressionally authorized, Congressionally mandated, and agency sponsored committees were much less pronounced. Moreover, Congressionally mandated committees tended to be the most open, and agency sponsored committees the more closed. Thus, prior to 1994, it appears that Agency Capture Theory

had somewhat more explanatory power than any of the other competing capture theories. Congress did indeed act more as a watchdog over secretive federal agencies, and less as an instrument of private interests seeking to use advisory committees as instruments of political control. In 1994-1997, we observe a drastic change in authorization and closure. The number of non-mandated committees plummets as the Clinton administration enforces E.O. 12,838, which cuts and caps their numbers. At the same time, the number of closed meetings triples and Congressionally authorized committees begin exhibiting extraordinarily high levels of closure.²⁰ Meanwhile, those advisory committees created solely by Congress or agencies continue to have relatively low levels of meeting closure.

Fourth, Figure 7 displays an extraordinary change in Presidential committees. Although not the focus of this paper, Presidential commissions deserve some comment here because of the dramatic trend line. Between 1980 and 1991, presidential advisory committees exhibited relatively high levels of closure after controlling for agency-specific effects – generally above 40% of total meetings. From 1991 to 1994, the percentage of closed meetings in presidential committees plummeted. From 1994 to 2000, presidential committees exhibited virtually no meeting closure at all. Unlike low-level administrative advisory committees, presidential committees have been the topic of significant scholarly work. (Wolanin, 1975) Given the stark change in closure rates, scholars should consider revisiting these high profile commissions.

Conclusion

Scholars and politicians have had great difficulty designing institutions that respond well to public pressure, but at the same time can resist particularistic influences.²¹ Peter Evans calls this elusive goal, ‘embedded autonomy’. His notion extends beyond the developmental state, where it is more widely recognized. All states encounter dual and opposing needs: first, for close ties to social groups in order to facilitate the creation and implementation of effective policy, and second, for isolation from social pressures in order to avoid capture by social groups and corruption of officials. “The problem,” Evans notes, “is separating the benefits of insulation from the costs of isolation.” (Evans, 1995)

As a partial solution to this problem, administrative laws such as FACA have turned to procedural regulation of the interfaces between government and society. The open meeting requirement in particular was designed to help prevent inappropriate influence in FACs, but has proven more burdensome than initially expected – prompting the question, “Is it worth the cost?”. This paper helps answer this question by looking at the relationship between closure, group membership, and committee authorization. To the extent that it identifies inappropriate influence in advisory committees, it also tries trace the source of this influence: Congress or the bureaucracy itself.

This paper has examined three sets of data, one aggregated at the committee level and spanning the years 1997-2000, one aggregated at the committee level in 1998 and including measures of group participation, and one aggregated at the agency level and spanning the years 1974-2000. The committee level regressions reject the Congressional capture hypothesis, though they do support it in certain specific agencies, such as the Department of Commerce. These regressions also support Agency Capture Theory, especially when excluding DOC and USDA committees.

However, the strongest result from the committee level data is the surprisingly high level of closure in Congressionally authorized committees, and the concentration of this effect in USDA and DOC committees. Congressionally authorized committees have meeting closure levels 15% or more higher than comparable committees sponsored solely by Congress or agencies. Only Iron Triangle Theory anticipates this result.

The 1974-2000 agency-aggregated data offers another twist on these results. Although the agency-level regressions confirm the committee-level regressions for the years 1997-2000, they also identify these years as anomalies. Prior to 1994, Congressionally authorized committees hardly differed from agency sponsored committees, and Congressionally mandated committees were the most open of all. Since 1994, agency sponsored committees have used more closed meetings, and meeting closure by Congressionally authorized committees has skyrocketed. These results hold true even when excluding HHS and NSF committees.

Arguably, we should view recent trends with some fear. Both the raw meeting closure data and the cross-time regressions hint that the informational function of advisory committees may be giving ground to special interest influence in some agencies. This might not surprise open government advocates, who could easily point to the increasing use of loopholes in FACA to erode the open meeting mandate.²² They would point out, as Figure 5 does, that the number of closed meetings has tripled in the last decade. And they would warn us to view cooperation between the Executive and the Legislature skeptically. On the other hand, the general public has expressed a keen desire to see the Legislature and the Executive working together efficiently, and advisory committees can certainly facilitate this process.

Meeting closure trends hint that new reform efforts may be needed, but in the current political environment, far-reaching legislation such as FOIA, FACA, and the Sunshine Act is likely not forthcoming. Instead, we might begin with a more reasonable set of goals. Rather than scrapping a system that has generally worked, the analysis herein suggests focusing on specific committees (those in DOC and USDA) and on influence by specific interest groups (industry associations and consultants). For starters, we might re-evaluate the implicit authorization in the 1974 Trade Act to close industry trade committees. After that, we might even revisit the original 1957 Department of Justice rules on the involvement of industry association and large business representatives in advisory committees, perhaps demanding a stricter accounting of committees that are heavily weighted toward such groups.

