

VERY ROUGH DRAFT: NOT FOR QUOTATION

Guarding the Guardians:
U.S. Senate Oversight of Foreign and Defense Policy, 1947-2005

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Abstract: This paper examines the effect of partisanship on Senate oversight of national security policy from 1947-2005, using unique data that encompass both public and executive session hearings and that are coded for oversight content for the Senate Armed Services and Foreign Relations Committees. The paper develops a theory of legislative oversight that considers how the payoffs of oversight vary with partisan goals and internal institutional constraints. It then assesses how alternative measures of oversight effort change over time and how cumulative oversight activity affects presidential approval. Finally, the paper develops statistical tests for assessing the relative impact of changes in party strength and ideological alignments in light of long-term changes in the Senate committee system, the size of the national security state and external shocks such as international crises and wars.

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As Democrats celebrated their electoral victory in November 2006, their agenda prominently featured oversight of the executive branch, particularly in the realm of foreign and defense policy. Incoming chair of the House Armed Services Committee, Ike Skelton (D, MO), had promised that his main priority would be “oversight, oversight, oversight.” (X 2006), and both the Senate Armed Services and Foreign Relations Committees scheduled high profile hearings on the Iraq War at the start of the 110th Congress in January. The aggressive Democratic stance toward the Bush Administration not only illustrated that oversight, like everything else on Capitol Hill, has strategic value in partisan battles for reputation, but also raised serious issues for scholars. First, how does overt partisanship affect the conventional view of congressional oversight as a choice between “fire alarms” and “police patrols” (McCubbins and Schwartz 1984), particularly in the realm of national security policy? Second, how do indicators distinguish among oversight behaviors that are largely for show and those that seriously engage the president? Third, how have long-term trends within Congress affected the capacity of the Senate to discharge its constitutional and historical roles of scrutinizing the exercise of executive discretion, and how do party effects and institutional developments interact and change over time? Finally, what is the overall affect of oversight on the president’s standing with the public?

This paper develops a theoretical perspective and innovative measures to disentangle short-term partisan shifts and long-term institutional developments in the oversight of foreign and defense policy. Given the lengthy time series from 1947-2005, the analysis promotes comparison across different foreign policy eras, encompassing the

Cold War consensus that stretched from the end of WWII to the divisive Vietnam War, the period of resurgence and individual policy entrepreneurship that extended from the Nixon years through the Reagan presidency, and the rise of party polarization that surged in the late 1980s and continues today. The vast scope of nearly sixty, often tumultuous years of national security policy requires limits to the research design that permit systematic analysis of major trends. The focus, therefore, is on the Senate Armed Services and Foreign Relations Committees--two committees that historically have had the prestige and visibility to challenge the president and whose fortunes have changed substantially in recent decades.¹ The task of collecting, analyzing and interpreting the evidence remains formidable, and the results confirm conventional wisdom in some respects and challenge it in others. Although the findings reveal wide variation in oversight activity, depending upon the time period and the committee, the overall trends indicate a decline in oversight, both in terms of quantity and quality. Nevertheless, even the reduced amount of oversight in recent years affects the public standing of the president.

1. Oversight, Partisanship and National Security Policy:

Decades of scholars have faulted Congress for insufficient attention to how the president and executive agencies exercise their enormous discretion over the implementation of public policy (c.f. Ripley and Franklin 1982). The political payoffs, they argued, were low, because constituents were more inclined to reward casework, pork barrel projects and positions instead of bureaucratic performance. Rather than tackle the arduous and politically unprofitable burden of oversight, then, the solution for Congress

¹ For more than a century Foreign Relations was the most desirable committee in Congress until the mid-1970s (Canon and Stewart ; Groseclose and Stewart).

was to build “fire alarms” into delegations of authority so that aggrieved citizens would bear the costs of oversight (McCubbins and Schwartz 1984; see also Weingast 1983).

