

The American System of Shared Powers: The President, Congress, and the NLRB

by

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Abstract

The purpose of this paper is to develop and test a model of political influence on regulation that incorporates both the competing interests of elected officials and the relevant institutional constraints. To do this, we focus on one channel of political influence: the appointment of agency leaders to a multi-member regulatory board. The model has two stages, first, a bargaining stage between the President and Senate in which they choose a target policy; and second, the appointments stage in which they attempt to implement this target by choosing the median board member. The model's empirical leverage arises because elected officials can replace board members only when seats on the board become available through term expiration or resignation. This yields specific predictions about how and whether each appointment will change policy. We apply the model to the NLRB. The empirical results, investigating all appointments to the NLRB from 1949 until 1988, fit our theory remarkably well.

1. Introduction

Although economists and political scientists approach the politics of regulatory agency policymaking in different ways, nearly all agree that, to a great extent, elected officials control regulatory agency policymaking for political ends. Elected officials negotiate the balance between citizen and interest group demand, translating this balance into pressure on the agency. Scholars presume that agencies respond to political pressure, implementing the goals of elected officials.¹ An impressive body of scholarship supports these conclusions.²

Yet a fundamental gap remains in this literature, best understood by analogy with the theory of the firm. Using the assumption that firms maximize profits, neoclassical economics

provides a theory of firm decisions as a function of various parameters. Through comparative statics, the theory shows how the firm responds to changes in the parameters. This approach treats the firm as a black box, ignoring the problem of why the firm behaves in this manner. More recent contributions to the theory of the firm (see, e.g., Milgrom and Roberts, 1991; Williamson, 1985) address this question. The new theory shows how firm structure is designed to provide managers with incentives to generate economic returns for shareholders instead of allowing managers to capture these returns for themselves.

A parallel question arises for regulatory agencies — why do managers of regulatory agencies implement political goals of elected officials? Students of political control typically assume that this process works without modeling why. Following the lessons of the theory of the firm, the literature on political control has begun to study the incentives and constraints facing regulatory agency managers. Bawn (1993) and McNollgast (1989) emphasize how the enabling legislation often explicitly constrains regulatory decisionmaking.³ Moe (1990) and Weingast and Moran (1983), among others, show how fluctuations in elected officials' preferences result in changes in agency policymaking.

One problem with modeling why regulatory agencies pursue goals of political officials is that regulatory agencies do not face a unified front of political control. Instead they face the pressure of competing political actors, each with their own policy agenda. Members of Congress, for example, typically have different policy goals from the President. Yet all of these elected officials have some power to influence regulatory agencies. Thus we cannot adequately model political control or examine its empirical implications without a coherent treatment of the multiple principal aspect of political control.⁴

The purpose of this paper is to develop and test a model of political influence that incorporates both the competing interests of elected officials and the institutional constraints faced by elected officials and agency members. To do this, we focus on one channel of political influence: the appointment of agency leaders to a multi-member regulatory board, subject to a series of constraints. The first set of constraints concerns the structure of the appointment process: the President nominates each board member while the Senate votes to confirm or reject. Policy implementation by multi-member regulatory agencies also depends on the agency's internal organization. We focus on one aspect of that structure: the use of majority-rule voting procedures to decide agency policy. For agencies facing a single policy issue (or a series of issues over which political preferences are highly correlated), the agency's policy decision implements the median board member's preferences.

This conclusion implies that politicians seeking to implement a particular regulatory policy will structure their appointments so that the median member's preferences match their desired policy. Because board members typically cannot be fired for political reasons, political institutions further constrain elected officials by the sequence and timing of open seats on the board.⁵

To study how elected officials influence multi-member regulatory agencies through

appointments, we build on previous work to refine the theory of appointments in two ways.⁶ First, we provide an explicit model of the political appointment process, modeled as a bargaining game between the President, who selects nominees, and the Senate, who accepts or rejects them. Second, we derive a series of comparative statics results. These predict how, given the institutional constraints, newly elected officials with preferences that differ from their predecessors attempt to alter regulatory policy through appointments.

Our model of policy implementation has three stages. First, consider a given *political regime* — that is, a fixed President-Senate combination. When an appointment opportunity arises, the President and the Senate bargain over policy. We call the outcome of the bargaining stage the regime’s *target policy*. Second, given various institutional constraints, the President and Senate appoint members to the board to implement their target policies. Finally, the board members make agency policy through majority rule decisions, implementing the preferences of the board’s median member.

We test our model by incorporating essential features of the appointments process, namely, that appointments are staggered and that board members cannot be fired. This implies that appointment opportunities happen one by one, allowing us to test our predictions on a sequence of appointments to a given agency. Consider a board whose median is located at a target policy determined by the current regime. Suppose next that the preferences of either the President or the Senate change. Because board members cannot be fired, political officials cannot directly alter the board composition to select a new median. They must instead wait until a seat becomes available through a current member’s resignation, retirement, or term expiration.

The ability of the newly elected officials to affect the board median depends on which seat becomes available, for two reasons. First, the position of the open seat plays a role in determining the elected officials’ target policy for the board. The board can still operate with an unfilled seat; thus, the policy carried out by the board’s remaining members becomes a threat point in their bargaining game. Second, suppose that the new regime seeks to move policy in a rightward direction. If the median member’s term expires, political officials can simply choose a new median, thus obtaining their target policy (with some qualifications made explicit below). If, in contrast, the available seat is to the right of the median, elected officials cannot change the policy because they cannot move the median to the right (although they can move it to the left). Instead, the best they can do is move the new appointee to the right of the rightmost board member, leaving the median unchanged.

The model reveals that the institutional constraints create a type of “path-dependence” in the sense that aspects of the board’s history affect the ability of elected officials to influence agency policy. Specifically, the particular pattern of seats that become vacant affects both the appointments by political officials and agency policy. Because the ability to move the median depends on which seat is vacated, the path by which political officials move the median depends on the order in which board members’ seats become vacant. The path also depends

on whether political officials can make appointments corresponding to seats vacated because a board member's term expires or whether one or more board members resign or die in office.

Building on the important work of Moe (1985; 1987), we apply our approach to the National Labor Relations Board (NLRB). The comparative statics about policy change through the sequential appointments process yields a prediction about each appointment. To test these predictions, we have extended Moe's (1985) data on NLRB appointments to include every appointment from 1949 to 1988. The results demonstrate a remarkable degree of harmony with the predictions. Following virtually every regime shift, the board median moves in the predicted direction. Moreover, the model predicts that a new set of elected officials should be able to obtain their target policy in three unconstrained appointments. This yields an additional prediction, namely, that the 4th through nth unconstrained appointment in a stable regime should yield no change in the median. The data support both this prediction and the path-dependent nature of appointments.

Scholars provide a range of alternative hypotheses about regulatory appointments. We specify three and test these against our own. First, appointments in the common parlance are nearly always associated with the President. Nominees to the Supreme Court, under secretariats of Commerce, or regulatory agencies are typically viewed as the "President's." A number of scholars thus argue for the "presidential dominance" of regulatory agency appointments (see, e.g., Moe, 1985; 1987; Mackenzie, 1981). This hypothesis holds that the preferences of the President alone should determine an appointee's preferences. Second, at the opposite extreme are scholars emphasizing the "congressional dominance." According to this hypothesis, the Senate's preferences alone should determine an appointee's preferences (Weingast, 1984). Third, some scholars argue that appointments to regulatory agencies are not made for policy reasons, but for partisan patronage (see, e.g., Rothenberg, 1994; Wilson, 1980: "Conclusion"). According to this view, the policy preferences of elected officials should not determine the preferences of appointees. Our empirical results reject each of these hypotheses in favor of our model.

Our paper proceeds as follows. Section 2 develops the model. Section 3 provides some necessary background about the NLRB. Section 4 describes our empirical model and results.

2. The Model

In this study we focus on only one of the methods politicians can use to affect regulatory agencies: appointments. Most regulatory agencies have a sufficiently broad legislative mandate that the beliefs of the agency's principal members play a crucial role in determining the policy goals of the agency. This implies that the appointments process is a critical means that politicians can use to influence regulatory agency policy.⁷

2.1 Policy and Preferences

The set of policy alternatives that a regulatory agency can pursue is represented as an interval on the real line. We normalize the endpoints of the interval to be 0 and 1; these endpoints represent the most extreme policies that the agency can enact. Agency policy is represented by $x \in [0,1]$.

The relevant players in an agency appointment are the President, who nominates, and the Senate, who votes to confirm or reject the nominee. Both the nomination power and the confirmation power can be used for political gain. When a President chooses a nominee whose beliefs may be politically objectionable to the Senate, he must consider the cost to his administration of extended confirmation hearings and the publicity they entail, as well as the possibility of outright rejection. These considerations can serve as a strong deterrent to disregarding the Senate's political interests (see Hammond and Hill, 1993; Lemieux and Stewart, 1990).

We abstract from the institutional detail of the Senate and consider the utility function U_S to represent the Senate's preferences over agency policy; the President has preferences represented by U_P . For $\theta \in \{P, S\}$:

$$U_\theta(x_\theta, x) = -|x_\theta - x|$$

Preferences are single peaked over $x \in [0,1]$, where $x_\theta \in [0,1]$ represents the politician's most preferred policy. Politicians can have most preferred policies anywhere in the $[0,1]$ continuum. To simplify exposition in the following discussion we will assume $x_P \neq x_S$.

2.2 Bargaining over policy

Politicians care about regulatory policy outcomes, not about inputs into the process of choosing outcomes. Thus, they do not derive utility from one type of appointment over another, but instead, from how that appointment affects regulatory policy. Appointments are thus seen as instruments toward a policy goal.

