

## **Public Attention and Statutory Delegation of Executive-Branch Policymaking Discretion**

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There is little research on how public attention affects legislative delegation of administrative discretion. This study examines the correspondence between public attention to policy issues and the delegation of policymaking authority to executive-branch agencies in significant U.S. statutes enacted from 1947 to 1992. The results indicate that issues typically associated with little public attention are associated with more statutory delegation than those typically associated with greater public attention. By one measure, statutes dealing with low-attention issues entail 48 percent more delegating provisions than statutes dealing with high-attention issues. The predictive power of this study's measure of public attention is far greater than that of commonly employed measures of inter-branch political division and legislative conflict. Additional analyses examining variation in delegation within and between policy issues yield results consistent with the notion that the anticipation of public attention after enactment motivates legislators to limit statutory delegation in publicly salient policy areas, though better data are needed to examine this dynamic.

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law. Public dissatisfaction with Wall Street and its role in the U.S. financial crisis enabled a Democratic majority to push through a law that would impose numerous regulations on a politically well-organized financial industry. Upon signing the bill President Obama remarked that passage required lawmakers to “overcome the furious lobbying of an array of powerful interest groups and a partisan minority determined to block change” (Obama, 2010). With public support, it seemed that groups representing a broad public interest secured victory over the well-organized financial sector.

The political victory was not so clear-cut, however. The public paid attention long enough to see the law pass, but the policymaking battles were just beginning. That is because the law was short on specifics, delegating significant policymaking authority to rule-writers in executive-branch agencies. A *New York Times* article published shortly before enactment provides an account consistent with this assessment.<sup>1</sup> It cites one financial-sector lobbyist as stating that the law “fixed in place no more than 25 percent of the details.” It also documents a perception that, once policymaking was in the hands of regulators, consumer advocates could no longer rely on the public to buoy their lobbying efforts. According to one AARP lobbyist advocating for consumer interests, policymaking would now be “out of the public eye, so a natural advantage that we benefit from—public outrage—[would diminish].” The Consumer Bankers Association, for example, chose to stop lobbying Congress well before the act passed, so that it could prepare to fight policy battles in the executive branch where, ostensibly, it would have more success. The apparent intent of the legislation may have been popular with the public,

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<sup>1</sup> Appelbaum, Binyamin. “On Finance Reform Bill, Lobby Shifts to Regulations,” *New York Times* 26 July 2010.

but it appeared to some that organized interests would have the power to stymie popular aims because the statute delegated so much policymaking discretion to the executive branch.

The *New York Times* narrative suggests that Congress delegated authority because well-organized groups representing the finance industry preferred it that way. These groups knew that, after enactment, decision-making would take place out of the public eye. That is, once matters were turned over to executive-branch agencies, organized groups representing the financial sector could exert a greater influence over policymaking. Enacting a vague law that left many policy decisions to the executive branch would clearly be beneficial to these groups because they would need to compromise less. On the other hand, one could imagine these organized groups demanding a very prescriptive, discretion-limiting statute if they expected matters related to banking and finance to continue to command public attention after the law's enactment. If the fight in the executive branch were the same as the fight in Congress, then why expend additional resources in a second set of battles at the implementation stage? Sophisticated, far-sighted interest groups recognize that policy areas typically associated with public attention involve continued political uncertainty—uncertainty which they can attenuate with prescriptive, discretion-limiting statutes (Moe 1989; Lavertu 2013) Thus, this story motivates a straightforward hypothesis: policy areas typically associated with low public attention entail the delegation of more policymaking discretion to the executive branch than policy areas characterized by high levels of public attention, all else held equal.

This study is a first step in accounting for the public in empirical delegation research. The analysis's proxy for public attention is based on Gallup surveys inquiring about public views regarding “the most important problem facing the nation.” These data, collected and annualized by the Policy Agendas Project, allow for an analysis of dynamics in public attention and

statutory delegation across 19 policy issues over a 45-year period (1947-1992). Additionally, the Gallup MIP data provide a much better approximation of the public's policy priorities than measures of salience typically used in research (Jones, Larsen-Price, & Wilkerson 2009). The limited delegation research concerned about issue salience, for example, tends to employ measures based on newspaper mentions or proxies for Congressional and presidential interest. Just like theoretical research on delegation, such empirical work in actuality is focused on the salience of issues to political principals, as opposed to the public.

The delegation data employed in this study come from Epstein and O'Halloran (1999). The measure of statutory delegation captures the proportion of provisions in 247 significant laws (enacted from 1947 through 1992) that delegate policymaking authority to the executive branch. The measure is imperfect, but, if one is focused on Congress, it is by far the best in terms of coverage across policy issues associated with different levels of public attention.<sup>2</sup> Additionally, the extended period the data cover allows one to examine dynamics within and between policy issues. Finally, these data have been used to document the usefulness of proxies for inter-branch conflict (e.g., divided government) in explaining statutory delegations of policymaking authority. As the analysis below reveals using the very same data, public attention, as captured by Gallup MIP data, provides a far more robust predictor of statutory delegation.

The paper begins with a brief review of the literature on legislative delegation, as well as literature linking issue salience and delegation. Based on this literature, the paper reviews possible relationships between public attention and statutory delegation, depending on whether the public's or interest groups' policy concerns drive legislative behavior. The paper then

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<sup>2</sup> One could also use Huber and Shipan's (2002) approach and compare states. Testing the theory in this paper on their data is a logical next step.

describes the data and presents the analysis in steps, beginning with an examination of the general relationship between public attention and statutory delegation. The results confirm that there is a negative and robust relationship between the typical level of public attention an issue commands and the proportion of statutory provisions that delegate executive-branch policymaking authority. The results also indicate that this relationship is primarily attributable to time-invariant differences in attention between issues, as opposed to the level of attention at the time a statute is enacted. The analysis then turns to examining potential mechanisms underlying this relationship. This analysis is more speculative, as the data do not allow one to examine interest groups' beliefs regarding future levels of public attention. Nevertheless, the results are consistent with the notion that public attention after enactment drives the negative relationship between public attention and statutory delegation. They also suggest other dynamics that are consistent with a group-centered view of statutory design. The paper concludes with a discussion of the implications of these findings.

### **Review of Delegation Literature**

There is a large literature focused on legislative delegation of policymaking authority, but it seldom stipulates much of a role for the public. Formal theoretical models usually focus on legislative-executive interactions and seldom include the public in the accountability chain (but see Fox and Jordan 2011). Empirical work on statutory delegation tends to do the same, focusing on the correspondence between legislative, presidential, and agency policy preferences to explain patterns in U.S. statutory delegation (Huber & Shipan 2007). When the factors driving legislative behavior are considered, the assumption typically is that interest groups are at the center of the

story, as the public seldom weighs in on matters related to statutory and agency design (e.g., Moe 1989).

The purpose of this section is to review theories of legislative delegation and make the case that, as a group, they do not offer clear hypotheses regarding the relationship between public attention and the prescriptiveness of Congressional statutes (that is, the extent to which statutes limit the policymaking discretion of executive-branch actors). Different theories produce competing hypotheses, and sometimes the hypotheses a single theory produces are at odds with one another. But the literature review ends with what may be the most plausible theory in light of the extant empirical evidence: Terry Moe's (1989) theory that statutory design and delegation decisions are driven by farsighted interest groups concerned about realizing their preferred policy outcomes. This theory also provides the clearest empirical implication: issues typically associated with more public attention will entail less statutory delegation than those typically associated with less public attention.

