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Strategic oversight and the institutional determinants of legislative policy control

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STRATEGIC OVERSIGHT AND THE INSTITUTIONAL DETERMINANTS OF

LEGISLATIVE POLICY CONTROL

by

Robert Joseph McGrath

An Abstract

Of a thesis submitted in partial fulfillment of the
requirements for the Doctor of Philosophy
degree in Political Science
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The University of Iowa

July 2011

Thesis Supervisor: Associate Professor Frederick J. Boehmke

ABSTRACT

This dissertation seeks to explain variation in legislative strategies to control policymaking across institutional contexts. Of these many strategies, I focus particularly on the use of statutory language meant to direct agency action and on the use of oversight hearings. I argue that while low levels of oversight activity need not imply that a legislature is helplessly abdicating policymaking responsibility to unelected agencies, this may be the case in some circumstances. With the goal of establishing when the lack of oversight may mean such normatively problematic abdication, I develop a signaling model of delegation and oversight which proposes that oversight depends on institutional features (such as legislative capacity, the existence of legislative term limits and a legislative veto), political features (such as policy conflict within the government and within the legislature and the policy preferences and activism of important judicial actors), and the legislatures initial delegation of policymaking discretion to an agency. Critically, the pursuit of either strategy depends on alternative strategies available as well as on the likely actions of other institutions with the power to affect policy outcomes. The dissertation extends our theoretical understanding of legislative-executive relations and provides one of the first large-scale empirical analyses of legislative policymaking.

In the first empirical chapter of this dissertation, I assess the predictions of the theory concerning congressional oversight activity from 1947-2006. I find that both the extent to which a congressional committees 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 policy disagreements are sufficiently conflictual. This last condition suggests, contrary to previous research, that the extent to which oversight should be necessary, to either legislative policymaking or democratic legitimacy, varies across preference arrangements. In the next empirical chapter, I switch my focus from the analysis of a single legislature over time to a cross-sectional study of the extent to which U.S. state legislatures delegate authority to bureaucratic agencies. Here, I find that the amount of discretion that a legislature delegates to an agency charged with implementing Medicaid policy is nonlinearly related to the extent to which state courts are likely to affect policy outcomes, as captured by a new measure of judicial activism. These analyses confirm that legislatures consider alternative methods of control as well as the likely actions of external institutions when crafting their policymaking strategies.

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Graduate College
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CERTIFICATE OF APPROVAL

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PH.D. THESIS

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To my parents, Robert and Mary McGrath,
for giving me everything

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This work has benefitted from the eyes and attention of a range of colleagues

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LEGISLATIVE OVERSIGHT, ACCOUNTABILITY, AND CONTROL
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1.1   Motivation

Throughout extended periods of 2007-2009, legislative oversight had been an improbably prominent news story in the United States. Some experts argue that a lack of oversight, both administrative and legislative, is to blame for the onset of the financial crisis that many believe to be the worst since the Great Depression. During the height of calls for a financial "bailout" bill, former Securities and Exchange Commission Chairman Christopher Cox admitted that:

> The last six months have made it abundantly clear that voluntary regulation does not work. When Congress passed the Gramm-Leach-Bliley Act, it created a significant regulatory gap by failing to give to the SEC or any agency the authority to regulate large investment bank holding companies, like Goldman Sachs, Morgan Stanley, Merrill Lynch, Lehman Brothers, and Bear Stearns (statement made September 26, 2008, http://www.sec.gov/news/press/2008/2008-230.htm).

Cox himself sees "regulatory gaps," i.e., a lack of *administrative oversight*, to be culpable for enabling the behavior of private firms and individual actors which led to the financial crisis. Others wonder where *congressional oversight* has been during the financial policy crisis. After all, it is Congress's responsibility, through statutes and more specific oversight procedures to make sure that there are no harmful "regulatory gaps" in the administrative structure.

Still others have emphasized congressional oversight's more positive roles in attempting to uncover the causes of the financial crisis and to draw lessons from past

regulatory failures or mistakes. Even casual observers of politics may well be able to identify Rep. Henry Waxman (D - CA), former chairman of the House Oversight and Government Reform Committee ("the Oversight Committee"), from his vigorous televised hearings with decisionmakers from the SEC, the Federal Reserve, the Treasury Department and other governmental regulators. Indeed, Waxman's successor, Rep. Darrell Issa, has promised to increase the workload of the "Oversight Committee" to hold "seven hearings a week, times 40 weeks" (Sherman and Cohen, 2010). If Rep. Issa fulfills this promise, he will preside over more than twice the amount of oversight hearings than did Waxman during the 110th Congress. In an effort to publicize this increased workload, the committee chairman has established a YouTube channel (http://www.youtube.com/user/oversightandreform) that publishes video from hearings (in high definition, no less), signaling both that holding hearings may have a positive effect on a watchdog legislator's reputation and re-electoral fortunes, but also an increased public and media interest in the process.

While congressional oversight's role in American politics is becoming more recognized by the popular media, so are some of the fundamental tensions between the legislative and executive branches of government. Highlighting such tension is former Treasury Secretary Henry Paulson's opening statement to the Senate Banking Committee on September 23, 2008. His remarks concern the unsuccessful first "bailout" bill. Paulson:

> We gave you a simple, three-page legislative outline and I thought it would have been presumptuous for us on that outline to come up with an oversight mechanism. That's the role of Congress, that's something we're going to work on together. So if any of you felt that I didn't believe that we needed oversight: I believe we need oversight. . . We need protection.

We need transparency. I want it. We all want it."

Of course, by "avoiding presumption," Paulson really meant to say that he didn't want any oversight.[1] While paying lip service to a supposed benefit of oversight (transparency), Paulson wanted a free hand to use his discretion to try and solve problems with the financial system while insulated from political (and therefore democratic) pressures. On the other side of the fence, the aforementioned Rep. Issa, speaking particularly about oversight of aspects of the $700 million dollar bank bailout bill passed under President Bush, holds that "the enemy is the bureaucracy, not necessarily the current occupant of the White House" (Sherman and Cohen, 2010).

In this thesis, I will address the underlying theoretical and empirical problems alluded to in many of the recent journalistic accounts of the importance of legislative oversight in the policymaking process. I will offer explanations for why levels of legislative oversight of executive agencies vary across time and space. These explanations are firmly rooted in a general theory of legislative-executive relations and are supported by extensive and original empirical analyses. I argue that oversight is but one strategy that legislators across political systems use to control policy outcomes. The pursuit of this strategy critically depends on alternative strategies available as well as on the likely actions of other institutions with the power to affect policy outcomes. Indeed, oversight, or at least its threat, is instrumental in enforcing the limits of the policymaking discretion that legislators regularly grant to their administrative

[1]See Section 8 of the three page bill: "Decisions by the Secretary pursuant to the authority of this Act are non-reviewable and committed to agency discretion, and may not be reviewed by any court of law or any administrative agency."

agents. Oversight thus cannot rightly be called "Congress's [or any legislature's, for that matter] neglected function" (Bibby, 1968) without adequately examining the extent to which Congress (or any other legislature) can enjoy the functional benefits of oversight through other, perhaps less costly, means. In the end, I hope that this work helps to clarify the role of oversight in the policymaking process and serves to emphasize the general importance of institutional determinants of oversight activity across different types of legislatures.

1.2   The Importance of Oversight

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.[2] 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.[3] Given this necessity, John Stuart Mill recognized the normative importance of the practice of oversight by elected bodies with respect to unelected ones:

> . . . 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

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[2]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.

[3]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.

> 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).

Woodrow Wilson similarly praised oversight and exalted the practice as coequal to the writing of legislation: "Quite as important as legislation is vigilant oversight of administration" (Wilson, 1885, p. 297).[4] Oversight is critically important in that it is supposed to ensure accountability and transparency and provide a link between policy and the will of the people.[5]

Accountability and transparency in policy implementation does much to convey a sense of legitimacy to the process itself and to individual policy programs. Legitimacy means that powers exercised by agencies are generally recognized by their principals and by the community at large as acceptable.[6] A necessary condition for democratic governance is for citizens, through their elected representatives, to have control of the decisions regarding public policy. In short, oversight is a normative good insofar as it often implies something akin to popular sovereignty.

As quoted in Dodd and Schott (1986, p. 156), in 1977, the Senate Committee on Governmental Operations gave quasi-official recognition to the explicit goals of

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[4]The aforementioned Rep. Henry A. Waxman (D - CA) takes a similar view: "Oversight is just as important, if not more important, than legislation."

[5]Besides this, since the Legislative Reorganization Act of 1946, Congress itself has 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." So oversight is mandated by statute as well as acclaimed by political philosophers and important politicians, past and present.

[6]If one is inclined to think of the world in principal-agent terms, the electorate may represent the principals to the elected representative agents.

oversight:

1. Ensuring that the administrative branch implements the laws in accordance with Congressional intent.

2. Determining policy effectiveness by gauging the appropriateness of a policy and determining whether its impact is in line with congressional standards.

3. Preventing waste and dishonesty by ensuring that agencies operate honestly and efficiently.

4. Preventing abuse in the administrative process by keeping tabs on agency use of discretionary authority.

5. Representing the public interest by monitoring and constraining agency-clientele group relations.

These goals are notable in that they support the notion that oversight is an invariable good, yet they do so in vague terms and do not recognize the heterogeneity of legislators or their intent. Nor do these goals explicitly recognize the potential benefits of policy made by politically insulated bureaucrats. One of the primary motivations for delegation in the first place is that legislatures lack the technical expertise to know which specific policy programs will achieve their desired policy outcomes. In addition, some policy areas, such as monetary policy and central banking practices, may particularly be better off when insulated from political consideration. In short, as proposed by Ogul and Rockman (1990), there exists a fundamental tradeoff between decisionmaking expediency and expertise, on the one hand, and democratic accountability and transparency on the other. One of the primary goals of this thesis is to evaluate these goals in the broader context of cross-institutional legislative-executive relations, and to begin seeing this fundamental tradeoff as something that can affect policy outcomes in systematic ways.

Despite the sense that oversight, very broadly speaking, is to be commended, there exists a large literature on the *administrative state*, which holds that this democratic requirement does not and can not hold in a modern society where elected officials inevitably and undemocratically cede policymaking power to unelected bureaucrats (McConnell, 1966; Lowi, 1969; Niskanen, 1971; Offe, 1972; Putnam, 1975; O'Connor, 1978; Peters, 1981; Aranson, Gellhorn and Robinson, 1982; Rourke, 1984; Knott and Miller, 1987). Despite difficulties associated with identifying the "administrative state" if and when it exists (see Huber and Shipan (2002, pp. 23-26), the fundamental assumptions of critics of broad delegation is that its consequences are undemocratic and contrary to the will of legislators and their constituents. Although the account of "helpless abdication" has been vigorously questioned in recent studies (Epstein and O'Halloran, 1999; Huber and Shipan, 2002), legislative oversight of bureaucratic action is considered to be necessary for avoiding democratically deleterious bureaucratic dominance. This, of course, has led to an expansive literature on whether and when and how legislatures control bureaucrats by directing their actions. However, control can be both visible and invisible, so the more important claim is that oversight allows politicians to know when they should more closely direct the actions of bureaucrats. If bureaucrats are already acting according to the will of the citizens and politicians, there is no need for legislators to micromanage their behavior. Therefore, I hold that while "control," is not necessary for democracy, the ability of elected officials to enforce a directed control is.

This thesis addresses the normative questions of whether and how oversight promotes accountability and democracy by way of evaluating the positive incentives

legislatures have to investigate administrative action.[7] I argue that there are certain conditions under which oversight fulfills these normative ends and hold that under these conditions, legislators have incentives to conduct oversight activity. This of course implies that there are other sets of conditions under which a lack of oversight activity means only that such activity would be superfluous (or too costly, given the expected benefits), and thus, not necessary for accountable and transparent democratic government. However, I show that there can exist situations, especially in the U.S. states, where legislatures have policymaking incentives to conduct oversight, but lack the institutional capacity to do so effectively. I focus the conclusion of this thesis on addressing the implications of these situations.

1.3 Variation in Oversight and Efforts to Explain It

There is great variation in oversight activities across legislatures (Rosenthal, 1981; Stapenhurst et al., 2008). This fact is implicit in the media's recent attention to a lack of oversight concerning the various incarnations of the "bailout bill" (or, more generally, the Troubled Asset Relief Program–TARP, or more recently, the American Recovery and Reinvestment Act of 2009). This concern of course implies that there were periods where the media have recognized vigorous congressional monitoring of administrative agencies. The variation in oversight activity that needs to be explained is both temporal and spatial. We know that Congress had kept a more "watchful eye" on administrative agencies during the 105th Congress than it did in the 87th (Aber-

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[7]Even short of the normative qualities of oversight, legislators see the activity as a method of maintaining control of policy outcomes as a matter or preference and self-interest.

bach, 1990, 2002). 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). In addition, Pelizzo et al. (2008) demonstrate that oversight activities vary across parliamentary democracies according to the strength of legislative committee systems and the existence of extra-legislative oversight institutions. As one of the central concerns addressed in Epstein and O'Halloran (1999) was that Congress seems to delegate variably broad authority to the executive across time and policy area, my goal is to explain variation in the extent to which legislatures exercise their oversight powers to monitor the agencies to which they have given variably broad authority. I argue that, given the potential for diligent oversight to make the policymaking process more accountable and transparent, this variation is worth exploring and explaining.

Despite this extensive variation, relatively little is known about what drives it, especially considering oversight's aforementioned importance for democratic legitimacy. Specifically, while extant studies posit and show support for certain covariates of oversight activity (Scher, 1963; Ogul, 1976; Aberbach, 1990, 2002; Ogul and Rockman, 1990; Smith, 2003), they do not propose regularly variable institutional conditions under which we would expect to see more or less oversight activity. This is an especially important issue to address considering that oversight may not always be necessary to achieve legislative or policy goals.

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 and 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 and Schwartz (1984)) focuses on monitoring: "the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation" by Congress (Kaiser, 2001, p. 1).

Although I will operationalize the concept further in Chapter 3, there are many ways in which legislatures can review, monitor, and supervise executive action. There are formal oversight hearings and investigations, where agency secretaries are required to appear before a legislative committee or subcommittee. There also exist more informal means of oversight. Legislators may engage in personal communication (even when this communication is technically illegal as "ex parte" communication) with bureaucratic staff or agency heads. Legislative staff may also engage in such casework on behalf of their constituents. Many states have regulatory rules review committees whose job it is to constantly monitor rules written by executive agencies and report to the greater legislature. Although unconstitutional at the federal level (see *Immigration and Naturalization Service v. Chada,* 462 U.S. 919 (1983)), many state constitutions allow for a legislative veto whereby legislatures can overturn promulgated agency regulations after the fact. There is also state level variation in explicit monitoring institutions, such as inspectors general reports (Light, 1993), general accounting office reports, and resolutions of inquiry (Oleszek, 2001). This said,

many empirical studies of the determinants of oversight use formal oversight hearings as the activity of empirical interest. In Chapter 3 of this thesis, I follow previous research (Smith, 2003) and examine formal oversight hearings held by substantive congressional committees.

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 and 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. There is clearly some truth to these insights, which is only highlighted by the creation of a YouTube channel as a credit-claiming platform for hearings held by the House Oversight and Government Reform Committee. As plausible as these stories regarding individual-level motives are, they can only incorporate institutional variation 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.

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 and Rockman (1990) argue that the LRA

was important in increasing oversight because it generated more subcommittees with narrow policy jurisdiction 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 branch 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 where "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 yet more new programs

to assist invalid elephants. Ogul and 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.[8]

These three categories (institutional, environmental, and fiscal) constitute a natural grouping of the types of explanations proffered in the literature to affect levels of oversight activity.[9] More generally, Aberbach (1990, pp. 14-15) recognizes that explanations of oversight are necessarily interdependent and dynamic:

> Changing environmental factors interact with the institutional characteristics of American government to shape congressional oversight behavior. The changed political environment beginning in the early 1970s increased the payoffs of oversight relative to other activities, and Congress responded accordingly.... When members of Congress see a pressing interest of political advantage to interjecting themselves into the administrative side of government they can do so...

This of course implies that accounting for oversight should include specifying the conditions under which such activity should become more attractive to legislators. As

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[8]Ogul and Rockman (1990, p. 19) nicely describe the effects of fiscal factors:

> Available resources for new legislative ventures have declined, and ...extraordinarily large budget deficits...act as a compelling constraint upon new expenditures not mandated by previous legislation. [In s]uch an environment, [members] avoid being tagged as spenders. Instead, they may expend more effort on friendly oversight to protect programs that already exist.... [In] an environment of resource constraint, favorable publicity can be generated for those members who appear as vigilant defenders of the taxpayer's pocketbook.

In addition to summarizing arguments for fiscal determinants of oversight, the above quotation introduces the concept of "friendly" advocacy oversight, which is a qualitatively different type of activity from what I examine in this thesis.

[9]I will discuss the expectations of the effects of these types of variables further in Chapter 3.

I argue below, these Congress-centric studies of oversight do a good job exploring how long-term institutional change affects these conditions, but they necessarily (given their myopic focus on the United States Congress) do not do so well in specifying regularly varying institutional arrangements under which oversight is more or less likely from a policymaking standpoint.

The predominant conclusion of these congressional studies is that oversight is a less popular activity than sponsoring constituent-friendly legislation or partaking in constituency service are to legislators. 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 provide confirmation for many of these hypotheses in Chapter 3), these studies, by approaching the problem through a congressional perspective, are missing more regularly variable types of institutional characteristics (Rosenthal, 1981).

From the very first empirical work on oversight by state legislatures (Elling, 1979), scholars of subnational politics have emphasized that legislatures other than Congress vary in their *capacity* to conduct oversight. For example, Hamm and Robert-

son (1981) find that legislative capacity affects the type of oversight activity that a legislature conducts. More recently, Potoski and Woods (2000) and Woods and Baranowski (2006) show that more professional legislatures have more influence over policy outcomes than their less capable counterparts. In addition to legislative professionalism, recent studies have argued that legislative term limits have made state legislatures less willing and able to monitor state agencies (Carey, Niemi and Powell, 2000; Berman, 2004; Farmer and Little, 2004; Carey et al., 2006; Kousser, 2005; Kurtz, Cain and Niemi, 2007; Sarbaugh-Thompson et al., 2010).

However useful these cross-institutional insights have been to the study of legislative control of agencies, they still miss an important strategic variable. A critical omission from the previous empirical literature is that it does not satisfactorily account for the possibility that oversight is unnecessary in particular contexts, nor does it address the possibility that legislatures have alternative statutory means by which to direct agency behavior. Although I have already alluded to the distinction between delegation and oversight, it is the interrelation between the two that is important here. Delegation is necessary in a modern democracy and may even serve to promote the goods of expert and expedient decisionmaking (Mashaw, 1985, 1997). It is not merely a necessary evil. Given the inevitability of this delegation, oversight becomes a necessary tool to keep bureaucrats accountable to the public and to keep the public privy to the decisions of the bureaucracy. Unlike previous studies of the determinants of oversight (Scher, 1963; Ogul, 1976; Aberbach, 1990, 2002; Ogul and Rockman, 1990; Smith, 2003), I argue that oversight must be considered while simultaneously recognizing that it comes after an initial delegation of discretion.

1.4 Delegation of Discretion and Oversight as Policymaking Strategies

Recent literature on delegation (Huber and Shipan, 2002) has emphasized the importance of statutory means to control bureaucratic action.[10] Politicians 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. This type of literature assumes that politicians and bureaucrats care only about their policy preferences and not about a tradeoff between expert judgement/expediency and accountability/transparency. Nevertheless, it shows that politicians often delegate significant discretionary authority to bureaucrats to make policy. Positive, as opposed to normative, literature (Epstein and O'Halloran, 1999; Huber and Shipan, 2002) does not see broad delegation as an indication that politicians necessarily value the "neutral competence" (Kaufman, 1956) of bureaucrats. Instead, 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 extensive 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

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[10]I 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 and Weingast (1987, 1989); Horn and Shepsle (1989); Banks and Weingast (1992); Epstein and O'Halloran (1994, 1996); Bawn (1995); Balla (1998).

whether this is the case and to establish the conditions under which it is, researchers should consider both ex ante and ex post mechanisms of control simultaneously, as their effects may be interdependent.

The theoretical distinction between delegation of discretion and oversight is illuminated by thinking of them as examples of ex ante and ex post controls over agency action. Ex post, or after the fact, controls had long been considered the primary means of legislative control of the bureaucracy (Scher, 1963; Ogul, 1976; Aberbach, 1990). Oversight, as a monitoring institution, necessarily comes after the bureaucracy acts to implement a policy. In response to the aforementioned claims that Congress had simply neglected its responsibility to oversee the bureaucracy (Scher, 1963; Bibby, 1966; Lowi, 1969; Ogul, 1976; Dodd and Schott, 1986), McCubbins and Schwartz (1984) argue that Congress supplements its monitoring oversight by setting up procedures that make it possible for interest groups to alert it when agencies drift from legislative and popular intent. Similarly, Mathew McCubbins, Roger Noll and Barry Weingast (McCubbins, Noll and Weingast, 1987, 1989) emphasize the general importance of such ex ante, or before the fact, mechanisms of legislative control. Statutory restrictions on delegations of discretion, as described by Huber and Shipan (2002), is such an example of an ex ante control, where oversight is obviously and necessarily ex post. By focusing only on the ex post mechanisms of control, previous research on the determinants of oversight hearings have at least missed half of the story of how legislatures control bureaucrats. In fact, it was the failure of these early studies (Scher, 1963; Bibby, 1966, 1968; Lowi, 1969; Huntington, 1973; Seidman, 1975; Hess, 1976; Ogul, 1976; Fiorina, 1977; Woll, 1977; Dodd and Schott, 1986) to recognize

ex ante mechanisms that inspired McCubbins and Schwartz (1984) to explore these strategies in more detail.

Since these oft-cited and pioneering works on ex ante constraints, much of the recent literature, both theoretical and empirical, on political control of the bureaucracy has been focused on them at the expense of ex post oversight strategies (Moe, 1989, 1990a,b; Kiewiet and McCubbins, 1991; Banks and Weingast, 1992; Epstein and O'Halloran, 1994, 1999; Hamilton and Schroeder, 1994; Bawn, 1995, 1997; Martin, 1997; Balla, 1998, 2000; Balla and Wright, 2001; Spence, 1999; Huber and Shipan, 2000; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002). The study of oversight, as a mechanism of political control, has all but disappeared[11] since scholars starting focusing on ex ante controls. But as the earlier studies were missing half the story by considering only oversight, this more recent research is missing the other half – almost assuming away any need for ex post oversight to enforce the limits of the ex ante measures.

Despite this, this theoretical literature recognizes that there is an essential relationship between ex ante and ex post controls. The McCubbins and Schwartz and McNollgast literature emphasizes that ex ante controls have been developed because ex post mechanisms are often too costly and inefficient. Similarly, Horn and Shepsle (1989) argue that ex post controls may only appear ineffective because an effective

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[11]With a few notable exceptions, e.g., Mayhew (1991, 2005); Wood and Waterman (1991, 1993); Fowler and Hill (2006); Kriner and Schwartz (2008); Parker and Dull (2009). Much of this disappearance can be attributed to the related increased focus on "fire alarm" controls over "police patrol" mechanisms. The idea of fire-alarm control is closely related to the design of ex ante procedures which "stack the deck" (McCubbins, Noll and Weingast, 1987, 1989) of future implementation in the legislature's favor.

ex ante design of statutes and procedures make them seem that way. Despite the theoretical importance of considering the interrelation of ex ante and ex post controls, these works do not provide clear predictions or explanations of delegation or oversight. This is a problem because we know that oversight hearings do occur and these principal-agent approaches do not account theoretically for this variation. Predictably, then, they do not provide empirical tests of the determinants of oversight activity either – so these theoretical approaches do not account for the empirical hypotheses I present below. A primary analytic task of this thesis is to consider the relationship between ex ante and ex post oversight to be a choice of the legislature and to generate predictions concerning the tradeoff between the two. As a motivating example of the types of predictions I seek to make, Huber and Shipan (2002) find that the less able a legislature is to conduct effective ex post monitoring, the more likely they are to enact ex ante strictures on discretion, all else equal:

> In particular, we have found a strong substitution effect in our analysis of the U.S. states: when legislative majorities have a strong veto over agency decisions, they are less likely to rely on policy details in legislative statutes. Such oversight institutions, then, not only assist legislatures in obtaining their policy goals, they also shape *how* policy is made, with the effect being to move the policymaking process out of the legislative arena and into the administrative one (Huber and Shipan, 2002, 227).

These authors are among the first to generate predictions about the relationship between ex ante and ex post methods of control and to test these predictions empirically.[12] However, they do not consider oversight to be a strategic choice of the

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[12]There is a rich literature on optimal levels of ex ante/ex post regulation and monitoring in the economics of contracts. See, e.g., Townsend (1979); Shavell (1984); Riordan and Sappington (1988); Lacker and Weinberg (1989); Bond and Crocker (1997); Choe (1998); Lewis

overseers. Instead, Huber and Shipan (2002) consider oversight to be an exogenous reversion mechanism. A goal of this dissertation is to develop a theory which considers oversight to be both strategic and related to how legislators delegate authority to bureaucrats in the first place. In other words, I seek to incorporate the early literature on oversight's concern with the motives of individual legislative behavior into a more general model of legislative policymaking in a separation of powers framework. This is important because it incorporates the theoretical insights about the relationship between ex ante and ex post controls (McCubbins and Schwartz, 1984; McCubbins, Noll and Weingast, 1987, 1989) and does so in a way that is empirically testable. In contrast to Bawn (1995) and Huber and Shipan (2002), theoretically, I do not expect a pure substitution relationship between ex ante and ex post strategies of control. As posited in Chapter 2, I expect the use of ex ante strategies to be primarily related to the ex post ability of extra-legislative policymakers, instead of a legislature's own propensity to conduct ex post investigations.

Upon review of these diverse literatures, it has become clear that there exists no comprehensive account of the determinants of oversight activity across institutional contexts. In addition to the shortfalls of the early oversight literature mentioned above, the study of oversight is very rarely comparative in nature[13] and is too often

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and Sappington (2000). While this literature recognizes ex ante and ex post mechanisms to be interdependent ways in which to deal with imperfect and asymmetric information in principal-agent relationships, the models are not spatial in nature. This makes it difficult to intuit how these results translate to a spatial setup (to be described and demonstrated in more detail in Chapter 2). It is especially difficult to gain insight about the "conditions under which" certain levels of oversight are in equilibrium from the optimization of contract schedules analyzed in the economics literature.

[13]See Rosenthal (1981) for an exception.

focused on the U.S. Congress and federal bureaucracy. I seek to correct this in this thesis and argue that a comparative institutional theory, along the lines of Epstein and O'Halloran (1999) and Huber and Shipan (2002), is needed to give a richer account of oversight's role in the democratic policymaking process. In addition, as the previous literature does not generally recognize the importance of alternative methods of legislative control of administrative agencies, my theory accounts for the strategic choice legislators have concerning how they wish to try and control delegated policymaking. My approach is informed by those reviewed works concerning oversight and those more general theoretical accounts of democratic delegation. As such, I develop the most comprehensive account to date of the role of oversight and couch it in a general theory of interbranch policymaking.

