Congressional Hearings and Policy Control: Explaining Oversight as an Ex Post Mechanism

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Abstract

Conducting oversight hearings should be an important congressional tool for controlling recalcitrant agencies, but it is not clear that this should always be equally true. Models of delegation generally focus on one of two types of mechanisms for combating agency drift, ex ante strictures on discretion or ex post monitoring of bureaucratic behavior, but they do not consider these strategies simultaneously. I present and summarize a formal model that considers both legislative strategies and use committee hearings data from the Policy Agendas Project (from 1947-2006) to test the implications of the model for explaining congressional oversight activity. This approach is better able than previous literature to account for the ways in which regularly variable institutional characteristics affect oversight activity. Specifically, I find that both the extent to which a congressional committee’s ideology diverges from an agency’s and the policy-specific expertise of said committee affect the number of oversight hearing days the committee holds, but only when the committee and agency are sufficiently ideologically distinct. These findings provide support for the theoretical arguments about the institutional nature of legislative policymaking strategies and help clarify the role of oversight in legislative-executive relations.
...the proper office of a representative assembly is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust...to expel them from office, and either expressly or virtually appoint their successors (Mill, 1861, p. 104).

While legislative oversight is considered to be a necessary condition for democratic governance, there is no prescribed formula for how much and what kind of oversight is required. In fact, political scientists have a very limited understanding of why and when legislators have incentive to elucidate with public hearings the darkened and smoke-filled rooms of governmental policymaking. Although my approach is quite general, this paper will attempt to improve our understanding of this important democratic activity by explaining variation in oversight hearings in a particular legislature, the United States Congress, over time. Oversight is made necessary by the ubiquity of delegation in a modern system of government. Elected legislators have time and experience only to write legislation, thus leaving implementation primarily up to (mostly) unelected bureaucrats.\(^2\) Congressional oversight of the executive branch is an integral part of the system of checks and balances and, as such, is derived from the implied powers of the Constitution of the United States\(^3\) (Kaiser, 2001). Normative justifications for the importance of legislative oversight hinge on its role in keeping unelected bureaucrats responsive and accountable to elected officials and, thereby, to the public will.

Beyond the normative appeal of oversight activity, legislative monitoring of executive action is intriguing to positive scholars as an expression of interbranch politics. Recent studies (Epstein & O’Halloran, 1999; Huber & Shipan, 2002) have questioned the point of

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\(^2\)In the language of a general principal-agent theory, elected politicians are principals who delegate authority to bureaucratic agents. In the context of the U.S. federal system, these agencies are usually located in the executive branch.

\(^3\)This is despite a concept known as the “non-delegation doctrine” in administrative law, which holds that delegations (especially overly broad delegations) of power violate the spirit of both the separation of powers and checks and balances principles. Although this doctrine may not be dead in the academy, it has not been legally important since the New Deal.
view that broad delegation of policymaking power from elected representatives to unelected administrators is indicative of a helpless abdication to an omnipotent “administrative state” (McConnell, 1966; Lowi, 1969; Niskanen, 1971; Offe, 1972; Putnam, 1975; O’Connor, 1978; Peters, 1981; Aranson, Gellhorn & Robinson, 1982; Rourke, 1984; Knott & Miller, 1987).

Instead, legislators deliberately and strategically delegate these powers to agencies. Similarly, they should conduct oversight hearings strategically in order to maintain the normatively good and subjectively preferred control over bureaucratic policymaking. In this paper I use insights from the principal-agent model of legislative-executive policymaking to derive and test hypotheses about when oversight should be necessary for legislative control, even in the context of strategic delegation. In so doing I can better account for variation in oversight activity over time than previous studies that focus almost exclusively on individual, as opposed to institutional, incentives for legislators to conduct oversight. I will show that oversight activity critically depends on the ideological relationship between Congressional standing committees and the executive branch, as well as the policymaking expertise of each committee, but only under certain conditions.

1 Variation in Oversight and Efforts to Explain It

There is great variation, both temporal and spatial, in oversight activities across legislatures (Rosenthal, 1981; Stapenhurst et al., 2008). We know that Congress had kept a more “watchful eye” on administrative agencies during the 105th Congress than it did in the 87th

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4 There are essentially two ways in which to view oversight. The first emphasizes the primary importance of oversight as a monitoring of the executive branch. McCubbins & Schwartz (1984, p. 165) define oversight as “attempts to detect and remedy executive-branch violations of legislative goals.” The second more narrowly sees oversight in terms of effective legislative control. Ogul (1976, p. 11) defines oversight thusly: “behavior by legislators and their staffs, individually, which results in an impact, intended or not, on bureaucratic behavior.” Since it is difficult to measure such control, previous research has followed the Congressional Research Service’s definition of oversight, which (as in McCubbins & Schwartz (1984)) focuses on monitoring: “the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation” by Congress (Kaiser, 2001, p. 1).
We also know that during the 1970s, legislators from California were more vigilant in their oversight duties than were their counterparts from, say, Kansas (Rosenthal, 1981). Figure 1 demonstrates variation in the number of oversight hearing days by congressional chamber for each year from 1947-2006. Despite this extensive variation, relatively little is known about what drives it, especially considering oversight’s importance for democratic legitimacy. Specifically, while extant studies show support for certain covariates of oversight activity (Scher, 1963; Ogul, 1976; Aberbach, 1990, 2002; Ogul & Rockman, 1990; Smith, 2003), they do not propose institutional conditions under which we would expect to see more or less oversight activity.

