

Institutional Persistence and Change in International Delegation

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This paper seeks to problematize Bradley and Kelley's notion of the autonomy of the agent to which authority has been delegated. In effect, I make the "bindingness" of international delegation a variable rather than a constant component of its definition.¹ I start with principal-agent (P-A) theory, but go beyond it to develop a general theoretical argument about how a principal-agent relationship might be expected to evolve in the aftermath of the initial delegation of authority.² Building on Political Scientists' renewed interest in institutional change and especially the recognition that institutional stability or persistence may also need to be explained rather than assumed (Büthe 2002; Greif and Laitin 2004; Pierson 2004:133ff), I distinguish two types of institutional development. For purposes of this paper, I reserve the term "institutional change" for changes of the P-A relationship in the sense of re-appropriation of authority by the principal, withdrawal from the agent's authority, a modification in the structure of the relationship, or the replacement of the agent. Examples of such institutional change in the realm of international delegation include exit from (authority-delegating provisions of) a treaty, such as U.S. withdrawal from ICJ compulsory jurisdiction in 1986, or the subordination of the Schengen Agreement Secretariat to General Secretariat of the EU Council. Analytically distinct from such institutional change is what we may call "change within an institution." In a recent article, Avner Greif and David Laitin (2004:633f) use the term "quasi-parameters" for characteristics of an institutional arrangement that can be treated as fixed for the analysis of behavior of actors—such

¹ Accordingly, I understand "international delegation" to refer to all instances where an actor from one country (the "principal") grants authority to another actor (the "agent") to act on the principal's behalf in a specified domain, where the agent is from another country or is an international or transnational entity. (There can be a collective principal or multiple principals, from multiple countries.) With Hawkins et al (2006), I assume that a delegation of authority can in principle be revised or revoked by the principal, though the speed or extent of such institutional change is also variable.

² P-A has become a popular analytical framework to study the delegation of authority from elected bodies to specialized committees of the legislature (e.g., Shepsle and Weingast 1988) or public or private bureaucracies in the U.S. (Hammond and Knott 1996; Huber and Shipan 2002; Mattli and Büthe 2005; McCubbins, Noll, and Weingast 1987; Shipan 2004), other OECD countries (Thatcher and Sweet 2002), and developing countries (Huber and McCarty 2004). Recently, P-A has also been used to explain the creation and operation of international organizations understood as agents of member state governments (Gould 2003; Hawkins et al. 2006; Pollack 2003).

as principal and agent—in a specific institutional context, although they are variable over time without such changes constituting institutional change. (I identify two quasi-parameters of P-A relationships below.) What I call change *within* an institution is a change of the quasi-parameters of a P-A relationship in the context of overall institutional stability/persistence.

1. Four Types of Delegation and the Two Quasi-Parameters of P-A Relationships

Previous research has identified several reasons for principals to delegate power to agents. I consider four specific reasons for delegation, which give rise to four ideal types of P-A relationships. Each of the four reasons has implications for two quasi-parameters of the P-A relationship. The first quasi-parameter of the institution is the level of discretion that is granted to the agent at the outset or will accrue to the agent in the course of the P-A relationship. I define discretion as the agent's ability to take decisions without interference from, or detailed review by, the principal. Delegation inevitably creates *some* discretion for the agent, because complete control of the agent would undercut the benefits of delegation, as it is costly (if even possible) to draw up complete contracts for the grant of authority and to monitor the agent's compliance in detail. Agent discretion gives rise to the "agency problem" of "shirking" when the interests of principal and agent do not coincide, and the agent therefore acts contrary to the principal's wishes. Each reason for delegation also has implications, from the outset, for how politically or economically costly, legally restricted or complicated, or technically difficult it will be to revise or reverse the grant of authority. This constitutes the second quasi-parameter; I refer to it as the level of irreversibility.³ The level of "irreversibility" determines the extent to which an agent can

³ What I call "irreversibility" is closely related to the notion of "permanence" in Bradley and Kelley's paper, but does not just depend upon provisions of the agreement to delegate, such as the duration of a treaty or the availability of exit clauses.

