

Legislative Analysis of Bureaucratic Redundancy: A Perspective of American Law

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Abstract—Bureaucratic redundancies are ubiquitous in the U.S. administrative system, basically caused by Congress through duplicative delegation, and often result in the overlapping of administrative jurisdiction and disorder of law enforcement. Bureaucratic redundancy can be understood as different agencies with same or similar regulatory powers. Though duplicative delegation is unavoidable, Congress has tried to prevent and control legislative redundancy mainly through legislative design and process control, as well as review and supervision. The research on the issue of the legislation redundancy of in the United States has certain enlightenment and reference significance for promoting the scientific legislation and alleviating the conflict of administrative jurisdiction in China.

Index Terms—Bureaucratic redundancy, Duplicative delegation, Legislative design, Coordination mechanism, Regulatory overlapping

I. INTRODUCTION

In the United States, bureaucratic redundancy is a long standing legal phenomenon. Although Congress has long been aware of the pervasiveness of redundancy, the legislation continues to be redundant in recent years. With the practice of administrative law enforcement being repeatedly subject to duplicative jurisdiction, bureaucratic redundancy is gradually receiving more attention from the legislature, the executive branch and the legal scholars.

II. BUREAUCRATIC REDUNDANCY: CONNOTATION AND EVALUATION

A. Redundancy Theory

Redundancy, as a concept widely used in engineering, refers to the repeated configuration of parts of the system. When a system fails, the redundantly configured parts intervene and take over the work of the failed parts, thereby reducing the system down time. For example, consider an automobile with dual breaking circuits. Assume that a malfunction in one circuit does not affect the performance of the other circuit. If the probability of

one circuit malfunctioning is 1/10, then the probability of both circuits malfunctioning at the same time is 1/100. Introduce a third circuit and the probability that the breaks will fail drops to 1/1000. The key point is that a system properly engineered with redundant parts may have a lower probability of system failure than a system with no such safeguards built in. From the function, there can be two functions, one positive, multiple backups to increase the reliability of the system; the second is negative, resulting in the waste of resources.

B. Bureaucratic Redundancy

In 1969, Martin Landau first applied redundancy theory to bureaucratic systems to challenge the public administration dogma that the “wholesale removal of duplication and overlap” is ideal. He argued that having more than one agency perform the same task may reduce the risk of administrative failure in much the same way that redundant circuits may reduce the risk of mechanical failure.

Subsequent political scientists have expanded the theory to include notions of interagency diversity. The basic idea here is that different agencies--because of their different expertise, internal processes, interests, and statutory mandates--will take different approaches to the same problem and thus make it more likely that at least one agency will hit on the right approach. Bureaucratic redundancy theory has recently migrated from political science into administrative and constitutional law. Professor Neal Katyal expressly draws on the theory when he argues that “reliance on just one agency is risky. It is a form of ‘administrative brinkmanship.’”

Bureaucratic redundancy theory extends this basic logic to political agencies, arguing that principals choose (or acquiesce to) multiple agents in order to increase organizational effectiveness. The American political system is replete with redundant arrangements, both across agencies as well as within them. A few examples illustrate their scope:

- Welfare policy has long been administered by a patchwork of overlapping programs (some created in part by federalism), many of which embody different “theories” for addressing poverty.

- Each branch of the military has its own “air force.” Each service has a somewhat differentiated role; for example, only the Air Force has long-range bombers. However, they also perform many common tasks, such as the support of ground troops in battle.

C. Evaluation of Bureaucratic Redundancy

Observers have long linked the effectiveness of government agencies to institutional design. Beginning with the seminal work of Landau (1969), redundant bureaucratic structures have been a prominent and recurring part of this discussion. Proponents have argued that redundancy improves the chances of some part of an organization succeeding in its task, and thus reduces the likelihood of failure. In other words, bureaucratic redundancy avoids the risk of failure of a single executive body to regulate. Imagine the IEA's failure to strictly enforce offshore drilling safety standards, but the Coast Guard inspection of offshore drilling rigs provided evidence of non-compliance with international standards, in which case the overlapping power distribution between the two agencies is to provide more than one opportunity to seize security breaches to prevent a disaster from happening. As a result, decentralized regulatory power has effectively created “fire alarm” mechanisms among multiple agencies and reduced the cost of parliamentary oversight. In this view, redundancy is an ideal byproduct of improving the quality of legislative decisions.

Opponents have questioned the efficiency of such arrangements, and have called for eliminating “wasteful duplication” and “overlap” in the bureaucracy. They think that redundancy leads to over-regulation or risk-based regulation of waste. Imagine that a planned task that could have been accomplished by an administrative body is now implemented by two or more administrative agencies. Such an overlapping administrative function can easily lead to repeated supervision. Sometimes quarrels between jurisdictions in these bodies are not focused on Perform tasks that result in wasted resources, inefficiencies and cumbersome procedures. Redundancy may also give rise to the possibility of administrative agencies abandoning their duties, leading to administrative inaction or blame, resulting in inadequate regulation and lack of supervision.

Others have also pointed out that increasing the number of components can lead to unpredictable interactions between them, ultimately hindering organizational effectiveness. To date, however, no equilibrium theory of redundancy and its alternatives has confronted these issues. As James Q. Wilson has summarized, “The problem, of course, is to choose between good and bad redundancies, a matter on which scholars have made little progress”.