### *Theories of Legislative Delegation*

There are some classic maxims on what motivates legislators to delegate policymaking authority. One is that legislators, in an effort to avoid conflict that might impede legislative productivity, write vague statutes that leave the details to unelected bureaucrats. In other words, legislative conflict leads to administrative policymaking discretion. This notion also is consistent with the "blame avoidance" theory, which stipulates that legislators delegate policymaking authority to the bureaucracy because taking a position on salient and conflict-ridden issues is politically risky (Fiorina 1982; Weaver 1986). These classic accounts suggest that legislative conflict corresponds to broad delegations of policymaking authority to the bureaucracy. They are

compelling and seem quite plausible to those who have observed legislative processes. However, there is no systematic empirical research that documents a general relationship between legislative conflict and the statutory delegation of policymaking discretion.

The models of bureaucratic politics that have gained the most currency in the last couple of decades posit a very different set of incentives for legislative delegation. These, primarily formal, models are based on the premise that policymakers are focused on realizing policy outcomes that are as close as possible to their preferred outcomes—that is, elected officials have policy concerns. The most prominent of these is Epstein and O’Halloran’s (1999) model, which features a single legislator deciding how much discretion to delegate to a bureaucratic agent who possesses sufficient expertise to predict precisely what outcome a policy choice will generate. Essentially, the model indicates that a legislator balances the benefits of agency policy expertise and the costs of agency bias when deciding how much discretion to delegate. More general delegation models yield similar intuition (Bendor and Meirowitz 2004).

Consistent with such models, much empirical research has documented that policymaking discretion in the executive branch decreases as inter-branch preference divergence increases (Huber & Shipan 2007). Additionally, using a similar logic, research has revealed that Congress is more likely to establish agencies that are insulated from presidential control during periods of divided government (Lewis 2003). Wood and Bothe (2004) show, for example, that federal lawmakers are far more likely to insulate agencies from politics and impose restrictive decision-making procedures when there is a risk that presidents or future legislative coalitions will undermine policy. Some of these empirical results are not entirely robust across studies, as they sometimes provide modest or contingent explanatory power (e.g., see Lavertu 2013; Volden 2002). Nevertheless, the strongest empirical evidence has been marshaled in support of these

policy-concerns models. And this evidence expands beyond the U.S. context (e.g., see Koop 2011). Whether the assumed policy concerns are attributable to sincere legislator preferences or a desire to claim credit, policy-concerns models, as opposed to blame-avoidance models, have come to dominate.

### *Issue Salience and Delegation*

Policy-concerns perspectives have dominated theorizing about issue salience as well (Ringquist, Worsham, and Eisner 2003). Gormley's (1989) extensive look at both bureaucratic reform and issue salience provides accounts that are consistent with the notion that issue salience corresponds to elected officials' intervention in administrative matters. By way of assumption (as opposed to deduction) formal modelers also have generally asserted that issue salience corresponds to legislators' heightened concern with realizing certain policy outcomes and that salience should correspond to limits on administrative discretion (e.g., Bawn 1997, Epstein & O'Halloran 1999). It appears that there is nearly a consensus regarding the impact of issue salience on bureaucratic politics: when an issue is deemed important, elected officeholders are more inclined to intervene in administrative matters.

The literature is sometimes unclear, however, about the mechanism that underlies the relationship between issue salience and administrative discretion. An issue that Congress considers salient may not be salient to the broader public, for example. As discussed above, models of delegation typically do not consider whether and how the public or organized interests drive legislator preferences, and the measures of salience used in research typically identify whether issues are salient to policymakers and other elites. Depending on whether public concerns or the concerns of organized groups take precedence, one might expect more or less



statutory delegation of policymaking authority when the public is paying attention. The following sections consider these possibilities in turn.

### *The Public's Policy Concerns*

Enacting prescriptive, discretion-limiting statutes can help lawmakers secure the preferred policies of an attentive public. Additionally, securing such policies via prescriptive statutory provisions can facilitate credit-claiming, as it reduces an attentive public's uncertainty about who is responsible for delivering policy benefits or solutions. Indeed, legislators who anticipate that the public will continue to pay attention after enactment may be more inclined to limit administrative discretion for the purpose of claiming credit down the road. Finally, if the public at large is attentive and possesses a multitude of preferences, it is conceivable that statutes would be relatively discretion-limiting, as various interests seek to secure their policy benefits (provided that the legislative conflict, which is thought to motivate blame-avoidance and vague statutes, is sufficiently low).

Another possibility is that an attentive public will demand discretion-limiting statutes if it anticipates that public attention soon will dissipate, leaving administrative politics in the hands of organized interests and other elites. For example, the manner in which off-shore drilling licenses are awarded is an issue that is seldom the subject of much public scrutiny, and savvy political observers understood that the subsystem politics of offshore drilling would resume once the public shifted its attention from the Deepwater Horizon oil spill. Legislators chose to significantly alter administrative arrangements to reduce the possibility that subsystem politics would continue as they were before the spill. It is conceivable that, in those policy areas characterized by stable interest-group politics, brief bouts of public attention may be associated

with discretion-limiting statutes in order to control an administrative process heavily influenced by organized interests. This scenario seems less likely, however, as it requires a savvy public or, at least, savvy legislators who have the public's interests in mind.

Thus, it is relatively unclear what the implications are of assuming that public attention motivates legislators to pursue the public's policy concerns. One might expect publicly salient statutes to feature less delegation than non-salient statutes, especially if legislative conflict is sufficiently low. Additionally, legislators who anticipate continued public attention after enactment may be more inclined to write prescriptive statutes in order to facilitate future credit-claiming. On the other hand, a less likely possibility is that a savvy public will demand more prescriptive language when statutes deal with matters that the public seldom pays attention to, because it anticipates that it will not have the opportunity to weigh in during implementation.

### *Organized Groups' Policy Concerns*

A significant problem with placing the public's policy concerns at the center of the story is that doing so assumes that the public is relatively savvy about bureaucratic politics and policy design—or, at least, that savvy legislators attend to the public's policy priorities. A more typical account of legislative delegation features a general public that is satisfied with symbolic action (e.g., the enactment of a statute) and savvy organized interests that push for policy and administrative designs that will benefit them for years to come. *The New York Times's* account of the enactment of the Dodd-Frank Act seems consistent with such a perspective, and it is far more in line with classic characterizations of interest-group politics (notably, Lowi 1969).

Moe's (1989) theory of statutory and agency design also emphasizes the legislative demands of organized groups. It features interest groups that have a long time horizon—one that

extends well beyond the public's. Moe argues that, from the perspective of interest groups, both short-term political risks (for example, the executive-branch being headed by a president who is hostile to group interests) and long-term political risks (for example, the possibility that future legislative coalitions will enact statutes that undermine group interests) constitute costly political uncertainty. When politically feasible, when the costs of insulation are sufficiently low, and when political uncertainty is sufficiently great, legislators who represent group interests will protect groups' policy interests via prescriptive, discretion-limiting statutes and the establishment of politically insulated administrative agencies.

Viewed through Moe's theoretical lens, public attention may present a significant policy risk for organized interests. As Schattschneider (1960) puts it, issue salience represents an expansion of conflict fraught with political uncertainty. Political dynamics are relatively predictable when conflict is limited to a few organized groups. When conflict is expanded to include a larger public, however, it is unclear which group will come out the winner because it is unclear how the public (or which public) will respond. Thus, the prospect of future public attention may be a political risk that organized interests would rather avoid. In the context of Moe's theory, groups operating in issue areas in which the public is more likely to weigh in at some time in the future should be more inclined to insulate policy via prescriptive statutes and agency designs that limit the influence of elected officials on administrative matters. On the other hand, when statutes deal with policy matters about which the public will soon forget, then delegating authority to executive-branch agencies can allow organized interests to pursue their policy goals with less public weigh-in.

In summary, if organized groups' policy concerns dominate, statutes dealing with issues typically characterized by classic subsystem politics—that is, policymaking that takes place out

of the public eye and that is dominated by organized interests—may entail the delegation of more administrative discretion, so that groups can continue to exert their influence during implementation. On the other hand, concerned about the political uncertainty that public attention presents, groups may prefer discretion-limiting statutes if they anticipate that public attention will continue after enactment.