For the most part, the theoretical orientation of the studies on oversight of the 1970s and 1980s was behaviorist and focused on individual legislators and their incentives. Ogul (1976) and Ogul & Rockman (1990) explicitly incorporate Fenno (1973)’s and Mayhew (1974)’s insights into the reelection-centered goals of individual legislators. Oversight is but an activity, like any other that a legislator carries out, that can either help or harm their chances of reelection. This type of approach incorporates institutional variance by recognizing that certain institutional structures can alter the incentives of individual legislators. To the extent that they do, institutional variation can help to explain variation in oversight activity. Importantly, these approaches do not explicitly consider oversight to be an established step in the policymaking process.

As an example of this type of approach, Aberbach (1990) emphasizes the importance of the Legislative Reorganization Act of 1946 for increasing the level of decentralization in Congress and thereby changing the incentive structures of members in a way that made oversight more attractive. Indeed, this act required standing committees to “exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committees.” Ogul & Rockman (1990) argue that the LRA was important in increasing oversight because it generated
more subcommittees with narrow policy jurisdictions and increased staffs. This provided new opportunities and better resources for members of Congress to benefit from oversight activity.

Similarly, as the governmental environment changes, citizens may expect different things from their representatives. Aberbach (1990) argues that as government (executive government) becomes bigger and more pervasive, citizens may look to their elected representatives to “protect” them from bureaucratic dominance. The following quotation of an interview with a Democratic member of Congress highlights the emphasis on the importance of electoral incentives in driving oversight activities:

I think that people of the United States are saying: ‘We don’t want any more new programs. We want existing programs to work better.’ . . . How does that impact up here? It impacts up here politically . . . In the 1960s I suspect you could not get any credit for going home and saying, . . . ‘I’m making this program work better,’ but rather, you had to go back to your district and say, ‘I passed the new Joe Zilch piece of handicapped elephant legislation,’ something like that right? And you’ve got a new bill on the wall, and that’s what you wanted. Well, that’s not where the returns are now. The political returns are from oversight (Aberbach, 1990, p. 47).

Therefore, according to previous literature, the institutional determinants of oversight are so because they increase the opportunities to engage in oversight and decrease the costs of doing so, while “environmental” factors increase the willingness of individual members of Congress to oversee the bureaucracy (Rosenthal, 1981; Aberbach, 1990). A third major category of explanation is fiscal. Presumably, in the above quotation, budgetary concerns underlie the preference of the “people of the United States” for making existing programs work better over new programs to assist invalid elephants. Ogul & Rockman (1990) and Aberbach (1990) argue that legislators are more likely to conduct oversight when engaging in other activities, such as pushing pork barrel projects, may get them criticized for being fiscally irresponsible in times of scarce budgetary resources.

The predominant conclusion of these studies is that oversight is a less popular activi-
ity than is sponsoring constituent-friendly legislation or partaking in constituency service. Oversight activity is simply not public enough for voters to notice it or to care very much if and when it occurs. Indeed, although oversight may have been increasing during the time of these early studies, it was still commonly referred to as “Congress’s neglected function” (Bibby, 1968). Although institutional change can make time spent on oversight activity more valuable for individual legislators, such institutional change is considered either gradual (e.g., historical development of the committee and subcommittee system) or something like a shock to the system (e.g., the 1946 Legislative Reorganization Act). While there is little doubt that these types of institutional change have affected the legislative conduct of oversight, I argue that these studies, by approaching the problem through a behaviorist perspective, are missing more regularly variable types of institutional characteristics. In previous work summarized in the next section (McGrath, 2009), I approach oversight as a special case of a legislative policymaking strategy in a general separation of powers model. This approach is better able to account for institutional characteristics (such as legislative expertise, the presence or absence of the legislative veto, legislative term limits, and the partisan and ideological composition of a legislature) that may vary more often and in more systematic ways than the types of institutional characteristics previously considered in the literature. In addition, my approach explicitly recognizes the possibility that oversight may be unnecessary in particular contexts and also models the fact that legislatures have alternative statutory ways to direct agency behavior.

My approach explicitly embraces the “separation-of-powers” tradition of studying American politics. According to de Figueiredo Jr., Jacobi & Weingast (2008), this approach is well-suited to understand external constraints on institutional actors since, “to further their goals, actors in each branch must anticipate the reactions of actors in the other branches” (p. 200). These same authors recognize that the aforementioned normative approaches to bureaucratic policymaking behavior have been treated by public administration literature as
independent of political factors. Likewise, the behavioral literature reviewed above has been stifled by its reliance on internal Congress-centered logic. My research builds on important work in this tradition (Bawn, 1995; Epstein & O’Halloran, 1994, 1999; Huber & Shipan, 2002; McCubbins, Noll & Weingast, 1987, 1989; Moe, 1989), with the goal of formulating more specific testable behavioral hypotheses about when oversight should be more or less likely to occur.

2 A Model of Strategic Delegation and Oversight

The theoretical model from which I derive the empirical expectations tested in this paper is heavily influenced by the delegation models in Huber & Shipan (2002). This work emphasizes the importance of statutory means of controlling bureaucratic action. Legislators write laws that delegate variably broad authority to bureaucrats. If they want to more closely control bureaucratic behavior, they can write more detailed legislation, thus constricting the scope of an agency’s discretion. However, this literature has established that constricting bureaucratic discretion can sometimes be superfluous; that is if legislators think that bureaucrats, acting with their own self-interest in mind, will implement policies in line with the preferences of the legislators. In such a context of complete delegation, oversight may be an even more essential tool for legislators than it would be if they had delegated less discretion. Under certain conditions, however, oversight may be just as superfluous as statutory constraints on agency action. In order to determine whether this is the case and to establish the conditions, I consider both ex ante (delegation of statutory discretion) and ex post (legislative oversight) mechanisms of control simultaneously in the model presented below. Unlike in the literature reviewed above, this approach considers delegation and oversight to be elemental strategies

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5I mention this work in particular here because it focuses on statutory discretion, but there are many important works that consider the importance of statutes as a means to control administrative procedures. See, e.g., McCubbins, Noll & Weingast (1987, 1989); Horn & Shepsle (1989); Banks & Weingast (1992); Epstein & O’Halloran (1994, 1996); Bawn (1995); Balla (1998).
of legislative policymaking, where policy outcomes drive the legislature’s and executive’s utilities. By considering these strategies simultaneously, I also recognize that legislators may use them as either strategic complements or substitutes.