Table 1: Capture Theory Hypotheses

Variable	Congressionally Mandated	Congressionally Authorized	Sole Agency Discretion
Congressional Capture Theory	High Meeting Closure		Low Meeting Closure
Agency Capture Theory	Low Meeting Closure		High Meeting Closure
Iron Triangle Theory		High Meeting Closure	
Public Interest Theory	Low Meeting Closure	Low Meeting Closure	Low Meeting Closure

Table 2: Independent Variables

Variable	Category	Description	Mean
Closed Meetings	Dependent Variable	Percentage of meetings held by the committee that are closed	0.204
Congessionally Mandated	Establishment Authority	Dummy variable: 1 if mandated by Congress	0.421
Congessionally Authorized	Establishment Authority	Dummy variable: 1 if authorized by Congress	0.220
Presidential	Establishment Authority	Dummy variable: 1 if created by President	0.068
Sole Agency Discretion (Default)	Establishment Authority	Dummy variable: 1 if created solely by agency	0.290
Science and Technology	Committee Purpose	Dummy Variable: 1 if classified as a Scientific Technical Program Advisory Board.	0.223
Non-Science Program	Committee Purpose	Dummy variable: 1 if classified as a Non-Scientific Program Advisory Board.	0.349
National Policy (Default)	Committee Purpose	Dummy variable: 1 if classified as a National Policy Issue Advisory Board.	0.179
Grant Review	Committee Purpose	Dummy variable: 1 if classified as a Grant Review Committee.	0.110
Regulatory Negotiation	Committee Purpose	Dummy variable: 1 if classified as a Regulatory Negotiation Committee.	0.017
Other	Committee Purpose	Dummy variable: 1 if not classified under any of previous five categories	0.107

**Table 3: Authorization and Meeting Closure: Simple Correlations
(1997-2000 Aggregated Data)**

Congressionally Mandated	Presidential	Congressionally Authorized	Agency Discretion
-0.2207	-0.0731	0.2032	0.0945

**Table 4: Predicting Meeting Closure by Source of Authorization
(1997-2000 Aggregated Data)**

Variable	OLS	OLS (No HHS)	Random Effects	Fixed Effects	Between Effects	Random Effects Tobit	Random Effects (No DOC or USDA)
Congressionally Mandated	-0.073*** (0.001)	-0.031 (0.188)	-0.011 (0.615)	0.002 (0.943)	-0.181* (0.031)	1.016*** (0)	-0.085*** (0)
Presidential	-0.083 (0.054)	-0.045 (0.326)	-0.051 (0.217)	-0.050 (0.248)	-0.049 (0.743)	0.296 (0.467)	-0.041 (0.294)
Congressionally Authorized	-0.013 (0.624)	0.150*** (0.001)	0.153*** (0)	0.167*** (0)	0.436** (0.01)	1.247*** (0.001)	0.047 (0.177)
Scientific/ Technical	-0.126*** (0)	-0.094** (0.005)	-0.094*** (0.001)	-0.095*** (0.001)	-0.103 (0.35)	-0.090 (0.751)	-0.018 (0.518)
Non-Science Program	-0.124*** (0)	-0.147*** (0)	-0.065* (0.019)	-0.061* (0.039)	-0.011 (0.894)	0.245 (0.356)	-0.006 (0.821)
Grant Review	-0.168 (0.03)	-0.190 (0.027)	-0.053 (0.475)	-0.012 (0.887)	-0.332 (0.241)	-1.021 (0.265)	0.637*** (0)
Regulatory Negotiation	0.580*** (0)	0.661*** (0)	0.570*** (0)	0.600*** (0)	0.596* (0.011)	3.213*** (0)	-0.027 (0.708)
Other	0.041 (0.278)	0.051 (0.321)	0.107** (0.003)	0.103** (0.008)	0.222 (0.077)	1.538*** (0)	0.183*** (0)
Constant	0.225*** (0)	0.209*** (0)	0.131*** (0)	0.120*** (0)	0.158 (0.062)	-1.591*** (0)	0.105*** (0.001)
R-squared (Pseudo)	0.412	0.3744	0.381	0.375	0.276	(1.016)	0.5101
Observations	924	709	924	924	924	924	818

Note: P-values are in parentheses. All variables are dummy variables. The constant measures the predicted level of meeting closure in committees described by the default categories: Sole Agency Discretion (authorization) and National Policy (function). All regressions were run using standard commands in STATA (reg, xtreg, and xtobit). Tobit regressions truncated at 0 and 1, reflecting the fact that meetings cannot have closure rates below 0% or above 100%, but are probably somewhat exaggerated. *p<0.05, **p<0.01, *** p<0.001

Table 5: Predicting Closed Meetings Across Different Agencies

Variable	DOC	DOD	USDA	EPA
Congressionally Mandated	0.267* (0.026)	-0.304** (0.007)	0.008 (0.866)	-0.002 (0.755)
Presidential	-0.515** (0.008)	-0.305* (0.043)	-0.050 (0.731)	-0.000 (0.973)
Congressionally Authorized	-0.515 ^ψ (0.106)	0.276 (0.127)	0.769*** (0.000)	(dropped)
Scientific/ Technical	-0.575*** (0.000)	0.030 (0.815)	0.057 (0.352)	0.006 (0.669)
Non-Science Program	-0.522*** (0.001)	-0.205 (0.112)	0.101 (0.065)	0.000 (0.980)
Grant Review	(dropped)	(dropped)	(dropped)	(dropped)
Regulatory Negotiation	(dropped)	(dropped)	0.101 (0.617)	0.000 (0.987)
Other	-0.514 (0.099)	0.067 (0.736)	0.052 (0.62)	(dropped)
Constant	0.515*** (0.000)	0.465*** (0.000)	-0.051 (0.304)	0.000 (1.000)
R-Squared	0.637	0.267	0.8419	0.0522
Observations	59	69	47	27

Note: P-values are in parentheses. All variables are dummy variables. The constant measures the predicted level of meeting closure in committees described by the default categories: Sole Agency Discretion (authorization) and National Policy (function). All regressions were run using a standard OLS model. *p<0.05, **p<0.01, *** p<0.001.