Much like in Epstein and O'Halloran (1999) and Huber and Shipan (2002), my approach explicitly embraces the "separation-of-powers" tradition of studying American politics. According to de Figueiredo Jr., Jacobi and Weingast (2008), this approach is well-suited to understanding 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 the public administration literature as independent of political factors. Likewise, the behavioral literature reviewed above has been stifled by its reliance on an internal Congress-centric logic. My research builds on important work in this tradition (McCubbins, Noll and Weingast, 1987, 1989; Moe, 1989; Epstein and O'Halloran, 1994, 1999; Bawn, 1995; Huber and Shipan, 2002), with the goal of formulating more

specific testable institutional hypotheses about when oversight should be more or less likely to occur.

1.5   Research Plan

The primary goal of this thesis is to address the mentioned lacunae in the literature on oversight in order to get a better grasp of the activity's role in the policymaking process. Specifically, I approach oversight as an ex post mechanism that legislators use in conjunction with ex ante measures, such as delegations of statutory discretion, to control bureaucratic implementation of policy. While the levels of ex ante discretion and ex post oversight could in fact be interdependent, the crux of my argument is that institutional characteristics of legislatures serve to mediate these interrelationships, and thus they affect levels of oversight. In addition, I demonstrate, theoretically and empirically, that legislatures respond to anticipated behaviors of implementing agencies *and* judicial branches when formulating their policymaking strategies. In Chapter 2, I explicate a model of legislative-executive policymaking and derive predictions of expected levels of ex ante discretion and ex post oversight given variable institutional characteristics. This spatial model is a modified version of the Huber and Shipan (2002) model of discretion and is in the tradition of principal-agent theory, as borrowed from the economics of insurance contracts (Miller, 2005).[14] 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

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[14]This kind of approach was first applied to legislative oversight by Weingast and Moran (1983) and Weingast (1984).

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.

As in Huber and Shipan (2002), my model is more general than the structured relationship between the U.S. Congress and the federal bureaucracy. As such, I prefer to test its predictions across legislatures. However, the model does make predictions that can be tested at the congressional level across time and I do so in Chapter 3. Here, I utilize publicly available data from the Policy Agendas Project (http://www.policyagendas.org/) to test whether oversight activity (specifically, formal oversight hearings) has the expected relationships with the technical expertise of the congressional committee in charge of a given policy area and with policy conflict among these committees and the executive branch. 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 policy disagreements are sufficiently conflictual. This chapter is a first cut at assessing the implications of the theory and is substantively general in that I test the relationships across all policy areas in the data. While these analyses are convenient, given the availability of the data, preliminary assessments of the predictions generated in Chapter 2, they cannot provide the cross-institutional support that I seek, nor do they test the model's predictions concerning levels of ex ante statutory discretion.

Therefore, I test these implications concerning statutory language at the state level in Chapter 4. It would be impossible to test the cross-institutional implications of the model at the congressional level as certain institutional features are fixed and cannot vary—for example, legislative professionalism as conceptualized in the state politics literature. For this reason, I choose to follow previous literature (Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002; Volden, 2002) and scrutinize the predictions of my theory concerning variation in levels of ex ante statutory discretion at the level of the U.S. states as well. Since there is considerable institutional variation across states, I do not need to look at a wide range of time periods and instead focus in on a specific policy area and time period. In Chapter 4, I assess my theory against data on statutory discretion granted by legislatures in the Medicaid policy domain across 48 states. Specifically, I find that *Statutory Control*, measured by the number of words added to a state's Medicaid laws from 1995-1996, increases according to the novel predictions of the model from Chapter 2. From this analysis, I am able to draw interesting comparisons between my approach and that of Huber and Shipan (2002).

While these isolated assessments are useful in highlighting aspects of legislative policymaking, a more robust test of the theory would require me to evaluate the predictions concerning ex ante discretion in a policy area along with ex post monitoring activities in the same area simultaneously. In Chapter 5, I describe the ongoing process of partaking in such and endeavor concerning legislation meant to implement mandates from the federal No Child Left Behind (Public Law 107-110) act. In addition to the ex ante legislation, I need to collect myriad data related to ex post monitoring of state departments of education by legislative committees across

the U.S. states. In Chapter 5, I further argue that these institutionally determined levels of oversight have at least the potential to affect policy outcomes. An important insight from the theoretical model is that oversight can often be seen as being superfluous to the goals of democratic accountability. However, the model also tells us that, in certain contexts, oversight may be underprovided when it is in fact necessary for democratic accountability. In these contexts, increased oversight activity can serve to improve policy outcomes. Specifically, in cases where oversight should be necessary for control, increased legislative capacity should lead to policy outcomes that are distinct from outcomes in states with less legislative capacity. As in Chapter 4, I plan to assess the implications of this argument on state-level experiences with education policy outcomes over the past six years in future work. I also conclude the thesis in Chapter 5, where I discuss the broad implications of this research for a number of distinct subfields. I briefly explore extensions of the research project described herein and proffer possible directions for future research on oversight and policymaking.

CHAPTER 2
TO WRITE OR REVIEW? A MODEL OF STRATEGIC
DELEGATION AND OVERSIGHT

2.1   Principal-Agent Theory and Legislative Control of the Bureaucracy

In this chapter, I explicate a formal theoretic model of delegation and oversight and use it to generate predictions about how institutional variables affect levels of ex ante delegation of discretion and ex post oversight as legislative policymaking strategies. Before I do so, however, I will briefly summarize the very general theoretical approach that I take and emphasize its importance in dealing with the substantive problems at hand. *Principal-agent theory*, as developed in the economics of insurance contracts (Spence and Zeckhauser, 1971; Holmstrom, 1979; Shavell, 1979; Sappington, 1991), has proven to be a very effective modeling approach when there exist problems of informational asymmetry.

Overviews of the application of principal-agent theory to the relationship between legislatures and agencies (Huber and Shipan, 2002; Miller, 2005)[1] often cite Max Weber's early account of the inherent asymmetry in the relationship:

> the power position of the bureaucracy is always overtowering. The "political master" finds himself in the position of "dilettante" who stands opposite the "expert," facing the trained official who stands within the management of administration (Weber, 1946, p. 233).

Principal-agent theory seeks to understand the conditions under which (usually the institutional structures under which) politicians can retain control over policymaking

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[1]For more overviews on the subject, see Moe (1984); Bendor, Taylor and Gaalen (1987); Bendor (1988); Bendor, Glazer and Hammond (2001); Kiewiet and McCubbins (1988); Gill (1995); Horn (1995).

despite being on the ignorant end of serious informational asymmetries. In the context of legislative-executive relations, as in the context of the relationship between private sector managers and their employees, the principal can try and harness the agent's expertise while at the same time attempting to avoid deleterious "agency drift." The canonical insight of principal-agent theory is that principals can manipulate an agent's incentives so as to benefit from their expertise, but at the same time keep them from drifting too far from the principal's preferences over outcomes.

In one of the earliest applications of principal-agent theory to the problem of congressional oversight, Weingast and Moran (1983) question the aforementioned conclusion of the behaviorist studies of oversight—that Congress is impotent to monitor the bureaucracy. Their response to this literature is that oversight is unnecessary when Congress is able to manipulate the incentives of their bureaucratic agents to direct policy outcomes:

> . . . the more effective the incentive system, the less often we should observe sanctions in the form of congressional attention through hearings and investigations. Put another way, direct and continuous monitoring of inputs rather than of results is an inefficient mechanism by which a principal constrains the actions of his agent (Weingast and Moran, 1983, p.769).

According to this theoretical approach, Congress – as well as other similar legislatures – can and does effectively design institutional structures (the "incentive system") that allow it to delegate policymaking power with minimal need for ex post monitoring. Essentially, as applied in political science work on legislative-executive relations, principal-agent theory focuses on institutional design as a strategic choice of principals who seek mechanisms to combat agency problems.

However impossible – indeed, however undesirable – perfect and persistent monitoring is, I argue that the mere threat of oversight is likely to be an insufficient incentive to keep bureaucratic agents in line. Most previous oversight literature in the principal-agent tradition has tended to ignore the extent to which the use of ex post monitoring shapes the structure of ex ante incentives (e.g., Weingast and Moran (1983); McCubbins and Schwartz (1984); Weingast (1984)). This literature has correctly emphasized that a lack of oversight could mean either legislative abdication or complete (and difficult to observe) dominance over agencies; however, these approaches can contribute little to explanations of variation (across either time or space) in oversight activity that does occur. I argue that some amount of monitoring must take place in order to enforce ex ante contracts between political principals and their agents. Variation in this monitoring activity should increase (decrease) when 1) it becomes more (less) necessary for control or 2) when legislatures become more (less) able to conduct oversight cheaply (expensively). More recent literature (e.g., Epstein and O'Halloran (1994, 1996, 1999); Bawn (1997); Huber and Shipan (2002) has recognized the interrelation between ex ante and ex post strategies, but it has not considered them both to be endogenously determined in the same model.

2.2   A Formal Model of Delegation and Oversight

My theoretical model is derived primarily from those in Huber and Shipan (2002). The models in this important work seek to explain how legislators design statutes in terms of delegating policymaking discretion to bureaucrats. My approach is to generalize these models to come up with a more comprehensive account of how

politicians both design statutes and monitor how these statutes are actually implemented by bureaucrats. Clearly, with perfect enforcement, politicians can achieve the normative goal of policy accountability by designing statutes that constrain bureaucratic discretion such that bureaucrats will do what politicians and, therefore, what their constituents most prefer. However, this goal is not necessarily subverted when politicians delegate broad authority to bureaucrats. In fact, under certain conditions, politicians may delegate broad authority and get exactly what they and their constituents want. In these cases, delegation is less costly than writing specific statutes designed to hold the bureaucracy's hand during implementation. Bureaucrats are assumed to have greater policy expertise than legislators, so these broad delegations should be socially optimal, exhibiting the normative position that agency policymaking can be more efficient than extensive legislative policymaking. However, delegation of broad discretion is not preferable to designing specific statutes when legislators expect that bureaucrats will implement policies that the legislature and the general populace will not like. Although the Huber and Shipan model of legislation and discretion makes predictions about the relative roles of ex ante (delegation of discretion) and ex post controls, the ability to engage in ex post oversight is exogenous and could actually represent any number of nonstatutory controls, such as legislative vetoes, oversight hearings, sanctions after a "fire alarm," nullifying action by the courts, etc.

Huber and Shipan (2002, 229) acknowledge that their omnibus treatment of ex post controls is not ideal and suggest the following theoretical extension:

Our variable for nonstatutory factors, for example, is applied to court sys-

> tems, legislative oversight, and corporatism, among other concrete vari-
> ables. While our approach has the advantage of leading to a theory that
> can be tested in a range of political settings, we also think it is important
> to theorize more explicitly about some specific institutions...

In order to get a better understanding of the strategic choice between writing specific laws and conducting vigorous oversight, I pursue just such a theoretical extension in this chapter.

The following is a modification of the Huber and Shipan model of discretion. I allow the Politician[2] to observe the policy implemented by the Bureaucrat and to take further investigative action if necessary, i.e., if the Politician thinks that the Bureaucrat is acting illegally. Technically, this amounts to endogenizing an element of the γ term for "nonstatutory factors" from the Huber and Shipan model. The Politician now has two strategic means by which to control policy implementation: ex ante strictures on discretion and ex post monitoring. Although the two types of control are not mutually exclusive, they are both costly for the Politician, indicating the possibility of a trade-off. Since the Politician moves after the Bureaucrat imple-ments a policy, it is possible that she can learn something about the policy shock (i.e., the Bureaucrat's type) given what the Bureaucrat does. Since this is a signaling model, I will need to look for separating, pooling, and semi-separating equilibria and make sure that each is perfect Bayesian.

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[2] "Politician" is the term used in Huber and Shipan (2002). Since my empirical assess-ments deal only with legislative (congressional and state legislative) policymaking, I use the less ambiguous – but also less general – "Legislator" as the principal actor in the explication of my model.

2.2.1 Assumptions

My 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 types of player 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 easily 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 $x_B \geq 0$.

2.2.2 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 ϵ, but L believes that $\epsilon = 1$ with probability p and that $\epsilon = 0$ with probability $1 - p$, so she is imperfectly informed about the nature of the policy shock, leading to an informational asymmetry between the Legislator and the Bureaucrat. Since this is a signaling model, however, the Legislator uses Bayes' rule to update these beliefs based on the Bureaucrat's actions.

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 ($x = 1$). This discrete action space captures the general idea that legislatures can delegate across a continuum of discretion, but would only write statutes that are dominant over potential laws other than these archetypes. Huber and Shipan (2002, Appendix D, p. 246) show, by elimination of strictly dominated strategies, that $x = 0$ and $x = 1$ are the only possible low discretion laws. L must pay a cost k for limiting discretion, where $k = \left(a - \frac{ax}{\bar{I}}\right)$, 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 able to write more restrictive laws with less cost. Therefore, a certain threshold of capacity is needed to write a moderately de-

tailed law ($x = 1$), but more capacity is always required to write the most detailed

law ($x = 0$).

In stage 3, B implements a policy $\in \{0, 1, a, a+1, x_B, x_B+1\}$, called y_1 if $\epsilon = 1$

and y_0 if $\epsilon = 0$. As for the Legislator above, this discrete action space represents the

dominant implementation decisions for the Bureaucrat. Policy implemented at 0, 1, or

x_B+1 corresponds to the Bureaucrat implementing the exact policy mandated by the

Legislator. I let the Bureaucrat potentially act illegally or to use his informational

advantage by allowing for implementation decisions at his ideal point (x_B) and at

indifference thresholds for L's subsequent investigation choice (a and $a + 1$). The

policy B implements may be legal (i.e., $y_\epsilon < x$) or illegal (i.e., $y_\epsilon \geq x$). In Huber

and Shipan (2002), the outcome is determined by what B implements (minus ϵ)

and exogenous nonstatutory factors included below in stage 4. The most important

difference between my model and Huber and Shipan (2002) is that there is a fourth

stage where L has an opportunity to learn about the value of ϵ 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

ϵ). If L does not 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 $d > 0$. This

represents both the opportunity costs associated with the agency's time and staff

resources needed to prepare for an oversight hearing and the potential political costs

associated with being publicly embarrassed by being brought in front of a committee. Gailmard (2009, p.162) justifies thinking about oversight as costly above and beyond budgetary concerns: "...bureaucrats care about much more than their budgets, such as reputations, relationships with superiors, and environmental stability."[3] To the extent that oversight hearings can affect these interests, they are costly to bureaucrats. Similarly, holding a hearing is obviously costly to legislators, particularly in regards to opportunity costs and the concomitant slowing down of the legislative process (which may well be more lucrative in terms of credit-claiming) (Oleszek, 1989; Diermeier and Feddersen, 2000). With some exogenous probability γ, 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. Figure 2.1 is a summary representation of the game's extensive form and Figure 2.2 gives a timeline which summarizes the costs of action at each stage.

Since this is a signaling game, the equilibria presented below are perfect Bayesian, which requires that players' beliefs are sequentially rational and determined by Bayes' rule when possible (Gibbons, 1992). 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. This is an intuitive way to characterize the equilibria, since there are few scholars of executive-legislative relations who would argue that policy conflict

[3]Gailmard (2009) cites the following as having made this point in more detail: Fenno (1966); Wildavsky (1978); Kaufman (1981); Wilson (1989) and Golden (2000).

should be an insignificant determinant of oversight. By presenting the equilibria in this manner, I can better emphasize what may be counterintuitive or novel about the findings. I begin by characterizing the separating equilibria, then I give conditions for the existence and character of semi-separating equilibria and show that the substantively interesting set of pooling strategies are unsustainable for this model. I then discuss some comparative statics and refer to the empirical predictions they imply. I am able to generate novel predictions about the effects of the x_B, a, and γ parameters on equilibrium behavior. Interestingly, some of these predictions contradict those from Huber and Shipan (2002). I conclude this chapter with a discussion of what this contributes to models of delegation and introduce the empirical strategies I will pursue in later chapters.

2.2.3   Separating Equilibria

2.2.3.1   Where $x_B < a$ (Figure 2.3)

B's Strategy

Assume for now that L writes $x = \bar{I}$. In a separating PBE, each type of B chooses a different message, so that L may perfectly infer B's type given the policy they implement. Here, B can receive his ideal point x_B as an outcome by implementing $y_0 = x_B$ for type 0 or $y_1 = x_B + 1$ for type 1. Let us assume that this is B's strategy:

$$\sigma_B(t) = \begin{cases} x_B & \text{if } t = t_0 \\ x_B + 1 & \text{if } t = t_1 \end{cases}$$

L's Beliefs

Let $\mu(t_i|y_\epsilon)$ be the probability that L assigns to type i after observing B's action y_B.

When L observes B implement x_B, she will assign probability 1 to B being type 0. Likewise, when L observes B implement $x_B + 1$, she will assign probability 1 to B being of type 1. To illustrate this, consider Bayes' rule:

$$\mu(t_0|x_B) = \frac{P(x_B|t_0)P(t_0)}{P(x_B)} = \frac{P(x_B|t_0)P(t_0)}{P(x_B|t_0)P(t_0) + P(x_B|t_1)P(t_1)}$$

$P(t_0) = 1 - p$, $P(x_B|t_0) = 1$, and $P(x_B|t_1) = 0$, so when we substitute these probabilities into Bayes' rule, we see that the only belief consistent with it is for $\mu(t_0|x_B) = 1$. Similarly, $\mu(t_0|x_B + 1) = 0$, $\mu(t_1|x_B + 1) = 1$, and $\mu(t_1|x_B) = 0$.

L's Best Response

L considers her best response by comparing the expected utilities associated with Investigating and Not Investigating. These expected utilities are determined by her beliefs about where she is in the game tree conditioned on given actions of the Bureaucrat and the utilities associated with the corresponding nodes.

Against $y_\epsilon = x_B$:

$$EU_L(I, x_B) = \mu(t_0|x_B) * U_L(I, x_B; t_0) + \mu(t_1|x_B) * U_L(I, x_B; t_1) = -a$$

and

$$EU_L(NI, x_B) = \mu(t_0|x_B) * U_L(NI, x_B; t_0) + \mu(t_1|x_B) * U_L(NI, x_B; t_1) = -x_B(1-\gamma)$$

Since we know that $x_B < a$ in this region and that γ is a probability between 0 and 1, L's best response to $y_i = x_B$ is to Not Investigate.

Against $y_\epsilon = x_B + 1$:

$$EU_L(I, x_B+1) = \mu(t_0|x_B+1) * U_L(I, x_B+1; t_0) + \mu(t_1|x_B+1) * U_L(I, x_B+1; t_1) = -a$$

and

$$EU_L(NI, x_B+1) = \mu(t_0|x_B+1)*U_L(NI, x_B+1; t_0)+\mu(t_1|x_B+1)*U_L(NI, x_B+1; t_1) =$$
$$-x_B(1-\gamma)$$

Again, since $x_B < a$ in this region, L's best response to $y_i = x_B + 1$ is to Not Investigate.

Equilibrium

Since L's beliefs are Bayesian by construction and her strategy is a best response given those beliefs, this is an equilibrium only if B has no incentive to deviate. Given L's strategy, either type of B receives the highest possible utility by implementing $y_o = x_B$ and $y_1 = x_B + 1$, respectively, so there is never an incentive for them to deviate from this strategy. Generally, to show that an equilibrium is a PBE, one must set arbitrary beliefs (as I do for L in the pooling case below) for the signal receiver at information sets that are not reached along the equilibrium path. These off the path beliefs need not be determined by Bayes' rule and any beliefs can support a PBE as long as they would not make the sender (B in this model) wish to deviate from their equilibrium strategy. In this case, B's equilibrium strategy is dominant (it yields his ideal point for any of L's beliefs), so actually assigning L's off the path beliefs would be superfluous here. B sending the signal assigned on the equilibrium path is optimal for him. Knowing this, L would never wish to investigate either on or off the equilibrium path. Finally, given this subgame, L would not deviate from writing the costless law ($x = \bar{I}$), since such deviation would not change B's strategy

(since B's strategy here is dominant)[4] and would only take away from L's utility.

The following is a separating PBE where we would expect L to neither limit discretion

ex ante nor conduct ex post investigations:

$$\sigma_B(t) = \begin{cases} x_B & \text{if } t = t_0 \\ \\ x_B + 1 & \text{if } t = t_1 \end{cases}$$

$$\sigma_L(y_i, \mu(y_\epsilon)) = \begin{cases} x = \bar{I}, NI & \text{if } y_\epsilon = x_B \\ \\ x = \bar{I}, NI & \text{if } y_\epsilon = x_B + 1 \end{cases}$$

$$\mu(y_\epsilon) = \begin{matrix} (\mu(t_0|x_B) = 1 \\ \\ (\mu(t_0|x_B + 1) = 0 \end{matrix}$$

Proposition 1. *When $x_B < a$, as in Figure 2.3, L never limits discretion ex ante nor conducts ex post investigations.*

2.2.3.2 Where $a \leq x_B \leq a + \frac{1}{2}$ (Figure 2.4)

B's Strategy

Assume for now 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 of being investigated, d. Therefore, let us assume that B implements

---

[4]Although, more generally, and in future refinements of these results, I need to specify the full set of strategies for each player, including off-the-path beliefs that can sustain equilibrium strategies.

$y_0 = a$ for type 0 or $y_1 = a + 1$ for type 1.

$$\sigma_B(t) = \begin{cases} a & \text{if } t = t_0 \\ a + 1 & \text{if } t = t_1 \end{cases}$$

L's Beliefs

Again constructing L's beliefs via Bayes' rule, we find that $\mu(t_0|a) = 1$, $\mu(t_0|a+1) = 0$, $\mu(t_1|a + 1) = 1$, and $\mu(t_1|a) = 0$.

L's Best Response

Against $y_\epsilon = a$:

$$EU_L(I, a) = \mu(t_0|a) * U_L(I, a; t_0) + \mu(t_1|a) * U_L(I, a; t_1) = -a$$

and

$$EU_L(NI, a) = \mu(t_0|a) * U_L(NI, a; t_0) + \mu(t_1|a) * U_L(NI, a; t_1) = -a(1 - \gamma)$$

Since γ is a probability, it is between 0 and 1, and for all values besides 0, L would strictly prefer to Not Investigate here. For $\gamma = 0$ I will assume, given the indifference between Investigating and Not Investigating, that L would prefer to Not Investigate since it would require taking additional action to achieve the same utility. However, it would not be unreasonable to empirically consider the possibility of Investigation here if L has any incentives to do so that are external to this particular model (say, if there are any potential electoral benefits to holding hearings).

Against $y_\epsilon = a + 1$:

$$EU_L(I, a + 1) = \mu(t_0|a + 1) * U_L(I, a + 1; t_0) + \mu(t_1|a + 1) * U_L(I, a + 1; t_1) = -a$$

and

$$EU_L(NI, a+1) = \mu(t_0|a+1)*U_L(NI, a+1; t_0) + \mu(t_1|a+1)*U_L(NI, a+1; t_1) = -a(1-\gamma)$$

Similarly, L would prefer to Not Investigate when she sees B implement $a+1$ in this preference arrangement.

Equilibrium

Since L's beliefs are Bayesian by construction and her strategy is a best response given those beliefs, this is an equilibrium only if B has no incentive to deviate. B's utility from not deviating, regardless of type, is $-(x_B - a)$. If B deviated, it would change L's beliefs about B's type and would therefore change the expected utilities for L such that she would prefer to investigate all the time, thereby changing B's expected utility. Here, the outcome would yield a utility for either type of B of $-x_B - d$. Since $x_B > a$ in this region, this utility would always be strictly lower than $-(x_B - a)$. Therefore, B will not deviate from the given strategy in equilibrium. Likewise, L would not limit discretion by writing $x < \bar{I}$ because it would strictly add cost to her utility. Since neither player would deviate from their strategies, the following is a PBE:

$$\sigma_B(t) = \begin{cases} a & \text{if } t = t_0 \\ a+1 & \text{if } t = t_1 \end{cases}$$

$$\sigma_L(y_i, \mu(y_\epsilon)) = \begin{cases} x = \bar{I}, NI & \text{if } y_\epsilon = a \\ x = \bar{I}, NI & \text{if } y_\epsilon = a+1 \end{cases}$$

$$\mu(y_\epsilon) = \begin{matrix} (\mu(t_0|a) = 1 \\ (\mu(t_0|a+1) = 0 \end{matrix}$$

Note that L neither limits discretion (i.e., writes laws where $x < \bar{I}$), nor conducts oversight investigations in either of these first two regions. The effects of these tools of control can be seen in this second region, 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 ideologically close to L (Figure 2.6, 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 ϵ given the action of B.

Proposition 2. *When $a \leq x_B \leq a + \frac{1}{2}$, as in Figure 2.4, L never limits discretion ex ante nor conducts ex post investigations.*

And, combining the first two propositions,

Corollary 1. *When $x_B \leq a + \frac{1}{2}$, L never limits discretion ex ante nor conducts ex post investigations (Figure 2.6).*

These propositions describe equilibrium legislative behavior in a relatively common preference relationship: that where legislators and bureaucrats can be considered ideological allies. It is not surprise that legislatures seek to minimize action and transaction costs when they are certain that unconstrained policy implementation will not stray too far from their preferred policies. We now move to consider preference relationships where there is more conflict between the Legislator and the implementing Bureaucrat.

2.2.4   Pooling and Semi-Separating Equilibria

2.2.4.1   Pooling

There are no separating equilibria when x_B becomes too large ($x_B > a + \frac{1}{2}$, Figure 2.5).

To see this, 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 $a + 1$.

This is considered a "pooling" strategy, which is characterized by both types of B

behaving in the same way. If there exists a pooling PBE here, both types of B must

implement $y_B = a + 1$.

$$
\sigma_B(t) = \begin{cases} a + 1 & \text{if } t = t_0 \\ a + 1 & \text{if } t = t_1 \end{cases}
$$

When L sees B implement a+1 here, she uses Bayes' rule to update her beliefs about

type.

$$
\mu(t_0|a + 1) = \frac{P(a + 1|t_0)P(t_0)}{P(a + 1)} = \frac{P(a + 1|t_0)P(t_0)}{P(a + 1|t_0)P(t_0) + P(a + 1|t_1)P(t_1)}
$$

Since, by assumption, $P(a + 1|t_0) = 1$ and $P(a + 1|t_1) = 1$, and, by construction,

$P(t_0) = 1 - p$ and $P(t_1) = p$, we get $\mu(t_0|a + 1) = 1 - p$. Similarly, by Bayes'

rule, $\mu(t_1|a + 1) = p$. On the pooling equilibrium path, these posterior beliefs are

exactly the same as the prior probabilities of being in each state of the world. L

does not learn anything from B's behavior when the two types of B pool. If Bureau-

crat t_0 were to implement a, off the equilibrium path, Bayes' rule would not apply:

$\mu(t_0|a) \neq \frac{P(a|t_0)(P(t_0)}{P(a)}$, because $P(a) = 0$. Therefore, to check off-path beliefs, we need

to arbitrarily assign them to see if they can support a pooling equilibrium. I assume

that $\mu(t_0|a) = \lambda \in [0, 1]$.