2.1 Assumptions

This model includes two types of players, “Legislators” and “Bureaucrats.” The Legislator is considered to be a pivotal legislator in a legislature or committee and the Bureaucrat a key decision-maker in an executive agency. Quite simply, Legislators design policy, which the Bureaucrats implement, resulting in policy outcomes. I assume that both players care solely about policy outcomes, but that Bureaucrats are always better informed about the mapping of policy to policy outcomes. This idea is captured by the fact that Bureaucrats always know how to achieve any policy outcome, but Legislators only know this with some probability. Legislators and Bureaucrats need not have the same policy preferences, but they may.

I assume that writing statutes is costly for the Legislator and that the cost increases as the capacity of the Legislator to write detailed laws decreases and as the extent to which these laws are specific increases. I also assume that it is costly for a Legislator to investigate a Bureaucrat if she thinks that the Bureaucrat has acted illegally (i.e., outside of the bounds of discretion). This cost is also increasing with the extent to which the Legislator is generally unable to write detailed laws. In order to keep the model simple, I use one variable for both types of legislative capacity. As alluded to above, I do not assume that Bureaucrats are literally bound by delegated limits on discretion. A Bureaucrat may or may not choose to implement the policy chosen by the Legislator. Nevertheless, acting in a way that the Legislator disapproves of can lead to an investigation, which will be costly to the Bureaucrat. I assume that both players have linear spatial utilities and that the Legislator has an ideal point, $x_L = 0$, and that the Bureaucrat has an ideal point at some $x_B \geq 0$. 
2.2 Sequence

In the first stage of the game, nature determines a policy shock, $\epsilon \in \{0,1\}$. The outcome of any policy, $y$, is $y - \epsilon$, so $L$ prefers that $y = \epsilon$ and $B$ prefers that $y = x_B + \epsilon$. $B$ knows the value of $\epsilon$, but $L$ believes that $\epsilon = 1$ with probability $p$ and that $\epsilon = 0$ with probability $1 - p$, so she is imperfectly informed about where she is throughout the game tree.

In the second stage, $L$ chooses to adopt some law $x \in \{0,1,\bar{I}\}$, where $\bar{I}$ is the maximal upper bound to discretion, and $\bar{I} = x_B + 1$. For this version of the model, $L$ is limited to choosing among a maximal discretion law ($x = \bar{I}$, a law giving no specific instructions to $B$), a minimal discretion law ($x = 0$, a law giving comprehensive instructions to $B$), or something in between ($x = 1$). $L$ must pay a cost $k$ for limiting discretion, where $k = \left(a - \frac{a x}{\bar{I}}\right)$, so $x = \bar{I} \Rightarrow k = 0$ and $x = 0 \Rightarrow k = a$. Assume $a < \bar{I}$. Here, $a$ is the legislative capacity variable. As it decreases, $L$ is more more able to write more restrictive laws with less cost.

In stage 3, $B$ implements a policy $y \in \{0,1,a,a+1,x_B,x_B+1\}$, called $y_1$ if $\epsilon = 1$ and $y_0$ if $\epsilon = 0$. I had considered $B$’s action space to be continuous in previous versions of this model, but the discrete choices make the results more straightforward. Besides, the discrete choice captures the idea that although the Bureaucrat may act illegally, he does not have the ability to implement any policy he can conjure. These choices represent the feasible types of policies he can implement. The policy may be legal (i.e., $y_\epsilon < x$) or illegal (i.e., $y_\epsilon \geq x$).

In Huber & Shipan (2002), the outcome is determined by what $B$ implements (minus $\epsilon$) and exogenous nonstatutory factors included below in stage 4. The most important difference between my model and Huber & Shipan (2002)’s is that there is a fourth stage where $L$ has an opportunity to learn about the value of $\epsilon$ based on $B$’s actions and to use this information to her advantage. Because of the extra stage, mine is a signaling game, where their’s is not.

Finally, $L$ observes the policy implemented by $B$ and can choose to investigate or not. If she investigates, then the outcome goes to $L$’s ideal point (i.e., any $y$ becomes $\epsilon$). If $L$ doesn’t investigate, then the outcome is $y_\epsilon - \epsilon$. The cost of investigating is given by $a$, the
legislative capacity variable from above. If L investigates and B has acted outside the bounds of discretion, that is, illegally, B must pay \( d > 0 \). With some exogenous probability \( \gamma \), the outcome reverts to L’s ideal point and B pays \( d \) if he has implemented an illegal policy. This parameter represents nonstatutory, nonoversight mechanisms that may benefit L, such as the courts, the presence of a legislative veto, or the influence of interest groups over policy outcomes.

2.3 Summary of Results/ Empirical Expectations

Since this is a signaling game, the equilibria presented below are Perfect Bayesian (proofs and full exposition in McGrath (2009)\(^6\)). My strategy for characterizing the equilibria is to do so in terms of B’s position relative to L and other parameters of the model. I present only those results relevant to the U.S. Congress below. As we will see, these results predict that L never writes laws that restrict B ex ante. The more general results of the model show that L does restrict discretion ex ante (i.e., writes laws such that \( x < \bar{I} \)) under certain values of \( \gamma \), but these results are irrelevant to the empirical analyses in this paper. I neither have data on ex ante delegation at the congressional level, nor do I expect \( \gamma \) to vary much in one institution over time. Besides, when L does write laws where \( x < \bar{I} \), the directions of the predictions of levels of ex post oversight do not change substantively. These ex ante results will be used in future work to make predictions about the types (length, specificity, procedural requirements) of laws state legislators write in specific policy domains.