shirk with impunity. One can think of these quasi-parameters as two dimensions of the space that P-A relationships occupy (see Figure 1 below).⁴

Enhancing Efficiency: The first and probably most common reason for delegation is to reduce the principal's workload and enable greater efficiency of decisionmaking through specialization (e.g., Epstein and O'Halloran 1999:48). If, for instance, every negotiation among EU member states required the personal participation of the chief executive or issue-specific minister, the EU would quickly grind to a halt; member governments have therefore delegated (some) authority to "permanent representatives" to negotiate on their behalves in the COREPER in preparation of the EU Council meetings (Nugent 2003:150ff; Lewis 2005). Increasing efficiency through division of labor implies some discretion for the agent, since review of the details of the agent's every action would deprive the principal of the intended benefits of delegation, but efficiency-enhancing specialization as the objective of delegation creates little if any need to make this discretion hard to reverse.

Benefiting from Expertise: The second reason for delegation is to benefit from existing expertise since "delegation to an expert can be an effective substitute for the acquisition of expertise" (Alt and Alesina 1996:658). This presumes *prior* specialization. Expertise-based delegation is particularly common in highly technical, complex, or fast-changing issues areas, where political principals tend to be more willing "to trade uncertainty about policy consequences [which is a function of the principal's own lack of expertise] for uncertainty about agency behavior" (Bawn 1995:63). Examples may include the delegation of scientific assessments of compliance with civilian use obligations to the atomic scientists of the IAEA, the

⁴ An agent enjoying a high degree of discretion *and* a high level of irreversibility may be said to have attained what Daniel Carpenter (2001) calls "bureaucratic autonomy." (I think of autonomy as the far end of a continuum, rather than a distinct state.) Under these conditions, the agent is largely "safe" from the risk that ordinary political changes, such as a change in legislative majority, would result in the agent's regulatory decisions being overturned or its grant of authority being revoked.

allocation of large-scale multilateral economic development assistance to the World Bank, or the setting of product standards to the ISO or financial reporting standards to the IASB (Mattli and Büthe 2003; 2005b). It implies a level of discretion commensurate with the difference between the principal's and the agent's expertise, but by itself requires little political-legal irreversibility, though expertise-based delegation may be hard to reverse for practical, technical reasons.

Shifting Responsibility: A third reason for delegating policymaking functions is "blame avoidance" or "shifting responsibility" (Fiorina 1982:esp.46ff). The logic here starts from the assumption that a political actor who may provide or delegate governance will gain the benefit of getting credit for the positive effects of this exercise of authority, but will also incur the costs of being blamed for the negative effects. Delegation, by creating a perceptual distance between the principal and the apparent exercise of authority, should reduce both the costs and the benefits. If the costs decline faster with "distance" than the benefits, such that the net benefit increases with the perceived distance between the political actor and the exercise of regulatory authority, delegation becomes attractive for the political principal.⁵ These conditions may hold, for instance, when those who bear the costs of a regulation constitute more concentrated or politically organized interests than the beneficiaries, or in politically charged contexts when regulatory activity is less palatable for the regulated when carried out directly by the principal

⁵ For clarification, these conditions may be formally summarized as follows:

$$\frac{\partial B_{G,P}(\chi)}{\partial \chi} < 0 ; \frac{\partial C_{G,P}(\chi)}{\partial \chi} < 0$$

$$U_{G,P} = (B_{G,P} - C_{G,P}) = f(\chi, \cdot) ; \frac{\partial U_{G,P}(\chi)}{\partial \chi} > 0$$

... where χ is the distance between the political actor and the exercise of regulatory authority; $B_{G,P}(\chi)$ is the (expected political) benefit of governance to the political actor (and potential principal), i.e. benefit of gratitude from satisfied stakeholders, which is a function of the distance χ (and other variables); $C_{G,P}(\chi)$ is the (expected) political cost of governance to the political actor, i.e. cost of being blamed by dissatisfied stakeholders, which also is a function of χ (and other variables); $B_{(\chi=0)}$ and $C_{(\chi=0)}$ are assumed to be greater than zero. $U_{G,P}(\chi)$ is the overall utility (net benefit) derived from governance by the political actor (public principal).

rather than by an agent who can derive some legitimacy simply by appearing to have *some* separation from the principal. In either case, shifting responsibility implies a higher level of discretion than the previously discussed reasons for delegation and notable political (or legal) barriers to the re-appropriation of authority, lest the appearance and credibility of agent independence is undermined.

