

REDUNDANT TAX AND SPENDING PROGRAMS

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INTRODUCTION

In recent decades, social welfare laws have become an unpopular form of government spending and perhaps for good reason. Congress has adopted more than eighty different antipoverty programs at a cost of nearly

* Class of 1940 Professor of Law, Northwestern University School of Law. This paper has benefited from the incredible generosity of many colleagues and friends, including Sam Bagenstos, Kathie Barnes, Kenworthy Bilz, Randy Calvert, Dhammika Dharmapala, Lee Epstein, Barry Friedman, Pauline Kim, Fred McChesney, Ajay Mehrotra, Jide Nzelibe, Bob Pollak, Bill Popkin, Philip Postlewaite, Ed Rubin, Dan Shaviro, Margo Schlanger, Steve Smith, Barry Weingast, David Weisbach, Edward Zelinsky, Frank Zimring, the participants in faculty workshops at Berkeley, Indiana, and Washington University Law Schools, and the participants at the Eighth Annual Critical Tax Theory Workshop at Seattle University Law School. Finally, I thank Tony Madonna and Brian Kudowitz for their terrific research assistance. E-mail thoughts and comments to n-staudt@law.northwestern.edu.

\$400 billion,¹ and yet a large number of Americans still cannot meet their basic everyday needs.² In fact, the percentage of individuals living in poverty is the same today as it was in the late 1960s.³

Many policy experts argue the poverty problem is due to the large number of flawed programs and policies, such as those operating at cross-purposes.⁴ When a low-income person enters the labor market, for example, one program provides a subsidy as a means to encourage her to work while another reduces the level of government benefits on the theory that she is now better off economically.⁵ Not only do government policies conflict, but often they overlap and this leads to excessive costs⁶ and greater difficulty in detecting and assigning blame for faulty programs.⁷

Repairing the multifarious problems of this complex legal structure may seem like an impossible task, but a consensus has begun to emerge around a surprisingly simple solution: integration of the eighty or so programs into a single, tax-based plan.⁸ Policy analysts make a persuasive case

¹ The government offers need-based or income-tested benefits to twenty-three million Americans each year at a cost of \$373.2 billion via eighty or more different programs. See H. COMM. ON WAYS AND MEANS, 2000 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 1395–1401 tbls. K1–5 (Comm. Print 2000), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_green_book&docid=f:wm014_26.pdf; VEE BURKE, CASH AND NONCASH BENEFITS FOR PERSONS WITH LIMITED INCOME: ELIGIBILITY RULES, RECIPIENT AND EXPENDITURE DATA, FISCAL YEARS 2000–2002 (2003), available at http://www.opencrs.com/rpts/RL32233_20031125.pdf (summarizing programs and costs); MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES 1–14 (Robert A. Moffit ed., 2003) [hereinafter MEANS-TESTED TRANSFER PROGRAMS] (describing means-tested transfer programs spending trends).

² JOHN ICELAND, POVERTY IN AMERICA: A HANDBOOK 20–38 (2004) (explaining different measures for assessing level of poverty from 1950 to 2000); U.S. CENSUS BUREAU, HISTORICAL POVERTY TABLES tbl.2 (2005), <http://www.census.gov/hhes/www/poverty/histpov/hstpov2.html> (reporting between 11% and 15% of Americans living in poverty between 1968 and 2005).

³ U.S. CENSUS BUREAU, *supra* note 2 (reporting that, in 2003, 12.5% of Americans lived below the poverty level and, in 1969, 12.1% were living in these conditions).

⁴ See generally LESTER M. SALAMON, WELFARE: THE ELUSIVE CONSENSUS (1978) (assessing critically individual antipoverty programs as well as their interactive effects); WELFARE SIMPLIFICATION & COORDINATION ADVISORY COMM., TIME FOR A CHANGE: REMAKING THE NATION'S WELFARE SYSTEM (1993) (same); Daniel Shaviro, *The Minimum Wage, the Earned Income Tax Credit, and Optional Subsidy Policy*, 64 U. CHI. L. REV. 405 (1997) (same).

⁵ See also WELFARE SIMPLIFICATION & COORDINATION ADVISORY COMM., *supra* note 4, app. C at 91–104 (exploring the unexpected interaction between social welfare programs). Compare I.R.C. § 32(c) (2000) (establishing subsidy for market participation), with Food Stamp Act, 7 U.S.C. § 2011 (2000) (establishing decrease in subsidy as income increases).

⁶ David Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955 (2004) (arguing government could achieve economies of scale if it adopted similar methods for allocating subsidies and mandated that a single agency administer them).

⁷ SALAMON, *supra* note 4, at 53–58 (stating that complexity in system and jurisdictional overlap means that no single decisionmaking body is responsible for programmatic failures); see also JONATHAN B. BENDOR, PARALLEL SYSTEMS: REDUNDANCY AND GOVERNMENT 30, 290 (1985) (noting that redundant systems make it difficult to assign responsibility for failures).

⁸ The most recent law review article advocating integration appeared in the 2004 volume of *The Yale Law Journal*. See Weisbach & Nussim, *supra* note 6, at 997–1023 (advocating integration of EITC

for this type of consolidation reform—they rely on strong theoretical arguments and support these arguments with extensive empirical data.⁹ Ultimately, these analysts seem to prove that merging the existing policies into one coherent program would assure a more fair, efficient, and effective system than the current fragmented approach to distributing government subsidies.

Implicit, but entirely unstated in the case for integration, is an argument for awarding institutional monopolies. Under today's scheme, many different congressional committees and bureaucracies work on the poverty problem; the call for integration would leave the task to the tax-writing committees in Congress and to a single agency, the Internal Revenue Service.¹⁰ The integrationists, in effect, propose a fundamental change in decisionmaking authority. They argue that the federal government should replace the current parallel system, which allows numerous decisionmakers to participate in the development of the laws,¹¹ with a hierarchical system

and food stamp program). Countless other scholars and policy analysts have weighed into the debate and have advocated merging the social welfare programs into a single plan. See, e.g., MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 190–95 (1962) [hereinafter FRIEDMAN, *CAPITALISM AND FREEDOM*] (advocating integration of EITC, food stamps, minimum wage laws, and TANF); MILTON FRIEDMAN & ROSE FRIEDMAN, *FREE TO CHOOSE* 115–27 (1980) (same); CHRISTOPHER GREEN, *NEGATIVE TAXES AND THE POVERTY PROBLEM* 160–76 (1967) (same); WELFARE SIMPLIFICATION & COORDINATION ADVISORY COMM., *supra* note 4, at 63–66 (same); Michael R. Asimov & William A. Klein, *The Negative Income Tax: Accounting Problems and a Proposed Solution*, 8 HARV. J. ON LEGIS. 1 (1970) (same); Michael Jay Boskin, *The Negative Income Tax and the Supply of Work Effort*, 20 NAT'L TAX J. 353 (1967) (same); William A. Klein, *The Definition of Income Under a Negative Income Tax*, 2 FLA. ST. U. L. REV. 449 (1974) (same); William D. Popkin, *Administration of a Negative Income Tax*, 78 YALE L.J. 388 (1968) (same); Shaviro, *supra* note 4, at 459–75 (same); James Tobin, Joseph A. Pechman & Peter M. Mieskowski, *Is the Negative Income Tax Practical?*, 77 YALE L.J. 1 (1967) (same); Timothy J. Eifler, Comment, *The Earned Income Tax Credit as a Tax Expenditure: An Alternative to Traditional Welfare Reform*, 28 U. RICH. L. REV. 701 (1994) (same). For a discussion of the drawbacks of integration, see Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 535 & n.5 (1995) (arguing that a tax-based welfare system would compromise the level of accuracy, responsiveness, and compliance found in the existing system).

⁹ See, e.g., Robert Moffit, *The Negative Income Tax and the Evolution of U.S. Welfare Policy*, 17 J. ECON. PERSP. 119, 119–40 (2003) (arguing that theories and data can have major impact on scholarly discussions and policy development); Shaviro, *supra* note 4, at 418–59 (discussing economic theory and data on effective marginal tax rates); Weisbach & Nussim, *supra* note 6, at 983–1023 (discussing organizational theory and data on government implementation costs).

¹⁰ FRIEDMAN, *CAPITALISM AND FREEDOM*, *supra* note 8 (arguing that Congress should repeal social welfare programs and adopt negative income tax); Shaviro, *supra* note 4, at 469–73 (arguing that Congress should adopt tax-based welfare reform—a reform that allocates responsibility for entitlement programs to tax-writing committees); Weisbach & Nussim, *supra* note 6, at 997–1023 (suggesting that government could achieve costs savings if IRS controlled implementation of social welfare laws); Edward Zelinsky, *James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions*, 102 YALE L.J. 1165, 1194–1207 (1997) (positing that tax-writing committees are better suited to making tax and spending decisions than other congressional panels).

¹¹ Cf. Larry Heimann, *Understanding the Challenger Disaster: Organization Structure and the Design of Reliable Systems*, 87 AM. POL. SCI. REV. 421 (1993) (parallel system inside federal government);

that concentrates power and control in the hands of just a few individuals at each stage of the decisionmaking process.¹²

Although advantageous for many of the reasons set forth in the extant literature, integration is likely to face serious hurdles stemming from a reluctance to surrender authority over the programs. Throughout history, legislators and public administrators have demonstrated a strong propensity to fight over jurisdictional control and have rarely consented to share it—let alone give it up altogether.¹³ Moreover, even if integration of the social welfare programs were a politically viable option, it may not be the best reform from a normative perspective. Integrationists argue that redundancy in effort, organization, and authority wastes government resources but it can also assure that a system is reliable: If one committee adopts a flawed program, a second is there to succeed; if one agency fails, another can thrive. Redundancy also enables a range of experts with diverse viewpoints to contribute to the lawmaking process and it fosters competition and rivalry among decisionmakers, leading to a level of innovation and creativity that is impossible to achieve with a single decisionmaking body.¹⁴ Concentra-

Martin Landau, *On Multiorganizational Systems in Public Administration*, 1 J. PUB. ADMIN. RES. & THEORY 5 (1991) [hereinafter Landau, *On Multiorganizational Systems*] (parallel systems in government agencies); Martin Landau, *Redundancy, Rationality, and the Problem of Duplication and Overlap*, 29 PUB. ADMIN. REV. 346, 346–58 (1969) [hereinafter Landau, *Redundancy, Rationality*] (parallel systems generally). See generally BENDOR, *supra* note 7; Raaj Kumar Sah & Joseph E. Stiglitz, *The Architecture of Economic Systems: Hierarchies and Polyarchies*, 76 AM. ECON. REV. 716 (1986) (parallel system in economic context).

¹² For a discussion of hierarchical decisionmaking systems, see generally BENDOR, *supra* note 7; Heimann, *supra* note 11, at 424; Landau, *On Multiorganizational Systems*, *supra* note 11, at 5–18; Landau, *Redundancy, Rationality*, *supra* note 11, at 346–58; Sah & Stiglitz, *supra* note 11, at 716–18.

¹³ See *infra* notes 72, 77–81 and accompanying text. Program beneficiaries, of course, might also object if integration rearranges benefits structures so that some experience a loss of benefits. See JAMES C. OHLS & HAROLD BEEBOUT, *THE FOOD STAMP PROGRAM: DESIGN TRADEOFFS, POLICY, AND IMPACTS* 176–77 (1993) (noting that benefit formulas across programs differ and implying that integration or partial integration would lead to losses and gains for program beneficiaries).

¹⁴ The salutary effects of competition and diversity in public decisionmaking have been investigated and elaborated upon by many authors. See *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“[The] ultimate good desired is better reached by free trade of ideas . . . the best test of truth is the power of the thought to get itself accepted in the competition of the market.”); FRIEDRICH A. HAYEK, *INDIVIDUALISM AND ECONOMIC ORDER* 83–86 (1948) (positing that decentralized decisionmaking assures that those with knowledge contribute to the social process and enables beneficial outcomes); cf. LANI GUINIER, *THE TYRANNY OF THE MAJORITY* 94–101 (1994) (arguing that diversity in legislature assures better decisionmaking and fairer outcomes); Lee Epstein, Jack Knight & Andrew D. Martin, *The Norm of Prior Judicial Experience and Its Consequences for Career Diversity on the U.S. Supreme Court*, 91 CAL. L. REV. 903, 944–53 (2003) (stating that diversity in federal courts is important to achieve the best legal outcomes); Heimann, *supra* note 11, at 424–30 (noting the value of competition in NASA decisionmaking); Bryan D. Jones, Frank R. Baumgartner & Jeffrey C. Talbert, *The Destruction of Issue Monopolies in Congress*, 87 AM. POL. SCI. REV. 657, 660 (1993) (noting that competition in congressional committees increases innovation in lawmaking); Landau, *Redundancy, Rationality*, *supra* note 11 (discussing competition among government service providers). See generally WILLIAM A. NISKANEN, JR., *BUREAUCRACY AND REPRESENTATIVE GOVERNMENT* (1971) (advocating increased competition among bureaucracies); DAVID OSBORNE & TED GAEBLER, *REINVENTING GOVERNMENT*:

tion of power in the hands of a small group, in short, may not be the best use of government talent or resources.

In this Article, I provide a detailed account of what is at stake when policymakers move from a parallel decisionmaking structure with numerous participants, to one that is more streamlined and hierarchical—that is to say, when the government integrates fragmented policies into a single, unified program. Although I show that redundant and overlapping programs can offer certain advantages, I will not suggest they are always the way to go. The costs of parallel decisionmaking associated with policy output, resources, and accountability do exist, but determining whether Congress should merge programs together or leave them splintered across committees and agencies requires a deeper consideration of the government's aims and goals than that found in the existing literature.¹⁵ Of course, even if consolidation is preferable, it may be, as I just noted, impossible to achieve for political reasons. This leads to the question of whether policy analysts should work harder to make a fragmented system succeed, or whether they should continue to work for one that is ideal but probably unattainable.

Part I.A of this Article describes the congressional institutions that have led to redundant and overlapping tax and spending programs, and then briefly explains the procedures that serve as coordinating mechanisms for fragmented systems, such as those found in social welfare. Part I.B considers the criticisms of the existing regime as well as the arguments for moving toward a hierarchical arrangement that effectively awards a monopoly to the tax-writing committees for purposes of designing the laws, and to the IRS for executing them. The advocates of tax-based welfare reform do not seek to change the level of subsidies that Congress awards to the poor, but rather to make them more effective, efficient, and fairer. Congress, they argue, cannot achieve these goals in the context of a highly fragmented system with numerous committees and agencies at the helm.

Part II begins by examining the practical effects of integration inside Congress and the bureaucracies: Seven congressional committees and four agencies stand to lose jurisdiction over their social welfare programs. Legislators and administrators are likely to object to this type of reform given the importance of jurisdictional control for purposes of pursuing preferred

HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR (1992) (advocating competition at all levels of government).

¹⁵ Identifying whether redundancy in government institutions is useful and, if so, at what level is a complicated exercise with no obvious answers. See DONALD CHISHOLM, COORDINATION WITHOUT HIERARCHY: INFORMAL STRUCTURES IN MULTIORGANIZATIONAL SYSTEMS 201–02 (1989) (explaining tradeoffs and hypothesizing that a nonlinear relationship exists between costs and benefits of redundancy); JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 274 (2000) (“Overlapping agencies, like back-up computers on the space shuttle, can detect errors; duplicating functions is not always wasteful, it can lead to more flexible responses and generate alternatives. The problem, of course, is to choose between good and bad redundancies, a matter on which scholars have made little progress.”). *But see* Heimann, *supra* note 11, at 421–34 (offering insight into when the government should pursue redundant decisionmaking structures and to what extent).

policies, gaining attention in the press, and serving constituents. So important is jurisdictional control over policies and programs that government actors tend to view it as a property right.¹⁶ Not only are they rarely willing to give it up, they are actually far more likely to engage in contentious turf battles to protect it. Indeed, throughout history, Congress has had little success in pursuing reforms that call for rearranging policy jurisdictions that entail losses, and has never succeeded in the type of major reform advocated by the integrationists—although legislators have attempted several times.¹⁷

In Part III, I argue that integration of the social welfare programs, even if it were politically possible, may not be the most desirable policy for Congress to pursue from a normative perspective. Part III.A notes that parallel systems of decisionmaking and the correlative redundancy and overlap they cause, while undoubtedly subject to the criticisms set forth by the integrationists, have several advantages. Parallel systems can facilitate reliability and innovation at a level that cannot be attained when a single committee or agency has a monopoly. Rather than relying exclusively on tax experts to assist the needy, overlapping control allows for a range of experts to study the conditions that lead to poverty and devise plans to help ameliorate those conditions. The failure of one plan is not so consequential given the range of back ups available to the government in its efforts to reduce poverty. Of course, it is the range of policies and projects that have emerged from the committees and agencies that integrationists argue is exactly the problem—to reduce the number is arguably not a drawback but an advantage. Accordingly, in Part III.B, I investigate the ability of large organizations, such as Congress and executive agencies, to establish decisionmaking procedures that facilitate innovation and creativity but simultaneously assure that only the best ideas get implemented in a coordinated manner. This Part argues that if Congress implements *both* hierarchical and parallel decisionmaking structures, it could use the system of redundancy and overlap to its advantage, while protecting against the harms of fragmentation.

In Part IV, I discuss the options available for implementing a system of oversight to ensure that a more rational system of entitlements emerges from Congress. While various alternatives exist, the most promising involves increased reliance on existing institutional arrangements—with the budgeting process one such possibility. If Congress funds programs based on a system of “performance-based budgeting” or “PBB,”¹⁸ it could ameliorate the problems of parallel decisionmaking. PBB ties government allocations to the success of individual programs; it requires governmental units to set up annual review procedures, to assess existing policies and programs, and to report on their performance to the Budget Committees in

¹⁶ See *infra* note 80 and accompanying text.

¹⁷ See *infra* notes 102–107 and accompanying text.

¹⁸ See *infra* note 46.

Congress. Budgeting decisions are then made in a manner that rewards successful programs with increased allocations and penalizes those that fail or underperform with budget cuts. Performance budgeting has already undergone preliminary testing and appears to have a great deal of potential. Indeed, early indications suggest that it is a useful mechanism to identify relationships between related programs and to strengthen their overall performance, while avoiding the costs associated with vesting power in a small group of individuals.¹⁹

While I investigate these issues in the context of the most visible illustration of redundancy and overlap—the social welfare laws—these laws are just one example of the problem. Parallel decisionmaking structures and thus overlapping programs also exist in the health, defense, trade, energy, transportation, and environmental laws.²⁰ Policy analysts have also argued for creating institutional monopolies in these areas for the purpose of improving performance but have not yet considered systematically the drawbacks of the proposal.²¹ The analysis of institutions and programs that I offer here, then, may carry implications for many ongoing scholarly and policy debates.

¹⁹ JOHN MERCER, PERFORMANCE BUDGETING IN FEDERAL AGENCIES: A FRAMEWORK 1–10 (2002) (defining performance-based budgeting and exploring its advantages); U.S. GEN. ACCOUNTING OFFICE, PERFORMANCE BUDGETING: OBSERVATIONS ON THE USE OF OMB'S PROGRAM ASSESSMENT RATING TOOL FOR THE FISCAL YEAR 2004 BUDGET 15–17 (2004) (discussing mechanisms for assessing performance).