First, consider the case where \( x_B < a \) (Figure 2). Assume that L writes \( x = \bar{I} \). Here, B can receive his ideal point \( x_B \) as an outcome by implementing \( y_0 = x_B \) or \( y_1 = x_B + 1 \). L prefers this outcome to investigating (conducting oversight) since the cost of doing so, \( a \), is greater than the policy gain for having the outcome go to 0. Given this situation, L would

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\(^6\)A version of this paper can be found at http://myweb.uiowa.edu/rmcgrath/dissertation_files/rjm-chapter2.pdf
not deviate from writing the costless law \((x = \bar{I})\), since such deviation would not change B’s strategy and would only take away from L’s utility.

For the case where \(a \leq x_B \leq a + \frac{1}{2}\) (Figure 3), assume again that L writes \(x = \bar{I}\). B can no longer receive his ideal point through implementation because L would prefer to pay the cost \(a\) to investigate and force the outcome to 0. B would lose less policy utility by choosing to implement a policy which yields an outcome at \(a\). B would always prefer this outcome to 0 and would avoid paying the cost \(d\). Therefore, B’s strategy would be to implement \(y_0 = a\) or \(y_1 = a + 1\). As in the first case, L would not deviate from writing the costless law \((x = \bar{I})\) here either.

Note that L neither limits discretion (i.e., writes laws where \(x < \bar{I}\)), nor conducts oversight hearings in either of these first two regions. The effects of these tools of control can be seen in Region 2, where B moderates his policy choice in light of the oversight threat, but the model predicts that neither will be used when B is sufficiently close to L (Figure 5, where \(i\) is the probability of L investigating). These two equilibria are separating in the sense that L is able to perfectly infer the value of \(\epsilon\) given the action of B. These similar equilibria lead to this formulation of an empirical hypothesis:

**Hypothesis 1a:** When ideological conflict between an executive agency and a Congressional committee is sufficiently low \((x_B \leq a + \frac{1}{2})\), changes in neither ideological conflict nor committee expertise should lead to changes in the probability of oversight hearings.

Relatedly,

**Hypothesis 1b:** When the cost of holding a hearing is sufficiently high \((a \geq x_B - \frac{1}{2})\), changes in neither ideological conflict nor legislative expertise should lead to changes in the probability of oversight hearings.

There are no separating equilibria when \(x_B\) becomes too large \((x_B > a + \frac{1}{2}\), Figure 4).
Here, assume that when $\epsilon = 1$, B implements $y_1 = a + 1$, yielding an outcome, as before, at $a$. Now consider the case where $\epsilon = 0$. B would prefer an outcome at $a + 1$ to one at $a$, so he has an incentive to “cheat” here and again implement $a + 1$. However, $y_\epsilon = a + 1$ is not sustainable as a pooling strategy, since L would then investigate with probability 1 in this region. Therefore, let us assume that B “cheats” (i.e., implements $y_0 = a + 1$) with probability $q$ and does not cheat (i.e., implements $y_0 = a$) with $1 - q$. In equilibrium, B would choose a value of $q$ that would make L indifferent about investigating. Similarly, L would have to choose a probability of investigating, $i$, that would make B indifferent about cheating. Given a maximal discretion law ($x = \bar{l}$), these probabilities are $q = \frac{ap\gamma}{1 - \gamma a + \gamma - p + ap\gamma + \gamma p}$ and $i = \frac{2a + 1 - 2x_B}{a + 1 - 2x_B}$. As noted above, these are equilibrium probabilities for most values of $\gamma$ and are the ones most relevant to the study of oversight at the congressional level.\(^7\) Whereas the theoretical probability of oversight is 0 in regions 1 and 2, it is positive in region 3. Therefore, I hypothesize that oversight hearings happen more frequently when in this region.

**Hypothesis 2a:** When ideological conflict between an executive agency and Congressional committee is sufficiently high ($x_B > a + \frac{1}{2}$), or the cost of holding a hearing sufficiently low ($a < x_B - \frac{1}{2}$), oversight hearings will occur with positive probability.

**Hypothesis 2b:** When ideological conflict between an executive agency and Congressional committee is sufficiently high ($x_B > a + \frac{1}{2}$), or the cost of holding a hearing sufficiently low ($a < x_B - \frac{1}{2}$), increases in ideological conflict should have a positive effect on the probability of oversight hearings.

**Hypothesis 2c:** When ideological conflict between an executive agency and Congressional committee is sufficiently high ($x_B > a + \frac{1}{2}$), or the cost of holding a hearing sufficiently low

\(^7\)The probabilities given are in equilibrium when $\gamma \leq \frac{1}{a+1}$ or $\gamma > -\frac{x_B + a}{x_B(a+1)}$. However, when $\frac{1}{a+1} < \gamma < -\frac{x_B + a}{x_B(a+1)}$, then B cheats with $q = \frac{ap\gamma}{1 - \gamma a - \gamma - p + ap\gamma + \gamma p}$ and L investigates with $i = \frac{-2x_B + 2a + 2\gamma a - 2x_B + 2\gamma d + 1 + \gamma}{-2x_B - d + a + 1 + \gamma a + \gamma - 2x_B + \gamma d}$. 

\((a < x_B - \frac{1}{2})\), increases in committee expertise should have a positive effect on the probability of oversight hearings.

