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Heuristic Agenda Closure in Administrative Government

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Abstract

Agenda-setting shapes the problems that occupy the sustained attention of those who craft laws and policy, and the heuristics and solutions used to address those problems. An extensive political science literature has elucidated agenda formation, concluding that (1) policy change happens under the conjuncture of solution streams and policy streams (given a structure or moment of political opportunity), and (2) “there is an impressive congruence between the priorities of the public and the priorities of Congress across time” (Jones and Baumgartner 2004), conditioned upon wider legislative agendas than those for the public. I contend here that the rise of administrative government qualifies these conclusions. That delegation trades off expertise for agency preferences is well known, but it also embeds a second trade-off: between a forum with more open agendas (the legislature) and one that restricts them (administration). Indeed, delegation to administrative agencies presumes, if it does not favor, *agenda closure* – a tightly constrained focus on a limited set of issues to which the legislature has entrusted the agency’s authority and resources, and a narrow set of methods and *consiliaria* (experts, lawyers, adversaries, commenters) from which the agency seeks and gets its information. Agenda limitation may be desirable but may also worsen the quality of public problem solving, and agenda democracy itself may be normatively desirable. This tension is ineluctable. Hypothetically, it might be ameliorated by (a) the development and embedment of greater expertise in law-making assemblies and/or (b) the restriction or deliberative aperture (or both) of administrative policymaking.

Key Words

bureaucracy
agenda setting
agenda democracy
deliberation
administrative problem solving

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But in kingships the subjects have too small a share in the administration of justice and in deliberation; and in aristocracies the masses can hardly have their share of liberty, since they are entirely excluded from deliberation for the common weal and from power. – Cicero, *De Re Publica* I, 43.

The definition of the alternatives is the supreme instrument of power; the antagonists can rarely agree on what the issues are because power is involved in the definition. He who determines what politics is runs the country, because the definition of alternatives is the choice of conflicts, and the choice of conflicts allocates power. – (Schattschneider 1975 (1960, p. 66), emphasis in original).

Agenda-setting shapes the problems that occupy the sustained attention of those who craft laws and policy, and the heuristics and solutions used to address those problems. There are few theoretical and empirical research agendas in political science more vibrant than the study of agendas and their formation. From its origins in classic works of American politics (Schattschneider 1975 (1960, Kingdon 1984), the empirical literature exploded from the 1980s through the early twentieth-century with a set of theoretical innovations, measurement strategies and exhaustive empirical investigations by Baumgartner and Jones (for prominent examples and summaries see Baumgartner and Jones 2015; Jones 2005; Jones and Baumgartner 2004). This literature and the intertwined concepts, methods and data sources it spawned have revolutionized political science. Many cognate disciplines (economics, sociology) now drawn upon related data and methods. Scholars and students of politics have learned several critical lessons from this enormous effort. First, policy change is conjunctural; it happens when a window of political opportunity emerges and when the set of problems then available (given by the “problem stream”) matches up with a particular set of solutions then regnant (given by the “solution stream”). Second, there has been a long-term correspondence between the problem stream of the American public and that of its primary representative body at the national level, the United States Congress, for decades, visible in “an impressive congruence between the priorities of the public and the priorities of Congress across time” (Jones and Baumgartner 2004). While the problem agenda for Congress is wider than that of the public, this macro-correspondence points to a form of representative democracy being performed and replicated in the institutions of American national government.

One long-term development in American policymaking likely qualifies the lessons we can glean from studies of legislatures, however. By any number of measures, as much “policy” is now made in administrative agencies as in Congress. The reasons are manifold, but they have led prominent scholars in legislation and regulation to declare that we have entered an era of “unorthodox” procedure (Gluck, O’Connell and Po 2015), while other scholars have noted that the very character of the American state has been transformed, from one centered upon statutes and rights to one centered upon “policy” as a mode of governing (Orren and Skowronek 2017). The evidence for the hypothesis of a procedural transformation of American government is

voluminous, but it includes the fact that far more regular activity proceeds through the federal rulemaking process and through administrative guidance production (as much as 90 percent, by some estimates) than through statutes (Kerwin and Furlong 2018) and that, most tellingly, lobbying now targets the administrative state as much as, or more than, it targets the national legislature (Krawiec 2013; You 2017; Ban and You 2019; Libgober 2020a; Libgober and Carpenter 2024). To be clear, major scholars of agenda setting have long also been interested in administrative politics (e.g., May, Workman and Jones 2008, Dwidar 2025). It is not our collective ignorance of administrative agenda-setting that is at issue – though it clearly needs more study – nor any constitutional question (at least in this paper). The question is rather what massive delegation of policymaking to administrative agencies implies for the representativeness, the democratic nature, of agenda politics (Jones and Baumgartner 2004; Carpenter 2023).