Committing Policy: Finally, principals may delegate in pursuit of a long-term commitment to a policy or policy bias. Political principals may seek such an institutionalized commitment to deal with the "time-inconsistency problem," such as in the case of bilateral investment treaties, where governments may seek to commit themselves to policies that they believe to be in everyone's long-term interest (such as economically liberal policies that ensure the continued profitability of competitive foreign investments) as a safeguard against temptations to choose policies that are expedient in the short run but detrimental in the long run (see Büthe and Milner 2005). Political principals, lacking lasting "property rights" over policy, also may seek policy commitment through delegation in order to bind their successors in elected office by "locking in" a given policy (Moe 1990:220, 227f). In either case, policy commitment as the motivation for delegation calls for a high level of statutorily guaranteed (difficult to reverse) discretion for the agent, reducing the delegating principal's own leverage immediately after the initial delegation.⁶

The greater the discretion enjoyed by the agent, the greater the potential for shirking, i.e. the likelihood that agent behavior will differ from the behavior preferred/sought by the principal

⁶ Policy commitment as such implies no specialized expertise. Irreversibility therefore should be legal or political rather than practical-technical. An additional reason for political delegation is equilibrium-inducement through the grant of agenda-setting power to avoid decision cycling when the principal consists of a collectivity. This feature of delegation may explain the grant of agenda-setting power in many issues areas from the EU member states to the EU Commission (Pollack 1997:104, 106). It requires some degree of statutory discretion to be effective, but repeated play may be sufficient to counterbalance temptations to overturn the institutional arrangement.

at the time of contracting *if the agent's preferences differ from the principal's*.⁷ Such agency problems or "losses" may still be counteracted *ex ante* through contract design, screening, and selection mechanisms, as well as *ex post* through monitoring and reporting requirements and institutional checks (Kiewiet and McCubbins 1991:esp. 27ff). But as Douglas North reminds us, measuring performance and compliance is costly (North 1981:19, 40), and changing agent behavior is more difficult the greater the agent's level of discretion.

2. Post-Delegation Dynamics I: Change in the Quasi-Parameters of an Institution

With few notable exceptions,⁸ principal-agent theory is quite static. Most scholars have either assumed that all post-delegation dynamics are taken into account at the time of the initial decision to delegate and addressed through institutional design or choice of agent—or they have assumed away dynamics by conceptualizing the continuation of a principal-agent relationship as simply a repeated play of the initial delegation decision, since principals can re-appropriate authority. I submit that whether and why the opportunities and constraints faced by an agent change (or remain the same) over the course of an ongoing relationship warrants explicit analysis. In this section, I focus on three developments in the post-delegation period that change the two "quasi-parameters" of a given P-A institution—developments that increase the economic or political costs of re-appropriating authority or modifying the P-A relationship (thus increasing, *ceteris paribus*, the irreversibility of delegation).⁹ For some types of P-A relationship, they also

⁷ In the case of delegation as a commitment device, the very purpose is of course to create, under some conditions, a divergence of short-term preferences, but this divergence is sought by the principal, based on the principal's own long-term interest.

⁸ See Balla 1998; Balla and Wright 2001; Coen and Thatcher 2004; Diermeier 1995; Eisner and Meier 1990; Hamilton 1996; Moe 1985; Wood 1988.

