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The Macropolitics of Congress

Edited by

E. Scott Adler and John S. Lapinski

The Macropolitics of Telecommunications Policy, 1899–1998: Lawmaking, Policy Windows, and Agency Control

Grace R. Freedman and Charles M. Cameron

In this chapter, we use a macropolitics approach to study a century of congressional policymaking for telecommunications. What we attempt to explain is the production of major laws—their timing and volume—in the area of telecommunications policy. Our real subject, however, is the creation and operation of regulatory regimes. Therefore, we view the chapter not only as an experiment in macropolitics but also as one in policy history or “American Political Development” (APD). We show that simple and largely intuitive notions from rational choice institutionalism afford at least some purchase on the historical data.

Let us stake out more clearly the terrain over which we maneuver. Why is the production of major laws interesting? From a substantive viewpoint, Congress’s enactments of the Radio Act of 1912, the Communications Act of 1934, and the Telecommunications and Deregulation Act of 1995, along with many lesser statutes, *were* the creation of the American state in this policy arena—though hardly the whole story, of course. And, Congress’s willingness or reluctance to allow its creations, especially the Federal Communications Commission (FCC), to make decisions ranging from the mundane to the momentous, has been a central feature of the *operation* of this regulatory regime. In our view, understanding when and why Congress creates regulatory regimes, and how it manages them, is crucial for understanding the history of the American state.

Theoretically, and in practice, Congress creates a regulatory agency in order to delegate policymaking functions to it. If the agent is a trusted and effective regulator, Congress members will mostly leave the agency to its tasks and devote its own energies to other issues. Stated another way, there must be a positive reason for Congress to involve itself in a technically difficult

area such as telecommunications, rather than rely on agents in the executive to manage affairs. Ideological estrangement between the executive agent and the congressional overseers creates such an impetus. We argue that a necessary condition for lawmaking, then, is the degree of ideological distance among the key oversight committees in the House and Senate and the delegated agency. Since House and Senate political ideology can also be a barrier or incentive for legislative action, the spatial position of the median floor member is also taken into account. As we show, these arrangements are predictive of lawmaking activity in telecommunications policy from 1899 to 1998.

The chapter is organized in the following way. The following section sets the stage by presenting a highly schematic history of federal telecommunications policy. We present this abridged history in terms of “regimes,” focusing on key changes in the relationships among Congress and its agents in telecommunications policy over time. The third section presents the theoretical framework and discusses its plausibility in this policy arena. The next section explains how we measure key variables and presents some basic information about them. The fifth section undertakes an empirical analysis of the data. The sixth section concludes.

HISTORY OF TELECOMMUNICATIONS POLICY

TABLE 7.1 Theorized Regimes in Telecommunications Policymaking

<i>Regime</i>	<i>Date</i>	<i>Characteristics</i>
1	pre-1934	Early regulatory structures, weak and ineffective
2	1934–late 1950s	Creation of FCC as single regulatory authority, Congress defers powers to agency
3	1960s–1982	Technological pressures and eroding political support of existing regime; FCC, Department of Justice, and Congress active
4	1982, 1996	Regulatory framework switch to favor competition; tension among Congress, Department of Justice, and FCC over regulatory powers; FCC strengthened in 1996

Regime 1: Early Attempts at a Regulatory Regime (before 1934)

Though historical accounts of the regulation of telecommunications often begin with the 1934 Communications Act, which established the Federal Communications Commission (FCC), state and federal regulation of telephone, telegraphy, and radio preceded this historic enactment. As early as 1910, the first federal, executive agencies in telecommunications were established. The Mann-Elkins Act of 1901 placed telephone regulation under the Interstate Commerce Commission (ICC) and the Radio Acts of 1910 and 1912 placed radio licensing and registration under the secretary of commerce.¹

Despite the established regulatory regime, the ICC did not aggressively implement the Mann-Elkins mandate and rarely invoked its given powers.² The agency concentrated more on its original charge to oversee railroad and transportation-related commerce cases. Only a handful of telephone regulation cases were brought before the ICC during its tenure over the area, begging the need for continued congressional oversight (Cohen 1991; Robinson 1989).

Radio regulation was similarly flawed. The permission of unlimited radio licenses under the Radio Acts of 1910 and 1912 created broadcasting jamming by the early 1920s. Since there was more demand than capacity, a great influx of radio stations began transmitting over open airwaves, sometimes in a haphazard and uncontrolled fashion. An estimated seven hundred licensed stations were operating only 90 available radio channels in 1924 (Wollenberg 1989, 66). Herbert Hoover, then the secretary of commerce, tried to reduce radio license awards, but he was barred by the Supreme Court in the *Zenith* decision. The Court upheld the Radio Act of 1912, reasoning that the executive branch office could not regulate without further legislative action.

In response to these political and technological pressures, Congress created the Federal Radio Commission (FRC), empowering it as regulatory agent in the provision of licenses and other oversight of the new industry. Enacted as a temporary measure with only a one-year life span, this law (Radio Act of 1927) was not meant to be a comprehensive solution to the regulation of the radio industry. The arrangement set down in 1927 proved permanent.