In this brief essay I suggest that the delegation dilemma in institutional politics is larger than the usual one we confront. It is not simply about the fact that, as in delegation from floors to committees within a legislative body, a principal entrusts an agent with authority to set policy and loses some fidelity to its own policy preferences in doing so (Epstein and O’Halloran 1999; Gailmard and Patty 2007; Gailmard and Patty 2012). The matter is not simply that the administrative agency qua “agent” has different (more) information or capacity relative to the legislative “principal.” Nor is the matter reducible to the fact that the administrative agent may have different preferences over ultimate policy (assuming the classic “ally principle” (Bendor and Meirowitz 2004) is not perfectly satisfied). Structurally and historically, *the agent also may also have a narrower way of looking at things*, even in those cases where its policy preferences lie quite close to those of the legislature that granted it authority. The administrative agency may be a “silo” – at least relative to the legislature – by intended design and unintended operation (Kwak 2014; Carpenter and Moss 2013). It might systematically ignore heuristics and solutions that exist in the larger public or among a broad community of “experts,” thereby being systematically less likely to shed attention upon possible solutions or ways of looking at a problem that are “available” in its informational and deliberative environment, or that the legislature does consider or is more likely to consider. A related restriction is that the heuristic agenda of the legislature is likely more expansive than that of the agency, due not only to certain behavioral tendencies and institutional restrictions operating upon the agency itself, but also due to the fact that the agency’s set of information sources and conversation partners may be more limited.

The idea that agencies may be more subject to heuristic agenda closure is a proposition that needs systematic empirical evidence, but there are a range of recent developments that point to the possibility of more systematic agenda restriction in administrative government.

- The Food and Drug Administration (FDA) was long less receptive to voices calling for greater patient access to medications, especially for those diseases with high mortality

(cancer). The primary voices for the acceleration of cancer treatments came from other government agencies (the National Cancer Institute) (Carpenter 2014, Chapter 6).

- Administrative architects of the Affordable Care Act’s implementation appear to have more adept in the incentive-based design of health insurance than they were in the rollout of administrative systems. The Department of Health and Human Services was plausibly far better staffed with experts on incentive and plan design than with experts on administrative implementation.
- The “consumer welfare standard” as applied to antitrust appears to have far greater currency in universities and among agency personnel than it among the public (Short and Brown N.d.). Moreover, scholars have offered a range of alternatives to this standard.
- Public health agencies embraced a plausibly narrow conception of “science” and what it counsels during the COVID pandemic, and subsequent analyses of institutional closures generally fail to adduce evidence for net health benefits from these and other COVID-era policies (Macedo and Lee 2025).
- Without much evidence for its benefits at the time, and certainly without explicit legislative instruction to value it, financial regulatory agencies appeared to be far more receptive to arguments for “financial innovation” before 2007 than they are now. Among other things, their mental and actual models failed to consider “the statistical cost of a financial crisis” (Posner and Weyl 2013; Posner and Weyl 2014).
- Public comments and non-comment meetings with rulemaking agencies come disproportionately from the regulated industry (Yackee and Yackee 2006; Yackee 2019; Sahn 2024) and within that, a small set of players within the industry, especially bank-holding companies (BHCs) (Krawiec 2013; Ban and You 2019; Libgober 2020a; Libgober and Carpenter 2024). Whether these narrower interactions lead to heuristic closure is not clear, but even smaller and regional banks are not “at the table” with nearly the frequency of BHCs.