In the realm of national security policy, the disincentives for congressional oversight were even greater, however, because of presidential prerogatives with respect to treaty negotiations, command over military operations, the need for “secrecy and dispatch,” and rally effects during times of crisis. The president gradually assumed the position of first-mover (Howell 2005; James 2005), leaving Congress in the tenuous position of reacting to a *fait accompli*. Under such conditions, the fire alarm remedy was not a viable alternative, although interest groups did become visible on Capitol Hill in recent years in advocating foreign and defense policy agendas (c.f. Lindsay 1994; Deering 2001; 2005). Consequently, Congress has engaged in repeated struggles with the executive since the onset of the Cold War to maintain both its legitimacy and its capacity for oversight of defense and foreign policy—in the eyes of most observers without success (c.f. Hinckley 1994; Silverstein 1997; Fisher 2005).

The burst of activity in the winter of 2007 suggests that partisanship provides some incentives to engage the executive over the implementation of national security policy. Party reputations rely heavily on voters’ perceptions of competence in war and peace (Petrocik 1991), and party campaigns devote considerable attention to foreign policy and defense issues in presidential elections (Geer 2006). Moreover, party strength in Congress constrains presidential war making and influences the duration of armed conflicts (Howell and Pevehouse 2005; 207 forthcoming; Kriner 2006), while divided government leads to gridlock on foreign policy issues (Deering 2005). Given the volatility and responsiveness of public opinion to international events (Page and Shapiro),

it would be surprising if parties did not exploit the strategic possibilities of oversight.

The epic struggles between the Democratic Congress and a succession of Republican presidents—Nixon, Ford, and Reagan—provide dramatic examples of the role of party conflict in the congressional oversight of foreign and defense policy. Disputes over national security issues shaped the relations between Republicans and the Clinton Administration, as well. Although both Eisenhower and Johnson experienced challenges to their national security decisions from their fellow partisans in Congress, a cursory review of the historical record suggests that presidents suffer fewer challenges from Capitol Hill under unified government.

Research on congressional parties seldom looks at oversight as an arena for competition, however, focusing instead on committee assignments, agenda control and roll call voting in the House (c.f. Kiewiet and McCubbins 1991; Krehbiel 1991; Cox and McCubbins 1993; 2005; Aldrich 1995a; 1995b; Young and Heitshusen 2003; Aldrich and Rohde 2001; 2005; XXXXX), and to a lesser extent in the Senate (Sinclair 2005; Evans and Lipinski 2005). Aberbach (1990) has demonstrated, however, that oversight increased during the 1980s under divided government, while Mayhew (2005) reported that major investigations in the 1990s, in contrast to earlier years, all occurred under divided party control. Moreover, Rohde (1994) has suggested that increased polarization raised barriers to bipartisan cooperation with the president on foreign and defense policy. Many scholars have remarked on the divisive nature of foreign policy discourse in recent years (c.f. Lindsay and Ripley 1993; Hinckley 1994; Destler 2001). Generally, however, the literature lacks systematic analysis of the long-term connections between partisanship and oversight.

Scholarship on the delegation of authority to the executive has emphasized the procedures and incentives that make executive agents accountable to legislative principals. Parties offer a special challenge to models of legislative control of the executive, because they magnify the problem of multiple principals inherent in a separation of powers system (Moe 1984; Moe and Bendor 1985). Sitting majorities seek to prevent future majorities from reversing policy goals, so they build requirements into legislation that lead to inefficiency and shirking (Epstein and O'Halloran 1999; Shipan 1997; 2005). The emphasis of this literature, however, has been on domestic policy, particularly regulation and administrative procedure, and the difference in executive prerogatives suggest that such models may not be relevant to scrutiny of national security policy. In recent years, Congress has endeavored to build weak fire alarm provisions into foreign and military aid programs through reporting requirements, as well as the War Powers Resolution of 1973, but such efforts have been modest at best (Deering 2005). Generally, when scholars have examined delegation to the president in foreign policy, the debates have largely been about the constitutional powers of each branch (c.f. Koh 1991; Silverstein 1997; Rabkin and Crovitz 1989; Yoo 2005; Irons 2005).

