



The impact of party conflict on executive ascendancy and congressional abdication in US foreign policy

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Abstract

The Constitution's division of powers from which E. Corwin famously asserted an "invitation to struggle" in the making of US foreign policy (1957, 171) has become overshadowed by partisan conflict in the contemporary era. Although much of the extant literature points to Congress's subsidiary role in foreign policy relative to the presidency-centered model, the appeal of partisanship has worked to further deepen congressional abrogation and extend presidential unilateralism (Lindsay in Congress and the politics of U.S. Foreign Policy. The Johns Hopkins University Press, Baltimore, 1994; Kriner in After the rubicon: congress, presidents, and the politics of waging war. University of Chicago Press, Chicago, 2010; Potter in Pres Stud Quart 46(4):849–867, 2016). Our analysis illustrates a puzzle. On one hand, there are growing levels of majority support in the USA for political leadership on the world stage. But on the other hand, our analysis of congressional behavior such as voting, lawmaking, and oversight shows relatively clear patterns of congressional decline—Congress no longer exercises much of its power in foreign affairs, neither in form or substance. Partisan incentives for congressional abdication to the presidency carry at least one additional risk we point to: Congressional capitulation from its constitutional duty places democracy in the jeopardy that the Framers' design was intended to prevent.

Keywords US foreign policy · Congress & foreign affairs · Congressional-Executive relations · Party conflict · Congressional oversight · Presidential unilateralism

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Introduction

One of the greatest insights born from the Framers' collective wisdom was the recognition of the dangers from unchecked power whether by an individual or institution. The Framers agreed that the people would carry the ultimate check on power, but elections alone would not be a sufficient barrier. Thus, Madison and the other Framers designed auxiliary precautions in the separation of powers, checks, and balances, and in the bedrock principle that each branch would defend its own prerogatives (see *The Federalist Papers*; Fisher 2000).

Well over one-hundred and fifty years later, it was this same design that inspired E. Corwin's famous assertion that the Constitution's division of powers between the executive and Congress created an "invitation to struggle" in the making of US foreign policy (1957, 171). However, given the Constitution's design, there's little reason to believe that the Framers were vexed about making Congress dominant in the struggle—whether in domestic or foreign policy. The Constitution's language hides in plain sight Congress's vast horizon of powers in foreign affairs. The Constitution does offer some division in power between the executive and legislative branches like in the treaty power (Art II, Sect. 2) and in the appointment of the nation's ambassadors for instance. However, in the most momentous foreign policy area—war powers—there is no such careful division. Article I Sect. 8 offers up no fewer than seven clauses that predominantly puts the leash controlling the Dogs of War into Congress's hand (see clauses 10–16 of the US Constitution). On the executive side of the ledger, there was of course the inarticulate phrase designating Commander-in-Chief, and the Article 2 exception that specifies the president's defensive power to repel in the case of sudden attacks. Clearly, the Framers trusted that Congress would be better suited than a president to resist the corruptions of vanity and fame in the cause of war (Federalist 4), and Hamilton argued in Federalist 69 that the Commander-in-Chief clause was not as powerful, or Kingly, as it might seem: "in substance, much inferior to it."

Beyond this, Congress owns significant enumerated powers in foreign policy such as its authority to regulate commerce. Congress's power over commerce shapes international and interstate trade and beyond (Henkin 1972, 69). In fact, Congress's commerce power has grown significantly over time to direct the nation's foreign policy in areas such as finance, transportation, communication, immigration, labor, and crime to name a few. Moreover, Congress enjoys general powers like that of appropriations to shape the entire spectrum of the nation's foreign policy commitments and give to the legislative branch the power over the executive bureaucracy that implements the nation's foreign policy (Fenno 1966; White 1993; Fisher 2000; Hinckley 1994).

Article I provides Congress with immense constitutional authority in foreign affairs. With its constitutional prerogatives embedded into the legislative and oversight roles in foreign policy, there are few limitations on what Congress could do. Yet, we observe a contemporary Congress that looks and acts like a distinctly different constitutional animal in the competition for power than what



the Framers had intended. This is not to confuse the contemporary Congress as gliding along a low ebb in its power but rather an Article I Congress that has all but retreated from the playing field, abandoning much of its prerogative in foreign affairs to the executive.