^ψAlthough the coefficient on Congressionally Authorized is negative in the DOC regression, this is deceiving; when DOC committees are included in the general regression, they make a positive contribution to the Congressionally Authorized coefficient.

Table 6: Membership Categories for 1998

Variable Name	Description	Mean	Std.
Business (Default)	Includes private business, doctors in practice, scientists/engineers employed in private sector	0.206	0.256
Industry	Industry groups	0.046	0.101
Consultant	Lawyer or Consultant	0.034	0.090
Non-Profit	Recreational Groups and Professional Groups	0.015	0.050
Government	Federal, Retired Federal, State, Local, International, and Foreign Government, and Indian Tribe	0.211	0.235
Public Interest	General Public, Public Interest Groups, Consumer Groups, Environmental Groups, Ethnic/Gender Groups	0.073	0.157
Union	Unions	0.013	0.068
Research	Research Groups, Universities, Social Research Institutes, and Scientific Research Institutes	0.293	0.322
Medical Research	Medical Research Institutes, Major Research Hospitals	0.051	0.115
Charity	Charitable Non-Profits, International NGOs, Non-Profit Medical Facilities, Non-Profit Medical Support Groups	0.006	0.032
Press	Writer/Journalist	0.206	0.256
Balance	Interaction between Public and Industry	0.0016	0.0071

Note: The Mean measures the proportion of the average committee's membership that is constituted by the given membership category. It does not measure the proportion of total advisory committee members in a category.

Table 7: Effect of Membership on Closure, 1998 Committees Only

Variable	OLS	Fixed Effects	Between Effects	Random Effects	Tobit	Random Effects Tobit
Consult	0.260* (0.013)	0.258* (0.023)	-0.109 (0.686)	0.241* (0.024)	3.012* (0.043)	-1.008 (0.691)
Industry	1.069*** (0.000)	0.970*** (0.000)	-0.707 (0.217)	0.931*** (0.000)	9.627*** (0.000)	9.206** (0.01)
Non-Profit	-0.100*** (0.000)	-0.911*** (0.000)	0.1239 (0.886)	-0.897*** (0.000)	-20.628** (0.009)	-13.710* (0.016)
Government	-0.131* (0.012)	-0.180** (0.002)	-0.157 (0.364)	-0.146** (0.006)	-1.883* (0.044)	-2.186* (0.086)
Public	-0.152* (0.053)	-0.184* (0.047)	-0.262 (0.551)	-0.154* (0.078)	-14.537** (0.009)	-2.217 (0.246)
Union	0.199 (0.181)	0.186 (0.369)	-0.123 (0.639)	0.190 (0.214)	2.017 (0.351)	3.246 (0.397)
Research	-0.052 (0.315)	-0.190** (0.002)	-0.087 (0.733)	-0.110* (0.048)	-0.525 (0.494)	-4.929** (0.002)
Charity	-0.117 (0.250)	-0.162 (0.174)	-0.092 (0.738)	-0.069 (0.504)	-0.584 (0.722)	-1.481 (0.594)
Press	-0.431 (0.289)	-0.109 (0.810)	-1.704 (0.192)	-0.399 (0.318)	-6.983 (0.525)	-12.832 (0.372)
Medical Research	-0.991*** (0.000)	-0.970*** (0.000)	-2.925 (0.416)	-0.901*** (0.000)	-14.390*** (0.001)	-18.556** (0.004)
Balance	-5.821*** (0.000)	-4.462** (0.002)	-4.463 (0.717)	-4.559** (0.002)	-56.021 (0.490)	-153.908 (0.024)
Congressionally Mandated	-0.053 (0.035)	-0.003 (0.925)	-0.087 (0.371)	-0.014 (0.586)	-0.723 (0.091)	-3.282 (0.006)
Presidential	-0.013 (0.795)	-0.006 (0.903)	0.054 (0.721)	-0.003 (0.950)	-0.282 (0.741)	1.273 (0.088)
Congressionally Authorized	0.028 (0.339)	0.164*** (0.000)	0.210 (0.35)	0.137*** (0.000)	-0.090 (0.838)	0.989 (0.438)
Ad Hoc	-0.075 (0.232)	-0.061 (0.342)	0.057 (0.778)	-0.073 (0.233)	-1.043 (0.330)	4.080*** (0.000)
Scientific/ Technical	-0.048 (0.173)	-0.041 (0.240)	0.018175 (0.89)	-0.039 (0.247)	-0.763 (0.161)	0.277 (0.844)
Non-Science Program	-0.074* (0.018)	-0.005 (0.881)	0.026 (0.804)	-0.035 (0.266)	-1.414** (0.009)	0.055 (0.95)
Grant Review	0.689*** (0.000)	0.636*** (0.000)	0.757*** (0.040)	0.665*** (0.000)	5.444*** (0.000)	0.762 (0.36)
Regulatory Negotiation	-0.144 (0.221)	-0.120 (0.308)	-0.672 (0.210)	-0.093 (0.418)	-12.603 (NA)	9.875*** (0.000)
Other	0.128** (0.005)	0.140231** (0.002)	0.594** (0.002)	0.154*** (0.000)	1.190* (0.070)	1.417 (0.628)
Constant	0.208*** (0.000)	0.194*** (0.000)	0.175 (0.150)	0.155*** (0.000)	-1.079* (0.099)	2.307* (0.047)
R-Squared (Pseudo)	0.5573	0.5256	0.3680	0.5446	(0.4146)	
Observations	788	788	788	788	788	778