The Legislator's best response, since $EU_L(I, a+1) > EU_L(NI, a+1)$, to on-the-path play is to Investigate B with probability 1 when $a > 1$:

$$EU_L(I, a+1) = \mu(t_0|a+1) * U_L(I, a+1; t_0) + \mu(t_1|a+1) * U_L(I, a+1; t_1) = -a$$

$$EU_L(NI, a+1) = \mu(t_0|a+1) * U_L(NI, a+1; t_0) + \mu(t_1|a+1) * U_L(NI, a+1; t_1) = \\ -pa + (1-p)(-|a-1|)$$

Likewise, L will Investigate off-the-path behavior with $\mu(t_0|a) = \lambda$ and $\mu(t_0|a) = 1-\lambda$ only when $a > 1$, otherwise she would prefer to Not Investigate:

$$EU_L(I, a) = \mu(t_0|a) * U_L(I, a; t_0) + \mu(t_1|a) * U_L(I, a; t_1) = -a$$

$$EU_L(NI, a) = \mu(t_0|a)*U_L(NI, a; t_0) + \mu(t_1|a)*U_L(NI, a; t_1) = -\lambda a + (1-\lambda)(-|a-1|)$$

$$BR_L(a|\mu(t_0|a)) = \begin{cases} I & \text{if } a > 1 \\ \\ NI & \text{if } a \leq 1 \end{cases}$$

It is straightforward to see that either type of B would prefer to deviate from their strategy profile and play the strategy that would yield their ideal points (i.e., $y_0 = x_B$ and $y_1 = x_B + 1$) when $a \leq 1$, given L's off-the-equilibrium path beliefs. Therefore, the pooling strategies assigned to B do not support equilibrium in this model.

2.2.4.2   Semi-separating $(x_B > a + \frac{1}{2}$, Figure 2.5)

Maximal Discretion law $(x = \bar{I})$

Let us now consider potential equilibria with type t_1 implementing $a + 1$, as in the above consideration of pooling strategies, but let us assume that type t_0 "cheats" (i.e., implements $y_0 = a + 1$) with probability q and does not cheat (i.e., implements

$y_0 = a$) with $1 - q$. The equilibria we are looking for here are semi-separating in the sense that L can imperfectly update prior beliefs about the state of the world given that she knows that one type of B is playing a pure strategy while the other is mixing over implementing a and $a + 1$. We here consider the case where t_1 plays a pure strategy and t_0 mixes because the preference arrangement implies that t_0 has the opportunity to use his informational advantage to gain policy from the imperfectly updating Legislator.

B's Strategy

In general,

$$\sigma_B(t) = \begin{cases} a & \text{with probability } 1 - q & \text{if } t = t_0 \quad q \in (0, 1] \\ a + 1 & \text{with probability } q & \text{if } t = t_0 \\ a + 1 & & \text{if } t = t_1 \end{cases}$$

L's Beliefs

Since both $a + 1$ and a are played on the equilibrium path, L's beliefs follow Bayes' rule for each information set. According to B's strategy, we know that $P(a+1|t_1) = 1$ and $P(a + 1|t_0) = q$, and by construction $P(t_1) = p$ and $P(t_0) = 1 - p$, so we get:

$$\mu(t_1|a) = 0$$

$$\mu(t_1|a + 1) = \frac{P(a+1|t_1)P(t_1)}{P(a+1)} = \frac{P(a+1|t_1)P(t_1)}{P(a+1|t_1)P(t_1)+P(a+1|t_0)P(t_0)} = \frac{p}{p+q-pq}$$

B's Equilibrium Strategy

In equilibrium, the Bureaucrat of type t_0 must choose the probability q with which he "cheats" and implements $a+1$ instead of a. This probability needs to be chosen so as to make the Legislator indifferent about Investigating him (i.e., make $EU_L(I|a + 1) = EU_L(NI|a + 1)$). If the Legislator is not indifferent about Investigating, a

Bureaucrat of type t_0 would no longer be willing to mix strategies and the semi-separating equilibrium would not be supported. As with the separating cases, these expected utilities are determined by L's beliefs about B's type and the objective utilities associated with the potential outcomes. Where $\mu = \mu(t_1|a+1) = \frac{p}{p+q-pq}$ and $1 - \mu = (t_0|a+1) = 1 - \frac{p}{p+q-pq}$:

$$EU_L(I|a+1) = EU_L(NI|a+1)$$

$$(1-\mu)*U_L(I,a+1;t_0)+\mu*U_L(I,a+1;t_1) = (1-\mu)*U_L(NI,a+1;t_0)+\mu*U_L(NI,a+1;t_1)$$

$$-a = (1-\mu)(1-\gamma)(-(a+1)) + (\mu)(1-\gamma)(-a)$$

Substituting $\frac{p}{p+q-pq}$ for μ:

$$-a = -\frac{p(1-\gamma)a}{p+q-pq} - \left(1 - \frac{p}{p+q-pq}\right)(1-\gamma)(a+1)$$

And solving for q:

$$q = \frac{ap\gamma}{1 - \gamma a - \gamma - p + ap\gamma + p\gamma}$$

L's Best Response

Since she is indifferent between the two, the Legislator will respond to the Bureaucrat's strategy by mixing over Investigating and Not Investigating. In equilibrium, L will choose a probability of Investigation i which makes the Bureaucrat of type t_0 indifferent about cheating, so that he would not prefer to cheat all of the time.

$$EU_B(a|t_0) = EU_B(a+1|t_0)$$

$$\gamma(-x_B) + (1-\gamma)(-(x_B - a)) = i(-x_B) + (1-i)[\gamma(-x_B) + (1-\gamma)(-a-1+x_B)]$$

After simplifying, and solving for i, we get:

$$i = \frac{2a + 1 - 2x_B}{a + 1 - 2x_B}$$

Now that we have these equilibrium mixing probabilities, we can construct utilities

for L given the types of B, and eventually expected utilities given B's strategies.

$$U_L(a + 1|t_0) = -ia - (1 - i)(1 - \gamma)(a + 1)$$

$$= -\frac{(2a + 1 - 2x_B)a}{a + 1 - 2x_B} - \left(1 - \frac{2a + 1 - 2x_B}{a + 1 - 2x_B}\right)(1 - \gamma)(a + 1)$$

$$U_L(a|t_0) = (1 - \gamma)(-a)$$

$$= -(1 - \gamma)a$$

$$U_L(a + 1|t_1) = -ia - (1 - i)(1 - \gamma)(a)$$

$$= -\frac{(2a + 1 - 2x_B)a}{a + 1 - 2x_B} - \left(1 - \frac{2a + 1 - 2x_B}{a + 1 - 2x_B}\right)(1 - \gamma)a$$

We substitute these utilities into L's expected utility for this maximal discretion

subgame, and after some simplification, we get:

$$EU_L(x = \bar{I}) = (1 - p)[q * U_L(a + 1|t_0) + (1 - q) * U_L(a|t_0)] + p * U_L(a + 1|t_1)$$

$$= \frac{a\left(\gamma^2 a - \gamma a - p\gamma^2 + \gamma^2 + 1 + p\gamma - 2\gamma\right)}{-1 + \gamma a + \gamma}$$

L's beliefs are Bayesian by construction, her strategy is a best response given these

beliefs, and B's strategy is constructed as a best response to L's strategy, so this is

a semi-separating equilibrium if L has no incentive to deviate from writing a costless

law $(x = \bar{I})$. In the next section, I show that L has no such incentive for many values

of γ, but will limit B's discretion by writing $x = 1$ for other values of γ.

Limited Discretion law $(x = 1)$

In the subgame where L writes $x = 1$ instead of $x = \bar{I}$, she incurs a constant cost of

$k = a - \frac{a}{x_B + 1}$. In addition, B must now pay a cost d when he is caught cheating (in

this case, this means implementing $a + 1 > 1$). These changes affect the structure of the i parameter and the critical utilities of L.

B's Strategy

Again, in general,

$$
\sigma_B(t) = \begin{cases} a & \text{with probability } 1 - q & \text{if } t = t_0 \quad q \in (0, 1] \\ a + 1 & \text{with probability } q & \text{if } t = t_0 \\ a + 1 & & \text{if } t = t_1 \end{cases}
$$

L's Beliefs

L's beliefs are based on B's general strategy, so they are the same as they were in the maximal discretion case:

$$
\mu(t_1|a) = 0
$$

$$
\mu(t_1|a + 1) = \frac{P(a+1|t_1)P(t_1)}{P(a+1)} = \frac{P(a+1|t_1)P(t_1)}{P(a+1|t_1)P(t_1) + P(a+1|t_0)P(t_0)} = \frac{p}{p+q-pq}
$$

B's Equilibrium Strategy

Somewhat counterintuitively, since B's equilibrium strategy is chosen to make the Legislator indifferent about investigating, the introduction of the possibility of B being punished for acting illegally does not change his general strategy:

$$
q = \frac{ap\gamma}{1 - \gamma a - \gamma - p + ap\gamma + p\gamma}
$$

L's Best Response

The introduction of the d penalty for when the Bureaucrat is investigated when he acts illegally affects the probability that the Legislator holds a hearing. To see this, consider again that L chooses this probability so as to make B indifferent about cheating.

$$
EU_B(a|t_0) = EU_B(a + 1|t_0)
$$

$$\gamma(-x_B) + (1-\gamma)(-(x_B-a)) = i(-x_B-d) + (1-i)[\gamma(-x_B-d) + (1-\gamma)(-a-1+x_B)]$$

After simplifying, and solving for i, we get:

$$\frac{-2\,x_B + 2\,a + 2\,\gamma a - 2\,\gamma x_B + \gamma d + 1 + \gamma}{-2\,x_B - d + a + 1 + \gamma a + \gamma - 2\,\gamma x_B + \gamma d}$$

As before, we can construct utilities and expected utilities for the limited discretion subgame with these mixing probabilities. Importantly, these utilities include the cost of writing the limited discretion law, $k = a - \frac{a}{x_B+1}$.

$$
\begin{aligned}
U_L(a+1|t_0) &= (-ia - (1-i)(1-\gamma)(a+1)) - k \\
&= -\frac{(-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma)a}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d} - \left(1 - \frac{-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d}\right) \\
&\quad * (1-\gamma)(a+1) - a + \frac{a}{x_B+1}
\end{aligned}
$$

$$
\begin{aligned}
U_L(a|t_0) &= ((1-\gamma)(-a)) - k \\
&= -(1-\gamma)a - a + \frac{a}{x_B+1}
\end{aligned}
$$

$$
\begin{aligned}
U_L(a+1|t_1) &= (-ia - (1-i)(1-\gamma)(a)) - k \\
&\quad -\frac{(-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma)a}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d} - \left(1 - \frac{-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d}\right) \\
&\quad * (1-\gamma)a - a + \frac{a}{x_B+1}
\end{aligned}
$$

L's expected utility for the limited discretion subgame:

$$
\begin{aligned}
EU_L(x=\bar{I}) &= (1-p)[q * U_L(a+1|t_0) + (1-q) * U_L(a|t_0)] + p * U_L(a+1|t_1) \\
&= \frac{a\left(\gamma^2 a x_B+\gamma^2 a-2\,\gamma a x_B-a-\gamma a-p\gamma^2+\gamma^2 x_B-p\gamma^2 x_B+\gamma^2-3\,\gamma x_B+p\gamma+p\gamma x_B-2\,\gamma+2\,x_B+1\right)}{(x_B+1)(-1+\gamma a+\gamma)}
\end{aligned}
$$

L's beliefs are Bayesian by construction, her strategy is a best response given these beliefs, and B's strategy is constructed as a best response to L's strategy, so this is a semi-separating equilibrium if L has no incentive to deviate from writing a limited discretion law $(x=1)$.

To see when L would write the limited discretion law instead of the maximal discretion one, we must compare the expected utilities of each. By assuming that the $EU_L(x = \bar{I}) > EU_L(x = 1)$, and then solving the inequality for the exogenous γ, we see that there is a middle region of γ where L would prefer to write the limited discretion over the costless maximal discretion law.

For $\gamma > \frac{1}{a+1}$ (which makes $-1 + \gamma a + \gamma$ positive):

$$EU_L(x = \bar{I}) \qquad\qquad\qquad > EU_L(x = 1)$$

$$\frac{a\left(\gamma^2 a - \gamma a - p\gamma^2 + \gamma^2 + 1 + p\gamma - 2\gamma\right)}{-1 + \gamma a + \gamma} >$$

$$\frac{a\left(\gamma^2 a x_B + \gamma^2 a - 2\gamma a x_B - a - \gamma a - p\gamma^2 + \gamma^2 x_B - p\gamma^2 x_B + \gamma^2 - 3\gamma x_B + p\gamma + p\gamma x_B - 2\gamma + 2 x_B + 1\right)}{(x_B + 1)(-1 + \gamma a + \gamma)}$$

$$\gamma^2 a x_B + \gamma^2 a - \gamma a + p\gamma x_B + p\gamma - p\gamma^2 x_B - p\gamma^2 + x_B + 1 + \gamma^2 x_B + \gamma^2 - 2\gamma x_B - 2\gamma >$$

$$\gamma^2 a x_B + \gamma^2 a - 2\gamma a x_B - a - \gamma a - p\gamma^2 + \gamma^2 x_B - p\gamma^2 x_B + \gamma^2 - 3\gamma x_B + p\gamma + p\gamma x_B - 2\gamma + 2 x_B + 1$$

Solving for γ:

$$\gamma > -\frac{-x_B + a}{x_B(a + 1)}$$

And for $\gamma < \frac{1}{a+1}$ (which makes $-1 + \gamma a + \gamma$ negative):

$$EU_L(x = \bar{I}) \qquad\qquad\qquad > EU_L(x = 1)$$

$$\frac{a\left(\gamma^2 a - \gamma a - p\gamma^2 + \gamma^2 + 1 + p\gamma - 2\gamma\right)}{-1 + \gamma a + \gamma} >$$

$$\frac{a\left(\gamma^2 a x_B + \gamma^2 a - 2\gamma a x_B - a - \gamma a - p\gamma^2 + \gamma^2 x_B - p\gamma^2 x_B + \gamma^2 - 3\gamma x_B + p\gamma + p\gamma x_B - 2\gamma + 2 x_B + 1\right)}{(x_B + 1)(-1 + \gamma a + \gamma)}$$

$$\gamma^2 a x_B + \gamma^2 a - \gamma a + p\gamma x_B + p\gamma - p\gamma^2 x_B - p\gamma^2 + x_B + 1 + \gamma^2 x_B + \gamma^2 - 2\gamma x_B - 2\gamma <$$

$$\gamma^2 a x_B + \gamma^2 a - 2\gamma a x_B - a - \gamma a - p\gamma^2 + \gamma^2 x_B - p\gamma^2 x_B + \gamma^2 - 3\gamma x_B + p\gamma + p\gamma x_B - 2\gamma + 2 x_B + 1$$

Solving for γ:

$$\gamma < -\frac{-x_B + a}{x_B(a + 1)}$$

When γ is between these two values $(-\frac{-x_B+a}{x_B(a+1)} < \gamma < \frac{1}{a+1})$, $EU_L(x = \bar{I}) < EU_L(x = 1)$ and L would prefer to limit discretion in equilibrium. However, when $\gamma \leq -\frac{-x_B+a}{x_B(a+1)}$ or $\gamma > \frac{1}{a+1}$, then $EU_L(x = \bar{I}) > EU_L(x = 1)$ and L would write the maximal discretion law in equilibrium.

Proposition 3. *When $x_B > a + \frac{1}{2}$ and γ is either sufficiently low $(\gamma < -\frac{-x_B+a}{x_B(a+1)})$ or sufficiently high $(\gamma > \frac{1}{a+1})$, L does not limit discretion ex ante, but does conduct ex post investigations with a probability, $i = \frac{2a+1-2x_B}{a+1-2x_B}$, that increases in x_B and decreases in a.*

Proposition 4. *When $x_B > a + \frac{1}{2}$ and γ is neither sufficiently low nor sufficiently high $(-\frac{-x_B+a}{x_B(a+1)} < \gamma < \frac{1}{a+1})$, L limits discretion ex ante and conducts ex post investigations with a probability, $i = \frac{-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d}$, that increases in x_B and decreases in a.*

The intuition here is quite straightforward: when γ is very high, the Legislator can rest easily knowing that a recalcitrant Bureaucrat is likely to be exogenously, and costlessly, reigned in, and when γ is very low, it is more efficient for the Legislator to hold oversight hearings (which will bring policy toward L's ideal point regardless of B's original implementation decision) with the given mixed strategy probabilities after having written a costless law. In these cases, L's policymaking strategy is determined by the assumed effectiveness of oversight hearings and by the extent to which extralegislative factors favor the Legislator. However, when γ is in the intermediate range, the Legislator cannot count on the exogenous reversion of policy to her ideal point. Instead, she must write more restrictive laws which can constrain

the Bureaucrat since he can be punished for implementing illegally. This strategy ends up being optimal to solely relying on hearings (as L is willing to do when γ is sufficiently low) because writing a restrictive law is relatively less costly than holding an oversight hearing.

2.3 Empirical Implications and Discussion

These theoretical results provide a number of empirical predictions that I will evaluate in the substantive chapters below. The results are important theoretically in that they show that the Legislator can consider both ex ante and ex post strategies simultaneously and that she considers the potential effects of exogenous institutions (such as the courts) when making her policymaking choices. This approach shares neither the shortcomings of the congressional approach nor the existing principal-agent approaches discussed in the previous chapter. Ex ante *and* ex post mechanisms are used in equilibrium and the extent to which they are used depends on institutional factors. When the Legislator does not hold hearings (i.e., when policy disagreement between L and B is sufficiently low), it is because doing so would be superfluous – an insight conspicuously missing from many of the congressional accounts of the determinants of oversight activity. Likewise, when policy disagreement is high, the Legislator cannot – as is assumed in many principal-agent accounts – rely solely on ex ante mechanisms of control. In fact, it is the cost to the Bureaucrat of being investigated when acting illegally that drives the effectiveness of the ex ante measures. Quite simply, legislatures in the real world use both types of strategies to control policy and I will use this model to make predictions about when they would be more

likely to use one type of mechanism over the other.

The first group of predictions are derived from Proposition 1. Since L never limits discretion in these Regions 1 and 2[5], changes in neither ideological conflict (x_B) nor legislative expertise lead to changes in oversight activity.

Prediction 1. *(A) When*

- *ideological conflict between an executive agency and a legislative 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.*

(B) 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.*

The two components of this prediction indicate that being in this region depends on the relationship between the theoretical x_B and a variables, rather than on either of their absolute values (The two conditions indicate the exact same spatial relationship). Figure 2.6 demonstrates these predictions graphically.

Where Prediction 1 holds that oversight hearings should not occur in Regions 1 or 2, once x_B becomes larger than $a + \frac{1}{2}$, we enter Region 3, where we would expect oversight hearings to take place with some positive probability.

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[5]I term the different preference orderings "regions" for ease of reference. Regions 1 and 2 indicate the preference orderings for which there are separating equilibria.

Prediction 2. *When*

- *ideological conflict between an executive agency and a legislative 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.*

Relatedly, since x_B and a determine this probability of oversight activity (given by

$i = \frac{2a+1-2x_B}{a+1-2x_B}$ or $i = \frac{-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d}$, depending on the value of γ):

Prediction 3. *(A) When*

- *ideological conflict between an executive agency and a legislative 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.*

(B) When

- *ideological conflict between an executive agency and a legislative 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 committee expertise should have a positive effect on the probability of oversight hearings.*

Figure 2.7 shows the effects of increases in ideological conflict (x_B) on the probability of investigation in Region 3 (when $\gamma \leq -\frac{-x_B+a}{x_B(a+1)}$ or $\gamma > \frac{1}{a+1}$). Although the probability of oversight is always very high in this region, it increases significantly when ideological conflict between a legislative committee and an executive agency becomes very large. Figure 2.8 demonstrates how increases in the cost of holding a hearing (a) significantly decrease the probability of the legislative committee holding a hearing in this region.

Besides these predictions regarding levels of oversight, Propositions 3 and 4 imply the following discretion-limiting prediction:

Prediction 4. *When*

- *ideological conflict between an executive agency and a legislative committee is sufficiently high $(x_B > a + \frac{1}{2})$,*

- *or the cost of holding a hearing sufficiently low $(a < x_B - \frac{1}{2})$,*

- *AND the probability of the courts (or some other exogenous policymaking actor) affecting policy in the committee's favor is neither sufficiently low nor sufficiently high $(-\frac{-x_B+a}{x_B(a+1)} < \gamma < \frac{1}{a+1})$,*

- *the committee is most likely to limit discretion ex ante with specific statutory language.*

Figure 2.9 demonstrates this expectation graphically, showing that the legislature should use both ex ante and ex post means to direct policy implementation in this case.

The empirical policymaking patterns predicted by the model presented in this chapter are unique to studies of legislative-executive relations. These predictions are important in that I show support for their ability to explain congressional oversight (Chapter 3) and the prescriptive content of statutes across U.S. state legislatures (Chapter 4). The model presented in this chapter is also important theoretically, as I show that it is possible for legislative oversight to be necessary for democratically important legislative control of policy outcomes, yet for this oversight to be under-provided when legislatures lack the institutional capacity to conduct hearings. In addition, one can derive predictions concerning agency behavior from this model and I discuss these implications more fully in Chapter 5.

Figure 2.1: Simplified Representation of the Extensive Form
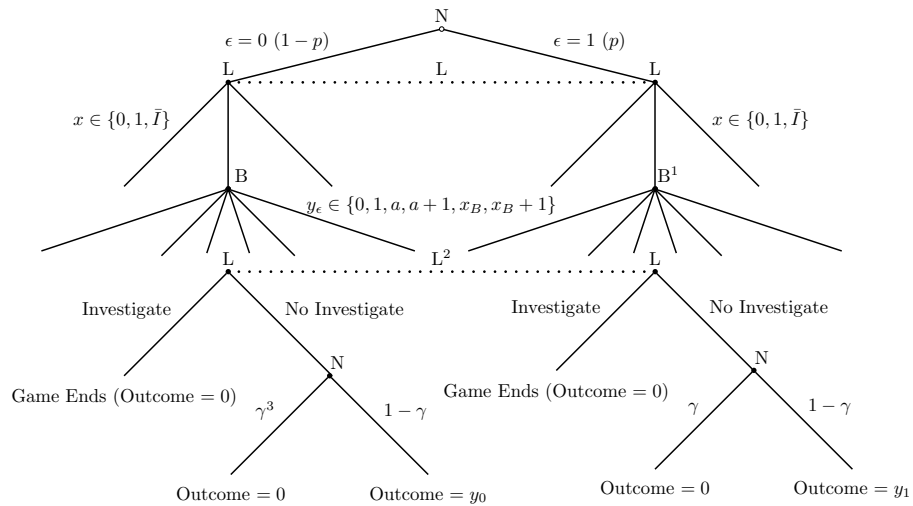
Notes:

1. At the stage where B implements L's law (stage 3), B has the same available actions for each law that L chooses in the previous stage. Likewise, L's strategies in stage 4 are for any given implementation decision of B.

2. Although L does not know the value of ϵ at this information set, she does know what her previous action ($x \in \{0, 1, \bar{I}\}$) was.

3. γ is the probability with which Nature reverts the policy outcome to L's ideal point. This represents exogenous nonstatutory determinants of policy outcomes.

Figure 2.2: Timeline of the Game

1) **Nature**	2) **L**	3) **B**		4) **L**
$\epsilon \in \{0,1\}$	$x \in \{0,1,\bar{I}\}$	$y_\epsilon \in \{0,1,a,a+1,x_B,x_B+1\}$		I or NI

1. **Nature** determines policy shock, $\epsilon \in 0,1$

2. **L**, observing nothing, but believing that $\epsilon = 1$ with probability p and that $\epsilon = 0$ with probability $1 - p$, adopts a law $x \in \{0,1,\bar{I}\}$. The cost of legislation is $k = (a - \frac{ax}{\bar{I}})$.

3. **B**, knowing the value of ϵ, implements a policy $y_\epsilon \in \{0, 1, a, a + 1, x_B, x_B + 1\}$

4. **L** observes the policy implemented by B and chooses to Investigate (with cost a) or or Not Investigate. If she Investigates and B has implemented $y_\epsilon > x$, B pays a cost $d > 0$.

5. With some exogenous probability γ, the outcome reverts to L's ideal point and B pays d if $y_\epsilon > x$. Utilities are determined by policy outcomes minus the costs of legislation and investigation (for L), and penalties for acting illegally (for B).