Long-term trends in the congressional committee system raise further questions about the capacity of lawmakers to engage in effective oversight of the executive branch. Both time constraints and changes in the committee system have made it less likely that members will undertake sustained examination of executive decisions generally. The opportunity costs of oversight are high because Congress spends less time in session than in the past (Mann and Ornstein 2006a), and members, especially senators, have more obligations to fulfill with multiple committee and subcommittee assignments (c.f. Sinclair

1989). In addition, the rise of the national security state greatly increases the time that Senate committees spend on nominations for the numerous bureaucratic positions and the complexities of budgets. Furthermore, the rise of polarized parties has coincided with a weakening of committee prerogatives and powers, not the least of which is term limits on chairs (Aldrich and Rohde 2005). Even in the Senate, committee chairs have conceded ground to party leaders as spokespersons with respect to the news media and as negotiators with the president (Sinclair 2001; 2005; Evans and Oleszek 2001).

With respect to national security, Deering (2005) highlights many of these patterns and attributes the ineffectiveness of Congress in monitoring national security policy to weak committee leadership on Foreign Affairs, inter-party conflict on both national security committees, and unwillingness to adopt reforms that would undo the damage of decades of ceding power to the executive branch. Deering's (2005) assessment is somewhat more charitable towards the Senate Armed Services Committee, but he generally sees Congress reacting episodically to scandals, crises and executive initiatives. Mann and Ornstein echo this pessimistic view: XXXXX (2006b). The current evaluations of congressional performance imply that the institution did better in the past, but the benchmarks for such claims are unclear.

Given the newfound urgency in Congress for oversight, what would it look like and how would we measure it? Public hearings spark headlines when lawmakers grill top administration officials, but quiet behind-the-scenes inquiries generate more useful information. A day of aggressive questioning provides dramatic moments of confrontation for the television cameras, but prolonged examination of an issue's complexities accomplishes more in educating the public or inducing officials to think

about alternatives rather than reflexively defending an existing policy. Thus, even when lawmakers respond to international crises, they choose from among symbolic and substantive types of oversight. How, then, do presidents and the public know when Congress means business? Has pseudo-oversight supplanted serious scrutiny?

Presidents have compounded the complexities of evaluating congressional oversight. For many years, oversight operated through informal communication networks among agency officials, lawmakers, committee staff and interest group representatives. Often disparaged as “iron triangles,” such contacts alerted administrators to congressional concerns, encouraged incremental adjustments, and created coalitions that could circumvent the White House. These collaborative arrangements meant that the level of congressional oversight appeared deceptively low (Weingast 1983; McCubbins and Schwartz 1984) and occurred indirectly through reauthorization and appropriations processes. Indeed, the annual authorization process became a particularly important tool for the Armed Services committees. By politicizing appointments to the upper reaches of federal agencies (Lewis 2007 forthcoming; Light 1995), presidents attempted to gain greater control over bureaucratic communication with Congress. To obtain information from agencies, members have had to schedule formal hearings, but the net effect on oversight remains unclear.

Finally, committees differ in a many ways that can influence their overall level of effort in overseeing the executive. Fenno’s (1973) classic work on committees predicts broad differences in committee behavior in response to the varying strategic premises of the members and environmental constraints. In keeping with this research tradition, Sheingate’s (2006) study of biotechnology reveals that committees with broad

jurisdictions engage in more oversight activity than those responsible for relatively narrow policy domains. With respect to national security policy, the number of relevant committees is small, but the range of potential issues is vast and involves grave matters of war and peace. Moreover, the division of labor between the foreign policy and defense committees profoundly influences the budgets, constituency pressures and ideological make-up of each (c.f. Rundquist and Carsey 1994). Typically, the Senate Foreign Relations committee has attracted liberal, northern internationalists, while Senate Armed Services has interested conservatives, southerners and lawmakers with major military bases or contractors (Deering 2001; 2005). Until recently, both committees have been preference outliers, although each now mirrors the growing partisan polarization of the Senate (Fowler and Law 2006). Finally, chairs are responsible for each committee's agenda (Evans 1991) and their varying skills in mobilizing attention of policy elites suggest that some variations in oversight across time are idiosyncratic.