III. LEGISLATIVE REASON FOR BUREAUCRATIC REDUNDANCY: DUPLICATION DELEGATION

There are many reasons for bureaucratic redundancy. For example, the regulatory object itself has multiple features, information asymmetry, etc., but the main reason is the factors related to the Congress itself. It can

be said that as a legislature, the legislature is the direct manufacturer of legal redundancy. In other words, bureaucratic redundancy is caused by duplicative delegation by the Congress. The United States Code is full of “duplicative delegation”, and duplicative delegation can be reasonably construed as granting the same regulatory powers to different administrative agencies, that is, Congress delegates the same or similar jurisdiction to multiple administrative agencies in the appointing legislation, but The division of responsibilities between agencies is not clearly indicated.

How does duplication delegation come from? Some duplication delegations are created by Congress's broad delegation to different agencies, due to the unpredictability of every possible situation. There are also some redundancies due to the ambiguity of the legislative language. For example, Article 402 of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to allow the discharge of pollutants other than dredged or filled materials into the watercourse, while section 404 of the Clean Water Act Article authorizes the Army Corps of Engineers to allow it to discharge dredged or filled material into the waterway. Because the law does not make it clear that “fill material” includes solid waste, any one of them can reasonably claim that it is allowed to discharge solid waste. For the above reasons, sometimes it is hard to guard against overlap.

However, a more general view is that the legislators are not sufficiently focused on redundancy and are even deliberately creating redundancies or overlaps. For example, in the case of conflict of jurisdiction between the EPA and the Occupational Safety and Health Administration (OSHA), according to the 1990 Clean Air Act Amendments, Congress has specifically foreseen that its mandate may give rise to regulatory overlap between the two agencies, but created this possibility in the legislation. It seemed Congress preferred to let the agencies bear the cost of information in advance, and they would work hard to handle mistakes afterwards. Congress deliberately created the legislative redundancy for two basic purposes: Firstly, the Congress deliberately created regulatory overlap for the purpose of increasing regulatory reliability or causing competition among administrative agencies. For example, in the EPA-OSHA case study in the previous section, Congress was intent on creating supervisory oversight across agencies. Secondly, Congress may view the fragmentation mandate more often as creating an independent executive body as a way of getting out of some kind of presidential political influence.

Regardless of the causes, duplication delegation is ubiquitous and has a significant impact on laws and regulatory agencies. On the surface, duplicative delegation gives multiple agencies the power to perform the same task. If all agencies act under this authority, the executive agencies will continually implement conflicting or repetitive actions. Therefore, the control of legislative redundancy is of great significance for alleviating the

plight of administrative law enforcement and improving the quality of legislation.

VI. LEGISLATIVE PREVENTION AND CONTROL OF BUREAUCRATIC REDUNDANCY

However, what measures can be taken by the legislature itself? Usually it could be legislative procedures, legislative techniques, legislative design, legislative supervision and other aspects of optimization and control.

A. "Automatic Sunset" Clause

In the case of the EPA and OSHA conflict of jurisdiction, because of the differing specific standards set by the two agencies, regarding the exposure of workers to the limits of exposure to pollutants and protecting workers from occupational risks, the law sets the term "automatic sunset" to prevent overlapping jurisdictions, which states that if OSHA issues a PEL (Permissible Exposure Limits) for the same substance, the NCEL will "automatically expire" provided that the PEL is not challenged in court.

B. Holding Public Hearings and Amending the Law

In recent years, for example, legislators have expressed concern over the waste and counter-productive duplication in some of the most pressing regulatory issues such as the reform of the financial regulatory system. Senate Energy and Natural Resources Committee held a hearing, the senator questioned agency officials on the Federal Energy Regulatory Commission (FERC) and the Interior Department of inefficient and redundant monitoring of hydroelectric power. A few weeks later, the two agencies formalized procedures to eliminate duplication and simplify oversight.

Congress also prevents duplication by tracking and amending duplicative delegation to more clearly and narrowly define the agency's jurisdiction. But if the executive or Judiciary has reconciled the duplicative delegations in a way that Congress does not like, Congress only passes the revision process.

C. Coordination Mechanism

In the case of conflict over EPA and OSHA jurisdiction, the Senate Committee on Environment and Public Works (EPW) has proposed that the EPA plays a leading role, but the House Education and Labor Commission urges OSHA to exercise its supervisory role. The Senate Committee's report clearly shows that effective action against chemical accidents requires regulatory overlap between the EPA and OSHA, directing both OSHA and EPA to take concrete actions on chemical accidents and to coordinate such actions in a coordinated manner.

D. GAO Review

In addition, the GAO of the National Assembly is responsible for reviewing and supervising the issue of redundancy in legislation. For example, GAO's 2011 report states that the GAO Comptroller should conduct routine surveys to identify initiatives, agencies, offices,

departments and nationwide initiatives for duplicative goals and related activities, and reports the findings of the survey to Congress on a yearly basis, including such costs of duplication, as well as consolidation and elimination proposals to identify specific relief measures and reduce duplication, with saving costs and increasing revenue.

V. CONCLUSION AND IMPLICATION

To sum up, bureaucratic redundancies are ubiquitous in the administrative system of the United States, and often result in the overlapping of administrative jurisdiction and disorder of law enforcement. Bureaucracy redundancy is basically caused by Congress through duplicative delegation. At the legislative level, the duplicative delegation of powers, though unavoidable, can be prevented and dissolved of legislative redundancy through legislative design and process control. This is of great significance for improving the quality of legislation and mitigating the law enforcement contradiction.

In China, similar bureaucratic redundancies and the legislative circumstances that lead to overlapping administrative law enforcement also exist. In this regard, the U.S. research of legislative redundancy, such as improving legislative techniques, designing scientific procedures, and controlling of duplicative delegation, as well as strengthening the legislative evaluation and supervision mechanism, have some inspiration and reference value for Chinese legislation improvement.

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