⁹ This discussion of changes that increase agent discretion in the post-delegation period—or make the reversal of the grant of authority more difficult or costly—raises the question why these changes are not anticipated by the principal and incorporated into her initial decision to delegate or her choice of agent, monitoring mechanisms, etc. Theoretically, the assumption of imperfect rationality may provide a reason, but even when assuming perfect rationality, one can recognize that processing information is costly and/or that political principals have rationally

increase agent discretion. In the next section, I then consider endogenous and exogenous changes that might counteract such a march toward autonomy.

The first kind of change in the principal-agent relationship over time should occur whenever specialization motivates the initial delegation, which is the case when "enhancing efficiency" and especially when seeking to "benefit from expertise" is the reason for delegation. Delegation here creates incentives for further specialization on both sides: The agent will acquire even higher levels of expertise while the principal, to benefit fully from having delegated the specialized task, will reduce her expertise. This increasing differential in expertise makes the agent more valuable to the principal and increases the technical, practical difficulty and the economic costs of reversing the grant of authority. It should also lead to a higher level of discretion, as the principal increasingly lacks the expertise to assess the agent's behavior in detail. In terms of Figure 1, we should see over time a movement toward the right as well as toward the top for expertise-based delegation, as indicated in Figure 2.

Note that the changes predicted under these conditions are entirely endogenous to the institution itself. They constitute "positive institutional self-reinforcement" or endogenous "positive returns" (Greif and Laitin 2004:esp. 638f, 647f; Pierson 2000a:254f, 259), which make an institution more stable or resilient over time, *ceteris paribus*; that is, they increase the likelihood that the particular P-A relationship will persist even under conditions less favorable than at the time when it was established. This change over time in the "quasi-parameters" of the institution, which to my knowledge has not been analyzed in the existing P-A literature, is

high discount rates. This should lead one to expect that, at the time of the initial decision to delegate, political principals do not take into account all the long-term consequences that could be hypothetically anticipated. Moreover, existing accounts of "unexpected" agent behavior after the initial delegation suggest that far-reaching anticipation rarely takes place when P-A institutions are created (e.g., Balla 1998; Wilks and Bartle 2002:148, 165).

integral to any P-A relationship that is initially established for the common purposes of enhancing efficiency and, especially, benefiting from expertise.

[FIGURE 2 ABOUT HERE]

A second kind of change that we might expect after the initial act of delegation should be observable for all four types of delegation. It may be understood as a kind of network effect, which over time increases the likelihood that a principal-agent relationship will persist. Actors that are subject to, or otherwise have an interest in, the authority delegated to the agent (i.e. third parties with respect to the P-A relationship) are likely to make investments that are specific to the particular institutional arrangement created by the initial delegation of authority, such as building a lobbying infrastructure to influence the particular agent or administrative procedures to efficiently comply with its decisions (Pierson 2000; 2004:147ff). To the extent that these investments are indeed specific, that is, yield political-economic benefits conditional upon the continued existence of the specific P-A relationship, these third parties will oppose attempts by the principal to re-appropriate decisionmaking or replace the agent. Such opposition will make institutional change politically more costly (shift to the right in Figure 1). Over time, institutional change should therefore become less likely.

The third kind of change is a function of the agent's own actions. If we treat the agent not as a passive object of the political game, but as a (sometimes) pro-active participant, we should expect the agent to want to safeguard and possibly increase its discretion and authority. The agent may therefore actively build coalitions to strengthen and support its autonomy (e.g., Haas 1958; 1990). When the European Court of Justice (understood here as an agent of the member states of the EU, see Pollack 2003:155ff), for instance, trains national lawyers in how to use European law and legal institutions for the benefit of their clients, they are building a

constituency for the maintenance of those institutions (Alter 2001; Mattli and Slaughter 1998). Such a strengthening of the support among the political principal's constituency for the agent's continued exercise of regulatory authority again constitutes a movement to the right in Figure 1, as shown in Figure 3.¹⁰

[FIGURE 3 ABOUT HERE]

3. Post-Delegation Dynamics II: Institutional Change

None of the changes discussed above implies that it will become impossible over time to reverse delegation or modify a P-A relationship. Yet, the argument so far implies that reversal becomes politically and/or economically monotonically more costly, *ceteris paribus*. Why then might we ever see institutional change in a P-A relationship?