Figure 2.3: Region 1 — Separating Equilibrium

$$L \qquad\qquad x_B \qquad\quad a \qquad\qquad\qquad\qquad x_B+1 \qquad a+1$$

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 2.4: Region 2 — Separating Equilibrium
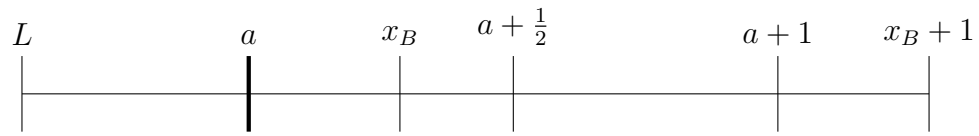
Separating Equilibrium: $a \leq x_B \leq a + \frac{1}{2}$

- 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 2.5: Region 3 — Semi-separating Equilibrium

$$L \qquad\qquad a \qquad\qquad\qquad a+\tfrac{1}{2} \qquad x_B \qquad a+1$$
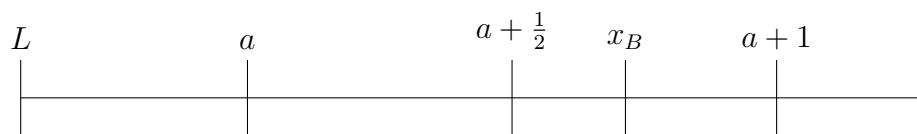
Semi-separating: $a + \tfrac{1}{2} < x_B$

- 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 2.6: Regions 1 and 2 — Empirical Expectations

$x = \bar{I}$

x

i

a

$i = 0$

$a + \frac{1}{2}$

$a + 1$

x_B
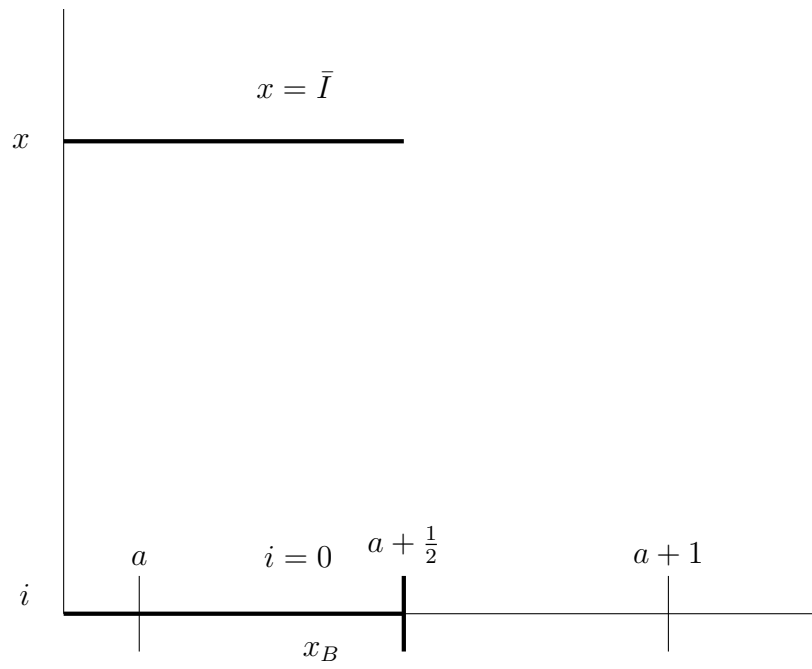
Figure 2.7: Region 3 — How x_B affects i, with $a = .2$
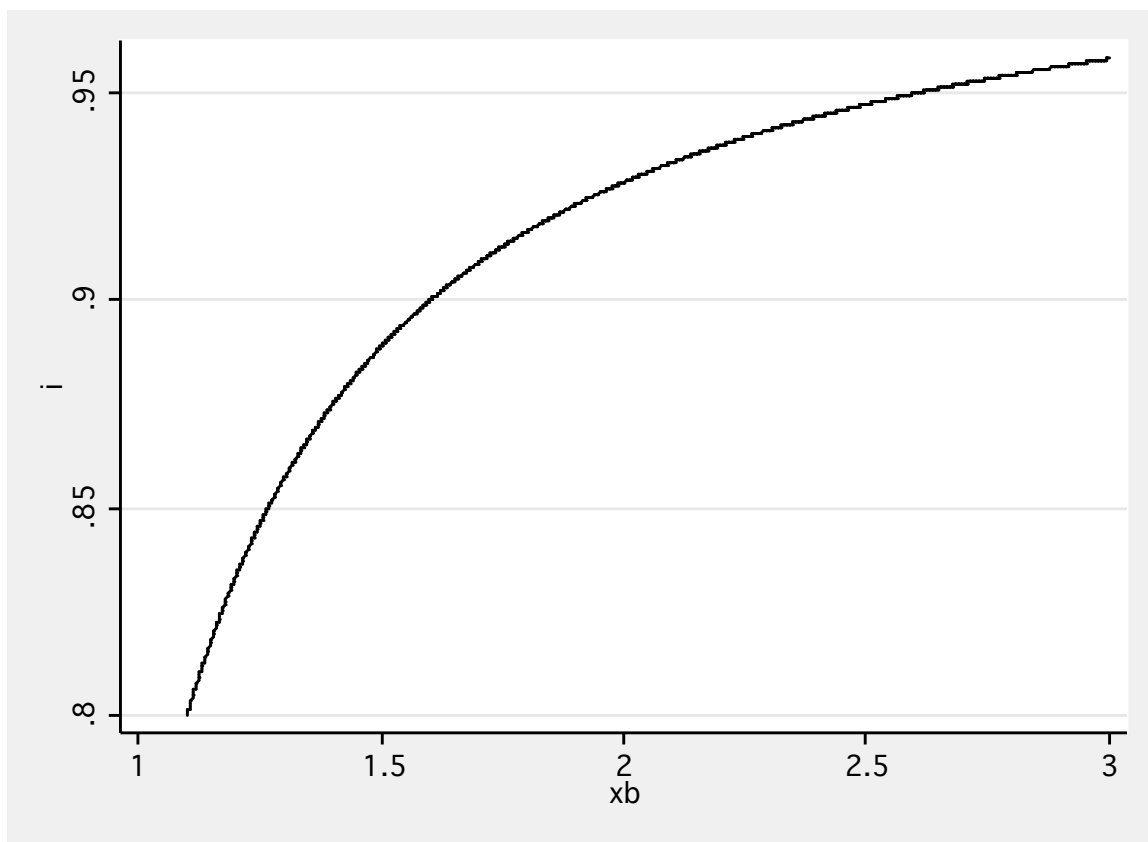
Figure 2.8: Region 3 — How a affects i, with $x_B = 1.1$
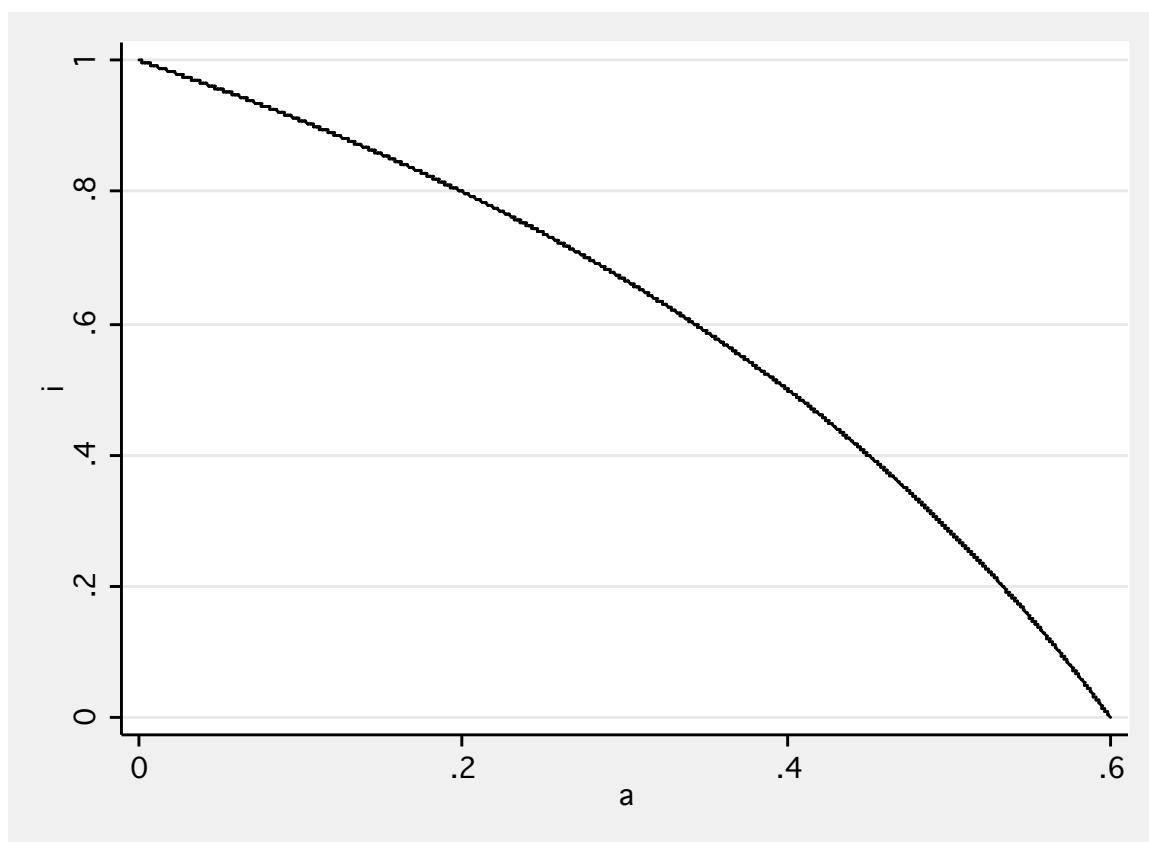
Figure 2.9: Regions 1, 2, and 3 — Empirical Expectations$(-\frac{-x_B+a}{x_B(a+1)} < \gamma < \frac{1}{a+1})$
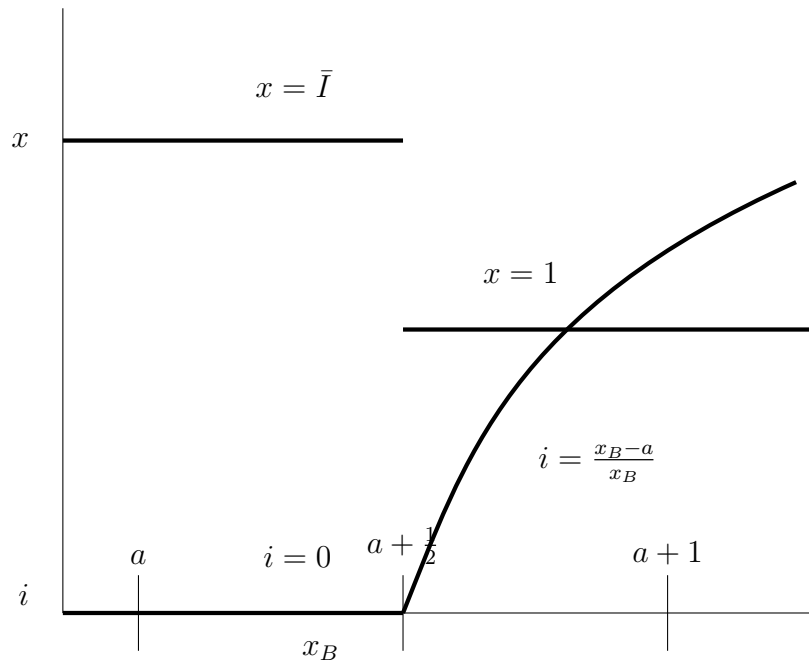
CHAPTER 3
CONGRESSIONAL HEARINGS AND POLICY CONTROL: EXPLAINING OVERSIGHT AS AN EX POST MECHANISM

The previous chapter deduces general insights about when we should expect legislatures (or, more specifically, legislative committees) to use ex post oversight to maintain control of policy outcomes in separation of powers systems. This approach is novel in that it considers the possibility that committees use oversight hearings to enforce the limits of the discretion that the legislature has stipulated to implementing agencies. This differs both from Congress-centric studies which see oversight as an arena for credit-claiming (Scher, 1963; Ogul, 1976; Davidson and Oleszek, 1985; Oleszek, 1989; Aberbach, 1990; Ogul and Rockman, 1990; Aberbach, 2002; Smith, 2003)[1] and from the existing principal-agent approaches which see oversight as either unnecessary in most circumstances (McCubbins and Schwartz, 1984; McCubbins, Noll and Weingast, 1987, 1989; Horn and Shepsle, 1989) or a strategic substitute for ex ante constraints (Bawn, 1997; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002; Gailmard, 2002). This most recent strand of literature argues that legislators at both the individual (Bawn, 1997) and the institutional levels (Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002) use fewer ex ante measures when their capacity to perform ex post oversight increases. In contrast, the model presented in the previous chapter holds that the choice between these two types of strategies should

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[1]Admittedly, many of these studies astutely recognize that oversight may also be used as agency advocacy, rather than adversarial review. Ogul and Rockman (1990, p. 12): "In an advocacy setting, the overseers seek to protect the programs in question, though they are often critical of the administrators (typically political appointees) sitting across the table from them in hearings."

be influenced by the ability of extra-legislative actors to influence policy outcomes. The model makes separate predictions about the determinants of ex post oversight (analyzed empirically in this chapter) and ex ante limitations on statutory discretion (which I turn to in Chapter 4).

The key contribution of this chapter is a demonstration that the conduct of congressional oversight activity fits the unique pattern predicted by the model from Chapter 2. Specifically, I utilize publicly available data from the Policy Agendas Project (http://www.policyagendas.org/) to test whether oversight activity (specifically, formal oversight hearings) has the expected relationships with the technical capacity and expertise of the congressional committee in charge of a given policy area and with policy conflict among these committees and the executive branch. To preview the main insight of this chapter, 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 policy disagreements are sufficiently conflictual.

In the next section, I briefly review the literature on the determinants of congressional oversight hearings. Since I have covered most of this literature (in Chapter 1) to motivate this thesis, I focus on the specific empirical predictions that scholars have made regarding covariates of oversight activity (Section 3.1). I then restate the empirical predictions derived from my model of legislative policymaking and formulate empirical hypotheses (Section 3.2). Next, I turn to operationalizing the key theoretical variables so that I may construct empirical models to test these expectations (Section 3.3). Section 3.4 presents the results of the different model

specifications, demonstrating broad support for the insights of the theoretical model, and Section 3.5 concludes with a discussion of contributions, shortcomings, and implications for future work.

3.1 Previous Literature on Oversight Activity

Previous literature (Rosenthal, 1981; Mantel, 2008; Stapenhurst et al., 2008) has demonstrated what is intuitively obvious, that oversight activity is uniform neither across space nor over time. Congressional oversight hearings, after decades of languishing, began to increase rapidly, especially in the House of Representatives, in the the late 1960s and throughout the 1970s (Figure 3.1 demonstrates variation in the number of oversight hearing days by chamber for each year from 1947-2006). In addition, it is generally the case that legislators from California are more vigilant in the extent to which they oversee policy implementation than their counterparts from, say, Kansas (Rosenthal, 1981). While extant studies show support for certain covariates of oversight activity (Scher, 1963; Ogul, 1976; Aberbach, 1990, 2002; Ogul and Rockman, 1990; Smith, 2003), they do not propose institutional conditions under which we would expect to see more or less of it.

As discussed in Chapter 1, many of the early studies on the determinants of oversight activity took the perspective that individual members of Congress are reelection-seekers and that achievement of this goal determines their every behavior. Oversight is but an activity, like any other that a legislator carries out, that can either help or harm their chances of reelection. Rosenthal (1981) notes that while this is clearly a useful approach, it can do little to recognize the fact that, institution-

ally, oversight does occur. Specifically as espoused by Aberbach (1990), 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.

Institutional change, like the passage of the Legislative Reorganization Act of 1946 (Aberbach, 1990), can restructure legislators' incentives so that oversight becomes more likely to occur. Specifically, Ogul and Rockman (1990) argue that the LRA was important in increasing oversight because it generated more subcommittees with narrow policy jurisdiction and increased staffs. This provided new opportunities and better resources for members of Congress to benefit from oversight activity. Similarly, Ogul and Rockman (1990) argue that important decentralization measures, such as the Subcommittee Bill of Rights of 1973, could also establish powerful, albeit small, arenas for oversight activity.

In addition to these proposed large-scale institutional determinants of oversight, previous research (Aberbach, 1990; Ogul and Rockman, 1990) has emphasized that as government becomes bigger and more pervasive, citizens may look to their elected representatives to "protect" them from bureaucratic dominance. Smith (2003) uses a variety of measures to capture the size and complexity of the federal government. The idea is that the more government there is (as measured primarily by the number of federal agencies and employees in the government), the more people should reward legislators who try to curb its size and complexity through oversight.

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 where "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. Ogul and 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. According to Ogul and Rockman (1990), these fiscal factors may lead legislators to engage in a more friendly and less adversarial type of oversight. Legislative advocates of specific programs can use oversight to give bureaucrats the chance to justify current levels of spending on that program. In addition, there are fewer opportunities for legislative credit-claiming in such austere environments.[2]

Given that I operationalize oversight activity primarily as the frequency with which committees hold oversight hearings (Section 3.3), I need also consider the literature of the partisan determinants of congressional investigatory hearings (Mayhew, 1991, 2005; Hamilton, Muse and Amer, 2007; Kriner and Schwartz, 2008; Parker and Dull, 2009).[3] In his classic probe into the consequences of divided government in the United States, David Mayhew (Mayhew, 1991)[4] finds that in periods of divided government, we, counterintuitively, do not see more congressional investigations of ex-

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[2]Previous literature (Smith, 2003) has operationalized the fiscal environment primarily by considering the ratio of the federal deficit to the total budget.

[3]Mantel (2008) reviews many more studies concerned with congressional investigations, from a variety of legal and social scientific approaches.

[4]The updated version of the book (Mayhew, 2005) reports a weak relationship between divided government and major "high profile" congressional hearings.

ecutive action. Kriner and Schwartz (2008) use the same sample of data as Mayhew and find that, although divided government may not drive the frequency of congressional investigations, hearings held under divided government tend to be more protracted and more extensively reported in the media than those that are held under unified government. Parker and Dull (2009) criticize these studies on the grounds that "high profile" hearings are determined by media coverage and are plagued by its changing nature. These authors instead examine the effect of divided government on the number of hearings reported by the *Congressional Information Service Index* and find that divided government does in fact lead to an increased Congressional focus on oversight investigations, especially in the House of Representatives. This partisan conflict literature expresses the rudimentary idea of the importance of ideological conflict from my model, but does so in a very blunt way. I would expect, when controlling for ideological conflict between committees and agencies and accounting for varying capacity across committees, that we, as in Mayhew (1991) should not find a relationship between partisan conflict and oversight hearings.

There is yet a different strain of literature which emphasizes the informational role of investigations held by legislative (congressional) committees. Building on the work of Austen-Smith and Riker (1987), Austen-Smith (1990*a*,*b*), and Gilligan and Krehbiel (1987), Diermeier and Feddersen (2000) argue that legislative committees will hold oversight hearings to signal information to a poorly informed legislative floor. However useful this insight is, especially considering the elucidated incentives for ideologically extreme committees to specialize and to reveal information to the floor, these models of strategic information transmission are notoriously difficult to oper-

ationalize and test, especially within the principal-agent framework I have adopted. Instead, I refer to this literature as a reminder that oversight hearings can be held for a number of different reasons besides the mechanism that I propose in this thesis.[5]

The prevalent conclusion of the previous empirical studies is that oversight is a less popular activity than is sponsoring constituent-friendly legislation. Oversight activity is simply not public enough for voters to notice it or to care very much if and when it occurs. 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, Subcommittee Bill of Rights of 1973). 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 and Congress-centric perspective, are missing more regularly variable types of institutional characteristics. In the previous chapter, I approach oversight as a special case of a general separation of powers account of legislative-executive relations. 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

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[5]For example, Mantel (2008, p. 325) states:

> Congress usually conducts an investigation for one of four purposes: to enact legislation, to provide oversight of existing programs, to keep the public informed, or to 'protect its integrity, dignity, reputation and privileges' (The 1992-93 Staff of the Legislative Reference Bureau).

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, this 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. In short, legislative oversight is but one means of affecting policy outcomes and the legislature is but one of a multitude of strategic policymaking actors. Only by viewing oversight as a policymaking tool can we properly consider its alternatives and have expectations about when legislators will chose to use oversight instead of other available mechanisms.

3.2   Empirical Expectations

The model presented in Chapter 2 provides predictions and their rationale for levels of ex post oversight hearings that I will examine here. In this chapter, I present only those results relevant to an empirical analysis of oversight in the U.S. Congress over time. As we will see, these results indicate that L (congressional committees) never write laws that restrict B (executive agencies) ex ante.[6] Despite this being patently untrue, I neither have data on ex ante delegation at the congressional level, nor do I expect γ to vary much in one institution (Congress) over time. Besides, theoretically, 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 are

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[6]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 γ.

used in Chapter 4 to make predictions about the types (length, specificity, procedural requirements) of laws state legislators write in a specific policy domain. Therefore, for this piece of the thesis, operationalizing and assessing the predictions presented below should be unproblematic.

First, where $x_B < a$ (Figure 2.3) or $a \leq x_B \leq a + \frac{1}{2}$ (Figure 2.4), L neither limits discretion (i.e., writes laws where $x < \bar{I}$), nor conducts oversight hearings in either of these first two regions (from Propositions 1 and 2 (Chapter 2)). The effects of these tools of control can be seen in Region 2 ($a \leq x_B \leq a + \frac{1}{2}$), 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 2.6, where i is the probability of L investigating). Taken together, these 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.

When x_B becomes too large relative to a ($x_B > a + \frac{1}{2}$, Figure 2.5), oversight will occur with positive probability as per Propositions 3 and 4 (Chapter 2). To see this, 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 $(x = \bar{I})$, these probabilities are $q = \frac{ap\gamma}{1-\gamma a-\gamma-p+ap\gamma+p\gamma}$ and $i = \frac{2a+1-2x_B}{a+1-2x_B}$. As noted above, these are equilibrium probabilities for most values of γ 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, and therefore more often than when in Regions 1 or 2.

Given how the probability of oversight is constructed,

Hypothesis 2b: When ideological conflict between an executive agency and con-

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

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

Figures 2.7 and 2.8 show the effects on the probability of oversight of changes in x_B, B's ideological position, and a, L's level of capacity/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 has the capacity to hold low-cost hearings 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.

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[8]Note that although a has a negative effect on the probability of investigation in Figure 2.8, this variable actually denotes a lack of capacity/expertise.

3.3 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 categorize strictly as oversight and to quantify. 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 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).[9] 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 3.1 displays the descriptive statistics for this dependent variable as well as those for each independent variable in the analyses. Likewise, Figure 3.1 shows the number of hearing days in each chamber for each year in the dataset.

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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.

I operationalize x_B from the theoretical model as the absolute value of the distance between each committee's median ("L" from the model)[10] DW-NOMINATE (McCarty, Poole and 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 e.g., Mayhew (1991); Epstein and O'Halloran (1999); Huber and 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 and Woon, 2009). Although experience in a certain committee does not directly translate into an expertise which makes writing laws and conducting oversight less costly, I argue that it is at least a proxy.[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

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[10]I also used the committee chairperson's ideal point and the results below were substantively similar.

[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., measured at the committee level).

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).[12] I focus on the results with the policy disagreement Region

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[12]I also estimated models where I considered different committee expertise thresholds (Hypothesis 1b) of 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.

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 3.2 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 (Mayhew, 1991, 2005; Hamilton, Muse and Amer, 2007; Kriner and Schwartz, 2008; Parker and Dull, 2009). It may also 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 a Republican controlled chamber. As suggested in Ogul and 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; Smith, 2003) 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 as the government becomes larger and more pervasive, 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 and Mann, 2008, Table 5.5). Second, I include the number of federal agencies, bureaus, and commissions appearing in each year's version of the *United States Government Manual* (*United States Government Organization Manual*, 1946 to 1973; *United States Government Manual*, 1974 to 2006). The final environmental variable is the number of fulltime non-defense civilian employees (*Historical Tables, Budget of the United States Government, Fiscal Year 2008*, 2007, Table 17.1).

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.[13]

3.4 Results

Table 3.3 presents estimates for different models of the determinants of congressional oversight activity. These models add significantly to the information provided in Table 3.2. 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

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[13]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.

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 into Smith (2003)'s basic model of oversight hearings.[14] These results are presented in the leftmost column of Table 3.3. I then assess my expectation that both of these variables should have positive effects in Region 3 (Hypotheses 2b, 2c), but 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 3.3.

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 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 (as per Parker and Dull (2009), with increases in both leading to significant increases in oversight activity.

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[14]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).

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 (confirming the supposed counterintuitive results from Mayhew (1991, 2005)). 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 in fact 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 determinants 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, as in Parker and Dull (2009). Consistent 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 or 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 general 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 3.2 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 which region it is in. In Regions 1 or 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 3.3 shows that the effect of ideological divergence is consistently negative and statistically and substantively insignificant if one naïvely leaves out the region interaction. Figure 3.4 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.[15] 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.

Figures 3.5 and 3.6 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 3.5 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.

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[15]Although I do not present them all here, this relationship holds for each of the following figures as well.

3.5   Discussion

This chapter 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 pursue oversight only 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 thesis extends and generalizes the influential Huber and 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, in this chapter, I test the implications of this 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 support for those hypotheses derived from the model 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 part of the thesis not only argues that oversight should be used as a policymaking strategy by congressional committees, but shows that it probably is, contingent on legislative expertise. Across committees, then, oversight can be simultaneously understood to be adequately provided or deleteriously underprovided, given a particular committee's capacity and subject-matter expertise. In other words, within a single legislature at a particular time, oversight can be either extremely effective or "neglected" (Bibby, 1968), simultaneously confirming the discrete and disparate insights of the principal-agent and Congress-centric literatures.

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. Perhaps the most interesting extension of this research would be to generate predictions about agency behavior given the model. The theory described in Chapter 2 yields predictions about the extent to which bureaucrats are likely to act illegally to attempt to 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 would ideally 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 the following chapter, I begin to explore, again in the context of the model from Chapter 2, how this kind of variation affects legislative policymaking across the states.

Table 3.1: Descriptive Statistics

	Obs.	Mean	S.D.	Min	Max
Oversight Hearing Days	2282	39.72	49.64	0	489
Mean Terms in Committee	1844	5.37	2.55	1	15.71
Ideological Divergence	1844	.50	.23	.003	1.045
Different Party	2282	.57	.49	0	1
Subcommittee Bill of Rights	2282	.4	.49	0	1
Republican Chamber	2282	.27	.44	0	1
ln(Committee Staff)	2282	6.77	.59	5.45	7.7
ln(Federal Agencies)	2282	5.95	.22	5.31	6.12
ln(Federal Employees)	2282	6.92	.20	6.5	7.15
% Discretionary Spending	2280	.55	.13	.36	.83
Deficit/Budget	2282	-.08	.11	-.29	.4
Session Days	2282	301.22	36.17	224	389
House of Representatives	2282	.53	.5	0	1
2nd Session	2282	.5	.5	0	1

Table 3.2: Difference of Means Tests for Critical Thresholds (Two-tailed)

	$x_B < .35$	$x_B \geq .35$
Mean # Hearing Days	33.8	41.3
SD	43.2	51.2
N	491	1791
t-statistic	-3.27	
p-value	.001	
	$a < 3.5$	$a \geq 3.5$
Mean # Hearing Days	33.8	41.2
SD	31.9	53.1
N	460	1822
t-statistic	-3.81	
p-value	.001	

Table 3.3: Negative Binomial Models of the Determinants of Oversight Hearing Days (S.E. clustered by committee), 1947-2006 – 40 committees, 1844 observations

	Naïve	Reg 3 (.35)	Reg 3 (.4)	Reg 3 (.45)
Ideological Divergence	-0.052	-0.754	-0.936**	-0.632
	-0.171	-0.507	-0.413	-0.521
Mean Terms in Committee	0.155***	0.078***	0.121***	0.139**
	-0.014	-0.023	-0.02	-0.056
Region 3	–	-0.952***	-0.561**	-0.292
	–	-0.235	-0.237	-0.342
Divergence * Region 3	–	1.066*	1.016**	0.606
	–	-0.556	-0.478	-0.562
Mean Terms * Region 3	–	0.101***	0.055***	0.031
	–	-0.024	-0.021	-0.037
Different Party	0.123*	0.039	0.074	0.087*
	-0.066	-0.071	-0.068	-0.052
Subcommittee Bill of Rights	0.137	0.027	0.061	0.076
	-0.119	-0.118	-0.118	-0.11
Republican Chamber	0.153**	0.145*	0.159**	0.155
	-0.076	-0.078	-0.078	-0.096
ln(Committee Staff)	0.826***	0.866***	0.881***	0.869***
	-0.149	-0.147	-0.149	-0.244
ln(Federal Agencies)	-0.557	-0.469	-0.514	-0.513
	-0.433	-0.432	-0.43	-0.361
ln(Federal Employees)	-0.289	0.325	-0.07	-0.144
	-0.608	-0.653	-0.65	-0.557
% Discretionary Spending	0.157	-0.276	-0.26	-0.176
	-0.872	-0.873	-0.886	-0.952
Deficit/Budget	0.292	0.413	0.326	0.296
	-0.377	-0.381	-0.385	-0.301
Session Days	-0.001	-0.002	-0.001	-0.001
	-0.001	-0.001	-0.001	-0.001
House of Representatives	0.621***	0.575***	0.595***	0.596*
	-0.085	-0.087	-0.086	-0.315
2nd Session	-0.237***	-0.243***	-0.241***	-0.239***
	-0.049	-0.049	-0.049	-0.042
Time	-0.009	-0.019**	-0.016*	-0.014
	-0.008	-0.008	-0.008	-0.011
Constant	2.772	-0.796	1.558	1.902
	-3.722	-4.006	-4.023	-3.158
Overdispersion (α)	.83	.82	.82	.82

Standard errors in parentheses. * significant at 10%; ** significant at 5%; *** significant at 1%