When an appointment opportunity arises, the President and Senate bargain over what policy to attempt to implement via their appointment; that is, they choose a new *target policy* for the agency. We model this bargaining process as follows. The President proposes a policy which the Senate accepts or rejects. If the Senate accepts, the bargaining game is over and we say the proposed policy becomes the target policy. If the Senate rejects, the process then repeats, with the President offering another policy, which the Senate accepts or rejects. This continues until a policy is agreed upon, with both sides losing some utility at the end of every round where a proposal is rejected. Each period an appointment is not made, a *reversion policy*, $R \in [0,1]$, is implemented. This is a Rubinstein bargaining game without alternating offers, the latter because the President always proposes.⁸

This process loosely mirrors the official proceedings of the appointments process, with

the President proposing nominees and the Senate confirming or rejecting them. The actual process of appointments is not so one-sided, as there is considerable back and forth communication between Congress and the relevant Senate committee about nominees.

Crucial to predicting the outcome of this game is the location of the reversion policy, R . The reversion policy will be specific to each appointment opportunity and is defined as the policy carried out by the agency if no appointment is made. It is assumed to be common knowledge. We will discuss how R is determined for a given appointment opportunity in the next section.

Consider the outcome of the bargaining game when the President and Senate have preferences as in figure 1, with the reversion policy R located between their ideal points. Note that the Senate would prefer to have no appointment at all to a policy equal to the President's most preferred policy, because the Senate gets higher utility from R than x_p . Additionally, any policy less than R will be rejected because it would give the Senate less utility than making no appointment at all. The unique subgame perfect equilibrium in the game is for the President to offer the Senate's least acceptable policy point, R , in the first round of play and for the Senate to accept. Thus R , the reversion policy, becomes the target policy the politicians will attempt to implement with their appointment.

Place Fig. 1 here

This result can be generalized; whenever R is between the Senate's and President's ideal points, then R will become the target policy. Because there is no change from R that both the President and Senate would prefer we call this a *contested* appointment opportunity.

Suppose instead R is less than both ideal points. Now the President can offer his most preferred policy, x_p , and the Senate will accept. More generally, when the reversion policy is further from the Senate's ideal point than the President's ideal point, the unique subgame perfect equilibrium outcome will be x_p . Because there exist policies that both the President and Senate prefer to R , we call this a *Pareto-improving* appointment opportunity.

Suppose that the reversion policy is to the right of x_s . In this case both the President and Senate would prefer policies to the left of R . The President can move the policy as far left as R^V , where R^V is defined as $2x_s - R$ (x_s is equidistant from R and R^V). At R^V the Senate is just indifferent between accepting or rejecting. More generally, if the reversion policy is on the other side of the Senate's ideal point from the President's ideal point, the unique subgame perfect equilibrium outcome is R^V , or if R^V is less than x_p , the President's most preferred policy, x_p . Again this appointment opportunity is Pareto-improving.

Figure 2 shows how the target policy changes as the reversion policy changes for politicians with ideal points at x_p and x_s .

Place Fig. 2 here

In summary, for any appointment opportunity, the target policy for a President and Senate with ideal points $[x_p, x_s]$, and a reversion policy R , is:

$$\begin{array}{ll} \max[x_p, \min[2x_s - R, R]] & \text{if } x_p \neq x_s \\ \min[x_p, \max[2x_s - R, R]] & \text{if } x_p = x_s \end{array}$$

2.3 Comparative Statics

These bargaining outcomes can be used to predict how politicians will attempt to change agency policy following changes in the preferences of the President or Senate. We will define a *regime* as a particular President-Senate combination. Electoral changes that lead to a different President or a different majority preference in the Senate result in a *regime change*.⁹

Generally each regime will have a number of appointment opportunities. The target policy for each appointment will depend on the reversion policy for each opportunity. But even without any information on the reversion policies we can often predict general trends in board policy. No matter what R is, the target policy outcome is always in the interval defined by the politicians' ideal points, x_p and x_s . Thus the set of target policies for a given regime with ideal points x_p and x_s will be contained within the $[x_p, x_s]$ interval.

If the politicians agree on policy, that is $x_p = x_s$, then we can precisely predict target policy for each appointment to be at their ideal points. If there is disagreement, that is $x_p \neq x_s$, then, without more information about the reversion policies, we can only predict that the target policy will be contained within the interval $[x_p, x_s]$. The more disagreement there is, or the bigger the $[x_p, x_s]$ interval is, the more uncertainty we will have about the exact location of the target policy for each appointment.

This logic provides some information about what will happen to policy after a regime change. Consider a change from a regime where both the President and Senate have ideal points at .8 to a regime where the Senate has an ideal point at .2 while the President remains at .8. The old regime had a target policy at .8 for every appointment. The new regime will have a target policy of $\max[.2, \min[1.6 - R, R]]$ for each appointment, which is always in the interval $[.2, .8]$. Thus, in comparison to the old regime's policies, the new regime will attempt to make appointments that will change the agency's policy in a weakly negative direction.

On the other hand, if the Senate's ideal point remains at .2 and the President's ideal point then changes from .8 to .9, we cannot predict that all target policies of the new regime will be greater than the target policies of the last regime. The old regime had target policies in the $[.2, .8]$ interval and the new regime has target policies in the $[.2, .9]$ interval. Any one of the new regime's target policies may or may not be to the right of any one of the old regime's target policies.

In general, if every point in the new regime's $[x_p, x_s]$ interval is less than or equal to

every point in the old regime's $[x_p, x_s]$ interval, we say the regime wants to move policy in a negative direction.¹⁰ If every point in the new regime's $[x_p, x_s]$ interval is greater than or equal to every point in the old regime's $[x_p, x_s]$ interval, we say the regime wants to move policy in a positive direction. If neither of those cases hold, there is overlap of the intervals at more than one point, and we can't predict the direction of change without knowing more about the exact location of the target policies. Note that a change in either the President's preferences or the Senate's preferences alone will not generally result in an unambiguous change in board policy; such a change will, however, always change the region of possible target policies.

2.4 Implementing Policy with Majority Rule

The particular institutional features of agency policy making will determine a) the reversion policy that is relevant for the bargaining over target policy; and b) whether the politicians will be successful in implementing their target policy. In the case of the multi-member regulatory commissions and boards, the relevant feature is the use of majority rule in making decisions.¹¹

We consider a regulatory commission or board composed of five members who serve staggered five-year terms. Appointment opportunities occur at least once a year, when a term ends or when a member leaves the board before his or her term is over. We assume board members have fixed preferences over regulatory agency policy and that their positions are known with certainty before they are nominated. Assume that every board member and potential board member has a utility function U_A over regulatory policy:

$$U_A(i,x) = - |i - x|$$

where $i \in [0,1]$ represents member i 's ideal point, or policy position, on the policy dimension and x represents the policy chosen by the board. Thus each member has single-peaked preferences, preferring policies closer to his ideal point to those further away.

For a given board we can represent the board members' policy positions in relation to each other as illustrated in figure 3, where the five members' ideal points are marked by the numbers 1-5. We seek to characterize a given board's policy choice. Because the preference profile of the board is single-peaked, the board's use of majority rule implies that its policy choice is characterized by the median voter theorem: policy corresponds to the ideal point of the median board member. In figure 3, this is member 3's ideal point.

Place Fig. 3 here

Because elected officials cannot fire board members, their ability to adjust the median is affected by the actual sequence of seats that become open. Consider the effect of the position of the open seat on policy choice. Its first effect is to determine the reversion policy of the

bargaining game. For example, suppose member 5's term expires, as in figure 4. Policy will be made by the four remaining members of the board until that seat is filled by appointment. We will approximate the policy of a four-member board as the midpoint between the two median members. Thus the reversion policy in this case is the midpoint of members 2 and 3. If no appointment is made, policy moves in a negative direction when the exiting member is located to the right of the median.

Place Fig. 4 here

Suppose instead that the term of member 1 or 2 had expired. Then the reversion policy would be the midpoint of members 3 and 4 --- when one of the members with the most negative preferences exits the board, board policy becomes more positive. If member 3, the median member, leaves, board policy will become the midpoint of members 2 and 4, and may change in a negative or positive direction.

Thus our model implies that the position of the open seat can have a large effect on the target policy a regime tries to implement. Suppose the President has an ideal point at 0, the Senate has an ideal point at 1, and the current members of the board have ideal points in between. Then any appointment opportunity will have a reversion policy in between the Senate's and President's ideal points. This implies that these appointment opportunities will be contested. The result will be a target policy exactly equal to the reversion policy. If member 1 or 2's seat is open, then both the reversion policy and the target policy will be a positive change from the current median. If member 4 or 5's seat is open, then the reversion policy and target policy will be a negative change from the current median. On the other hand, if the President and Senate both have an ideal point at 1 while the board members have ideal points less than 1, then regardless of the position of the open seat the target policy will always be a positive change from the current median.

The position of an open seat determines another aspect of policy choice: whether elected officials can move policy toward their target policy. To see this, suppose a regime has a Pareto-improving appointment opportunity and wishes to move policy in a positive direction from the current median. The position of the open seat matters and may constrain them. Suppose that, in the situation of figure 5(a), member 5's seat opens, as indicated by the open circle in figure 5(b). In this case, elected officials cannot move the median in a positive direction via a new appointment. Though they can choose a new member, N, with preferences to the right of the old member 5, as illustrated in figure 5(b), this will not affect the median's position. The same argument applies if member 4's seat becomes open. In these cases, where no Pareto-improving appointment can be achieved, we say that politicians' opportunities to move the median are constrained.

