One of the big cases at the end of this year's Supreme Court term was Gundy v. United States, where four justices signaled they were open to reviving a long dormant doctrine, the non-delegation doctrine, to constrain open-ended delegations of authority from Congress to Executive Branch agencies. There's been various prognostications as to whether the Court will go further. Here, I ask whether the US really has a delegation problem in the first place.

Arguments for a strict application of the non-delegation doctrine often run along these lines: Congress gives broad, open-ended delegations of power to the administrative state; those broad delegations facilitate Congress dodging political and policy responsibility that it alone has under the Constitution; and they can also empower arbitrary or ineffective policy implementation by the Executive Branch and rent-seeking and lobbying by interest groups. The concerns go back to authors like Theodore Lowi's The End of Liberalism, and the postwar legal scholar Alex Bickel. New York Law School Professor David Schoenbrod has made these arguments specifically in the context of environmental law for years.

However, it's not clear that the US is all that worse in terms of delegated powers from the legislature than other wealthy democracies. A recent piece I did in partnership with Sari Graben at Ryerson University in Canada compared the extent to which US and Canadian law delegates power to administrative agencies. Our findings: Canada does a ***lot*** more delegation than the US. Yet I don't think anyone would (plausibly) argue that Canada is a dystopian land of political dysfunction, and tyranny. And the limited evidence that is out there indicates that this pattern is not unique to Canada – other wealthy democracies appear to delegate more power to agencies than the US does. The US stands out for the detail with which Congress legislates – in terms of the mandates it imposes on agencies to act, restrictions on what the agencies can and cannot do, the deadlines it imposes on those agencies, the requirements to report back to the legislature on implementation of statutes, and more.

Of course, there are limits to what one can infer from this limited comparison. It would be great to do additional detailed comparisons with other wealthy democracies to see if the differences between the US and Canada are unique. One might argue that even if broad delegations don't obviously provide huge problems, they may have problematic effects on the margins that might be revealed by a closer comparison of environmental outcomes, political processes, and delegation across multiple countries.

But I think that this set of initial data is enough to put a burden of proof on those advocating for a broad expansion of the non-delegation doctrine – to show that broad delegations in other countries are really producing bad outcomes.