

The Varying Roles Played by Legislatures in Civil-Military Relations:  
Global Comparisons

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Abstract:

Democracies vary quite widely in how involved legislatures are in civil-military relations. One might expect that oversight in military matters is a fundamental part of any legislature's business, but observation suggests that there is much variation in effort and in effects. In the course of studying the Afghanistan mission, it became clear not only that some legislatures have much power in restricting the discretion of the commanders, but that some legislatures are largely ignorant about what their militaries are doing. We seek to compare different kinds of democracies to see how much of the variation is institutional—Presidential versus British-style versus Continental. We also seek to compare within categories to assess the variations that might be due to learning, to public expectations, to partisanship, and to party discipline. Along the way, we clarify what we mean by oversight as well as our proposed methodology.

This paper is the starting point for a project that seeks to understand the impact of legislatures on civil-military relations. The responsibilities and authorities vary among the world's democracies, yet there has been very little work that has compared the capacities of legislatures to engage in oversight nor their efforts to use such capacities nor the actual impact such effort may have. To be sure, there has been plenty of work considering how the U.S. Congress oversees the American military, and there has been much work of late to assess how European parliaments vary in their impact on their respective militaries. Yet key gaps remain. The purpose of this paper is identify these gaps and suggest hypotheses that ought to be considered more seriously.

Our focus is mostly on defence committees within the legislatures of contemporary democracies, whether they have adequate information to engage in oversight, whether they use the powers they have to engage in oversight, and the impact this has on the militaries they oversee. We seek to examine the variations that exist across various types of democracies (Westminster, Presidential, Continental) as well as within each category.

The paper proceeds by considering how civilian control of the military is conventionally conceived, focusing on the executive branch. The paper then uses principal-agent theory to address the central role of information that shapes the roles played by legislators. We then consider some hypotheses that might affect the performance of oversight. The next step is to consider the effects of oversight—how do militaries feel the impact of the legislative spotlight? We then conclude by discussing our research design.

## Legislatures and Militaries

The question of legislatures and their interactions with militaries is important because civilian control of the military is fundamental, but often taken for granted, in liberal democracies (Avant 1994; Choi and James 2005; Desch 1999; Diamond and Plattner 1996; Feaver 1992, 1999, 2003; Huntington 1957; Schiff 2008). Advanced democracies (and their scholars) no longer focus as much on the problem of coups<sup>1</sup>—the classical problem of civil-military relations—but on how to make sure their militaries perform efficiently and effectively within the bounds set by the civilians. When we speak of civilian control, there is a tendency to focus on the executive branch—the Prime Minister or President, the Ministers or Secretaries of Defence and those beneath them, but it can and does refer to legislators and legislative bodies as well. However, there is significant variation in how much of a role the legislative branch of government plays in such processes.

Why is this important? At least three reasons stand out. First, Prime Ministers and Presidents may be tempted to use the military secretly and without proper scrutiny. Indeed, democracies have devoted more resources since 2001 on Special Operations Forces (Delta Force, SEALs, Joint Task Force 2, Special Air Service, etc.). While there may be good reasons to engage in the clandestine use of force, one motivation may be to evade oversight and accountability. If legislatures are not empowered and interested in overseeing the military, then executives may have too free of a hand and engage in irresponsible behavior that cost lives and lead their states into conflicts without adequate debate or transparency.

Second, if oversight is strictly in the hands of the executive, there may be a temptation to deny any problems that may exist since they might be held responsible for the actions of their subordinates. This flips the conventional wisdom on its head—that having two overseers (executive and legislative) may give the military opportunities to play each against the other (Avant 1994). For instance, the story

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<sup>1</sup> To be clear, coups are still relevant in the world today, as Arab Spring demonstrated quite clearly, and there is still much work being done on coups and their consequences.

in Canada has been one of constant denial, even when addressing mild problems might help to prevent much bigger challenges from arising (Saideman, forthcoming).<sup>2</sup> Efforts by the parliamentarians to get access to information about the treatment of detainees in Afghanistan turned into a nearly endless saga that produced much smoke, little fire and not much insight.