Regime 2: New Deal, New Regime (1934–1960)

The Communications Act of 1934

Seven years later, with considerably more political support and attention, the Communications Act of 1934 established the FCC as the federal agency with sole authority to regulate telecommunications and the broadcast industry with

a vague mandate “to protect the public interest, convenience, and necessity.” The essential structure and powers of the FRC were adopted and expanded over a more broad terrain of telephony and broadcasting. Some legal historians, though, deride the creation of the FCC from the FRC as little more than a one-letter name change (Robinson 1989).

Yet the timing of its creation cannot be dismissed. Franklin D. Roosevelt, newly in office, made a specific request of Congress to organize a new body to control both broadcasting and telephony, although technically there is little reason to do so. There was no prevailing economic or technological rationale for creating this body in 1934. Neither did the Communications Act add new regulatory powers, although a provision to expand the oversight of mergers was considered by Congress. (Vigorous AT&T opposition blocked it [Robinson 1989].) In retrospect, experts have ascribed the primary motive for establishing the FCC to the claim that the previous structures, oversight by the ICC and the FRC, were not sufficient. The ICC, in short, was too busy with railroad and other transportation-related commerce to pay much attention to telecommunications, and the FRC was too slow in adopting a new licensing system. The status quo regulatory powers were not considered deficient, only unused.

The explanation is somewhat unsatisfying given the broad delegation of authority in the Communications Act and does not account for the timing of the enactment. Could sheer politics—namely that Franklin D. Roosevelt wished to remove Hoover appointees and replace them with his own—provide a better explanation? A comparison of the ideological standpoints of the regulatory agents and key committees should shed light on this question.

Regime Status Quo

Even though the new agency claimed no new federal powers, the establishment of the FCC itself did prove to be a significant change. There was now an attentive expert panel, if not exactly a watchdog, which took seriously the role of regulating these industries in the name of the public interest. Over the next half-century, the ebb and flow of FCC control would be related to court challenges and decisions, antitrust proceedings of the Department of Justice (Cantor and Cantor 1986), technological and economic changes in the industry. It is also related to the ideological and legislative inclinations of Congress and key oversight committees, which is our focus here.

World War II, and the economic expansion that followed, represented an important time in the development of the telecommunications industry. There was extensive public support for private research and development of telecommunications tools, including microwave communications, computer systems, and satellite technologies (Cantor and Cantor 1986). In terms of congressional activity, though, the status quo was unchallenged; there was a long lull in con-

gressional lawmaking on telecommunications in the 1940s and 1950s. This was due, at least in part, to the broad support enjoyed by AT&T and the pro-business stance of President Eisenhower, who on several occasions called the AT&T monopoly a “national resource” (Rosenstiehl 1997).

Regime 3: Pushing the Envelope—Technological and Political Shifts (late 1950s–1960s)

Still, technological advances pushed the status quo points even if political concerns did not. New technologies of microwave and satellite communications, as well as cable television and the broad acceptance of network television, were developed in the late 1950s.³ The FCC claimed jurisdiction over these new industries and was largely unquestioned in doing so, even though the 1934 act did not expressly support it (Robinson 1989). Another development was the waning of the previously monolithic support for market leader industries in telephone and traditional broadcasting, both in the FCC and Congress.

Though AT&T and national network broadcasters still had great regulatory advantages, several policy decisions from the FCC, Congress, and the Department of Justice signaled changes in political support. Among these was the *Above 890 Decision*,⁴ a 1959 FCC ruling that allowed private licensing of microwave telephone technology and mandated free interconnection with the existing telephone system (Zarkin 1998). The decision allowed MCI, the first major competitor to AT&T in over three decades, to offer enhanced telephone services, ushering in the potential for competition.⁵ Another change was the consent decree of 1956, by which the Justice Department broke up AT&T’s monopoly over the manufacture of telephone equipment (Rosenstiehl 1997). The regulatory regime of the 1940s and 1950s that featured FCC rule-making, monopolistic industry dominance, and little congressional lawmaking was pushed on both technological and political fronts.

In the midst of the Cold War, still broader political concerns influenced support of the regulatory regime. Soon after the landmark FCC microwave decision, Congress enacted the Communications Satellite Bill of 1962 (COMSAT), which represented a congressional mandate to open and promote private market investment in satellite-based communications. The push for this bill, one of the first noteworthy telecommunications laws since the 1934 Communications Act, took place when Congress and the American people were concerned about the nation’s ability to maintain technological superiority over the Soviet Union, a concern fueled by the launch of *Sputnik* in 1957.⁶ These events arguably spurred members of Congress to reconsider how well the federal government was supporting technological advancements and to possibly rethink how well the old alliances and state-supported monopoly of AT&T served the public interest.