Of these and other patterns, there are many potential responses. First, I have, with certainty, selected for cases of potential administrative failure or narrow conceptualization. Even were one to grant these statements as fact, their aggregation lies some distance from a conclusion, much less proof, that administrative agencies always or on average see things more narrowly than legislatures. Second, there are potential responses to each of these sector-specific characterizations, ranging from the questionable promise of many cancer treatments in the 1970s and 1980s to the benefits of both financial innovation and lighter antitrust enforcement in a world of two-sided markets and platform competition. Third and perhaps most important, *the narrowness of administrative deliberations may be a good thing* and exactly what we intend to

ensue when delegating matters to a specialized agency with considerable expertise.

That said, all of these points and others could be granted and at least part of the argument would still hold. When “agenda-setting” is construed not merely as problem identification but also solution search, there are structural and historical reasons to think that administrative agencies approach problems with a more narrow menu of options than do agencies (though they may compensate, in some sense, for the limited breadth of these options by considering them in more depth). At a minimum, the question demands empirical investigation. Beyond that, the idea that experts value highly insular modes of knowledge-gathering and discount plural and more diverse sources of information and counsel has been established in psychology and management fields (Tetlock 2017). What has not been argued is that (1) these dynamics shape the reality of lawmaking and policymaking under separated powers, (2) that delegation is more than a tradeoff between fidelity to first-order preferences and expertise, and (3) that the democratic or representative slippage between “solution streams” may well be appreciably greater than that for “problem streams.”

1 Agendas and Heuristics

What exactly is an “agenda”? While much of the literature considers agendas as composed of sets of available problems, scholars have long emphasized that the available tools and approaches to problem-solving also constitute an essential part of agenda-setting (Schattschneider 1975 (1960; Kingdon 1984).

1.1 Broader Understandings of Agendas

Kingdon, in particular, saw agenda-setting work in “solution streams.” Following recent theoretical work (Forrester 2022; Carpenter 2023), I wish to counsel consideration of “agendas” in their most expansive signification. Options include:

1. Menu from which final choice is made (Schattschneider 1975 (1960; Romer and Rosenthal 1978; Lupia 1992) 1a. binary voting option (or single alternative to status quo) controlled by a proposer 1b. denumerable set of items that can be considered by a decision maker (individual or collective)
2. Most important problem (Kingdon 1984; Baumgartner and Jones 2015; Jones 2005; Jones and Baumgartner 2004)
3. Shortlist of the possible (Forrester 2022)
4. Common sense (Woodly 2015)

5. The set of things that are public (Mettler 2011; Forrester 2022)
6. The set of things that are political, subject to public contestation (Schattschneider 1975 (1960; Forrester 2022; Woodly 2015)
7. Heuristics available to interpret problems (Hong and Page 2001; Hong and Page 2004; Landemore and Page 2015)
8. The persons giving voice to agenda items, when these are partially or wholly inseparable from the ideas they express (Hansen 1991; Thurston 2018; Carpenter 2021)

The idea that problem-solving in particular concerns different sets of tools or approaches has been advanced in theoretical work by Hong and Page (Hong and Page 2001; Hong and Page 2004). Much as a student approaching a problem of integral calculus might be better off being equipped with the tool of integration by parts than with a toolkit without it, Hong and Page argue that teams of problem solvers are better off with a broader set of heuristics when considering complex problems. Their argument is more technical, but in a conceptual sense, I wish to consider two rough corollaries of their approach. First, public problem-solving might proceed more “optimally” if more than one discipline or approach were available to those considering the problem. To take one recent argument, for instance, policymakers might perform better if, say, political and political economy (or legal) considerations were considered along the way than if merely considerations of optima dominated the calculus (Acemoglu and Robinson 2013). Second, these tools are likely linked to *the set of people who are involved in problem-solving and/or who talk with those people*. The argument that heuristically diverse *teams* might be better at problem-solving (Hong and Page 2001; Hong and Page 2004) would be far weaker if in fact heuristics were costlessly separable from persons, or if persons or organizations could seamlessly learn or adopt new heuristics.