### **Empirical Approach**

There are some subtle differences in the expected causal mechanism but multiple theories indicate that the statutory delegation of policymaking authority to the executive branch should decline as public attention increases. The first portion of the analysis examines the general relationship between public attention and statutory delegation. The analysis also examines the extent to which this relationship is attributable to differences in public attention between issues, as opposed to variation over time within issues.

The analysis then turns to exploring potential explanations for the negative relationship between the typical amount of public attention an issue receives and statutory delegation. As discussed above, some scholars emphasize the politics leading up to enactment to explain statutory delegation. In particular, legislators with public concerns in mind may write prescriptive statutes when public attention is high, provided that legislative conflict is sufficiently low during enactment. Other explanations emphasize prospective concerns about politics after enactment. For example, divided government is thought to present the risk of administrative drift, which legislators can minimize by writing prescriptive statutes. With regard to public attention, the prospect of continued public attention after enactment might motivate policymakers to secure policy benefits by writing discretion-limiting statutes—perhaps to

facilitate future credit-claiming or to guarantee organized groups policy benefits that future political coalitions might threaten. The second portion of the analysis examines these potential mechanisms by estimating the correspondence between statutory delegation and 1) public attention leading up to enactment and 2) public attention following enactment, which savvy political actors might anticipate. The analysis examines these relationships between issues and within issues over time.

The following sections describe the empirical measures and cover both parts of the analysis in turn, describing statistical techniques and empirical results as the analysis unfolds.

### **Empirical Measures**

The empirical analysis employs Epstein and O'Halloran's (1999) statutory delegation data, augmented with measures of public attention, legislative conflict, and inter-branch partisan conflict. Baumgartner and Jones's Policy Agendas Project's coding of statutes by policy topic identifies the primary issue with which a statute deals and, therefore, provides a link between the statutes under study and the Policy Agendas Project's Gallup "most important problem" (MIP) data summarizing yearly public attention to each topic.<sup>3</sup> The subsections below, as well as tables 1 and 2, describe this study's variables in greater detail.

[Insert Table 1 and Table 2 about here.]

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<sup>3</sup> The data were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant numbers SBR 9320922 and 0111611. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

### *Delegation ratio*

Epstein and O'Halloran (1999) provided delegation data for 247 significant statutes enacted from 1947 through 1992. They identified these laws using Mayhew's (1991) list of important legislation updated through the 102<sup>nd</sup> Congress. Using Congressional Quarterly Almanac summaries, for each law they determined the proportion of provisions that grant the executive branch policymaking authority—what they call the *delegation ratio*.<sup>4</sup> Two researchers coded the provisions independently, a third researcher checked over the coding, and then the authors took a final look (Epstein & O'Halloran 1999, 275).

They coded provisions as delegating if provisions gave the executive branch “the authority to move policy away from the status quo” (p 275). Specifically, delegating provisions grant agencies the authority to make decisions or take actions on their own—for example, by issuing waivers, entering into contracts, issuing subpoenas, awarding grants or loans according to agency-established criteria, and so on. Provisions that authorize a new program or establish a new agency also were coded as delegating authority. On the other hand, provisions that require agencies to report information to political overseers, that allow them to hire personnel, that appropriate funds for programs, and that transfer authority from one agency to another, are examples of provisions that were not coded as delegating policymaking authority.

Essentially, statutes associated with low delegation ratios generally consist of more specific or prescriptive provisions. The delegation ratio is an imperfect measure of statutory delegation, but it is the best available across so many years and policy issues. Additionally,

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<sup>4</sup> Epstein and O'Halloran use this delegation ratio, along with additional data on legislative constraints, to construct a discretion index. Models estimated using the discretion index yield analogous results. I report results of models estimated using the delegation ratio because the ratio has a clear and intuitive interpretation.

because it was a key measure used to establish inter-branch partisan conflict as a predictor of statutory delegation, using it to explore rival explanations—for example, the role of public attention—is particularly enlightening. Aside from validity issues, the primary statistical concern with *delegation ratio* is that its distribution is not conditionally normal. It appears that it would be normally distributed if it were not for censoring on the left-hand side—that is, allowing the measure to take on negative values could complete the normal curve. The analysis accounts for this censored distribution.

### *Public Attention*

The proportion of respondents to Gallup's MIP survey that indicated that a policy issue is the "most important problem facing the nation" is this study's proxy for public attention. The Policy Agendas Project coded the Gallup MIP items according to its content coding scheme and annualized the measure (Feeley, Jones, Larsen 2004). Creating a single yearly measure for each policy issue required normalizing the proportion of respondents identifying an issue as the most important problem, in order to account for multiple survey items across each year and because some poll takers allowed for multiple responses to the MIP item.<sup>5</sup> The resulting *proportion MIP* measure is thus bounded between 0 and 1 and is a good proxy for the public's relative attention or concern with each policy issue in a given year.

To capture public attention at the time a statute was enacted, the variable *enactment MIP* was created by linking *proportion MIP* to statutes using the year of enactment and the statute's primary Policy Agendas topic code. Additionally, because statutes are enacted at various times during the year and a preceding or succeeding year's value for *proportion MIP* might better

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<sup>5</sup> The method for calculating yearly proportions is available on the Policy Agendas website.

capture a statute's true public salience at the time of enactment, models were estimated using measures that capture the average value of *proportion MIP* within plus or minus one year of enactment, as well the maximum value of *proportion MIP* during that three-year span. These additional measures yield virtually identical results. One advantage of using the maximum value within plus or minus one year of enactment, however, is that some missing values of the MIP measure are replaced with values from adjacent years. For this reason, *enactment MIP* was calculated using this procedure.

This analysis also employs values of *proportion MIP* across all years, from 1947 through 2004.<sup>6</sup> Table 2 presents the mean and median of *proportion MIP* across all years for each policy issue. The issues are ranked from low (1) to high (19) levels of public attention based on the median of the MIP measure across all years (*median MIP*) and, for policy issues with medians of 0, based on the mean of the MIP measure across all years. The results presented below feature *median MIP* instead of *mean MIP* because the measure is less sensitive to outliers and, thus, better captures "typical" levels of public attention. Both *median MIP* and *mean MIP* yield similar results, however. Finally, the analysis below employs a variable indicating whether (1) or not (0) *median MIP* is greater than zero (*binary median MIP*) and an issue's MIP ranking (*MIP rank*) featured in Table 2. One purpose for creating these additional variables was to reign in the dramatically greater values of *median MIP* for some policy areas—particularly *Macroeconomics*, which also is associated with unusually low values of *delegation ratio*.

Additional analyses employ variables that capture *proportion MIP* in years before and after a statute's enactment. A number of variables were created capturing means and medians of

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<sup>6</sup> These data are now available through 2013. I employed data through 2004 because 12 years of data after enactment of the last statute was sufficient to conduct the analysis involving prospective public attention.



*proportion MIP* for some time span prior or after enactment. For example, models were estimated using measures that capture the average value of the MIP measure three and six years prior to enactment. These averages do not include missing values and, therefore, allow the inclusion of statutes for which measures of MIP are limited (e.g., statutes enacted early in the time series, for which *proportion MIP* may not be available in multiple preceding years).

There are limitations to using Gallup's MIP survey data to track public attention, such as changes in question wording over time and the fact that only the first-ranked issue is incorporated into the Policy Agendas MIP data. But using *proportion MIP* as a measure of public attention has a number of advantages, especially over measures of issue salience that may not truly reflect the broader public's policy priorities (Jones, Larsen-Price, and Wilkerson 2009). In particular, it allows this study to capture public attention more directly than other empirical studies of delegation and administrative discretion. Researchers have documented issue salience using newspapers (e.g., Ringquist, Worsham, and Eisner 2003), government documents (Lee, Rainey, and Chun 2009), and the length of legislative summaries (Smith 2010), for example. None of these captures directly the type of issue salience of interest in this study. Additionally, the MIP data cover all years of statutory delegation data (1947-1992), as well as additional years that allow one to examine the possibility of prospective policy concerns. This allows for the examination of dynamics that provide some information about the causal mechanisms at play. Many studies dealing with legislative delegation focus on short timespans or use static measures and therefore cannot explore such dynamics (e.g., Lee, Rainey, and Chun 2009).