Place Fig. 5a,5b,5c here

Suppose, in contrast, that member 1's position becomes open, as indicated by the open circle in figure 5(c). In this case, the new regime can move the median in a positive direction by choosing a new member whose preferences are to the right of the median to replace member 1. This is illustrated in figure 5(c) where a new appointee, N, has been placed on the board, altering the identity of the median from member 3 to member 4. More generally, being able to replace any one of members 1, 2, or 3 with member N would result in positive changes in the median. In these cases, we say that politicians' opportunities to move the median are unconstrained.

Thus Pareto-improving appointment opportunities can be separated into two categories: constrained and unconstrained. The categorization depends on the direction in which the regime is trying to move the board and the position of the open seat. For regimes desiring positive changes, the opening of the seats of members 4 and 5 are constrained opportunities, while the opening of the seats of members 1, 2 or 3 are unconstrained opportunities. For regimes desiring negative changes, the opening of seats 1 and 2 represent constrained opportunities, while the opening of seats 3, 4 or 5 represent unconstrained opportunities.

We can also see from figure 5 that the magnitude of policy change achievable by an appointment is limited by the positions of current board members. Though the regime that wants to make a positive change can move the median in its desired direction with the opening of member 1's seat, it can only move it as far as member 4's position. If the policy the new regime seeks to implement is to the right of member 4's position, moving to the new target policy will require a series of unconstrained appointment opportunities.

Our model thus implies that the implementation of a new regime's policy goals might not be immediate. It may take a series of appointees before a regime's target policy becomes evident in the observed policy of the agency.¹² The theory does not specify how many unconstrained appointments it takes for a regime to implement a target policy. This is because in equilibrium we have specified only the median member's position; the theory does not tell us where the other board members will be located. In this example the regime that wants to make a positive change may desire a policy anywhere greater than the current member 3's position. This target policy may fall between members 3 and 4, between members 4 and 5, or may be greater than 5's position. Thus the target policy may take one, two or three unconstrained appointments to implement. Three unconstrained appointments are sufficient for any new regime to place the median member wherever it wants.

We also do not specify how appointments are made when current policy cannot be changed in the direction of the target policy. The position of an appointee who will not change the median does not immediately matter. These appointments may, however, result in important policy changes later. For example, a positive regime can use a constrained

appointment such as the opening of member 4's seat to appoint someone with a higher score. This will make the median change that will occur with the next unconstrained appointment greater. Such positioning appointments may affect the speed with which regimes approach their target policy, or may create additional bargaining opportunities for the politicians.¹³

2.5 Comparative statics : politicians' preferences and open seat position

Our model predicts the new median that results after an appointment opportunity if we have information on : the regime's policy preferences, the position of the open seat, and the positions of board members, including the position of the current median and the position of the reversion policy. It can be difficult to obtain all this data; additionally, it may be difficult to obtain preference data on politicians and board members that is directly comparable.¹⁴

Suppose instead we have information on : the new regime's preferences relative to the old regime, the position of the open seat, and the number of appointments made by the regime. Then, in many cases, our model yields predictions about the direction of change in board policy for an appointment opportunity.

For example, suppose there is a positive regime change. Then the new regime has Pareto-improving appointment opportunities to move policy in a positive direction. Thus if seat 1, 2, or 3 opens, the regime is unconstrained and we predict positive change in policy. If seat 4 or 5 opens the regime is constrained and we predict zero change in policy. After 3 unconstrained appointments, the new regime will be able to have moved the policy into the $[x_p, x_s]$ interval.¹⁵ Once policy is in this interval, the appointments will be contested --- the President and Senate will want to move policy in opposite directions. If seat 1 or 2 opens, the reversion policy will move in the positive direction and so will policy. If seat 4 or 5 opens, the reversion policy will move in a negative direction and so will policy. If seat 3 opens, we cannot predict where reversion policy will be relative to the old median, and so cannot unambiguously predict sign change.

In the next section we discuss how this model can be used for predicting appointments to the NLRB.

3. The NLRB

The Wagner Act of 1935 created the National Labor Relations Board. The Act gave unions a bill of rights that outlined methods management could not use to dissuade union activity: management could not discriminate against union members, set up company unions, or refuse to bargain in good faith, for example. One of the Board's purposes is to mediate disputes between labor and management relating to these Unfair Labor Practices (ULP's) by deciding whether or not the defendant is guilty of a ULP.

In 1947 legislators amended the Act to include Unfair Labor Practices that businesses

could file against unions (e.g., disallowing secondary boycotting and discrimination against non-union members). The Board was also expanded from three to five members with each member serving a five-year term. This was the last major change in the NLRB's structure or legislative mandate (see Gross, 1974).

3.1 The Appointments Model Applied to the NLRB

By deciding whether a ULP charge is valid, each NLRB member must choose between favoring labor or management. Thus we interpret agency policy, x , as a measure of the degree to which the policy can be considered pro-labor. Formally, if $0 \neq x < y \neq 1$, y is a more pro-labor policy than x , alternatively x is a more pro-business policy than y . Politicians with most preferred policies of 0 can be considered to be strongly pro-business, while those with most preferred policies of 1 are strongly pro-labor.

The NLRB is composed of five members who serve staggered five-year terms. At least one appointment is made each year, though, with some frequency, more occur as other members leave before their term expires. In our model we assume Board members have fixed labor/business preferences and that their positions are known with certainty before and during their term with the Board. This assumption does not appear out of line with available evidence.¹⁶

We represent Board policy by its decisions on ULP cases. The Board makes a series of majority rule decisions on ULP cases each year.¹⁷ These decisions provide a measure of board policy, observable by the President, the Senate and interest groups.

These interpretations allow us to use the model to predict policy change following any NLRB appointment opportunity (see table 1). In the next section we describe NLRB appointment opportunities from 1949-1988 and compare the actual policy outcomes to the predictions.

4. Empirical Results

4.1 Voting Scores

Our model generates predictions relating to the direction of the change in the median Board member's position on a labor-management scale. Ideally we would like data describing each Board member's position on this labor-management scale. We approximate these positions with Moe's (1985) NLRB vote scores. Moe tabulated individual annual scores for each member using the formula $\text{Score} = [VA/(VA+VB)]*1000$, where VA is the percentage of that member's rulings in favor of the plaintiff (union) in cases filed against management, and VB is the percentage of rulings in favor of the plaintiff (management) in cases filed against unions. Scores thus range from 0 to 1000, with a score of 0 indicating completely pro-business voting,

and 1000, completely pro-labor voting.

Moe (1985) compiled annual individual Board member voting scores using over 12,000 individual voting decisions covering the years 1948 - 1979. We use these published voting scores and extend the data set to include the years 1980 - 1988 (see Appendix C for scores).¹⁸

These voting scores have meaning only in relation to the selection of cases decided by the Board (Moe, 1985; Roomkin, 1981). Board decisions are only one part of an "endogenous core" of NLRB policy that includes case filing decisions by unions and employers, and case filtering decisions by NLRB staff members. Changes in any one of these components can have repercussions throughout the core. For example, consider a change in Board membership that creates more pro-labor decisions. The unions and businesses that file cases now face new probabilities of winning their cases. Unions may now file complaints that they previously thought had too little chance of winning to file. Businesses may file fewer complaints than they did before. The Board staff will take their cue from the Board members' voting behavior and perhaps allow more cases filed by labor to go to the Board for decisions. The changes in union and business filing behavior and staff filtering decisions, in turn, create a new case mix for Board decisions. There will be fewer opportunities to vote in labor's favor, so even without a further change in Board members' preferences, their voting scores will move back in the pro-business direction. Thus, while the policy preference of the Board may have changed in the pro-labor direction, the voting scores may not reflect this change.

The implication of the endogeneity of the voting scores is that without further data on the other components of NLRB policy, voting scores cannot reliably be used to compare policy change from year to year. The correspondence of points on our labor/management scale to vote scores changes over time. Thus, we cannot directly compare the median scores of two years to ascertain the effect of a new Board member on policy. Nevertheless, the scores do provide a reasonable description of the relative positions of NLRB members in any year, and, carefully used, can provide information about the changes in Board policy that result with a new appointment.

4.2 Policy Change Computations

The model generates predictions about the policy change that results from each appointment opportunity. To test this model, we require some measure of the policy change that results from an appointment.

Consider, for example, the 1950 appointment of Styles. Styles filled the seat vacated by Board member Gray. We require a measure of how Board policy changed as a result of replacing Gray with Styles. One such measure is a comparison of the median of the Board members' ideal points with Gray on the Board with the median of the Board members' ideal points with Styles instead. We do not observe ideal points, however; we observe vote scores,

which are not directly comparable across years. The vote scores for Gray end with his tenure on the Board in 1949; while we do not observe scores for Styles' until 1950; thus, we cannot directly compare Gray's and Styles' vote scores to ascertain the relative positions of their ideal points.

An indirect way of judging the relative positions of their ideal points is to use their relative positions they hold in the years each was on the Board. The 1949 Board had the following scores:

Board Members:	Gray	Reynolds	Herzog	Murdock	Houston
Vote Scores:	459	502	552	571	614

Gray was the most pro-business member of the Board. The 1950 voting scores were:

Board Members:	Reynolds	Herzog	Murdock	Houston	Styles
Vote Scores:	522	530	545	587	593

Styles was the most pro-labor member of this Board. Assume that Board members keep the same positions relative to one another across years.¹⁹ Then although we do not have a voting score for Styles in 1949, we can infer that had he been on the Board in 1949, he would have had a score higher than Houston. This logic allows us to compare the actual 1949 Board with a counterfactual 1949 Board that includes Styles instead of Gray: replacing Gray with Styles shifts the Board median from Herzog to Murdock. Because Murdock has a more pro-labor score than Herzog, this is a positive change in the Board median; that is, a pro-labor change in policy. The change can be approximated by the difference of Herzog's and Murdock's scores in 1949, +19.²⁰

We use this counterfactual method to generate data on the direction and size of change in the Board median resulting from every appointment opportunity.²¹ Thus we use the Board members' yearly voting scores without assuming these voting scores have completely compatible meaning across different years.