Figure 3.1: Oversight Hearing Days, by Chamber (1947-2006)
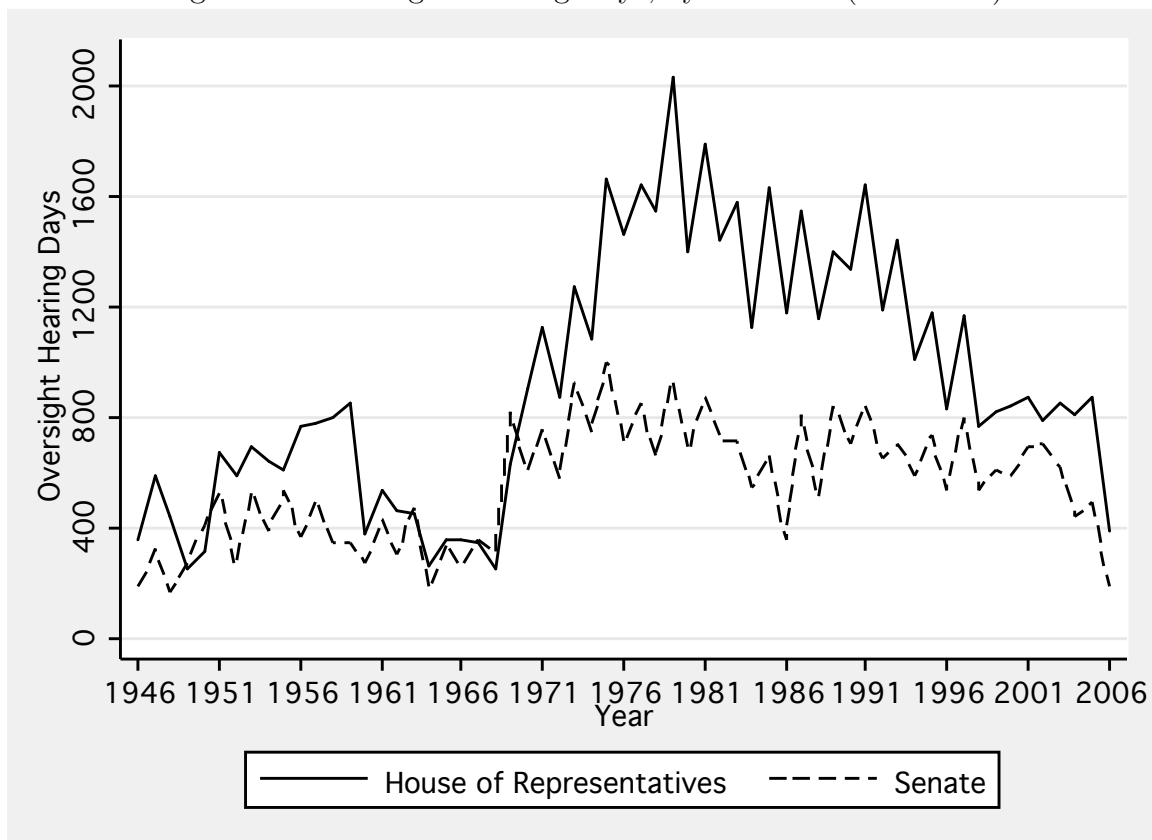
Figure 3.2: Effect of Ideological Divergence on Oversight Hearing Days by Region

Interval variables held at mean, Indicator variables held at median.
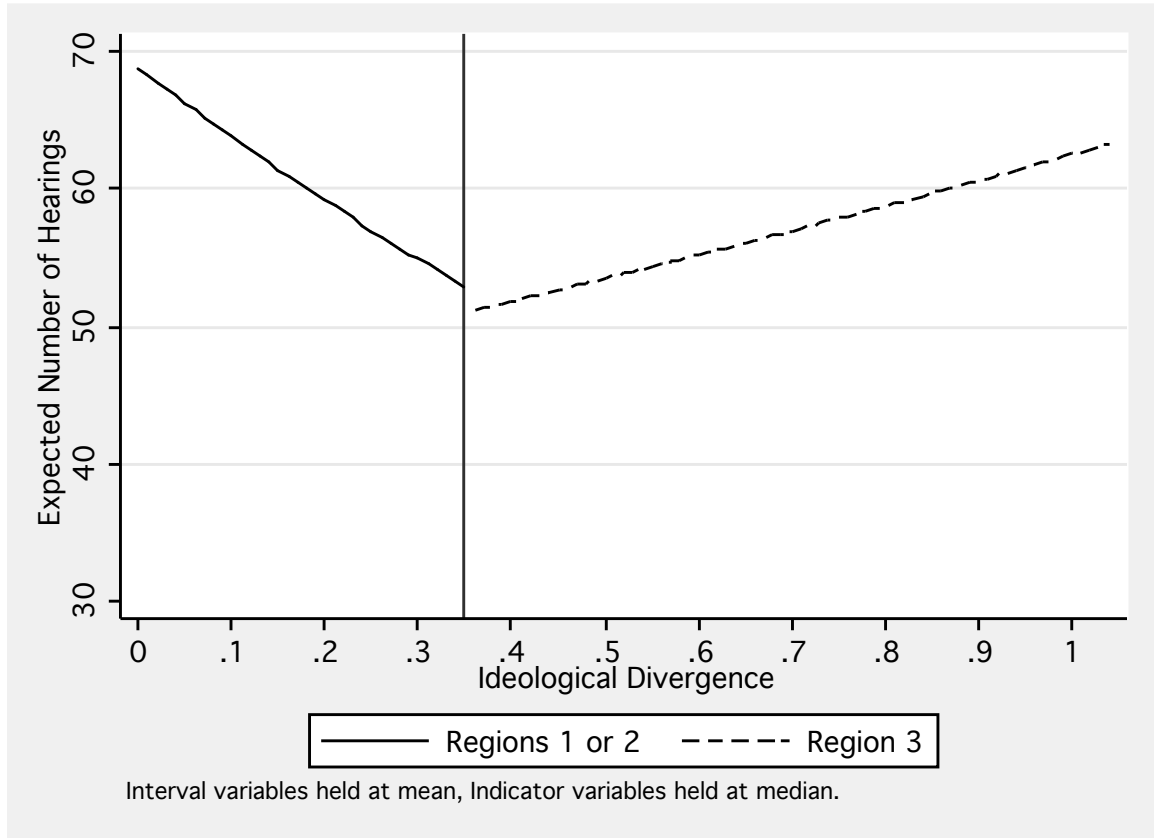
Figure 3.3: Effect of Ideological Divergence on Oversight Hearing Days, No Interaction

Interval variables held at mean, Indicator variables held at median.
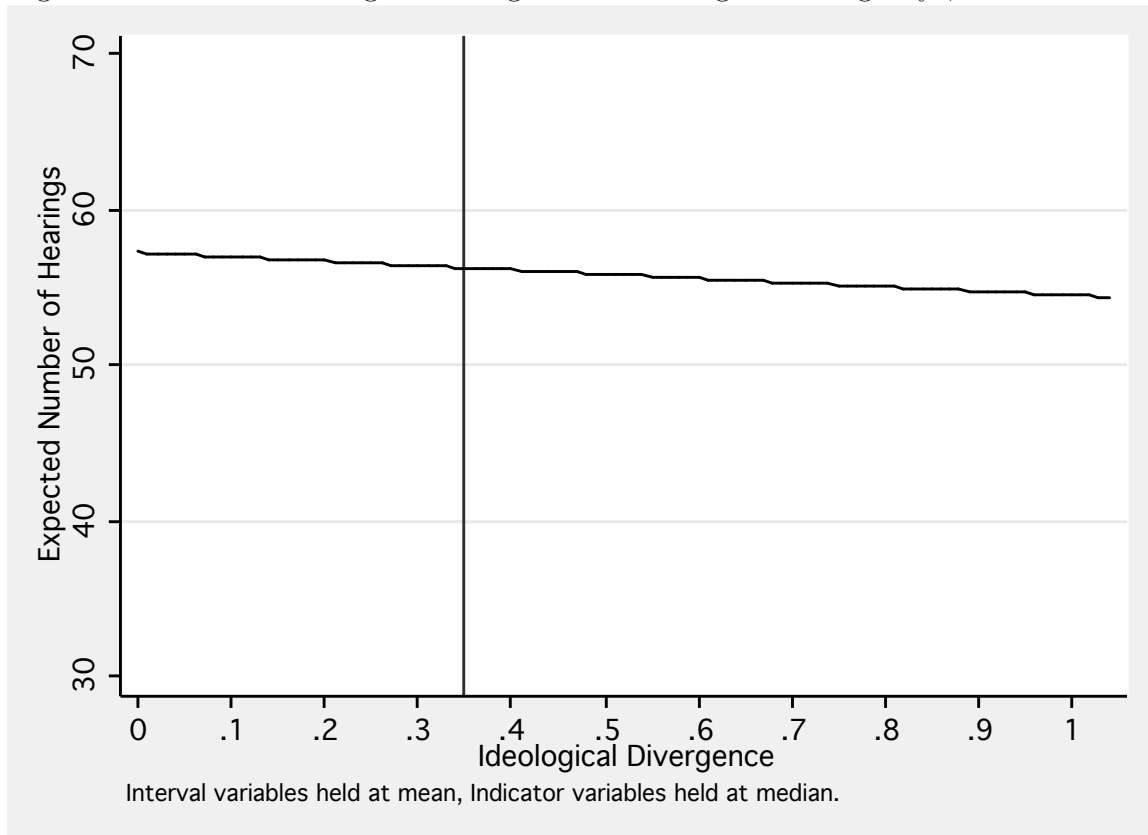
Figure 3.4: Effect of Ideological Divergence on Oversight Hearing Days by Region,

Senate

Interval variables held at mean, Indicator variables held at median.
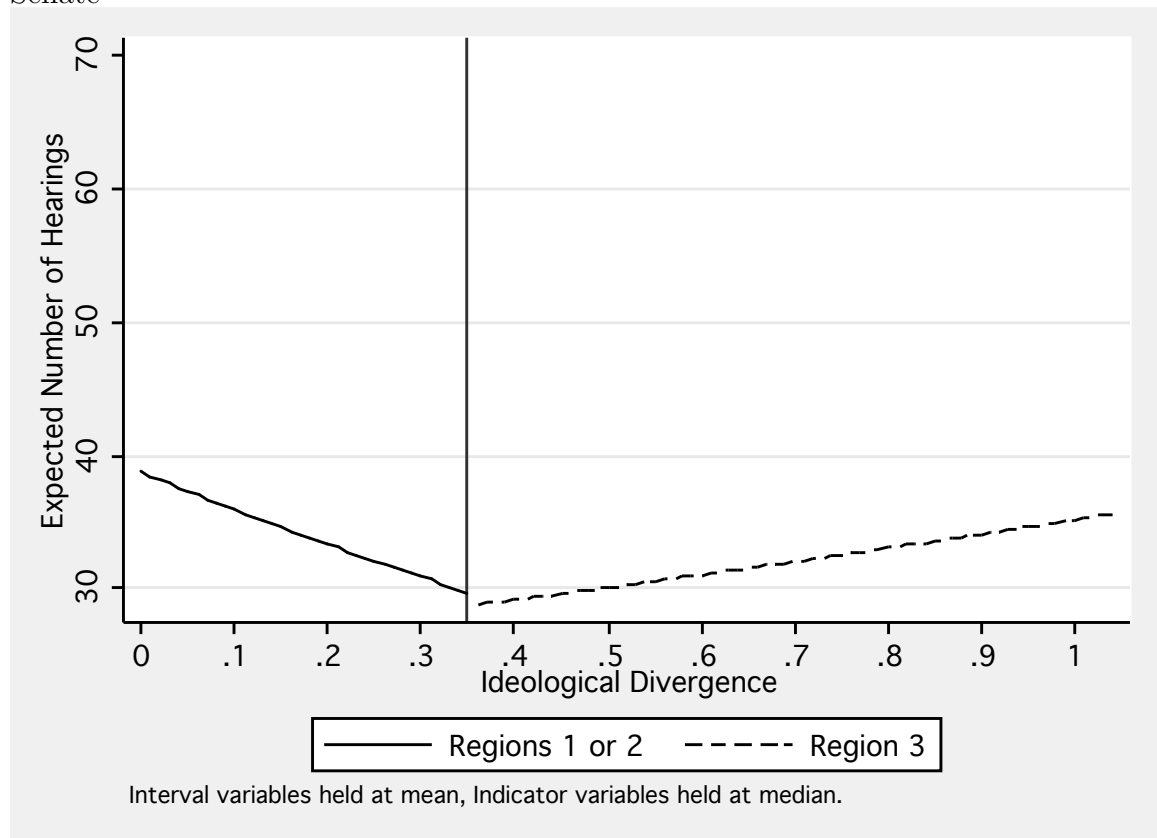
Figure 3.5: Effect of Committee Experience on Oversight Hearing Days by Region

Interval variables held at mean, Indicator variables held at median.
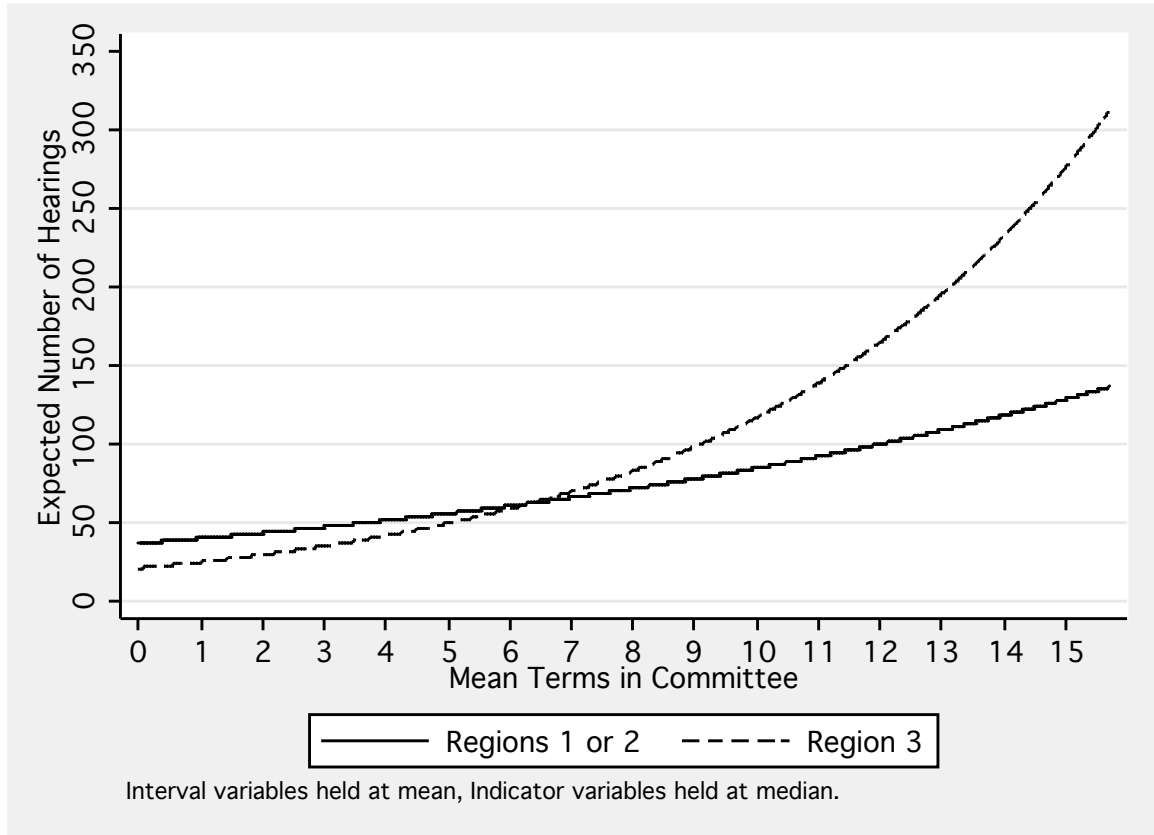
Figure 3.6: Effect of Committee Experience on Oversight Hearing Days, No Interaction
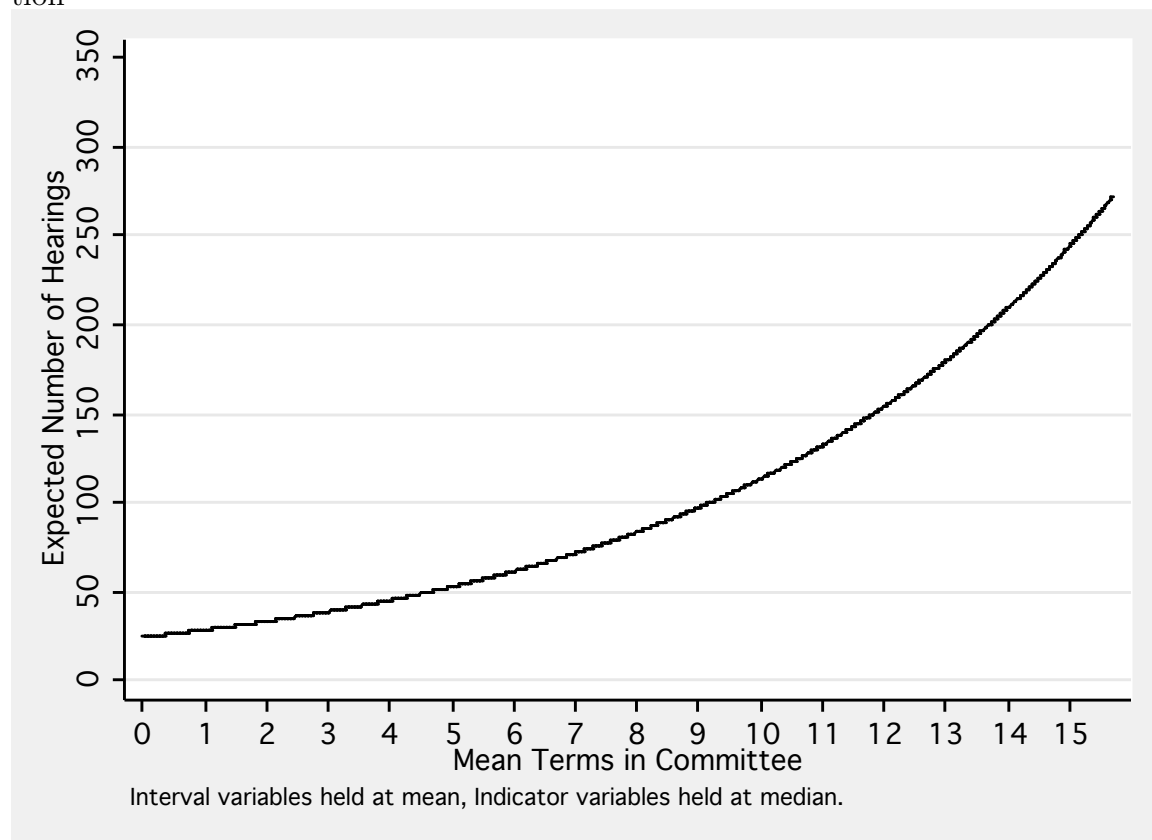
Interval variables held at mean, Indicator variables held at median.

CHAPTER 4
STATE COURT ACTIVISM AND LEGISLATIVE RESPONSES: EXPLAINING STATUTORY DISCRETION ACROSS THE U.S. STATES

Chapter 2 deduces general insights (many of which are tested in Chapter 3) about when we should expect legislatures to use ex post oversight to enforce the limits of bureaucratic discretion in equilibrium, but it also provides predictions for when these legislatures would be most likely to write these statutory limits on an agency's discretion ex ante. My approach considers that legislatures may use ex post oversight as a substitute for ex ante limits (either procedural or prescriptive) (Bawn, 1997; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002; Gailmard, 2002) or as a complementary activity meant to take advantage of the extent to which extra-legislative policymakers, such as the courts, share the policy preferences of the legislature. In these situations, explored empirically in this chapter, ex post oversight remains an important mechanism for enforcing the limits of the written amounts of agency discretion. Importantly, these insights are driven by the choice to model these strategies as endogenous strategic choices by the legislature in the same model. This is a notable departure from Huber and Shipan (2002)'s approach, whose results concerning levels of statutory discretion are shown to be driven by the choice to model ex post oversight only as an exogenous reversion probability. In contrast, the model presented in Chapter 2 holds that the choice between these two types of strategies should be influenced by the ability of extra-legislative actors to influence policy outcomes. Again, the model makes separate predictions about the

determinants of ex post oversight (analyzed empirically in Chapter 3) and ex ante limitations on statutory discretion, which I turn to assessing here.

The key contribution of this chapter is a demonstration that state legislatures[1] impose statutory language meant to limit agency discretion according to the unique pattern predicted by the model from Chapter 2. Specifically, I reanalyze Huber and Shipan (2002)'s data on statutory discretion in Medicaid policy across 48 states in 1995-1996 and find that legislatures likely anticipate the actions of state courts when they craft their policymaking strategies. This is an important contribution because it adds an additional "separation of powers" nuance (de Figueiredo Jr., Jacobi and Weingast, 2008) to the extant literature on substitution effects between ex ante and ex post strategies (Bawn, 1997; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002; Gailmard, 2002). To preview the main insight of this chapter, I demonstrate that state court activism, as a form of nonlegislative, nonstatutory policy control is, as expected, nonlinearly related to statutory control, with the latter increasing when state court activism is neither too high nor too low.

In the next section, I briefly review the literature on the institutional design of bureaucratic agencies, focusing specifically on the conditions under which legislatures delegate policy authority to agencies (Section 4.1). I then restate the unique non-linear predictions derived from my model of legislative policymaking and formulate empirical hypotheses, with an emphasis on the mechanism by which I expect nonleg-

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[1]Although the arguments from Chapter 2 apply to ex ante legislation passed by the United States Congress as well, I limit my analysis here to a cross-sectional study of U.S. state legislatures.

islative, nonstatutory factors, such as the activism of state courts, to affect statutory discretion across states (Section 4.2). Next, I turn to operationalizing the key theoretical variables so that I may construct the appropriate nonlinear empirical models to test these expectations, including the specification of a number of nonparametric Generalized Additive Models (GAM) (Section 4.3). Section 4.4 presents the results of the different model specifications, demonstrating broad support for the insights of the theoretical model, and Section 4.5 concludes with a discussion of contributions, shortcomings, and implications for future work.

4.1   Previous Literature on Statutory Discretion

Although, in each previous chapter, I have touched on literature that seeks to explain how much discretion legislatures should and do grant agencies to influence policy, I focus this literature review on those studies that provide clear empirical predictions on levels of statutory discretion. According to Black's Law Dictionary, *discretion* (in this sense) is "**4.** A public official's power or right to act in certain circumstances according to personal judgement and conscience, often in an official or representative capacity" (Garner, 2006). Especially when considering the "representative" nature of this definition, it is intuitive to consider this power to be constitutionally in the purview of legislatures in separation of powers systems. Indeed, under a strict separation of powers interpretation of the Constitution of the United States, delegation of discretion from Congress to executive agencies is to be avoided unless "Congress prescribes an intelligible principle to guide an executive agency in making policy" (Garner, 2006, p.362), which is to say that Congress can only delegate when

they do so without granting much or any discretion. In Constitutional law, this is known as the non-delegation doctrine[2], but the practical realities of modern government lead this principle to be mostly ignored. Legislatures (Congress and U.S. state legislatures) do in fact give great discretion to administrative agencies to implement policy that may or may not reflect the will of the legislature. The structure of this problem is precisely what makes it amenable to the principal-agent approach taken in this thesis.

It should be clear by now that this general approach is not foreign to the study of executive-legislative relations. Contesting claims that legislative grants of administrative discretion implied administrative dominance (and concomitant legislative impotency) (McConnell, 1966; Lowi, 1969; Niskanen, 1971; Offe, 1972; Putnam, 1975; O'Connor, 1978; Peters, 1981; Aranson, Gellhorn and Robinson, 1982; Rourke, 1984; Knott and Miller, 1987), McCubbins and Schwartz (1984), and McCubbins, Noll and Weingast (1987, 1989) argued that legislators, as the principals, can alter bureaucratic incentives with statutory language. That is, although legislators need to delegate, they can maintain some degree of control over what their administrative agents do with their delegated discretion. This literature draws on descriptive accounts of the federal Administrative Procedures Act of 1946 (Davis, 1978; Shapiro, 1982; Bonfield, 1986; Gellhorn, 1986) to argue that procedural requirements (stipulated in the APA or in individual statutes) can help to reign in potentially discretion-abusing bureaucrats

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[2] "The principle (based on the separation-of-powers concept) limiting Congress's ability to transfer its legislative power to another governmental branch, esp. the executive branch" (Garner, 2006, p.362).

through the "politics of structural choice" (Moe, 1990b). In addition to procedural limits on discretion, scholars have proposed that legislators can limit discretion more directly, by controlling the specificity of the legislation meant to delegate authority to bureaucrats (Epstein and O'Halloran, 1994, 1996, 1999; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002).[3] Huber and Shipan (2002) introduce this idea of "statutes as blueprints for policymaking" by positing that:

> When legislative statutes are specific, they make it more difficult for other political actors, especially bureaucrats, to enact policies that differ from those that legislative majorities prefer. Thus, specific statutes allow legislative majorities to limit the policymaking discretion of other political actors, while vague statutes give a larger policymaking role to these other actors (p. 44).

Considering the analogy of a blueprint, by including more specific prescriptive language into statutes, legislators make implementation of the policy program included in that statute straightforward. When there are fewer specific steps for bureaucrats to follow in implementing a statute, it is natural that they can more readily consider their own "personal judgement and conscience," that is, their own discretion. Taking these two types of ex ante strictures on discretion together (procedural and statutory), de Figueiredo Jr., Jacobi and Weingast (2008) discuss a potential "separation of powers" confounding factor that I take up in the next section:

> By introducing strict limits of discretion, administrative procedures ensure that outcomes will be closer to an elected official's ideal than if the agency had an unlimited range of options. But the mechanism only works if there is *ex post* enforcement of the rules... If the courts ruled consistently

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[3]I say that a prescriptive limiting of statutory discretion is more direct than procedural arrangements because they are more specific in nature and the policy outcomes are more certain to legislators. In addition, empirical research has demonstrated that procedural arrangements may be largely ineffectual (Balla, 1998; Hamilton and Schroeder, 1994).

with the intent of Congress, then the bureau would have strong incentives
to follow their intent. On the other hand, by implication, if the courts
were not aligned with the legislature, such mechanisms would provide the
bureau with more latitude to implement policy (p. 214).

Where the structure of my approach is similar to the literature reviewed here and in previous chapters, the implications of the model explicated in Chapter 2 are unique precisely because I consider the extent to which ex post enforcement (through oversight hearings – Chapter 3) manages to enforce the limits of ex ante discretion in the context of such extra-legislative and extra-executive policymakers such as state courts. Put simply, my approach is comprehensive in that it incorporates the insights of the works reviewed below in a theoretically synthetic way. Before I translate the theoretical insights into specific empirical hypotheses and test them in succeeding sections, I first delineate some alternative or complementary explanations for levels of statutory discretion from the literature.[4]

Previous literature on statutory discretion suggests that legislators vary levels of bureaucratic discretion according to intra- and inter- institutional variation. At the inter-institutional level, a host of scholars have argued that legislators consider the extent to which their policy preferences diverge from the bureaucratic agents' to whom they wish to delegate (Epstein and O'Halloran, 1999; Potoski, 1999; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002; Lewis, 2003; Wood and Bohte, 2004). In the context of principal-agent theory, this is an entirely plausible explanation for why some legislators at some times write more or less restrictive legislation than

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[4]With the exceptions noted below, much of the empirical literature on ex ante limitations of bureaucratic discretion analyze prescriptive statutory language as an indication of proscribed delegation, so this is my primary dependent variable as well.

others. Legislators simply trust like-minded policy-implementers more than those with starkly different preferences from them and, assuming that restricting discretion with statutory language is costly, seek to minimize their transaction costs without too much policy loss.