Note: P-values are in parentheses. All variables are dummy variables. The constant measures the predicted level of meeting closure in committees described by the default categories: Sole Agency Discretion (authorization) and National Policy (function). All regressions were run using standard commands in STATA (reg, xtreg, tobit, and xttobit). Tobit regressions truncated at 0 and 1, reflecting the fact that meetings cannot have closure rates below 0% or above 100%, but are probably somewhat exaggerated. *p<0.1, **p<0.01, *** p<0.001

Table 8: Using Closed Meetings to Predict Industry Membership in 1998

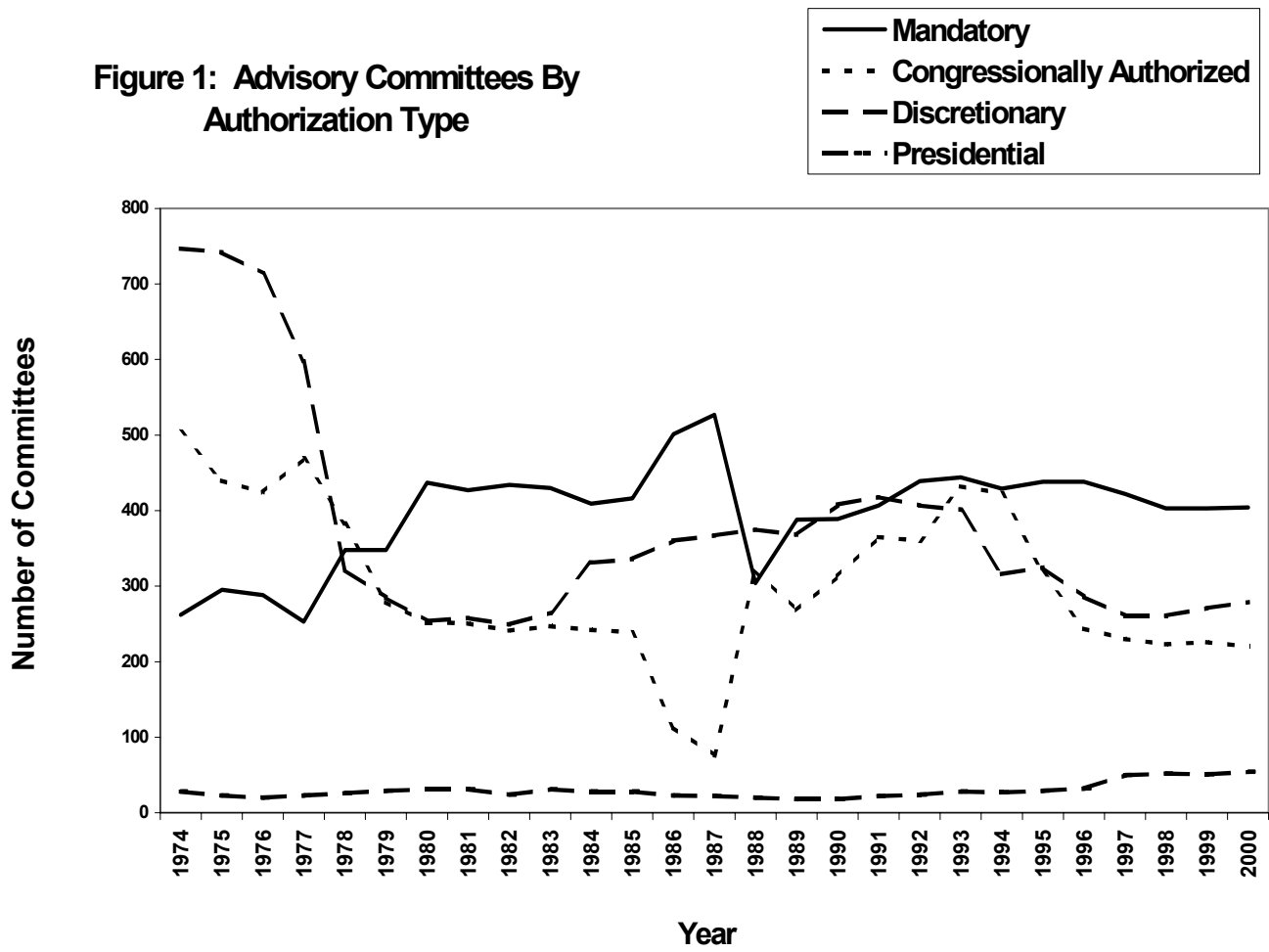
Variable	OLS	Random Effects	OLS, Excluding USDA and DOC	Random Effects, Excluding USDA and DOC
Percent Closed Meetings	0.084*** (0.000)	0.074*** (0.000)	-0.007 (0.468)	0.001 (0.887)
Ad Hoc	0.021 (0.272)	0.016 (0.390)	0.050** (0.002)	0.047** (0.002)
Scientific/ Technical	-0.038*** (0.000)	-0.025** (0.007)	-0.007 (0.397)	-0.004 (0.630)
Non-Scientific Program	-0.023* (0.013)	-0.009 (0.328)	-0.004 (0.572)	-0.004 (0.609)
Grant Review	-0.125*** (0.000)	-0.089*** (0.000)	-0.024* (0.033)	-0.021 (0.060)
Regulatory Negotiation	0.225*** (0.000)	0.241*** (0.000)	0.243*** (0.000)	0.245*** (0.000)
Other	-0.062*** (0.000)	-0.041*** (0.001)	-0.021* (0.041)	-0.018 (0.069)
Constant	0.0548*** (0.000)	0.0467*** (0.000)	0.030*** (0.000)	0.0346*** (0.000)
R-Squared	0.1944	0.1876	0.1735	0.1790
Observations	788	788	708	708