4.3 Political Preferences

In the following analysis we use political party as a proxy for labor policy preferences over NLRB policy. We assume Democrats place more importance on pleasing labor groups, while Republicans focus more on business groups. We assume all members of the same party have the same ideal point, with the ideal point of Democrats, x_D , being strictly greater than the ideal point of Republicans, x_R . The party of the President describes his labor policy preferences, and the majority party of the Senate describes their preferences.

While party is an admittedly broad proxy for such a specific issue as labor policy, this is an issue that has often appeared to split along party lines. Additionally, some support has been

found for the hypothesis that the party of the appointing President has an effect on NLRB members' voting (Delorme and Wood, 1978; Cooke and Gautschi, 1982; see especially Moe, 1982; 1985; 1987). These studies have found that members appointed by Democratic Presidents are more likely to vote in labor's favor, and members appointed by Republican Presidents are more likely to vote in business's favor.

4.4 Board Changes Following Appointments

Table 1 details the political factors and policy change associated with each appointment to the NLRB from 1949-88. Changes in the political party of the President and Senate form the basis for our predictions. In the lexicon of our model, a change in the party of either the President or the Senate is a regime change. At the beginning of the period we study (1948), the President is Democratic and the Senate is Republican, so the regime's target policies will be in the interval $[x_R, x_D]$. In the 1948 elections, the Democrats recapture the Senate. Because we assume all politicians of the same party have the same ideal point, the target policy for the new regime is the point x_D , regardless of the reversion policy for any particular appointment. This implies that the new regime will seek to move NLRB policy in a weakly pro-labor direction. Thus the predicted regime change is '+'; we expect to see the median member's vote score move in a weakly positive direction when unconstrained.

As shown in table 1, appointments 1-5 were made by this regime. The first three appointments were unconstrained; thus the predicted change is '+'. We expect each of these appointments to have a (weakly) positive effect on the Board median.²² After three unconstrained appointments our theory predicts the regime will have reached its target policy, the ideal point of the President and Senate. Thus appointments 4 and 5 have predicted changes of zero. Appointments are also predicted to result in zero changes when the Board is constrained from moving the median in the direction of their target policy, as occurred with the first appointment under Eisenhower, appointment 6.

The pattern of appointment predictions is somewhat different for split-party regimes. For the first appointment under Eisenhower after the Democrats recaptured the Senate in the 1954 election, our model predicts that the new regime will make appointments that result in policies in the interval $[x_R, x_D]$. If the reversion policy is at x_R or below, then the President could block any moves to the right; if the reversion policy is greater than x_R the Democratic Senate will be able to move the board's policy toward its ideal point. Once policy is moved away from x_R , the President will then attempt to move policy back toward his ideal point when liberal seats open up on the Board. Thus for appointments 9 and 10 the open seats are pro-business so we predict a positive policy change, and for appointments 11 and 12 the open seats are pro-labor, so the President can move policy back in the negative direction. Appointment 13 is made when a conservative leaves the board, so we predict a positive policy change. We cannot make an unambiguous prediction for appointment 14 because the open seat is the

median member --- the reversion policy could move to the right or to the left, depending on the exact placement of the 2nd and 4th members.

Table 1 shows the actual median change that occurred with each appointment, arranged by the predictive category. The signs of the actual median changes correspond well to the predicted signs for appointments during the eight regimes in our study. When our model predicts a (weakly) negative move in the median, nearly all changes are negative or zero, with an average change of 21.7 points in the negative direction. The same holds when our model predicts a (weakly) positive movement in the median, with an average change of 8.87 points in the positive direction. The differences between the means are statistically significant.²³

Place Table 1 here

Other empirical implications beyond policy change warrant examination. Our model makes direct predictions about the relationship between the reversion policy and the target policy that a regime will try to implement. If we assume that all appointments are made at the target policy, then we can make some additional tests of our bargaining model that do not depend on the institutional constraints inherent in changing the median.

Each of the three bargaining regimes in our model yields a specific prediction: if the reversion policy, R , is less than both x_p and x_s , then the target policy is greater than R . If R is greater than both x_p and x_s , then the target policy is less than R . If R is between x_p and x_s , then the target policy is equal to R .

Let N represent the position of a new appointee. If all appointments are made at the regime's target policy, then the model's specific predictions are:

if $R < x_p, x_s$, then $N > R$;
 if $R > x_p, x_s$, then $N < R$; and
 if R in $[x_p, x_s]$, then $N = R$.

We test our bargaining model by comparing the relationship among the reversion policy, the policy preferences of the President and Senate, and the new appointee's position. To obtain some broad predictions, we make a few simplifying assumptions. In our data, we have four types of political regime changes. The first change is from a split regime to a unified Democratic regime. We assume that, initially, during the new united Democratic regime, $x_D > R$ no matter what seat opens up. This implies that $N > R$. After the unified Democratic regime makes three or four new appointments at their target policy x_D , the reversion policy will equal the target policy (we can predict whether this will take three or four appointments from the specific pattern of open seats). Thus, for later appointments, $x_D = R$, implying that $N = R$. The second type of regime change is from a unified Democratic regime to

a unified Republican regime. Here, we assume that $x_R < R$ for the first three or four appointments, implying that $N < R$; for later appointments $x_R = R$, implying $N = R$. The third type of regime change is from a unified Republican regime to a split regime. In this case we assume R will be in $[x_R, x_D]$, and thus $N = R$. The last type of regime change is from a unified Democratic regime to a split regime. Here too, we assume R is in $[x_R, x_D]$, and so $N = R$.

These assumptions allow us to classify every appointment in terms of whether the new appointee's policy position should be less than, greater than, or equal to the reversion policy.

We report the data in the far-right columns of table 1, which shows the actual difference between the new appointee's policy position (N) and the reversion policy (R) for each appointment, arranged by predictive category. The analysis supports our predictions. When our model predicts a negative change, the average actual change is -84.43 . When our model predicts a positive change, the average change is $+32$. When our model predicts a zero change, the average change is -7.92 , which is not statistically significantly different from zero. The differences between the means of the three categories are statistically significant.

Table 2 summarizes the fit of our predictions about the sign of the policy change with the sign of the actual appointments. For the ten appointments in which we predict (weakly) negative changes, six had negative changes, three had zero changes, and one had a positive change. For the eighteen appointments in which we predict zero change, two-thirds are zero and, of the other six, three are negative and three are positive. Finally, for the fifteen appointments in which we predict a (weakly) positive change, nine are positive and six are zero. If the theory's predictions about median change had no relation to the actual change, the distribution of data in each row of table 2 would be the same; in other words, the probability of a median change being positive, zero, or negative would be the same regardless of the prediction made about that median change. Using Pearson's $\chi^2(4)$ test for a contingency table (see Appendix B), we computed a value of 19.6, which is significant at a .005 level. This indicates we should reject the null hypothesis that each row of table 2 follows the same distribution. This implies that our theory's predictions about the sign of policy change capture the underlying patterns in the data.

Place Table 2 here

4.5 Hypothesis Testing

Ultimately we are interested in whether our bargaining model of appointments has better predictive power than other models of appointment behavior. We will test our model against three alternative hypotheses concerning regulatory agency appointments: the presidential dominance hypothesis; the congressional dominance hypothesis; and the political

patronage hypothesis.

The presidential dominance hypothesis is the most common explanation of appointments. Proponents of this hypothesis argue that the President chooses appointees with little or no interference from the Senate. Senate confirmation of nominees is, in this view, simply a "rubber stamp" of approval that is withheld only in the most extreme cases. Proponents of this approach often refer to a norm of Senatorial deference that allows the President to choose the nominees he prefers (see Moe, 1985; 1987). Thus regulatory agency appointments will be made to those who share the President's policy preferences.

The congressional dominance hypothesis emphasizes congress' influence over regulatory agencies. This hypothesis suggests that the President defers to Congress in choosing appointees.²⁴ While the President is ultimately responsible for naming an appointee, he will rely on recommendations from Congress. Thus regulatory agency appointments will be made to those who share the same policy preferences as the more influential members of Congress.

Others argue that politicians often use regulatory agency appointments in order to give out political favors (see examples in MacKenzie, 1981 and Rothenberg, 1994). These appointments are not made to further policy goals but to reward supporters. These appointees may have little expertise in the area of their appointment. Under this hypothesis the policy preferences of regulatory board members and the politicians who appointed them may be completely unrelated.

The hypothesis in this paper has two components. First, the President and Congress both care about affecting regulatory agency policy, and both can affect the appointment process through their bargaining. Thus our model's predictions are quite distinct from the other three hypotheses in the literature: our bargaining model of appointments implies both the policy preferences of the President and Senate should be reflected in the preferences of the agency appointees.

Second, we also explicitly recognize a series of constraints on the ability of politicians to affect regulatory agency policy. If a pro-labor member of the Board leaves, political officials cannot move the Board median in a pro-labor direction, no matter how extremely pro-labor the new appointee is. None of the other three hypotheses explicitly addresses this issue of institutional constraints on political influence, but neither are they inconsistent with the presence of institutional constraints. Thus in the following hypothesis tests we will consider versions of the other three hypotheses that do take into account these institutional constraints.

