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## LEGISLATIVE OVERSIGHT OF BUREAUCRACY

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# LEGISLATIVE OVERSIGHT OF BUREAUCRACY

(By Morris S. Ogul,[1] University of Pittsburgh)

Legislative oversight of bureaucracy involves some of the most complex forms of behavior that the Congress undertakes. Not surprisingly then, legislative oversight is less understood than almost any other aspect of congressional behavior. Both congressmen in interviews and scholars in their writings concede this lack of sustained insight. In this vortex of incomplete knowledge (recognizing that the best experts on congressional behavior are often congressmen) an outsider may make a contribution by looking at familiar questions from a more detached viewpoint than that of the immersed participant.

What follows is based on perspectives derived from a variety of sources, from general reading and observation of the Congress and especially from intensive research in 1965 and in 1966 into the behavior of several committees and subcommittees. Then, and since, the writer has interviewed in depth some 40 House members, an equal number of staff persons, and more than a score of lobbyists and officials in the executive branch concerned with oversight.

Statements embodying general laws about oversight are scarce. It is possible, however, to provide some useful insights into the conduct of oversight. The materials that follow may qualify under this latter heading. Oversight is defined as the behavior of legislators, individually or collectively, formally or informally, which results in an impact on bureaucratic behavior in relation to the structure and process of policy implementation.

## LEGAL EXPECTATIONS AND ACTUAL BEHAVIOR

There is a large gap between the oversight the law calls for and the oversight actually performed. The clearest single statement about the oversight that the law requires the Congress to perform comes from that often quoted and seldom heeded statement in the Legislative Reorganization Act of 1946 assigning each standing committee the responsibility 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 committee."

Members of the Congress agree that this provision provides a full and direct legal obligation to act. In addition, all those interviewed saw that obligation as an appropriate one for the Congress. In brief, there is consensus in the Congress that extensive and systematic oversight *ought* to be conducted.

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One reason for the gap between expectations and behavior lies in the nature of the expectation. The plain but seldom acknowledged fact is that this task, at least as defined above, is simply impossible to perform. No amount of congressional dedication and energy, no conceivable increase in the size of committee staffs, and even no extraordinary boost in committee budgets will enable the Congress to carry out its oversight obligations in a comprehensive and systematic manner. The job is too large for any combination of members and staff to completely master. Congressmen who feel obligated to obey the letter of the law are doomed to feelings of inadequacy and frustration and are laid open to charges of neglect. Fortunately, at least for their own morale, the members of the Congress tend to focus on the immediate more than on the impossible.

The statements above are not intended to suggest that the Congress ignores the oversight function but rather that it performs it selectively. In fact, the Congress oversees formally and informally in many ways on a daily basis. The most visible and perhaps the most effective way is through the appropriations process; the most unnoticed is latently as it considers authorizations, performs casework, and goes about business not directly labeled as oversight.

The remaining part of the gap between expectations and behavior narrows as one considers why congressmen act as they do. Two topics will be given central attention: the multiple priorities of the members of the Congress, and the impact of their policy preferences on their behavior. A discussion of these topics will reveal that there are sound reasons for this gap to exist and that most members do not really mind too much that the gap is as large as it is. Hence, their lack of willingness to do much about it.

## MULTIPLE PRIORITIES

Although they seldom seem to articulate it, most members do seem to realize that the performance of oversight is best discussed not in the vacuum of legal expectations but in the more proximate context of multiple priorities and policy preferences. Each member is faced with a variety of obligations that are generally agreed to be legitimate, important, and demanding in time and energy. In principle, he should be working hard at all of them. In fact, since he does not weigh them equally, he is unlikely to give them equal attention.

When any action is perceived to contribute directly and substantially to political survival as well as to other legitimate functions, it is likely to move toward the top of any member's priority list. Extra incentives to oversee come from problems of direct concern to one's constituents or from issues that promise political visibility or organizational support. Conversely, problems not seen as closely related to political survival are more difficult to crowd onto the member's schedule. In the choice phrase of one member: "Our schedules are full, but flexible".