### *Inter-Branch Partisan Division*

Scholars often emphasize inter-branch partisan conflict in an effort to explain statutory delegation. Indeed, proxies for legislative-executive conflict are the benchmark against which any other predictor of delegation probably should be judged. At the very least, proxies for inter-branch conflict must be included as controls in sensitivity analyses, which is the primary purpose behind their use in this study.

Consistent with many prominent studies, the results below are based on analyses that employ *divided government* as a measure of inter-branch conflict. Specifically, the variable indicates whether (1) or not (0) at least one house of Congress was controlled by a party other than the president's when a statute was enacted. This is a coarse measure, but it yields similar results to various other proxies for inter-branch conflict, such as the seat advantage in Congress of the party opposite of the president's and legislative-presidential divergence in estimated ideal points. Thus, for ease of interpretation, the results below are from models that employ the straightforward measure of divided government.

### *Legislative Conflict*

Legislative conflict during enactment is perhaps the most prominent explanation for statutory delegation of policymaking authority to the executive branch. This concept is seldom accounted for in large-N, systematic studies of delegation, however. In the analysis below legislative conflict is captured by the closeness of the vote in the House of Representatives. Specifically, the variable *closeness of House vote* captures the final number of House votes against the significant statute's passage divided by the number of final votes in favor of passage. (The measure captures the closeness of the vote because all legislation passed, which means it

approaches but never reaches a value of one.) The measure is based mostly on data that Adler and Wilkerson (2008) collected as part of the Congressional Bills Project. Missing values were filled in by consulting CQ summaries. There are six remaining missing values for *closeness of House vote* because no roll calls were taken for those laws.

The closeness of the House vote is perhaps the best measure of legislative conflict because it is tied to particular laws, allows for more variation than the Senate vote, and, unlike the Senate vote, is not complicated by the filibuster. This is an imperfect measure, of course. For example, conflict-ridden bills may ultimately pass by relatively wide margins once the necessary commitments have been gathered to ensure passage. Nevertheless, this is an adequate proxy for the purpose of this study, as it is meant primarily as a statistical control for sensitivity analyses. Additionally, as the analysis below reveals, its interactive effects with *enactment MIP* suggest that the measure indeed captures conflict at the time of enactment.

### **The Relationship between Public Attention and Statutory Delegation**

Figure 1 illustrates the relationship between *delegation ratio* and *proportion MIP*—that is, the normalized proportion of Gallup survey respondents who identified a statute’s primary policy issue as the “most important problem facing the nation.” Figure 1a illustrates the negative relationship between *delegation ratio* and *enactment MIP* with a scatter plot and a regression line. There is a clear negative relationship between an issue’s public salience at the time of enactment and the proportion of provisions delegating policymaking authority. Figure 1b illustrates a similar relationship, though this time the median of *proportion MIP* for each policy issue across all years (1947-2004) is employed instead of *proportion MIP* at the time of enactment. In other words, policy issues that typically involve greater public attention are

associated with less statutory delegation. The figures also suggest, however, that outlying observations of *enactment MIP* and *median MIP* may be driving the results. In particular, it is unclear whether or not *Macroeconomics*'s extreme value of 0.27 for *median MIP* and average of 0.07 for *delegation ratio* (see Table 2) are driving the overall negative relationship between public attention and statutory delegation.

[Insert Figure 1 about here.]

The measure of public attention employed in figures 1c and 1d is meant in part to minimize the extent to which the MIP metric is driving the relationship. Both figures illustrate the relationship between *delegation ratio* and an issue's *MIP rank* from low (1, corresponding to *Public Lands and Water Management*) to high (19, corresponding to *Macroeconomics*), as per the ordering in Table 2. Ranking the issues spreads out the low-attention issues and reigns in the outlying high-attention issues. The regression line in figure 1c reveals that the relationship between *delegation ratio* and *MIP rank* is negative, though the slope is not quite as steep as in figure 1b. Figure 1d presents the same scatter plot with two lines that demarcate the mean delegation ratio for issues with typically low (*median MIP* = 0) and typically high (*median MIP* > 0) levels of public attention. On average, 36 percent of provisions in statutes dealing with issues typically characterized by low levels of public attention delegate policymaking authority, whereas 25 percent of provisions delegate authority in statutes that deal with issues typically characterized by high levels of public attention. This difference of 11 percentage points is significant at the  $p=0.05$  level for a two-tailed test and climbs to over 12 percentage points when one accounts for measures of inter-branch partisan conflict and the closeness of the House vote in an OLS model. That is, by one measure, statutes dealing with low-attention issues entail 48 percent more delegating provisions than statutes dealing with high-attention issues.

### Within-Issue Dynamics vs. Differences between Issues

The data indicate a general, negative relationship between the public attention surrounding an issue and the statutory delegation of policymaking authority. A central question regards the extent to which this relationship is attributable to relatively stable differences between policy issues or to political dynamics that transcend issue-specific politics. One way to compare the relative explanatory power of these factors is to estimate models that include variables capturing both dynamic public attention (*enactment MIP*) and static, issue-specific public attention (e.g., *median MIP*).

Table 3 presents the results of statistical models that incorporate both dynamic and static measures of public attention by issue. As discussed above, it appears that values of *delegation ratio* are censored on the left-hand side—that is, it appears that allowing the measure to take on negative values would allow it to reach conditional normality. Tobit models were estimated to account for this censoring. Standard errors are clustered by issue for models 1-5 and reported in parentheses below the estimated coefficients. Robust standard errors are reported for the issue fixed-effects model (model 6), which includes binary issue indicator variables. The coefficients of the issue indicators are not reported due to space constraints. Significance levels are based on two-tailed t-tests (\*\* =>  $p < 0.05$  and \* =>  $p < 0.10$ , so that \* =>  $p < 0.05$  for a one-tailed test).

[Insert Table 3 about here.]

Models 1-3 reveal that the time invariant *median MIP* and *MIP rank* measures are negatively related to delegation, whereas *enactment MIP* (which varies over time) yields coefficients that are statistically indistinguishable from zero. These results also obtain if the average of MIP, or a ranking based on this average, are used. Additionally, model 6 reveals that accounting for issue fixed-effects similarly undermines *enactment MIP*'s explanatory power.

These results indicate that variation in public attention between issues indeed provides more explanatory power than variation in public attention within issues. It also is worth noting that these results obtain whether or not models account for divided government, legislative conflict (*closeness of House vote*), and a trend over time (*year*). These factors—which often are touted as important predictors of statutory delegation—have no discernible relationship with statutory delegation when public attention or issue fixed-effects are accounted for.

Model 4 reveals, however, that simply accounting for whether an issue typically is characterized by “high” or “low” levels of attention (*median MIP*>0 or not) does not completely account for *enactment MIP*’s explanatory power. That is, though the dichotomy is useful for understanding variation in delegation, it clearly does not explain completely the relationship between public attention and statutory delegation. That said, the coefficient for *enactment MIP* becomes statistically indistinguishable from zero when statutes related to *Defense* and *Macroeconomics*—which are outliers on the *median MIP* measure—are omitted from the analysis (see model 5). Additionally, supplementary analyses reveal that the explanatory power of time-invariant measures, such as *median MIP*, increases dramatically when statutes related to *Defense* and *Macroeconomics* are removed from the analysis. Thus, the distinction between low- and high- attention issues—a key distinction for the remainder of the analysis below—appears to be most useful when *Defense* and *Macroeconomics* are omitted from the analysis.