4.5.1. Tests against the presidential dominance hypothesis

Model I represents the hypothesis of this paper. Board policy change (represented by the change in the median member's score) is influenced by both the policy preferences of the President and Senate and institutional constraints. In specifying a regression equation, there are two distinct types of appointment opportunities to consider. For many appointments, the

President and Senate will agree on the direction they would like to move policy --- these are Pareto-improving appointment opportunities. In these cases board policy change will be influenced by the direction the politicians would like to move policy, which is captured by the variable REGPOS (see table 3 for variable definitions). Model I also includes the institutional constraint on politicians: whether they can influence Board policy depends upon the position of the Board's open seat. We also include the prediction that each regime will have reached its target policy after three unconstrained appointments, and so will not attempt to change the median further. The variable UNCONST captures these effects. Our theory predicts that the coefficient of UNCONST will be negative and the coefficient of REGPOS*UNCONST will be positive.

Place Table 3 here

Other appointments will be contested --- the President and Senate will disagree on the direction to move policy. For these appointments, reversion policy, which is determined by the position of the open seat on the board, will determine the direction of change. The categorical variable SEAT should have a positive coefficient : if a pro-business seat opens up, the reversion policy will move to the right and so will board policy, and if a pro-labor seat opens up, the reversion policy will move to the left. If the median seat opens up the predicted policy change is ambiguous --- the reversion policy may move positively or negatively, depending upon the exact position of the board members' preferences.²⁵

Model I:
$$\text{MEDCHANG} = \hat{\alpha}_0 + ((\hat{\alpha}_1 + \hat{\alpha}_2 \text{REGPOS}) * \text{UNCONST}) * \text{PARETO} + (\hat{\alpha}_3 \text{SEAT}) * \text{CONTESTED} + \hat{\alpha}$$

Model II represents the hypothesis that the President alone determines appointments: if the President is the primary player in the NLRB appointment process, the party of the President, PRES, should explain a large portion of the change in policy. Model III incorporates constraints on the President in changing Board policy; P_UNCONST = 1 if the desired political change of the President can be implemented, and 0 otherwise.

Model II:
$$\text{MEDCHANG} = \hat{\alpha}_0 + \hat{\alpha}_1 \text{PRES} + \hat{\alpha}$$

Model III:
$$\text{MEDCHANG} = \hat{\alpha}_0 + (\hat{\alpha}_1 + \hat{\alpha}_2 \text{PRES}) * \text{P_UNCONST} + \hat{\alpha}$$

Table 4 presents the parameter estimates of each of these models computed from OLS regressions.²⁶ All variables with significant coefficient estimates are of the predicted sign. Comparison of the R-squared statistics in table 4 shows striking differences in the predictive power between Model II and Models I and III. The consideration of the median voter theorem

constraint greatly improves the fit of the presidential dominance model. This provides support for the hypothesis that Board policy does not react smoothly to appointments) some appointment opportunities are much more likely to result in policy change than others.²⁷

Place Table 4 here

Because of the simplicity of the independent variables, the estimates can be easily interpreted. For example, in Model II a Republican President will on average change the Board median score by -6.08 points with each appointment, and a Democratic President will change the median by +5.78 points. Estimates of Model I, the model that represents the hypothesis of this paper, show that an unconstrained regime trying to move in the pro-business direction will on average change the Board median by -30.40 points with each appointment, while an unconstrained pro-labor regime will on average change it by +9.89 points. If the regime disagrees about the direction to move policy, Model I implies that an open business seat leads to a change of +10.06 while an open labor seat leads to a change of -9.71. These estimates are of the right sign and statistically significant. Moreover, these results appear to be robust to different approximations of policy change.²⁸

To test between this paper's hypothesis, represented by Model I, and the two versions of the presidential dominance hypothesis, Models II and III, we created artificially nested models, with estimates given under columns (I&II) and (I&III) in table 4. Model I and Model II are now restricted versions of Model (I&II). Through Wald tests we find we cannot reject Model I in favor of Model (I&II), but we can reject Model II in favor of Model (I&II).²⁹ Thus we reject Model II, the simple presidential dominance model, in favor of Model I (see Greene, 1990, for discussion of non-nested hypothesis testing). Similarly, we find we cannot reject Model I in favor of Model (I&III), but can reject Model III in favor of Model (I&III). Thus we reject Model III, the presidential dominance model with institutional constraints, in favor of Model I.³⁰

In summary, we reject the presidential dominance hypothesis in favor of the bargaining hypothesis of this paper. This does not imply that the President's policy interests are unimportant; but that the president's these policy influence occurs via the bargaining process modeled above and as characterized by the REGPOS variable in Model I. Relying on the President's preferences alone as a predictor of NLRB policy ignores crucial elements of the NLRB appointment process: that the Senate must confirm appointees, and that there are institutional constraints on how new appointees can affect Board policy. Model I incorporates all these features; the empirical results confirm that this model provides greater predictive power.

A counter-argument to our rejection of the presidential dominance hypothesis reflects our reliance on political party as the sole descriptor of political preferences. In particular, Moe

argues that Ronald Reagan differed in his NLRB appointments from other Republican presidents (Moe, 1987). Although Republican presidents generally attempted to seat pro-business members on the Board, Reagan's nominations were more strongly anti-union than the nominations of Eisenhower, Nixon, or Ford. Such appointments directly challenged what Moe refers to as the prior consensus that both business and organized labor accept the presence of the other. Reagan tested the limits of his appointment power while other Republican presidents took less controversial routes.

To examine this alternative claim, we created another nested model, Model IV, that builds on our model but adds a variable representing Reagan appointments. This model allows us to examine any extra difference in policy change when Reagan was making the nominations to the Board. Results from table 4 indicate that the coefficient on the Reagan variable is of the wrong sign and insignificant. A Wald test confirms that this variable adds no significant explanatory power to Model I.³¹ These statistical results imply that the bargaining dynamics in our model adequately capture the highly pro-business bias of the Reagan appointees. Our model implies that the Reagan effects did not occur because Reagan's behavior differed from other Republican presidents, but because he had a Republican senate for the first six years of his Presidency.³²

Model IV:
$$\text{MEDCHANG} = \hat{\alpha}_0 + ((\hat{\alpha}_1 + \hat{\alpha}_2 \text{REGPOS}) * \text{UNCONST}) * \text{PARETO} + (\hat{\alpha}_3 \text{SEAT}) * \text{CONTESTED} + \hat{\alpha}_4 \text{REAGAN} * \text{P_UNCONST} + \hat{\alpha}$$

4.5.2. Tests against the congressional dominance and political patronage hypotheses

We implemented a similar procedure to test our model against a model of congressional dominance. Here we used the majority party of the Senate as the proxy for congressional preferences. If the Senate is the most important player in NLRB appointments, then the majority party of the Senate should play a large role in predicting Board policy change.³³ Again we tested two versions of the congressional dominance hypothesis: one that incorporates constraints in changing the Board, and one that does not.

Model V:
$$\text{MEDCHANG} = \hat{\alpha}_0 + \hat{\alpha}_1 \text{SENATED} + \hat{\alpha}$$

Model VI:
$$\text{MEDCHANG} = \hat{\alpha}_0 + (\hat{\alpha}_1 + \hat{\alpha}_2 \text{SENATED}) * \text{S_UNCONST} + \hat{\alpha}$$

Table 5 reports the results of these regressions. We include the Model I regression again to facilitate comparisons. Again we find that including the constraints greatly improves the fit of the congressional dominance model.

Place Table 5 here

As with the presidential dominance hypothesis, we use artificially nested tests to test between our model and the congressional dominance model. We nest Model I against Model V (column I&V) and Model I against Model VI (column I&VI).³⁴ In both cases we reject the congressional dominance model in favor of the hypothesis of this paper.³⁵

We now turn to the third alternative hypothesis, that regulatory appointments are made for reasons of patronage. If patronage is the motivator for appointments, then we should see no relationship between the politicians' policy preferences and appointees. There are still constraints on the direction of change, however; if a pro-labor seat opens up, the Board cannot move in the pro-labor direction, and if a pro-business seat opens up, the Board cannot move in the pro-business direction. Incorporating these constraints, we formulated Model VII to represent the political patronage model. The variable BUS_SEAT is equal to 1 if one of the more pro-business seats (seat 1 or 2) opens up, and 0 otherwise; the variable LAB_SEAT is equal to 1 if one of the more pro-labor seats (seat 4 or 5) opens up, and 0 otherwise.

Model VII: $MEDCHANG = \hat{\alpha}_0 + \hat{\alpha}_1 BUS_SEAT + \hat{\alpha}_2 LAB_SEAT + \hat{\alpha}$

The estimates in table 5 show the low predictive power of this model. In artificially nesting this model with Model I (column I&VII), however, we find a much improved fit over our original model.³⁶ Given the poor fit of the patronage model alone, together with the wrong sign of the BUS_SEAT coefficient, there is little to indicate that the political patronage model, as specified here, provides a better explanation of the data.

5. Conclusions

This paper develops a new approach to explain how political officials influence regulatory agency policymaking. Although the voluminous literature on regulatory policy presumes that political officials influence agency managers, it fails to explain why managers respond to this influence. To address this issue, we draw on insights from the theory of firm. The avenue of political influence we study concerns the appointments process. We model appointments as a multiple principal problem: both the President and the Senate have important powers. The model suggests how the structure of appointments and regulatory board decisionmaking combine to allow political influence.

The model shows how political institutions will help determine both what policy changes elected officials want to implement and whether they will be successful. Because board members serve for a fixed term and cannot be fired, new appointments must wait until a current board member vacates a seat. The location of the member who vacates a particular seat, relative to the median, has two important effects. First, it will determine the threat point in the bargaining game between elected officials over target policy. Second, it will often constrain

politicians in their ability to move the median. Thus the preferences of elected officials, institutional constraints, and the preferences of the board members combine to explain how multi-member regulatory agency policy changes in response to new appointments.

We apply our model to the NLRB, using data on all appointments from 1949-1988. The data on individual board member voting provides substantial support for our hypotheses. Changes in the preferences of the President or Senate move NLRB policy in the predicted direction. We also show support for our null predictions about when particular appointments should not move the median.