In addition to this preference-based story, Bawn (1995), Epstein and O'Halloran (1999), and Huber and Shipan (2002) argue that the cost of restricting discretion can increase with the complexity of a policy area. As a corollary then, their arguments imply that variation in statutory discretion across legislatures can be partially attributed to variations in legislative capacity to deal with (i.e., their ability to design policy that achieves their preferred outcomes) technically/scientifically complex policy areas. A second important intra-institutional potential explanation for a legislature's willingness to limit an agency's discretion is the extent to which they can rely on alternative, and potentially less costly, means to control bureaucratic decisionmaking. A central insight of Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002) is that as legislatures become better able to control policy ex post (say, through oversight activities), they have fewer incentives to incur the costs of ex ante restrictions on discretion. As I show in Chapters 2 and 3, my model goes beyond this argument that the decision between choosing ex ante or ex post mechanisms for control is a simple substitution calculus. Instead, my argument (and its concomitant empirical tests) more explicitly considers the extent to which external institutional actors, like the courts (de Figueiredo Jr., Jacobi and Weingast, 2008), can affect this decision.

Building on this research and that on the origins of bureaucratic autonomy (Carpenter, 2001) and agency termination (Carpenter, 2000; Carpenter and Lewis,

2004), MacDonald and Franko (2007) argue that discretion is also related to bureaucratic capacity, with better performing agencies receiving more freedom to implement policy as they see fit than do agencies with less capacity. However, instead of examining the extent to which Congress restricts an agency's discretion with prescriptive language, these authors analyze the proclivity of Congress to attach limitation riders to agency appropriations. These statutory provisions can preclude agencies from exercising discretion in that they circumscribe the types of things for which the agency can spend its appropriations.[5] Although these riders are included in appropriations statutes, they are less an ex ante mechanism of control than they are decided ex post, that is, after an agency makes a policy implementation decision. The tool itself, like procedural requirements, exists as an ex ante threat, but the way that MacDonald (2010) conceptualizes its implementation is as an after-the-fact punishment for recalcitrant bureaucrats. Still, the observation that these instruments are used to statutorily proscribe agency action is relevant to my endeavor in this chapter. Although I do not assess data on the use of limitation riders across the states, I discuss, in the conclusion, ways to incorporate MacDonald (2010)'s and MacDonald and Franko (2007)'s contributions into the framework of this thesis.

As much of this literature (with the important exceptions of Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002)) focuses on the relationship between Congress and the federal bureaucracy, it may miss important mediating effects

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[5]MacDonald and Franko (2007, p. 795) provide the following example of a limitation rider: " . . . the fiscal year 2001 Labor, Health and Human Services, and Education appropriations bill mandated that 'none of the funds . . . may not be used by the Occupational Safety and Health Administration to promulgate, issue, implement, administer, or enforce any proposed, temporary, or final standard on ergonomic protection.' "

of cross-institutional variation (Huber, Shipan and Pfahler, 2001). Besides these two studies, there has not been much literature on cross-state empirical assessments of statutory discretion. In fact, there is a dearth of empirical legislative-executive relation studies at the state level in general. What we do know is that legislative capacity varies across the states and this has predictable effects on legislative control of state bureaucracies (Elling, 1979; Hamm and Robertson, 1981; Potoski and Woods, 2000; Woods and Baranowski, 2006) and that institutional change, such as the imposition of legislative term limits (Berman, 2004; Carey, Niemi and Powell, 2000; Carey et al., 2006; Farmer and Little, 2004; Kousser, 2005; Kurtz, Cain and Niemi, 2007; Sarbaugh-Thompson et al., 2010), can potentially change the nature of state legislative-executive relationships. The current chapter adds to this literature by incorporating insights from a cross-institutional theory of statutory control of bureaucracy into a cross-sectional empirical model at the level of the U.S. states.

4.2   Empirical Expectations

The model presented in Chapter 2 provides predictions and their rationale for levels of ex ante delegation of discretion that I will examine here. In this chapter, I present only those results relevant to an empirical analysis of statutory discretion across the U.S. states at a point in time. As we will see, these results predict that L (state legislatures) conduct oversight hearings to affect policy directly or to enforce the limits of delegated authority. Importantly for this chapter, there are conditions under which L would prefer to rely solely on ex post methods of control, and conditions under which L would use ex post and ex ante control as complementary strategies.

Again, here I focus on the predictions broadly concerning the types[6] of laws state legislators write in a specific policy domain.

First, where $x_B < a$ (Figure 2.3) or $a \leq x_B \leq a + \frac{1}{2}$ (Figure 2.4), L neither limits discretion (i.e., writes laws where $x < \bar{I}$), nor conducts oversight hearings in either of these first two regions (from Propositions 1 and 2 (Chapter 2)). The effects of these tools of control can be seen in Region 2 ($a \leq x_B \leq a + \frac{1}{2}$), 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 2.6, where x indicates the amount of statutory discretion L delegates to B). These two preference-determined regions denote situations where legislative and bureaucratic preferences are close enough to consider the two policymaking branches ideological allies. In these situations, the outcomes from the model conform to intuition: principals need not work very hard to control agents who want the same outcomes they do. Taken together, these equilibria lead to this formulation of related empirical hypotheses:

Hypothesis 1a: When ideological conflict between an executive agency and a state legislature is sufficiently low ($x_B \leq a + \frac{1}{2}$), changes in neither ideological conflict, legislative expertise, nor the probability of the courts affecting policy in the legislature's favor should lead to changes in the extent to which the legislature limits the agency's statutory discretion.

Relatedly,

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[6]The empirical analyses here focus on the prescriptive length and specificity of these laws, but I conclude by discussing ways to examine further characteristics (procedural requirements, limitation riders, etc.) of these laws in future research.

Hypothesis 1b: When the cost of limiting an agency's discretion is sufficiently high ($a \geq x_B - \frac{1}{2}$), changes in neither ideological conflict, legislative expertise, nor the probability of the courts affecting policy in the legislature's favor should lead to changes in the extent to which the legislature limits the agency's statutory discretion.

When x_B becomes too large relative to a ($x_B > a + \frac{1}{2}$, Figure 2.5), legislators and bureaucrats can no longer be considered ideological allies and oversight will occur with positive probability as per Propositions 3 and 4 (Chapter 2), but this does not guarantee that L will limit the agency's discretion as a complementary strategy. In fact, in this model, variation in the theoretical variables x_B and a never lead to changes (independent of the value of γ) in the extent to which L is willing to pay the cost of limiting B's discretion. However, for the case where x_B is in Region 3 ($x_B > a + \frac{1}{2}$), from Proposition 3 (Chapter 2), when γ is either sufficiently low ($\gamma < -\frac{-x_B+a}{x_B(a+1)}$) or sufficiently high ($\gamma > \frac{1}{a+1}$), L does not limit discretion ex ante, but does conduct ex post investigations with a probability, $i = \frac{2a+1-2x_B}{a+1-2x_B}$, that increases in x_B and decreases in a. Here:

Hypothesis 2: When ideological conflict between an executive agency and a state legislature is sufficiently high ($x_B > a + \frac{1}{2}$), or the cost of limiting an agency's discretion sufficiently low ($a < x_B - \frac{1}{2}$), and γ is either sufficiently low ($\gamma < -\frac{-x_B+a}{x_B(a+1)}$) or sufficiently high ($\gamma > \frac{1}{a+1}$), increases in neither ideological conflict, legislative expertise, nor the probability of the courts affecting policy in the legislature's favor should lead to changes in the extent to which the legislature limits the agency's statutory discretion.

However, when $x_B > a + \frac{1}{2}$ (Region 3) and γ is neither sufficiently low nor

sufficiently high $(-\frac{-x_B+a}{x_B(a+1)} < \gamma < \frac{1}{a+1})$, L does limit discretion ex ante (that is, she

writes a law at $x = 1$ rather than at $x = \bar{I}$) and conducts ex post investigations with

a probability, $i = \frac{-2\,x_B+2\,a+2\,\gamma a-2\,\gamma x_B+\gamma d+1+\gamma}{-2\,x_B-d+a+1+\gamma a+\gamma-2\,\gamma x_B+\gamma d}$, that increases in x_B and decreases in a

(Proposition 4, Chapter 2). Therefore:

Hypothesis 3: When ideological conflict between an executive agency and a state

legislature is sufficiently high $(x_B > a + \frac{1}{2})$, or the cost of limiting and agency's

discretion sufficiently low $(a < x_B - \frac{1}{2})$, and γ is neither sufficiently low nor sufficiently

high $(-\frac{-x_B+a}{x_B(a+1)} < \gamma < \frac{1}{a+1})$, state legislatures will be most likely to limit an agency's

discretion ex ante with prescriptive statutory language.

In the previous chapter, I have assessed the model's predictions concerning

levels of oversight hearings at the congressional level. This work confirms that neither

x_B nor a have significant effects on the probability of oversight when x_B is sufficiently

low (Regions 1 and 2), but that both ideological distance between a congressional

committee and an executive agency and the extent to which the committee has policy-

specific expertise positively affect oversight in Region 3. In the current chapter, I test

the prediction that legislatures have the most incentive to limit discretion ex ante

when they possess nonstatutory means of control (in the form of advantageous court

action affecting policy) (γ) that are neither too high too low, relative to the preference

parameters. Since the theoretical contribution I am making is that I can account for

the strategic complementarity of the two methods of control, a full assessment of the

theory would require that I test both sets of predictions simultaneously with data on

ex ante discretion and ex post monitoring by the same legislatures in a narrow policy

domain. I conclude this thesis by spelling out how I plan to do this, focusing on the

types of data I have been collecting.

4.3   Data and Methods

As noted above, I focus exclusively on explaining ex ante delegation of discretion in this paper.[7] The U.S. states provide the ideal context in which to test the expectations of the theory. First, as we will see, there is great variation in the extent to which state legislatures constrict agency action by limiting statutory discretion. Although it is true that congressional bills also vary in this regard, there exists no cross-sectional or regularly changing temporal variation in the institutional context of Congress. Most importantly for the analyses required here, it is difficult to operationalize the theoretical γ term in a way that yields variation at the congressional level. Crucially, there are myriad ways to consider differences in the effectiveness of exogenous nonstatutory controls across the states.

Research by Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002) similarly considers the effects of institutional variables on statutory discretion across the states. Therefore, I reassess the data[8] used in these works in light of the expectations derived from the theory described above.[9] Before I describe their independent

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[7]Although I do not construct empirical models of ex post oversight activity here, the models of ex ante discretion are specified with specific consideration of the theory outlined above.

[8]acquired via personal correspondence with the authors

[9]For the sake of easy comparison, I have included Tables 1 and 2 from Huber, Shipan and Pfahler (2001) as Figures 4.5 and 4.6. Interestingly, these tables show support for the authors' linear predictions of a ex ante/ex post substitution affect. This support disappears in my results below, as I include a nonlinear specification which better conforms to my theoretical expectations.

variables and their expectations regarding them, I will describe the dependent variable and its measurement and explain how I choose to operationalize nonstatutory controls (the theoretical γ) across the states.

The dependent variable is the total number of new words that a state legislature put into law in the Medicaid (nonappropriations) policy area in 1995-96. When comparing statutory content, it is essential to control for issue area. A natural way to do that is to focus on a reasonably narrow issue that all states must deal with contemporaneously. Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002) argue convincingly for the appropriateness of Medicaid data from this time period. Here is a description of the coding rule for the dependent variable:

> We identified relevant legislation in each state by searching Lexis's "Advanced Legislative Service" database.[10] For each state we used the search terms "Medicaid" and "medical assistance,' which are used interchangeably by states to refer to the Medicaid program, as well as any state-specific names for Medicaid programs (such as "Medical" in California or "MC+" in Missouri). We retained any nonappropriations bills that turned up in this search that were related to the provision of medical care for Medicaid participants. We then examined the content of the bill for relevance, and if it was only partially relevant (i.e., only partly about Medicaid health care) we edited out the irrelevant portions. We then used a macro in Microsoft Word to count all the words in the legislation that were new. This count of new words is the dependent variable, *Statutory Control*, that we focus on in our empirical tests (2001, p. 336)

These authors argue that the length of a statute, controlling for narrow policy area, is at least a proxy for the amount of statutory discretion given to a state health agency.

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[10] "We coded legislation for forty-eight states. We omitted Nebraska from the analysis because it has a unicameral legislature and our theory focuses on the difference between unified and divided legislatures. We omitted Virginia because in each year the state legislature would pass multiple copies of bills, each containing extremely similar (but not necessarily identical) language. Because of this redundancy, it was impossible to obtain even a reasonably accurate count of new words."

The idea is that the longer a law is, the more detailed it should be in terms of instructing and directing (constricting) agency action. It certainly could be the case for a law to be relatively short in length, but full of discretion-limiting procedures. This hypothetical law certainly could be more restrictive than a much longer, but procedure-less law, but Huber and Shipan (2002) find that, at least for the sample they analyze, "procedures seem to play a minor role, relative to policy instructions, in all contexts" (p.72).[11] Since I am using the same sample of data, I argue with Huber and Shipan (2002) for the appropriateness of statute length as a proxy for the amount of statutory control exercised by a legislature in this policy area.

Although the previous empirical research on the determinants of statutory discretion considers the effects of nonstatutory means of control, it usually does so with a indicator variable for the presence or absence of some extralegislative power. For example, Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002) argue that the ability for state legislatures to veto administrative rules should mitigate their need to impose statutory constraints. Since I predict that statutory discretion depends on the probability that nonstatutory factors affect outcomes neither being too high nor too low, an indicator variable would be of little use to test the theory. I need to construct a continuous measure of nonstatutory factors that, since they influence policy outcomes, independent of ex ante legislative action, may reduce the incentive for legislators to write detailed statutes.

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[11]See Huber and Shipan (2002, pp. 56-72) for a series of diagnostics showing the relatively scant use of procedural language in the state Medicaid statutes and demonstrating that, in any event, procedural restrictions tend to be correlated with statutory control.

Decisions by the courts, especially concerning the appropriateness of administrative rules made by state agencies, affect policy outcomes well after laws have been written by legislatures. Therefore, the extent to which state courts may be favorable to legislative preferences should affect the initial delegation of discretion to state agencies. There exist no ready-made measures that capture both the extent to which state courts are favorable to legislatures and the extent to which they are activist in terms of overturning administrative actions. I have created an index that I believe captures these elements in a way appropriate for it to be a proxy for general nonstatutory controls (γ).

State Court Index is a measure that combines elements of state supreme court ideology and the extent to which each court overturns agency action, usually with the purported intent to further legislative will. A standard measure exists for the ideological preferences of state supreme court justices (Brace, Langer and Hall, 2000). This measure, the party-adjusted surrogate judge ideology measure (PAJID), is based primarily on a judge's partisan affiliation, the ideology of their state, and the manner in which they took office. Although policy-preferential and jurisprudential ideology are not synonymous, since the PAJID measure takes into account legislative preferences and not executive preferences, I use it as a proxy for the extent to which state supreme courts are willing to actively address (executive) governmental action. I aggregate this individual measure up to the supreme court level by taking the median PAJID score for each court in 1995.[12]

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[12]The PAJID measure is unbounded and takes on higher values with the extent to which a judge is determined to be liberal.

To complete the index, I take the product of the state's median PAJID value for 1995 and the percentage of supreme court cases that involved an agency where the supreme court reversed agency action. These data are made available by the State Supreme Court Data Project, managed by professors Paul Brace and Melinda Gann Hall.[13] This component of the measure captures judicial antagonism to agency action, which is an important variable given the concept of nonstatutory control. Since I hold that each component's effect on nonstatutory control depends on the level of the other, I multiplied the two measures together to create the index. So, very high values of *State Court Index* indicate a state where the supreme court is both very liberal and overturns agency action at a high rate, where very low values denote a very conservative and agency-friendly court. My expectations about *State Court Index* are parabolic, rather than linear, so multiplication of the component parts is a good way to capture the different dimensions of this kind of nonstatutory control without necessarily making assumptions about liberal judges being more likely to side with legislatures than with agencies. To review, my expectation is that *Statutory Control*, measured by the number of words added, should increase only when a legislature's preferences are sufficiently different from the executive's and when nonstatutory controls are neither too high nor too low. Table 4.1 contains descriptive statistics for this and other variables assessed in this paper.

I capture policy conflict (x_B from the theoretical model) rudimentarily with indicator variables for party control of institutions. *Unified Legislature* takes a value

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[13]Available online at: http://www.ruf.rice.edu/ pbrace/statecourt/.

of 1 when a state governor's party controls neither legislative chamber. Similarly, the *Divided Legislature* variable takes the value of 1 when the governor's party controls one of the legislative chambers. Therefore, completely unified government is indicated when both of these variables take the value of 0. Lacking better measures of state legislative and agency ideology, these variables are meant to capture the extent to which we can consider legislatures and executive agencies ideological allies or foes. Ideally, I would use more finely grained measures of policy conflict, but these require more intensive data collection and are planned for future work. Following the Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002) convention, I operationalize legislative capacity (a) as the 1995 amount of legislative *Compensation*—the annual salary plus per diem expenses for lower house members. Since it is reasonable to expect that the effects of capacity may diminish over the range, I performed all of the analyses with an untransformed *Compensation* term and a logged one. The results are substantively similar and I present the log-transformed coefficients in the analyses below.

As in the previous research, I model the interdependent effects of these important theoretical variables with multiplicative interaction terms. The natural log of *Compensation* is interacted with both *Unified Legislature* and *Divided Legislature* to capture the extent to which policy conflict may only become important when legislative capacity, with diminishing returns, is sufficiently high. Previous research has identified the legislative veto as an important nonstatutory factor that influences *Statutory Control*. Therefore, I include an interaction between a *Legislative Veto* indicator variable and *Unified Legislature*.

Including institutional interaction terms in cross-sectional studies at the state level eats up precious degrees of freedom. Therefore, I include only three true control variables in the models below. In the Huber and Shipan empirical work on statutory discretion, per capita *Medicaid Expenditures* is the only consistently important control variable. Inclusion of this variable should isolate statutory discretion from policy change by controlling for the size of a state's Medicaid program. I have estimated models using all of the control variables found in Figures 4.5 and 4.6, but these results are never substantively different from the more parsimonious models presented here. Due to their unique political history and the possibility that divided government means something different in southern states than it does in northern ones (Erikson, Wright and McIver, 1993), I include an indicator for the *South*. Finally, I include an indicator for *California* to control for that state's voluminous legislation, which has nearly three times more added words than the next largest amount.

I have good theoretical reason to expect that the effect of the primary independent variable, *State Court Index*, is nonlinearly related to the total number of new words added to state Medicaid policy. The theory I have explicated predicts that this relationship is discontinuous (i.e., there should be no effect for some values of *State Court Index*, and a positive effect for other values), but due to random error and other unmodeled determinants of *Statutory Control*, including the fact that there is no reason to believe the points of discontinuity across the states should be the same, this is unlikely to bear out perfectly. Therefore, it may be more reasonable to test whether there is at least a parabolic relationship between the variables. Among others, Keele (2008) warns against assuming linear specifications when we suspect that

the true data-generating process implies a nonlinear relationship. As an alternative, I use nonparametric techniques to diagnose the expected nonlinearity from the data and semiparametric ones to model these appropriate functional forms.

4.4 Results

Figures 4.1 and 4.2 examine the functional form of the bivariate relationship between *State Court Index* and *Statutory Control*. Here, I use local weighted polynomial regression (*lowess*) to get a sense of the relationship between the two variables. Since local regression is nonparametric, there do not exist global summary parameters that allow us to assess the relationship with a single number or coefficient. Instead, we can use the plot in Figure 4.1 to get a sense of the relationship in the full data.[14] Visual inspection suggests that *Statutory Control* increases only slightly with *State Court Index* until it reaches a threshold near 10 on the x-axis. The dependent variable then rises logarithmically until *State Court Index* hits another threshold at 22, at which point, *Statutory Control* decreases until it levels off at 1,000 added words. This plot displays strong evidence of nonlinearity, at least in the bivariate relationship.

Recall that the explicit prediction of the theoretical model was that nonstatutory factors should have this nonlinear effect on the delegation of discretion only when there is sufficient policy conflict between the legislature and agency (Region 3). Figure 4.2 displays the *lowess* estimates for different levels of policy conflict. The figure on the left plots the clearly nonlinear relationship for the data from states with di-

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[14]As there is no way to control for outliers it in a bivariate framework, I omit California from the *lowess* results.

vided government in 1995.[15] Since party control is the only measure of policy conflict I have, I consider divided government to indicate that the conflict is sufficiently large to sustain the prediction regarding nonstatutory controls. The plot on the right allows us to assess the extent to which this relationship may differ when there is less policy conflict. We see here, contrary to expectations, that the same relationship holds when there is unified government or a divided legislature. Although this diagnostic does not support the hypothesis regarding policy conflict, the plots presented here indicate a strong and consistent nonlinear relationship between the main variables, indicating that semiparametric regression is an appropriate modeling choice.

Local smoothing techniques such as local regression and spline smoothing are useful for diagnoses of nonlinearity, but since they can only summarize bivariate relationships they are not very useful for modeling social science data (Keele, 2008, p. 109). Fortunately, these techniques can be incorporated quite easily into the standard parametric regression framework. Below, I estimate a standard parametric model of the determinants of *Statutory Control* and compare it to a Generalized Additive Model (GAM) which estimates a smoothed functional form for *State Court Index* while simultaneously estimating the remaining variables parametrically.

The model in the first column of Table 4.2 presents the results for a parametric poisson model of the determinants of *Statutory Control* across the states.[16] These

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[15]Divided government is considered to be when a state governors party controls neither legislative chamber, i.e., when $UnifiedLegislature = 1$. The non-divided government plot includes states where $UnifiedLegislature = 0$.

[16]I also specified parametric OLS and negative binomial regression models, but the results were nearly identical across parametric specifications.

results can be contrasted with those from Huber, Shipan and Pfahler (2001) found in Figure 4.6.[17] In what is essentially the same specification otherwise, inclusion of the *State Court Index* variable leads to the divided government variables and interactions either losing their significance or switching direction. Although it is highly statistically significant, the substantive effect of the γ variable seems quite small. If we believed that the relationship between *State Court Index* and *Statutory Control* was linear, we would create a plot of how increases in the independent variable would lead to, since the coefficient is negative, *decreases* in expected levels of *Statutory Control*. Such a conclusion would be consistent with the Huber and Shipan model of discretion, which predicts a standard linear substitutive relationship between ex post capacity and ex ante control, but inconsistent with my model.

The second column of this table presents results from a semiparametric GAM model with the same independent variables. Essentially, the GAM framework allows one to simultaneously estimate a smoothing spline for nonlinear terms and conventional parameters for linear ones.[18] The first important thing to notice is that this model fits the data significantly better than the parametric model (likelihood-ratio test $p < .001$). Given what we know about the nonlinearity in *State Court Index* from

[17]Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002) hold that *policy conflict* (unified legislature), *legislative capacity* (compensation), *bargaining environment* (divided legislature), and *nonstatutory factors* (legislative veto) should all have linear effects on statutory control. In contrast, my model predicts that only what they term *nonstatutory factors*, modified by *policy conflict*, should systematically vary with statutory control.

[18]Keele (2008)(pp. 140-141) describes some estimation procedures for GAMs and notes that different software may estimate these models differently. I have used the `mgcv` package in `R` to estimate the poisson GAM below. This package uses iterated reweighted least squares to estimate GAMs.

Figures 4.1 and 4.2, this is not surprising. In addition to providing an overall better fit, the poisson GAM leads to reinterpretations of the effects of some of the parametric terms. For example, the constitutive *Unified Legislature* term switches signs and gains a high level of statistical significance, while its interaction with *Compensation* does the same.

Since the poisson GAM estimates a spline for the effect of *State Court Index* on *Statutory Control*, we cannot summarize the relationship with a coefficient and standard error. Instead, the standard way to interpret nonparametric terms in GAMs is to inspect a plot of their effects across the range. In the interest of presenting substantively meaningful results rather than difficult to interpret propensities from the poisson GAM, I have plotted the effects of the nonparametric term from a semiparametric OLS regression in Figure 4.3. This plot confirms that the relationship, even while controlling for the other independent variables in the model, between γ and thousands of words is obviously nonlinear. Contrary to the parametric model, which told us that the effect was significantly negative, this plot shows that the direction of the effect varies across the range of *State Court Index*. The shape of the nonlinearity displayed here is broadly consistent with the expectations of the theory. In particular, we see that the effect of the *State Court Index* significantly increases *Statutory Control* in the range from around 11 to 15, until it begins reverting to a zero, or insignificantly (given the coverage of 0 by the confidence bands) negative effect. Lest we worry that this significant hump in the effect is produced by a lack of data or outliers, Figure 4.2 tells us that there are a great many data points across the range of *Statutory Control* in the 11 to 20 range of the x-axis, where the effect is statistically

distinguishable from zero. As in Figure 4.2, Figure 4.4 shows the plots when we split the sample according to levels of policy conflict. Here, while the quadratic pattern holds for divided government, a linear pattern emerges for non-divided government. This general modeling decision is heavily influenced by the theoretical expectations derived in Chapter 2. It is worth noting once more that had I not tied the empirical model so closely to the theoretical approach, the results would have shown support for the Huber and Shipan (2002) model at the expense of the one developed here. While these results suggest some support for the prediction that γ should only affect statutory discretion in the expected way when there is sufficient policy conflict, the fact that the uppermost plot does not indicate a significant relationship tempers this conclusion.

4.5   Discussion

This research has contributed to the study of comparative legislative-executive relations in a number of ways. First, it approaches questions of delegation and oversight with a general theoretical framework that generates novel predictions about the relationship between nonstatutory controls and the incentive to write statutory controls into legislation. In so doing, the model presented in Chapter 2 extends and generalizes the influential Huber and Shipan (2002) model of delegation – while providing starkly differing empirical expectations in this chapter.

Second, this chapter tests the implications of the theoretical model on statutory discretion across the U.S. states in the Medicaid policy area in 1995-1996. I replicate and modify the empirical analyses found in Huber, Shipan and Pfahler

(2001) and Huber and Shipan (2002) by creating a novel measure of state court activism as a nonstatutory control across the states. I demonstrate that this variable is, as expected, nonlinearly related to statutory control and I appropriately model the empirical relationship nonparametrically. Interestingly, when we analyze the same data used in these studies in light of the predictions generated in this thesis, we find support for the unique patterns of prediction derived from Chapter 2. However, were we to naïvely test these prediction using a linear framework, we would instead find support for the linear predictions of Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002). While the general results suggest support for the hypothesis that nonstatutory factors should increase statutory discretion when they are neither too high nor too low, there is very limited support for the conditional hypothesis that this should only be the case when there is sufficient policy conflict between a legislature and an agency. A likely explanation for this is that my measure for policy conflict is too blunt. While divided government should be sufficient for policy conflict, it is not necessary, as state political parties may not be ideologically homogenous.