Congress has long been aware of its own abdication in foreign policy, but unable and/or unwilling to overcome its collective apathy (Church 1969). Partisan and ideological conflict, as well as the politics of foreign policy have created an environment where Congress seeks electoral and political expediency over preserving its reservoir of constitutional authority (Fisher 2000; Lee, 2009).¹ Hinkley argued that Congress valued position-taking over substantive influence in foreign policy (1994). There is no external constituency for the balance of powers, so no necessary electoral imperative for members of Congress to mount a defense. And to the extent there ever was institutional loyalty in Congress, it did not extend beyond the circles of D.C. (Fenno 1978). Moreover, presidents enjoy institutional, political, and strategic advantages in the competition for power in foreign policy (Howell and Pevehouse 2007; Wittkopf and McCormick 1990; Fisher 2000). Presidents have sought out opportunity from congressional inaction or abdication under the guise of national emergencies to act on their own and by doing so lay precedent for future executive actions in the realm of foreign affairs. And, with the possible exception of the Detainee Cases—which were also arguably about the power of the Courts not just about Executive Power—the Courts have been reluctant (increasingly so) and slow to turn back presidential power (Henkin 1972; Fisher 2000). Thus, over time Congress has largely lost the zero-sum struggle for power with presidents in the shaping of US foreign policy.

The Senate acquittal of President Trump in 2019 (after his first impeachment) reflects on an important illustration of congressional abdication of power that took place in the context of foreign affairs. The impeachment trial brought to light evidence suggesting the US president coerced the president of Ukraine to announce an investigation into his political rival—Joe Biden and his son, while at the same time withholding crucial military aid that Congress had expressly appropriated for that purpose, a clear violation of statutory law. With the backdrop of opinion polls showing that a clear majority of citizens were troubled by the evidence presented against President Trump, Senate Republicans voted nearly along pure party-lines to not hear from any additional witnesses and then to acquit the president of all charges contained in the articles of impeachment. House managers had even included a video clip from less than a year before, where President Trump had claimed that “I have an Article 2 where I have the right to do whatever I want as president” (February 10, 2020 CQ Magazine). But even this—the starkest of executive power claims, seemed to offer the Senate majority no pause in the rush to acquit the president.

¹ Our focus in this argument is more on party conflict that results from party competition when MCs behave strategically with an eye toward majority control as compared to conflict that may result from ideological differences between MCs (Lee 2016). Although polarization or ideological conflict remains an important factor, we think party conflict resulting from competition for majority control has become a key motivator in understanding the more recent dynamics of congressional decline and presidential ascendancy.



This discussion lays bare at least a few important questions that we will explore in this analysis. What explains executive ascendancy and congressional abdication in US Foreign policy over time? Similarly, what impact has partisanship and party competition had in shaping congressional behavior including oversight of the executive branch, and what are the consequences for US foreign policy? More recently, the Chicago Council on Global Affairs has observed significant across-the-board shifts in public support in the areas of immigration, trade, and international involvement more generally indicating growing majorities of Americans have preferences for their political leaders to engage in and with the international environment. One may surmise that these conditions would motivate Congress to flex its foreign policy muscle in legislating and oversight more, rather than less, when confronting a President whose “America First” approach to foreign policy seems to run afoul of this public sentiment. Yet, we find evidence that Congress’s behavior has become largely untethered from public opinion. We do not see an increase in Congress exercising its foreign policy chops but rather largely the abandonment of foreign policy (with some exceptions) to the executive. Indeed, we find a deep fall off in congressional activity such as lawmaking and oversight in foreign affairs over time. The analysis of recent oversight hearings during the last six congresses shows considerable variation across policy, constituency, and prestige committees. In addition though, we found interesting party differences and chamber differences in congressional hearings. Over the last decade, our analysis shows the once pivotal Senate Foreign Relations Committee has witnessed some of the sharpest declines in oversight activity. This result is consistent with Fowler’s systematic analysis from 1948 to 2008 showing the dramatic decline of oversight activity for the Senate’s national security watchdogs (Armed Services and Foreign Relations) over time (Fowler 2015).