In summary, it appears that time-invariant differences in the public attention that characterizes policy issues drives the negative relationship between public attention and statutory delegation. (See the Appendix for an examination of the stability of differences in attention between low- and high-attention issues, as well as an illustration of the relatively uniform distribution over time of significant enactments for each of these issue categories.) Unlike the

other time-invariant measures of issue-specific public attention (e.g., *median MIP* and *MIP rank*), *binary median MIP* (the low- vs. high-attention dichotomy) does not completely account for *enactment MIP*'s explanatory power. However, the binary measure clearly accounts for some of *enactment MIP*'s explanatory power—especially when statutes related to *Defense* and *Macroeconomics* are omitted from the analysis.

### **Immediate vs. Prospective Concerns**

The analysis above establishes the negative relationship between the level of public attention typically associated with a policy issue and the proportion of statutory provisions that delegate policymaking authority. The purpose of the remainder of the analysis is to get some sense for the mechanism that drives this relationship. In particular, the analysis examines whether the lower level of delegation in high-attention issue areas is associated with the level of public attention leading up to enactment (e.g., due to legislators' desire to avoid blame) or the anticipated level of public attention subsequent to enactment (e.g., due to the prospective policy concerns of organized groups). The empirical strategy consists of examining how public attention prior to enactment and public attention after enactment—which savvy political observers should be able to anticipate to some degree—correlate with *delegation ratio*. This strategy is far from ideal, as it does not actually account for actors' actual estimates of future public attention. However, if, as research indicators, legislators and interest groups are sophisticated forecasters and more far-sighted than the public, then these results could provide some insights.

Table 4 presents the results of statistical models that employ measures capturing the average of *proportion MIP* in the years leading up to enactment and following enactment.

Models 1-3 employ variables based on the average for three years prior and three after enactment, whereas models 4-6 employ six-year averages. Variables capturing different numbers of years and based on different measures of central tendency—for example, medians—yield similar results. The control variables—*divided government*, *closeness of House vote*, and *year*—are omitted in the interest of space, as including them does not affect the results. Once again, the results of tobit models are reported; standard errors are clustered by issue and reported in parentheses below the estimated coefficients; and significance levels are based on two-tailed t-tests (\*\* =>  $p < 0.05$  and \* =>  $p < 0.10$ , so that \* =>  $p < 0.05$  for a one-tailed test).

[Insert Table 4 about here.]

The results presented in Table 4 are clear and consistent. First, the average of *proportion MIP* prior to enactment yields coefficients that are not statistically distinguishable from zero and that are not statistically distinguishable between low- and high-attention issues, as indicated by the interaction between *binary median MIP* and the average *proportion MIP* prior to enactment. Second, the average of *proportion MIP* after enactment yields coefficients that are statistically distinguishable from zero and that are statistically distinguishable between low- and high-attention issues, as indicated by the interaction between *binary MIP* and the average *proportion MIP* after enactment. Third, the relationship between average *proportion MIP* after enactment and *delegation ratio* is positive for low-attention issues but negative for high-attention issues.

In other words, the results are consistent with the notion that the negative relationship between statutory delegation and time-invariant measures of issue-specific public attention are driven by prospective policy concerns. It may be that for high-attention issues the anticipation of relatively high levels of sustained attention leads lawmakers to write more prescriptive statutes. On the other hand, there is no such relationship in low-attention areas. Indeed, it appears that the



anticipation of relatively high levels of public attention after enactment leads to more delegation for low-attention issues. (Perhaps theories of blame avoidance apply with low-attention issues.)

### **Immediate vs. Prospective Concerns: Within-Issue Analysis**

There are a number of issue-specific factors for which the models in Table 4 do not account (e.g., the need for expertise that is prominently featured in formal models of delegation). And the estimates capture both within and between-issue variation in public attention. This is helpful for understanding the empirical relationship between time-invariant measures of public attention and delegation, but identifying within-issue dynamics that provide a consistent story might provide a more convincing picture of the mechanism driving these results. Table 5 presents the results of tobit models that include issue indicator variables to capture issue fixed effects. In the interest of space, only models using 3-year intervals are reported, as they yield similar results to models that employ 6-year intervals. Robust standard errors are reported in parentheses below the estimated coefficients and significance levels are based on two-tailed t-tests (\*\* =>  $p < 0.05$  and \* =>  $p < 0.10$ , so that \* =>  $p < 0.05$  for a one-tailed test).

[Insert Table 5 about here.]

Models 1 and 2 yield the same signs as models 1-2 in Table 4, but neither of the post-enactment measures yield statistically significant results. The only coefficient that reaches traditional levels of statistical significance is the measure of public attention prior to enactment (model 2). Greater public attention leading up to enactment corresponds to statutory delegation of policymaking authority in high-attention issue areas. Columns 3 and 4 present the results of models estimated without *Macroeconomics* and *Defense*, as they are characterized by outlying values of *proportion MIP* and, as illustrated in Table 3, their exclusion seems to enhance the

usefulness of the low- and high-attention dichotomy. Removing statutes associated with these issues yields an even stronger relationship between public attention prior to enactment and statutory delegation. Additionally, the average *proportion MIP* after enactment now yields negative and statistically significant coefficients, which is consistent with the notion that prospective policy concerns lead lawmakers to write more prescriptive statutes for high-attention issues.

One possible explanation for the positive relationship between statutory delegation and public attention leading up to enactment is that more significant statutes—those involving more dramatic changes—capture greater public attention. Indeed, such significant statutes are more likely to involve the establishment of new programs and agencies, both of which are coded as delegating statutory provisions in Epstein & O’Halloran’s *delegation ratio*. Another possibility is that high-attention issues are more likely to involve legislative conflict, which is thought to lead to vague, discretion-granting statutes. To explore this possibility, models were estimated that interact the closeness of the House vote when a statute was enacted with the average *proportion MIP* in the years leading up to and following enactment, respectively. As the results for models 5 and 6 indicate, the positive relationship between *proportion MIP* leading up to enactment and *delegation ratio* is driven by statutes associated with close votes. Interestingly, the interaction term for the average *proportion MIP* after enactment does not yield coefficients that approach statistical significance. The coefficient is negative whether or not enactment was characterized by a close vote in the House. These results are consistent with the notion that conflict during enactment leads to the enactment of vague, discretion-granting statutes, whereas legislative politics does not interfere with statutory design motivated by prospective policy concerns. In other words, the results are consistent with group-centered theories of statutory delegation.

## Discussion

The analysis above unearths a number of empirical relationships. First, public attention to policy issues is negatively correlated with the proportion of statutory provisions that delegate policymaking authority. Second, the relationship between public attention and statutory delegation is driven almost entirely by differences in attention between issue areas, as opposed to varying public attention within issue areas. That is, low-attention issues (e.g., classic subsystems dealing with agricultural, transportation, and banking issues) are associated with greater statutory delegations of executive-branch discretion than issues that command high levels of public attention (e.g., social welfare, health, and immigration). These general results are robust. They obtain using variations of each measure (e.g., means instead of medians, ordinal rankings instead of cardinal rankings, and time horizons of various lengths) and they obtain whether or not models account for commonly used predictors of delegation (namely, measures of inter-branch partisan conflict and legislative conflict).

Supplementary analyses provide some insights into the above relationship, though one can only speculate as to the theoretical mechanism driving the results. First, the additional analyses indicate that public attention after statutes are enacted—as opposed to public attention leading up to enactment—drives the relationship between public attention and statutory delegation of executive-branch policymaking authority. Specifically, for issues characterized by high levels of public attention, public attention after enactment is negatively related to statutory delegation, whereas the relationship is reversed for low-attention issues. These results are especially pronounced when statutes dealing with unusually salient policy issues—*Macroeconomics* and *Defense*—are omitted from the analysis.