As noted above, MacDonald and Franko (2007) do not use the length of legislative statutes as a measure of statutory control over bureaucratic discretion. Instead, they look at the use of limitation riders in appropriations bills as indicative of proscribed delegation. In addition, motivated by the theoretical work on procedural constraints (McCubbins and Schwartz, 1984; McCubbins, Noll and Weingast, 1987, 1989; Moe, 1990b), Epstein and O'Halloran (1999) measure policymaking autonomy by identifying, through *Congressional Quarterly* reports, the extent to which statutes both delegate policy authority and set procedural limits on that authority. While this

would no doubt be an innovative complement to the data on statutory discretion used in Huber and Shipan (2002) and in this chapter, it would be impossible to collect at the state level, since there is no uniform state-level equivalent to *Congressional Quarterly.* Besides, Huber and Shipan (2002, pp. 56-72) go through pains to highlight the importance of prescriptive language, and not procedural language, in these state Medicaid statutes.[19] Had they not, there would be much more reason to suspect that statute length may not be a good proxy for delegation of discretion. Therefore, to the extent that future research delves into new policy areas, we must be keen to diagnose the extent to which legislation in those areas rely on relatively brief, yet highly restrictive, procedural language.

Among many directions for future research, I am now following a few especially important ones. As I have assessed the theoretical model's predictions regarding ex ante discretion in this paper, I have previously shown support for the ex post oversight hypotheses at the congressional level (Chapter 3). However, a more stringent test of the theory would require me to collect data on ex ante discretion in a policy area along with ex post monitoring activities in the same area and assess the theoretical expectations simultaneously. I am currently working on collecting data on statutory control in legislation meant to implement mandates from the federal "No Child Left Behind" (Public Law 107-110) act. In addition to the ex ante legislation, I am collecting myriad data related to ex post monitoring of state departments of educations

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[19]As well as they show that "...longer legislation does not consist of mostly general language ... [and] that longer legislation does not contain proportionally more procedural language" (Huber and Shipan, 2002, p.74).

by legislative committees across the U.S. states. Specifically related to limitation of the policy conflict measure in this study, I am taking care to code the ideology of committee members as well as that of agency decionmakers. Also, while explaining legislative-executive relations and legislative strategies of control are important topics in themselves, future work should integrate this research with policy studies to assess whether control has discernible effects on policy outcomes (as discussed further in Chapter 5).

Table 4.1: Descriptive Statistics

	Obs.	Mean	S.D.	Min	Max
Statutory Control	48	24,683	44,345	216	277,495
State Court Index(γ)	48	17.2	9.65	2.02	48.99
ln(Compensation)	48	9.21	1.84	0	10.96
Unified Legislature	48	.31	.47	0	1
Divided Legislature	48	.19	.39	0	1
Legislative Veto	48	.6	.49	0	1
Medicaid Expenditures	48	.57	.17	.34	1.33

Table 4.2: Parametric and Semiparametric Models of Statutory Control (in thousands of words added) Across U.S. States, 1995-1996

	Poisson	Poisson GAM
ln(Compensation)	.39***	.64***
	.05	.08
Unified Legislature	-.64	4.91***
	.88	1.39
Unified Legislature * ln(Compensation)	.09	-.49***
	.09	.09
Divided Legislature	5.77**	9.79***
	1.86	2.84
Divided Legislature * ln(Compensation)	-.65***	-1.03***
	.19	.28
Legislative Veto	-.37***	-.42***
	.09	.11
Legislative Veto * Unified Legislature	-.42*	-1.15***
	.20	.28
Medicaid Expenditures	2.04***	.61
	.25	.41
South	-.68***	-1.15***
	.12	.19
California	3.10***	2.67***
	.20	.34
State Court Index (γ)	-.03***	—***
	.004	
Constant	-1.02*	-4.79***
	.48	.96
Observations	48	48
Deviance Explained	59%	83%
LR test p-value		.00

Likelihood ratio test against previous model in the table.

Standard errors in parentheses.

* significant at 10%; ** significant at 5%; *** significant at 1%

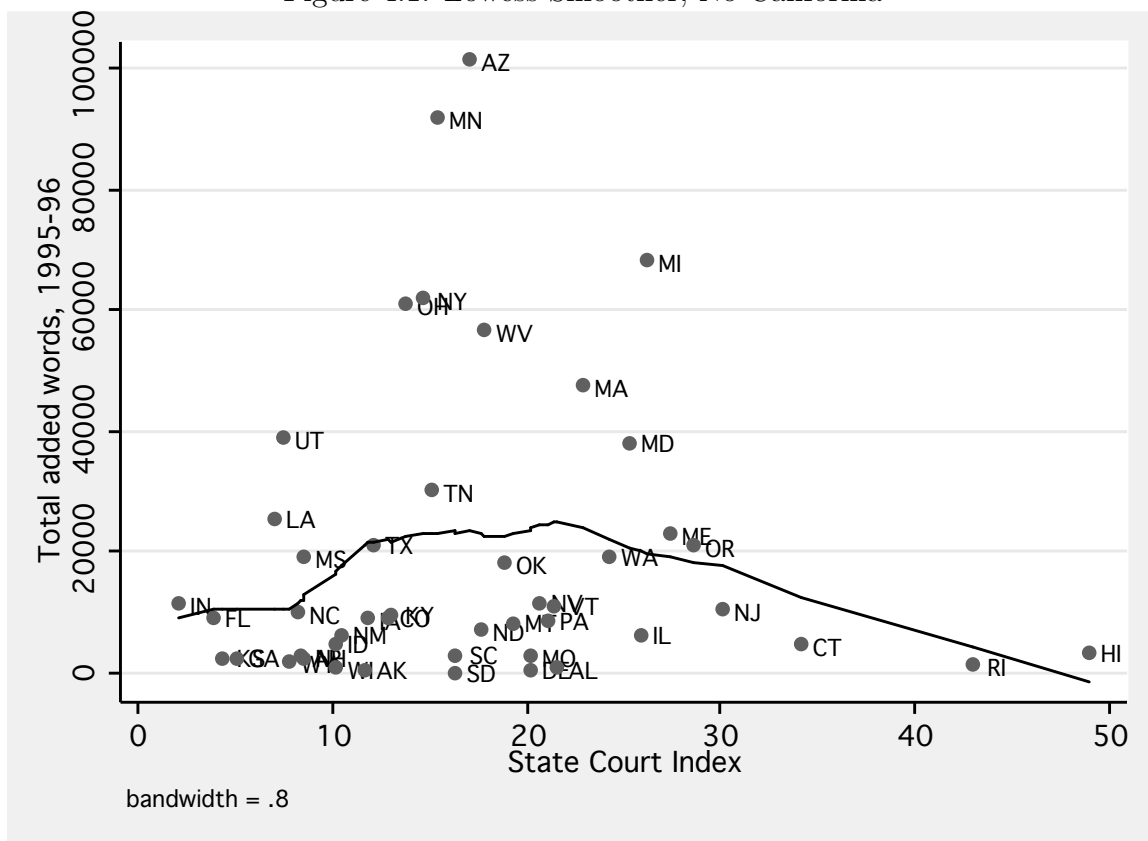Figure 4.1: Lowess Smoother, No California

Figure 4.2: Lowess Smoother, No California
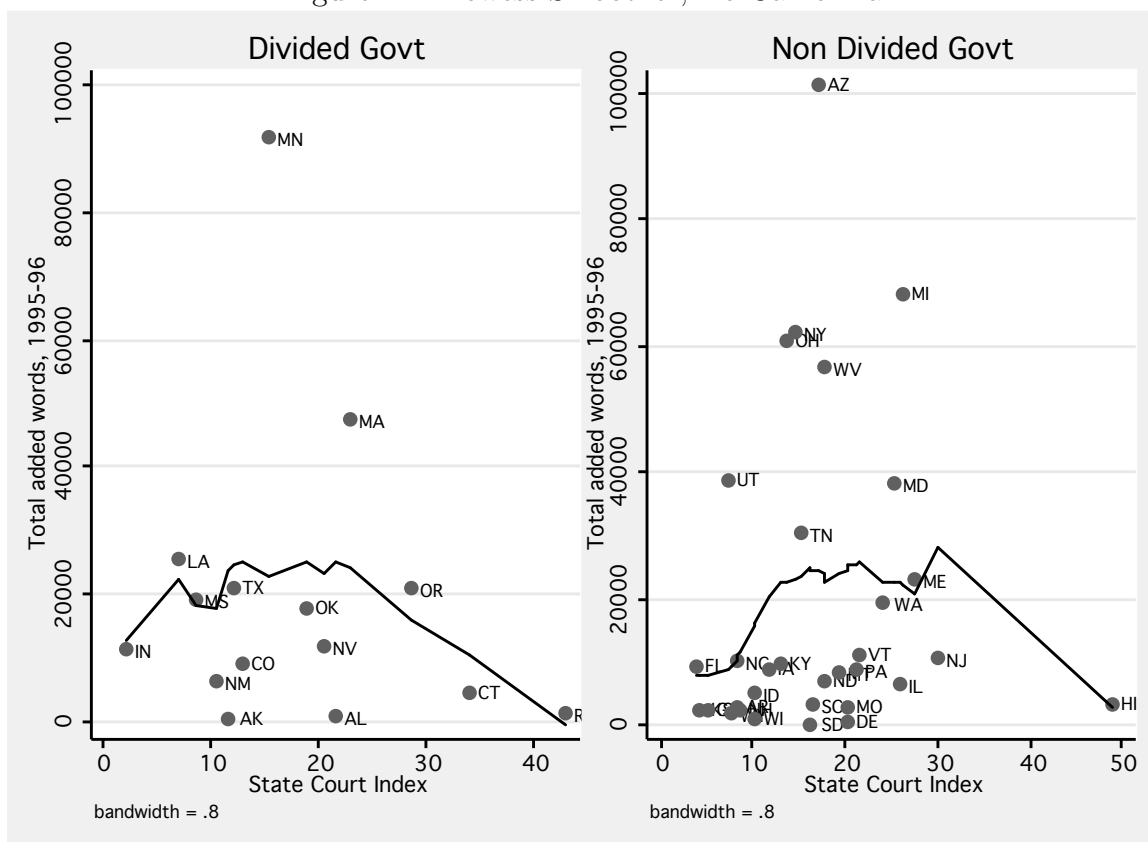

bandwidth = .8

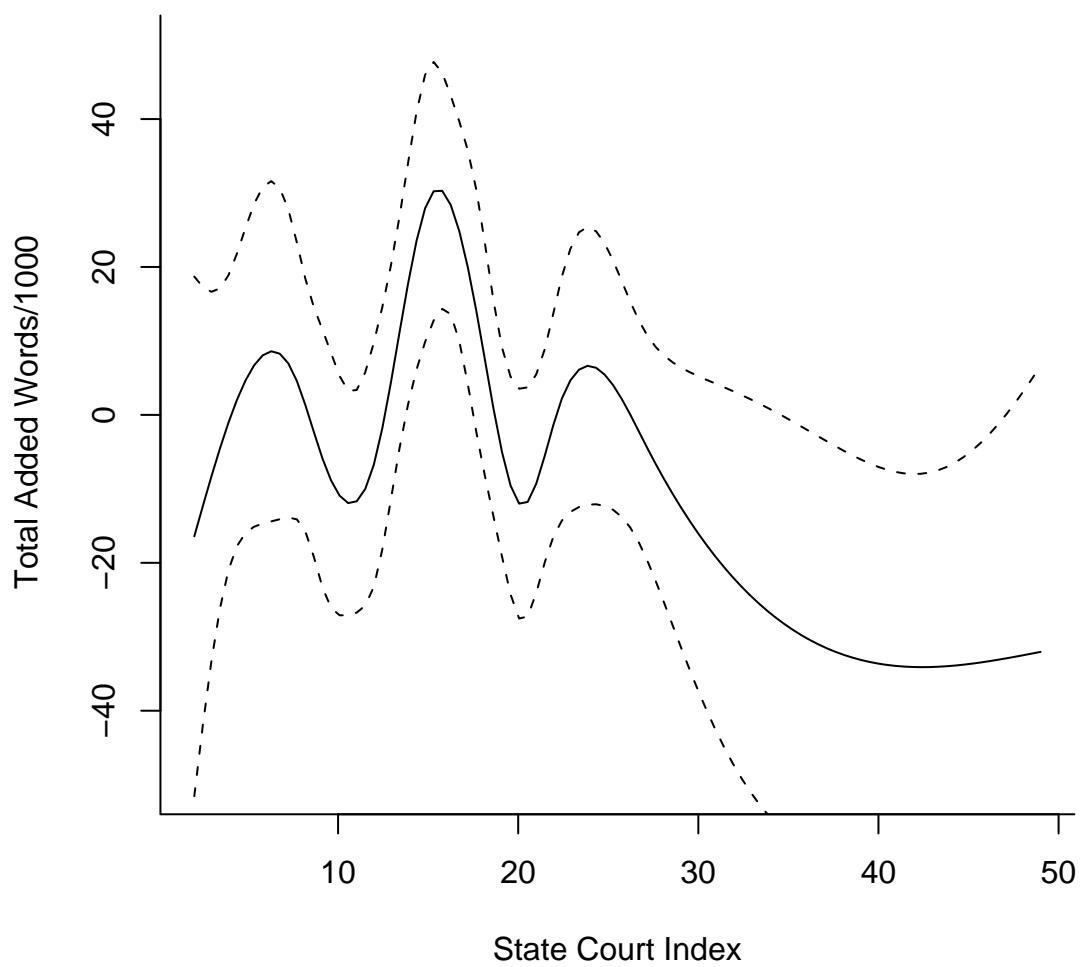Figure 4.3: Nonparametric Estimates from Semiparametric OLS Regression Model

Figure 4.4: Nonparametric Estimates from Semiparametric OLS Regression Model
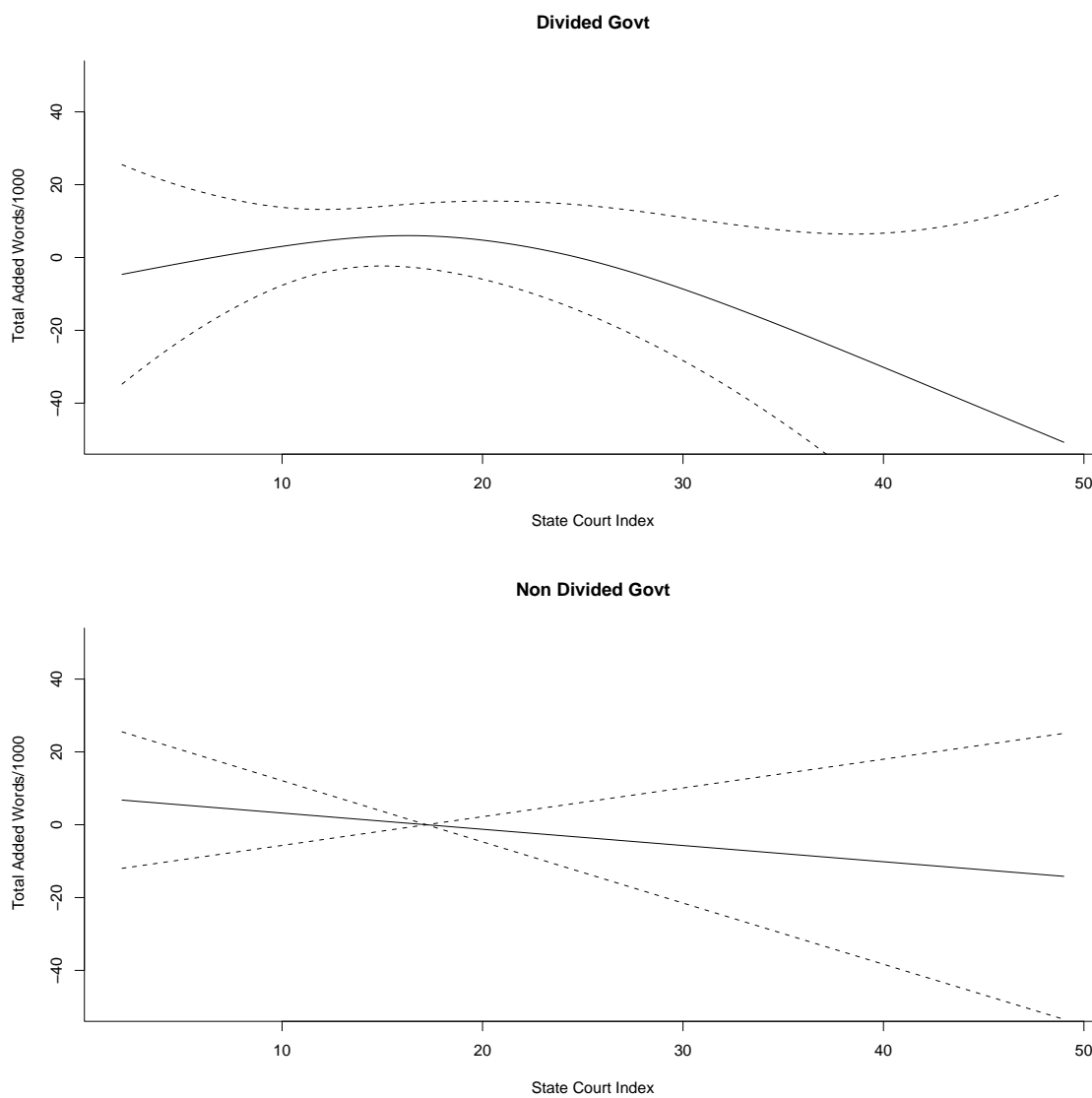
Figure 4.5: Huber, Shipan and Pfahler (2001): Table 1

TABLE 1 OLS Models of State Legislative Efforts to Limit Agency Discretion in Nonsouthern States

Independent Variables	(1)	(2)	(3)	(4)
Unified Legislature	−24,854	−20,846	−31,695	−25,611
	(9,903)	(9,815)	(13,219)	(10,788)
Unified Legislature × Compensation	2.25	2.23	2.29	2.35
	(.91)	(.86)	(.92)	(.95)
Divided Legislature	−20,020	−17,999	−23,917	−20,353
	(11,435)	(11,705)	(12,197)	(11,090)
Divided Legislature × Compensation	.51	.49	.38	.47
	(.39)	(.37)	(.45)	(.38)
Unified Legislature × Legislative Veto	−25,520	−28,190	−27,407	−27,795
	(11,247)	(10,847)	(11,910)	13,427
Ranney Index	—	—	60,846	—
			(61,270)	
Unified-to-Divided	—	−7,946	—	—
		(8,603)		
Bureaucratic Professionalism	—	—	—	.10
				(.40)
Medicaid Expenditures	36,145	36,943	36,360	36,079
	(20,698)	(20,298)	(20,227)	(22,245)
California dummy	248,867	247,901	249,397	248,727
	(12,984)	(12,573)	(13,197)	14,434
Constant	2,351	1,922	−46,401	−6,101
	(14,008)	(13,935)	(52,963)	(30,359)
Adjusted R^2	.72	.71	.72	.71
N	38	38	38	38

Note: The dependent variable is *Statutory Control* in Medicaid-related legislation in 1995–96 (see text for details). Positive coefficients reflect less agency discretion. Numbers in parentheses are White standard errors.

Figure 4.6: Huber, Shipan and Pfahler (2001): Table 2

TABLE 2 OLS Models of State Legislative Efforts to Limit Agency Discretion in Forty-eight States

Independent variables	(1)	(2)	(3)
Unified Legislature	−16,910 (8,275)	−16,229 (8,169)	—
Unified Legislature × Compensation	1.59 (.70)	1.56 (.71)	—
Divided Legislature	−17,244 (9,958)	−16,169 (9,718)	—
Divided Legislature × Compensation	.59 (.32)	.56 (.34)	—
Unified Legislature (South)	—	—	446 (10,237)
Unified Legislature × Compensation (South)	—	—	.46 (.72)
Divided Legislature (South)	—	—	−16,479 (17,818)
Divided Legislature × Compensation (South)	—	—	.73 (.95)
Unified Legislature (Non-south)	—	—	−23,039 (9,785)
Unified Legislature × Compensation (Non-south)	—	—	2.00 (.81)
Divided Legislature (Non-south)	—	—	−18,094 (11,241)
Divided Legislature × Compensation (Non-south)	—	—	.52 (.40)
Legislative Veto × Unified Legislature	−13,804 (7,549)	−13,513 (8,091)	−18,526 (6,356)
South	—	−2,071 (5,200)	—
Medicaid Expenditures	28,301 (17,533)	28,274 (18,047)	35,559 (21,190)
California dummy	244,040 (10,933)	243,972 (11,253)	248,520 (13,308)
Constant	4,442 (11,822)	4,716 (12,206)	538 (13,871)
Adjusted R²	.72	.71	.70
N	48	48	48

Note: The dependent variable is *Statutory Control*. White standard errors are in parentheses.

CHAPTER 5
CONCLUSION: DOES VARIATION IN LEGISLATIVE STRATEGIES AFFECT POLICY OUTCOMES?

Throughout this thesis, I have analyzed legislative-executive relations as the product of a policymaking game whereby both institutional actors seek to influence policy outcomes as much as they can, given their institutional constraints. This approach has been fruitful insofar as it has provided unique empirical predictions regarding institutional behavior, particularly as they relate to legislative strategies to control policy outcomes. In this chapter I briefly review these unique and theoretically-motivated predictions and reiterate the original evidence I have uncovered in support of these proposed empirical patterns.

In addition to this principal-agent modeling perspective, I have sought to elucidate the nature of some normative concerns with the policymaking process in separation of powers systems like that found in the United States. The problem, simply put, is that elected representatives delegate their policymaking authority to unelected bureaucrats. This situation is endemic to modern government where elected legislators have neither the time nor experience to micromanage policymaking. Given this practical reality, a normatively relevant question becomes: is policymaking responsive to the democratic process, and, if so, how do institutions mediate the links between "the people" and policy outcomes? Clearly and uncontroversially, I have argued against an account of "helpless abdication" and have instead held that legislators seek to maintain such democratically necessary control while at the same time they try to harness the bureaucracy's policy-specific expertise – this insight be-

ing standard in principal-agent accounts of legislative-executive relations. The novel finding of this thesis along these lines is that institutional features of legislatures may facilitate or debilitate their ability to conduct oversight with the frequency needed to keep recalcitrant bureaucrats in line. This finding has implications both for when legislatures have control of policy and for what the nature of these policy outcomes will be according to different sets of institutional features. I specify this argument more fully below and give some preliminary observations regarding how institutional characteristics have the ability to affect education policy outcomes across a sample of U.S. states.

5.1   Summary of Results

Chapter 1 ("Legislative Oversight, Accountability, and Control of the Bureaucracy") introduces the pursuance of legislative oversight as an empirical puzzle which had yet to be explained fully in the extant literature. Empirically, there is great variation (further documented in this thesis with original data in Chapter 3) in the extent to which legislatures, across both time and space, oversee policy implementation by unelected bureaucratic agents. Implicit in the discussion of the importance of oversight in light of the recent financial crises is the idea that more vigorous congressional oversight could have affected the impact of exogenous financial events. Even in the more general political science literature, scholars recognize the potential for diligent oversight to make the policymaking process more accountable and transparent (as I discuss further in the second half of this chapter) and thereby to affect policy outcomes. I motivate the aims of the thesis by making this connection between oversight

activity and the nature of policy outcomes.

Besides failing to address this practical concern with oversight's effects on policy outcomes, previous literature had not firmly established which institutional factors can serve to drive or inhibit legislative oversight activity. The first wave of literature on oversight (Scher, 1963; Ogul, 1976; Aberbach, 1990, 2002; Ogul and Rockman, 1990; Smith, 2003) treated the activity from the perspective of individual legislators and their incentives and concluded that oversight can be considered a "neglected function" (Bibby, 1968) of legislatures. These authors make sense of this abdication by appealing to the "electoral connection" (Fenno, 1973; Mayhew, 1974) motives of legislators and concluding that oversight is not public enough to be a valued legislative activity. Importantly, these accounts ignore the extent to which legislators may care about the ways in which policy outcomes are perceived by their constituents. Although it is surely a component of the "electoral connection," I argue that these authors underestimate the extent to which legislators consider policymaking goals and the institutional balance of power when they do engage in oversight activity (Rosenthal, 1981). As a result, this literature greatly underestimates the occurrence of oversight activity and cannot adequately account for when it becomes more or less prevalent.

Another strand of literature astutely considers these legislative policymaking goals, but comes to a similar empirical conclusion regarding oversight activity. Literature in the principal-agent tradition has focused on the use of ex ante, or before the fact, mechanisms of legislative policy control at the expense of explicit oversight activity (Moe, 1989, 1990a,b; Kiewiet and McCubbins, 1991; Banks and Weingast, 1992;

Epstein and O'Halloran, 1994, 1999; Hamilton and Schroeder, 1994; Bawn, 1995, 1997; Martin, 1997; Balla, 1998, 2000; Balla and Wright, 2001; Spence, 1999; Huber and Shipan, 2000; Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002). These works emphasize that legislatures can design incentives which make it more likely that bureaucrats implement policy in line with what the legislature wants. These works deemphasize the theoretical importance of ex post, or after the fact, mechanisms of control, such as the use of formal oversight hearings. While recognizing that the existence of ex post mechanisms may help to enforce the limits of the ex ante restrictions that legislatures put in place, many of these studies provide no clear predictions of when and under which conditions these ex post mechanisms will be used. Where the first wave of empirical literature only considered ex post oversight (and concluded that it does not happen often enough to enforce legislative control of policymaking), these theoretical studies often predict no empirical role for ex post oversight. These types of predictions are empirically problematic, as we know that variation in oversight activity does exist across legislatures and these theoretical approaches cannot account for this variation. Chapter 1 reviews these literatures and makes a case for the development of a theory that can account for both the policymaking motives of legislators and the fact that legislatures often have distinct strategic alternatives to affect policy outcomes.

Chapter 2 ("To Write or Review? A Model of Strategic Delegation and Oversight") builds on the research that has come closest to providing such an account of oversight as a means to affect legislative control of policy. Recent comparative institutional theories embrace a "separation of powers" (de Figueiredo Jr., Jacobi

and Weingast, 2008) methodology of considering the effect of external institutional constraints on legislative behavior. In particular, Epstein and O'Halloran (1999) and Huber and Shipan (2002) examine the extent to which anticipated bureaucratic behavior and, in the latter study, anticipated judicial behavior affect the amount of ex ante discretion legislators delegate to implementing bureaucrats. In seeking to explain a legislature's choice between erecting ex ante constraints on discretion and performing ex post monitoring tasks, I recognize that the interrelationship of the two can be affected by the ability of other institutional actors to affect policy outcomes. The goal in Chapter 2 is to build on the approach of these works, but to consider the use of ex post monitoring activities to be an explicit strategy of legislators (i.e., an endogenous choice).

The formal model presented in Chapter 2 is an extension of the Huber and Shipan (2002) delegation model. Specifically, I endogenize an element of the exogenous "nonstatutory factors" (potential extra-administrative institutions or processes which may affect policy outcomes) from their model while adding a stage to the extensive form where a Legislator can observe a policy implemented by a Bureaucrat and choose whether of not to hold an oversight hearing. This extension is necessary to provide a strategic explanation for variation in ex post oversight activity over time and/or space.[1] Despite empirical research on "substitution effects" (Bawn, 1997; Huber and Shipan, 2002), my model does not presuppose that the choice of ex ante

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[1]In fact, Huber and Shipan (2002) recognize this to be the case and encourage future research to "theorize more explicitly about some specific institutions [of 'nonstatutory factors']" (p. 229).

strategies versus ex post ones (and vice versa) be empirically correlated. I construct the model such that oversight activity may depend on institutional features (such as legislative capacity, or institutions which may affect this capacity, such as legislative term limits or the existence of a legislative veto over agency rulemaking), political features (such as policy conflict within the government or within the legislature and the policy preferences and activism of important judicial actors) and the legislature's initial delegation of policymaking discretion to an agency.