In sum, the prospect of increased congressional scrutiny of the Bush Administration highlights interesting problems of theory and measurement in the study of oversight. This research demonstrates that long-term institutional developments, when combined with medium- and short-term influences, constrain congressional capacity for serious oversight of the executive branch even when party competition encourages lawmakers to be more aggressive. It also demonstrates that the post-war national security committees, for all their supposed deference to the president, were more diligent in scrutinizing executive decision making in the past. Despite reduced effort, however, oversight in the contemporary Congress is potentially more damaging to the president. Such findings will hardly count as news to experienced Congress-watchers, but what is

new is the systematic analysis of when and how the shifts occurred over the entire post-WWII period through detailed comparisons of the two major national security committees—the Senate Armed Services and Foreign Relations Committees.

The paper begins with a theory of committee oversight that incorporates the dynamics of party competition and committee change. It ties the political costs and benefits from challenging the executive to the cost constraints of committee members who have the responsibility for examining executive performance. Next, the paper illuminates the complexity of measuring oversight by examining unique data on hearings by the Senate Armed Services and Foreign Relations Committees from 1947-2005. Through plots of the frequency of the number of hearings, hearing days, executive sessions, as well as the content of oversight hearings, the paper illustrates the various oversight options available to legislators and how the mix has changed over time. The analysis then shifts to statistical models that examine the impact of oversight on presidential approval and sort out long-term institutional shifts from the short-term shocks of events and changes in party fortunes in order to demonstrate the differing effects of such influences on the two committees. The findings have implications for theories pertaining to parties and legislative delegation, as well as applications to the ongoing debate about the relative power of the legislative and executive branches in the conduct of national security policy. As news stories confirm daily, congressional passivity or assertiveness regarding presidential prerogatives in matters of war and peace has enormous consequences at home and abroad.

2. A Theory of Congressional Oversight:

The actors in the model of executive oversight are the committee chair and rank-and-file members who sit on the committee. We assume that the chair establishes the calendar for the committee (Evans 1991) and provides a mix of activities that will satisfy the preferences of the committee members. In this approach, the chair is the agent of committee principles, although Maltzman (1997) has demonstrated that committees operate in a complex network of principle-agent relationships, acting as agents for the chamber, the majority party and for constituency interests and organized groups, while serving as principles with respect to agency officials. (A section of the data analysis addresses the empirical implications of treating committees as agents of the chamber majority.)

The chair chooses among types of legislative activity to enhance the committee's reputation within Congress or with the public. Oversight (denoted o) can encompass many types of scrutiny, an issue addressed later in the paper, but for simplicity the different types are considered *in toto*. Legislation (denoted l) includes activity involving statutes and budgets. The utility of the i th committee's members for the chair's agenda at time t is:

$$U_{it} = f(o_{it}, l_{it}) \quad (1)$$

The committee's preferred bundle of oversight and legislation is conditional on the length of the legislative session (Q), minus required committee activity (R), such as organizational meetings or presidential nominations. The total number of days (D) the chair has to work with is:

$$D_{it} = Q_t - R_{it} \quad (2)$$

The chair estimates the price of each type of activity, p , in terms of the time per

unit of effort. Let p_1 be the price of conducting oversight and p_2 be the price of considering legislation. The chair, thus, can offer the committee a mix of oversight and statutory activity such that:

$$D_{it} = p_1 o_{it} + p_2 l_{it} \quad (3)$$

This is a standard utility maximization problem under a budget constraint, which we convey as a Lagrangian function (where λ represents the Greek letter lambda) :

$$L = u(o_{it}, l_{it}) - \lambda (p_1 o_{it} + p_2 l_{it} - D) \quad (4)$$

Differentiating the function yields the familiar result that the marginal rate of substitution between o and s is equal to the price ratio of p_1 and p_2 :

$$\frac{\partial u(o_{it}, s_{it}) / \partial o_{it}}{\partial u(o_{it}, s_{it}) / \partial s_{it}} = \frac{p_1}{p_2} \quad (5)$$

The equation emphasizes two important aspects of committee decisions to oversee the executive: 1) variation in the amount of effort to gain information regarding oversight versus legislation; and 2) the relative value of oversight with respect to other legislative activity. This simple relationship highlights the opportunity costs of oversight in terms of foregone effort to consider bills and budgets, and it draws attention to the claims on members' time for accomplishing other goals within the constraints of the legislative calendar. In addition, the equation indicates that the utility of oversight varies compared to other legislative activity.