Not all congressional activity is linked directly to political survival. A congressman seems to gain interest in pushing oversight efforts onto his active calendar under the following conditions: new executive requests are forthcoming calling for massive new expenditures or substantial new authorizations in controversial policy areas; a crisis has occurred that has not been met effectively by executive departments; the opposition political party is in control of the executive branch; he

has not been treated well either in the realm of personal attention or in the servicing of his requests; he has modest confidence in the administrative capacity of departmental or agency leaders. If key members have confidence in the way that executive department leaders are running their programs, pressure for oversight eases. Comparing the experience of two former heads of the now defunct Post Office Department is instructive. Because most members of the House Post Office and Civil Service Committee had great respect for Postmaster General Lawrence O'Brien, their willingness to give him wide latitude to run his department was immense. Because these same members lacked such confidence in John Gronouski, they probed somewhat more carefully into the affairs of the Post Office Department when he ran it. At issue was not comparative executive competence, but congressional perceptions about that competence.

In making his choices about what to do, each congressman applies his own standards of relevance; all will be doing those things that they consider most important to them at that time. Problems seen as less pressing may be recognized but may remain untouched. In these calculations, oversight frequently falls into the semineglected category. Choice, not accident, governs this decision.

If one judges from the behavior of congressmen rather than from their words alone, the conclusion seems clear that in oversight as in other congressional activities, selection and choice among worthy tasks is always necessary. Absolute mandates, even if accepted as desirable, will be obeyed only in relative terms. The price of effective action in one area may be the neglect of another.

Members of the Congress, like most other people, manage to compartmentalize their various beliefs and behaviors. Even in the face of continuing imperfect performance, congressmen retain their belief in the desirability of doing a good job at oversight. Yet, concurrently, many members seem comfortable while not doing much to narrow the gap between expectations about oversight and the actual performance of it. One might reasonably conclude then that the main spurs to the conduct of oversight do not come from any abstract belief about its necessity or desirability, but from other sources.

Congressmen through their actions implicitly rank their priorities. A glance at the rules that many seem to use provides some help in trying to understand oversight.

All members have many tasks that they feel should be pursued. The finite limits set by time and energy require that some of these expectations will be met more fully than others. If there is widespread agreement about the contents of a list of high priority tasks, there is less consensus on the relative ranking of them. Only a few things are known about why members choose to give primary attention to some activities and less to others. Even if we can presume that the omnipresent desire to survive politically serves as a major inspiration, still, member selection of other priorities remains a murky area of political analysis.

Because these factors change, the interests of each congressman in oversight will wax and wane despite his continuing adherence to the notion that oversight is an important function for the Congress to be performing.

## POLICY PREFERENCES

Examining the policy preferences of members of the Congress moves us toward a more adequate explanation of the gap between expectations and behavior. From interviews and observation, I conclude that congressmen are seldom anxious to monitor those executive activities of which they approve. Oversight efforts to support administrative programs are the exception. A member essentially indifferent to a program is not likely to press for oversight efforts. One of the most important pressures to oversee flows from disagreements on policies, especially those that are of intense concern to the member. The words of members express the abstract desire to oversee; it is when that desire combines with policy disagreement that oversight is more likely to ensue.

A classic example is the experience of the House Judiciary Committee in 1965 and 1966 with civil rights issues relating to race relations. This Committee was an able group vitally interested in civil rights policy-making and administration. Emanuel Celler ran the committee as a strong chairman. Superficially, the Committee was conducting almost no oversight activity on questions of civil rights. What was strange was that the civil rights concerns of the Committee were known to be strong and deep. Several not so obvious factors helped to explain the situation. First, the Committee Chairman felt that he was having an impact on the activities of the Justice Department through informal consultation. Second, the chairman agreed in essence with what the Justice Department was doing and thus had no desire to interfere. Third, in the judgment of Chairman Celler, the net effect of any formal investigations would be harmful to the cause of civil rights since anti-rights forces might find the forum useful to articulate and publicize their views. In this case, the absence of formal oversight could be explained by a simple formula: when policy interests and the obligation to oversee clash, policy preferences will normally prevail as a guide to conduct.