The many faces of congress in foreign affairs and rise of presidential unilateralism

The literature offers various perspectives on Congress’s role in foreign affairs from a supportive partner, to a resurgent competitor, and to an institutional actor that has basically vacated its constitutional prerogatives. The power wielded by Congress has waxed and waned over the last eighty years but has increasingly and undeniably exercised form over substantive power in foreign affairs—as Barbara Hinckley (1994) summarized: “less than meets the eye.” The first two decades following WWII witnessed a broad foreign policy consensus in Congress in which the water’s edge thesis was conventional wisdom (Hinckley 1994; Gowa 1998; Holsti 2004). It held that the underlying rationale was that the international threat of communism to the nation’s security took precedence over other political concerns. The outward threat reinforced a bipartisan harmony and resulted in a Congress more supportive of White House policies (Souva and Rohde 2007). However, the Vietnam War marked an end to consensus and a distinct shift toward increased partisan conflict over foreign affairs. Moreover, the literature has offered a strong challenge to the underpinnings of the water’s edge rationale suggesting much greater variation in foreign policy bipartisanship existed during the Cold War era than what would have



been expected given the relative stability of the communist threat (Souva and Rohde 2007; McCormick and Wittkopf 1998; Meernik 1993; Prins and Marshall 2001).

The Vietnam conflict also divided public and elite opinion, reducing the political costs for members to speak out against foreign policy (Souva and Rohde 2007). Institutional changes such as the growth of subcommittee government undermined committee dominance and spread policy-making power more evenly to the rank-and-file membership (Rohde 1991; Marshall 2003). These changes gave members of Congress greater ability to initiate policy challenges and political confrontations with presidents in foreign affairs.² In addition, the increasingly sharpened ideological character of foreign policy during the 1970s–80s drove the view of a resurgent Congress (Ripley and Lindsay 1993; Fleisher and Bond 2000). Scholarly attention focused on Congress's bitter partisan struggles that challenged opposition presidents with much greater frequency than the earlier decades of the Cold War. Hinckley's work presented a different picture, suggesting that there was no real evidence of increased congressional activism from the period 1961–88, and if anything there was a decrease in congressional attention (1994). She asserted that Congress valued position-taking over substantive policy influence. Congress and the President engaged in a symbolic struggle over foreign policy that mutually served to signal both branches were actively engaged serving a broader stability and democratic accountability. Instead of across-the-board activism, Congress and president more strategically pick issues to engage in Lindsay (1994). But the view of a more potent Congress also faded quickly in the face of increasingly muscular foreign policy agendas and the aggressive use of military actions by presidents Reagan, Bush, and Clinton.

Congress did possess for a time a cadre of institutionalists that fought to maintain Congress's status in the balance of power with the executive. Speaker Sam Rayburn once famously quipped, "I did not serve under any presidents. I worked with eight presidents" (CQ Magazine, February 10, 2020, pg. 8). We see fewer and fewer institutionalists willing to carry the fight in foreign policy to the executive branch. Those few in Congress that have possessed this characteristic have become casualties of primary challenges and intra-party warfare. One of the last in recent memory was Senator John McCain (R-AZ). In 2005, Senator McCain withstood withering political pressure from his own party in order to stand up to the Bush Administration's legislative demands that would allow the use of torture to gain information from enemy detainees. Senator McCain stood his ground in the fight to forbid torture and President Bush had signed off on a defense appropriations bill that made the language explicit. However, President Bush added a signing statement that in effect equivocated on the McCain amendment language by stating that the particular section of the bill would be interpreted in a manner consistent with the constitutional authority of the President as Commander-in-Chief. The signing statement strategy has become increasingly common practice

² In addition, Lindsay suggests the growth of foreign policy lobbying and interest groups significantly altered the incentives for members of Congress to take positions and to increasingly invest in developing their own foreign policy expertise (1994, pp. 28–29).



to circumvent Congress's policy-making authority (Kelley and Marshall 2010). There are no more in the ranks like Senator McCain or Senator Lugar that are willing to subjugate the party for institutional principle. And despite the sacrifice of a few fighting to patrol and preserve Congress's powers, it was never the same as a sustained collective commitment to preserve institutional powers. Indeed, we think both the disappearance of experienced foreign policy champions and broader institutional changes such as the movement toward widespread committee assignments and policy diversification (especially in the Senate) have transformed individual MC incentives and gutted the capacity of Congress to challenge presidential dominance in foreign affairs (see Fowler 2015).