Regime 4: Regulatory Framework in Flux—Breakdown of Support for Existing Regulatory Structures (1970s–1982)

In the 1970s, there was a renewed interest in reforming telecommunications policy more broadly. Reacting in part to the technological advances of the 1960s, policy experts,⁷ regulators, and legislators no longer unanimously held state-sanctioned monopolies in telecommunications to be in the public interest. Demands for regulatory change came from consumer advocates, who were concerned about telephone rates in a time of rising inflation (Crandall and Waverman 1995), start-up industries that wanted to enter markets untapped but controlled by AT&T, and the FCC, which instituted reforms to increase competition. Within Congress, committee reforms of 1974 had created specific House and Senate subcommittees for communications policy and increased the number of research staff available to legislators in this policy area (Rosenstiehl 1997). To many legislators (the chair of the House subcommittee, in particular) competition and deregulation were now more in the public interest than the preservation of the AT&T monopoly, in contrast to the policies of previous decades.

The Department of Justice and the federal courts were the most aggressive in their efforts to open telephone markets to competition. The centerpiece of the judicial branch approach was the antitrust case brought against AT&T, which after eight years resulted in the breakup of AT&T in 1982. This settlement was a radical departure from existing policy, prompting some in Congress to challenge the authority of the Justice Department (Rosenstiehl 1997). Public opinion about the breakup was decidedly mixed, and policy historians agree that there was never a public outcry against AT&T's monopoly status to prompt the drastic action (Hudson 1997; Crandall and Waverman 1995). The aftermath of the AT&T breakup undoubtedly left Congress and the FCC in new regulatory terrain. Increased congressional lawmaking in the late 1980s and 1990s may be an indicator of these new demands.

A New Regime? The Telecommunications Competition and Deregulation Act of 1996

The Telecommunications Competition and Deregulation Act of 1996 (referred to as the Telecommunications Act of 1996) represents a comprehensive reworking of the regulatory regime in telecommunications. The legislation represents a trend, several years in the making, where congressional committees, leaders, the courts, FCC regulators, and the states were all moving towards removing and reducing regulatory barriers to competition in the telecommunications arena ("Congress Puts Finishing Touches" 1995, 4). Enacted by a Republican Congress and supported by the Clinton administration, the Telecommunica-

tions Act of 1996 affects every segment of the telecommunications industry: telephone, cable TV, broadcasting, and computer communications. The primary mechanism of deregulation in this act was to reverse the long-standing policy of placing regulatory barriers between each of the niches in the telecommunications industry.⁸

Rather than reducing the need for the FCC, the new legislation has provided a new charter and a raft of regulatory questions to address. The FCC is still the primary federal interpreter of telecommunications regulations and the chief agency in charge of the law's smooth and consistent implementation. The FCC, for instance, has to "grant permission" in order for a previous monopolist to enter a new field. In addition, the agency was given new roles in order to assure that competition would not adversely affect the public interest.

Historically, federal telecommunications regulation has always supported private sector control of the industry. The aim of regulation was to create safeguards to assure that the private, profit-motivated companies would also serve "the public interest" in providing fair, equitable, and affordable access. The regulatory regime that is thought to best serve these goals changed over the course of the twentieth century. Competition is now seen as better than the protection of a "natural monopoly," as a way to advance technological improvement, improve service, and lower costs.

Experts, industry leaders, and legislators continue to debate how effective the new regulatory regime of the Telecommunications Act of 1996 has been in ensuring "public interest" goals. Indeed, the policy environment has greatly changed since the law was enacted. Since 1996, wholly new markets for telecommunications services have been created, as seen in the rise of Internet and cable/DSL services and the explosion of the market for cell phones and other wireless communication devices. Competition within the industry may be more connected to technological innovation and market forces than to regulatory changes, as industry price standards are tied more to premium services than basic access.

THE POLITICS OF TELECOMMUNICATIONS POLICY

A Theoretical Framework

The theoretical ideas we employ have become common currency among rational choice institutionalists, though no one has implemented them exactly this way before (at least to the best of our knowledge). In essence, we combine standard ideas from the spatial theory of policy bargaining with standard ideas from the theory of political delegation, to explain surges and slumps in legislative productivity.

In simplest form, the spatial theory of bargaining can be illustrated as ideal

points along a line.⁹ The line is a one-dimensional policy space, and is a convenient way to represent the array of policy choices. The points can be marked *H* and *S* to represent the “ideal points” of two actors, for examples, the chairmen of the House and Senate Commerce committees. These points indicate the most preferred policies of the two chairmen. We assume that the value to a chair of other policies declines proportionately with distance from her ideal point.

The interval between the two ideal points is known as the *Pareto set*, and it plays an important role in the analysis. Note that, for any given point outside the Pareto set, one can find a point within the Pareto set that *both* chairs prefer. On the other hand, given a point within the Pareto set, it is impossible to find a point that both prefer. Suppose the two chairs bargain about changing policies, with either free to propose any change she wishes. But suppose further that both chairs must agree on the change if it is to occur (as the rules of Congress assure). Then it seems reasonable to believe that, over time, the two chairs will replace policies outside the Pareto set with ones inside them. But once a point has entered the Pareto set, it will be invulnerable to further change.

This exceedingly simple setup affords one way to think about “policy windows.” For policies outside the Pareto set, the policy window is open. For policies inside the Pareto set, it is closed. Suppose that new “policies” arrive randomly throughout the policy space, as new problems arise within a dynamic, industrial society. If the ideal points of the two players are close, then the Pareto set is small and the policy window for the new problems is apt to be open. But if the ideal points of the two players are far apart, then the new policy may well lie within the Pareto set—the policy window is apt to be closed. Thus, simple notions of bargaining suggest that ideological agreement between the House and Senate chairmen of relevant committees is apt to be necessary for much legislative action.