A shift toward greater agent autonomy (or just an increase in cost of reversal) is politically interesting first and foremost because it changes the power relationship between principal and agent. *If the agent's and the principal's policy preferences differ*, increased costliness of reversal allows the agent to move further from the principal's preference without crossing the threshold that would make the termination or substantial change of the P-A relationship a net gain for the principal. Political coalition-building by the agent, third party specific investments in the institutional arrangement, and increasing specialization thus increase over time the agent's ability to select outcomes that diverge from the principal's preferences. Increasing specialization also makes it less and less likely that there will be other potential agents

¹⁰ Agents will, of course, not always succeed in building broad political support, and principals may counteract their attempts, for instance by cutting funding for such activities. Yet, the general trend from attempts to build constituencies should be a movement toward a higher level of irreversibility. We should observe this change for all types of delegation, but *a fortiori* if delegation is expertise-based: If a regulatory agent's portfolio requires specialized expertise to deal with complex issues, such that the agent can establish a reputation for professionalism and a unique ability to "create solutions and provide services found nowhere else in the polity," then the agent should be particularly well able to build a political coalition that is broader than a temporary partisan majority or "a single class or interest group" (Carpenter 2001:5, 17).

available to the principal with the same level of expertise but incentives to shirk less. By reducing the available alternatives, increased specialization increases the power of the agent (see also Moe 2005:227f).¹¹

Ironically, this consequence of the increasingly stable P-A relationship counteracts the increased likelihood of institutional persistence. As an agent takes advantage of the increased costliness of reversal or modification of the P-A relationship for the principal—by selecting outcomes that diverge from the principal's preferences—it also increases the benefit that the principal can attain from institutional change. In other words, if an agent with preferences that differ from the principal's fully takes advantage of the increased costliness of institutional change analyzed in section 2.2, then the resulting divergence between the principal's preferences and the agent's choices has the effect that the net costs of institutional change remain constant.

If the principal is aware of the developments analyzed above and the resulting divergence, and if s/he refrains from changing the institutional arrangement only due to the constant small net costs, then a relatively minor exogenous shock may lead to a radical change in a long-persisting, seemingly very stable institution (see Greif and Laitin 2004:639; Krasner 1984:240ff; Spruyt 1994:22ff). Such a shock might consist of a change in political majorities (Weingast and Moran 1983), a new framing of issues (which may change the principal's preferences even without any change in the facts or new objective information about them; see Baumgartner and Jones 1993:30) or a change in the procedure or venue for making decisions about the continuation of the P-A relationship, if such a change empowers opponents of the persistence of existing institutional arrangements (see Baumgartner and Jones 1993:esp. 31f).

¹¹ Increasing specialization reduces available alternatives by increasing the costliness of replacing the agent to reduce shirking.

Moreover, if the initial delegation was motivated by wanting to benefit from expertise and if the P-A relationship experienced the development hypothesized above, it is quite likely that the principal is not even fully aware of the divergence. In this case, events that provide the principal with additional information (or provide an increased incentive to obtain it), such as a sudden change in the complaints about the agent's use of its regulatory authority, may constitute the exogenous shock that leads to institutional change in the sense of re-appropriation of (or withdrawal from) authority, modification of the P-A relationship, or replacement of the agent.