So, there is a semi-separating equilibrium in Region 3 with the given mixed strategy probabilities. Figures 6 and 7 show the effects on the probability of oversight of changes in \(x_B\), B’s ideological position, and \(a\), L’s level of professionalism/expertise, within this region. As I describe more fully below, I have developed empirical measures of both of these theoretical variables and have used them to test the hypotheses that neither \(x_B\) nor \(a\) should have an effect on the probability of oversight when \(x_B\) is sufficiently low (regions 1 and 2), but that both ideological distance between L and B and the extent to which L is professionalized should have positive effects on oversight in region 3.\(^8\) These predictions are important because they stipulate that Congress should conduct oversight hearings when it needs to do so to control policy, and when it has the institutional capacity to respond to the preference orderings which make oversight necessary for control. Again, these hypotheses differ from those in the literature in that they recognize that preferences and actions of extra-congressional actors can affect the strategies members employ to control policy.

3 Data and Methods

Although there are many ways in which legislatures can review, monitor, and supervise executive action, I focus exclusively on formal oversight hearings. The main reason for this is that these formal hearings most closely resemble the “investigations” from the model. In addition, they are the easiest to quantify and categorize as oversight. The data are structured by standing committee and year. I use standing committee-years as the unit of analysis instead of committee-years (including special committees) or subcommittee-years.

\(^8\)Note that although \(a\) has a negative effect on the probability of investigation in Figure 7, this variable actually denotes a lack of professionalism/expertise.
because it is the format that allows for the most complete array of control variables to be merged with the hearings data. There are a total of 40 standing committees in these data from 1947-2006.

I use the number of hearing days as the dependent variable. I created this variable based on the “Congressional Hearings” data from the Policy Agendas Project (www.policyagendasproject.org). I considered a hearing to be concerned with oversight if it was about neither legislation nor the creation of a new agency or program. Since committees often hold more than one oversight hearing in a day, there are observations where hearing days exceed the session length or even the number of days in a year. Table 1 displays the descriptive statistics for this dependent variable as well as those for each independent variable in the analyses. Likewise, Figure 1 shows the number of hearing days in each chamber for each year in the dataset.

I operationalize $x_B$ from the theoretical model as the absolute value of the distance between each committee’s median (“L” from the model) DW-NOMINATE (McCarty, Poole & Rosenthal, 1997) score (available at http://voteview.com/) and the president’s DW-NOMINATE score (“B” from the model). The president’s ideology is used here as an inexact proxy for the location of the investigated agency’s ideal point. Although this is not an ideal proxy, it is a more nuanced and theoretically sound operationalization than an indicator for divided government (as in Epstein & O’Halloran (1999); Huber & Shipan (2002)). To capture the $a$ parameter from the model, I collected data on the mean number of terms served in each committee during a given year (Nelson, 1993; Stewart & Woon, 2009). Although experience in a certain committee does not directly translate into an expertise which makes

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9 The data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant number SBR 9320922, and were distributed through the Department of Government at the University of Texas at Austin and/or the Department of Political Science at Penn State University. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

10 I also used the committee chairperson’s ideal point and the results below were substantively similar.
writing laws and conducting oversight less costly, I argue that it is at least a proxy.\textsuperscript{11}

It is not straightforward to construct a way to capture empirically the distinction between regions 1 and 2 and region 3 from the theoretical model. Ideally, the above empirical measures for $x_B$ and $a$ would perfectly capture the theoretical constructs and be on the same natural scale. In this perfect world, I could simply create an indicator for whether the value of the $x_B$ variable was greater than the value of the $a$ variable plus $\frac{1}{2}$. Instead, the empirical measures I have created are not perfect and to construct a region 3 indicator in this way would falsely assume they were. The key problem with operationalizing the distinction between the regions is that the distinction simultaneously depends on the value of both variables. An alternative way to think about the distinction is that neither $x_B$ nor $a$ should have an effect on the probability of oversight when policy disagreement is sufficiently low (Hypothesis 1a), or when the cost of holding a hearing is sufficiently high (Hypothesis 1b). This approach does not explicitly consider that the regions depend on an interaction of the two variables, but it does still recognize a threshold point where the effects of either variable should change. In fact, if either of the conditions for being in region 1 or 2 holds, then the model predicts that the probability of the committee holding a hearing should be zero. Since we know from previous literature that legislatures may hold hearings for reasons external to policy preferences, this theoretical prediction overstates the empirical one. I would, however, expect there to be fewer total hearings when either policy disagreement or committee expertise is very low than if they are higher (Hypothesis 2a).

I estimated the models below with many potential values of the policy disagreement and committee expertise thresholds between regions 1 and 2 and region 3 and have reported model estimates for three different policy disagreement threshold values (Hypothesis 1a), .35 (78% of cases in region 3), .4 (72% in region 3), and .45 (67% in region 3).\textsuperscript{12} I focus on the results

\textsuperscript{11} An alternative measure that I plan to incorporate into future work is a measure of committee resources (staff, budget, number of party leaders in committee, etc.).
\textsuperscript{12} I also estimated models where I considered different committee expertise thresholds (Hypothesis 1b) of
with the policy disagreement region 3 threshold at .35 because this seems to be the value at which the change in effects from one region to another is the starkest, but I report the results for the other threshold values to show that the pattern of results does not depend on the exact specification of a threshold value. Table 2 assesses the expectation from Hypothesis 2a that oversight hearings should be more prevalent when there is either sufficient policy disagreement or committee expertise. This table shows that there are significant differences in the mean number of oversight hearing days on either side of both operationalizations of the region threshold.

For the multivariate models, I include an indicator variable for whether the chamber in which each committee operates is controlled by a different party from the president. This is a more crude way to measure ideological divergence than that described above, but it also controls for the possibility that parties use oversight hearings to attack the president if they are from a different party. It may be the case that since they generally distrust the federal government more than Democrats, Republicans are ideologically more prone to conducting oversight hearings. I control for this potential effect by including an indicator for Republican controlled chamber. As suggested in Ogul & Rockman (1990), I also include an indicator for whether or not the Subcommittee Bill of Rights was in full effect during the committee-year. If decentralization leads to more oversight activity, this indicator should have a positive and significant coefficient.