²⁰ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT (2004), available at <http://www.gpoaccess.gov/911/> (noting that command over military operations is redundant and overlapping); CHISHOLM, *supra* note 15, at 1–14 (describing fragmentation in transportation industry); STANLEY S. SURREY & PAUL R. MCDANIEL, TAX EXPENDITURES 58–59 (1985) (noting fragmented control over many different substantive legal and policy areas); Thomas E. Mann & Norman J. Ornstein, *A First Report on the Renewing Congress Project*, in INTENSIVE CARE: HOW CONGRESS SHAPES HEALTH POLICY 28–49 (Thomas Mann & Norman Ornstein eds., 1992) [hereinafter INTENSIVE CARE] (noting that control over health policies is fragmented across congressional committees); Jason M. Patlis, *The Endangered Species Act: Thirty Years of Politics, Money, and Science*, 16 TUL. ENVTL. L.J. 257, 263 (2003) (describing how environmental jurisdiction is fragmented across committees); see also Frank R. Baumgartner, Bryan D. Jones & Michael C. MacLeod, *The Evolution of Legislative Jurisdictions*, 62 J. POL. 321, 321–49 (2000) (discussing empirical study showing jurisdictional fragmentation in nineteen different policy areas); Michael A. Heller & Rebecca S. Eisenberg, *Can Patents Deter Innovation?: The Anticommons in Biomedical Research*, 280 SCI. 698, 698–99 (1988) (suggesting that fragmentation of property rights interferes with scientific research and development).

²¹ See, e.g., NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, *supra* note 20, at 399–428 (advocating centralized control of military operations). For criticism of the consolidation proposal and for a discussion of advantages of redundancy and overlap in federal military institutions, see Richard Posner, *The 9/11 Report: A Dissent*, N.Y. TIMES BOOK REVIEW, Aug. 29, 2004, at 1, 1–9.

I. DECISIONMAKING IN THE CONTEXT OF TAX AND SPENDING PROGRAMS: AN OVERVIEW

A. *Parallel Structures Lead to Programmatic Redundancy and Overlap*

Over the last fifty years, Congress has enacted nearly 20,000 laws.²² To facilitate this busy workload and to ensure that experts vet each new policy initiative, legislators have adopted an elaborate system of committees and subcommittees.²³ The House of Representatives, for example, has nineteen standing committees and more than one hundred subcommittees;²⁴ the Senate has sixteen standing committees with more than two hundred subcommittees.²⁵ Each committee specializes in specific legal and policy issues, and, according to chamber rules, the Speaker must refer all bills and resolutions that contain matters within a specific committee's jurisdiction to that committee.²⁶ Bills involving farms, farming, forestry, nutrition, rural development, or rural electrification, for example, go to the Agriculture Committee;²⁷ issues relating to banks, money, credit, public and private housing, or economic stabilization go to the Financial Services Committee;²⁸ matters relating to customs, tariffs, revenue measures, and bonded debt are referred to the Ways and Means Committee; and so on. For the most part, the jurisdictional rules allocate policy responsibilities to separate committees, but on certain broad-ranging issues, committee jurisdictions overlap. This leads to multiple congressional committees—a parallel system of decisionmaking—working simultaneously on similar policy questions and problems.

Consider the social welfare laws, a well-known area of jurisdictional overlap. As Table 1 shows, five committees in the House of Representatives and four committees in the Senate control various features of national welfare policy; moreover, five different agencies are involved in program-

²² These data were collected by Frank R. Baumgartner and Bryan D. Jones with the support of the National Science Foundation and distributed through the Center for American Politics and Public Policy at the University of Washington. For the original data, see Policy Agendas Project, <http://www.policyagendas.org> (last visited Aug. 21, 2005).

²³ For an excellent study of congressional committees, see STEVEN S. SMITH & CHRISTOPHER J. DEERING, *COMMITTEES IN CONGRESS* (1990).

²⁴ LIST OF STANDING COMMITTEES AND SELECT COMMITTEES AND THEIR SUBCOMMITTEES OF THE HOUSE OF REPRESENTATIVES, 109TH CONG. (2005) [hereinafter LIST OF STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES].

²⁵ THE SENATE OF THE UNITED STATES COMMITTEE AND SUBCOMMITTEE ASSIGNMENTS, 108TH CONG. (2003) [hereinafter SENATE COMMITTEE AND SUBCOMMITTEE ASSIGNMENTS].

²⁶ H. COMM. ON RULES, RULES OF THE HOUSE OF REPRESENTATIVES, 109TH CONG. 23 (2005), available at <http://www.rules.house.gov/ruleprec/109th.pdf> (describing receipt and referral of measures and matters as governed by rule XII).

²⁷ *Id.* at 6 (describing jurisdiction of Agriculture Committee as governed by rule X).

²⁸ *Id.* at 7 (describing jurisdiction of Committee on Financial Services).

matic implementation.²⁹ Together these committees and agencies oversee more than eighty social welfare programs including food stamps,³⁰ the earned income tax credit,³¹ the minimum wage laws,³² school lunch programs,³³ and housing subsidies.³⁴

Table 1: *Fragmented Jurisdiction over Social Welfare Programs*

PROGRAM	JURISDICTION		
	House Committee	Senate Committee	Federal Agency
Food Stamps	Agriculture	Agriculture, Nutrition & Forestry	Department of Agriculture
Housing Subsidies	Financial Services	Banking, Housing & Urban Affairs	Department of Housing and Urban Development
Medicaid	Energy & Commerce	Finance	Department of Health and Human Services
Minimum Wage Laws	Education & Workforce	Health, Education, Labor & Pensions	Department of Labor
Earned Income Tax Credit (“EITC”), Medicare, Supplemental Security Income (“SSI”), Temporary Assistance for Needy Families (“TANF”)	Ways & Means	Finance	Department of Health and Human Services (Medicare, TANF); Department of Treasury (EITC)

Ideally, allowing for a parallel system of decisionmakers, with each committee and agency controlling a different component of the social welfare laws, creates fine-tuned programs that are responsive to the discrete health and welfare problems that poor individuals face.³⁵ By giving respon-

²⁹ See *id.* at 23 (describing congressional committee jurisdictions); OHLS & BEEBOUT, *supra* note 13, at 4–5 (listing committee and agency jurisdictions); WELFARE SIMPLIFICATION & COORDINATION ADVISORY COMM., *supra* note 4, at 63–77 (same).

³⁰ Food Stamp Act, 7 U.S.C. § 2011 (2000).

³¹ I.R.C. § 32 (2000).

³² Fair Labor Standards Act, 29 U.S.C. § 206 (2000).

³³ See, e.g., Richard B. Russell National School Lunch Act, 42 U.S.C. §§ 1751–1770 (2000).

³⁴ See, e.g., 42 U.S.C. § 1437(f) (2000).

³⁵ See DAVID C. KING, TURF WARS: HOW CONGRESSIONAL COMMITTEES CLAIM JURISDICTION 2, 102, 113 (1997) (suggesting that fragmentation of jurisdictions may be a positive feature because committee members and staff build valuable knowledge on policy problems); KEITH KREHBIEL, INFORMATION AND LEGISLATIVE ORGANIZATION 49–52 (1991) (noting that Congress establishes com-

sibility for food stamps to the House Agriculture Committee, for example, Congress enables the group of legislators with the greatest expertise in food production, distribution, and consumption to design the policies intended to guarantee that the poor have food and nourishment. Similarly the House Education and Workforce Committee members have built up the expertise and knowledge necessary to assure Congress pursues the best policies for school children and laborers. And when it comes to using the tax code as a means for subsidizing low-income individuals, the House Ways and Means Committee is well situated to undertake the task in an effective and efficient manner. Legislative experts design the different components of welfare policy and this brings about a high level of innovation and creativity.³⁶ The same advantages of decentralization exist in the context of the Senate and in the executive agencies.

Although Congress has given nine different committees responsibility for designing the social welfare laws as depicted in Table 1, their autonomy is somewhat limited by the Budget Committees in each chamber.³⁷ The House and Senate Budget Committees pull together the substantive work produced by the various authorizing committees into one spending plan; they create a macroframework within which individual committees must work.³⁸ To facilitate this coordinating function, the Budget Committees

mittees for purposes of gathering information and gaining expertise on policy problems); *cf.* GARY W. COX & MATHEW D. McCUBBINS, *LEGISLATIVE LEVIATHAN: PARTY GOVERNMENT IN THE HOUSE* 83–134 (1993) (suggesting that political parties create committees not for the purpose of assuring expertise but to advantage party caucus); Barry R. Weingast & William J. Marshall, *The Industrial Organization of Congress: Or, Why Legislatures, Like Firms, Are Not Organized as Markets*, 96 J. POL. ECON. 132, 142 (1988) (suggesting that Congress designed committee structure to advantage individual legislators in political process).

³⁶ See also BENDOR, *supra* note 7, at 40–42 (positing that redundancy and overlap in decisionmaking fosters the creativity and competition necessary for useful output); C. Lawrence Evans, *Committees and Health Jurisdictions in Congress*, in *INTENSIVE CARE*, *supra* note 20, at 33 tbl.2 (indicating range of policy proposals emerging from sixteen different congressional committees in health care context). See generally MEANS-TESTED TRANSFER PROGRAMS, *supra* note 1 (collecting essays discussing the various means-tested transfer programs that have emerged from different congressional committees over time).

³⁷ See also JAMES V. SATURNO, *THE CONGRESSIONAL BUDGET PROCESS: A BRIEF OVERVIEW* 1–6 (2004) (providing a short but useful summary of budgetary procedures in Congress). See generally ALLEN SCHICK, *THE WHOLE AND THE PARTS: PIECEMEAL AND INTEGRATED APPROACHES TO CONGRESSIONAL BUDGETING* (1987) [hereinafter SCHICK, *WHOLE AND THE PARTS*]; ALLEN SCHICK, *CONGRESS AND MONEY: BUDGETING, SPENDING, AND TAXING* (1980) [hereinafter SCHICK, *CONGRESS AND MONEY*]; ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, AND PROCESS* (1995) [hereinafter SCHICK, *THE FEDERAL BUDGET*] (a discussion of budgeting procedures). The Appropriations Committee also plays an important role in the budgeting process. See *id.* at 163–235 (discussing interplay between the authorizing and appropriating process). The Appropriations Committee, however, allocates federal money with the assistance of ten subcommittees and works to keep programs fragmented rather than coordinated. *Id.* at 19–202 (discussing independence of subcommittees); see also U.S. House of Representatives Committee on Appropriations, <http://appropriations.house.gov/> (last visited Aug. 20, 2005) (listing Appropriation Committee's subcommittees and corresponding jurisdiction over separate programs).

³⁸ SCHICK, *THE FEDERAL BUDGET*, *supra* note 37, at 163–235.

first consider the President's spending proposal as well the various standing committees' own views and estimates concerning expected expenditures and receipts.³⁹ Together the Budget Committees in each chamber draft concurrent resolutions that establish annual congressional revenue and spending targets for twenty different governmental functions, thereby setting the government's financial priorities while still leaving the details of the law-making to the individual standing committees listed in Table 1.⁴⁰ An important component of the process involves the Budget Committees' power to instruct the committees in each chamber to revise the level of entitlement spending and taxation to comport with the overall budget goals found in the resolution.⁴¹ These instructions do not specify which entitlement programs must be revised, but they direct designated committees to report changes in the law that will bring revenue and spending in line with the budget resolution.⁴² This reconciliation process is inherently centralizing because it enables a single committee in each chamber to orchestrate changes in numerous laws simultaneously; these changes are then packaged and combined into a single omnibus bill to facilitate their passage on the House and Senate floors.⁴³ Although the budget resolutions and the reconciliation instructions are not formal law, various enforcement mechanisms, such as discretionary spending caps and "Pay-As-You-Go" legislation, ensure that committees do not violate spending targets.⁴⁴

³⁹ SATURNO, *supra* note 37, at 1–6; SCHICK, CONGRESS AND MONEY, *supra* note 37, at 3–5.

⁴⁰ H. COMM. ON THE BUDGET, 107TH CONG., BASICS OF THE BUDGET PROCESS 3 (Comm. Print 2001), available at <http://www.house.gov/budget/budget-process-brf.pdf> (listing the twenty budget categories).

⁴¹ Entitlement programs are unique in that they are deemed "direct spending programs." SCHICK, CONGRESS AND MONEY, *supra* note 37, at 211–12, 369–73; SCHICK, THE FEDERAL BUDGET, *supra* note 37, at 165–235. As such, they give legal rights to payments even if no money is allocated to the programs through the appropriations committee. H. COMM. ON THE BUDGET, *supra* note 40, at 5 (distinguishing between direct and discretionary spending); SCHICK, CONGRESS AND MONEY, *supra* note 37, at 215–17 (same); SCHICK, THE FEDERAL BUDGET, *supra* note 37, at 164–72 (same). Thus, spending decreases in the entitlement programs occur only if the authorizing committee changes the law or the Budget Committee mandates a revision. See *infra* notes 46–47 and accompanying text.

⁴² These instructions are labeled "reconciliation" in the budgeting process because the committees must reconcile entitlement spending with budget targets found in the resolution. See H. COMM. ON THE BUDGET, *supra* note 40, at 6, 16 (discussing role and importance of reconciliation process); STAFF OF H. COMM. ON THE BUDGET, 109TH CONG., BUDGET RECONCILIATION: WHAT IT IS AND HOW IT WORKS 1–13 (2005), available at http://www.house.gov/budget_democrats/analyses/06reconciliation_dear_colleague.pdf; SCHICK, THE FEDERAL BUDGET, *supra* note 37, at 135–39 (same); SMITH & DEERING, *supra* note 23 (same); AARON WILDAVSKY & NAOMI CAIDEN, THE NEW POLITICS OF THE BUDGETARY PROCESS 74–79 (3d ed. 1997) (same); see also ADAM D. SHEINGATE, THE RISE OF THE AGRICULTURAL WELFARE STATE: INSTITUTIONS AND INTEREST GROUP POWER IN THE UNITED STATES, FRANCE, AND JAPAN 199–201 (2001) (investigating role of budgetary procedures on reconciliation on agricultural policy).

⁴³ SCHICK, WHOLE AND THE PARTS, *supra* note 37, at 25–33.

⁴⁴ STAFF OF H. COMM. ON THE BUDGET, *supra* note 42, at 3–5; SCHICK, CONGRESS AND MONEY, *supra* note 37, at 397–412 (discussing various enforcement mechanisms); SCHICK, THE FEDERAL BUDGET, *supra* note 37, at 129–34 (same).

Congress created the Budget Committees in the early 1970s as a means to control government spending but did not intend them to interfere with the detailed work of the committees with jurisdiction over the law and policies. The Budget Committees, in turn, avoid challenging this separation of power, and issue reconciliation instructions that stipulate to individual committees' discretion to decide which programs must be cut.⁴⁵ Thus, the nine committees listed above are subject to budget constraints, but are completely autonomous when it comes to substantive lawmaking—a level of freedom that leads to the range of uncoordinated programs that often work at cross-purposes.⁴⁶

B. Arguments for Reform: The Advantages of Hierarchical Decisionmaking

The parallel system of decisionmaking that allows for the fragmentation of substantive responsibility across multiple committees, along with the weak coordinating function currently found in the Budget Committees' work, has its critics. For at least four decades, policy analysts have argued that Congress should adopt a hierarchical system of decisionmaking that would centralize control over lawmaking with a small number of individuals and streamline the creation and implementation of poverty policy. The opponents of the current system—and there are many—argue that the extensive and uncoordinated network of social welfare programs leads to severe coordination problems, program incompatibility, and costly duplication and overlap.

Beginning with coordination and incompatibility. Scholars from Milton Friedman to Daniel Shaviro claim that the social welfare programs are

⁴⁵ SCHICK, *WHOLE AND THE PARTS*, *supra* note 37, at 26.

⁴⁶ Recently, however, the Congress has begun to investigate the concept of “performance-based budgeting,” or “PBB,” a means by which the Budget Committees might exercise more substantive control over the tax and spending programs. See MERCER, *supra* note 19, at 1–10; SCHICK, *THE FEDERAL BUDGET*, *supra* note 37, at 262–66 (discussing performance-based management in agency context); *Performance-Based Budgeting: Hearing Before the H. Comm. on the Budget*, 109th Cong. 1–3, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:22571.pdf [hereinafter *Performance-Based Budgeting Hearing*] (statement of Chairman Jim Nussle); see also JEROME B. MCKINNEY, *EFFECTIVE FINANCIAL MANAGEMENT IN PUBLIC AND NON-PROFIT AGENCIES* 377–80 (3d ed. 2004) (discussing performance-based budgeting and various other coordinating initiatives); GERALD MILLER, W. BARTLEY HIDRETH & JACK RABIN, *PERFORMANCE-BASED BUDGETING* (2001) (collecting essays investigating performance-based budgeting); *Performance-Based Budgeting Hearing*, *supra*, at 5–10, 13 (statement of Clay Johnson and Congressman K. Michael Conway).

PBB is a relatively new idea that some legislators believe will promote programmatic success because it ties funding levels to a program's actual performance. Although only in the preliminary stages, the purpose of PBB would be to improve program effectiveness and public accountability by focusing on results, service quality, and consumer satisfaction. See *infra* notes 187–190 and accompanying text. This approach to budgeting may give incentives to the authorizing committees to spend more time and energy in designing successful programs and investigating unexpected problems and drawbacks because the Budget Committees can cut the funding of failing programs and increase it for those that succeed. See *infra* notes 190–207 and accompanying text.

troublesome when analyzed separately, but when investigated together they border on the absurd.⁴⁷ Friedman and Shaviro note that Congress designed the minimum wage laws to encourage poor individuals to enter the low-wage sector of the economy, but the laws may make it difficult to find work.⁴⁸ Moreover, once in the market, low-wage workers become entitled to subsidies, such as the Earned Income Tax Credit (“EITC”), but at the same time, due to their increased income from the labor force participation, lose the benefits found in programs such as Medicaid, food stamps, and low-income housing.⁴⁹ In certain circumstances, the interaction between the programs results in a loss of government benefits that exceeds the gains obtained by working in the market—the effective marginal tax rate can actually exceed one hundred percent.⁵⁰ Often the interplay between the programs is so complex that it is nearly impossible to predict the level of benefits to which poor individuals are entitled *ex ante*, which makes it difficult to make good economic decisions or to arrange one’s affairs in a rational manner.

Because each part of the system operates autonomously, committees rarely think globally when they reform individual components. As one policy analyst noted:

Crackdowns in AFDC can . . . be canceled out by liberalizations in food stamp benefits. Improvements in social security benefits can be offset by dollar-for-dollar reductions in SSI [the Supplemental Security Income program]. Through it all, the recipient can either be whiplashed by the seemingly arbitrary array of separate program regulations, or placed in the position of playing one program off against the other.⁵¹

⁴⁷ Milton Friedman was the first theorist to investigate seriously a proposal to integrate social welfare programs into the tax code. FRIEDMAN, *CAPITALISM AND FREEDOM*, *supra* note 8 (advocating negative income tax). Many other scholars and policy analysts since that time have weighed in on the debate and have supported integration. *See, e.g.*, GREEN, *supra* note 8 (examining range of different programs and offering criticisms); SALAMON, *supra* note 4, at 159–68 (same); WELFARE SIMPLIFICATION & COORDINATION ADVISORY COMM., *supra* note 4 (noting problems in existing entitlements structure); Shaviro, *supra* note 4, at 405, 411–17 (critiquing social welfare programs and supporting negative income tax in lieu of current fragmented system); *see also supra* note 8 and sources cited therein.