A few caveats are in order. The model predicts that Presidential-Senate agreements about policy are made in the first round of play. This implies that no nominees are rejected. This has not always been the case, as seen in the long confirmation process for Beeson in 1953, Van de Water's rejection in 1982, and the numerous empty seats on the board in the 1980's (see Scher, 1961 and Moe, 1987). Uncertainty about preferences of the politicians likely plays a part in these events, though it may also be that politicians are taking positions that are not entirely explained by their policy preferences.

We also do not discuss the many other methods politicians have to affect bureaucracy policy apart from appointments. For example, congress could affect NLRB policy through holding oversight hearings, passing new legislation, or changing the agency's budget. A more complete discussion of the political control of an independent agency would examine these factors as well as the appointments process.

Additionally, no discussion of any regulatory policy is truly complete without considering other environmental factors such as interest groups and the role of the Federal courts (as Wilson, 1989, emphatically reminds us). For example, a large percentage of NLRB decisions go to the U.S. Court of Appeals for court enforcement or review (NLRB Annual Report, various years). Our study considers only the NLRB's role in labor/management policy. In reality, politicians may also look to influence the courts in pursuit of their labor policy goals, and NLRB members may also alter their voting behavior in expectation of judicial review (see Moe, 1985).³⁷

Though our analysis focuses on the NLRB, the approach has implications for several broader issues. First, it demonstrates that, despite the plethora of actors, the complicated political relationships within the regulatory environment, and the enormous demands on the time and energy of political officials, the latter nonetheless consistently influence policy through their appointments. Put another way, though regulation creates broad grants of delegation of political authority to unelected officials, the model reveals a remarkable political responsiveness of regulatory agency officials to political pressures (see also Fiorina, 1981; Ferejohn and Shipan, 1989; McCubbins and Schwartz, 1984; Moe, 1985; 1987; and Weingast and Moran, 1983). Pursuing their own self-interest in the context of an institutional environment, regulatory board members implement policies desired by elected officials. Subject to institutional constraints of a multi-member board, when the interests of elected officials change, so too does regulatory

policy.

Second, as Hammond and Hill (1993) and Lemieux and Stewart (1990) suggest, this approach extends to appointments of other multi-member bodies, such as the Supreme Court. Although an adequate treatment of appointments to the Court is beyond the scope of this paper, it is worth sketching the model's implications for the influence of the political branches on the Supreme Court, and hence on Constitutional doctrine.

When elections alter the preferences of the President or Senate — particularly both at once and in the same direction — they are able to reorient policymaking of most regulatory agencies. Elections thus hold the potential for wide swings in regulatory policy. Were this also the case for the Supreme Court, constitutional doctrine would have far too little stability. The importance of political commitment in constitutional doctrine requires that opinions on the Supreme Court fluctuate more slowly than opinions on most regulatory agencies.

In keeping with this view, the institutions constraining political officials from influencing the Court differ systematically from those of the typical independent regulatory commission. Influencing the Court is a much slower process than influencing the typical regulatory commission. Not only is the Supreme Court larger, but its members serve for life. A given President-Senate combination can virtually replace an entire five member regulatory board during a four-year presidential administration.³⁸ For the Court, the average since WWII has been approximately two appointments per presidential term. As a consequence, influencing the Court typically requires a sustained series of President-Congress combinations with similar policy and constitutional goals. These institutional differences imply that the relevant regime change for the Supreme Court entails a relatively permanent shift in the party of the President, the Senate, or both.

For most of American history, a single party has dominated both the Congress and the presidency for extended periods. The Democrats did so from the election of Jackson in 1828 to that of Lincoln in 1860. The Republicans then dominated elections until the election of Franklin Roosevelt in 1932. Throughout most of the post-WWII era, partisan control has fluctuated between Democrats and Republicans. Episodes of major political change, sometimes called critical realignments (Burnham, 1970), punctuate these long periods of stability. The most notable instances are the rise of the Republicans in 1860 and the Democrats in 1932. In this context, the model implies that dominant parties can control the Supreme Court. During these periods, constitutional doctrine is relatively stable. After a relatively permanent change in political regime, new elected officials make “transformative appointments,” altering both the political composition of the Supreme Court and hence its constitutional jurisprudence (Ackerman, 1988).³⁹ In keeping with this view, some of the biggest changes in constitutional doctrine occurred in the 1860s and the 1930s. In the post-WWII era, constitutional doctrine has been more slowly to evolve. The partisan turnover has meant that the Republicans have only slowly altered the new deal composition of the Court.

Our approach underscores the fruitfulness of a new program for understanding the

American system of separation of powers and the interaction among the political branches (e.g., Calvert, McCubbins and Weingast, 1989; Eskridge, 1991; Eskridge and Ferejohn, 1992; Ferejohn and Shipan, 1989; Gely and Spiller, 1992; Kiewiet and McCubbins, 1991; Marks, 1988; McNollgast, 1989; Moe, 1985; Spiller and Gely, 1992). It not only suggests that the interactions among the branches are regularized and predictable, but that they can be modeled systematically.

Appendix A: Voting Score Methodology.

The Labor Relations Reference Manual lists a subset of NLRB decisions on Unfair Labor Practices cases and representation elections that are judged to "add significantly" to the body of labor law.⁴⁰ We used all formal decisions on ULP 8(a) and 8(b) cases that were filed by unions against management or by management against unions.⁴¹ Summary judgments were not included, as these are often rubber stamp decisions that require little interpretive action on the part of Board members. Cases filed by individuals were also not included, as well as cases filed by unions against unions (jurisdictional disputes) as they do not provide evidence directly indicative of the union/management bias we are testing for.

Each Board member's vote on a case was recorded as either for the plaintiff or defendant. In some cases, decisions have some charges decided in union's favor and some in management's favor. On these we used a strict majority count of the decisions on each charge to judge which side "won."⁴²

Appendix B: Pearson's χ^2 Test.

Consider a contingency table with p rows and b columns. Let R_i = total of row i , C_j = total of column j , N_{ij} = entry in row i column j cell, and n = total number of observations. Then under the null hypothesis that all rows (columns) are distributed with the same multinomial distribution,

$$\sum_{i=1}^p \sum_{j=1}^b \frac{(N_{ij} - \frac{R_i C_j}{n})^2}{\frac{R_i C_j}{n}} = \frac{\chi^2}{(p-1)(b-1)}$$

(Bickel and Doksum, 1977:324).

Appendix C: NLRB Voting Data

Place Table 6 here

Endnotes

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1. Though this political control is not always completely successful; see for example Hill (1985), Woolley (1993), and Hammond and Knott (1996).
2. Studies of the political influence on regulation fall into two broad and related schools. Economists tend to focus on the “demand side” for public policy, concerning the relative influence of citizen and interest groups demands on regulatory policy (including the Chicago school of political economy: Becker (1983), Peltzman (1976), and Stigler (1971; 1988); and the Public Choice school of “rent-seeking”: Tollison (1995)). The positive political theory approach in political science tends to focus on the “supply side” of public policy, namely, the role of politicians and political institutions (Ferejohn and Shipan, 1989; Moe, 1984; 1987; Spiller and Gely, 1992; and Weingast and Moran, 1983). Two recent surveys of the literature include Noll (1989) and McNollgast (1997).
3. Studies of the Occupational Safety and Health Administration (OSHA) provide an example (Cornell, Noll and Weingast, 1976; and Moe, 1990). In creating the agency, Congress forced OSHA to depend on another agency (the National Institute of Occupational Safety and Health) with much different goals than OSHA for initiating new health standards. As intended, this provision prevented the agency from implementing aggressive regulation.
4. Several models suggest how showing how agency leaders can play off the different factions in order to gain more discretion; see, e.g., Calvert, McCubbins, and Weingast (1989) and McNollgast (1989).
5. Although dated, Cushman (1941) remains the best source for the circumstances under which commissioners can be removed.

6. This extends the model in Calvert, McCubbins, and Weingast (1989) and is consistent with Cameron et al. (1990), Hammond and Hill (1993), Lemieux and Stewart (1990), Moe (1985;1987), Nokken and Sala (1996), Moraski and Shipan (1999), and Waller (1992).
7. For a discussion of the importance of appointments to the NLRB, see McCulloch & Bornstein (1974). See also Scher (1961) for evidence as to why battles over changing the policy goals of the NLRB turned into battles over appointee ideology.
8. We could also consider this bargaining game to be one stage in the supergame of all President-Senate interactions (including appointments to other agencies and legislative bargains; see Calvert, McCubbins & Weingast (1989)). This would result in a folk-theorem result where any outcome in the interval bounded by the President's and Senate's least acceptable points could be supported as a subgame perfect equilibrium. We choose the model in the text because it reflects an asymmetric role for the President without allowing the President to dominate the outcome.
9. We assume that the board's policy is such a small part of the total of policy positions that a politician takes to be re-elected that we need not consider regime changes to be a function of board policy.
10. This may be a weakly negative change, as in the example above where a regime with target policies in the $[.2, .8]$ interval follows a regime with a target policy of $.8$.
11. For another appointment model using majority rule institutions see Lemieux and Stewart (1990).
12. Romer and Rosenthal (1987) have suggested this may be the case. As an example, it took President Reagan and the new Republican Congress until 1983 to effect a far more conservative NLRB.
13. This may also create opportunity for "position-taking" by politicians - appointing highly ideological members to the NLRB knowing that this will have no (immediate) effect on policy. The regime could also attempt to position appointees in such a way as to make it more difficult for the next regime to change board policy.
14. Though see Segal, Cameron, and Cover (1992), Spiller and Gely (1992) for methodologies to compare