The discussion thus far of member priorities, choices, and policy preferences concerns each member. The fact is that in oversight efforts, as in other activities, all congressmen are not equal. So even an intense desire to oversee, clearly a rarity in the Congress, depends for its fruition on factors other than the individual member's wants. The ability to oversee depends on where one is situated in the legislative process. Individual members, on their own, conduct very little oversight. For reasons of authority, money, and staff, oversight efforts are centered in the standing committees and subcommittees. Where one is placed in the committee system becomes a vital element in translating desires into effective action. A brief look at committees and their oversight activity is thus warranted.

## COMMITTEES AND OVERSIGHT

One key to understanding oversight can be discovered by examining those places in the Congress where the division of labor and specialization can most easily be found, the committees and subcommittees. Members individually rarely can expect to conduct much legislative oversight. A comment later in the paper will indicate how even individual members can partially overcome this limitation. The heart of

legislative oversight lies in the committees and subcommittees. How and why these units function as they do will tell us a great deal about how legislative oversight is performed. How the committees function is related to their structures for decision-making.

Perhaps the most effective means to enhance a committee's oversight performance is through the presence of an alert, shrewd, active chairman who wants to conduct oversight broad in scope and profound in depth. Most reforms pale in significance before this seemingly simple solution. No one, of course, really knows how to pretest prospective chairmen for these talents and interests. Nor is it clear that the members would want to pick their chairman on the basis of these criteria even if they could. The best practical bet seems to be to assume that a list of committee chairmen and subcommittee chairmen will include a few who are intensely interested in oversight and highly talented in pursuing it and a larger number who are less keen and less talented.

Assuming some such mix of committee chairmen, is there any way to enhance the oversight efforts of those committees headed by chairmen whose appetites and talents for oversight are unimpressive? At least one suggestion merits discussion. The odds for active oversight are better, in the absence of an eager chairman, if there are some semi-autonomous subcommittees with established jurisdictions, budgets, and staffs. The objective is to create additional fields in which ambition may flower. Visibility and ambition are as effective stimulants for subcommittee chairmen as for any other members. An active subcommittee within a quiescent full committee is not an unknown phenomenon in the Congress.

Innovation always has its price. The flexibility of the full committee chairman, his personal power, and perhaps even committee efficiency could possibly suffer. Whether enhancing the prospects for oversight may be worth these costs has to be decided by the congressmen themselves.

What promotes the personal power of the chairman is not necessarily good for committee oversight efforts. Fixed subcommittee jurisdictions may indeed remove some flexibility from the full committee chairman, but the price may be right: promoting the competence prerequisite to oversight activity. Numbered subcommittees without fixed jurisdictions may impede the development of expertise. Besides, from an odds maker's perspective, the presence of several subcommittee chairmen with defined jurisdictions, separate staffs, and separate budgets, increases the field from which an interest in oversight may emerge. This analysis does not ignore the problems that may arise in some decentralized communities, but merely adds another weight to the scales.

Committee leaders may not dominate all committee behavior, but they do control much of it. What they are willing to do is central. Of course, committee members may press committee leaders to act. One type of situation minimizes the likelihood of member pressure for leadership action: where the members of a committee are there involuntarily. Members view some committee assignments as highly desirable; other assignments are viewed as burdens to be endured. Members appointed to unsought committees frequently transfer to

more satisfactory assignments as soon as they can muster sufficient seniority. Given the normal problems in allotting their time and energy, we can expect that few members who see their assignments as undesirable are likely to exert maximum effort on such committees. Some oversight behavior, or the lack of it, is explainable in part by the priority that members assign to their work on a particular committee. In low status committees, those few members who choose to remain probably do so for reasons unrelated to any desire to actively pursue oversight.