⁴⁸ FRIEDMAN, *CAPITALISM AND FREEDOM*, *supra* note 8, at 180–81 (critiquing minimum wage laws); Shaviro, *supra* note 4, at 411–59 (discussing minimum wage laws and the scholarly consensus that it harms low-wage earners). *But see* DAVID CARD & ALAN KRUEGER, *MYTH AND MEASUREMENT: THE NEW ECONOMICS OF THE MINIMUM WAGE* (1995) (arguing that minimum wage laws can work as intended).

⁴⁹ Shaviro, *supra* note 4, at 418–59 (examining interaction between and among social welfare programs).

⁵⁰ *Id.* at 407 (“The phase-out, as a family’s income rises, of social welfare benefits such as Aid to Families with Dependent Children (AFDC) and Food Stamps, combined with an array of positive federal and state taxes, often causes individuals in poor households, especially those with children, to face the highest marginal tax rates of *any* taxpayers, sometimes exceeding 100 percent.”).

⁵¹ SALAMON, *supra* note 4, at 116.

In short, the programs are confusing, conflicting, and often do more harm than good. By failing to adopt a unified system of assistance to the poor, and by permitting a range of committees to work separately on preventing problems associated with poverty, Congress makes it much more difficult to help the poor and perhaps impossible to achieve the goal of eliminating poverty altogether. An integrated system of social welfare, many argue, would enhance program coverage and eliminate the bizarre incentives that are present in the complicated program structure.⁵²

Not only does jurisdictional fragmentation lead to incoherent—even bad—policy choices, but many argue it involves costly duplication as well. David Weisbach and Jacob Nussim note that because multiple bureaucracies are in charge of administering the eighty different welfare programs, redundancies inevitably arise within agencies.⁵³ The Earned Income Tax Credit and food stamps, for example, are both needs-based programs with similar criteria, but the Internal Revenue Service (“IRS”) executes the former while the Department of Agriculture is responsible for the latter.⁵⁴ Both programs require evaluation of an individual’s financial position and level of income—but each agency goes about this task in a different manner with different underlying standards.⁵⁵ Thus, the federal government incurs the costs of running two programs through two different agencies with the aim of serving a single constituency. In their sophisticated argument, which draws upon organizational theory,⁵⁶ Weisbach and Nussim explore the possible advantages of cooperation and consolidation of these two tasks into the jurisdiction of a single agency. They argue that the government could achieve economies of scale if it used the same technique—if not literally the

⁵² Along with Milton Friedman and Daniel Shaviro, many other legal and economic scholars have examined and offered support for tax-based welfare reform. *See supra* note 8 and sources cited therein.

⁵³ Weisbach & Nussim, *supra* note 6, at 999–1023.

⁵⁴ *See infra* note 60 and accompanying text.

⁵⁵ Weisbach & Nussim, *supra* note 6, at 999–1023.

⁵⁶ Professors Weisbach and Nussim relied primarily on the work of Alfred Chandler and Oliver Williamson in their investigation of coordination and specialization in the government context. *Id.* at 983–997. Chandler and Williamson suggest that the delineation of organizational divisions be decided based upon the tradeoff between the gains from the specialization that follows by having separate activities conducted by separate units, and the gains from coordination that are available when similar activities are combined in the same unit for purposes of investigating how best to organize the government. *Id.* at 997–1026. Weisbach and Nussim borrow this insight in order to investigate the best way to organize government agencies specializing in similar activities. Ultimately, they find integration may offer advantages that few have explored in the past. *Id.* As the authors themselves note, integration would mean, in many cases, moving a program’s jurisdiction from its present authorizing committee in the House and Senate into the tax-writing committees, and at the same time awarding the tax-writing committees exclusive control over the program with no obligation to share jurisdiction, as the current fragmented regime requires. *Id.* Weisbach and Nussim’s consideration of the organizational design suggests that similar implications might be identified in the context of legislative activity. Besides initially creating an integrated program, one congressional committee would be involved in all future oversight, appropriations, reauthorizations, and modifications of the program, rather than a diverse collection of committees pursuing those same activities in the present, divided manner.

same agency—to assign benefits and, ultimately, to assure that the programs work together in a unified manner.⁵⁷

The incoherent nature of the laws, along with the redundancies found in the bureaucracies, have led to a strong consensus in the scholarly literature: It is time for Congress to replace the multitude of specialized social welfare programs with a single integrated plan. Legislators, in effect, should design a single law, with a single technique for awarding benefits, which a single agency would administer. The integration of all the social welfare programs (or at least the major and most expensive programs) would arguably increase the quality and value of the benefits delivered to the needy and at the same time rid the federal government of unnecessary and costly redundancies.

Of course, the proposal to integrate the social welfare laws does not necessarily imply which congressional committee should take responsibility for the new regime. But here again a strong consensus exists: The House Ways and Means Committee and the Senate Finance Committee should be in charge of social welfare.⁵⁸ Policy analysts support awarding jurisdiction to the tax-writing committees for several reasons. First, they have expertise in allocating cash subsidies, which many argue are the most efficient mechanisms for distributing government largesse.⁵⁹ Cash transfers allow needy persons to make their own spending decisions, while in-kind programs (which are the current favorite of many of the non-tax committees) impose constraints and do not allow individuals the freedom to allocate government money in a manner they find the most advantageous to their individual circumstances. Second, if the social welfare subsidies are found in the tax code, then the IRS will take responsibility for executing the laws. Empirical data strongly suggest that the IRS is significantly less prone to error and a far cheaper means for implementing government subsidies than the various other federal agencies, such as the Department of Agriculture, which takes responsibility for food stamps.⁶⁰

⁵⁷ Notably, however, the authors do not go so far as to argue for a complete integration of social welfare laws. *See id.* at 999 (“[W]e argue, contrary to the thrust of the negative income tax literature, that some welfare policies are best implemented separately because of institutional considerations.”).

⁵⁸ *See* FRIEDMAN, CAPITALISM AND FREEDOM, *supra* note 8 (implicit in argument of negative income tax); Shaviro, *supra* note 4, at 59–73 (same); Weisbach & Nussim, *supra* note 6, at 965 (noting explicitly that delegating authority to the IRS means delegating legislative jurisdiction to tax-writing committees); Zelinsky, *supra* note 10, at 1175–84 (arguing explicitly that tax-writing committees are best suited to authorize tax and spending). In other contexts, scholars object to empowering the tax-writing committees on the grounds that folding programs into the tax code will render them more vulnerable to the special interest pathologies associated with lawmaking or bring in many more such temptations that would further damage tax law. *See, e.g.,* SURREY & MCDANIEL, *supra* note 20, at 106–07; E.C. Lashbrook, Jr., *An Economic and Constitutional Case for Repeal of the I.R.C. Section 170 Deductions for Charitable Contributions to Religious Organizations*, 27 DUQ. L. REV. 695, 700 (1989); Edward Yorio, *Equity, Efficiency, and the Tax Reform Act of 1986*, 55 FORDHAM L. REV. 395, 425 (1987).

⁵⁹ FRIEDMAN, CAPITALISM AND FREEDOM, *supra* note 8, at 192.

⁶⁰ Weisbach & Nussim, *supra* note 6, at 1004–12.

Finally, scholars and policy analysts have identified the tax-writing committees as among the least political and most independent of those in Congress. The integrationists note that many of the existing social welfare programs advantage special interest groups as much, or more, than the intended poor. The housing subsidies adopted by the Financial Services Committee, for example, benefit the property owners anxious to have “blighted areas cleared and refurbished” more than they do the homeless;⁶¹ the minimum wage laws that have emerged from the Education & Workforce Committee reflect the work of “[special] interests [such as] . . . trade unions . . . threatened by . . . competition”;⁶² and the food stamps program adopted by the Agriculture Committee can only be explained by the “political fact that rural areas are over-represented in the electoral college and in Congress.”⁶³ Of course, the Ways and Means and Finance Committees are also notorious for pandering to special interests to the detriment of unorganized and diffuse groups.⁶⁴ The perceived difference between the tax-writing committees and the others with jurisdiction over social welfare programs, however, is that the latter are specialized in orientation whereas the former are generalist bodies.⁶⁵ The Committee on Agriculture, for example, serves only the farm interests while the Ways and Means Committee works for a heterogeneous group of interests. This suggests that the tax-writing com-

⁶¹ FRIEDMAN, *CAPITALISM AND FREEDOM*, *supra* note 8, at 179.

⁶² *Id.* at 181.

⁶³ *Id.*

⁶⁴ *Accord* JOHN F. WITTE, *THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX* (1985) (exploring history of politics in tax context); *see, e.g.*, E. SCOTT ADLER, *WHY CONGRESSIONAL REFORMS FAIL: REELECTION AND THE HOUSE COMMITTEE SYSTEM* 148–49 tbl.10 (2002) (suggesting that tax-writing committees are subject to capture); RICHARD F. FENNO, JR., *CONGRESSMEN IN COMMITTEES* 1–45 (1973) (same); JOHN F. MANLEY, *THE POLITICS OF FINANCE: THE HOUSE COMMITTEE ON WAYS AND MEANS* (1970) (same); STANLEY S. SURREY, *PATHWAYS TO TAX REFORM: THE CONCEPT OF TAX EXPENDITURES* 140–54 (1973) (same); Daniel Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s*, 139 U. PA. L. REV. 1, 86–87 (1990) (positing that tax law has been dominated “by interested groups that seek favors for themselves and that through a norm of logrolling, almost never oppose favors from each other”).

Stanley Surrey and Douglas Arnold offer one explanation for why the House Ways and Means and Senate Finance Committees are particularly good at transferring economic benefits to politically preferred individuals and groups: tax expenditures are so well hidden in the tangle of the tax laws that it is difficult to identify their existence, let alone the beneficiaries. R. DOUGLAS ARNOLD, *THE LOGIC OF CONGRESSIONAL ACTION* 193–223 (1990) (exploring procedural biases in taxation policy making context); SURREY, *supra*, at 141–42 (stating that tax policy lacks transparency and is subject to procedural advantages not found in other spending programs). *But see* Weisbach & Nussim, *supra* note 6, at 969 (stating that the arguments regarding transparency and visibility of tax expenditures versus direct spending are “unpersuasive” and “not convincing”). Whether tax-based spending offers many more opportunities for fiscal illusions than direct spending programs is questionable, but my point is this: There is no reason to believe that the tax-writing committees are less political than all other congressional committees and the evidence suggests just the opposite—the tax-writing committees are the most political of all.

⁶⁵ Zelinsky, *supra* note 10 (presenting empirical data on lobbying efforts and media coverage with regard to various congressional committees).

mittees are lobbied more heavily by competing interest groups and, at the same time, have greater visibility in the press. The increased levels of lobbying efforts and news coverage convinces scholars such as Edward Zelinsky that the tax committees are more “objective”⁶⁶ and “independent”⁶⁷ than the others and, consequently, better positioned to reach efficient and fair spending decisions. These differences do not mean that the House Ways and Means and Senate Finance Committees are objective in the sense that they are above politics, but it may suggest that they are less likely to reach biased decisions in the lawmaking process.⁶⁸

In making the argument for awarding control over social welfare laws to the tax-writing committees in Congress and to the IRS, the integrationists acknowledge that potential problems could emerge for the welfare recipients. Allowing for the continued fragmentation of benefits enables the government to serve a diverse population with varied needs arising from different causes. Implementing a single program, on the other hand, could lead to unexpected shortcomings.⁶⁹ Analysts, for example, agree that integrating food stamps into the tax code could reduce the government’s ability to respond promptly to unexpected spells of poverty given that tax subsidies are awarded on an annual basis while food stamps can be obtained any time of the year.⁷⁰ Moreover, a single system of tax-based welfare assumes that poor individuals all face the problem of insufficient economic resources for the same reasons—and that this problem can be remedied with cash transfers that phase out as income increases. In fact, however, individuals live in poverty for a variety of reasons (poor health, bad luck in the market, large families, and so forth) and thus have very different needs; if treated identically, some may find themselves subject to the level of benefits designed to

⁶⁶ *Id.* at 1191 (“[T]he Ways and Means and Finance panels, because of their greater visibility and offsetting clientele pressures, are better positioned than the direct expenditure committees to oversee subsidy programs objectively.”).

⁶⁷ *Id.* at 1175 (discussing the greater independence of the Secretary of Treasury and the Ways and Means Committee because of their diverse constituencies).

⁶⁸ Various political scientists have noted that the tax-writing committees are subject to different levels of lobbying and press coverage but the observations do not lead to the conclusion that the tax-writing committees are more objective policymakers; rather, this difference is believed to make them more *partisan* given the important role the committees play in advancing the interest of the party caucus. See COX & McCUBBINS, *supra* note 35, at 199–200 (discussing committees and their external effects on members of Congress). Because the tax-writing committees are so powerful, majority leaders—who appoint committee members—pay particular attention to assure they fully and accurately represent the party caucus whereas the clientele committees are considered less important to the majority party and are given free reign to pursue the policies they prefer. Thus, while the Agriculture Committee may have a bias in favor of agriculture subsidies, they may be less driven by biased party politics than the Ways & Means Committee or the Senate Finance Committee. *Id.*

⁶⁹ SALAMON, *supra* note 4, at 114–15 (discussing programmatic drawbacks of integration); Alstott, *supra* note 8, at 535 n.5 (noting drawbacks associated with integration of tax and spending programs); Weisbach & Nussim, *supra* note 6, at 1016–23 (noting that food stamps offer advantages that may not be attainable with integration).

⁷⁰ Weisbach & Nussim, *supra* note 6, at 1016–17.

accommodate those in completely different situations.⁷¹ While the integrationists note these drawbacks and acknowledge they make the case for integration a bit more difficult, in the end they come down in favor of centralizing power and awarding issue monopolies. Integrationists argue that reform will make the social welfare programs on the whole more effective, efficient, and fair.

Overall, policy analysts have made a strong case for integration; they have shown that fragmentation of jurisdiction has led congressional committees to duplicate each other's work, place conflicting demands on agencies, adopt competing policy proposals, and incur overlapping costs. All these problems exist, and all impose costs on both welfare recipients and government institutions.

The drawbacks of the extant literature on integration, as it turns out, are not related to its underlying goal, the stated justifications for moving in its direction, or even the means for achieving it. Rather the problem lies with scholars' assumptions regarding political dynamics in government institutions and hierarchical decisionmaking.

In the next section, I examine these issues. Part II explores the assumption that Congress can easily—and would desire to—rearrange committee jurisdictions in a manner that eliminates the current parallel system of decisionmakers and awards a monopoly to a single committee to achieve better social welfare policy. Part III investigates the assumption that if jurisdictional change is politically possible, then centralizing power in each chamber over a major federal program has benefits that obviously outweigh costs. Both of these assumptions are seriously questionable, as I show below.

II. A POLITICAL EXPLANATION FOR CURRENT INSTITUTIONAL ARRANGEMENTS (OR WHY DECISIONMAKERS WILL RESIST CHANGE)

The advocates of integration have made the case for social welfare reform, but powerful normative arguments do not make reform happen. More to the point, modern theories of social science make it clear that integration of the tax and spending programs faces serious feasibility problems. As noted above, streamlining the social welfare laws will force seven congressional committees and four federal agencies to give up control over the programs that they have designed and administered for the last several decades. Not only will the losing committees and agencies strongly object to this type of reform, history suggests that a system of fragmented jurisdictions is far more stable than one enabling a monopoly.⁷² To understand why this is so, I focus on jurisdiction in the context of congressional committees and

⁷¹ SALAMON, *supra* note 4, at 115 (noting that different types and levels of needs counsel for diverse government programs).

⁷² *Cf.* BENDOR, *supra* note 7, at 42–43 (arguing that unstable organizational arrangements cannot be effective).

show that integration is a reform proposal that is not likely to succeed in the near future, if ever. Though it is routine in the political science literature to assess the political benefits associated with jurisdictional control and fragmentation, such an assessment has not been undertaken by the integration advocates.

Political scientists have long studied the logic behind the committee system and have derived at least three different political explanations for its existence.⁷³ The first, the constituent-control model, hypothesizes that committees are the means by which legislators respond to constituent demands. According to this theory, individual legislators self-select onto their preferred committees, thereby enabling themselves to provide concentrated benefits back to their districts while spreading costs widely.⁷⁴ The second explanation, the party control model, understands committees as mechanisms for ensuring that individual legislators promote the party agenda: Party leaders appoint committee members and the members respond by behaving in a partisan fashion when considering and promoting legislative initiatives.⁷⁵ If the committee member fails to act in the requisite partisan fashion they will be sanctioned with reduced resources, demotion to a less prestigious committee, or in some other manner. Finally, the third model, the chamber control model, assumes that each chamber establishes committees for informational gathering purposes; by building specialization and expertise on important legal and policy matters the chamber can trust that the committees will advocate the best and most predictable policies.⁷⁶ No consensus exists in the political science literature on which of the three theories is accurate and it is possible that they may in fact work in combination.⁷⁷ Nevertheless, one fact seems clear: Legislators happily expand their committee responsibilities but rarely consent to contracting them.⁷⁸

⁷³ See generally Kenneth A. Shepsle & Barry R. Weingast, *Positive Theories of Congressional Institutions*, 19 LEGIS. STUD. Q. 149, 158–74 (1994) (providing a terrific description of modern political science theories and underlying propositions). Modern studies of Congress nearly always begin with a description of the three theories of legislative control—constituent control, party control, and chamber control. See, e.g., FORREST MALTZMAN, *COMPETING PRINCIPALS: COMMITTEES, PARTIES, AND THE ORGANIZATION OF CONGRESS* 9–10 (1997) (outlining three theories of congressional committee system); Shepsle & Weingast, *supra*, at 156–57, 158, 161–62 (same). But see C. LAWRENCE EVANS & WALTER J. OLESZEK, *CONGRESS UNDER FIRE: REFORM POLITICS AND THE REPUBLICAN MAJORITY* 166–72 (1997) (listing five differently organized categories); ERIC SCHICKLER, *DISJOINTED PLURALISM: INSTITUTIONAL INNOVATION AND THE DEVELOPMENT OF THE U.S. CONGRESS* 5–12 (2001) (same).

⁷⁴ KENNETH A. SHEPSLE, *THE GIANT JIGSAW PUZZLE: DEMOCRATIC COMMITTEE ASSIGNMENTS IN THE MODERN HOUSE* 45 (1978); Weingast & Marshall, *supra* note 35, at 137, 145; Morris P. Fiorina, *Legislative Facilitation of Government Growth: Universalism and Reciprocity Practices in Majority Rule Institutions* 4–5 (Ctr. for the Study of Am. Bus., Working Paper No. 48, 1979).

⁷⁵ See COX & MCCUBBINS, *supra* note 35, at 166, 182.

⁷⁶ KREHBIEL, *supra* note 35.