I operationalize potential environmental (Galbraith, 1977) influences on oversight activity in a number of ways. Each is a measure of the size and complexity of the federal government and may have diminishing effects on hearing days, so I take the natural log of each before including them in the empirical models below. First, I use the total number of committee staff for each chamber in each year (Malbin, Ornstein & Mann, 2008, Table 5.5). Second, I include

3.5 terms (79% of cases in region 3), 4 terms (69% in region 3), and 4.5 terms (61% in region 3). The results were substantively identical to those presented below and I have omitted them here in the interest of brevity.

Two variables are used to represent potential fiscal determinants of oversight. The first is the percentage of federal spending that is discretionary. Spending is coded as discretionary if it is not a mandatory payment to individuals, like Social Security or Medicare, or an interest payment on the federal debt (*Historical Tables, Budget of the United States Government, Fiscal Year 2008, 2007*, Table 3.2). I code the yearly deficit (negative values) or surplus (positive values) as a percentage of the total budget for a given year (*Historical Tables, Budget of the United States Government, Fiscal Year 2008, 2007*, Table 1.1).

I also include the number of days in each congressional session, an indicator for chamber, and an indicator for the second session of each Congress as controls. For the most part, besides the variables representing the theoretical variables $x_B$ and $a$, these are the variables used in a relatively recent and similar empirical study (Smith, 2003).

Generally, count data such as these are characterized by the Poisson distribution (Long, 1997); however, for these particular data, a negative binomial regression model is more appropriate than a Poisson regression because it allows for the clear overdispersion of the dependent variable. To account for potential time trends in the number of oversight hearing days, I include a time counter which begins at 1 in 1947 and goes to 60 in 2006. In addition, I have clustered the standard errors by standing committee to ameliorate potential negative effects of heteroskedasticity on estimate efficiency.\footnote{Since these data are longitudinal, they may violate the independence assumption of the negative binomial model. Therefore, I also estimated cross-sectional negative binomial models with a random effects design to accommodate the non-independence of events (Cole, 2006, p. 1921). The results were substantively identical to the ones presented below. In general, the results presented below are robust to diverse specifications and functional forms.}
4 Results

Table 3 presents estimates for different models of the determinants of congressional oversight activity. These models add significantly to the information provided in Table 2. First, the multivariate models allow me to control for potential determinants of oversight activity other than ideological divergence and committee expertise. Second, these simple difference of means tests are consistent with continuous linear effects of the main institutional variables. The theoretical model predicts the effects of $x_B$ and $a$ to be discontinuous (and therefore nonlinear across the range) with respect to the probability of oversight hearings. The models below clearly demonstrate that the effects of ideological divergence and committee expertise are partially determined by their values (i.e., the probable theoretical region). These models do much to provide support for Hypotheses 2b and 2c.

I begin by including the “Ideological Divergence” ($x_B$) and “Mean Terms in Committee” ($a$) variables in Smith (2003)’s basic model of oversight hearings. These results are presented in the leftmost column of Table 3. I then assess my expectation that both of these variables should have positive effects in region 3 (Hypotheses 2b, 2c) and not in regions 1 or 2 (Hypothesis 1a). I do so by including an indicator variable for “Region 3” and interacting it with both of the theoretical variables of interest. These results are presented with different region thresholds in the second, third, and fourth columns of Table 3.

Unsurprisingly, given the theory, the extent to which a committee’s median ideology score differs from the president’s is not a significant determinant of oversight hearing days across the full data (the “No Interaction” column). In contrast, even when unmodified by the region indicator, mean terms in committee has a positive and significant effect on congressional oversight activity. Although the theoretical model makes no predictions about

\footnote{Note that my model does not include variables for percentage of hearing days in subcommittee or a measure of citizen trust in the federal government and that it does include a variable for the number of committee staff not found in Smith (2003).}
the unconditional effect of either of these variables, it is useful to know that committees with
more policy-specific experience conduct more oversight hearings, ceteris paribus.

In this first model, it appears that the different party and Republican chamber variables
exert the expected effects on oversight activity, with increases in both leading to signifi-
cant increases in oversight activity. However, where Republican control of the committee’s
chamber (and thereby the committee chair position) maintains its significant effect across
specifications, different party becomes a statistically insignificant influence of oversight when
the region indicator and interactions are included. Likewise, these models show no support
for the idea that committee decentralization brought on by the Subcommittee Bill of Rights
had increased oversight activity.

Of the environmental variables, only the number of committee staff across each chamber
significantly affects hearing days. The more resources that a chamber has in terms of staff
serves as a proxy for the resources available to individual committees. For future research,
I hope to have access to information about staff numbers disaggregated to the individual
committee-level. I fully expect such a variable would have an even stronger effect on oversight
and be a close approximation of the theoretical $a$ variable. These results differ from those
in Smith (2003), who finds that the number of federal agencies has a negative effect on
oversight hearing days and the number of federal employees has a positive effect. Smith does
not include a variable for chamber-level committee resources, which could account for the
different findings.

As is generally the case in Smith (2003), neither of the fiscal variables I include (percent
discretionary spending and percent surplus/deficit of total budget) are significant determi-
nants of hearing days for any specification. In contrast, two of the control variables have
consistently significant effects. Holding all other variables constant, committees in the House
of Representatives are more likely to hold oversight hearings than those in the Senate. Con-
sistent with Smith’s findings, committees are less likely to conduct oversight when they are
in the second session of a Congress than the first.