1.2 Arguments for Agenda Democracy and Heuristic Diversity

Given this more expansive notion of agendas, let me review two arguments for greater “aperture” in agenda politics. The first, advanced by scholars in formal political theory, is that agenda limitation can worsen problem-solving or policymaking in general. A more generalized and not- explicitly-political approach to this question appears in arguments that agenda restriction can limit the heuristic diversity of teams (Hong and Page 2001; Hong and Page 2004). One of the advantages of more open deliberation, according to these theorists, is that it can encourage precisely this breadth of heuristics brought to a particular problem (or set of them) (Landemore and Page 2015). A different, but I think related, argument appears in recent scholarship that transforms our understanding about what good policy search constitutes. Critical work by Callander (Callander 2011) examines optimal policy experimentation when the relationship between policies and outcomes is unknown and the mapping defining that mapping is only

partially “invertible,” namely that even given new information about the relationship between one policy experiment and its outcomes, considerable uncertainty about the larger relationship still remains and never disappears in finite time. Callander’s work and a range of papers that have followed have reshaped our understanding of how the search for good policies (whether decision-theoretic or strategic) unfolds. In a more recent paper, we learn that agenda control can worsen information that policymakers get (Callander and McCarty 2024), consistent with related formal arguments that reliance upon delegated expertise can limit the agenda and can lead to a form of “capture” (McCarty 2013).

A second argument about agenda openness is that it is normatively desirable given the demands that “democracy” in the broadest sense – or in a republican reading of the concept – makes upon political systems. As Robert Dahl (Dahl 2008) argued 35 years ago,

The demos must have the exclusive opportunity to decide how matters are to be placed on the agenda of matters that are to be decided by means of the democratic process.

This general perspective has been accompanied by argument in normative theory that social movements perform important agenda-democratizing functions in modern politics (Woodly 2015; Forrester 2022; Carpenter 2021). These perspectives may perhaps qualify as “utopian” and inconsistent with policy efficiency, yet they are no less relevant for the fact, as modern legislatures and courts routinely subject administrative procedures to a range of openness requirements on the rationale that values such as “due process” and others are better served by a degree of sacrifice in procedural efficiency and a concomitant consideration of potential complaints and perspectives on proposed policy solutions.

2 Legislatures and Agencies

If a more open agenda – at least in “the problem stream” – is desirable, what venues are more likely to lead to such an aperture? There are reasons to believe that legislative politics offers a broader heuristic agenda than exists in administrative agencies.

The obvious point here is that legislatures are representative and elected, hence subject to competitive pressures that administrative agencies are not. To be sure, agencies themselves are known to compete for turf, in part through direct lobbying and in part through reputational politics (Carpenter 2014). Yet it is no stretch to argue that the *degree* of competition is larger in the legislative sphere. More generally, the pursuit of legislators’ time – their attention – constitutes one of the central objects of modern organized interests, in part because those interests are far more capable of shaping attention than they are of shaping legislators’ core preferences (Hall and Deardorff 2006; Hall and Wayman 1990; Hall 1998).

The less obvious point is that legislatures have traditionally received information from a very broad range of sources. Historically, American legislatures in the colonial and early national periods presided over one of the most open-access systems in global political history – petition-and-response systems – even (perhaps especially) at a time when other aspects of democratization were limited (Bailey 1979; Blackhawk et al. 2021; Carpenter 2021), and such apertures of agendas have been witnessed in other legislative and parliamentary systems as well (Miller 2023; Miller 2017). The nature of public hearings has, as Baumgartner and Jones have shown, also added a wide range of voices and subjects to the twentieth-century legislative agenda.¹

How then might heuristic agendas get narrower under administrative government?

2.1 Mechanisms of Heuristic Closure

Administrative Structure. The very fundamentals of administrative government entail topical specialization. It is a feature, and not a bug, of administrative government. We do not expect a ministry of agriculture to concern itself all that much with telecommunications or with housing and urban development. (Whether it *should* concern itself with such measures is another matter.) In part because the set of tools in a given policy domain might be more restrictive than in another, we might expect that the tools available to housing policymakers might differ systematically from those of agricultural policymakers, say.²