⁷⁷ See Shepsle & Weingast, *supra* note 73, at 157 (discussing interplay between distributional and institutional approaches to understanding congressional behavior); see also DAVID W. RHODE, *PARTIES AND LEADERS IN THE POSTREFORM HOUSE* 28–34 (1991) (discussing increased role of party leadership in certain circumstances); John H. Aldrich & David W. Rhode, *The Consequences of Party Organiza-*

Jurisdictional control over legal and social policies is important to committee members because it gives them the power to shape legislation. This power, in turn, enables committee members to pursue the best policies, gain attention in the press, and serve interested constituents and groups—each are essential for reelection and for gaining prestige in and around the Capitol.⁷⁹ Indeed, jurisdictional control over specific policy programs is so valuable that legislators tend to perceive it as akin to a property right.⁸⁰ To protect these property rights, committees have been known to set up “border cops,” who are staff members that monitor the parliamentarian’s referral decisions to insure that the committee gains control over all legislative initiatives in its jurisdiction and to deter competitor committees from encroaching upon their “turf.”⁸¹ If a border cop identifies a possible breach, she sounds an alarm, thereby notifying committee members, and possibly the chair of the committee, to challenge a referral decision or to take other types of protective action. Turf battles are notorious in Congress and legislators will go to great lengths to secure control of their territory.⁸²

tion in the House: The Role of the Majority and Minority Parties in Conditional Party Government, in POLARIZED POLITICS: CONGRESS AND THE PRESIDENT IN A PARTISAN ERA 31, 34, 71–72 (Jon R. Bond & Richard Fleisher eds., 2000) (investigating the increased role of party leadership under certain political conditions).

⁷⁸ After 9/11, however, Congress did succeed in restructuring committee jurisdictions in a manner that forced certain members of Congress to cede control and power over intelligence issues. See generally NAT’L COMM’N ON TERRORIST ATTACKS UPON THE UNITED STATES, *supra* note 20, at 420–21 (including Commission’s recommendations regarding consolidation of jurisdiction); Recommendations from the 9/11 Commission Report ¶ 36–37, <http://911independentcommission.org/report/recommend.html> (last visited Jan. 16, 2006).

⁷⁹ See FENNO, *supra* note 64, at 1–9; KING, *supra* note 35, at 25–26; SMITH & DEERING, *supra* note 23, at 85–86; C. Lawrence Evans, *Participation and Policy Making in Senate Committees*, 106 POL. SCI. Q. 479, 482–83 (1991) (interviewing Senators suggesting that it is important to influence and shape legislation in order to achieve goals associated with political influence, constituents service, and personal interest).

⁸⁰ See KING, *supra* note 35, at 1–2, 101–02, 113, 115–16; Charles R. Shipan, *Senate Committees and Turf: Do Jurisdictions Matter?*, 49 POL. RES. Q. 177, 187 (1996) (noting that some committee members fight procedures that allow end runs around jurisdictional rules). But see Charles R. Shipan, *Individual Incentives and Institutional Imperatives: Committee Jurisdiction and Long-Term Health Care*, 36 AM. J. POL. SCI. 877, 892–93 (1992) [hereinafter Shipan, *Individual Incentives*] (reporting less objection to jurisdictional violations than many theories of congressional behavior would have predicted in a floor vote on a bill that did an end run around jurisdictional rules); Charles R. Shipan, *Looking for a Smoking Gun: Committee Jurisdictions and Congressional Voting Decisions*, 83 PUB. CHOICE 65, 75 (1995) (suggesting that members that are not involved in jurisdictional disputes do not seek to protect exiting jurisdictional parameters).

⁸¹ KING, *supra* note 35, at 1–2, 115.

⁸² As David C. King notes, “Committee jurisdictions are akin to property rights, and few things in Washington are more closely guarded or as fervently pursued. Former Speaker Thomas Foley says that no single policy dispute during his tenure ignited the kinds of passions among members that turf wars could inflame.” *Id.* at 11. For a discussion of these strategic activities, especially in the context of politically salient issues, and for an exploration of various strategies for staking claims to important public laws, see *id.* at 105–20.

Although complete control over policy areas may be an ideal, overlapping rights tend to emerge given the topical ambiguities that exist in legislative initiatives. When new and changing issues surface in a proposed bill, for example, the parliamentarian often has difficulty determining which committee has jurisdiction over the issue.⁸³ The social welfare laws are a typical example of this problem. Congress initially adopted the Social Security laws as the means to subsidize the poor and gave the Ways and Means Committee a jurisdictional monopoly over the program.⁸⁴ But as legislators became interested in expanding financial assistance for the poor, they began proposing alternative programs, such as food stamps, to fight poverty.⁸⁵ This created a jurisdictional problem: Was the food stamps program in the jurisdiction of the Ways and Means Committee because it was a social welfare program or the Agriculture Committee because it addressed issues associated with farms, farming, and nutrition?⁸⁶ A similar problem emerged in the context of housing subsidies: Would it be logical to refer housing initiatives to the Financial Services Committee, which controlled public and private housing matters, or to the tax-writing committee?⁸⁷ As we now know, Congress made the decision to fragment jurisdiction across various committees.⁸⁸

Not only is jurisdictional fragmentation predictable given the ambiguities that arise with new issues, political incentives also exist for legislators to challenge jurisdictional monopolies.⁸⁹ For example, fragmentation of ju-

⁸³ *Cf. id.* at 14–17 (discussing turf wars and jurisdictional ambiguity).

⁸⁴ See H. COMM. ON WAYS AND MEANS, *supra* note 1, at 2–3 (offering a brief history of social security programs and jurisdictional control); H. COMM. ON RULES, *supra* note 26, at 9 (establishing in rule X(1)(t)(9) that jurisdiction over social security lies with House Ways and Means Committee); IRWIN GARFINKEL & SARA S. McLANAHAN, *SINGLE MOTHERS AND THEIR CHILDREN: A NEW AMERICAN DILEMMA* 100–03 (1987) (providing a brief account of the enactment of the Social Security Act and its purposes).

⁸⁵ See generally OHLS & BEEBOUT, *supra* note 13, at 13–18 (offering a brief history of food stamp program).

⁸⁶ See *supra* note 27 and accompanying text. But see John Ferejohn, *Logrolling in an Institutional Context: A Case Study of Food Stamp Legislation*, in CONGRESS AND POLICY CHANGE 223, 229–30 (Gerald C. Wright, Jr. et al. eds., 1986) (providing historical evidence that the food stamp program went to Agriculture Committee because no other committee wanted jurisdiction).

⁸⁷ See generally KING, *supra* note 35, at 77 (“Jurisdictional fragmentation is a direct result of so many committees trying to stake out claims to pieces of larger issues—like the environment and health care.”); Baumgartner, Jones & MacLeod, *supra* note 20, at 328, 337, 344 (positing that rise of new issues and redefinition of existing ones leads to jurisdictional changes and fragmentation); Jones, Baumgartner & Talbert, *supra* note 14, at 668 (noting that with new and changing issues, Congress constantly realigns committee jurisdictions).

⁸⁸ See *supra* notes 29–36 and accompanying text.

⁸⁹ Legislators also criticize overlapping and redundant jurisdictions for promoting jurisdictional rivalry; creating duplication in hearings, meeting, and reports; encouraging delays; and giving a weapon to groups to delay, modify, or kill legislation. See Roger H. Davidson et al., *One Bill, Many Committees: Multiple Referrals in the U.S. House of Representatives*, 13 LEG. STUD. Q. 3, 21–22 (1988) (noting members’ criticisms). Notwithstanding these criticisms, which mirror those found in the integration lit-

jurisdiction affords increased opportunities for interest groups and constituents to gain access to members of Congress who control important policy issues; lobbyists, in effect, “venue shop” for friendly legislators who are, in turn, eager to serve.⁹⁰ If an interest group cannot attract the attention of the Agricultural Committee or Education and Workforce Committee, it may call on the Ways and Means Committee or the Commerce and Energy Committee to advocate a policy or program.⁹¹

Moreover, fragmentation allows a large group of legislators to claim credit for the benefits of legislative initiatives.⁹² Douglas Arnold notes that some policy proposals are politically compelling because the ends are so popular that many legislators will fight to gain even partial control over the issue.⁹³ The poverty issues of the late 1960s and early 1970s, which became a popular topic of discussion and ultimately a national priority, provide an excellent exemplar of precisely this type of behavior.⁹⁴ As media coverage soared, Congress responded by holding many more hearings and pursuing

erature on redundancy, the legislators have not successfully streamlined the system. *See infra* notes 102–107 and accompanying text.

⁹⁰ *See* Jones, Baumgartner & Talbert, *supra* note 14, at 661–63 (finding that congressional committees with overlapping jurisdictions tend to seek different witnesses—each committee finds witnesses that reflect the committee viewpoint). An interrelated feature associated with fragmentation is that it also enables “reverse lobbying”—politicians lobbying interest groups in an effort to get public support for controversial legislation. Reverse lobbying efforts often entail legislators threatening interest groups with unpleasant legal developments unless they offer their support for a particular policy or project important to the member of Congress. THOMAS J. REESE, *THE POLITICS OF TAXATION* 45 (1980) (reporting that Treasury officials lobby industry lobbyists to facilitate tax reform); Allen Schick, *How a Bill Did Not Become Law*, in *INTENSIVE CARE*, *supra* note 20, at 241–44 (discussing the value of lobbying and reverse-lobbying efforts in Congress).

⁹¹ The five committees currently in control of social welfare laws have a total of 258 members offering constituents many opportunities to discuss policies and problems. For a listing of the committee and subcommittee members, see Committee Quick Links, <http://www.house.gov/> (last visited Mar. 23, 2006). *See also* SENATE COMMITTEE AND SUBCOMMITTEE ASSIGNMENTS, *supra* note 25; LIST OF STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES, *supra* note 24.

⁹² *Cf.* Evans, *supra* note 36, at 41 (noting legislators’ desire to get credit for good social policy decisions and to avoid blame for problematic outcomes); Shipan, *Individual Incentives*, *supra* note 80, at 882–84 (reporting that when health care became a popular topic on the Hill, legislators violated jurisdictional rules in an effort to pass their own bills).

⁹³ ARNOLD, *supra* note 64, at 128–42 (noting that legislators seek to control issues that are salient to the public); John W. Hardin, *Advocacy Versus Certainty: The Dynamics of Committee Jurisdiction Concentration*, 60 J. POL. 374, 394–95 (1998) (reporting results of empirical study showing that PAC contributions and media coverage cause jurisdictions to fragment).

⁹⁴ Prior to the 1960s, the major social welfare program was the Social Security Act. By the late 1960s, however, a widespread consensus was beginning to emerge around the idea that the government needed to address hunger and poverty in the United States. *See* OHLS & BEEBOUT, *supra* note 13, at 15 (reporting that a CBS documentary and widely published reports on poverty sparked a “public outcry” in 1968). For a description of the growth of poverty programs from the late 1960s and for a collection of essays examining nine major social welfare programs, see generally MEANS-TESTED TRANSFER PROGRAMS, *supra* note 1 (collecting essays examining nine major social welfare programs). For a general discussion of jurisdictional fragmentation and salience, see KING, *supra* note 35, at 42–45; Jones, Baumgartner & Talbert, *supra* note 14, at 668–69.

ever growing legislative initiatives in order to address the poverty problem, which in turn led to the jurisdictional overlap that we see today.⁹⁵

Other policies are politically repellant because citizens do not see any connection between the proposed policy and the intended effects; this reality leads legislators to prefer fragmentation of jurisdiction to avoid being the exclusive recipient of the political costs that follow from policy implementation.⁹⁶ Legislators, for example, are often reluctant to publicize their efforts to award cash transfers to the poor because of the popular image of those who accept such assistance. At the same time, they like to claim responsibility for funding school lunches, Medicaid, Head Start, and so forth, which are far more popular with constituents.⁹⁷ Thus, while the cash transfers advocated by the integrationists may be more efficient than in-kind transfers, politicians prefer the latter because they give the public the sense that the federal government is merely supporting every-day necessities as opposed to luxury items. Fragmented jurisdiction allows Congress to offer both types of assistance (cash via the tax-writing committees and food stamps via the Agriculture Committees). The political calculus that leads to a diverse collection of needs-based programs is very different from the economic calculus. While integrationists have argued that economics should lead legislators to grant welfare only through the tax code, a more complex analysis would likely lead them to question the viability—or usefulness—of this reform proposal.

Fragmentation of jurisdiction across committees fosters a number of institutional goals. Overlapping jurisdictions assure that heterogeneous groups put together proposals for floor votes. This multiple referral process, in turn, avoids the political biases that can emerge when a single committee has a policy monopoly and can structure the agenda and influence outcomes favorable to itself and no others.⁹⁸ Moreover, redundant and overlapping control over policy areas fosters communication and consensus within the legislature prior to the time an initiative reaches the floor, mak-

⁹⁵ See ARNOLD, *supra* note 64, at 128–42; Evans, *supra* note 36, at 26 (noting that committees seek to claim jurisdiction over popular issues).

⁹⁶ ARNOLD, *supra* note 64, at 100–15 (noting that policymakers seek to avoid blame for bad decisions).

⁹⁷ *Id.*; see Janet Currie, *U.S. Food and Nutrition Programs*, in MEANS-TESTED TRANSFER PROGRAMS, *supra* note 1, at 270 (describing political benefits of in-kind transfer programs in context of food stamps); cf. GARFINKEL & MCLANAHAN, *supra* note 84, at 18–21, 25 (providing empirical evidence showing that federal programs allocate substantially greater public funds to widows than needy mothers via AFDC); Lawrence M. Mead, *Welfare Reform and Children*, in CHILDREN, FAMILIES, AND GOVERNMENT: PREPARING FOR THE TWENTY-FIRST CENTURY 51, 54–59 (Edward F. Zigler et al. eds., 1996) (outlining the contentious politics that have emerged in the context of AFDC since Congress adopted it in 1935 as part of the Social Security Act).

⁹⁸ See SCHICK, *WHOLE AND THE PARTS*, *supra* note 37, at 53 (stating that fragmentation allows a range of views to be expressed on important issues); Davidson et al., *supra* note 89, at 9 (suggesting that overlapping committee jurisdiction takes power from the few and spreads it among the many, thereby assuring legislators can monitor and understand the consequences of bills).

ing it easier to pass worthwhile legislation.⁹⁹ Finally, fragmentation is useful for promoting competition between committees, which in turn can foster innovation and improvement in policy outcomes and increases the odds that Congress will better serve constituent needs.¹⁰⁰

Whether or not jurisdictional fragmentation is advantageous from either a policy or political perspective, one thing is sure: it is difficult—if not impossible—to consolidate jurisdictions once they have splintered. Committee members are extremely protective of their jurisdictional property rights as discussed above, and will go to great lengths to avoid incurring losses. As one commentator noted, “[l]ike castle walls, jurisdictions protect the fiefdoms of committee barons. And like castle walls they do not move easily.”¹⁰¹

In fact, in an effort to address the perceived problems associated with overlapping and redundant control over policymaking, Congress attempted major jurisdictional reforms in 1946, 1974, and 1995.¹⁰² In each era the reformers argued that fragmentation had led to problems associated with information gathering and oversight, failures of coordination, heightened pressures from interest groups, and the artificial separation of teamwork.¹⁰³

⁹⁹ SCHICK, *WHOLE AND THE PARTS*, *supra* note 37, at 53 (arguing that fragmentation reduces costs associated with deadlock and stalemate); Davidson et al., *supra* note 89, at 15–16 (suggesting that inter-committee cooperation can increase success rate of bill on the floor).

¹⁰⁰ See Davidson et al., *supra* note 89, at 20 (noting that overlapping committee jurisdictions “stimulate policy innovation and encourage committees to consider problems they might not otherwise do”).

¹⁰¹ KING, *supra* note 35, at 14; cf. SCHICK, *WHOLE AND THE PARTS*, *supra* note 37, at 53 (discussing Task Force’s concerns about an omnibus budgetary proposal).

¹⁰² For a discussion of the 1946 jurisdictional changes, see generally ADLER, *supra* note 64, at 108–41; KING, *supra* note 35, at 59–62; MALTZMAN, *supra* note 73, at 85–86; CHARLES TIEFER, *CONGRESSIONAL PRACTICE AND PROCEDURE: A REFERENCE, RESEARCH, AND LEGISLATIVE GUIDE* 69 n.23 (1989); Roger H. Davidson, *The Advent of the Modern Congress: The Legislative Reorganization Act of 1946*, 15 *LEGIS. STUD. Q.* 357, 357–72 (1990). For a discussion of the 1970s jurisdictional changes in the House, see ADLER, *supra* note 64, at 142–70; KING, *supra* note 35, at 62–67; MALTZMAN, *supra* note 73, at 84–86; TIEFER, *supra*, at 70–71. For a discussion of the 1995 jurisdictional changes in the House, see ADLER, *supra* note 64, at 171–212; KING, *supra* note 35, at 70–77; MALTZMAN, *supra* note 73, at 86–87.

¹⁰³ In fact, a piece of the 1995 proposal actually called for consolidation of the social welfare programs into a single committee’s jurisdiction similar to that called for by the integrationists, although—notably—the legislators proposed that the Educational and Economic Opportunities Committee be given the monopoly and not the Ways and Means Committee. See ADLER, *supra* note 64, at 184–85 (offering a table showing one proposal to integrate welfare programs under a single committee’s jurisdiction); KING, *supra* note 35, at 71–74 (same). Integration of the tax and spending programs was also attempted through legislation in the 1970s. President Ford proposed the Tax Credit and Allowances Act, which would have abolished the AFDC, food stamps, housing subsidies, etc., for a single tax program to be designed by the Ways and Means Committee and administered by the IRS. See Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969–99*, 53 *NAT’L TAX J.* 983, 994 (2000) (discussing the Tax Credit and Allowances Act). Instead of purging programs from committees, Congress ultimately acted patently opposite—it expanded the food

In each time period, reformers put forth exactly the same rationales articulated today by the integrationists, yet each time they failed to accomplish the goal of eliminating redundancies and overlap in committee work. The jurisdictional reforms sparked strong opposition from individual legislators, committee members, and interest groups—each feared losing access to and control over important policies and programs.¹⁰⁴ Not surprisingly, the House managed to adopt a watered-down version of the initial plan in each year, but it could not radically change the existing property rights.¹⁰⁵ History, in short, suggests that just as Boardwalk and Park Place are valuable properties to players in the board game Monopoly, so too are the policies and programs in individual committee jurisdictions. It is unlikely that the Agriculture, Financial Services, Commerce and Energy, and Labor and Workforce Committee members will happily cede control to the Ways and Means Committee notwithstanding the possible policy advantages outlined by the integration advocates. And a similar analysis holds for the Senate Committees and the federal agencies in charge of the current social welfare regime.

Although major jurisdictional reform is unlikely in the near future, policy analysts are likely to continue to press for the integration of the social welfare programs. Small jurisdictional changes may be possible in the short term (perhaps with a payoff to the committees suffering losses), and may lead to the desired reform in the long run.¹⁰⁶ Moreover, understanding the policy ideal is important for achieving the best overall policies and programs. Identifying the ideal creates a baseline from which legislators can make good policy choices even when political considerations are at play; understanding the ideal also enables legislators to make better decisions when they find themselves politically indifferent between two or more policy options. Thus, if integration, or a reform akin to integration, is a possibility, then the extant literature on the topic offers clear guidance as to which choice(s) the legislators should make.¹⁰⁷

stamp program and adopted new programs—instead of leading to integration it led to the proliferation of social welfare programs.

¹⁰⁴ Melissa P. Collie & Joseph Cooper, *Multiple Referral and the 'New' Committee System in the House of Representatives*, in CONGRESS RECONSIDERED 245, 253 (Lawrence C. Dodd & Bruce I. Oppenheimer eds., 1989) (“Stories of jurisdictional fights are legion, and turf protection so pronounced as to have frustrated all but the most minor changes in committee jurisdictions since 1945.”); Eric Schickler & Andrew Rich, *Controlling the Floor: Parties as Procedural Coalitions in the House*, 41 AM. J. POL. SCI. 1340, 1340–75 (1997) (studying jurisdictional changes from 1919 to 1994).