- scores computed in different scales.
15. In this example we assume it takes 3 unconstrained appointments to move the median this far.
 16. Although there is evidence that Board policy is affected by economic and political conditions, there is no compelling evidence that these changes are not created mainly through changing membership of the Board. Regarding the issue of the degree to which the preferences of prospective appointees is known in advance, at least for the NLRB, see Moe's (1987) discussion.
 17. For the NLRB, most cases are actually randomly assigned to 3 member panels of the Board. For now we are ignoring this complication.
 18. See Appendix B for data collection methodology.
 19. In this example, the Board members who are on the Board both years do remain in the same relative positions; this is not always the case. Comparing every pair of Board members for every two-year period, we find that 238 times out of 286 (83%) the pair remain in the same order.
 20. There are several other ways of creating a measure of policy change that results from an appointment opportunity, all of which yield similar results to those reported in the text. For example, we can compare a counterfactual Board in 1950 with Gray instead of Styles to the actual Board; in this case the median change is +15. The results are roughly the same when the later year is used; more importantly, the signs of the changes are always the same. This method also generates similar results to using OLS to regress members' scores in 1950 on their scores in 1949 for the four members who were on the Board both years, using the estimated parameters to create a 1950 score for Gray, using that score to create a counterfactual 1950 Board with Gray, and then comparing the median of this Board with the real 1950 Board median. (We thank Keith Krehbiel for suggesting this method.) Scaling methods would be another way of doing these comparisons; see Rothenberg's (1994) study of the ICC. Another possible method would be to take into account the constraints on how far the median can be changed with one appointment, using a ratio of the policy change achieved to the possible policy change.

21. We treat reappointments essentially the same as new appointments.
22. Our model does not predict whether it will take one, two, or three unconstrained appointments to reach a target policy. Table 1 reveals that, of the four unconstrained Pareto-improving appointment opportunities that result in zero policy changes, three occur on the third unconstrained appointment, one on the second, and none on the first.
23. The open seats for appointments 37-40 are scaled to a five-member board; because of vacancies that went unfilled during this period boards were not always composed of five members.
24. Weingast (1984) comes closest to making this argument when he says that Congress controls who gets appointed to regulatory agencies.
25. Note the use of a categorical variable for seat under contested appointments rather than separate dummy variables for business seats and labor seats imposes an extra restriction not implied by the theory. Also, contested appointments with the median seat are constrained to be the same as constrained Pareto appointments. Weakening either restriction does not significantly improve the fit of the model.
26. Standard errors in parentheses. Standard errors are adjusted for heteroskedasticity.
(* - significant at .10 level (all one-sided tests); ** - significant at .05 level; *** - significant at .01 level.)
27. Lagrange Multiplier tests for autocorrelation show that the null of no autocorrelation cannot be rejected at reasonable significance levels for these regressions.
28. As discussed previously, many other variables could be used to represent the policy change resulting from an appointment. Using some of the other variables mentioned, we found roughly the same pattern of parameter estimates and differences in explanatory power across these models. Results are also roughly similar when we allow a regime may take up to four unconstrained appointments to achieve their target policy. This may be a more appropriate hypothesis if we consider that the NLRB makes

- most of its decisions with 3-member subsets of the Board. (In this case, it may take up to four unconstrained appointments for a regime to appoint all possible medians of the 3-member panels.)
29. Wald statistics are, respectively, .18 distributed $\chi^2(1)$, and 13.44 distributed $\chi^2(3)$ (reject with probability .99). We use Wald tests rather than F-tests because of heteroskedasticity in the data.
 30. Wald statistics are, respectively, 4.24 with distribution $\chi^2(2)$ and 11.97 with distribution $\chi^2(3)$ (reject 11.97 with .99 probability).
 31. Wald statistic of .03 distributed $\chi^2(1)$.
 32. On the other hand, one thing we see in the Reagan years is long lag times in filling empty seats on the Board. Thus there may have been a pro-business influence on the Board in the form of delaying Board decisions that is not captured in our data. It does not necessarily follow, however, that Reagan was responsible for this more than the Republican-led Senate.
 33. The congressional dominance hypothesis would include other variables to measure influence such as the preferences of House members. We choose to focus on a highly simplified model here.
 34. The constant term in model (I&V) was dropped due to multicollinearity.
 35. We cannot reject Model I in favor of Model (I&V) (Wald statistic of .004, distributed $\chi^2(1)$) but can reject (with probability .99) Model V in favor of Model (I&V) (Wald statistic of 10.98, distributed $\chi^2(3)$). We cannot reject Model I in favor of Model (I&VI) (Wald statistic of 4.50, distributed $\chi^2(2)$) but can reject (with probability .90) Model VI in favor of Model (I&VI) (Wald statistic of 7.50, distributed $\chi^2(3)$).
 36. We can reject both model I and model VII in favor of Model (I&VII) (Wald statistics of 9.08 distributed $\chi^2(2)$ and 15.80 distributed $\chi^2(3)$, respectively).
 37. We also employ two explicit theoretical simplifications about institutional factors of a multimember board that may be worth incorporating into the model in the future. First, we treat all NLRB members as equals. In practice, the chair of the NLRB wields extra influence on Board outcomes. Further research is necessary to build this into the model and to test for its importance. Second, as noted above, we

have ignored the possibility that today's elected officials may use constrained appointments today to affect a future regime's ability to move the median.

38. For the NLRB, the average number of appointments per presidential term during the period studied here is 4.2.
39. As Ackerman (1988) argues, a series of Republican Presidents facing largely Democratic Senates have led to a fight over transformative appointments during the mid-1980s and early 1990s.
40. Labor Relations Reference Manual, various years.
41. For a summary of 8(a) and 8(b) charges see McCulloch and Bornstein (1974).
42. Admittedly arbitrary, but applied uniformly. Other studies have simply omitted ambiguous cases (Cooke & Gautschi, 1982; Delorme et al., 1981).

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App't Num.	Year/ Pres.	Senate Maj. Party	Predicted Target Policy	Regime Change	Open Seat	Actual Median Change by Predictive Category			Actual N-R by Predictive Category			
						-	0	+	-	0	+	
		Truman(D)	R	[X _R ,X _D]								
	1949	D	X _D	+								
1	1950				1			+19				+55
2	1950				2			0				-22
3	1951				1			0				-36
4	1952				1			+10				+36
5	1952				5			0				+39
		Eisenhower(R)	R	X _R	-							
6	1953				2			0				-216
7	1953				3			-22				-207
8	1953				4			-44				-31
		D	[X _R ,X _D]	+								
9	1955				2			+20				+1
10	1956				2			+13				-64
11	1957				4			-5				+1
12	1957				5			0				+35
13	1958				1			0				-27
14	1959				3			-5				-30
		Kenn./John.(D)	D	X _D	+							
15	1961				4			0				+143
16	1961				3			+34				+61
17	1963				3			+1				+48
18	1963				1			0				-25
19	1965				1			+25				+13
20	1965				1			0				-27
21	1966				5			0				+14
22	1967				4			-14				-34
23	1968				4			-6				+1
		Nixon/Ford(R)	D	[X _R ,X _D]	-							
24	1970				1			0				-90
25	1970				2			0				-151
26	1972				5			-60				-22
27	1973				5			0				+103
28	1973				4			0				+49
29	1975				3			+26				+22
30	1975				1			0				-106
31	1976				2			+8				-7
		Carter(D)	D	X _D	+							
32	1977				2			+30				+16
33	1977				5			0				+30
34	1978				2			+5				+25
35	1979				3			0				0
		Reagan(R)	R	X _R	-							
36	1981				1			0				-125
37	1983				4			-63				-54
38	1983				3			-30				-30

Table 1: Predicted and Actual Board Changes by Appointment.

Predicted Sign of Change	Actual Sign of Change			Total
	-	0	+	
-	6	3	1	10
0	3	12	3	18
+	0	6	9	15
Total	9	21	13	43

Table 2: Predicted vs. Actual Change in Medians.

Variable Name	Definition
MEDCHANG	Change in median
REGPOS	1 if regime is predicted to move in pro-labor direction, 0 if pro-business
UNCONST	1 if median can be moved in regime's desired direction AND less than 3 unconstrained appointments have been made, 0 otherwise
PARETO	1 if politicians agree on the direction to change board, 0 otherwise
CONTESTED	1 if politicians disagree on the direction to change board, 0 otherwise (CONTESTED = 1 - PARETO)
SEAT	1 if open seat is 1 or 2; -1 if open seat is 4 or 5, 0 if open seat is 3

Table 3: Variable Names and Definitions.

Models: Variables	I	II	I&II	III	I&III	IV
CONSTANT	0.18 (2.67)	-6.08 (4.27)	-0.50 (3.56)	1.41 (1.76)	-2.99 (2.14)	-0.07 (2.85)
UNCONST* PARETO	-30.58** (11.96)		-29.90** (12.19)		-32.44** (13.18)	- 31.42*** (9.64)
REGPOS* UNCONST* PARETO	40.29*** (12.55)		38.12*** (13.54)		30.66* (15.75)	41.24*** (10.40)
SEAT* CONTESTE D	9.89* (5.68)		9.95* (5.79)		12.46** (5.37)	9.90* (5.69)
PRES D		11.86** (5.18)	2.16 (5.06)			
P_UNCONS T				-15.41* (7.22)	5.02 (6.19)	
PRES D* P_UNCONS T				24.33*** (7.96)	9.63 (9.51)	
REAGAN* P_UNCONS T						1.58 (8.59)
Adj. R ²	0.37	0.07	0.36	0.22	0.38	0.36

Table 4: Regression results.