In the modern administrative state, Congress directly manages few areas. More typically, it delegates authority to an agent in the executive. In the last few years, political scientists have devoted a great deal of thought to the dynamics of delegation.¹⁰ Again, we will employ only a sketch of these interesting ideas. Thinking of the one-dimensional line described above, suppose that an agency has an ideal point outside the Pareto set. It would seem that the agency must set policy within the Pareto set to avoid triggering congressional reversal of its policy. However, information costs or other transaction costs for the chairmen may give the agency a degree of “wriggle room.” If so, the chairmen may be reluctant to delegate to an agency whose ideal point lies far outside the Pareto set, as this agency will face strong incentive to exploit the “wriggle room” and bend policy in its favor. Thus, when the agency is ideologically distant, the chairs may find it more attractive to direct policy themselves. Hence, more legislation. Somewhat similarly, if an agency lies outside the Pareto set, attempts to “cheat” on policy, but is found out by the chairs, then the two chairs will be able to agree on remedial legislation altering the policy of the agency. Both arguments suggest that legislation is apt to be more

frequent as the agency lies further outside the Pareto set. And both arguments suggest that the key distance is from the agency’s ideal point to the *nearest* of the two committees, since it is the willingness to act of the “more friendly” of the two chairs that is the real constraint on legislating.

Where is the president in this picture? At one level, the president is another veto player. But perhaps even more crucially, he is an administrative one as well. If the president shares the ideology of the key congressional actors, then his appointments to the agency will bring it closer to the preferred ideological stance of the congressional overseers. In addition, if the president has any direct administrative authority, he may use it to eliminate the agency’s ideological “cheating” or “wriggling,” if he shares the ideology of the chairs. In either case, ideological conformity between the chief executive officer of the administrative state and key legislative actors is apt to decrease direct legislative intervention in policymaking, at least in areas where Congress prefers to delegate rather than legislate directly.¹¹ Epstein and O’Halloran (1999) provide evidence that this is apt to be more likely in technologically difficult areas, like telecommunications.¹²

In sum, these simple ideas suggest that legislative action is more likely to be *possible* if the two chairs are ideological soul mates. But even so, action will actually *happen* only if the two chairs have reason to act. In an area in which Congress prefers to delegate policymaking, an impetus to action is more likely if the relevant agency is ideologically estranged from the chairs, and if the president is ideologically untrustworthy as well.

Congress and the FCC

Are these ideas at all plausible in this policy arena? The history of the relationship between the FCC and Congress strongly supports a principal-agent dynamic. Case studies suggest that Congress has often held the FCC on a “short lease” (Emery 1971; Krasnow and Longley 1973). During its 65-year history, the FCC has most often been headed by a chairman from the same party as the president, with a majority advantage (though usually by one vote only) of that party among the FCC commissioners. In times of divided government, this often puts the agency at odds with congressional leadership.

Detailing several ways in which Congress influences the FCC, Krasnow and Longley (1973) conclude that the most obvious, control by statute, is the least employed. More often nonstatutory control is used, such as investigations, oversight and review of all agency budgetary expenditures, and the watchfulness of the House and Senate Commerce committees, other committees with vested interests, and individual members of Congress and staff. Over the time of Krasnow and Longley’s study, congressional involvement in directing and overseeing broadcast regulatory policies took place on an “almost daily” basis, even in times of relatively little legislative production. Former chairman Newton Minow is quoted as saying, “When I was Chairman, I heard from

Congress about as frequently as television commercials flash across the screen” (Krasnow and Longley 1973, 53).

Within Congress, the most important touch points for the FCC are the House and Senate Commerce committees, particularly their chairmen. The authors cite a highly placed FCC staff member who explained that “the word of Senator Warren Magnuson, Chairman of the Senate Commerce Committee, is practically law to the FCC” (Krasnow and Longley 1973, 53). Legislators also use inaction in policy debates that are politically contentious. In these cases, the administrative decisions fall to the FCC, which bears the brunt of the criticism should the agency’s policy interpretations prove unsatisfactory to Congress or other stakeholders.

Furthermore, Krasnow and Longley suggest that the National Association of Broadcasters concentrates its lobbying efforts on Congress, not the FCC directly. Former vice president and general counsel of the National Association of Broadcasters Paul B. Comstock notes,

Most of our work is done with congressional committees. We concentrate on Congress. We firmly believe that the FCC will do whatever Congress tells it to do, and will not do anything Congress tells it not to do. (Krasnow and Longley 1973, 56)

This is not to say that organizations, especially large firms and industry organizations, do not lobby the FCC directly. They do. Indeed, a study by de Figueiredo and Tiller (2000) analyzed over nine hundred lobbying contacts between industry and the FCC, covering over one hundred issues, and occurring in just the early portion of 1998.¹³ The evidence suggests that industry lobbyists seek to influence policy decisions at both ends, the FCC and Congress.