¹⁰⁵ See KING, *supra* note 35, at 70–75 (showing that some jurisdictional changes that encompassed losses included gains as well).

¹⁰⁶ Empirical evidence supports the idea that jurisdictional change does not happen dramatically but rather incrementally. See *id.* at 56–59 (suggesting that incrementalism explains most observed reforms).

¹⁰⁷ Cf. Moffitt, *supra* note 9, at 138 (arguing Friedman’s work on the negative income tax may have set the agenda for welfare reform); Shaviro, *supra* note 4, at 438–39 (noting that academic scholarship can help place a topic on the political agenda by permitting supporters to cite respectable support for

In sum, both normative and political analyses are necessary to achieve good policy outcomes. The problem with the existing literature on integration, however, is that it neither addresses the political issues nor does it offer a complete analysis of the normative problems associated with the proposed reform. Indeed, the political hurdles discussed above make integration nearly impossible in the foreseeable future; Part III explores the reality that integration may not be normatively desirable either. Though the criticisms of the current regime are sound, there are equally sound normative reasons for disagreement.

III. A NORMATIVE DEFENSE OF CURRENT INSTITUTIONAL ARRANGEMENTS (OR WHY THEY MIGHT BE BETTER THAN REFORMERS REALIZE)

The conventional wisdom, adopted by integration advocates, tells us that redundancy and overlap are costly. They lead to incoherent policy output, increase the level of expenditures, and make it difficult to detect and assign blame for faulty government policies.¹⁰⁸ These problems all exist in the context of social welfare laws, and integrationists argue it is high time for Congress to streamline the system.¹⁰⁹ Although completely unstated, the integrationists argue for eliminating the current parallel system of decision-makers and replacing it with organizational monopolies: One and only one congressional committee in each chamber should design the laws, and one and only one agency should implement them.

Redundancy and overlap, however, are not always harmful; in fact, in certain circumstances they may be the preferred organizational structure. Redundancy in effort and control can provide a measure of reliability in the face of uncertainty. If one committee or program fails, another is there to succeed. The importance of duplication is well understood in science and engineering contexts where reliability can be extremely valuable. Commercial airlines, for example, use four engine planes for flights that air traffic controllers cannot easily divert to nearby airfields for an emergency landing in the event engine problems arise.¹¹⁰ If each engine operates independently and has the capability of enabling the flight to continue in the face of another engine's failure, then the probability of a crash decreases notably as the number of engines increase. As experts note, a failure of one engine in a multi-engine plane will have virtually no impact on cruise performance if

their position and suggesting this may have happened with David Card and Alan Krueger's study of the minimum wage).

¹⁰⁸ See *supra* notes 47–71, 92–97 and accompanying text.

¹⁰⁹ See *supra* notes 47–71 and accompanying text.

¹¹⁰ The Boeing 747, for example, has four engines and offers a high level of reliability. See generally ALEXANDER T. WELLS & CLARENCE C. RODRIGUES, COMMERCIAL AVIATION SAFETY 243 (4th ed. 2004) (stating that multiple sources of power allow adequate system function when one or more elements fail).

the remaining engines continue to operate effectively.¹¹¹ Because a single engine plane has, say, a 1/10 chance of failing, and the mathematical probability of failure is equal to the product of each component's failure rate, a four engine craft has a mathematical probability of failure equal to 1/10,000.

This logic, which is an important aspect of reliability engineering,¹¹² can be extended to various other situations. Military handbooks use reliability theory to assess the dependability of military equipment as well as when making decisions about the viability of its operations.¹¹³ And, while perhaps unarticulated, reliability theory arguably shows up in an array of legal and policy contexts. The Framers supported it when they wrote a Constitution calling for separation of powers across different federal decision-makers; they perceived a system of checks and balances as more reliable than any one of its parts and believed overlapping powers could guard against bad—even tyrannical—policymaking.¹¹⁴ Congress has recognized the value of redundancy by authorizing two federal court systems—special and general jurisdiction courts—to decide bankruptcy, tax, custom, and patent disputes.¹¹⁵ Further, city and state governments recognize the usefulness

¹¹¹ See generally WELLS & RODRIGUES, *supra* note 110, at 242–43, 248 (stating that with redundancy, no single failure of an electrical, hydraulic, or flight control component will result in a reduction of operational capability).

¹¹² See generally WALLACE R. BLISCHKE & D.N. PRABHAKAR MURTHY, RELIABILITY: MODELING, PREDICTION, AND OPTIMIZATION 483 (2000) (listing redundancy as one aspect of reliability engineering); HERBERT HECHT, SYSTEMS RELIABILITY AND FAILURE PREVENTION 175–76, 182 (2004) (stating that redundancy is “effective against a broad spectrum of failure mechanisms and most effective against random failures”); ARNLJOT HOYLAND & MARVIN RAUSAND, SYSTEM RELIABILITY THEORY: MODELS, STATISTICAL METHODS, AND APPLICATIONS 173–77, 212 (2004) (discussing different types of redundancy from a reliability engineering perspective); PAUL A. TOBIAS & DAVID C. TRINDADE, APPLIED RELIABILITY 165–67 (1986) (discussing benefits of redundancy, as well as its increased costs).

¹¹³ As one analyst noted, “[r]edundancy in war can yield flexibility and security. It ensures that when one system fails for whatever unforeseen reason, another can take its place. It provides the ability to meet unexpected challenges.” Frederick W. Kagen, *The Art of War*, in AMERICAN DEFENSE POLICY 229, 231 (Paul J. Bolt et al. eds., 8th ed. 2005) (exploring redundancy in the context of the Iraq war and noting increased ability to handle Saddam Hussein’s missiles).

¹¹⁴ See generally FORREST McDONALD, NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION 185–224 (1985) (discussing the various attitudes and ideas held by the Framers). Reliability theorists also use the language of “checks and balances” when assessing a system. See HECHT, *supra* note 112, at 23–26 (“In a space mission, a system of checks and balances is set up, or should be set up, to avoid errors.”).

¹¹⁵ Cf. PATRICK C. REED, THE ROLE OF FEDERAL COURTS IN U.S. CUSTOMS & INTERNATIONAL TRADE LAW 18–20 (1997) (discussing reasons Congress decides between creating specific and general jurisdiction courts, and the fact that different types of customs cases are split between courts of specific and general jurisdiction); Wendy L. Hansen et al., *Specialized Courts, Bureaucratic Agencies, and the Politics of the U.S. Trade Policy*, 39 AM. J. POL. SCI. 529, 530–32 (1995) (analyzing the Court of International Trade, a specialized court with jurisdiction over U.S. trade policy disputes, and discussing issues concerning the creation of specialized courts in general); James E. Pfander, *Article I Tribunals, Article III Courts, and the Judicial Power of the United States*, 118 HARV. L. REV. 643, 656–60 (2004) (providing a history of Article I specialized tribunals); Richard L. Revesz, *Specialized Courts and the*

of overlap when they intentionally set up dual planning committees to assess matters of local importance.¹¹⁶

Allowing for redundancy and overlap in equipment parts and in decisionmaking bodies is useful when success is important and the probability that a single component will fail is alarmingly high.¹¹⁷ Of course some may argue that policy analysts should not concern themselves with failing social welfare programs given that redistributive policies are inherently illegitimate. Assisting the poor need not be a policy priority.¹¹⁸ Nevertheless the integrationists, and this Article, accept this prioritization for purposes of discussion.

A. Decisionmaking at the Committee Level: The Drawbacks of Centralizing Power with a Single Group

Underlying the proposal to give a monopoly to the tax-writing committees are two assumptions: (1) Congress can rely completely upon the House Ways and Means and Senate Finance Committees to achieve its goals in the social welfare context; and (2) redundancy is not as necessary as it might be in other contexts, such as in the commercial airline industry and the Constitution for purposes of assuring success. There are, however, several reasons why the tax-writing committees (or any committee with a monopoly) could fall short in its assignment to create useful policies and programs, thereby suggesting that success may indeed depend on redundancy.

To understand the possibility of failure, consider the reality that an individual committee member's preferences may differ from the chamber's policy preferences as a whole. These differences could lead to a disappointed majority in Congress. The tax specialists, for example, may prefer larger subsidies for the poor, whereas the majority may have political preferences that call for reduced subsidies and payments. The House Ways and Means and Senate Finance Committee members are perfectly placed to implement their own goals over those of all other legislators because they pos-

Administrative Lawmaking System, 138 U. PA. L. REV. 1111, 1111–15 (1990) (listing specialized Article III courts).

¹¹⁶ See generally BENDOR, *supra* note 7, at 119–66 (investigating competitive planning in Minneapolis, Minnesota).

¹¹⁷ Cf. BENDOR, *supra* note 7, at 52–53 (noting that redundancy is a strategy for reducing and containing failures, and its usefulness is related to the “significance of the failure”); Heimann, *supra* note 11, at 421, 433 (investigating the value of redundancy in context of space shuttle losses).

¹¹⁸ See, e.g., ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 169–72 (1974) (arguing that taxation is a form of slavery and redistributive policies raise serious problems associated with individual property rights); Shaviro, *supra* note 4, at 467 (observing that welfarism is controversial because it ignores individual claims to wealth and property). *But see* A.B. ATKINSON, *PUBLIC ECONOMICS IN ACTION: THE BASIC INCOME/FLAT TAX PROPOSAL 15* (1995) (positing that depending on how one models public economics, transfers may work to the benefit of all, from an individual welfare perspective).

sess a monopoly over the welfare program.¹¹⁹ If the chamber as a whole prefers something different, the Ways and Means and Senate Finance Committees—with their gate-keeping powers—can hold the social welfare program hostage until they know they will succeed on the floor with their proposed policy.¹²⁰

Alternatively, the Committee and chamber may have similar views on the level of antipoverty subsidies, but the Committees' policy priorities may differ from those of the other legislators in the chamber. Thus, though well intentioned, the tax-writing committees could decide to move welfare to the “back burner” in order to work on the tax policies perceived to be more important. From a theoretical perspective, then, it is risky for an organization to allocate broad powers to a single component in the system.¹²¹ Allowing an “unfriendly” decisionmaker, or one with differing priorities and values, means possibly forgoing what is desired as far as policies and programs are concerned.

Empirical data reveal that when it comes to ideology, the tax-writing committees in fact tend to have political preferences that are extremely close to those found in the chamber as whole.¹²² These parallel political preferences have existed at least since 1960 and continue today. Thus, unlike the House Agriculture Committee, which is consistently more conservative than the chamber as a whole, or the House Education and Workforce Committee, which is consistently more liberal,¹²³ the tax-writing committee may be exactly the type of “friendly” committee upon which the House majority can rely.

Overlapping political preferences may increase the likelihood that the Ways and Means Committee will produce politically attractive programs

¹¹⁹ See CHISHOLM, *supra* note 15, at 180 (stating that awarding a monopoly to a public institution makes it likely that programs will be tailored for certain special interest groups while ignoring other group interests). Empirical data on committee hearings indicate that committee members hear legislative testimony that reflects their own biases and preferences. Members then rely on this testimony to bolster their case for specific legislative initiatives that advance their goals. Jones, Baumgartner & Talbert, *supra* note 14, at 661–63 (suggesting that committee witnesses “preach to the crowd”). Even if committees collect complete information, they may conceal selected portions of their data in order to manipulate the decisionmaking process on the floor to assure their preferred outcomes. See KREHBIEL, *supra* note 35, at 151–91 (predicting chamber gives less deference to committees with outlier preferences).

¹²⁰ See Weingast & Marshall, *supra* note 35, at 143 (discussing committees as powerful gatekeepers).

¹²¹ See Michael M. Ting, *A Strategic Theory of Bureaucratic Redundancy*, 47 AM. J. POL. SCI. 274, 287 (2003) (noting that principals can achieve goals when they award agents a monopoly if agent is friendly, but redundancy is more effective when agents have opposing viewpoints).

¹²² COX & MCCUBBINS, *supra* note 35, at 60–84 (comparing tax-writing committee and chamber preferences and showing similarity); KREHBIEL, *supra* note 35, at 105–50 (same); RANDALL STRAHAN, *NEW WAYS AND MEANS: REFORM AND CHANGE IN A CONGRESSIONAL COMMITTEE* 84–87 (1990) (same).

¹²³ COX & MCCUBBINS, *supra* note 35, at 60–84; KREHBIEL, *supra* note 35, at 105–50.

(increased or decreased levels of subsidy), and this may assure that the chamber can rely on the Committee to implement its policy priorities. However, the existence of similar political preferences and policy priorities does not guarantee that the Committee will produce the *best* programs.¹²⁴ Consider, as Jonathan Bendor has noted, that at least four different theories of poverty currently exist, and each calls for a different type of program to remedy the problem¹²⁵:

Theory 1: Class divisions in society are the cause of poverty. Programmatic Implication: Congress should adopt a program of cash transfers that equalize income throughout society.¹²⁶

Theory 2: People who are lazy, have bad moral character, and do not want to work/live in poverty. Programmatic Implication: Congress should adopt a system of benefits that are targeted only to those in genuine need, such as the mentally ill or physically disabled.¹²⁷

Theory 3: The culture of poverty that is passed on from one generation to the next is the problem; families in poverty tend to suffer high divorce rates, the mothers abandon their children, and poor individuals refuse to join community life or political parties. Programmatic Impli-

¹²⁴ A number of empirical studies suggest that while the tax-writing committees may have similar political preferences, they may not have similar political goals. *See, e.g.,* FENNO, *supra* note 64, at 210–12 (suggesting that tax-writing committee members have goals associated with power and prestige inside Washington while other committee member’s care more about “good” public policymaking); SMITH & DEERING, *supra* note 23, at 86–87 (summarizing committee members’ goals and highlighting differences across committees).

¹²⁵ Various other authors have put together a similar listing of social welfare policies. *See* BENDOR, *supra* note 7, at 16–17 (listing four different theories of poverty); *see also* ICELAND, *supra* note 2, at 98 (listing three views of poverty); Lee Rainwater, *Stigma in Income-Tested Programs*, in *INCOME-TESTED TRANSFER PROGRAMS: THE CASE FOR AND AGAINST* 24–26 (Irwin Garfinkel ed., 1982) (listing eleven possible causes of poverty and showing how views vary across countries).

¹²⁶ BENJAMIN I. PAGE & JAMES R. SIMMONS, *WHAT GOVERNMENT CAN DO: DEALING WITH POVERTY AND INEQUALITY* 47 (2000) (noting that during the 1960s and 1970s, politicians and poverty experts on both the right and the left subscribed to the idea that poverty is caused by the maldistribution of income).

¹²⁷ *Id.* at 51–56 (suggesting that government should offer subsidies that promote education and investments in human capital to avoid encouraging less than ideal social behaviors); *see* GEORGE GILDER, *WEALTH AND POVERTY* 68–69 (1981) (stating that free government benefits encourage laziness); MICHAEL MORRIS & JOHN B. WILLIAMSON, *POVERTY AND PUBLIC POLICY: AN ANALYSIS OF FEDERAL INTERVENTION EFFORTS* 30–34 (1986) (outlining and critiquing alleged motivational causes of poverty); CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980*, at 9, 146 (1984) (discussing and endorsing “popular wisdom” that people avoid work and are amoral absent pressures to the contrary).

cation: Congress should tie benefits to an individual's participation in society and to the creation of positive family structures.¹²⁸

Theory 4: Insufficient government benefits cause poverty. Programmatic Implication: Congress should design programs that allow individuals to have the benefits necessary to live above the poverty line, such as child care, housing, health care, food, education, and so forth.¹²⁹

Legislators with similar ideological preferences may agree on the level of funding and may agree antipoverty legislation should be a priority, but they may disagree vehemently over the underlying mechanism that leads to poverty and therefore disagree about the best means for addressing the problem. Placing social welfare within the jurisdiction of the tax-writing committees assures that the programs will be biased toward their members' theories of poverty and their ideas on how to remedy it. In fact, this same bias shows up in the extant policy literature: the integrationists generally favor a negative income tax as the means to fight poverty—a system that would provide poor individuals with cash transfers that would gradually phase out as income rises and is replaced by a positive tax.¹³⁰ This mechanism would fit well with Theories 1 and 4, which imply poor people are poor because of class divisions in society and because of insufficient government benefits. However, it would not help to eradicate poverty if the poor conditions are caused by bad moral character as suggested by Theory 2, or by a culture of poverty as implied in Theory 3.

Of course, tax subsidies need not take a single form—the committees could design an array of tax benefits that attend to different theories. But this leads to the problem of competence: Can a single committee build the level of expertise necessary to ensure that the subsidies are effective and successful, or will the subsidies be suboptimal and fail to meet congressional expectations? Overlapping jurisdictions allow a range of legislators

¹²⁸ LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* 3, 9–10 (1986) (arguing welfare programs should teach poor people a sense of responsibility and not simply entitlement).

¹²⁹ DAVID RAPHAEL RIEMER, *THE PRISONERS OF WELFARE: LIBERATING AMERICA'S POOR FROM UNEMPLOYMENT AND LOW WAGES* 9 (1988) (advocating cash payments and wage supplements as a means to get the poor out of poverty).

¹³⁰ See FRIEDMAN, *CAPITALISM AND FREEDOM*, *supra* note 8, at 191–92 (advocating negative income tax); Eifler, *supra* note 8, at 758 (advocating a wage subsidy program similar in some respects to the negative income tax); Shaviro, *supra* note 4, at 410, 469–73 (advocating negative income tax); see also *supra* note 8 and sources cited therein. *But see* Alstott, *supra* note 8, at 589–91 (noting drawbacks of negative income tax); Weisbach & Nussim, *supra* note 6, at 999 (supporting integration but rejecting negative income tax).

to bring their knowledge and skill to the policy problem.¹³¹ They allow Congress to test different theories and enable Congress to try different solutions to cure the problem rather than relying on a single group to resolve a matter of immense national importance.

The integrationists are right to point to the problems of coordination and the costs of redundancy, but it is important to investigate whether these drawbacks are worse than those that would emerge in a unified system. A simple unified system would stabilize the effective marginal rates and prevent the benefits from working at cross purposes.¹³² A unified system would also entail Congress placing the fate of social welfare programs in the hands of a single committee that may not have the expertise to address the range of problems that would emerge. Put differently, poor individuals face shortages in food, healthcare, housing, education, pensions, and economic opportunities that may be best addressed through a complex arrangement of cash transfers and in-kind benefits rather than a series of tax credits that phase in and out in a harmonious fashion. Indeed, recent integration advocates have worried about precisely this problem. Weisbach and Nussim note that food stamps are useful because they assist the poor at any time of year when dire economic circumstances emerge, but tax preferences tend to be allocated on an annual basis and consequently could leave poor people in untenable circumstances.¹³³

Redundancy and overlap are not only advantageous for attaining reliability and for allowing experts to design the individual components necessary to make the system as a whole work, they also set up competitive structures. As economists frequently note, competition leads to innovation and creativity.¹³⁴ Competition creates a process of checks and balances that protects against abuse, inefficiency, and incompetence. In fact, when independent actors are forced out of a system, monopolies emerge. Several commentators have argued that this is exactly what causes the market to

¹³¹ Cf. BENDOR, *supra* note 7, at 53 (suggesting that redundancy is desirable because it produces innovations at a greater rate than monopoly); KREHBIEL, *supra* note 35, at 61–105 (discussing informational advantages associated with decentralizing decisionmaking in congressional committees); OSBORNE & GAEBLER, *supra* note 14, at 79–80, 83–84, 252–53 (investigating advantages of decentralized and competitive government and noting increased levels of innovation); Heimann, *supra* note 11, at 433 (arguing that redundancy may be valuable in context of research and design phase of government projects); *see also supra* notes 98–100 and sources cited therein.