The biggest contribution of this study is that it illustrates the usefulness of public attention as a predictor of statutory delegation. Using delegation data that have been used to make the case that inter-branch policy conflict is an important predictor of statutory delegation, the analysis clearly illustrates that differences in the typical levels of public attention between issues provides a far more general and robust predictor of statutory delegation. Indeed, measures of inter-branch partisan conflict seldom yield coefficients that even approach statistical significance, and coefficients typically have the wrong sign. Additionally, though the analysis illustrates that a measure of legislative conflict (the closeness of the House vote) indeed helps explain statutory delegation, the relationship is conditional on public attention being sufficiently great. In other words, the analysis provides some support for a classic maxim regarding the politics of delegation, but it also suggests that this maxim requires a caveat.

The secondary contribution of the analysis is its exploration of possible causal mechanisms. The results indicate that public attention after the enactment of statutes, as opposed to attention leading up to enactment, explains some of the negative relationship between time-invariant, issue-specific measures of public attention and the delegation of executive-branch discretion. These results suggest that perhaps prospective policy concerns drive delegation decisions, as opposed to immediate credit-claiming concerns. That post-enactment attention is positively correlated to delegation for low-attention issue areas is consistent with the notion that group politics are driving this relationship. For example, it may be that organized groups, knowing that they have an advantage over the public in influencing administrative matters in low-attention issue areas, prefer vague and discretion-granting statutes—just as the Dodd-Frank account suggests. Conversely, when it comes to high-attention issues, perhaps groups choose to fight their battles at the enactment stage if they anticipate continued public attention. These

explanations are merely speculation, but they are consistent with well-accepted accounts of congressional abdication in low-salience policy subsystems (as per Lowi 1969) and they are consistent with a prominent theory that puts interest groups' aversion to prospective political uncertainty at the heart of statutory delegation and bureaucratic design (Moe 1989).

The results to a significant extent complement prominent theorizing about subsystem politics. Consistent with the notion of policy subsystems, for example, policy issues less visible to the public are associated with statutory designs that appear conducive to more inter-branch cooperation. Additionally, as the analysis makes clear, blame-avoidance theories may apply, depending on the immediate salience and legislative conflict that characterizes an issue. These results suggest that classic case studies indeed capture important policymaking dynamics. They also suggest, however, that if one wants a more general way of characterizing bureaucratic politics, then perhaps Moe's (1989) focus on political uncertainty is the way to go.

The data employed in this study are imperfect. The measure of statutory delegation employed captures but one facet of executive-branch actors' policymaking discretion (e.g., see Carpenter 2001; Hanretty and Koop 2013; Maggetti 2007; Yackee and Yackee 2009). Additionally, the Policy Agendas Project's topic coding scheme is fine-grained compared to some others, but coding issue salience according to this typology nonetheless involves significant measurement error. To some extent, this imprecision also makes the results more compelling. Insofar as the purpose of research is to identify empirical regularities, these results provide a much needed contribution to a literature that has long sought to characterize in very general terms the political determinants of administrative discretion.

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**Table 1. Variable Descriptions**

<i>Variable Name</i>	<i>Description</i>	<b>Overall (N=247)</b>	<b>Median MIP = 0 (N=98)</b>	<b>Median MIP &gt; 0 (N=149)</b>
		<i>Mean (std. dev.)</i>	<i>Mean (std. dev.)</i>	<i>Mean (std. dev.)</i>
delegation ratio	Proportion of provisions listed in CQ Almanac that delegate policymaking authority to the federal executive branch. The measure ranges from 0 to 1. [See appendix in Epstein & O'Hallorn (1999) for specific coding procedure.]	0.29 (0.20)	0.36 (0.16)	0.25 (0.21)
enactment MIP	Normalized yearly proportion of Gallup survey respondents who identified a statute's primary policy issue as the "most important problem" within one year of enactment. The measure ranges from 0 to 0.73. [See <i>Policy Agendas</i> website for details of normalization procedure and how the measure and statutes are linked to the <i>Agenda's</i> policy topic coding scheme.]	0.09 (0.16)	0.01 (0.03)	0.15 (0.19)
median MIP	Median of the Gallup proportion MIP measure by policy issue across the years 1947-2004. The measure ranges from 0 to 0.27.	0.04 (0.08)	0 (0)	0.07 (0.10)
divided government	Whether (1) or not (0) the majority in at least one house of Congress is held by a party other than the president's.	0.45 (0.50)	0.46 (0.50)	0.44 (0.50)
closeness of House vote	Number of House votes against a law's final passage divided by the number of votes in favor of passage. The measure ranges from 0 to 0.99 and is available for statutes for which roll calls were taken (N=239).	0.29 (0.28)	0.34 (0.31)	0.26 (0.27)
year	Year (1947-1992) in which a statute was enacted.	1970 (11)	1970 (11)	1970 (11)

**Table 2. Rank of Issues (low to high public attention, 1947-2004) and Descriptive Statistics**

<i>Baumgartner &amp; Jones Policy Topic</i>	<i># of Significant Statutes</i>	<i>Average Delegation Ratio</i>	<i>Median MIP</i>	<i>Mean MIP</i>
1. Public Lands and Water Management	14	0.29	0	0.0000
2. Banking, Finance, and Domestic Commerce	11	0.30	0	0.0001
3. Transportation	18	0.33	0	0.0002
4. Space, Science, Technology, and Communications	6	0.42	0	0.0023
5. Foreign Trade	8	0.54	0	0.0030
6. Housing and Community Development	15	0.37	0	0.0036
7. Agriculture	18	0.36	0	0.0043
8. Energy	8	0.40	0	0.0151
9. Health	9	0.43	0.0020	0.0355
10. Environment	20	0.47	0.0021	0.0080
11. Education	7	0.41	0.0081	0.0184
12. Labor, Employment, and Immigration	21	0.23	0.0092	0.0124
13. Social Welfare	15	0.12	0.0251	0.0345
14. Government Operations	10	0.16	0.0283	0.0318
15. Law, Crime, and Family Issues	8	0.31	0.0402	0.0796
16. International Affairs and Foreign Aid	7	0.30	0.0463	0.1078
17. Civil Rights, Minority Issues, and Civil Liberties	17	0.19	0.0551	0.0932
18. Defense	8	0.38	0.1224	0.1452
19. Macroeconomics	27	0.07	0.2654	0.3077
<i>Across All Statutes</i>	<i>247</i>	<i>0.29</i>	<i>0.04</i>	<i>0.06</i>

**Note:** The table ranks policy issues according to their median and, secondarily, average levels of public attention from 1947 through 2004. This ranking is based on the Policy Agendas coding of Gallup's "most important problem" (MIP) questions from 1947 through 2004. The table also provides a count of the number of U.S. federal statutes examined in this study and the average proportion of provisions delegating policymaking authority per statute.

**Table 3. Public Attention and Statutory Delegation of Policymaking Authority**

	(1)	(2)	(3)	(4)	(5) (w/out Defense & Macroecon.)	(6) (w/ issue fixed effects)
<b>Public Attention</b>						
enactment MIP	0.11 (0.11)	0.11 (0.09)	-0.15 (0.15)	-0.32* (0.17)	-0.18 (0.21)	0.06 (0.12)
median MIP	-1.38** (0.13)	-1.36** (0.13)				
MIP rank			-0.012** (0.006)			
binary median MIP [high (1) vs. low (0) attention]				-0.08 (0.05)	-0.08 (0.06)	
<b>Controls</b>						
divided government		0.03 (0.02)	0.03 (0.02)	0.03 (0.02)	0.04 (0.03)	0.00 (0.02)
closeness of House vote		-0.02 (0.08)	-0.03 (0.08)	-0.04 (0.08)	-0.10 (0.08)	-0.01 (0.04)
year		0.001 (0.001)	0.001 (0.001)	0.001 (0.002)	0.001 (0.002)	0.00 (0.00)
<b>Model Parameters</b>						
constant	0.33** (0.03)	-2.24 (2.64)	-1.37 (2.86)	-1.97 (3.18)	-0.86 (3.00)	-1.13 (1.89)
sigma	0.19 (0.01)	0.19 (0.01)	0.20 (0.01)	0.20 (0.01)	0.19 (0.02)	0.16 (0.01)
N	247	239	239	239	204	239
F-test	73.86**	35.59**	2.77**	4.06**	2.24*	14.76**

**Note:** The results are from tobit models estimating the proportion of statutory provisions delegating policymaking discretion to the executive branch. Standard errors are clustered by policy topic for all models except model #6, for which robust standard errors are reported. Standard errors are reported in parentheses below the regression coefficients. Significance levels are based on two-tailed t-tests: \*\*p<0.05 and \*p<0.10.