Third, legislatures exist for a reason—to hold executive branches accountable. Indeed, when legislatures are left out of the process or are otherwise irrelevant, the phrase “democratic deficit” tends to be applied (Born and Hänggi. 2004). Legislatures are seen as the most representative branch of any democracy with the most direct connection to the citizens. While legislators have many jobs, representing the people is an essential one. Given the enormity of the stakes in military affairs—life and death, victory and defeat, taxes, even social advancement—it would seem most strange for modern democracies to have legislatures be involved in all areas of governance except this one.

Both in the scholarly literature in and debates in national capitals, the focus has been on decisions to send troops abroad. In the U.S. there is the enduring controversy in the U.S. over the War Powers Resolution (Howell and Pevehouse 2011; Grimm 2010; Zeisberg 2013). In Europe, much effort has been made to document the powers of the various parliaments in blocking potential deployments (Born and Uscheler 2004; Bono 2005; Born and Hänggi 2005). Most recently, the British parliament challenged existing understandings of its role in deployment decisions by voting against military action in Syria in 2013.

### ***The Problem of Oversight***

This focus has tended to crowd out examinations of how legislatures oversee operations once they are launched. During the Afghanistan mission, the limits of the Canadian Parliament's oversight over the military came into sharp relief. When members of Parliament (MPs) from the opposition sought information about the handling of detainees, the executive resisted; and, in the end, a compromise was reached that largely benefited the executive (Gionet 2009; Brewster 2011). In my interviews with MPs for a book on NATO and Afghanistan (Auerswald and Saideman 2014), I learned that members of the defence committee do not have security clearances, which complicated efforts to secure documents related to the detainees. This contrasts quite sharply with the U.S. Congress, where the House and Senate Armed Services committees have greater authority to ask questions about sensitive subjects, meet behind closed doors, and compel members of the military to testify. In subsequent conversations with Canadian parliamentarians, it seemed that MPs would rather speak out loudly about what the government and military might be doing wrong but with very little information, rather than being more discreet but with greater information about the activities of the executive and armed forces. They argued that their job is not to directly oversee the armed forces but to hold the Minister of National Defence accountable for Canada's defence affairs. This is problematic as it is unclear how one holds someone accountable for behavior that is unobservable. Still, the difficult choice of “ignorant critic” vs. “informed overseer” is a real one, and we currently do not know why parliamentarians prefer one path or the other nor do we know which form is better for civilian control of the military.

Principal-agent theory puts information asymmetries at the heart of the problem of oversight (Calvert et al. 1989; Moe 1984). The basic idea is that when a person or firm or entity is hired to do a task (the agent), the one that is hired will ultimately know more about the task and how it is performed than the one doing the hiring (the principal). This raises the threat of opportunism—that the agent may do more or less than what the principal desires (Epstein and O'Halloran 1999; Kiewiet and McCubbins 1991). Canadian Forces have tended to follow their preferences and not the Prime Ministers' (Jockel

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<sup>2</sup> For a preview of that argument, see <http://www.theglobeandmail.com/globe-debate/the-canadian-forces-have-a-dangerous-habit-of-denial/article7353925/>.

1987, 2007). To address this challenge, the principal must engage in oversight to monitor the agent and provide incentives for the agent to stay within the intent of the principal.

The problem of oversight is particularly acute when it comes to militaries. First, the risks are quite significant, as lives are often at stake, and failure in the field can pose threats to the careers of politicians back home (Chiozza and Goemans 2004). Second, war, peacekeeping and other military operations are quite complex and require significant expertise to evaluate. The number of legislators with military experience in the US, Canada and other democracies has been declining from its heights after World War II era, so expertise about military affairs is in short supply among legislators (Gelpi and Feaver 2002; Bianco and Markham 2001). Third, unlike most other government agencies, militaries require secrecy, as countries need to keep the military's capabilities, plans, and even operations secret to give it an advantage over potential and existing adversaries. This makes ordinary oversight quite difficult because open discussion during Question Period could potentially harm soldiers in the field.