¹³² Shaviro, *supra* note 4, at 474–75.

¹³³ Weisbach & Nussim, *supra* note 6, at 1016–17. For example, integration of food stamps into the tax code may eliminate the level of “responsiveness” to the onset of spells of poverty that is currently found in the food stamp program. *See* CHISHOLM, *supra* note 15, at 10 (“[T]he rigid character of standardized procedures inherent in formal centralized structures precludes adaptive responses to surprise, and the organizational system suffers accordingly.”).

¹³⁴ Cf. NISKANEN, *supra* note 14, at 167–68 (advocating competition among bureaucracies); OSBORNE & GAEBLER, *supra* note 14, at 80–84 (advocating competition among government service providers); Stephen J. Nickell, *Competition and Corporate Performance*, 104 J. POL. ECON. 724, 741 (1996) (finding that increased competition is associated with a higher rate of productivity).

cease to function effectively. It is well known that the monopolist in the private sector seeks “the quiet life”;¹³⁵ so too for government actors. If multiple committees have control over the different programs, it is likely that each committee will seek to gain publicity and credit for designing the best and most effective policy.¹³⁶

Of course, this argument assumes that committees actually compete in Congress to produce the best policies and programs, which is a debatable proposition. Some social scientists have argued that legislators have established the committee system precisely to avoid intrachamber rivalry.¹³⁷ Legislators seek committee assignments that allow them to work on and control discrete issues. In exchange for these gate-keeping powers, they are willing to forgo influence over all other policy areas.¹³⁸ Because jurisdictional parameters do not change very often, legislators can be confident that they will not lose control and authority over their preferred programs. Without fear of jurisdictional loss, committees are free to create policies and programs that are more and less successful without any concern for the consequences.¹³⁹ If this description of committees and their work is true, then the advantages associated with competition may not exist—there is no explicit competition among committees. There may, however, be a certain amount of “latent” competition; that is to say, committees may compete with themselves.¹⁴⁰ This type of competition is likely to surface because Congress relies on the committees to create successful policies. Committees that repeatedly fail will suffer a loss of resources, staff, or in drastic circumstances, may be eliminated altogether.¹⁴¹ Given resource limitations

¹³⁵ See Oliver D. Hart, *The Market Mechanism as an Incentive Scheme*, 14 BELL J. ECON. 366, 366 (1983) (noting that monopolies allow “managerial slack”); J.R. Hicks, *Annual Survey of Economic Theory: The Theory of Monopoly*, 3 ECONOMETRICA 1, 8 (1935) (“The best of all monopoly profits is a quiet life.”); BENDOR, *supra* note 7, at 3.

¹³⁶ Redundancy, however, may have drawbacks. See Gary J. Miller & Terry M. Moe, *Bureaucrats, Legislators, and the Size of Government*, 77 AM. POL. SCI. REV. 297, 311 (1983) (arguing that competition in public sector is valuable in some contexts but does not always lead to better output); Joseph E. Stiglitz, *Potential Competition May Reduce Welfare*, 71 AM. ECON. REV. 184, 184–85 (1981) (noting that in certain circumstances monopolies are efficient means to distribute goods and services); Joseph Stiglitz, *The Private Uses of Public Interests: Incentives and Institutions*, 12 J. ECON. PERSP. 3, 12–13 (1998) [hereinafter Stiglitz, *Private Uses of Public Interests*] (stating that competition in political markets, if perceived as zero-sum game, can lead to higher costs); Ting, *supra* note 121, at 276 (noting that redundancy in government operations can lead to collective action problems among agents). See generally JOHN MAURICE CLARK, *COMPETITION AS A DYNAMIC PROCESS* 24–62 (1961) (offering intellectual history of theories of competition).

¹³⁷ See Weingast & Marshall, *supra* note 35, at 137, 144.

¹³⁸ For example, members from farm districts will select onto the Agriculture Committee and those from urban districts will choose the Financial Services Committee. See *id.* at 151–52.

¹³⁹ See *supra* notes 102–107 and accompanying text.

¹⁴⁰ Ting, *supra* note 121, at 276.

¹⁴¹ COX & MCCUBBINS, *supra* note 35, at 254–58 (listing various instruments of control); KREHBIEL, *supra* note 35, at 78–103 (positing that committees that fail to provide useful information do

and the various budgetary constraints that legislators have implemented, it is likely that at least some competition and rivalry (whether overt or latent) exists, which in turn leads to innovation in program design.

At bottom, redundancy and overlap in the social welfare system assures reliability in program coverage, takes advantage of a range of decisionmakers' expertise and knowledge, and fosters at least some competition among committees to innovate and create the best possible policies and programs—each provides advantages to the system that integrationists fail to consider.¹⁴² Yet, even with these countervailing factors, advocates of reform might still take the position that the system needs streamlining; that the level of reliability, expertise, and competition has not only reached the level of diminishing marginal returns, but it imposes negative marginal returns to the system. Perhaps some redundancy is useful, but in this case, the costs have exceeded the benefits. In short, Congress has tried redundancy—and it has failed—and it should now implement a different mechanism for conquering the poverty problem. Part III.B considers how organizational structures might take advantage of redundancy and overlap while still achieving the level of coherency and efficiency that the integrationists demand.

B. Decisionmaking in Complex Organizations: The Benefits of Parallel and Hierarchical Decisionmaking Structures Joined Together

The committees with jurisdiction over the social welfare programs are not in complete control over the law; each initiative must be voted on by the House floor and the Senate floor, and signed by the President. When the additional decisionmakers are added to the equation, the argument for a committee monopoly becomes even weaker. To conceptualize this, consider two basic organizational paradigms: the hierarchical approach to decisionmaking, which is advocated by the integrationists, and the parallel form, which is the current approach that Congress uses for purposes of designing and implementing the social welfare laws.¹⁴³ With a complex ar-

not succeed on the floor). Committees that succeed in specialization, by contrast, achieve informational asymmetries (i.e., specialized information in the hands of the committee members) and enable good policymaking and thus will be rewarded with increased resources. The chamber can determine whether or not the committee is a specialist—and thus whether or not to rely on the committee's legislative proposals—by observing the number of committee hearings on a bill, the seniority of the membership, the quality of the staff, and the staff resources devoted to the particular piece of legislation. *Id.*

¹⁴² Another reason that jurisdictional redundancy may be preferred in the lawmaking context is because it leads to stable outcomes. See Jones, Baumgartner & Talbert, *supra* note 14, at 657 (noting that committees have a difficult time retaining permanent or complete jurisdiction over issues); *supra* notes 109–117 and accompanying text; see also BENDOR, *supra* note 7, at 42 (discussing relationship between organizational stability and effectiveness).

¹⁴³ For purposes of clarification, I use the term “organizational paradigm” to mean an organizational model or system of subunits, known as components or decisionmakers, which are linked together in a particular structure. In this context, the organization is the federal government and includes various components such as individual committees, the House floor, the Senate floor, and the executive—all of

rangement of decisionmakers and one slightly modified from what we observe today, Congress may be able to improve the laws that emerge from the existing system without moving to the hierarchical structure advocated by the integrationists that allows for issues monopolies.

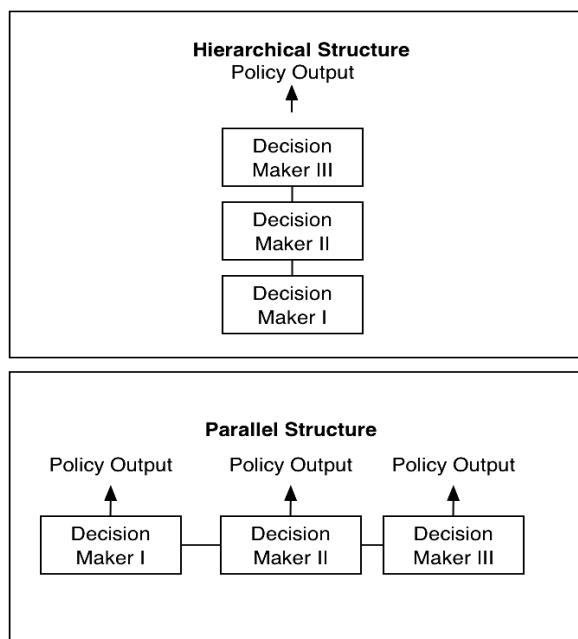
The hierarchical approach to decisionmaking calls for concentrating authority in a few individuals (or only one individual at each level of the process). In this configuration, as depicted in the top panel of Figure 1, the decisionmakers are arranged in a series. The first decisionmaker considers a policy proposal; if she (or the committee) approves the policy, she will pass it along to the second decisionmaker for approval, who then passes it along to the third, and so forth.¹⁴⁴ Each decisionmaker must endorse the policy initiative in order for it to move to the next step in the process and ultimately for it to become law. Thus, effective policymaking in this type of hierarchical configuration requires that initiatives move through each component. Though each component operates independently, each is completely dependent upon the others for overall success.¹⁴⁵ If one decisionmaker fails to reach a good decision, then the whole system fails. If one component refuses to approve a good policy, that policy will not be implemented.

which play a role in the design of the laws that emerge from Congress. Heimann, *supra* note 11, at 423 (explaining systems and units in reliability analysis).

¹⁴⁴ HOYLAND & RAUSAND, *supra* note 112, at 94 (explaining that series structure functions only if all components function); Heimann, *supra* note 11, at 424 (discussing decisionmaking in hierarchical structure); Sah & Stiglitz, *supra* note 11, at 716–18 (same).

¹⁴⁵ Heimann, *supra* note 11, at 423–26; Sah & Stiglitz, *supra* note 11, at 716–18.

Figure 1: Hierarchical and Parallel Decisionmaking Structures



The second type of decisionmaking structure is the parallel configuration depicted in the lower panel of Figure 1.¹⁴⁶ In contrast to the hierarchical form, the parallel approach enables policymakers to move a bill forward if one component authorizes it. The lower panel in Figure 1 shows that each component in the parallel form is an independent decisionmaker and can function without concern for any other piece of the system. This independence means that a policy can pass through just one decisionmaker to get to the implementation stage. A parallel structure (i.e., the form adopted by commercial airlines, the Framers, and Congress) allows success even in the face of a partial system failure and because it does so is widely admired by theorists concerned with organizational output.¹⁴⁷ The whole system succeeds if one component succeeds.

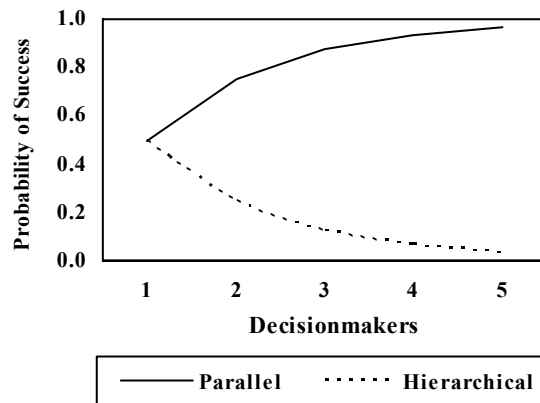
The chances of success under each decisionmaking paradigm differ as starkly as the models themselves. In a hierarchical system, each additional component decreases the likelihood that the system as a whole will succeed. Consider the hierarchical system with n decisionmakers, $D_1, D_2, D_3 \dots D_n$,

¹⁴⁶ HOYLAND & RAUSAND, *supra* note 112, at 94 (explaining that parallel systems function if at least one component functions); Heimann, *supra* note 11, at 423–26; Sah & Stiglitz, *supra* note 11, at 716–18.

¹⁴⁷ See, e.g., Heimann, *supra* note 11, at 426–33. See generally BENDOR, *supra* note 7; Landau, *On Multiorganizational Systems*, *supra* note 11, at 5–18; Landau, *Redundancy, Rationality*, *supra* note 11.

where each decisionmaker (“*D*”) must consider a policy before it can move to the next level in the system. If each decisionmaker’s reliability is mutually exclusive, then the reliability of the system is easy to compute: it is the product of all the components’ probabilities of success.¹⁴⁸ Assuming that each decisionmaker has a 50% chance of making a good decision, then policymaking with a single decisionmaker will be successful 50% of the time; with two decisionmakers the probability of adopting good policies decreases to 25%; with three the number goes to 12.5%, and so forth. As Figure 2 suggests, increasing output in the hierarchical system requires the institution either to augment individual decisionmakers’ reliability or eliminate them from the system altogether, thereby relying on fewer individuals and groups in the lawmaking process. This conclusion may suggest initially that a monopoly *is* the most reliable and efficient organizational structure. However, such a conclusion is undermined when one considers the parallel configuration.

Figure 2: Success Rates in Hierarchical and Parallel Decisionmaking Systems



A parallel system enables institutional success with a single decisionmaker’s success. In a parallel system also with n decisionmakers, $D_1, D_2, D_3 \dots D_n$, where only one must consider a policy before it becomes law, the system’s reliability can easily be computed.¹⁴⁹ Figure 2 indicates, unlike the hierarchical system where each additional decisionmaker *decreases* the

¹⁴⁸ If we denote the reliability of each component as R , then the system reliability can be calculated with the following equation: $R_{system} = (R_1)(R_2)(R_3) \dots (R_n)$.

¹⁴⁹ The reliability of this system is calculated with the following equation: $R_{system} = 1 - ((1 - R_1)(1 - R_2)(1 - R_3) \dots (1 - R_n))$. See also Sah & Stiglitz, *supra* note 11, at 716–19 (noting that parallel system accepts larger proportion of projects when compared to hierarchy).

chance of success, that in the parallel system each additional decisionmaker *increases* the chance of overall success. Thus, assuming that each decisionmaker has a rate of success equal to 50%, then two decisionmakers will increase the chances of institutional success to 75%, three decisionmakers to 88%, and so forth.¹⁵⁰ Therefore, while single components in a hierarchical system may be able to produce output, success is more likely in a multi-component system arranged in parallel form.

Of course, the framework that I have just outlined assumes reliability and success are linked to policy output, and failure occurs when the system fails to produce laws. But the integrationists have strongly—and convincingly—argued that the multiple programs and the redundant policies that have emerged are precisely the problem. There are too many programs and their excess is causing system-wide failure. Success should be defined as circumstances in which the policymakers (1) adopt a good policy *or* (2) refuse to adopt a bad policy. Similarly, failure should be defined as the situations in which policymakers (1) adopt a bad policy *or* (2) refuse to adopt a good policy. Focusing on failures, statisticians label an error of commission a “Type I error” and an error of omission a “Type II error.”¹⁵¹ Modern reliability theory distinguishes between these types of errors and instructs on how to build a system that avoids committing them.¹⁵² Thus, a more complex understanding of success and failure requires further examination of the advantages and drawbacks of the hierarchical organizational structure versus the parallel organizational structure.

Depending on the institution’s aims and goals, different structures should be adopted in different circumstances. Consider again the parallel structure that makes it easier for an institution to adopt laws—both good and bad. Although the institution wants the good policies, if the cost of bad policies exceeds the benefits of the good ones, then it is better to implement a hierarchical structure as advocated by the integrationists because it makes it difficult to adopt bad policies. In other words, the institution must determine whether it is better overall to have more policies (good and bad) or whether it is better to have fewer policies (avoiding the bad but missing out on the good). When there is consensus on the relative importance of the two types of error or when there is agreement that only one type of error is consequential, one kind of redundancy should be pursued in order to decrease total damage.¹⁵³ In some contexts the decision should be relatively

¹⁵⁰ The parallel system—one that allows for overlapping and redundant components—is attractive for this feature, but it also has its limits. As Figure 2 shows, the marginal return of each additional decisionmaker is decreasing and this, along with the increased costs associated with adding additional components, makes it clear that infinite redundancy will not or should not occur.

¹⁵¹ ALAN AGRESTI & BARBARA FINLAY, *STATISTICAL METHODS FOR THE SOCIAL SCIENCES* 175–77 (1997) (discussing Type I and Type II errors).

¹⁵² See BENDOR, *supra* note 7, at 49–52 (discussing Type I and II errors); Heimann, *supra* note 11, at 426–33 (same); Sah & Stiglitz, *supra* note 11, at 716–18 (same).

¹⁵³ BENDOR, *supra* note 7, at 52.

easy. For example, when NASA ponders whether to launch a spacecraft, NASA would logically prefer to avoid the type of error that leads to a malfunctioning launch—NASA would rather avoid adopting a bad decision, to go forward, even if that means a missed opportunity to launch.¹⁵⁴ To avoid Type I error, NASA should adopt a hierarchical configuration—a decisionmaking system that will prevent a launch unless every component agrees it should take place and will be stopped if even one objects.¹⁵⁵ In other circumstances, say in the context of research and development (“R&D”), NASA might prefer to deploy a parallel system, one that allows multiple decisionmakers to work on engineering problems and to find an array of solutions.¹⁵⁶ In the R&D context, NASA prefers to make it easier for scientists to innovate notwithstanding the correlative risk associated with the increasing probability of Type II errors—fruitless discoveries that may emerge from the labs.

The integrationists might reasonably argue that they prefer to assure that extremely effective decisionmaking occurs (as in the NASA launch) given the importance of success to the individuals living in poverty. Failure has serious and negative consequences and thus a hierarchical structure is preferred. But large institutions need not choose between the two organizational structures; instead they can utilize a combination of hierarchical and parallel forms to achieve their ends.

In fact, this is exactly what we observe in the current lawmaking process in the context of social welfare. As the bottom panel of Figure 3 shows, at the committee level, the House operates in a parallel form by allocating jurisdiction to five separate committees, each of which independently pursues and advocates a different welfare program. This form fosters a multitude of perspectives as well as competition and innovation in the design process. Just as NASA might prefer parallel decisionmaking in the context of R&D, Congress may prefer a multitude of perspectives at the design phase of the social welfare laws. Once a policy passes through the committee, however, it will then be considered by a series of decisionmakers, including the House floor, the Senate floor, and ultimately the President

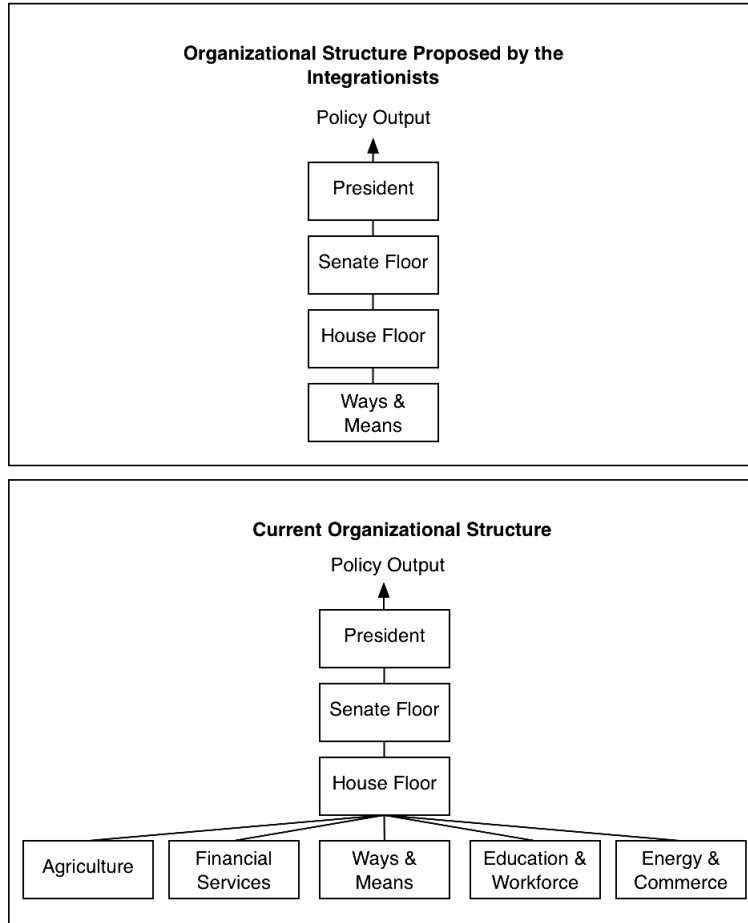
¹⁵⁴ *Id.* (“[B]ecause unnecessarily delaying a NASA launch is a less serious error than launching one that would malfunction, the system is deliberately biased against the former by giving five specialists independent authority to halt a firing.”); HECHT, *supra* note 112, at 26 (stating that Type I error occurred at NASA because management stifled dissenting opinion during meetings); Heimann, *supra* note 11, at 426–33 (stating that the 1970s changes in NASA’s decisionmaking structure led to the launch of the space shuttle *Challenger* before it was ready).