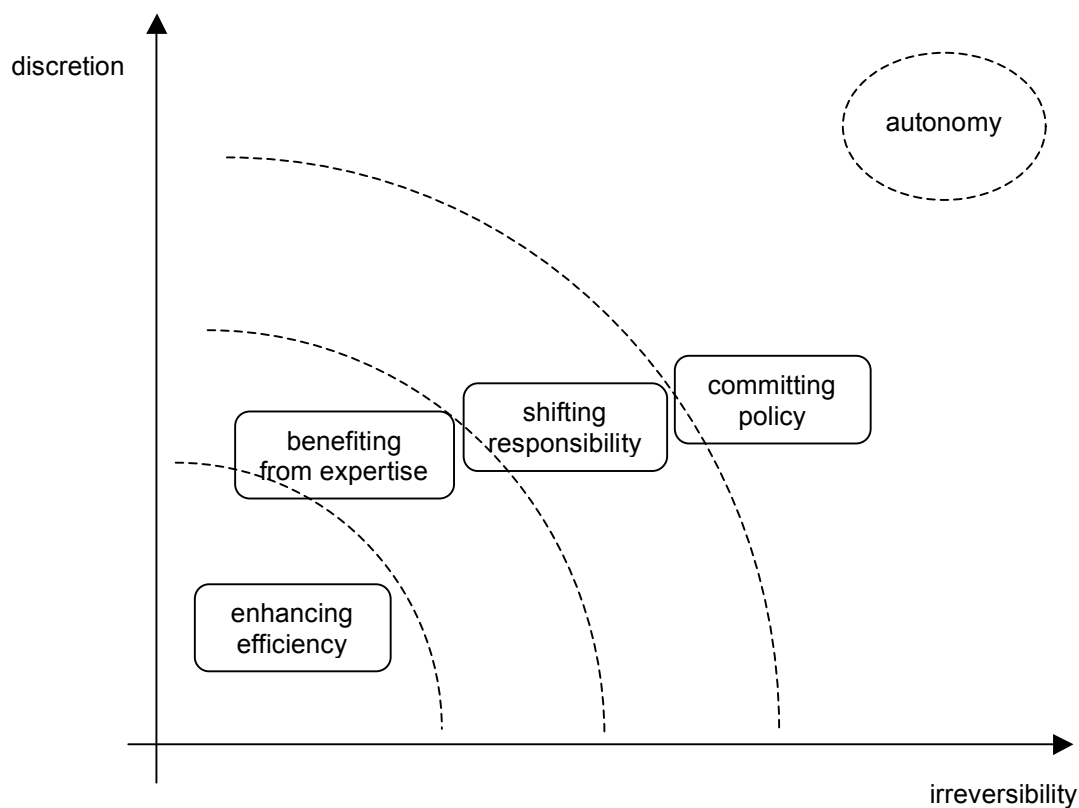


Figure 1

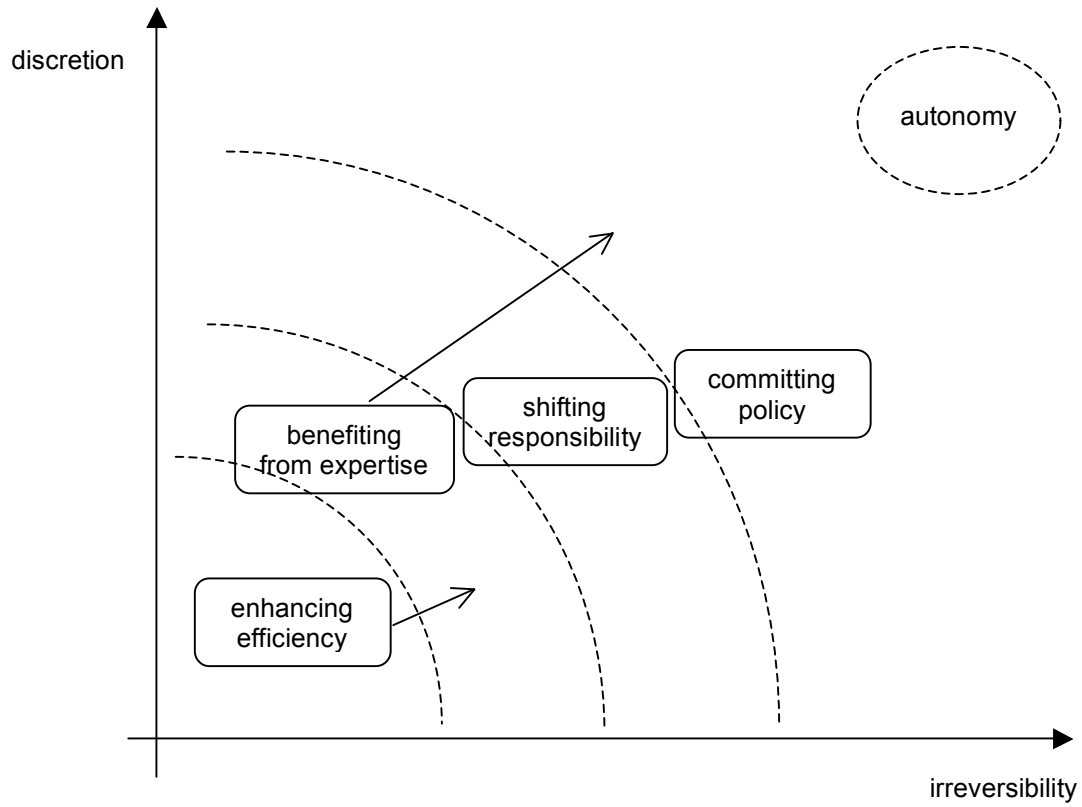


Figure 2