Caveats aside, the FCC has substantive policymaking authority and makes many of the rules and regulations that affect the telecommunications field.¹⁴ Its jurisdiction and administrative capacity far exceed the original mandate of the Communications Act of 1934 (Paglin 1989). Nonetheless, the commission fulfills its mandate to gather information for Congress and to deliberate on broad policy matters related to serving the public interest of telecommunications. Over its history, the FCC has sometimes taken a far-reaching and activist role, but it remains, ultimately, tethered to Congress and the executive.

Measurement

Our background knowledge of telecommunications policy, then, supports a more systematic investigation of ideological leadership in the FCC and Congress and its relationship to policymaking. The challenge is how to capture this interaction, keeping in mind the other influences to policymaking. In this section, we discuss how we measure key variables associated with these relationships.

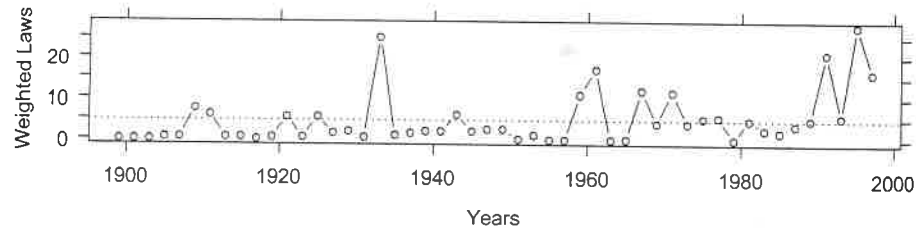
The central difficulty in measuring legislative productivity is how to count and calibrate lawmaking to create a dependent variable across long periods of time. Counting actual laws is a starting point, but a major challenge is how to count the relative importance of laws enacted in each congressional session. Clearly some laws are more important than others, but this truism must be accounted for systematically. A problem in constructing such a measure is that many of the sources typically used to construct post–World War II measures of significance are not available for the entire time series. *Congressional Quarterly Almanac*, for instance, was first published in 1945, and no comparable sources exist for the period prior to 1945.

Our approach is to rate the historical significance of each telecommunications policy enactment from 1899 to 1998 on a five-point scale from historic to very minor. Then we “weight” each law with a computed value and sum the weights to calculate the legislative productivity in each congressional session. The “weight” (Wdtlaws2) used was equivalent to the average number of pages of *CQ* coverage for laws in each significance category enacted from 1945 to 1998. This value was used retroactively by attempting to match earlier laws of similar historical significance to those passed after 1945.

For example, there were only two telecommunications laws in the set deemed historic: the Federal Communications Act of 1934 and the Telecommunications Deregulation and Competition Act of 1996. Given the time frame, only the latter had coverage in *Congressional Quarterly*, 27 pages to be exact. This value became the “weight” for historic laws, and the 1934 act was weighted as 27 as well. For all other significance levels, the average number of *CQ* pages from 1945 to 1998 was substituted for the corresponding level from 1899 to 1944.

The Laws and Legislative Productivity

We use a broad definition of telecommunications policy and include legislation related to broadcasting (radio, television, cable television) and communication devices (telegraph, telephone, wireless and Internet/computer) that have been widely used. The set of telecommunications laws ($N = 162$) was identified by reading through lists of laws in the *Statutes at Large* (1900–44, table of contents) and *Congressional Quarterly* (1945–98, lists of laws) and by cross-checking the lists via the index for keywords related to telecommunications. Expert sources¹⁵ were also used to verify that no major laws were omitted and to rank laws by historical significance. All telecommunications legislation was coded to identify historic laws, major laws, ordinary laws, and minor ones. Major laws were identified in two ways: (1) by consensus of expert opinion, including Mayhew’s (1991) list; (2) by coverage in *Congressional Quarterly* after 1945 (number of pages written about final passage of law). Prior to 1945, historical expert sources necessarily took on greater weight; also the length of



1. Early Regime (1900-1930): low level attention
2. FCC Regime: (1934 (peak) to 1956) Boom in creation (1934), then status quo of low level
3. Challenged Regime: (1958-1970) Increased activity
4. Changing Regime: (after 1970s) regulatory framework of moves toward competition: low activity, (1970-1982) then increased activity after AT&T break-up (1990s)

Figure 7.1: Congress Makes Telecom Policy, 1899–1998

Notes:

1. Early regime (1900–1930): low-level attention.
2. FCC Regime: [1934 (peak) to 1956] boom in creation (1934), then status quo of low level.
3. Challenged regime: (1958–70) increased activity.
4. Changing regime: (after 1970s) regulatory framework of moves toward competition: low activity (1970–82), then increased activity after AT&T breakup (1990s).

the law (number of pages in the *Statutes at Large*) was considered, since more important laws tended to be of longer length.

Figure 7.1 shows the dependent variable, Weighted Laws, over time. The circles indicate each data point. The dotted line indicates the mean of the data (4.8 per Congress). In general, the amount of congressional lawmaking in the telecommunications area is rather low, reflecting a high degree of delegation to the FCC after 1934. However, there have been three bursts of policymaking activity: 1934, 1959–71, and 1991–97.