Principal-agent theory is useful for identifying this problem and clarifying the consequences of choosing different sorts of oversight schemes. The classic analogy is that of police patrols versus fire alarms (McCubbins and Schwartz 1984). In the former, much time and effort is spent attempting to directly monitor the agents. Fielding large police force to walk a beat and patrol in cars ensures compliance with the law via both deterring potential violators and catching them in the act. Fire alarms are a more passive form of oversight, as the overseers do not act until someone signals that there is a problem requiring intervention. This costs far less money but means that violations have to occur before action is taken. In the conventional understanding, the fire alarm role is usually played by the media which alerts the legislature to a problem. Legislators are quite busy with the other duties they have, so they may not be interested in time-consuming oversight. They are likely to rely then on fire alarm-style oversight, but this is problematic when the agent involved, the military, relies so heavily on secrecy.

In the U.S., Congress has delegated to its Armed Services Committees (and others) responsibility for overseeing the military. The members of these committees and their staffs have security clearances so that they can see documents and hold closed sessions so that they can ask sensitive questions. While Canada's defence committees can hold closed sessions, they do so rarely and are poorly prepared since they do not have access to classified documents. This has been identified as a serious short-coming in the Canadian civil-military relations literature (Bland and Rempel 2004; Lagassé 2010).

### ***Defining the Dependent Variable of Oversight***

There is much confusion when we speak of oversight, as there is much confusion between accountability and oversight. In Canada, parliamentarians say that their job is not to do oversight over the military but to hold the ministers to account. That can be quite confusing, but it generally means that they see their job not as improving the performance of the agents (the military) but in imposing costs on the politicians in power. For our project, we are very much focused on the more traditional notion of oversight: are the agents doing what they have been told to do? We stick to the principal-agent idea that oversight is aimed to prevent/correct/address agency loss—that government agents may not behave as intended by their bosses. This allows us to focus on outputs and outcomes—what are legislatures doing and what impact are they having—and saves us from falling into the normative traps of thinking about what is appropriate, too little or too much. We hope the project does eventually speak to the big questions of what legislators should do, but we need to get the analytical project structured right first.

We focus on both outputs and outcomes. That is, we can measure oversight efforts most easily, and there is likely to be much interesting variation to explain. How many times does a committee spend on overseeing the military? What kind of attendance is normal at such meetings? What kind of staff is involved? Who provides testimony? Do legislators and staff have security clearances? How often are meetings held in public? In camera (behind closed doors)? We should be able to develop comparisons to establish which legislatures are more active and informed and which ones are more passive.

Outcomes will be harder to measure. It requires a sense of whether a military is acting within the intent of its principals or not and whether its behavior is related to the activities of the legislature. One measure would be legislation—that a legislature passes laws to narrow the discretion of a military that may not have anticipated what is correct behavior. As noted below, we focus on procurement, deployments and operations (mostly detention). Are militaries doing what legislators expect or are the legislators surprised, which leads to new hearings? Since much of the power of oversight is creating a sense that shirking and other forms of agency loss will be detected and investigated, we will need to talk to military officers to see if this anticipation exists and matters. As always, it is easier to measure outputs than outcomes.

### ***Variations Among Democracies***

This research project seeks to understand why this is the case. The obvious answer is that different sorts of democracies vary in how trusting they are of their executives. The United States was founded on the basis of distrust of the government, and its constitution deliberately separates power so that the executive, legislative and judicial branches check and balance each other. In **Presidential** systems, with the U.S. as just the most obvious example, the legislature is charged with overseeing executive agencies. In **Westminster** systems, the Prime Minister and the Cabinet govern in the name of the Crown as the executive power, and the system assumes that those powers will be used responsibly and in the public interest, and that the House of Commons will withdraw its confidence in the governing ministry if not. Parliamentarians hold ministers accountable by questioning them in committee and during Question Period, forcing the executive to defend its policies and the activities of government agencies. This requires far less time, expertise, and information than what the American system needs to function. However, to be clear, not all parliaments are the same, as **Continental parliaments** do more than hold ministers accountable—they conduct oversight via defence committees with closed hearings and access to classified materials.<sup>3</sup>