**Table 4. Public attention and delegation: immediate vs. prospective concerns**

	Public attention avg. within <b>3 years prior</b> vs. avg. within <b>3 years after enactment</b>			Public attention avg. within <b>6 years prior</b> vs. avg. within <b>6 years after enactment</b>		
	(1) low attention issues	(2) high attention issues	(3) all issues	(4) low attention issues	(5) high attention issues	(6) all issues
<b>Public Attention</b>						
avg. proportion MIP – <b>prior to enactment</b>	-0.70 (0.99)	0.13 (0.31)	-0.69 (0.94)	-0.81 (1.24)	0.10 (0.18)	-0.80 (1.19)
avg. proportion MIP – <b>after enactment</b>	2.00** (0.78)	-0.60** (0.26)	2.01** (0.75)	1.42** (0.58)	-0.61** (0.13)	1.43** (0.56)
binary median MIP [high (1) vs. low (0) attention]			-0.07 (0.06)			-0.06 (0.06)
<i>binary median MIP X avg. MIP prior</i>			0.82 (0.99)			0.90 (1.20)
<i>binary median MIP X avg. MIP after</i>			-2.60** (0.80)			-2.03** (0.57)
<b>Model Parameters</b>						
constant	0.35** (0.02)	0.28** (0.06)	0.35** (0.02)	0.35** (0.03)	0.29** (0.06)	0.35** (0.03)
sigma	0.16 (0.02)	0.22 (0.02)	0.20 (0.01)	0.16 (0.02)	0.22 (0.02)	0.20 (0.01)
N	98	148	246	98	148	246
F-test	3.89**	5.37**	15.94**	3.12**	11.07**	24.10**

**Note:** The results are from tobit models estimating the proportion of statutory provisions delegating policymaking discretion to the executive branch. Standard errors are clustered by policy topic and reported in parentheses below the regression coefficients. Significance levels are based on two-tailed t-tests: \*\*p<0.05 and \*p<0.10.

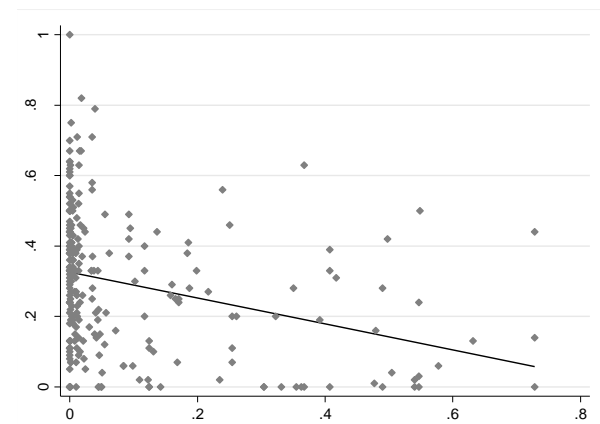
**Table 5. Public attention and delegation: immediate vs. prospective concerns (within-issue analysis)**

	Public attention prior to enactment (avg. within 3 years ) vs. after enactment (avg. within 3 years )					
	(1) low attention issues	(2) high attention issues	(3) high attention w/out Defense & Macroecon.	(4) high attention w/out Defense & Macroecon	(5) high attention issues	(6) high attention w/out Defense & Macroecon.
<b>Public Attention</b>						
avg. proportion MIP – <b>prior to enactment</b>	-1.02 (0.86)	0.32* (0.19)	1.23** (0.33)	1.18** (0.31)	-0.45 (0.33)	0.47 (0.58)
avg. proportion MIP – <b>after enactment</b>	1.21 (0.96)	-0.04 (0.20)	-0.68* (0.36)	-0.79** (0.37)	0.31 (0.30)	-0.34 (0.58)
closeness of House vote				-0.06 (0.08)	-0.11 (0.09)	-0.10 (0.11)
divided				-0.02 (0.04)	0.02 (0.04)	-0.02 (0.04)
year				-0.002 (0.002)	0.000 (0.002)	-0.002 (0.002)
<i>closeness X</i> <i>avg. MIP prior</i>					1.99** (0.78)	2.78* (1.58)
<i>closeness X</i> <i>avg. MIP after</i>					-0.92 (0.73)	-1.27 (1.18)
<b>NOTE: Coefficient estimates for 18 issue indicator variables are omitted due to space constraints</b>						
<b>Model Parameters</b>						
constant	0.54** (0.04)	0.13** (0.05)	0.14** (0.05)	5.00 (3.77)	1.02 (3.08)	4.43 (3.90)
sigma	0.15 (0.01)	0.17 (0.01)	0.17 (0.01)	0.16 (0.01)	0.16 (0.01)	0.16 (0.01)
N	98	148	113	111	146	111
F-test	3.91**	11.80**	8.47**	7.20**	11.14**	6.45**

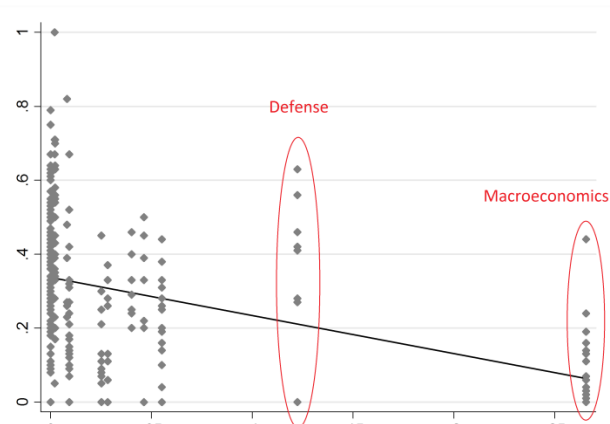
**Note:** The results are from tobit models estimating the proportion of statutory provisions delegating policymaking discretion to the executive branch. Robust standard errors are reported in parentheses below the regression coefficients. Significance levels are based on two-tailed t-tests: \*\*p<0.05 and \*p<0.10.