Agency-Committee Proximity

Our theory suggests that the ideological distance between the agency and the nearest relevant committee in the House or Senate affects the volume of significant enactments. We capture ideology of key players using the first dimension of Poole's common space NOMINATE scores. NOMINATE scores, based on a scaling of roll call votes on the floors of each chamber, are one of the most frequently used measures of congressmen's political ideology (Poole and Rosenthal 1997). Roughly speaking, the scores are bounded by -1 and 1 , with negative scores being "liberal" and positive scores being "conservative." The common space scores use the movement of House members to the Senate to standardize the scaling across the two chambers, so that scores for House members and Senators are comparable. In this analysis, we used the NOMI-

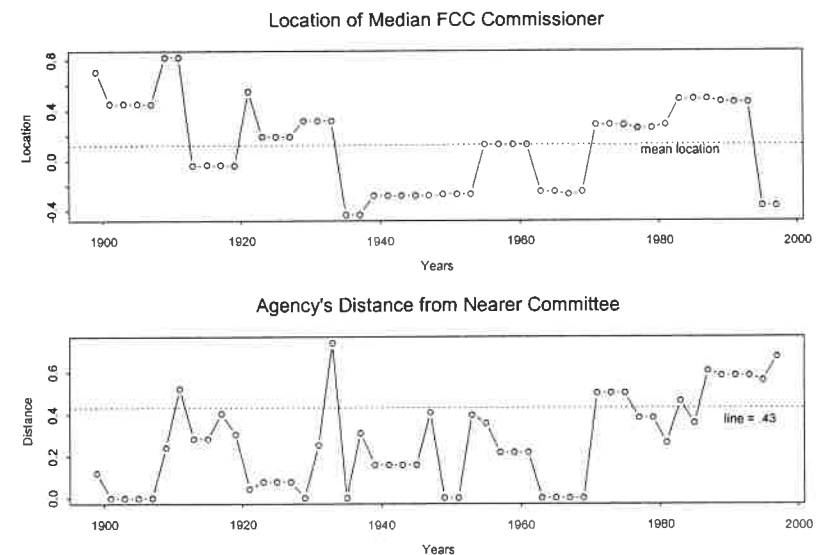


Figure 7.2: Agency-Committee Distance, 1899–1998

NATE scores for the chairmen of the House and Senate Commerce committees as well as the floor medians in the House and the Senate.

To determine the agency's ideal points at each congressional session, we first identified all the commissioners of the Federal Radio Commission (1927–34) and the FCC (post-1934) and the presidents who appointed them. As a proxy for the commissioners' own ideology, we used McCarty's pseudo-NOMINATE scores for the appointing president.¹⁶ Then we identified the ideology of the median commissioner. For the period before 1927, we proceeded in a similar way, but used the score imputed to the secretary of commerce (that is, McCarty's pseudo-NOMINATE score for the sitting president).¹⁷

To estimate the proper distances among these actors, we first created spatial arrays for each Congress, marking the ideal points (by NOMINATE scores) for the agency, the chairmen of the House and Senate Commerce committees, and the median voter in the House and Senate. If the median commissioner lay outside the interval on the NOMINATE scale bounded by the House and Senate chairs, we calculated the distance between the median commissioner and the most proximate of the two committee chairs. In this case, the (absolute) distance became the variable. However, if the median commissioner lay within the interval, we scored the variable as 0.

Figure 7.2 displays agency-committee distances. The top panel shows the location of the median FCC commissioner per congressional session. The bottom panel displays the distance from relevant committees. Rather obviously,

the likelihood of measurement error means that this variable needs to be taken with a grain of salt—or perhaps a whole fistful! Nonetheless, we hope that large scores for the variable indicate that the preferred policies at the FCC are likely to be rather discordant with those favored by both committee chairs. Conversely, we hope that low scores indicate that the preferred policies at the FCC are not likely to be very discordant with those supported by both committee chairs.

As shown in figure 7.2, the variable for agency-committee distance takes large values at several interesting junctures in the time series. Relatively high distance values occur in the 61st and 62nd Congresses, when the first Radio Acts of 1910 and 1912 were enacted, in the 73rd Congress which enacted the legislation to create the FCC in 1934, and in the early 1970s (the 92nd–94th Congresses), when several laws on the Public Broadcasting Corporation were enacted. The distances remain high in the 1990s (the 100th–105th Congresses), when Congress turned its lawmaking attention to changing technological and economic conditions following the breakup of AT&T.

THE PRODUCTION OF TELECOMMUNICATIONS LAWS

In building a predictive model for legislative production, we theorized that agency distance would operate under a “threshold” effect. In other words, if the agency was close enough to one of the committee’s ideal points, the nearer chairman would be satisfied to delegate telecommunications policy to the agency. However, if the distance between them became too great, exceeding a certain threshold of tolerance, the nearer chairman would be motivated to act, resulting in a greater likelihood for lawmaking. Figure 7.3 displays legislative productivity in relation to agency-committee distance. As both the top and lower panels show, the amount of legislative activity and the probability of enacting a major law increase as agency-committee distance increases. Both figures support the idea of a break-point threshold near the 0.4 distance.