Lobbying Dynamics. Considerable research has elucidated the processes by which organized and special interests attempt to persuade administrative decision-makers and organizations (Yackee and Yackee 2006; Yackee 2019; You 2017; Carpenter et al. 2020). While a number of questions remain open to investigation and replication, there are clear advantages for business interests as opposed to other forms of interests, and among business interests, advantages for wealthier participants over smaller and less wealthy participants. As one among a number of recent examples, the Dodd-Frank Wall Street Reform Act of 2010 engaged consciously in large-scale delegation to federal agencies, calling for more than 400 substantive rulemaking processes. What is now known about those rulemaking processes suggests that both formal and informal participation in the process of rulemaking was dominated by large financial corporations (especially bank holding companies), publicly traded entities, and their legal and association-based representatives (Krawiec 2013; Ban and You 2019; Libgober 2020a; Libgober and Carpenter 2024). The patterns are observed when more formalized participation is measured (notice-and-comment processes during rulemaking) as well as when less formalized participation is

¹To be clear, in at least some of the policy areas mentioned above, there is now systematic evidence of agenda closure in the national legislature itself (e.g., Witko et al. 2021).

²This tilt toward topical specialization is surely moderated by interagency working groups, interagency memoranda, and by the general management of the executive branch under the President and more generalized executive departments.

observed (meetings between interests and rulemaking agency personnel before the notice-and-comment process commences).

There are many reasons to believe that, from an efficiency standpoint, the tilt of administrative dialogue improves policy relative to an “egalitarian” alternative. The subjects of rulemaking are those firms with the greatest information relevant to the policy being considered, and one defensible aim of the notice-and-comment process may be to induce such private interests to reveal information they otherwise would not, in part by writing a first draft of policy that is highly costly to regulated entities (Libgober 2020*b*). Beyond this, the kinds of specialized expertise that appear in rulemaking processes are likely to be particularly relevant as administrative agencies consider how to make complex policy decisions (Libgober and Carpenter 2024).

Nonetheless, public interest organizations (think of consumer organizations or labor organizations) cannot, or do not, marshal expertise in nearly the same way, or at nearly the same scale.

Cultural Capture. James Kwak has advanced an argument for what he calls the possibility of “cultural capture” (Kwak 2014). Whereas many arguments about capture – invoking mechanisms of the revolving- door, for instance – gesture toward some sort of implicit contract as a mechanism of influence, Kwak’s argument starts with the operational reality of regulation. By dint of their jobs, regulators have to spend an inordinate amount of time talking to the entities they regulate. By virtue of being in the same room as the regulated entity, different behavioral processes may lead to a partial convergence of views of ways of approaching problems. The fact of organized lobbying by some of these same entities – particularly of the sort that places expert or powerful members of the organization in the same room with policymakers (Johnson and Kwak 2011; Krawiec 2013; Libgober and Carpenter 2024) – only exacerbates the problem. Status dynamics and continual proximity may mean that the modestly dressed regulatory official ends up being awed by, or won over to, the perspectives of the banker or infotech/biotech executive.

In biopharmaceutical regulation, the inclusion of patient advocates in the regulatory process has coincided with increasing likelihood and rapidity of product authorizations, especially for rare diseases and diseases with otherwise limited treatment options. (I say “coincided” as causal evidence is harder to come by here.) There may well be reasons to worry about this development, especially if, under a form of “astroturfing,” the patient advocates are less representative of patients and more representative of companies. Yet in the 1970s, the primary force for acceleration of consideration of cancer treatments was not cancer patients but oncologists and, in particular, the National Cancer Institute. It took a strong-handed move by FDA bureau chiefs to overrule one of their own medical reviewers to approve the first platinum-based chemotherapy

drug (Carpenter 2014).

The physical proximity of many administrators to certain constituents (and not others) may exacerbate this dynamic. Most regulatory policymakers operate out of Washington, D.C., easily reachable in an hour or more's journey from New York, Philadelphia, Boston and, further south, Charlotte. Not unlike the electoral dynamics of the widely spread voting power of the assemblies in Republican Rome, those who must travel further to (or who do not have delegates employed in) the capital city are less likely to be represented there.