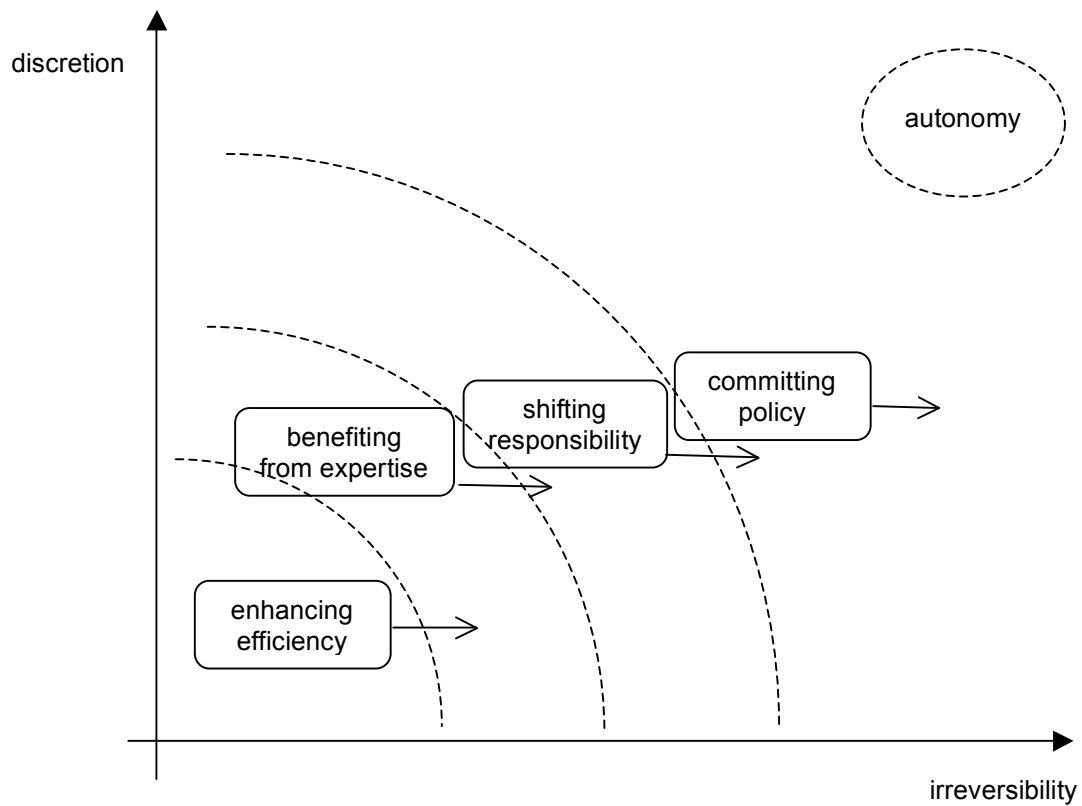


Figure 3

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