Our research aims to investigate democracies in all three categories (Presidential, Westminster, Continental) to understand the variation across the advanced democracies.<sup>4</sup> While there has been extensive efforts to understand oversight and accountability in one Presidential system (Feaver 2003; Bruneau 2006; Howell and Pevehouse 2011; Lindsay 1990; Ostrom and Job 1986.), some work on accountability in Westminster systems (Byers 1972; Bland and Rempel 2004; Berrington 2008; Lagassé 2010; Payne 2008), and some comparisons of European democracies (Barbé and Herranz 2005; Bono 2005; Born 2006; Born et al. 2007; Born and Hänggi 2004; Jancic 2011), there is very little work comparing legislative oversight across the categories of democracies. This is important because the possibilities to reform any system are limited by the lack of understanding of the alternatives.

Our first hypotheses, then, focus on the cross-system variation. We expect the most intrusive, the most consistent oversight to be by Continental democracies. In such systems, coalitions are the norm, which means that both in cabinet and on defense committees, multiple parties both in and out of government are involved in oversight. Not only is there simply a frequency logic operating—that the more parties involved, the more likely it is for at least one to take oversight seriously—but a competitive logic as well. In such circumstances, multiple parties compete to be seen as serious stewards of public policy, with partisanship having a less negative impact than in Presidential systems.

This might seem counter-intuitive as Presidential systems are designed to be adversarial—that the different branches compete to check and balance each other, with oversight being a key instrument by which the legislative branch can manage the executive branch. The problem is that Presidential

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<sup>3</sup> Interviews with Danish, Dutch, and German parliamentarians, 2009-2010.

<sup>4</sup> The scope of the project is limited to stable democracies. In authoritarian and semi-democratic regimes, rules are far less binding.

systems often have majorities in the legislature, which means that the committees are run by those who may have an interest in protecting the government. This might suggest that Presidents facing legislatures dominated by the opposition might face more strenuous oversight, but this raises a question about oversight. Oversight may lose legitimacy and its power if it is seen as pure partisanship. In the American case of late, the Republican effort to put Benghazi at the top of the agenda makes it appear that it is not so much about oversight and more about grandstanding. Partisanship can, thus, weaken oversight, as legislative hearings focus less on investigating potential wrongdoing and more on blame-casting. The line here can be a bit thin, but purely partisan criticisms can be beaten back more easily than when members of one's own party are critical. We examine partisanship and party discipline more fully when we consider intra-system variation, but the point here is that Presidential systems are likely to vary a great deal, depending on the parties holding the Presidency and the key legislative committees whereas Continental systems are more likely to be more consistent in engaging in oversight.

On the other hand, we should always expect Westminster systems to engage in less oversight. The consensus on British-style parliamentary systems, at least until recently, has been that Prime Ministers are more powerful and less restrained than Presidents (Cox 1987; Auerswald 1999; Auerswald 2000; Auerswald 2004; Auerswald and Cowhey 1997). Party discipline means that any government having a majority of seats has comparatively little to worry about from the committees in parliament. Indeed, as mentioned above, this project was initiated upon the realization of how ignorant Canadian members of parliament have been and how acceptant they are of their ignorance. Perhaps this is not typical of all Westminster systems as Australia's senators<sup>5</sup> and Great Britain's parliamentarians have examined more seriously their constraints and have engaged in efforts to reform the institutions to give them more ability to engage in oversight (Franks 1987). New Zealand MPs seem to rely on the small size of the population to gain access to the information they need, as they tend to know someone involved in any government effort.<sup>6</sup> South Africa will serve as an important comparison given its modification to the Westminster model and its active military presence in Sub-Saharan Africa.

Our key hypothesis here is that in general that oversight will be more frequent, more intense and have a greater impact in Continental systems than in Presidential ones, and both more so than in Westminster systems.