## SOME GRIST FOR CONTEMPLATION AND DISCUSSION

### *Four Myths About Oversight*

Perhaps the first necessity in thinking more generally about oversight is to suggest that some widely held and deeply cherished ideas are myths. The first of these is that the Congress lacks sufficient authority to oversee properly. In fact, one can argue that the Congress has all of the authority that it needs to oversee much more extensively and effectively.

A second myth holds that the Congress lacks the budget to oversee effectively. With few exceptions, committees have the money that they need even if they wish to sharply augment their oversight efforts. One can uncover, of course, some relatively deprived committees or subcommittees, but these are the exceptions.

A third cherished belief states that the answer to how to improve oversight efforts is more staff. This answer might hold in a few cases, but not generally. Committee staff persons are hired to satisfy a variety of needs. If committee chairmen choose to take on staff exclusively for subject-matter competence, research skills, and investigative talents, they can quickly improve the prospects for oversight. But even then, staff behavior is largely a function of member preferences. A chairman passive about oversight is unlikely to have staff persons, however talented, who view oversight as a high priority. With a few conspicuous exceptions, staff behavior is more a function of member preferences than a determinant of them.

The Legislative Reorganization Act of 1970 spelled out some relationships between the Congress, its committees, and the GAO. The actual impact of the GAO on legislative oversight would be an intriguing study in itself. Such an analysis might well suggest useful paths in a rethinking of how the oversight function is performed.

Legal authority, staff, and money are all important prerequisites to congressional action, but none of these are grossly lacking now. Genuflections before the trilogy of authority, money, and staff do not reach the basic problems.

In my judgment, a fourth myth about oversight is that members of the Congress and their staffs lack the experience, training, intelligence, or creativity to conduct more and better oversight. To put it more bluntly, some critics charge that the members and their staff simply lack the competence, defined broadly in the terms just mentioned, to do the necessary work. One can unearth situations where members lack the competence needed for specific tasks, but one finds little evidence to support the proposition that these deficiencies are universal or, when found, that normally they are beyond remedy. As has been demon-

stated in actual performance, useful oversight is practicable in the Congress. Deficiencies in competence in specific circumstances can frequently be remedied if the committees or subcommittees desire to do so.

It is true that even talented generalists (viz., the members of the Congress) can be intimidated by mountains of data, by exotic or technical vocabularies, or by arcane analyses. It is also true that some technical experts at times seem to relish prolix analyses presented in nearly incomprehensive language. The expert may indeed understand that obfuscation is his first line of defense. But legislators and their staffs are predestined neither to succumb nor to be deceived. Effective legislative oversight does not require that all members and all staff persons be competent in all aspects of public policy. If that were necessary the task indeed would be hopeless. The dual practices of division of labor and specialization provide the classical solution to this problem.

## SOME SUMMARY PROPOSITIONS

1. Oversight is neither comprehensive nor systematic because that goal is beyond achievement.

2. Oversight is performed intermittently because the factors most relevant to stimulating it are not constantly present. Thus the quality and quantity of oversight varies between the two branches of the Congress, among the committees and subcommittees within each house, and in the same committees and subcommittees from session to session and from issue to issue.

3. It is not too difficult to produce a syndrome of factors which tend to maximize the possibilities for effective oversight. The elements might be; there is a legal basis for committee activity and there is an adequate budget for it; adequate staff resources, defined in terms of numbers, skills, and attitudes are present; the subject matter is not unusually complex or technical; the issue involved has high political visibility; the committee with relevant jurisdiction is decentralized in structure unless the chairman is a strong advocate of oversight in the given area; key committee members are unhappy with their treatment by executive personnel; key committee members lack confidence in top executive personnel; committee senior members harbor personal antipathy toward executive officials; the executive proposes vast changes in existing programs; committee control rests in the political party opposite to that of the President.

The ease of creating such a list obscures the more difficult problem of assigning weights to each element and to predicting the possible consequences of its presence or absence. Perhaps that is because the primary elements of explanation may well vary from case to case. There seems to be no single pattern which explains legislative oversight in all circumstances. There are only common factors which combine in different ways under specified sets of circumstances. Moreover, even casual inspection of congressional behavior suggests that all the conditions which are part of this syndrome are rarely present simultaneously.