This model provides insights into legislative strategies to control the policymaking process insofar as it makes predictions about when legislatures will be more or less likely to conduct oversight hearings and empirically separate, yet theoretically related, predictions about when they would be more or less likely to limit an implementing agency's discretion ex ante. Importantly, this is the first policymaking model to make simultaneous predictions concerning the two broad classes of legislative (the principal) control of bureaucratic policy implementation (the agent). In addition, the comparative institutional nature of the model allows me to explain how regularly variable institutional features can affect the extent to which legislatures can control policy. Interestingly, the theoretical relationship between the two does not appear to indicate that they should be strategic substitutes, nor necessarily strategic complements. The theoretical model holds that only institutional features (i.e., legislative capacity) and political features (i.e., conflict between the Legislator's and Bureaucrat's ideal policies) affect the propensity to engage in oversight activity. In contrast, the factor which drives the Legislator's willingness to limit discretion is the likely behavior of other institutions (such as the courts, as analyzed in Chapter 4) with

the power to affect policy outcomes. Notably, these discretion-limiting predictions contradict those from Huber and Shipan (2002) in that they hold the relationship between discretion-limiting statutes and the probability that nonstatutory factors affect policy outcomes to be discontinuous and nonlinear, rather than the linear substitutive relationship proposed by Huber and Shipan (2002).

The subsequent two chapters provide empirical evaluations of the unique predictions derived from the equilibrium outcomes of the formal model. For Chapter 3 ("Congressional Hearings and Policy Control: Explaining Oversight as an Ex Post Mechanism"), I utilize publicly available data from the Policy Agendas Project (http://www.policyagendas.org/) from 1947-2006 to test whether oversight activity (specifically, formal oversight hearings) has the expected (as derived in Chapter 2) relationships with the technical expertise (i.e., legislative capacity) of the congressional committee in charge of a given policy area and with the policy conflict between these committees and the executive branch. 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 that the committee holds, but *only* when the policy disagreements are sufficiently conflictual. This last condition suggests, contrary to previous research, that the extent to which oversight should be necessary, to either legislative policymaking or democratic legitimacy, varies across preference arrangements. Motivated to accurately test the discontinuity of this prediction, I employ a (preference arrangement) region-informed empirical strategy and find that the effects of the primary independent variables (ideological divergence between a committee and the executive and the mean terms of

policy-specific experience in that committee) depend in part on their values and re-lationships to each other. That is, their effects on oversight activity are nonlinear, as the model suggests.

That these predictions are supported by the analyses in Chapter 3 demon-strates the utility of considering regularly varying institutional features when explain-ing oversight activity. Much previous literature (Scher, 1963; Ogul, 1976; Aberbach, 1990, 2002; Ogul and Rockman, 1990; Smith, 2003) suffers from a Congress-centric bias and only considers large-scale institutional change (such as the passage of the Legislative Reorganization Act of 1946 or the adoption of the Subcommittee Bill of Rights in 1973) as a potential determinant of changes in oversight behavior. By incorporating the insights of principal-agent theory and considering both ex ante and ex post strategies simultaneously, my approach assuages the weaknesses of this congressional literature and can better account empirically for oversight activity by congressional committees. While these empirical analyses are convincing, they are but partial assessments of the the predictions generated in Chapter 2.

It would be impossible to test some cross-institutional implications of the theory at the congressional level, as certain institutional features are more or less fixed, such as legislative professionalism as conceptualized in the state politics literature. In order to gain leverage on some of this variation, I test the model's predictions concerning the use of restrictive statutory language across U.S. state legislatures in Chapter 4 ("State Court Activism and Legislative Responses: Explaining Statutory Discretion Across the U.S. States"). Here, I switch my focus from the analysis of a single legislature over time to a cross-sectional study of the extent to which U.S.

state legislatures delegate authority to state agencies (following previous literature (Huber, Shipan and Pfahler, 2001; Huber and Shipan, 2002; Volden, 2002)). Since there is considerable institutional variation across states, I do not need to look at a wide range of time periods and instead focus on a specific policy area (Medicaid) and time period (1995-1996). The empirical implications tested in this chapter are unique to the literature on ex ante statutory discretion in that they are derived while considering that ex post enforcement strategies are available to enforce these statutory limits.

Because the model from which the expectations are derived allows legislatures to strategically choose their mixture of ex ante and ex post strategies, they are distinct from those presented in Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002), where their model considers ex post oversight to be an exogenous and nonstrategic probability. The Huber and Shipan (2002) prediction, like that proposed by Bawn (1997), is a substitution relationship: when ex post ability (such as the ability to conduct oversight hearings cheaply) is high, then there is little incentive for legislators to exert costly ex ante control. In contrast, I find that the amount of discretion (*Statutory Control*) that a legislature delegates to a state agency charged with implementing Medicaid policy is nonlinearly related to the extent to which state courts are likely to affect policy outcomes, as captured by a novel measure of judicial activism. This is not a ex ante/ex post substitution argument, but instead demonstrates the potential complementarity of the strategies. Where there is sufficient policy conflict and when nonstatutory controls (in this case, court activism) are neither too high nor too low, then legislators should both restrict discretion ex ante and conduct over-

sight hearings to enforce the limits of this discretion. Chapter 4 provides additional support for this argument.

Reviewing the main contributions of this thesis, it is clear that Chapter 2 extends and deepens our theoretical understanding of legislative-executive relations, especially as it relates to the policymaking process. Legislators and their agents seek to exert as much influence over policy outcomes as they can while considering costs, benefits, and information. The empirical analyses contained in Chapters 3 and 4 confirm that legislatures consider alternative methods of control as well as the likely actions of external institutions when crafting their policymaking strategies. Specifically, Chapter 3 reminds us of the ally principle in the context of congressional oversight. The lack of such oversight does not necessarily mean that members of Congress do not value oversight activity. Instead, I argue that the extent to which they try to hold agents to account should (and does) vary with policy conflict and policy-specific expertise. Chapter 4 extends the empirical scope of this study and concludes that state legislators likely react to the expected actions of state courts when crafting their policymaking strategies. What I hope to have emphasized is that the policy process matters to legislatures seeking to control outcomes. The following, and final, section examines whether the extent to which legislators can control policy can have systematic effects on the types of outcomes we should expect as a result of this process.

5.2   The Next Step: Legislative Control and Policy Outcomes

This section serves to highlight an important practical implication of the research reported in this thesis. Although the theoretical model holds that there are conditions under which oversight, as well as the limitation of statutory discretion, is unnecessary for legislative control, there are also conditions under which sufficient legislative capacity is required for legislatures to conduct the oversight which makes policy control possible. As the U.S. Congress is the most professional legislature in the world, such situations are more likely to arise at the state level, where there is great variation in legislative capacity (Squire, 1992; King, 2000). As mentioned above, legislative control of policy can be an important mechanism linking policy outcomes to the will of the people. To assess this normatively important possibility, I am collecting data on statutory discretion and oversight hearings for policies related to implementing "No Child Left Behind" (Public Law 107-110) mandates to the U.S. states. In cases where oversight should be necessary for control (i.e., under certain preference configurations), increased legislative oversight (made possible by sufficiently great capacity) should lead to policy outcomes that are distinct from outcomes in states with less legislative capacity and therefore neglect necessary oversight.

This endeavor is important for a number of reasons. First, and most closely related to what has already been presented (and introduced at the conclusion of Chapter 4), I wish to simultaneously test the empirical implications of the theory concerning the use of ex post and ex ante strategies of control. Chapters 3 and 4 do a comprehensive job of testing these implications in a piecemeal fashion, but do

not conclusively demonstrate the temporality of legislative strategy. In addition, by adding a second policy area to the Medicaid policy studied here and in Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002), I can increase our confidence that the empirical legislative strategies are not determined by a specific policy area or point in time.

As it relates to this first reason for conducting this future research, analyzing "No Child Left Behind" (NCLB) offers a number of advantages over other policy areas. First, it conforms to the same justification that Huber and Shipan (2002) give for their choice of using Medicaid policy to study legislative control. These authors contend that the "issue and time period [1995-1996] provide a unique natural experiment, one that gives us an opportunity for meaningful cross-state comparisons" (p. 141). The purported natural experiment was concocted by the coincidence of the rising costs of Medicaid programs (Rom, 1999), and an increased focus on the state (as opposed to federal) level by interest groups concerned with health care reform. A similar justification can be made for the usefulness of state "No Child Left Behind" education policy in making cross-state comparisons. NCLB is a federal act which went into effect in January of 2002 (Public Law 107-110). This act mandates testing and accountability procedures that many states had not yet implemented before the passage of the act, thus requiring states to change their education policies by having the legislature pass new laws designed to implement the NCLB mandates.[2] NCLB requirements were to be fully implemented (statutorily) by states by the 2005-2006

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[2]I have included a concise overview of NCLB requirements as Appendix B.

academic year, which suggests that many, if not all, states passed laws concerning NCLB requirements during 2002-2005. My choice of this policy area is consistent with the natural experiment design described in Huber and Shipan (2002). In fact, the federal mandates in education testing and accountability act as a stronger and more formal impetus for state policymaking action than did the rising costs of Medicaid. Therefore, I expect, crucially for the natural experiment design, that almost every state was passing laws with similar goals at about the same time.

In addition, education policy is highly salient, and NCLB, in particular, has been an important policy program for legislators and executives alike. It has motivated the vast expansion of the literature on how federalism relates to education policy (as documented in (McGuinn, 2006, Chapter 1), although also see Kosar (2005) for evidence that federal government-driven standards-based accountability programs have been evolving since the 1960s). It has also motivated interest in state-level implementation of the federal mandates (McGuinn, 2006; Febey and Louis, 2008; McLendon and Cohen-Vogel, 2008; Stecher et al., 2008; Wong, 2008) as well as drawn attention to what seems to be a bi-partisan shift in concepts of "coercive federalism" (Posner, 2007). Insofar as it may help us unravel the complicated politics of education policy across levels of government, the theory presented in this thesis can inform a field that some close observers recognize as having little cohesive theoretical structure (Cibulka, Fusarelli and Cooper, 2008). To the extent that this future assessment of state legislative strategies to control standards-based education policy conforms to theoretical expectations, we can be more confident of 1) the temporal nature of ex ante/ex post strategic assessments and 2) that legislative strategies are affected by institutional

variation across time and policy area. I am currently collecting information, as per Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002), on the length and specificity of the ex ante legislation meant to implement NCLB at the state level, as well as myriad data related to ex post monitoring of state departments of educations by legislative committees across the U.S. states. Although I have collected hearings data for a number of states (the type and number of NCLB policy-specific hearings held by state legislative committees), I do not yet have enough to properly assess the theoretical expectations.

In addition to providing a more stringent test of the theory, this research should be able to elucidate some of the murkier determinants of education policy outcomes. Specifically, the extent political science and public policy (policy analysis) literatures do not posit a clear role for oversight as an influence on policy outcomes. Such as role is implicit in the policymaking model presented here. I make the case that legislatures pursue oversight activities when such activity is necessary for policy control and when institutional conditions (i.e., the legislature has sufficient capacity) allow it. The fact that this has the potential to affect the actual outcomes of policy programs has been proposed, but neglected by empirical research:

> The literature has discussed extensively what oversight is, why it is necessary in properly functioning democratic regimes, why it is good from a normative point of view and what conditions might favor effective oversight. Yet, less attention has been paid to whether legislative oversight has any impact on the functioning of a political system and, if so, what kind of impact it has (Pelizzo et al., 2008).

I argue that the ability of legislatures to monitor bureaucrats that they expect to be recalcitrant makes them better able to keep policy responsive to the public will. Huber

and Shipan (2002, 230) allude to this possibility in identifying possible implications of their research:

> . . . issues of delegation and discretion touch many issues other than whether politicians control bureaucrats. Issues of transparency, responsiveness, and the distributive consequences of policymaking across elected officials are all affected by the inherent link between legislation and the delegation process.

It is this responsiveness, induced by oversight activities, that holds at least the possibility to affect policy outcomes, broadly considered. My model would hold that this responsiveness should entail outcomes closer to legislative preferences when oversight is necessary. It would therefore serve as a mechanism for a general legislative control of the bureaucracy. This theoretical mechanism could help avoid problems of observational equivalency in empirical work.

As the NCLB policy area is ideal for testing the implications of my institutional theory, it is a fruitful and germane arena in which to assess the impact of legislative strategy on policy outcomes. The literature in educational accountability, of which NCLB is a huge part, has focused on test scores as performance indicators and thus as indicators of NCLB policy outcomes ((Kosar, 2005), although see Stecher et al. (2008) for more a more nuanced policy analysis). Therefore, it should be possible to assess whether oversight—as an accountability and transparency mechanism—of the implementation of NCLB-inspired laws has affected test scores in the states. However, there are some easily foreseeable problems with using test scores as an indicator of education policy outcomes. First, it is possible (and seems to be the case) that states try and avoid penalties attached to low test scores and inadequate score gains over

time by, say, adjusting scores that demarcate proficiency. Fortunately, there are data that present test scores normalized across the country, including the readily available National Assessment of Educational Progress (NAEP) scores. The availability of these data make cross-state comparisons much more convincing than raw scores, that may have been "juked" by states wary of financial penalties (Kosar, 2005).

As with the general lacuna described above, there are very few scholarly attempts to attribute student achievement levels to political factors at all, never mind to the specific kind of institutional variation deemed important in this thesis. In their seminal work on the politics of school choice, Chubb and Moe (1990) compare achievement in private and public schools and argue that inefficiency of school board governance leads to lower levels of student achievement in public institutions.[3] If oversight, when it is necessary for policy control, allows legislators to better transmit the will of the people to policy outcomes, then oversight related to NCLB-inspired laws should have a positive effect on statewide student performance on NCLB-mandated tests. To the extent that oversight does turn out to lead to better policy, this will allow me to assess the normative claim that oversight *should* lead to more accountability and responsive policy outcomes. If oversight has no effect, then we will have good reason to question the utility of the normative claims about the benefits of oversight.

Although this thesis has contributed to the theoretical understanding of

[3]These authors cite Ziegler and Jennings (1974), Salisbury (1980), Coleman, Hoffer and Kilgore (1982), and Powell, Farrar and Cohen (1985) as making similar arguments about the politics-driven difference between public and private schools.

legislative-executive relations, there are a number of plausible extensions that should be taken up in future work. First, I have considered only the case where Legislators and Bureaucrats have discrete action spaces. It would be useful to see how each having a continuum of potential actions would affect the results presented here. In addition, recent political science literature on delegation and control (Huber and Gordon, 2007) has eschewed the spatial setup to model the control mechanism with contract schedules rather than spatial limits of discretion. Huber and Gordon (2007) argue that implementation preferences are often not single-peaked or static and that the contract schedules approach does not rely on these assumptions. Applying this type of modeling approach to legislative oversight may indeed prove fruitful, especially in terms of more accurately reflecting bureaucratic behavior.

More on the empirical side, the model presented in this thesis provides some theoretical predictions about such bureaucratic behavior – predictions that should be more clearly specified, operationalized, and tested in future research. I have thus far only examined how legislatures react to expected bureaucratic implementation and have not given equal consideration to how bureaucrats respond to anticipated legislative action. For example, the theory described in Chapter 2 yields predictions about the extent to which bureaucrats are likely to act illegally to attempt to fool ideologically distant legislators. To test this prediction would be no easy feat, but doing so would certainly enhance of understanding of interbranch politics in separation of powers systems. Likewise, and as alluded to in the empirical chapters, future studies can turn to alternative operationalizations of theoretical concepts analyzed here – such as the legislative use of limitation riders, regulatory rules committees, the

legislative veto, or budgetary measures as indicative of ex post strategies of control, for example.

Finally, oversight, as conceptualized in this thesis, clearly consists of more than formal hearings, but these hearings may also indicate something other than adversarial, policy-controlling oversight. Formal oversight hearings may instead indicate "friendly" advocacy oversight by legislators seeking to justify and protect certain programs or agencies. Although scholars have established this as a genre of formal hearing (e.g., Ogul and Rockman (1990)), future work should theorize more explicitly about when legislators engage in this activity, why, and what explains variation in the legislative policymaking strategy.

APPENDIX A
HUBER AND SHIPAN MODEL AND SOLUTION

A.1 Assumptions

Same as in the model presented here.

A.2 Sequence

A.2.1 Stage 1

- Politician (L) chooses to do nothing (SQ) or adopt $x \in [0, \bar{I}]$, where $\bar{I}$ is the maximal upper bound to discretion, and $\bar{I} = x_B + 1$

- L must pay k for limiting discretion. Let $k = \left(a - \frac{ax}{\bar{I}}\right)$, so $x = \bar{I} \Rightarrow k = 0$ and $x = 0 \Rightarrow k = a$. Assume $a < \bar{I}$. a is the legislative professional variable, as it decreases, the Politician (i.e., the legislature) is more professionalized.

A.2.2 Stage 2

- Nature determines policy shock, $\epsilon \in \{0, 1\}$

- Outcome of any policy, y, is $y - \epsilon$, so L prefers that $y = \epsilon$ and B prefers that $y = x_B + \epsilon$

- B knows ϵ, L believes that $\epsilon = 1$ with probability p and that $\epsilon = 0$ with probability $1 - p$

A.2.3 Stage 3

- B implements a policy, called $y_1 \in \Re^+$ if $\epsilon = 1$ and $y_0 \in \Re^+$ if $\epsilon = 0$

- Outcome is determined by what B implements (minus ϵ) and nonstatutory factors: $\gamma \in (0, 1)$ is the probability that B is forced to implement $y = \epsilon$. If B chooses $y_\epsilon > x$, then γ is also the probability that B will be punished for acting illegally (by the courts, for example). In such cases, B must pay $d > 0$

A.3 Solution

Subgame perfect Nash equilibria can be found for this model using backward induction.

A.3.1 Bureaucrat's Best Response to x

Since the Bureaucrat acts last in this model, we will begin by examining B's strategic calculations. B must choose between an optimal legal response (in compliance with x, i.e., $y \leq x$) and an optimal illegal response (not in compliance with x, i.e., $y > x$). If $x \geq x_B + \epsilon$, then the policy which yields B's ideal point is always in compliance with x. If $x < x_B + \epsilon$, then the optimal legal response to x is x and the optimal illegal response is $x_B + \epsilon$, which yields B's ideal point. B's expected utility for acting legally ($y_\epsilon = x$) is given below:

$$EU_B(y_\epsilon) = -\left[\gamma x_B + (1 - \gamma)(x_B - (x - \epsilon))\right]$$

Likewise, B's expected utility for acting illegally ($y_\epsilon = x_B + \epsilon > x$) is

$$EU_B(y_\epsilon) = -\gamma(x_B + d)$$

So, B prefers to act legally when

$$-\left[\gamma x_B + (1 - \gamma)(x_B - (x - \epsilon))\right] \geq -\gamma(x_B + d)$$

or

$$x \geq x_B + \epsilon - \frac{d\gamma}{(1-\gamma)}$$

Using this inequality as the definition of B's compliance boundary, we get B's best response given ϵ and the relation between the Politician's choice of law (x) and the compliance boundary:

$$BR_B(\epsilon) = \begin{cases} x_B + \epsilon & \text{if} \quad x \geq x_B + \epsilon \qquad \text{or} \quad x < x_\epsilon \\ x & \text{if} \quad x_\epsilon \leq x < x_B + \epsilon \end{cases}$$

A.3.2   Politician's Optimal Statute

Huber and Shipan focus on L's decision to adopt a low-discretion law (i.e., one that could constrain B's action, $x \in [0, x_B + \epsilon)$) or a high-discretion law $(x = x_B + 1)$.

A.3.2.1   Optimal High-Discretion Law

Since any high discretion law will result in an outcome which gives B his ideal point, the optimal high discretion for the Politician is the least costly. This law is always $\bar{I} = x_B + 1$ and yields

$$EU_L(\bar{I}) = -(1-\gamma)x_B$$

A.3.2.2   Possible Low-Discretion Laws

Huber and Shipan restrict their analysis to cases where $x_0 < 0$ (which implies that $x_1 < 1$) and prove a Lemma 1 which states that if $x_0 < 0$, then $x^* \in \{0, 1, \bar{I}\}$ (Huber and Shipan, 2002, pp. 246-247). Therefore, L really has to make a choice

among the most restrictive law $(x = 0)$, the least restrictive law $(x = \bar{I})$, and an intermediately restrictive law $(x = 1)$. This choice is determined by what the Politician expects the Bureaucrat to implement in the final stage.

A.3.3 Proposition 1

Huber and Shipan (2002, p. 248) present the results of this model with a three part proposition:

1. "a high-discretion law will always be adopted if there is no policy conflict (i.e., if $x_B = x_L = 0$);"

2. "a low-discretion law $(x < \bar{I})$ is adopted in equilibrium only when legislative capacity is sufficiently high (a is sufficiently small);"

3. "increases in policy conflict(increases in x_B) and decreases in the reliability of nonstatutory factors (decreases in γ) always make it easier to satisfy the conditions under which the Politician adopts a low-discretion law as opposed to a high-discretion law."

A.3.3.1 Proof

1. When $x_B = 0$, $EU_L(\bar{I}) = -(1 - \gamma)x_B = 0$. This is a dominant strategy in this case as it is the best that the Politician can do (i.e., yields the highest possible utility).

2. Given B's strategy, considered above, we see that L only chooses a low-discretion

law when a is sufficiently small. If L prefers $x = 1$ and $x_1 < 1$,

$$EU_L(x = 1) = -(1-\gamma)(1-p)x_B - (a - \frac{a}{\bar{I}}) \geq EU_L(x = \bar{I}) = -(1-\gamma)x_B \Rightarrow$$

$$a < (x_B + 1)p(1 - \gamma) \tag{A.1}$$

If L prefers $x = 0$ and $x_1 < 0$,

$$EU_L(x = 0) = -(1 - \gamma)p - a \geq EU_L(x = \bar{I}) \Rightarrow$$

$$a \leq (p - x_B)(\gamma - 1) \tag{A.2}$$

And if L prefers $x = 0$ and $x_1 > 0$,

$$EU_L(x = 0) = -(1 - \gamma)px_B - a \geq EU_L(x = \bar{I}) \Rightarrow$$

$$a \leq x_B(p - 1)(\gamma - 1) \tag{A.3}$$

3. Consider Z to be an upper bound on the parameter a that satisfies the following inequality:

$$EU_L(x^*) \geq EU_L(\bar{I}) \tag{A.4}$$

Claim 3 of the proposition requires that for A.1, A.2, and A.3, $\frac{\partial Z}{\partial x_B} > 0$ and $\frac{\partial Z}{\partial \gamma} < 0$.

For A.1:

$$\frac{\partial}{\partial x_B}\left[(x_B+1)p(1-\gamma)\right] = p(1-\gamma) > 0$$

$$\frac{\partial}{\partial \gamma}\left[(x_B+1)p(1-\gamma)\right] = p(x_B-1) < 0$$

For A.2:

$$\frac{\partial}{\partial x_B}\left[(p-x_B)(\gamma-1)\right] = (1-\gamma) > 0$$

$$\frac{\partial}{\partial \gamma}\left[(p-x_B)(\gamma-1)\right] = p-x_B < 0$$

For A.3:

$$\frac{\partial}{\partial x_B}\left[x_B(p-1)(\gamma-1)\right] = (1-p)(1-\gamma) > 0$$

$$\frac{\partial}{\partial \gamma}\left[x_B(p-1)(\gamma-1)\right] = (p-1)x_B < 0$$

APPENDIX B
OVERVIEW OF STANDARDS-BASED ACCOUNTABILITY UNDER
NO CHILD LEFT BEHIND

Taken from Stecher et al. (2008, pp.4-5):

In theory, the three components of SBA (standards, assessments, and consequences) form a coherent system that focuses on improving student achievement. Standards describe what content students should be learning and the level of mastery students should be able to demonstrate, In addition, the standards are expected to serve both as a basis for the creation of assessments and as a guide for educators' curriculum development and instruction. The assessments measure how well students have mastered the skills and knowledge contained in the standards, and aggregate test scores serve as an indicator of schools' success in making school children learn. Consequences for schools might include rewards for those whose students perform well and assistance and/or sanctions for those whose students do not. Essentially, the system creates a feedback loop that is intended to give educators the data and incentives necessary to improve educational practice and consequently increase student achievement.

SBA systems can be structured in many different ways, Under NCLB, for example, the incentives structure is multifaceted. Schools that do not meet performance expectations are first given extra support in the form of improvement planning and PD, and only later are sanctions applied. In addition, students within those schools are given options to receive supplemental tutoring or to transfer to another school. These options, while potentially beneficial to individual students, also act as indi-

rect incentives to schools and districts because of their effects on how funds must be allocated.

NCLB requires each state to create an SBA system with seven basic components:

- Academic content standards in reading, mathematics, and science indicate what students should know and be able to do.

- Annual assessments are aligned with the academic content standards in reading and mathematics in grades three through eight and once in high school and, in science, once in elementary school, once in middle school, and once in high school.

- Achievement standards for reading, mathematics, and science indicate the level of test performance that corresponds to "proficient" and other levels of performance (sometimes called performance standards).

- Annual measurable objectives (AMOs) in reading and mathematics indicate the percentage of students who are expected to be proficient each year, which increases annually until all students reach proficiency in 2014. AMOs are applied to all students (i.e., to the school and to the district as a whole) and to designed subgroups, including students from major racial and ethnic groups, low-income students, students with limited English proficiency (LEP), and students with disabilities (if each group is of sufficient size).

- There is an additional academic indicator chosen by the state. (For high schools,

this indicator must be the graduation rate, but each state can select its own indicators for other levels.)

- Adequate yearly progress (AYP) calculations for schools and districts indicate whether all students and all significant subgroups of students have reached AMOs in reading and mathematics and whether the school made progress on the additional academic indicator (a school or district makes AYP only if it meets all the requirements for all subgroups).

- There are interventions and sanctions for Title I schools and districts that do not make AYP for two or more years. After two years, the mandatory interventions include formal planning for improvement, PD, and the requirement that schools offer parents the opportunity to transfer their child to a school that is not low performing (with transportation provided). After three consecutive years of not making AYP, schools must also offer students supplemental educational services (i.e., tutoring). The interventions escalate in subsequent years to staffing changes and major governance changes, such as state takeover or reconstitution as a charter school.

As the above list demonstrates, NCLB makes significant demands on states, districts, and schools. However, the law also gives educators a great deal of flexibility in how they reach NCLB goals. Each state designs its own content standards, assessments, and performance standards. Although all students are expected to be proficient by 2014, states decide the interim targets. Perhaps most significantly, other than dictating certain interventions for failing schools, NCLB does not tell schools

how to make the achievement gains that are needed to meet escalating performance targets nor what their policies should be for subjects that are not included in the accountability computations, such as social studies, science, art, or music. The success of NCLB is therefore largely dependent on how districts and schools implement the law and what policies and strategies these entities rely on to improve student achievement.

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