These relationships provide a starting point for thinking about the impact of partisanship on oversight. First, it seems likely that the committee's demand for oversight is likely to fall when the legislative majority and the president have shared political fortunes. Thus, divided government and party-line voting among voters would

depress oversight effort. Second, the price of oversight is likely to be sensitive to partisan rivalries because committees controlled by the opposition party will find it more costly to obtain cooperation from administrations officials in both executive sessions and public hearings.

To illustrate this relationship, consider the two demand functions in Figure 1 in which AB represents high demand for committee oversight under divided government, and CD is the demand is low demand for oversight under unified government. The graph indicates that the committee is more likely to undertake oversight under divided government, even if the price in terms of effort is very high. Conversely, the committee will be disinclined to scrutinize the executive even if the price in terms of foregone effort on legislation is low.

FIGURE 1 HERE IN NEXT VERSION?

If party competition affects the demand for committee oversight of the executive branch, then the level of activity should vary with party control of the Senate, the size of the party majority and the degree of difference between the parties.

3. Data and Methods:

The data for the study of Senate oversight of foreign and defense policy were compiled by the authors from the published hearings of the Senate Armed Services and Foreign Relations Committees from 1947-2005, using the online abstracts of the Congressional Information Service (CIS) available through *LexisNexis Congressional*.²In addition, data on executive sessions for each committee were obtained from the Senate committee calendars, supplemented by the *Daily Digest* for the same period. The hearings were coded for each year, with variables for the dates, total number of hearing

² The CIS abstracts for 2004 contained a list of hearings that stopped with 2003.

days, type of subcommittee involvement, content, relevant bill numbers and witnesses. A full description of the methods and issues involved in creating the data set is contained in Appendix B.

a) Dependent Variables: Cameron (1993) observed, that congressional hearings are a signal to an agency of the committee's "resoluteness" to change administrative behavior. Conventionally, scholars who measure oversight activity count the number of hearing days that committees devote to examining the performance of the executive branch (c.f. Aberbach 1990; Jones and Baumgartner 2005). Yet, the measurement of legislative oversight is not nearly as straightforward as it might seem. First, the number of *hearings* and the total *number of days* per hearing can be quite different; the committee may spend many days on a single subject or schedule numerous hearings on different topics of very short duration. Second, information from public hearings may differ significantly from information obtained through executive session because agency officials are willing to be more candid or discuss classified material. Third, oversight varies in content, ranging from testimony of the Secretary State at the beginning of an administration about broad policy goals, to military operations, to questions about embassy security or personnel. Fourth, oversight in the national security policy domain involves more than one committee, and their collective efforts may carry more weight than their individual activities. Finally, the committee calendars vary across the session and between sessions, as lawmakers organize for a new Congress, deal with the budget cycle and recess for elections. To take account of "naturally" recurring fluctuations in committee activity, the data are grouped by quarters rather than years.

The figures below portray the frequencies over time for alternative ways of

defining oversight for the Senate Armed Services and Foreign Relations Committees from 1947-2004. We first use data from the Policy Agendas Project (Jones and Baumgartner <http://www.policyagendas.org/>) to establish the general pattern of hearing activity by the Senate in the post-WWII period as benchmark. The Agendas data does not have a specific code for oversight, and although we approximated a measure, we are not confident about its accuracy and do not report the results here.

Figure 1 indicates that total Senate hearing activity varies significantly over time and that frequencies for the number of hearings and the total number of days of hearings differ, sometimes dramatically. Not surprisingly, the Nixon years and post-Watergate period marked the highpoint of aggregate Senate hearing activity. In the early post-war era, moreover, the number of hearing days exceeded the number of hearings substantially, while the reverse has been true since the 1980s. While Senate committees were conducting more hearings between 1985-1995, they actually were spending less time doing it, despite large increases in professional staff and the growth of subcommittees. Indeed, it is striking that the Senate has spent fewer total days on hearings recently than in the late 1940s and early 1950s.