¹⁵⁵ BENDOR, *supra* note 7, at 52; Heimann, *supra* note 11, at 426–33; *see also* Sah & Stiglitz, *supra* note 11, at 716–18.

¹⁵⁶ BENDOR, *supra* note 7, at 52–55 (suggesting that it is sensible to deploy competing problem-solving teams in early stages of R&D because uncertainty is the highest and the cost is low); Heimann, *supra* note 11, at 426–33 (noting that parallel systems are useful when focusing on two-state devices—operating and failing); *see also* Sah & Stiglitz, *supra* note 11, at 716–18 (explaining that parallel or “polyarchical” decisionmaking systems are useful when a team is set up to reject or accept a collection of overall good projects).

before it becomes law.¹⁵⁷ This means that at least three additional bodies must independently review and evaluate the policy proposal before it reaches the implementation stage. Moreover, these bodies or decisionmakers are up the chain of command, and therefore have the authority to sign off on the bill (moving it to the next step in the implementation process) or to kill the proposal because it is perceived to be a bad idea.

Figure 3: Decisionmaking Structures



The proposed organizational structure found in the integration literature is depicted in the top panel of Figure 3. Comparing this structure with the current approach, it is easy to see that the latter is more complex be-

¹⁵⁷ See generally TIEFER, *supra* note 102 (discussing the procedures for a bill to become law).

cause it incorporates both parallel and hierarchical decisionmaking trees. By using a parallel structure at the committee level, the House increases the probability of getting a proposal to the floor for a full vote. But even if the floor approves the policy, it must still make its way through the hierarchical decisionmaking structure, which decreases the probability of the bill's enactment. As discussed, increasing the number of components in a hierarchical system decreases the chance that the policy will get to the implementation stage. Thus, if every component is operating at a 50% success rate then in the current system, with five committees with overlapping jurisdictions, the likelihood of a proposal reaching the House floor is 98%. However, after the House Floor, Senate Floor, and the President's consideration, there is only a 12% probability of success.¹⁵⁸ An integrated system would have a success rate equal to 6%.¹⁵⁹

This analysis assumes that the House floor, the Senate floor, and the President all exercise meaningful oversight. This assumption may not be accurate; in fact, it probably is not. In reality, the House floor is likely to defer to the committee with jurisdiction over a program on the assumption that its members have far more expertise and knowledge than the average member of Congress.¹⁶⁰ If members of Congress view the committee as "friendly," then they are not likely to substitute their own judgment for that of the committee. Doing so would increase the likelihood of Type I and Type II errors in the decisionmaking process.¹⁶¹ Moreover, if the House approves the proposal, it moves to the Senate, which suffers from the same fragmented system of committees and the same level of floor deference to the committee members that is found in the lower chamber of Congress. Realistically, the executive too relies on experts to analyze each proposed bill. These experts are also spread across four different agencies and are likely to seek to protect their "turf" at a cost to the overall system.¹⁶² There-

¹⁵⁸ This was calculated in the following manner:
 $.12 = (.5)(.5)(.5)(1 - ((1 - .5)(1 - .5)(1 - .5)(1 - .5)(1.5)))$. See *supra* notes 147–148 and accompanying text.

¹⁵⁹ See *supra* notes 146–147 and accompanying text.

¹⁶⁰ KREHBIEL, *supra* note 35, at 256 ("[C]ommittees earn the compliance of their chamber by convincing the chamber that what the committee wants is in the chamber's interest."); Morris Fiorina, *Alternative Rationales for Restrictive Procedures*, 3 J.L. ECON. & ORG. 337, 341 (1987) ("[C]ommittee and subcommittee chairs are believed on the floor because they have repeatedly demonstrated their expertise and truthfulness."). See generally RICHARD FENNO, *THE POWER OF THE PURSE: APPROPRIATIONS POLITICS IN CONGRESS* (1966) (noting that the floor defers to committees with expertise).

¹⁶¹ Without significant knowledge and expertise on the topic contained in the bill, members that substitute their own judgment for that of the committee may reject policies that are good or advocate bad policies.

¹⁶² For a discussion of the White House decisionmaking procedures, see NISKANEN, *supra* note 14, at 36–42; DANIEL E. PONDER, *GOOD ADVICE: INFORMATION AND POLICY MAKING IN THE WHITE HOUSE* (2000); PRESIDENTIAL POLICYMAKING: AN END OF THE CENTURY ASSESSMENT (Steven Shull ed., 1999); Stiglitz, *Private Uses of Public Interests*, *supra* note 136, at 6–7.

fore, rather than a hierarchical system placed on top of a parallel structure as depicted in Figure 3, the actual lawmaking system may encompass a series of parallel forms that lead to the dizzying array of uncoordinated and expensive programs that the integrationists hope to eliminate.

To remedy the problem, the integrationists advocate a simple hierarchical form that allows for zero redundancy and overlap at the committee level and in the agencies. The proposed regime in effect allocates a monopoly to the Ways and Means Committee in the House, the Senate Finance Committee, and the Department of Treasury. The integrationists argue that this simple hierarchical decisionmaking structure makes it more difficult to adopt policies and assures those that are adopted are coherent and useful. Further, they argue, the simplified decisionmaking structure will reduce the possibility of Type I errors, errors of commission (Congress will not adopt bad policies), which is unambiguously advantageous. However, the simplified structure also forces each chamber to rely exclusively on a single committee and therefore excludes a range of policy experts and thinkers from the lawmaking process that may constrain innovation and creativity in the design of the laws. Though a simplified structure may decrease the likelihood of errors of commission, it also increases the probability that the government will commit Type II errors—errors of omission (Congress will not adopt good laws).

The ideal system would retain the reliability, expertise, and competition found in the existing system but also would include effective and serious oversight to assure only the best policies emerge from Congress and are signed by the President. The question, then, is whether it is possible to adopt a hybrid system that would allow for a rigorous hierarchical decisionmaking structure layered upon the existing parallel forms found in Congress and the agencies.¹⁶³ One alternative to such a system would be to rely upon informal coordinating devices, such as ad hoc studies and unofficial negotiations that take place between and among the nine standing committees with jurisdiction over social welfare.¹⁶⁴ There is evidence to suggest that this type of informal hierarchy has begun to emerge and is improving the system.¹⁶⁵ While this approach has many advantages, it may be

¹⁶³ See CHISHOLM, *supra* note 15, at 137–59 (exploring hybrid systems that naturally emerge in complex organizations).

¹⁶⁴ Improving our current system of social welfare may require that the nine standing committees and the five agencies coordinate their policy efforts, but it does not necessarily require formal, centralized arrangements. In fact, empirical studies suggest that informal organizational structures often lead to better outcomes because they emerge in the context of personal relationships and high levels of trust. *Id.* at 64–136.

¹⁶⁵ Some legislators have proposed reforms that would move toward an integrated system, *see* KING, *supra* note 35, at 70–77 (discussing 1995 proposal to consolidate jurisdiction over social welfare programs), while others have proposed studies to improve programmatic coordination, *see* H.R. 11, 102d Cong. (1993) (requiring Secretaries of Health and Human Services and Agriculture to report jointly to the President and the Congress on the differences and similarities between food stamps, AFDC, and Medicaid programs); H.R. 4046, 102d Cong. (1993) (same). The congressional committees

impractical due to enforceability problems, timing delays, and a lack of accountability.¹⁶⁶ Another option is for Congress to create formal decision-making bodies to supervise the coordination of the social welfare laws. These supervisory bodies could help avoid the Type I errors that the standing committees are so prone to make, and help prevent Type II errors that simple hierarchical systems are likely to produce. Two alternatives are discussed in Part IV below.

IV. IMPROVING TAX AND SPENDING DECISION: POSSIBLE INSTITUTIONAL REFORMS

Policy analysts—and even most legislators—agree that serious problems exist in systems that allow for fragmented decisionmaking. Though social welfare is a well-known example of this problem, there are many more in other legal and policy areas.¹⁶⁷ Integration of the policies and programs into a single, coherent plan is one way to streamline the system. However, political and normative reasons exist for retaining redundancy. Accordingly, this Part considers two alternatives for improving the social welfare laws that do not call for giving the tax-writing committees and the IRS a monopoly over the process.¹⁶⁸

with jurisdiction over social welfare laws have also begun to study coordination problems. *See* H. COMM. ON WAYS AND MEANS, *supra* note 1, §7, at 352–448 (discussing TANF and interaction with various other social welfare laws); *id.* § 9, at 571–632 (discussing child care programs and interaction with various other social welfare laws); *id.* § 15, at 862–85 (discussing food stamps program and interaction with various other social welfare laws).

¹⁶⁶ Relying on informal structures to achieve policy goals is risky. It privileges the key individuals in the process, and this can lead to decisions that are made for personal ends rather than for the public welfare. Moreover, informal contacts, negotiations, and alliances are made behind closed doors, and this means the system lacks the transparency that many agree is necessary for good lawmaking. *See* CHISHOLM, *supra* note 15, at 142–45 (examining drawbacks to relying on informal bargaining for purposes of improving government services).

¹⁶⁷ *See supra* notes 21–22 and accompanying text.

¹⁶⁸ It is important to point out that Congress could rationally choose to maintain the status quo. As discussed above, allowing a range of decisionmakers to devise policies and programs assures diversity of input and fosters competition among experts to design the best possible laws. If Congress allows multiple committees to continue to work on social welfare but establishes mechanisms to foster coordination among the programs, it will eliminate these advantages. That is to say, if Congress retains food stamps, housing subsidies, Medicaid, and the cash payments programs but adopts the same eligibility criteria for the level of income, for example, then the whole system fails if legislators misjudge the appropriate cut point for the benefits to start and to fall off. In the more diverse approach that we have now, a failure of one component is not related to the failure of another. BENDOR, *supra* note 7, at 44–49 (investigating importance of independence for advantages of redundancy and overlap to obtain increases in reliability). Nonetheless, the overwhelming consensus in Congress and among policy analysts is that the social welfare system could be improved. Moreover, a mandate to improve the system does not necessarily lead either to monopoly conditions (as the integrationists propose) or to a system driven by a single approach for determining need in every program—it only requires that the different programs work in a balanced fashion. And if conflicts exist, a mandate to improve the system will assure that legislators investigate and propose reform to avoid disjointed and problematic lawmaking.

One approach for improving the current system is for Congress to establish a new committee, for example a Select Committee on Social Welfare, to oversee the laws and to propose coordinating reforms. Alternatively, Congress could rely more heavily on existing committees but enhance their oversight responsibilities. Congress could call on the Budget Committees, for example, to assess the performance of the social welfare programs when putting together budget resolutions and reconciliation instructions.¹⁶⁹ Performance-based budgeting is a relatively new idea and many budget analysts believe it has potential to operate as a key, centralizing feature of the lawmaking process—a feature that could provide incentives for fragmented decisionmakers to work together to harmonize their policies and programs.

Successful coordination will require Congress to place a rigorous hierarchical system atop the current system of parallel decisionmakers found in the House and Senate. Put differently, the committees must believe the decisionmakers up the chain of command have some authority—i.e., they will not simply defer to the committees in the lawmaking process. To achieve coordination in the lawmaking context, three elements are necessary: (1) the parties must develop a plan of action that identifies compatible goals and objectives; (2) the plan must be communicated to the individuals and groups who will take responsibility for its implementation; and (3) the plan must be accepted by the relevant parties as legitimate and useful.¹⁷⁰ As discussed below, both alternatives satisfy the first two criteria for success, but only the second approach—performance-based budgeting—has an incentive structure that will force the nine standing committees to accept a plan as legitimate and useful.

A. *A Select Committee on Social Welfare*

At various times throughout history, the House and Senate have used special committees, task forces, summits, and commissions to assist in the lawmaking process.¹⁷¹ Whereas the standing committees are permanent and have the power to receive and report legislative initiatives, the special committees are generally temporary and have no legislative authority.¹⁷² They are useful, however, for purposes of highlighting important policy is-

¹⁶⁹ See *supra* notes 37–46 and accompanying text (discussing budgeting process).

¹⁷⁰ CHISHOLM, *supra* note 15, at 28–30 (describing three elements necessary for coordination and adding a fourth step that requires the collection of information and research for purposes of devising a successful plan); HERBERT SIMON, ADMINISTRATIVE BEHAVIOR 139–40 (1957) (setting forth elements necessary for successful coordination).

¹⁷¹ TEMPORARY SELECT COMM. TO STUDY THE S. COMM. SYS., U.S. SENATE, THE SENATE COMMITTEE SYSTEM: JURISDICTIONS, REFERRALS, NUMBERS AND SIZES, AND LIMITATIONS ON MEMBERSHIP 23–27 (Comm. Print 1976) [hereinafter SENATE COMMITTEE SYSTEM] (discussing the historical establishment of special and select committees in the Senate); SMITH & DEERING, *supra* note 23, at 11–12, 193.

¹⁷² SMITH & DEERING, *supra* note 23, at 11–18.

sues, for studying and investigating pressing problems, and for coordinating the development of policies when overlapping jurisdictions exist.¹⁷³ As Steve Smith and Christopher Deering note:

These groups bring together members from different committees with different points of view. They are intended to short-circuit the turf-conscious committee system and to fashion either legislation or legislative coalitions that might otherwise be bottled up in committee or formulated in ways that suit committee members but not party members.¹⁷⁴

At the height of the Watergate scandal, for example, the Senate established the Special Watergate Committee to investigate the burglary and wiretapping of the Democratic National Committee by President Nixon's campaign fundraising organization.¹⁷⁵ The Special Committee played a pivotal role in gathering evidence that ultimately led to the indictment of forty administration officials and several of Nixon's aides.¹⁷⁶ Again, in the late 1980s, both the House and the Senate set up Select Committees on the Iran-Contra Affair to investigate the secret arrangement to provide funds to Nicaraguan contra rebels; these Committees played an important role in conducting hearings and gathering data on the conspiracy.¹⁷⁷ Today, the Senate has four different Select Committees that advise on Indian Affairs, Ethics, Intelligence, and Aging matters, while the House of Representatives has one, the Select Committee on Intelligence.¹⁷⁸

To address the problems associated with the fragmented system of social welfare, Congress could establish a Select Committee on Social Welfare to launch an investigation into the existing regime. Like the various other ad hoc committees that have existed and still exist today, the Committee would serve as the focal point for discussion and debate on the entitlement programs. The Committee would be responsible for submitting findings and recommendations to the nine standing committees; and it would work to promote coordination among and rationality within the existing programs. Thus, the Select Committee on Social Welfare would centralize the decisionmaking of the nine committees with jurisdiction over the entitlement programs. It would, in effect, operate as a hierarchical structure on top of the parallel form and would steer the standing committees away

¹⁷³ *Id.* at 16; SENATE COMMITTEE SYSTEM, *supra* note 171, at 23 (discussing the function of select committees in discussing and integrating information on cross-cutting issues).

¹⁷⁴ SMITH & DEERING, *supra* note 23, at 191.

¹⁷⁵ *Id.* at 16.

¹⁷⁶ The Special Watergate Committee's work also prompted the introduction of articles of impeachment against the President in the House of Representatives, and this ultimately led to President Nixon's resignation. For a discussion of the event that led to the Watergate burglary and eventually the President's resignation, see CARL BERNSTEIN & BOB WOODWARD, *ALL THE PRESIDENT'S MEN* (1974).

¹⁷⁷ SMITH & DEERING, *supra* note 23, at 16; *see also* BOB WOODWARD, *VEIL: THE SECRET WARS OF THE CIA 1981-1987* (1987).

¹⁷⁸ This committee, however, is a permanent committee. *See* LIST OF STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES, *supra* note 24, at 40.

from bad policies and help coordinate those that currently exist. In this way, the Select Committee would deter the Type I errors that the integrationists have highlighted in their numerous studies of the social welfare laws but would not completely eliminate the competition and innovation at the committee level, thereby avoiding Type II errors.

Congress actually created an Advisory Committee on Social Welfare in 1993—a Committee composed of policy analysts but *no* legislators—to study the entitlement programs and to devise solutions for improving the law.¹⁷⁹ The Advisory Committee determined that fragmentation was not only a major roadblock to serving the needy, but it also imposed unnecessarily high costs on the government. Like the integrationists, the Advisory Committee supported a single, coordinated program and advocated an incremental approach for achieving the reform over the long run. Recognizing the limited impact that the Advisory Committee could have on effectuating actual reform within Congress, it recommended that the legislators establish a Select Committee on Welfare.¹⁸⁰ The Advisory Committee recommended that the Select Committee be composed of the chairs of the nine standing committees that oversee the income transfer programs along with the chairs of the House and Senate Appropriations committees. This structure was suggested in order to provide the Select Committee with a centralizing influence without further fragmenting control and interest in social welfare lawmaking.¹⁸¹

The legislators, however, did not pursue the Advisory Committee's recommendation. Perhaps this was because many policy analysts and working groups had examined the socials welfare laws and had identified the central problems with the system. Thus, a new Select Committee would merely replicate the work that had already been done.¹⁸² Moreover, serving on the Select Committee would force legislators to rearrange their policy priorities and increase workload on matters that may have been perceived as having too little importance.¹⁸³ Equally problematic, the nine standing committees may have viewed the Select Committee as a threat to their autonomy, given that under the current regime they have no reason to share jurisdiction over their individual programs. Evidence suggests that special congressional committees tend to be successful in the context of new issues

¹⁷⁹ See WELFARE SIMPLIFICATION & COORDINATION ADVISORY COMM., *supra* note 4, at 77–78 (committee members' biographies indicate Congress appointed one minister, one political consultant, one scholar, and eight state and local officials).

¹⁸⁰ *Id.* at 63–76.

¹⁸¹ *Id.* at 67.

¹⁸² See *id.* at app. G (listing fifty-four reforms that would improve the existing social welfare system).