The work on presidential unilateralism departs sharply from Neustadt's framework in understanding presidential power (1962). Whereas Neustadt's framework of executive power relied upon the president's ability to build inter-institutional cooperation, presidential unilateralism emphasizes how presidents exploit Article II ambiguity with first mover strategies and in acting alone to change policy (Mayer 2001; Cooper 2002; Howell 2003). In this way, presidents can shape the policy status quo in their favor and readily circumvent Congress. This literature has shown dramatic growth in the president's use of a multitude of unilateral tools to shape policy such as through executive orders, proclamations, national security directives, executive agreements, and recess appointments to name a few (Mayer 2001; Howell 2003; Evans 2011). Even after Congress has acted decisively and authoritatively in foreign affairs, as was the case with the 1996 Helms–Burton legislation on the embargo of Cuba, the president was still able to not just get back in the game but to regain control over the ship of state (see, e.g., Haney et al. 2006; Marshall and Haney 2010).

The trends toward executive dominance, relative to Congress, expanded quite dramatically following September 11th with both the Bush and Obama Administrations pushing the boundaries of presidential unilateralism in the conduct of foreign policy. Mayhew concluded that divided government had no significant impact on the passage of major foreign policy legislation by Congress (2005). And most recently, we have seen these trends toward presidential unilateralism and congressional abdication in foreign relations solidify exponentially. In fact, we do not see much evidence of Congress flexing its foreign policy muscle, but we do see presidents continually acting in lieu of Congressional inaction and more and more Presidents act in foreign policy seemingly impervious to any congressional reaction. There are exceptions of course and we point to some of these, but by and large what we have seen from Congress and recent presidents only reinforces our view that Congress has abandoned any semblance of defending its institutional powers. Instead, Congress has traded away this bedrock principle in favor of their political party and allowed—even encouraged—presidents on their team to run roughshod over Article I. We briefly sketch out an illustrative accounting that reinforces this view but recognize the literature remains more varied. Recent work by Tama for example illustrates recent bipartisan pushback in international affairs against the Trump Administration in areas such as sanctions against Russia and China and in preventing the weakening of NATO and South Korea alliances among other areas (Tama 2021).

(1) There has been a dramatic falloff of legislation by Congress



In fact, four of the last six congresses have witnessed the lowest number of laws passed in contemporary times. And the 116th is on track to be the worst yet—2019 marked one of the lowest first-year tallies ever with only 105 laws passed. Moreover, Congress has seemed to calculate that legislating carries too much political risk. On this point, one 30-year Senate staffer said “The only legislation he [Majority Leader McConnell] is going to call up is the legislation he has to call up” (CQ Magazine February 24, 2020, pg. 4). And McConnell has reinforced this view, “We’re in the personnel business” he said at a 2018 Rose Garden news conference (CQ Magazine February 24, 2020, pg. 2). Confirming judges it would seem is far less risky and much easier than working out legislative compromise. For party leaders, it seems that floor voting is designed more for position-taking to attract the base and campaign resources—mobilizing the pipeline of interest group spending. And in the Senate, why bring policy debates to the floor that risk opposition amendments and put your party in a precarious political position? This feature in the Senate is a “tax” known as the Senate spanking machine—allowing floor amendments is the price the majority party has to pay for the minority to allow legislation to the floor for consideration. Legislative deadlock then is a less risky strategy (and convenient excuse) for MCs not to find compromise but also an invitation for presidents to act.³

(2) Presidents increasingly do not take positions on votes in Congress

About forty years ago, it was common in any given congress to see presidents take positions on legislative votes about 25% of the time. However, there has been a significant drop-off over the last couple of decades in the number of presidential position votes. 2017 and 2018, for instance, were low water marks in the percentage of presidential position votes (4.9% and 6% respectively) since CQ started tracking them in 1953. The percentages in the Senate during 2017 and 2018 were about 10%, closely tracking the House (CQ Weekly February 20, 2020). Given the decline in congressional lawmaking, this trend reinforces the view that presidents prefer policy-making through unilateral action to that of building coalitions in Congress.