Models: Variables	I	V	I&V	VI	I&VI	VII	I&VII
CONSTANT	0.18 (2.66)	- 15.20** (7.47)		-6.07 (4.28)	-4.27 (2.72)	1.38 (7.65)	14.28 (7.92)
UNCONST* PARETO	- 30.58** (11.96)		- 30.40** (11.66)		- 30.40* * (11.66)		- 36.37** * (9.60)
REGPOS* UNCONST* PARETO	40.29** * (12.55)		40.08** * (12.96)		34.92* * (13.39)		38.33** * (10.67)
SEAT* CONTESTED	9.89* (5.68)		9.89* (5.74)		5.04 (6.51)		4.36 (6.07)
SENATED		18.35** (7.97)	0.21 (3.24)				
S_UNCONST				-15.64 (10.70)	4.27 (2.72)		
SENATED* S_UNCONST				30.31** * (10.12)	5.37 (4.66)		
BUS_SEAT						5.28 (7.95)	-9.53 (7.94)
LAB_SEAT						- 14.18 (9.66)	- 20.77** (8.30)
Adj. R ²	0.37	0.14	0.37	0.31	0.37	0.17	0.46

Table 5: Regression results.

Board member	80	81	82	83	84	85	86	87	88
Fanning	539	569	539						
H Jenkins	524	594	561	755					
Penello	483								
Truesdale	494								
Zimmerman		561	515	487	483				
V de Water			436						
Hunter			414	479	392	380			
Dotson				433	395	402	433	429	
Dennis					409	449	613		
Johanson						474	493	504	608
Babson						468	570	501	632
Stephens							486	498	580
Cracraft								528	616

Table 6: NLRB member voting scores: 1980-1988

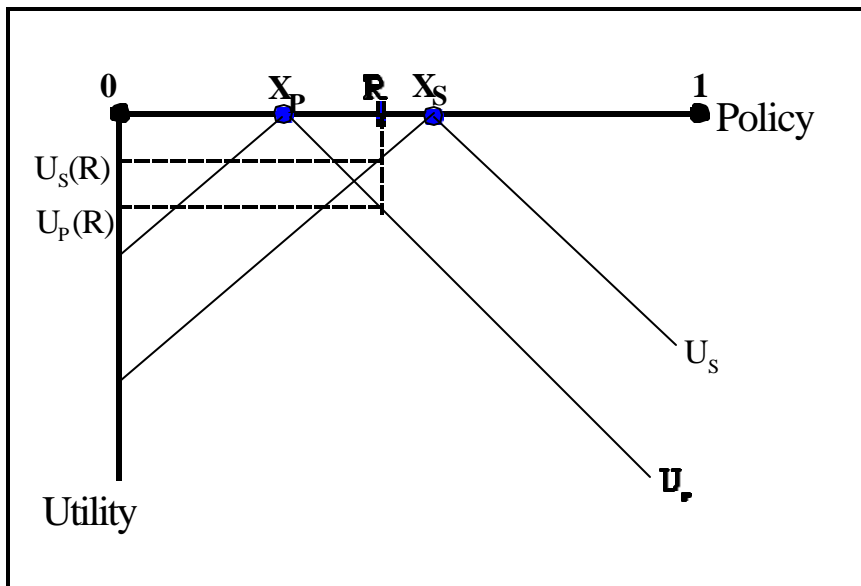


Figure 1: Target policy is R .

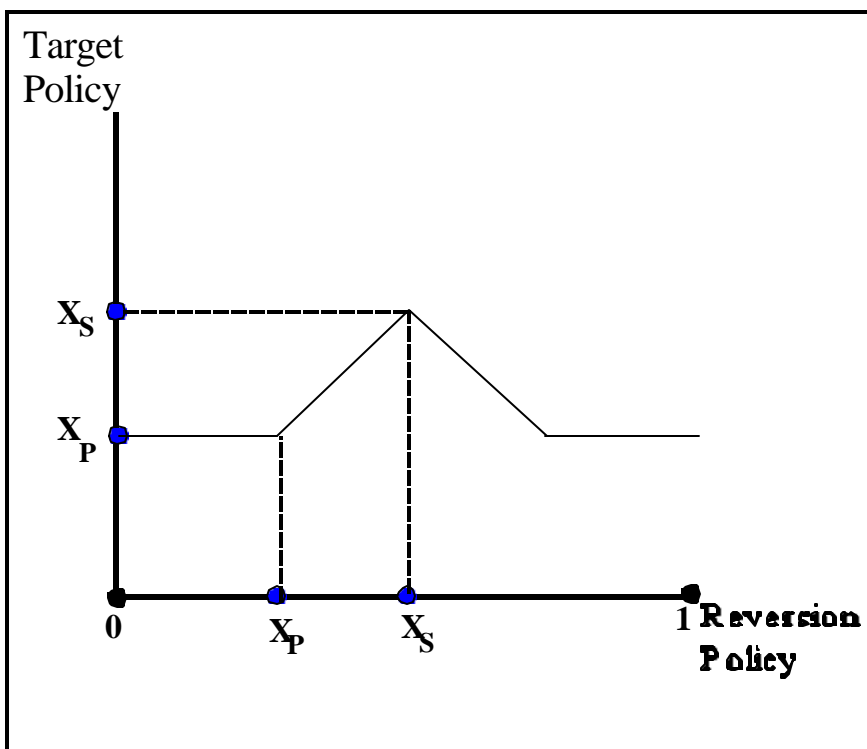


Figure 2: Target policy as a function of Reversion Policy.

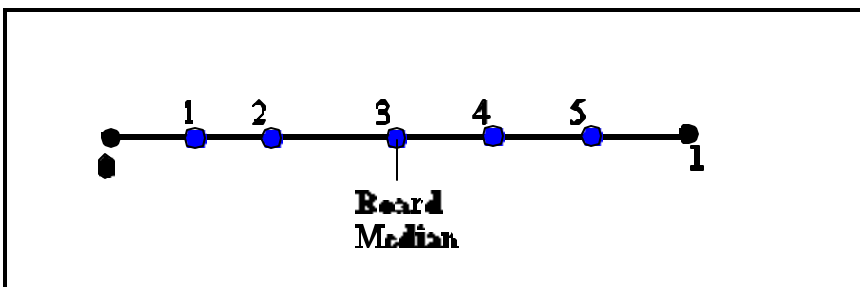


Figure 3: Distribution of Board Preferences.

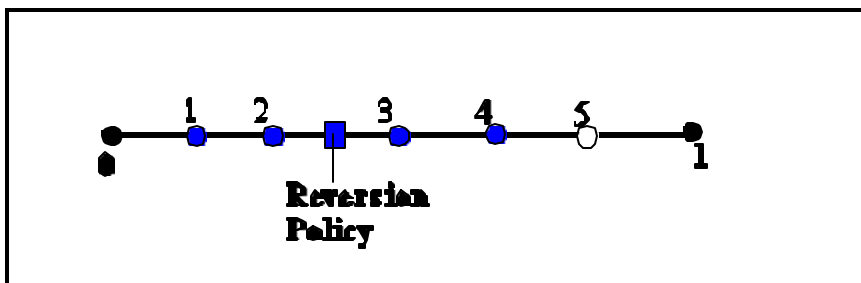


Figure 4: Board with empty seat.

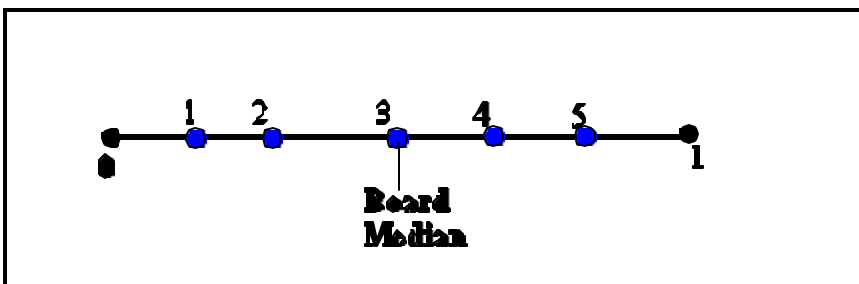


Figure 5a: Initial board member positions.

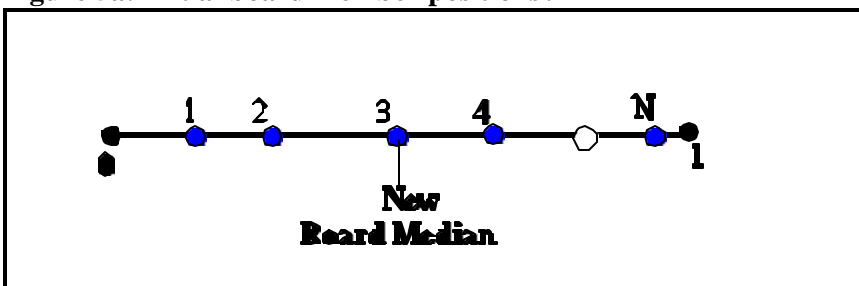


Figure 5b: Constrained positive change appointment: policy unchanged.

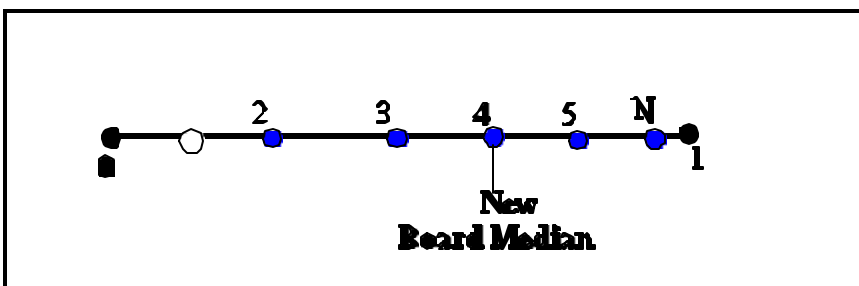


Figure 5c: Unconstrained positive change appointment: policy moves positively.