Note: P-values are in parentheses. All variables are dummy variables. The constant measures the predicted level of meeting closure in committees described by the default categories: Sole Agency Discretion (authorization) and National Policy (function). All regressions were run using the STATA commands 'regress' and 'xtreg'. *p<0.05, **p<0.01, *** p<0.001

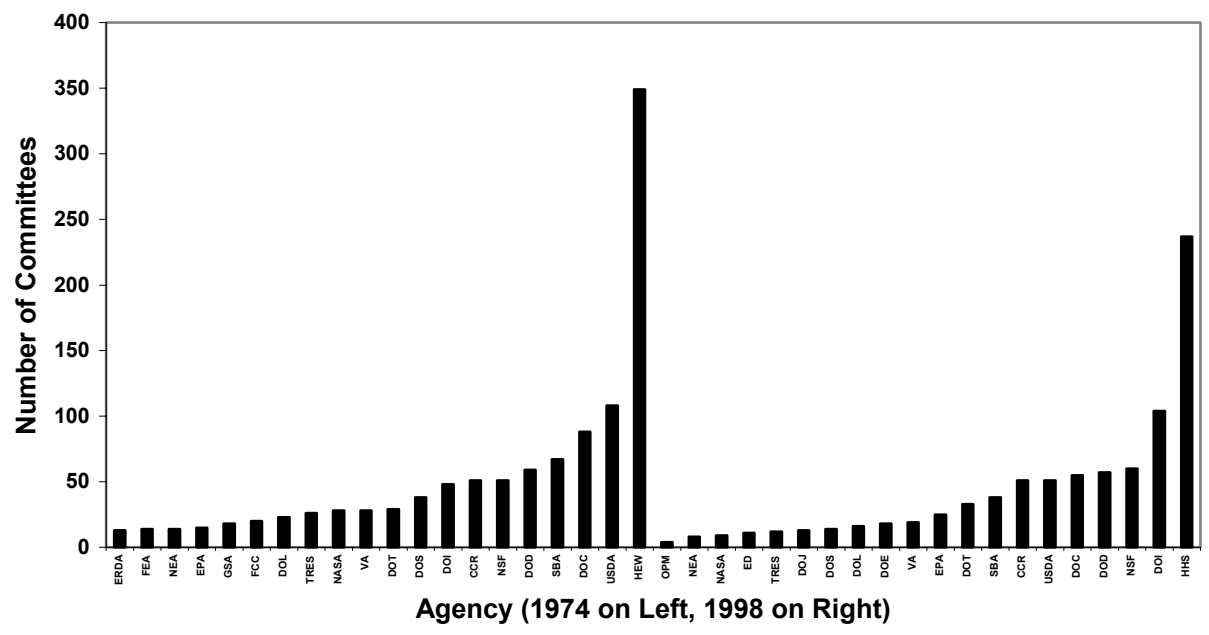
Table 9: 27 Year Panel Data Variables

Independent Variable	Category	Description
Mandate	Authorization	Percentage of committees within the agency in a given year that are mandated by Congress
Authorized	Authorization	Percentage of committees within the agency in a given year that are authorized by Congress
President	Authorization	Percentage of committees within the agency in a given year that are authorized by the President
Discretionary (Default)	Authorization	Percentage of committees within the agency in a given year that are sponsored solely by the agency
Ad Hoc	Committee Type	Percentage of committees within the agency that are ad hoc. Agencies which are not ad hoc are ‘continuing’ committees that persist for long periods of time.
Split Government	Dummy Variable	Split Government takes on the value 1 when different parties control Congress and the Presidency. It takes on a value of 0.5 when control over Congress is split. Finally, it takes on the value 0 in all other years. <i>There are two periods of fully split government: the Nixon/Ford years (1974-1976) and the later Clinton years(1995-1998). There is one period of partially split government, the early to middle Reagan years (1981-1986).</i>
Interaction Terms	Split * Authorization	This paper tests the above variables interacted with Split to determine whether the effect of committee authorization changes in years of split government.