To capture this effect, we used the median agency distance ($x = .43$) as the threshold level and computed a variable that represented law production above that level interacted with production below that level. We used this model to predict both total production of telecommunication laws (Weighted Laws) and the probability of enacting a major law (historic and major significance levels). Table 7.2 reports results from these regression models.¹⁸

Both models perform surprisingly well considering they represent only one explanatory variable. Over 40 percent of the lawmaking performance, measured by the R^2 value, can be accounted for with this simple story. Substantially more telecommunications laws (weighted value 61.76) are enacted when agency distance from the relevant committees is greater than the threshold mark. The probability of enacting a major law is also increased during these periods. These findings indicate that Congress is willing to act when its

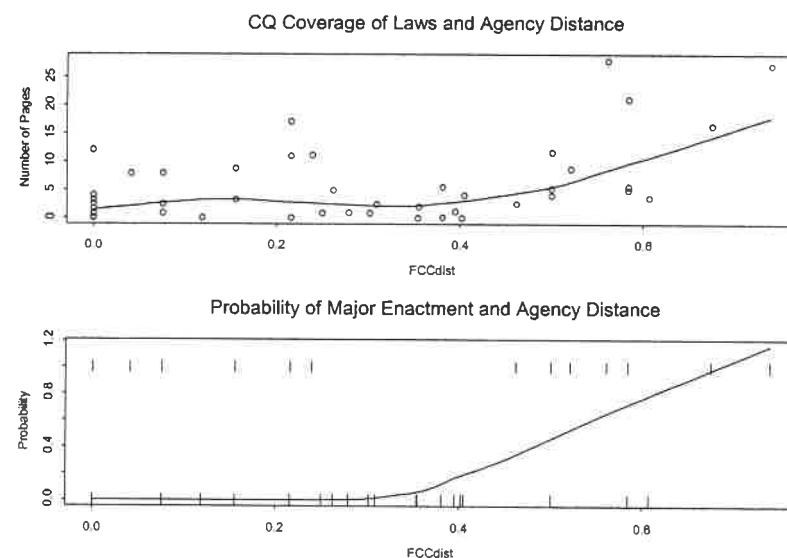


Figure 7.3: Legislative Productivity and Agency-Committee Distance

agent diverges from the committee’s ideological preferences. When the agency is estranged from the committee in terms of ideology, committee members seem to reverse their tendency to delegate and take on a more active role in policymaking.

Clearly there are other important factors at work to explain legislative

TABLE 7.2 Regression Models Predicting Legislative Activity, 1899–1998

	<i>Production of Laws (weight)</i>	<i>Probability of Major Law</i>
Agency distance above threshold		
Coefficient	61.76	11.74
S.E.	10.37	5.09
<i>t</i> -value	5.96	2.3
Intercept		
Coefficient	3.21	-1.29
S.E.	0.80	0.38
<i>t</i> -value	3.99	-3.4
<i>degrees of freedom</i>	48	48
R^2	.42	
Durbin-Watson	2.26	2.23

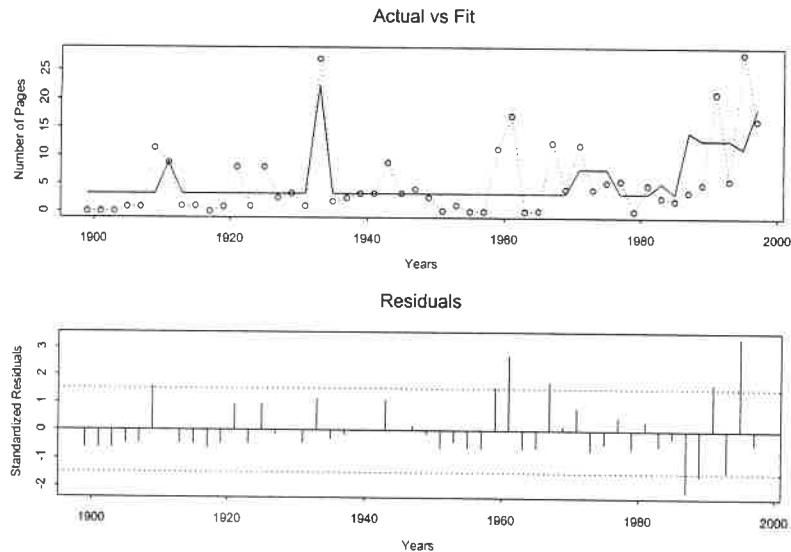


Figure 7.4: The Model's Predictions: *Congressional Quarterly* Coverage of Enactments

production in this policy area. Lawmaking, it would seem, would be sensitive to technological changes, economic stresses, and the political actions or pressures from other influential players, such as the Department of Justice, the courts, and telecommunications market leaders, like AT&T. We attempted to measure and model several of these elements, but without success.¹⁹ More appropriate measures must be devised. In addition, we theorized that “regimes” of FCC oversight might explain different periods of legislative production. Yet the small number of data points in each time period undermined our ability to detect a clear relationship.

Figure 7.4 examines the predictions of the model against the historical record. The top panel shows actual observations (the points) and the model's predictions (the line). The lower panel shows the corresponding (standardized) residuals. Though the R^2 for this extremely simple model is surprisingly robust at .425, it is expected that one will find discrepancies between the model and the data. The bottom panel identifies a few large differences that require further explanation.