After estimating the no interaction model in the first column as a baseline, I sought to test the implications of the theoretical model. Although I will discuss only the model where I assume the region threshold exists at .35, note that the results hold at a threshold of .4 and nearly reach significance when the region threshold is considered to be as large as .45.

In support of Hypothesis 1a, the insignificant coefficient on the ideological divergence variable tells us that it has no effect on oversight hearings when the region 3 variable is zero (i.e., in regions 1 and 2). In contrast, when this term is interacted with the region 3 indicator, the effect switches signs from negative to positive and gains moderate statistical significance. Therefore, this model shows support for the expectation (Hypothesis 2a) that $x_B$ only has a positive and significant effect on oversight hearings when it is sufficiently far from a committee’s ideal point.

Mean terms in committee, however, does have a positive and significant effect on oversight in regions 1 and 2 (.078 (.023) coefficient on constitutive term). This is despite the model’s expectation (Hypothesis 1a) that there should be no effect in these regions. The significant coefficient (.101 (.024) ) on the interaction term indicates that this positive effect does increase in region 3, in support of Hypothesis 2b. Although this does not perfectly conform to the expectations of the theoretical model, it does suggest that there is something about the increased distance between a committee and the president that conditions the way in which committee expertise affects oversight.

While these statistical results show limited support for the predictions of my model of legislative-executive policymaking, they do little to give us a sense of their substantive meaning. However, since maximum likelihood models based on the negative binomial probability distribution are log-linear, it is simple to convert a vector of difficult-to-interpret coefficients into substantively meaningful quantities. The output of this model is a prediction of the expected number of oversight hearing days given the values of the independent variables
(the conditional mean). Since the model is log-linear, I can exponentiate the product of an independent variables coefficient and a chosen value of an observation for each variable and sum them to obtain the linear prediction of hearing days for that vector of independent variables and coefficients (Long, 1997, p. 237). These substantive relationships are convenient to present graphically.

Figure 8 plots the effect of changes in ideological divergence across its range on the expected number of hearing days, holding other interval variables at their means and indicator variables at their medians. This figure shows the predicted number of hearing days for committees in the House of Representatives. The vertical line indicates the value of the region 3 threshold. This figure shows clearly that the ideological divergence variable has distinct effects depending on the region it is in. In regions 1 and 2 (the line to the left of the region threshold), there is a clear, although statistically insignificant, negative effect of increases in ideological divergence. In contrast, when the variable reaches the region 3 threshold, the effect becomes positive and significant. We see that changes in ideological divergence can have substantively meaningful effects on oversight hearing days. For example, if a House committee’s distance from the president were to change from .4 to .8, holding all other variables constant, we would expect to see about a 16 percent increase in hearing days (from 51 to 59). This graph and its interpretations are starkly different when considering the model with no interaction term. Figure 9 shows that the effect of ideological divergence is consistently negative and statistically and substantively insignificant if one naively leaves out the region interaction. Figure 10 shows that the nonlinear effect of ideological divergence on predicted number of oversight hearing days exists in the Senate as well, but with a downward intercept shift. Importantly, the difference between how committees from the House and Senate react to changes in ideological divergence between their own policy preferences and an agency’s is one of intensity, not quality.

\footnote{Although I do not present them all here, this relationship holds for each of the following figures as well.}
Figures 11 and 12 show these same effects for the mean terms in committee variable. For regions 1 and 2 and for region 3, I held the value of ideological divergence at its mean for that region and the values of the other variables at their means or medians. Figure 11 shows that although the effects of mean terms in committee are consistently positive, they are substantively much larger in region 3. For example, an increase of 2 terms in committee from 8 to 10 leads to an increase in expected hearing days of about 10 in regions 1 or 2, but the same increase leads to an additional 35 hearing days in region 3.

5 Discussion

This research has contributed to the study of legislative-executive relations in a number of ways. First, it approaches congressional oversight with a general policymaking framework that generates novel predictions about levels of oversight given regularly variable institutional characteristics. Previous accounts of oversight rely heavily on the assumption that legislators care only about reelection and will only pursue oversight if it helps them in this regard. I argue that legislators should also care about oversight if they are at least in part motivated by policy goals. The approach that I take considers that congressional oversight may be superfluous either because legislators have alternative statutory means to control bureaucrats or because bureaucrats may produce policy that legislators prefer to holding costly oversight hearings. In so doing, the model summarized in this paper extends and generalizes the influential Huber & Shipan (2002) model of delegation and demonstrates that, under certain conditions, legislative oversight serves no positive policymaking purpose. This fact should inform normative accounts of the inherent democratic good of oversight activity.

Second, this paper tests the implications of the theoretical model on congressional oversight hearing days from 1947-2006. This is the most extensive empirical study of the determinants of oversight hearings to date. I find limited support for these hypotheses and also
find that there are few other variables (Republican chamber, committee staff, House of Representatives, and second session) that have consistent effects on oversight activity. It may be the case that when one adequately accounts for institutional determinants of oversight, the effects of environmental, fiscal, and other factors become less important. Importantly, these analyses show that it is likely that legislators consider the actions of agencies to be signals about likely policy outcomes. This kind of explicit separation of powers consideration is novel for empirical studies of oversight. This paper not only argues that oversight should be used as a policymaking strategy by Congressional committees, but shows that it probably is.