Figure 1: Advisory Committees By Authorization Type



**Figure 2: 20 Agencies With The Most Advisory Committees:
Then and Now**



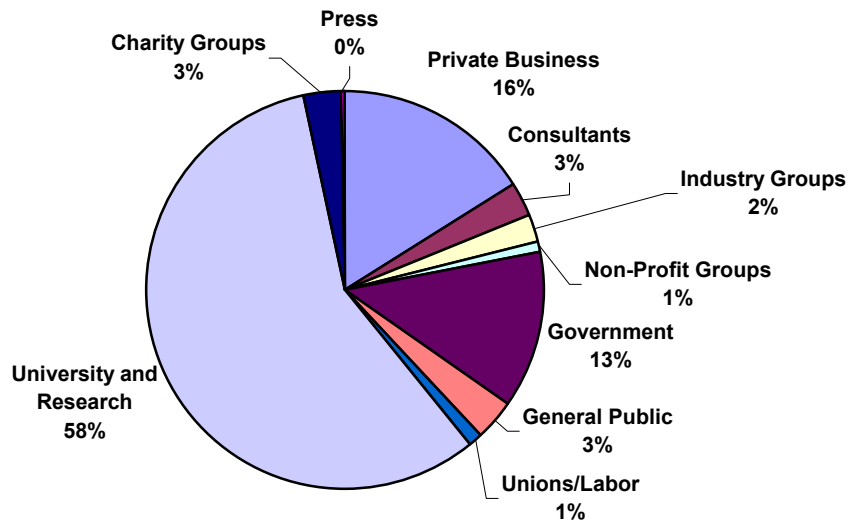


Figure 3: Membership Proportion by Group Category

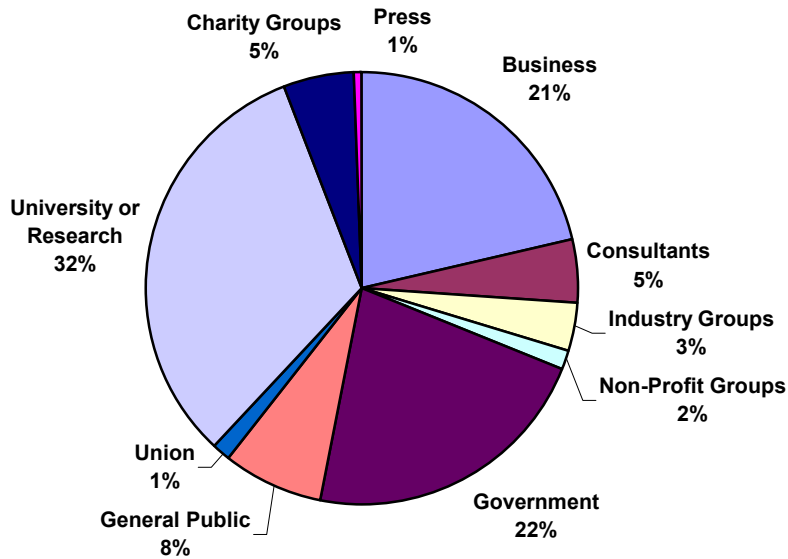


Figure 4: Average Membership Proportion by Committee

Note: Figures 3 and 4 are based on a hand count of all advisory committee members, and are of course subject to coding difficulties. Data was obtained from the Committee Management Secretariat for all committees and committee members in 1998. Figure 4 displays the average membership percentages for all advisory committees, which clearly indicate that academics and scientists tend to serve on larger committees.

Figure 5: Open, Closed, and Partly Closed Meetings (1974-2000)