First, the model predicts high levels of legislative production from the 100th to the 105th Congresses. There are high levels of lawmaking in the 102nd and 104th (actually higher than predicted), but there are depressed levels in the 100th, the 101st and the 103rd. This could be an indication of the time needed for Congress to consider and to pass legislation in the highly technical area of

telecommunications. Ideologically, Congress may have been motivated to act throughout the 1990s, but the actual laws took time to craft and be successfully enacted. There are definite bursts of legislation in the 1990s, but they were not sustained at each and every congressional session in the period. Nonetheless, the model correctly identifies this period as one of ideological tension that proceeds to “open a window” for policymaking.

Second, the model fails to predict the surges that occurred in the 86th and 87th Congresses. In these Congresses, the House and Senate Commerce committees were ideologically proximate, but the FCC was not particularly out of step with them. Factors not strictly related to ideology must be driving these surges. In the late 1950s and 1960s, the tensions caused by the appearance of new technologies and, perhaps, Cold War concerns may have held greater influence.

DISCUSSION AND CONCLUSION

The model presented here, which taps into the role of ideology and principal-agent relationships in predicting legislative productive, does a pretty good job at identifying key moments in telecommunications policymaking. But its failures suggest the need for greater attentiveness to other dynamics in the regulatory regime. That remains a difficult task for the macropolitics enterprise to tackle in the future. Nonetheless, we have shown that a simple political theory can afford real purchase on a difficult dataset.

In our view, a new kind of history of the administrative state—one that is theoretically driven yet also sensitive to the internal logic of regulatory regimes—demands to be written. This new kind of political history has yet to find its Gibbon or Namier. But when it does, the ideas we explore here may prove useful—at least, that is our hope.

NOTES

1. The very first federal involvement in telecommunications was research and development subsidies prior to the 1840s, and the first federal regulations were enacted in 1866 (the Post Roads Act).

2. The commission's regulatory inaction in telecommunications continued even as its powers were expanded to oversee mergers and acquisitions with the Willis-Graham Act of 1921.

3. Both television and microwave technologies can be used for long-distance communications and were threatening to the AT&T monopoly.

4. “Above 890” is a reference to the frequency threshold of microwaves, which can be used for telephone transmissions.

5. MCI, founded in the early 1960s, used microwave technology to provide better telephone service to business subscribers. It was not until the Telecommunications Act of 1996 that coaxial cable restrictions would be lifted to allow cable companies the ability to transmit telephone service.

6. The House Committee on Science and Astronautics was also created in 1959, although it did not sponsor the COMSAT bill.

7. Experts from right-leaning (The American Enterprise Institute) and left-leaning (The Brookings Institution) think tanks were in relative agreement in supporting deregulation (Rosenstiehl 1997).

8. At one time, technological barriers separated these industries, and natural monopoly arguments were used to establish a protectionist monopoly system. Over the years, especially with advancements in digital technology and computers, these barriers no longer existed.

9. For more carefully articulated models with relevance to this discussion, see Krehbiel 1999; Brady and Volden 1998; Cameron 2000; and Ferejohn and Shipan 1990, among many others.

10. Among the more interesting studies are Kiewiet and McCubbins 1991; McCubbins, Noll, and Weingast 1999; Snyder and Weingast 1999; de Figueierdo and Tiller 2000; Epstein and O'Halloran 1999; and Huber and Shipan 2002.

11. This argument stands the normal "veto player" argument on its head. Obviously, it applies only to areas in which Congress prefers delegated rather than direct policymaking.

12. In addition, see Price 1979, which provides evidence on committee policymaking in the telecommunications arena.

13. In one of the first large-scale empirical studies to analyze actual lobbying events (rather than by proxy via PAC contributions or by case study), they found that large firms' behavior is consistent with economic theories of transaction costs.

14. The judiciary and the Department of Justice also influence telecommunications policy. Both have been active in oversight since the early days of telephone and radio regulation, predating the Communications Act of 1934 and the FCC. It is beyond the scope of this chapter, though, to deal with those interactions.

15. Telecommunications policy sources included Compaine 1984; Kahn 1968; Paglin 1989; Brock 1981; Cohen 1991; Rosenstiehl 1997; Zarkin 1998; Cantor and Cantor 1986; and Teske 1995.

16. McCarty calculated these using each president's requests to Congress, treating the president as if he were a House member. His DW-NOMINATE data was adjusted to match the common space values needed for this analysis (McCarty 2001, private communication).

17. A plausible alternative here would be to calculate the median for the ICC.

18. Models with additional variables were tested, but none proved substantively or statistically significant. Better variables and measurement are needed to capture key factors of interest.

19. Variables we tested, unsuccessfully, included "technology stress," which was computed by the percentage of household adoption of a particular technology (television, radio, computer), presidential mentions of telecommunications policy in his State of the Union address, and standard variables of unified versus divided govern-

ment. We also considered using dummy variables for crisis events and Department of Justice actions, but decided that the few instances could not be properly modeled.

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