### ***Variation Within Categories of Democracies***

Principal-agent theory sets up the framework for the analysis—the problem of oversight—but it does not answer the question of why some principals seek to engage in more energetic oversight than others. In our previous work (Auerswald and Saideman 2014), theorizing about institutions (Tsebelis 2002) and parties produced testable hypotheses. The variations in institutions help to account for the differences between Presidential, Westminster and Continental systems, but may not be as useful for understanding the within-category variations. Below, we develop hypotheses aimed at capturing the within-category variation.<sup>7</sup>

First, just as the military is viewed as an agent of the executive, legislators are agents of voters, who delegate to the legislators the job of overseeing the military (among other responsibilities). So, we expect *greater oversight where publics expect and demand it* (Lupia and McCubbins 2000). We will examine the histories of reform efforts and ask experts and parliamentarians about public pressure to

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<sup>5</sup> Interviews with Australian senators, March 2010, Canberra, Australia.

<sup>6</sup> Interviews with New Zealand members of parliament, March 2010, Wellington, New Zealand.

<sup>7</sup> Some might expect international forces to matter greatly as domestic audiences respond to alliance pressures. Our book (Auerswald and Saideman 2014) addresses this question quite directly, and finds that domestic dynamics matter far more than external pressures for how countries engage in oversight.

engage in oversight.<sup>8</sup> Second, oversight is a dynamic process where both principals and agents react and learn from the behaviour of the other (Lupia and McCubbins 1994). *Legislators that have been burned by military failure are more likely to engage in oversight* than where a country's armed forces have either not been active in foreign deployments or have not engaged in problematic behaviour (Levy 1994). Because oversight is dynamic and interactive, oversight is more likely to be intrusive the more secretive a military tries to be. To address the learning hypotheses, we plan to interview legislators that serve on defence committees and study the recent legislative histories to see if public accounts of oversight demonstrate the expected reactive process. We also will interview military officers (retired and active) to get their side of this interactive learning process.

Third, *partisanship may influence the quality of oversight* (Ott 2003; Fox and Van Weelden 2010; Kaiser 1977). Among institutions, we may find that Westminster systems perform the worst because the parties are pitted against one another as the government or the opposition (Smith 2013), which may reduce committee meetings to accusations and defenses rather than serious investigations. The grandstanding in the U.S. Congress over Benghazi illustrates how partisanship can affect oversight. It may be the case that party loyalty varies among systems, so that individuals on key committees may choose to take their own party's representatives to task. Within categories, we may find that partisanship varies over time, so that oversight declines when parties use committees to compete for votes and denigrate the other and that oversight increases when legislators use committees to exert legislative authority in its competition with the executive (Blidook 2008). The comparisons will allow us to test for variations in partisanship and see if they impact oversight. We plan to build on existing work that develops measures for partisanship (Cox and Poole 2008).

Fourth, institutions, including those governing oversight, develop logics of their own, that make learning and adaptation difficult. *Historical institutional structures impose a degree of path dependency* on how legislators oversee the armed forces in their respective countries. Institutional structures tend to slow the pace of change and constrain actors, preventing novel ways of pursuing an objective from being applied or implemented (Thelen 1999; Steinmo 2008). In the case of legislative oversight of armed forces, this suggests that constitutional structures and long-standing practices are likely to significantly influence the extent to which legislators are able to improve their ability to oversee the armed forces in different states. We expect to find that in Westminster countries, the ability of MPs to undertake a more rigorous form of oversight over the armed forces may be constrained by the conventions of responsible government and the military's foremost service to the executive instead of Parliament (Lagassé 2010). History may be less constraining in Presidential systems where the executive and legislative branches fiercely protect their powers. Moreover, we expect more adaptation and reforms in oversight to take place in younger democracies (Argentina, Brazil, Chile, South Africa, South Korea). Again, interviews and a study of recent history will be used to investigate this hypothesis.