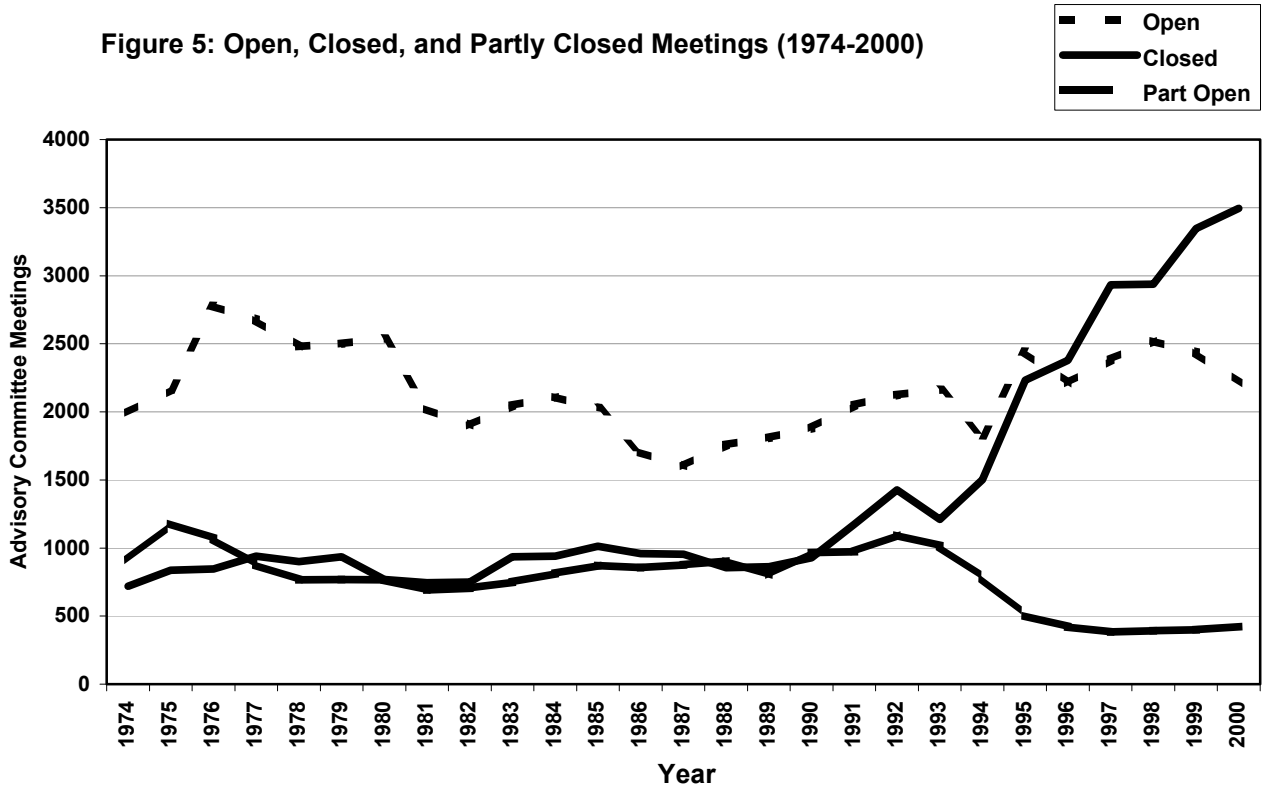
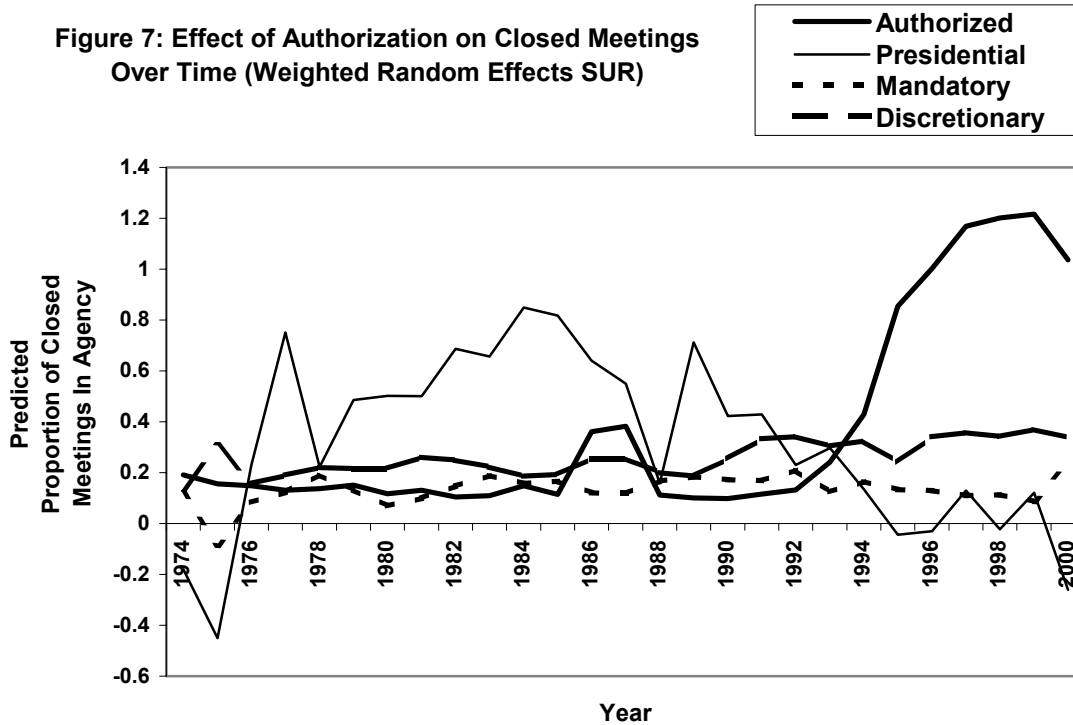


Figure 7: Effect of Authorization on Closed Meetings Over Time (Weighted Random Effects SUR)



Note: Y-Axis measures the predicted proportion of closed meetings by committee authorization for a given year. Predictions were generated using the random effects ‘xtreg’ command in STATA to control for agency specific effects, and interacting a set of yearly dummy variables with each of the authorization variables. This seemingly unrelated regression approach is similar to running separate regressions for each year, except that it accounts for correlation in the errors due to agency effects and it introduces an additional restriction by minimizing the mean squared error across all years rather than by each year.

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¹ In the Harris polls, we observe the same drop in public confidence in ‘Big Business’ during the same 30 year period.

² “In Washington's highly politicized world, the greatest risk is not that a program will perform poorly, but that a scandal will erupt. Scandals are front-page news, while routine failure is ignored. Hence control system after control system is piled up to minimize the risk of scandal. The budget system, the personnel rules, the procurement process, the inspectors general--all are designed to prevent the tiniest misstep. We assume that we can't trust employees to make decisions, so we spell out in precise detail how they must do virtually everything, then audit them to ensure that they have obeyed every rule. The slightest deviation prompts new regulations and even more audits.” Office of the Vice President. 1993. *National Performance Review: Introduction*. Washington D.C.: Government Printing Office.

³ One of the first known committees dates back to George Washington, who convened it to seek a peaceful solution to the Whiskey Rebellion. Over the years, the popularity of commissions varied with the preferences and style of the president. Flitner, David Jr. 1986. *The Politics of Presidential Commissions: A Public Policy Perspective*. Dobbs Ferry, NY: Transnational Publishers, Inc.