Despite these contributions, there is ample room for future work. The most obvious direction for future research is to better specify the empirical models so as to more directly test the predictions from the theoretical model. I am collecting committee- and agency-specific information (e.g., number of committee staff and ideological position of agencies instead of presidents) that will make the operationalization of concepts more precise in future work. In addition, I am working on incorporating semiparametric and hidden Markov techniques that will allow me to relax the assumption of a specific region threshold. Perhaps the most interesting extension of this research would be to generate predictions about agency behavior given the model. The theory sketched in section 3 yields predictions about the extent to which bureaucrats are likely to act illegally to try and fool ideologically distant legislators. To study this would involve collecting a large amount of novel data, but would be an important and unique undertaking. Finally, while trying to explain congressional oversight is useful, the most interesting implications of this theory must be tested at the level of the U.S. states. There is much more institutional variation in the states than across time in Congress and at least as much variation in oversight activity (Rosenthal, 1981). Besides, an important implication of the theory is that legislators should also consider the likely strategies of judicial actors when crafting their policymaking strategies. Cross-sectional
variation in relevant judicial preferences does not exist at the Congressional level. In essence, this paper is an encouraging first cut at assessing the implications of this model of legislative-executive policymaking.
<table>
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<th>S.D.</th>
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<th>Max</th>
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<td>.5</td>
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Table 2: Difference of Means Tests for Region 3 Thresholds (Two-tailed)

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<th>Ideological Divergence ≥ .35</th>
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<tr>
<td>Mean # Hearing Days</td>
<td>33.8</td>
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<td>SD</td>
<td>43.2</td>
<td>51.2</td>
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<td>N</td>
<td>491</td>
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<td>t-statistic</td>
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<tr>
<td>p-value</td>
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Mean Terms in Committee < 3.5 | Mean Terms in Committee ≥ 3.5

<table>
<thead>
<tr>
<th></th>
<th>Mean # Hearing Days</th>
<th>SD</th>
<th>N</th>
<th>t-statistic</th>
<th>p-value</th>
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<td>Mean # Hearing Days</td>
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<td>41.2</td>
<td>1822</td>
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Table 3: Negative Binomial Models of the Determinants of Oversight Hearing Days (S.E. clustered by committee), 1947-2006

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<th>Region 3 (.35)</th>
<th>Region 3 (.4)</th>
<th>Region 3 (.45)</th>
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<td>Ideological Divergence</td>
<td>-0.052</td>
<td>-0.754</td>
<td>-0.936***</td>
<td>-0.632</td>
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<td>-0.171</td>
<td>-0.507</td>
<td>-0.413</td>
<td>-0.521</td>
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<td>Mean Terms in Committee</td>
<td>0.155***</td>
<td>0.078***</td>
<td>0.121***</td>
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<td></td>
<td>-0.014</td>
<td>-0.023</td>
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<td>Region 3</td>
<td>-0.952***</td>
<td>-0.561***</td>
<td>-0.292</td>
<td></td>
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<tr>
<td></td>
<td>-0.235</td>
<td>-0.237</td>
<td>-0.342</td>
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<tr>
<td>Divergence * Region 3</td>
<td>-1.066*</td>
<td>1.016**</td>
<td>0.606</td>
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<tr>
<td></td>
<td>-0.556</td>
<td>-0.478</td>
<td>-0.562</td>
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<td>Mean Terms * Region 3</td>
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<td>0.055***</td>
<td>0.031</td>
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<td>-0.016*</td>
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Standard errors in parentheses. * significant at 10%; ** significant at 5%; *** significant at 1%
Figure 1: Oversight Hearing Days, by Chamber (1947-2006)
Figure 2: Region 1 — Separating Equilibrium

\[ L \quad x_B \quad a \quad x_B + 1 \quad a + 1 \]

Separating Equilibrium: \( x_B < a \)
- L passes \( x = x_B + 1 \), B implements \( y_1 = x_B + 1 \) when \( \epsilon = 1 \), L does not investigate
- L passes \( x = x_B + 1 \), B implements \( y_0 = x_B \) when \( \epsilon = 0 \), L does not investigate

Figure 3: Region 2 — Separating Equilibrium

\[ L \quad a \quad x_B \quad a + \frac{1}{2} \quad a + 1 \quad x_B + 1 \]

Separating Equilibrium: \( a \leq x_B \leq a + \frac{1}{2} \)
- L passes \( x = x_B + 1 \), B implements \( y_1 = a + 1 \) when \( \epsilon = 1 \), L does not investigate
- L passes \( x = x_B + 1 \), B implements \( y_0 = a \) when \( \epsilon = 0 \), L does not investigate

Figure 4: Region 3 — Semi-separating Equilibrium

\[ L \quad a \quad a + \frac{1}{2} \quad x_B \quad a + 1 \]

Semi-separating: \( a + \frac{1}{2} < x_B \)
- There is no pure separating strategy for B here
  - If \( \epsilon = 1 \), B plays pure \( a + 1 \)
  - If \( \epsilon = 0 \), B mixes between \( a + 1 \) and \( a \)
Figure 5: Regions 1 and 2 — Empirical Expectations

\[ x = \bar{I} \]

\[ \begin{align*}
  i & = 0 & a + \frac{1}{2} & a + 1 \\
  x_B & & & \\
  a & & & \\
\end{align*} \]

$\mathbb{X}$
Figure 6: Region 3 — How $x_B$ affects $i$, with $a = .2$
Figure 7: Region 3 — How $a$ affects $i$, with $x_B = 1.1$
Figure 8: Effect of Ideological Divergence on Oversight Hearing Days by Region, House of Representatives

Interval variables held at mean, Indicator variables held at median.
Figure 9: Effect of Ideological Divergence on Oversight Hearing Days, No Interaction, House of Representatives

Interval variables held at mean, Indicator variables held at median.
Figure 10: Effect of Ideological Divergence on Oversight Hearing Days by Region, Senate

Interval variables held at mean, Indicator variables held at median.
Figure 11: Effect of Committee Experience on Oversight Hearing Days by Region

Interval variables held at mean, Indicator variables held at median.
Figure 12: Effect of Committee Experience on Oversight Hearing Days, No Interaction

Interval variables held at mean, Indicator variables held at median.
References