4. Oversight is not a high priority much of the time for most members.

5. Congressional staff behavior is primarily determined by member priorities and policy preferences. The best way to alter staff behavior is to focus on its major determinant.

6. A sense of realism demands recognition of the fact that most members are relatively satisfied with the conduct of legislative oversight of the bureaucracy. They feel little stimulus to alter existing patterns.

## SOME PROPOSALS PERHAPS WORTHY OF DISCUSSION

*1. Casework and oversight.*

For very fundamental reasons, most oversight activity will come from congressmen acting not as individuals, but as members of committees and subcommittees. But congressmen acting as individuals in their own offices can do something that most do not do now. Priorities are basic. Most members now view the mountains of casework processed in their offices simply as service for constituents. Members could instruct their caseworkers to be more alert to the patterns of problems revealed in cases so that this information could be passed on to the appropriate committees and subcommittees. Congressmen collect routinely a mother lode of information potentially useful for oversight. Members either have not understood the value of what they have or have not cared enough to order the modest effort that would make this information more useful.

*2. Committee structure and oversight.*

Committees that are serious about improving their potential for oversight should carefully examine their subcommittee structure to see if more autonomy might be provided.

*3. Recognition of the full dimensions of oversight.*

Much oversight that now occurs in the Congress is not recognized. Because a session is called a legislative hearing, or because processing of constituent complaints is called casework does not mean that these activities are unrelated to oversight. Oversight should be viewed from a broader perspective than that of formal investigations.

*4. Are oversight subcommittees worthwhile?*

Perhaps the most obvious step taken by a few standing committees to enhance their oversight efforts has been to create specific oversight subcommittees. To my knowledge, no one has systematically or intensively looked at whether having such subcommittees makes any appreciable difference in the conduct of oversight. Here is a structural solution which one could suspect has not had any great impact. But nobody knows for sure. The topic does deserve attention.

## A FINAL NOTE

The standard answer to improving the conduct of the congressional oversight function usually seems to be: elect smarter people to the Congress, make them work harder, and give them bigger staffs. After extensive observation of the Congress at work, it seems to me that most members have the talent necessary to perform their jobs well; many congressmen probably cannot work much harder than they do now, although they can change what they do if they want to; few congressmen argue that increasing staff size would have any significant impact on the conduct of oversight. Apparently, those members who publicly proclaim the general virtue of having more staff seemingly do not have the improvement of oversight specifically in mind.

Surely a more accurate answer than the standard one (although still not a fully satisfactory one) might be: if more and better oversight is to be achieved, members need to alter their priorities for allocation of their time and they need to insist on *better* staffs. In practice, how to achieve either of these objectives is far from obvious.

The idea that no problem, given human effort and enough money, is beyond solution stands at the center of the American ethos. As a goad to improve things, this view may have great utility; as an observation about reality, it may be sadly defective. If the goal is to increase the quantity of oversight and to improve its quality, one needs to look at underlying causes. From this perspective, structural changes in the Congress, by themselves, are unlikely to do the job. The basic limits to more adequate oversight seem to me to lie not in defective structures but peripherally in excessive expectations and centrally in an imperfect will to act. The latter comment necessarily implies neither a general criticism nor a weakness. Congressmen do what they do and slight what they slight for reasons that seem persuasive to them. In the words of an astute Senate staff member discussing staff behavior on oversight matters:

> Specialists in departmental interference must judge both the merits of the case and the costs in time, effort, and their own or the congressman's "credit" with the agency, of attempting to achieve a given solution.

In other words, reality is complex. The bases for choice are many. Balancing reasonable requests for time and action is central. Most congressmen feel that they can justify much of what they do in terms that their constituents would find quite acceptable. Most staff members feel that what they are doing is what their employers, the members of Congress, want them to do. Merely telling members or staff persons to do something else is just not much help. The incentives for conducting more intensive and extensive oversight are great in the abstract and yet are modest in most concrete situations. Any analysis of legislative oversight has to be grounded in these stern facts.

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