⁴ The negotiated rulemaking literature began in earnest with Harter. Although many others have contributed, Coglianese is the only scholar to have attempted an empirical assessment of reg-neg committees. Recent attention for reg-neg committees has spawned two new major rule changes to encourage their use: Administrative Dispute Resolution Act of 1996 (ADR), Pub. L. No. 104-320, 11(a), 110 Stat. 3870, 3873.; Executive Order

No. 12866, 3 C.F.R. 638, 642-43 (1994). Various other memorandums and reports have also encouraged the use of Reg-Neg committees.

⁵ Among other things, the Brownlow Commission is famous for its warcry, “The President needs help!” and for using the phrase “headless fourth branch” to describe the myriad independent agencies which proliferated at that time without any guidance from the executive branch.

⁶ Letter from Assistant Attorney General for Antitrust, Oct. 8, 1951, cited in Levine, 1973.

⁷ Levine (1974) predicted that the courts would interpret the “fair balance” of “viewpoints” and “functions” very leniently, as a “fair balance of viewpoints given the functions.” The courts adopted this interpretation almost exactly. *Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods*, 708 F.Supp. 359 (D.D.C. 1988), *aff'd* 886 F.2d 419 (D.C.Cir. 1989).

⁸ Exactly what this means is unclear. The courts have been very vague in defining the term ‘inappropriate influence’, which FACA outlaws. *Cargill, Inc. v. U.S.*, 173 F.3d 323 (5th Cir. 1999)

⁹ Although the balanced representation rule suggested the possibility of radical reform of the committee process, the courts have failed to deliver on its potential. They have frequently interpreted the ‘balance’ rule leniently toward agencies, and have failed to offer substantial remedy when it has been violated. See Aurelia, 1995.

¹⁰ The 2000 Presidential election brought this controversy to the fore.

¹¹

¹² In addition to these regressions, I conducted regressions using an analysis of proportions method, and also using a modified dependant variable that equals the

percentage of closed meetings plus one-half the percentage of partly closed meetings.

The analysis of proportions regressions yielded nearly identical results, but creates unnecessary difficulties in interpretation. In the regressions with the modified dependent variable, the results were very similar but usually slightly attenuated, which one would expect given the theoretical difference between partial and complete closure. Partial meeting closure (or breaking out into closed subcommittee meetings) may be more easily justified as necessary to facilitate open discussion rather than as a tool to lock out opposing interests. (Faure, 1996)

¹³ In other words, it does not include interactions between variables and agency dummies to determine whether difference variables have different slopes within different agencies – essentially a seemingly unrelated regression (SUR). This data set is not large enough to run SUR because most agencies have fewer committees than the number of independent variables.

¹⁴ Two recent cases include: *Association of American Physicians and Surgeons, Inc. v. Clinton*, 879 F.Supp. 103 (D.D.C. 1994); and *Animal Legal Defense Fund, Inc. v. Shalala*, 104 F.3d 424 (D.C.Cir. 1997). Although the courts ruled in favor of the plaintiffs in these two cases, the courts have more frequently held in favor of the defendants (the government) in earlier cases.

¹⁵ Unfortunately, a number of advisory committees in HHS did not report members' actual group membership, but instead listed nebulous terms such as "Chief", "Administrator", and "Director". These committees were dropped from the final regressions. Given that 180 out of 246 HHS committees remain in the sample this should not overly bias the results.

¹⁶ Originally, I identified over thirty separate groups, but for the sake of parsimony, I aggregated similar groups together in this analysis. Tests of equality of the coefficients within each cluster of categories fail to reject the null hypotheses of equality. The original aggregation procedure combined medical research groups with other research organization, but testing revealed strong differences between these two types of groups in every model, and so I kept these separate.

¹⁷ The interpretation of the Tobit model is questionable – how could one observe a negative percentage of closed meetings? Consider the following: the openness of a meeting can be so over-determined by a pattern of independent variables which all favor openness that OLS underestimates the individual effects of each independent variable. Indeed, we do observe considerable massing of the dependent variable at 0% closed meetings and 100% closed meetings. Tobit would compensate for this; however the magnitude of the estimates could be exaggerated due to Tobit’s dependence on in-sample observations to extrapolate unobserved distributions (similar to making out of sample predictions).

¹⁸ Interestingly, we do not observe any relationship between closed meetings and industry group membership in DOD committees, largely because of universally high closure rates.

¹⁹ Although challenged, the USTR policy of blanket closure was upheld in court. *Public Citizen vs. Barshefsky*, 939 F.Supp. 31 (D.D.C. 1996).

²⁰ Strikingly, these two phenomena do not appear to be related, since dropping HHS and NSF committees from this regression does not strongly affect the trend line on the Congressionally Authorized variable.

²¹ The “checks and balances” system of the US Constitution is one famous attempt to solve the problem of interest group dominance (or “Factions” in Madison’s terminology). Civil Service Reform is another famous attempt to fix government, this time focusing more on patronage and individual corruption. Faction dominance and corruption are both aspects of the same endemic problem, but we appear to have had more success solving corruption than factioneering. In the developing world, however, the focus often remains more on balancing the costs of corruption against the cost of bureaucratic oversight. Freedheim and Tandler, 1994.

²² The proliferation of executive sessions and subcommittee meetings, which do not involve the entire committee, is one excellent example that frequently came up in personal interviews with committee members. The courts have allowed such meetings, so long as they do not make substantively binding recommendations to the general committee. Another excellent example is Congress’ choice in 1997 to grant the National Academy of Sciences a partial exemption to the open meeting requirement.