¹⁸³ Working on the coordination efforts would require gathering information, documenting decisions, and going through formal channels in the decisionmaking process. SENATE COMMITTEE SYSTEM, *supra* note 171, at 153–54 (noting that increasing the number of committees exacerbates the problems of coordination, scheduling, and overlap); CHISHOLM, *supra* note 15, at 28–35.

that are not firmly within the jurisdiction of any of the standing committees (like Watergate and the Iran-Contra affair), but those instructed to investigate matters within the jurisdiction of permanent standing committees often do not get off the ground or, if they do, do not succeed in accomplishing reform.¹⁸⁴

The fear that a temporary committee will encroach upon the jurisdictional turf of the standing committees has historically interfered with Congress's ability to set up investigative bodies to assist in promoting reforms.¹⁸⁵ In 1995, the House planned to establish a range of special committees to study various problems, including those associated with the social welfare laws, in an effort to produce "a very sophisticated, integrated system"¹⁸⁶ of committees and programs. The ambitious plan failed, however, when the existing committees loudly objected to the proposal. Committee chairs indicated that they would not tolerate any encroachment on their jurisdiction even by temporary committees upon which they would serve. They further argued that the best way to remedy the problems of fragmentation would be to protect committee autonomy and avoid increasing the number of competitor committees that would attempt to coordinate (and thus constrain) the work of the existing ones.¹⁸⁷

While a Select Committee on Social Welfare could theoretically oversee the work of the nine standing committees with jurisdiction over the entitlement programs, in practice this is unlikely to happen. Although legislators have a plan of action (create the Select Committee), and this plan has been communicated to all the relevant actors (through the Advisory Committees' report), the actors have not accepted the plan as legitimate and useful. Shared goals are not enough to implement reform; the parties must agree to take action, and the current incentive structure discourages action along these lines. A more promising alternative for avoiding Type I errors in the lawmaking process is to rely on decisionmaking bodies that have coercive power and can therefore impact substantive laws.

B. Performance-Based Budgeting

The House and Senate Budget Committees develop annual budget resolutions that establish federal spending goals for twenty different governmental functions, including the entitlement programs.¹⁸⁸ To assist the Budget Committees in this process, the executive, agency heads, and the standing committees submit reports, assessments, and views of existing programs and expected costs. Based on this information and data, the Budget Committees adopt budget resolutions, which are translated into

¹⁸⁴ SMITH & DEERING, *supra* note 23, at 192–93.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* (discussing Newt Gingrich's failed plan to set up a series of special committees).

¹⁸⁸ See *supra* notes 41–42 and accompanying text.

committee allocations and then delivered to the authorizing committees. In the context of the entitlement programs, the allocation informs each committee of how much total spending is permitted.¹⁸⁹ For example, if the existing social welfare programs are expected to cost \$400 billion, the Budget Committees can pass a resolution to increase, decrease, or maintain this level. If the budget resolution calls for reducing current expenditures to, say, \$300 billion, then the nine committees with control over the entitlement programs must redesign their programs to reconcile actual spending with the amount outlined in the budget resolution.¹⁹⁰

Although the Budget Committees' instructions often recommend specific program cuts, the affected committees retain the discretion to adopt any deficit-reducing measure they deem appropriate. Thus, the budget resolution and reconciliation instructions provide a macro framework for congressional taxing and spending but leave the details of substantive lawmaking to the authorizing committees. However, the ability to identify specific programs and to recommend precise cutbacks gives the Budget Committees extraordinary influence over federal spending priorities.¹⁹¹ For this Article's purposes, it is important to note that this power has been centralized within a single body in each chamber. Thus, a system already exists for achieving greater levels of oversight than currently take place. In fact, both Congress and the Budget Committee members have recognized the ability of the latter to act in a coordinating function and have begun to

¹⁸⁹ The budget resolution includes information and data regarding total budget authority and outlays, total revenues, the surplus or deficit, and the public debt. The budget resolution may also include reconciliation instructions, which direct either one or several committees to enact laws adjusting spending, revenue, or both in order to comply with the budget resolution. See STAFF OF H. COMM. ON THE BUDGET, *supra* note 42, at 2; *supra* notes 40–44 and accompanying text.

¹⁹⁰ The 2006 budget resolution called for both House and Senate committees to cut their spending, and each committee had to submit reconciliation bills by September 16, 2005. See STAFF OF H. COMM. ON THE BUDGET, *supra* note 42, at 6–12 (discussing reconciled budget cuts by committee). The Budget Committees have mandated that the committees with control over the entitlement programs cut their budgets by roughly \$60 billion. *Id.* Although the budget resolution requires that each committee cut its spending, it does not specify whether these cuts will come from the social welfare programs. Still, there seems to be a presumption that this is where the cost savings will take place. *Id.*

¹⁹¹ Countless legislators and commentators have noted that the Budget Committee's ability to set the budget, identify certain programs for expansion or cut backs, and enforce these resolutions and instructions gives its members extraordinary power over the lawmaking process. SCHICK, *THE FEDERAL BUDGET*, *supra* note 37, at 117–20 (remarking that the budget committees are powerful because they can initiate sweeping changes in federal tax and spending policy); SCHICK, *WHOLE AND THE PARTS*, *supra* note 37, at 26 (“[R]econciliation in the first step of the congressional budget process undermines the committee system, reposing in the Budget Committee authority to legislate substantively with respect to the nature and scope of federal activities. Such a procedure . . . infringes on the legitimate roles of authority and appropriations processes.” (quoting a letter of protestation from sixteen House committees)); SMITH & DEERING, *supra* note 23, at 63 (“[D]riven largely by the importance of budget deficits on the national agenda, and augmented by several centralizing trends in national policy making, the Budget Committee must now be ranked among the most powerful of standing committees.”).

explore using this power to promote better and more effective government programs.

One recent effort at increasing programmatic performance was the enactment of the Government Performance and Results Act (“Results Act”). The Results Act was intended to help “shift the focus of government decisionmaking and accountability away from a preoccupation with the activities that are undertaken—such as grants dispensed or inspections made—toward a focus on the results of those activities, such as real gains in employability, safety, responsiveness, or program quality.”¹⁹² As explored below, the Results Act focused on agency activities and not committee work, but it established a framework that might be transported and implemented in the legislative context.

The Results Act sets forth a series of steps for improving government performance, which are nearly identical in their goal to those deemed necessary for the successful coordination of efforts listed above: the development of a plan, communicated to the relevant parties, who accept it as legitimate and useful.¹⁹³ The Results Act mandated a five-year planning stage that would allow agencies to create a strategy for measuring organizational goals and for assessing their ability to achieve these goals.¹⁹⁴ In an effort to assure the widespread acceptance of the strategic plans, the Results Act required the agency to solicit the views of legislators and other stakeholders before articulating their mission and goals, as well as the mechanisms they would adopt for measuring success. The second stage, which began in 1999, required agencies to put the strategic plans to work and to measure the results of their efforts in terms of outcomes.¹⁹⁵ Finally, in the third stage, the agency heads had to attach their findings to their budget requests, and forward them to the congressional Budget Committees for informational purposes. These performance results have been available to

¹⁹² Reports on the Government Performance and Results Act, <http://www.gao.gov/new.items/gpra/gpra.htm> (last visited Mar. 23, 2006). See generally Government Performance and Results Act of 1993, 31 U.S.C. § 1115(a) (2000). Since the 1970s, Congress has enacted six laws affecting financial management in the agency context. SCHICK, THE FEDERAL BUDGET, *supra* note 37, at 262–66 (providing brief history of laws affecting financial management in Congress since the 1970s and listing discrete attempts to shape decisionmaking).

¹⁹³ See *supra* note 170 and accompanying text.

¹⁹⁴ The agencies adopted a “Program Assessment Rating Tool” (“PART”) to help assist with the annual performance review. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 19; U.S. GEN. ACCOUNTING OFFICE, PERFORMANCE BUDGETING: OMB’S PERFORMANCE RATING TOOL PRESENTS OPPORTUNITIES AND CHALLENGES FOR EVALUATING PROGRAM PERFORMANCE (2004); *Performance-Based Budgeting Hearing*, *supra* note 46, at 5 (statement of Clay Johnson); *id.* at 14 (statement of Congressman K. Michael Conaway).

¹⁹⁵ Many of the agencies that have participated in the process have submitted extensive reports identifying both successful and failing programs in their jurisdiction. Not only do agency heads support the Results Act, but President Bush has also recently argued that programs working at cross-purposes must be fixed or suffer budgetary reductions or complete termination. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19.

both the executive and legislative branches since 2000 and have been relied upon in the budgeting process by directly linking resource allocation to the success of the programmatic output.¹⁹⁶ As one commentator noted, the Results Act not only forced government actors to create a plan for measuring success and to take responsibility for implementing the plan, it also guaranteed “widespread acceptance” of the plan because failure to produce the information, or poor performance, would jeopardize the agency’s budget allocation.¹⁹⁷

The Act created a mechanism for using performance information in day-to-day management and in decisionmaking in the agency context. The Act also proved that the Budget Committees could adopt a similar system of performance-based budgeting (“PBB”) in their annual budgeting process.¹⁹⁸ With PBB, the Budget Committees would impose similar performance requirements upon the nine standing committees with jurisdiction over the social welfare programs. The Budget Committees could require that the authorizing committees submit annual reports containing a performance assessment of the existing programs. They could also require an evaluation of the coordination problems that currently exist as well as explanations of how the committees are working to remedy the problems. Individual committees that fail to include this information or that fail to convince the Budget Committee members that they are seeking to improve overall system performance would be punished in the budgetary process.¹⁹⁹

The House Budget Committee’s 2005 budget resolution included language that supported the goals of PBB in Congress, thereby suggesting that legislators have already begun to consider implementing reforms that could change committee decisionmaking.²⁰⁰ Moreover, in a recent hearing

¹⁹⁶ This does not mean that ineffective programs automatically experience budget cuts and successful programs obtain budget increases. See *id.* (reporting funding increases for Internal Revenue Service’s Earned Income Tax compliance initiative even though it was rated “ineffective”).

¹⁹⁷ *Should We Part Ways with GPRA?: A Look at Performance Budgeting and Program Review: Hearing Before the Subcomm. on Gov’t Efficiency & Fin. Mgmt. of the H. Comm. on Gov’t Reform*, 108th Cong. 42–43 (2004) [hereinafter *Should We Part Ways with GPRA? Hearing*] (statement of Maurice McTigue), available at <http://reform.house.gov/UploadedFiles/108-144.pdf>; DEPT. OF EDUC., DEMONSTRATING RESULTS: AN INTRODUCTION TO THE GOVERNMENT PERFORMANCE AND RESULTS ACT 1–27 (1990) (describing the impact that the Results Act has had on the assessment of the education programs).

¹⁹⁸ See generally SCHICK, *THE FEDERAL BUDGET*, *supra* note 37, at 262–66 (discussing performance-based management in agency context); MCKINNEY, *supra* note 46; MILLER, HIDRETH & RABIN, *supra* note 46, at 10–12.

¹⁹⁹ Performance-based budgeting was attempted in the 1950s and 1960s with little success. The difference between the current approach and the one tried earlier is that Congress has become involved in the attempt to create a culture of performance and success. SCHICK, *THE FEDERAL BUDGET*, *supra* note 37, at 265. In the end, however, it remains unclear whether the Results Act will simply create more paper work or foster improvement in federal operations. *Id.*

²⁰⁰ *Performance-Based Budgeting Hearing*, *supra* note 46, at 1 (statement of Chairman Jim Nussle). In describing PBB, Chairman Nussle stated,

Chairman Nussle noted that the “Results Act helped establish a basic infrastructure for creating high-performance in federal organizations, and the next step would be to adopt a strategy to restructure budgeting practices with a heavier focus on performance and results in budget deliberations” within Congress.²⁰¹ Budget scholars also support the idea of using PBB to improve lawmaking. Some argue that PBB is potentially “the most powerful tool for bringing about productive change and meaningful accountability” at a far greater level than the government has ever achieved in the past.²⁰²

Of course, if PBB is to be a successful coordinating device in Congress and act as a hierarchical structure on top of the parallel decisionmaking structure, then the authorizing committees must accept it as useful and legitimate. One advantage PBB has over a Select Committee on social welfare is that the former relies on preexisting committees to do the work. Legislators who support the initiative will not bind themselves to additional committee work. Moreover, legislators in both chambers have already expressed support for the underlying theory of PBB, as demonstrated by a unanimous vote in favor of adopting the Results Act in 1993.²⁰³ PBB expands the authority of the Budget Committees, however, which could lead to legislative objections similar to those expressed in the context of jurisdictional changes or proposed Select Committees.²⁰⁴ Moreover, legislators may worry that PBB will enable Budget Committee members to substitute their own political preferences for those of the nine authorizing committees in charge of designing the welfare programs.²⁰⁵ PBB, in short, could eliminate the advantages of the parallel structure by giving a monopoly to the Budgeting Committees over welfare and many other programs.

In a nutshell—performance based budgeting is an effort to tie funding levels for government programs to the programs’ actual performance. The intent is to ensure that performance is routinely considered in funding and management decisions, and that programs achieve expected results, and work toward continual improvement. The practice has been utilized in various ways—and with varying degrees of effectiveness—by many of the 50 states, including my own state of Iowa, as well as the federal government.

Id.; see also *id.* at 14 (statement of Congressman K. Michael Conaway) (discussing success of PBB in Texas).

²⁰¹ *Id.* at 1–2.

²⁰² *Should We Part Ways with GPRA? Hearing, supra* note 197, at 41 (statement of Maurice P. McTigue).

²⁰³ The Library of Congress operates “Thomas,” a website with information on all legislative activities since the 1970s. Thomas, <http://thomas.loc.gov/> (last visited Mar. 23, 2006). For an explanation of the major congressional actions associated with the adoption of the Results Act, as well as the vote tallies, see Thomas, <http://thomas.loc.gov/cgi-bin/bdquery/z?d103:SN00020>: (last visited Mar. 23, 2006).

²⁰⁴ *Performance-Based Budgeting Hearing, supra* note 46, at 1 (statement of Chairman Jim Nussle) (noting that critics of PBB assert that it may allow the executive to control the purse or may permit Budget Committee members to pick and choose what to fund based on personal preferences).

²⁰⁵ See SHEINGATE, *supra* note 42 (investigating political use of budgetary procedures to win preferred outcomes).

Legislators had these same concerns when Congress established the Budget Committees in the early 1970s. Congress addressed these worries by setting up a unique appointments process and by establishing term limitations for Budget Committee members. Under current House rules, for example, the Budget Committee must be composed of the leading members of the other important committees in the chamber and a member's service is limited to six years in any ten-year time period.²⁰⁶ Together these mechanisms guarantee that the chamber spreads budgeting power widely, and ensures that power constantly changes hands, thereby effectively limiting the influence that individual legislators can obtain over the lawmaking process. These procedural features, along with the fact that PBB has gained widespread and bipartisan support throughout Congress, increase the chance that it will be implemented in the legislative context.

PBB could assist the Budget Committees' effort to act in a coordinating role. If pursued rigorously, PBB would add an effective hierarchical component to the existing parallel decisionmaking structure that would allow the nine different House and Senate committees to participate in the lawmaking process. Maintaining the parallel approach would ensure that Congress benefits from the diversity of viewpoints found in the different committees. Competition among the committees to have the best plans would continue, and PBB would offer reliability if one piece of the overall program fails. Moreover adding budgetary oversight would help deter Type I errors, decreasing the number of problematic laws. For purposes of illustration, assume that five committees are involved in the design phase and that one committee—the Budget Committee—oversees each design when making budgetary decisions for the chamber. Under the current approach criticized by the integrationists, if each committee has a 50% chance of proposing legislation that will then be adopted by the chamber,²⁰⁷ the overall likelihood of adopting social welfare laws is 97%—it is almost guaranteed that Congress will pursue (both good and bad) laws and that the laws will be fragmented. This is because the Budget Committee does not make allocations based on performance—no effective policy oversight exists. However, with effective oversight the probability of problematic and fragmented laws decreases to 48%.²⁰⁸ Thus, while the parallel structure increases the

²⁰⁶ The House Budget Committee is composed of five members from the Appropriations Committee, five from the Ways & Means Committee, and seventeen members from various other committees. See SENATE COMMITTEE SYSTEM, *supra* note 171, at 155–56 (discussing advantages and disadvantages of rotating committee memberships); SCHICK, CONGRESS AND MONEY, *supra* note 37, at 100 (discussing budget committee make-up); SMITH & DEERING, *supra* note 23, at 71 (discussing Budget Committee term limits for members and their impact on motivation for being on the committee).

²⁰⁷ See *supra* notes 160–161 and accompanying text (noting that the chamber defers to the committee in voting on proposed legislation).

²⁰⁸ Mathematically, this number can be calculated in the following manner:

$$.48 = ((.5)(1 - ((1 - .5)(1 - .5)(1 - .5)(1 - .5)(1.5))).$$

number of proposals put forward by the authorizing committees, if they are all funneled through the Budget Committee, the probability of being funded will decrease.

If Congress expands PBB to the legislative context, the Budget Committees will be able to impact committee allocations. This budgeting power will force the nine standing committees to engage in cooperative efforts that could lead to an improved system of social welfare. It would maintain redundancy and overlap in the initial stages of lawmaking but would guard against Type I errors that lead Congress to adopt bad laws.

CONCLUSION

Congress has adopted more than eighty different policies and programs to assist the needy, but many of the programs do not work and others are rendered less effective by their complex interaction. To improve the system, analysts have begun to coalesce around a reform that calls for the integration of the multifarious programs into a single plan that would fall within the jurisdiction of the tax-writing committees and would be administered by the IRS. This solution envisions the tax-writing committees as guarantors; under the IRS's watchful eye Congress will adopt the most effective subsidies and effect the most cost-effective implementation of those subsidies.

Although advantageous for many of the reasons set forth in the extant literature, integration is likely to face serious hurdles associated with jurisdictional "turf" battles; legislators and public administrators are likely to fight to retain their control over the major federal programs, and history suggests that they will win these skirmishes. Moreover, even if integration of the social welfare programs were a politically viable option, it may not be the most desirable reform from a normative perspective. Integrationists argue that redundancy in effort, organization, and authority is wasteful. They ignore, however, that it can also provide reliability—if one committee adopts a flawed program, a second is there to succeed; if one agency fails, another can thrive. Redundancy and overlap also enable a range of experts with diverse viewpoints to contribute to the lawmaking process, and they foster competition and rivalry among decisionmakers. These advantages are difficult to achieve when a single decisionmaking body enjoys a monopoly. Concentration of power in the hands of a small group, in short, may not be the best use of government talent or resources.

That fragmentation of jurisdiction offers policy advantages does not mean it is problem free; the integrationists have convincingly shown that drawbacks exist when control over lawmaking is splintered across a range of committees and agencies. Thus, the question is whether Congress can establish decisionmaking structures that allow it to retain the benefits of re-

For the reasons discussed earlier, I do not calculate the House floor, the Senate floor, or the President as rigorous overseers of the lawmaking process. *See supra* notes 161–162 and accompanying text.

dundancy while ameliorating costs. One possible solution calls for Congress to pursue a system of performance-based budgeting (“PBB”). PBB would allow the parallel system of committees to continue their design work, while simultaneously forcing legislators to assess their policy output and to undertake reforms where necessary to ensure programmatic success. If the programs fail or the committees fail to coordinate their plans, the Budget Committee in each chamber would have the power to sanction the committee with decreased revenue allocations. In effect, PBB would add a hierarchal component to the existing parallel decisionmaking structure, which would allow the nine House and Senate committees to participate in the lawmaking process and increase coordination among and between them.