Figure 1 about here

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DESCRIPTIVE STATISTICS FOR THE DEPENDENT VARIABLES ARE IN

APPENDIX A

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Appendix B

Hearing data collection began with 1947, the year after the adoption of the Legislative Reorganization Act, which significantly reorganized and professionalized congressional committees, and ended with 2004, the last year for which complete CIS abstracts were available. Data were coded by undergraduates at Dartmouth College during the winter of 2006. For each year of Senate Armed Services and Foreign Relations hearings, student created a document file by copying the Congressional Information Service abstract for each published hearing. Once document files for each year were completed, students then coded the variables onto an excel spreadsheet for each year. To minimize error, a second student double-coded each year's file onto a new spreadsheet. After the original and double-coded files were compiled into separate master spreadsheets for the entire time series, we ran an excel program that compared the two files and identified any cells that did not match. We corrected all mismatched cells by referencing the original document files containing the abstracts.

For the hearing content variable, we used the codes below. Fowler reviewed all of the content codes, resolving differences when the student coders disagreed and making corrections when their lack of knowledge of history led to errors.

Nomination = 0

Treaties = 1 through 3, where 1 pertains to treaty ratification; 2 involves progress reports on treaty negotiations; 3 indicates treaty implementation

Budget = 4 and includes authorization of annual budgets for FYyyyy

Statute = 5, 10, 11, where 5 indicates legislation to create or amend a program, as well as military personnel matters; 10 authorizes use of military force;

11 identifies "sense of the Senate" resolutions

Oversight = 6, 7, 8, 9, 12, where 6 captures requests for information about the General state of the world, a region or broad problem; 7 involves Committee efforts at agenda-setting; 8 indicates review of specific Programs; 9 indicates review of administration handling go foreign policy And military crises; 12 identifies scandal, ineptitude, cost-over-runs.

For the purposes of this paper, the hearings were grouped into broad categories of Nominations, Budget, Statutes, and Oversight. For some formulations of the dependent variable, Budget and Oversight were combined.

We focused on published hearings given our interests in the effects of partisanship on Senate oversight of national security polic, but this turned out to be a rather complicated decision. Until 1970, each committee was responsible for publishing its own hearings, with predictable variation. With the advent of the CIS system in 1970, the publication and indexing of hearings became far more systematic, and eventually, the CIS began to compile and index unpublished hearings for the earlier years. Inspection of the “red books” that were produced regarding unpublished materials, indicated that for Senate Armed Services and Foreign Relations, relatively trivial matters such as approval of U.S. participation in an international exposition, were involved.

Matters were further complicated by the fact that Armed Services, and especially Foreign Relations, held a great many legislative and oversight hearings in executive session. Foreign Relations also refused to make many of its unpublished hearings available to be copied by CIS. Finally, both committees, but especially, Foreign Relations, periodically have issued previously unpublished hearings, which are sometimes grouped by year and other times by topic. The most noteworthy are the

Foreign Relations historical series on the Marshall Plan, the Vietnam War and other major foreign policy issues. It is impossible to tell from the abstracts, however, whether all of the relevant hearings are included or not.

These diverse practices raise a number of issues about the completeness of the record, particularly the exclusion of key oversight and statutory activities during times of crises. In addition, they have the practical problem of distorting the hearing counts. For example, a single abstract lists as one hearing what actually turns out to be multiple hearings on different topics that can run as many as 70 days. This practice produces an undercount of the number of hearings and generates errors in the total number of days per hearing. It creates a good deal of uncertainty, as well, about how much hearing activity has not been published.

Given these concerns, our approach was to focus only on published hearings for this paper and to exclude all of the historical material. We have compiled a separate data set on executive session hearings from the committee calendars, supplemented with material from the Daily Digest. This list is exhaustive of all hearing activity, thus avoiding the selection bias inherent in the committees' decisions about publication. For Foreign Relations, it produces 129 statutory hearings and 929 oversight hearings, for a total of 1058. When the coding for Armed Services is completed, these data will be added to the analysis.