2.2 Opening Administrative Spaces: Participation and Proxies

There are potential mechanisms for aperture in administrative decision-making. The function of advisory committees in federal agencies may be less to draw on expertise per se than to open up the process to a wider set of public inputs (Moffitt 2014). One mechanism involves the systematic embedment of consumer (or other less represented) voices in administrative organizations, as in California's Public Participation Program in insurance regulation for personal rates or the National Association of Insurance Commissioners' (NAIC) Consumer Participation Program (Schwarcz 2014). The evidence for the efficacy of these programs has been mixed, but (Schwarcz 2014, 385-86) examines one case – the Medical Loss Ratio (MLR) regulation of the NAIC – in which “a sufficient number of consumer representatives...actively engaged in specific NAIC issues and effectively coordinated their efforts,” generating “substantial influence in counteracting industry influence.” This case might seem more about public versus special interest influence in regulation, but Schwarcz is clear that the major influence of the consumer representative had to do not with the agenda of problems confronted by the NAIC but rather with *the agenda of policy tools* consulted by the NAIC in the MLR regulation. Alternatively, some writers have suggested that citizen bodies be given veto or review power over regulations (Schulson and Bagg 2019; Bagg 2024).

Another general mechanism concerns proxy advocates. In some cases such as insurance regulation these are more explicit (Schwarcz 2014, 389-95), but in federal policymaking involving other levels of government can function to better represent consumer or public interests. In federal rulemaking, scholars of policymaking in transportation have noted that In transportation policy, for instance, the participation of state governments in rulemaking processes is associated with less industry (contractor, auto) influence in federal rulemaking outcomes (Yackee 2014).

2.3 The Issue (or Potential Solution) of Enhanced Congressional Capacity

The final possibility rests in strengthening the policymaking capacity of the nation's lawmaking bodies. Chiefly this would involve strengthening institutions that serve all members (the Congressional Budget Office, the General Accounting Office) and, beyond that,

domain-specific committees that inform mark-up and oversight. While the idea of having a Senate Finance Committee with anything like the analytic capacity of the Federal Reserve is farfetched, it is worth noting that had congressional staffing patterns kept pace with the growth of federal agencies (or even their own numbers as a proportion of population or another aggregate indicator), they would be many times the size that they are now. Such committees might be better able to keep tabs on administrative agencies. The issue of weakening congressional capacity raises larger system issues about the American system of government (Dexter 1965), and a range of scholars and writers have begun to propose alternatives to the status quo (Drutman and Teles 2015; LaPira, Drutman and Kosar 2020; Neblo, Esterling and Lazer 2018). While many of these suggestions represent non-marginal adjustments to current institutions, they also rest upon ideas that have some experimental and historical plausibility (Lazer et al. 2015; Neblo, Esterling and Lazer 2018).

A related option is to consider “sunsets” for agency regulations or even legislative delegations to agencies, compelling the legislature to revisit these problems and not to rely upon permanent delegation as a (perhaps unintended) means of shifting deliberation about policy entirely to a non-legislative and non-representative venue. While the principle has been little used for agencies at the federal level, it was inaugurated in Colorado in 1976 at the state level (Price 1978; Quitmeyer 1977) and it was applied to advisory committees in the Federal Advisory Committee Act of 1972.³

The exact form that congressional capacity investment might take is far beyond the scale and scope of this essay. Yet it is important to keep in mind that such efforts might well serve as complements to, rather than substitutes for, changes in the structure and procedure of administrative government.

3 Conclusion

The relative closure of agenda politics under administrative government points to a dimension of delegation that has largely escaped our notice, and which also compels some circumspection about what we think we know about problem-solving as a mode of politics. A plausible fact is that most problem-solving politics in advanced industrial democracies occurs in administrative settings. I have focused on the United States here, but surely the facts of the matter are not entirely different in, say, Fifth Republic France (Vauchez and France 2021) or late- twentieth-century Japan up to the present day (Muramatsu and Krauss 1984; Shinoda

³I acknowledge Roberta Romano for this point.

2022). The agenda-setting literature in political science has demonstrated important long-term correspondence of public agendas and legislative agendas, at least in the problem domain, but in the past half-century, a considerable degree of policymaking has migrated to the administrative realm. We know far less about that realm. And in that realm and more generally, we know far less about “the solution stream” than we do the “problem stream.”

Delegation to administrative organizations trades off not only expertise against the administrators’ preferences, but a plausibly more open venue with that of a more restricted agenda. While this is feature, and not merely bug, of administrative operations, the potentially limited deliberative setting of administrative agencies poses a challenge to problem-solving in contemporary democratic politics.

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