## The Perceived Impact of Oversight

One of the problems in the study of oversight is the tendency to focus only on the overseers and not those being overseen. Studies of legislative oversight of militaries rarely investigate the objects of oversight and consider how they react to the oversight efforts. Despite the fact that oversight is a relationship, much scholarship only addresses the principals and not the agents. In the discussion with the Canadian parliamentarians, the choice of being an ignorant but loud critic versus an informed but quiet overseer completely missed the question of which approach causes the military to become a better agent.

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<sup>8</sup> We have considered conducting surveys, but doing so in most of the countries would be very costly, and it would be challenging to produce compatible surveys among the cases. We will utilize existing polls as much as possible.

So, do officers across the democracies vary in how they experience oversight? Do the overseen differ in how they respond to similar efforts to monitor them? This gets to the second half of our question—the effects of oversight. The manner and degree to which the military adjusts its behavior to meet the expectations or avoid criticism from legislators will be indicative of how successfully various legislatures contribute to controlling their national militaries.

## Methodology

The primary methodology is a series of structured focused comparisons (Bennett and George 1997; George 1979; George and McKeown 1985). It builds on a previous study (Auerswald and Saideman 2014) that compared nine democracies and how they controlled their militaries in Afghanistan. In that book and in this study, the idea is to compare countries that share key institutional characteristics to ascertain how much of their behavior is driven by institutions and how much by other factors. In the book, we focused mostly on the executive branch, whereas here we focus on the legislative branch.

By comparing across categories, we can see how different institutions operate. We intend to build on our case selection from our previous project that studied the US and France (Presidential cases), the United Kingdom, Canada, Australia and New Zealand (Westminster cases), and Denmark, Germany and the Netherlands (Continental parliaments). In this study, we plan to add several more cases to ascertain how the dynamics we seek to capture apply beyond those states operating in Afghanistan. We plan to add South Africa to the Westminster cases, several Latin American countries (Argentina, Brazil, Chile) and South Korea to the Presidential cases, and Japan to the Continental cases. This gives us greater variation within each category. The more cases we have within each category, the better we can understand how much behavior is driven by institutions (due to the type of democracy) and how much by public pressures, partisanship, learning and history.

The expansion of cases also allows us to consider younger democracies with more troublesome histories of civilian-military relations, particularly the Latin American cases where military rule and coups (first generation civil-military relations concerns) are still within people's memories. Again, the primary purpose of the selection of cases is to vary the basic institutional frameworks to understand the variations among and within the different kinds of democracies. We will supplement these in-depth case studies with mini-cases that examine the secondary literature on the role of legislatures in other democracies around the world, a strategy that has worked well in my previous books.

Instead of studying one long, difficult mission and focusing almost entirely on discretion (Auerswald and Saideman 2014), here we focus on three sets of **issues**. The three issues are *deployment decisions* (recent news on Syria demonstrates the varying relevance of legislatures), *detention issues* and other potentially controversial operational issues (most countries faced the problem of how to handle detainees in Afghanistan (Shah 2010), and *procurement decisions* (Haglund and Treddenick 1988). By varying the issues, we can see if legislators behave differently when the stakes change from the life and death decisions of deploying armed forces to the concern about war crimes to the decisions of weapons purchases. These comparisons will serve to vary the attentiveness and interest of the domestic audiences and of the incentives of legislators. Defense procurement means jobs and significant budgetary impacts, so we may see different behavior over such issues. In general, we *expect far more oversight efforts* in procurement than deployment decisions or how expeditions are conducted.

## Conclusion

This paper is merely an introduction to our project. We are looking for feedback as we begin the research. We believe this project is important as there has been relatively little systematic comparison of legislatures in the study of civil-military relations. We know much about the U.S., some about

Europe and the former British colonies, but we do not know that much about variations within institutions or over time. Nor do we know much about the comparative impact of different kinds of oversight strategies and institutions.

Just as war is too important to be left solely to the generals, our starting assumption is that oversight of the generals is too important to be left to just the executive branch of government. Many legislators take this activity quite seriously, so we ought to consider the variations in effort, in power, and in effects.

Again, this project is in its preliminary stages, and feedback would be most welcome.

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