**Figure 1. Statutory delegation (y axis) and public attention (x axis)**

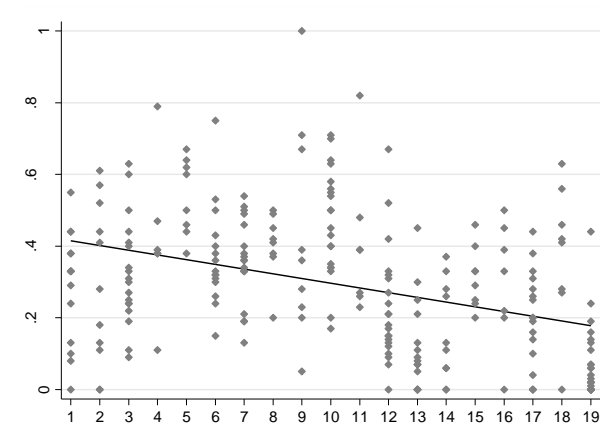
*a. Delegation ratio vs. policy issue's MIP proportion at time of enactment*



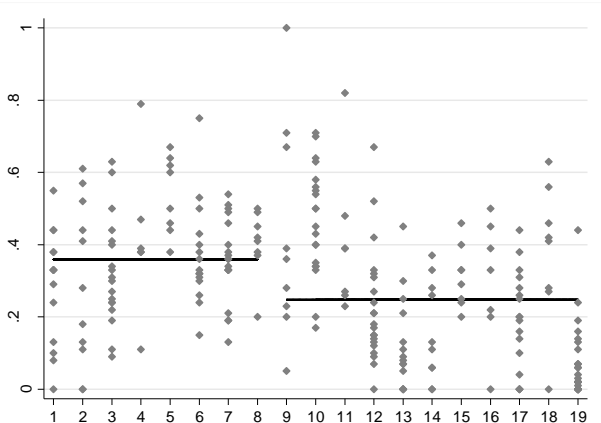
*b. Delegation ratio vs. policy issue's median MIP (1947-2004)*



*c. OLS fit of delegation ratio vs. MIP rank (from low to high median MIP, 1947-2004)*



*d. Mean delegation ratio vs. binary MIP (median MIP=0 vs. median MIP>0, 1947-2004)*



## Appendix: Stability of Public Attention in Low- and High-Attention Issues

The analysis indicates that the variation in public attention between issues is a relatively strong predictor of statutory delegation. This claim is based on the notion that time-invariant measures of public attention (based on medians and averages across the time series) generally explain delegation better than this study's proxy for public attention at the time a statute is enacted. For this argument to be plausible, the differences in issue-specific politics must be relatively stable over time. Otherwise the relationship could be spurious. The remainder of the analysis focuses on differences in the politics of low- and high-attention policy issues, so it is important to establish that the difference in public attention between these issues is indeed relatively time-invariant from 1947 through 2004. It also is important to establish that statutes are enacted throughout these years in both low- and high-attention issues. Establishing these facts should go a long way toward minimizing concern that the relationship between *delegation ratio* and *binary MIP*, for example, is spurious or driven by a few, unusual observations.

Figures A1 and A2, featuring low attention (*median MIP=0*) and high attention (*median MIP>0*) issues, respectively, illustrate trends in the normalized proportion of respondents who identify an issue as “the most important problem facing the nation,” as well as the *delegation ratio* for years in which significant statutes were enacted. Figure A1 illustrates the relatively stable and minimal attention the public has paid to eight of the 19 issues. Besides *Energy's* public salience in the 1970s (attributable to oil shortages) it is difficult to argue that any of the issues in figure A1 were a great concern to the public at large at any time from 1947 through 2004. The normalized proportion of the public that considers low-attention issues as the “most important problem” is remarkably stable. Unsurprisingly, this also is a list of issues often generated when discussing interest-group politics, policy subsystems, and agency capture.

[Insert Figure A1 about here.]

The high-attention issues featured in Figure A2 demonstrate far greater variability in public attention. For most of these issues, it is clear that across the years of the time series, some public attention was a possibility in any given year. There are general trends over time (demarcated by the dashed OLS lines). For example, concerns about civil rights and defense issues declined over time, on average, whereas attention to crime, social welfare, education, and health generally increased over time.<sup>7</sup> Because these issues compete for agenda space, the rise of some necessarily implies the fall of others. But the high-attention issues generally rise and fall at the expense of one another. And, for all but environmental issues, the issues in Figure A2 registered regularly on this measure of attention during the entire time series, which distinguishes them from the issues in Figure A1.

[Insert Figure A2 about here.]

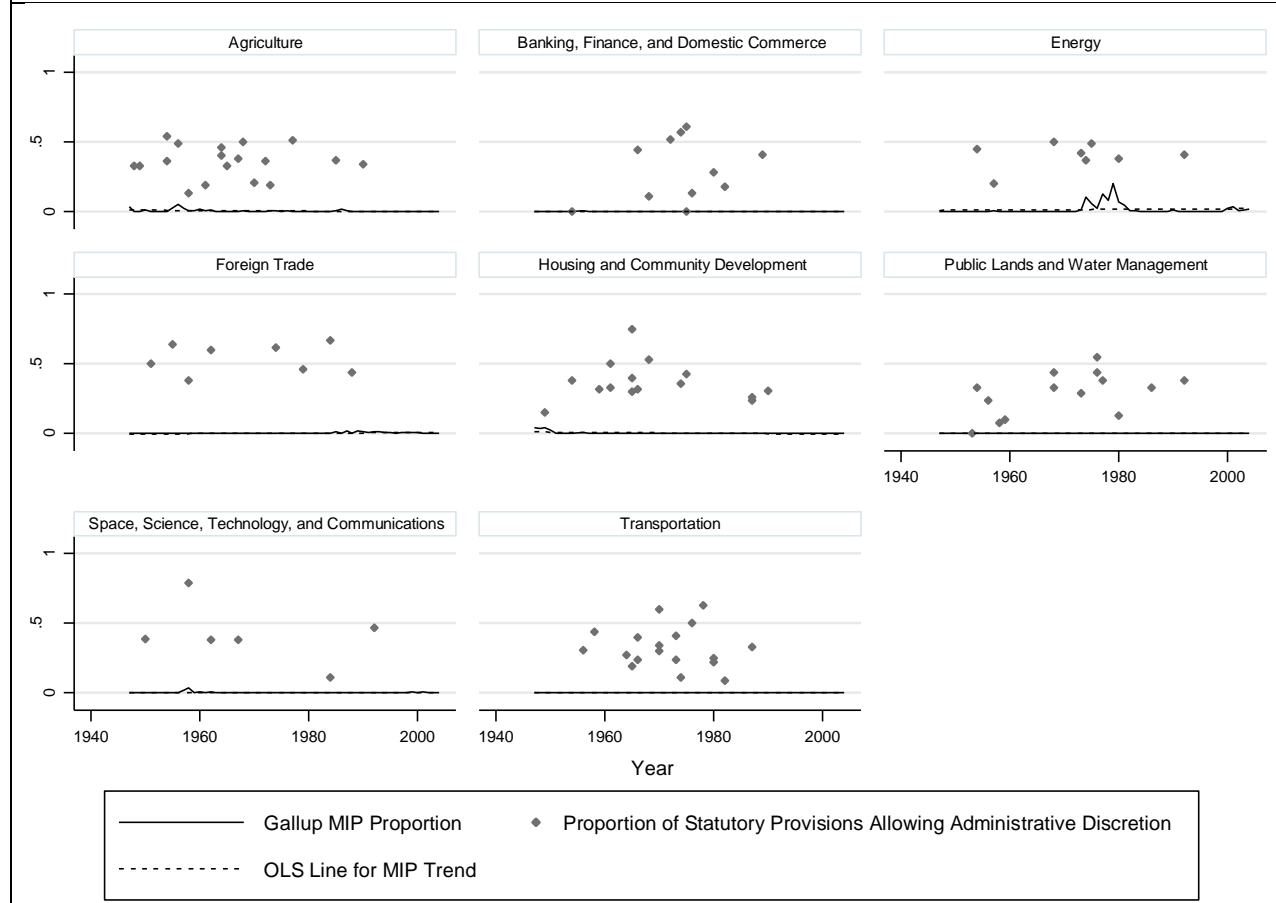
Though there are clearly trends over time in public concern over high-attention issues, the distinction between low- and high-attention issues seems to be a valuable one across the entire time series. The relative differences in these issue categories are relatively consistent over time and statutes associated with both categories are distributed across the time series.

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<sup>7</sup> Controlling for these trends—using the OLS predicted values by year, for example—does not affect the results presented in Table 3.



**Figure A1. Policy issues associated with low levels of public attention (median MIP = 0)**



**Figure A2. Policy issues associated with high levels of public attention (median MIP > 0)**