With the lower legislative output, and fewer position votes on the President’s radar, we see a parallel decrease in the number of presidential vetoes. In contemporary times, Reagan used the veto pen more than his modern predecessors and more than those that followed after him. President Reagan issued 78 vetoes and we have seen subsequent declines from every president since. George W. Bush and Obama issued just about a dozen each and President Trump issued only 9. President Trump’s vetoes represent the low ebb of any president serving at least one term since Millard Fillmore’s Administration (he issued zero) preceding the

³ Recent work by Curry and Lee (2020) takes a somewhat different long-term view demonstrating that the sheer volume of pages of legislation enacted in recent congresses has been relatively constant since the 1980s. They argue that policy outcomes over the last several decades have not changed as much as the internal legislative processes. They also show that restrictive rules have increased and amending activity has declined considerably which is also consistent with Sinclair’s work and suggests that party leaders enjoy greater influence over the legislative process and the rank-and-file members have fewer opportunities to participate in the legislative process.



Civil War (1850–53). Moreover, congressional overrides have become nearly extinct, Obama had fewer than any of his immediate two-term predecessors with just one bill overridden—the Justice Against Sponsors of Terrorism Act (S 2040) which among other things allowed citizens to sue Saudi Arabia for state-sponsored acts of terrorism. And even this single override was more of a “ducking” of congressional ownership than an inter-institutional clash (Marshall 2017). Congress did successfully override one of President Trump’s vetoes—for the NDAA, but only after his 2020 election defeat.⁴

(3) President Trump shredded Congress’s power of the purse

President Trump took appropriations tagged for some of Congress’s favorite military construction projects to fund wall construction on the southern border. Congress understood the broader stakes as suggested by Senator Lamar Alexander (R-TN) when he stated that “the problem with this is that after a Revolutionary War against a king, our nation’s founders gave to Congress the power to approve all spending so that the president would not have too much power. This check on the executive is a crucial source of our freedom” (CQ Magazine February 10, 2020, pg. 7). And Congress has been reluctant to push back against President Trump. There are some important exceptions for instance Congress rejected some of the more draconian budgetary cuts to the State Department and foreign assistance proposals by the Trump Administration (see Tama 2021, pp. 11–12). Despite the heart of congressional power—its purse—hanging in the balance, only 12 GOP senators voted to end the diversion of funds falling well short to override President Trump’s veto.

(4) President Trump had Iranian General Qassem Soleimani assassinated

Without congressional assent and without informing Congress. The Trump Administration leaned on the 2002 Iraq War resolution (Authorization for the Use of Military Force) for authority to carry out the assassination. Senator Mike Lee (R, UT) was one of the few Republican Senators that berated the Administration’s action against a foreign official without congressional consideration saying “It’s un-American, it’s unconstitutional and it’s wrong” (2/10/2020 CQ Magazine). Congress did pass resolutions reigning in presidential authority in the use of military force in Yemen and Iran, but Congress was unable to muster sufficient support to override President Trump’s veto. Moreover, the common practice of at least informing bipartisan congressional leadership of such an act—not required by the Constitution but perhaps a way for presidents to side step the reporting requirements of the War Powers Act—is also leaking in the Trump White House, with only one team meriting a briefing on this controversial action (Raju and Barrett, 2020).

⁴ The National Defense Authorization Act (NDAA) was the only successful congressional override during the Trump Presidency, passing 322–87 in the House and 81–13 in the Senate. The NDAA has historically passed with bipartisan coalitions for the last 60 years. The NDAA, like its predecessors, contained a bonanza of popular provisions such as 3% military pay raise, new weapons systems, and military construction projects. President trump vetoed the legislation claiming that it failed to limit giant social media companies that were biased against him and he also opposed language that would rename military bases that honor Confederate leaders (AP Jan 1, 2021).



(5) The Trump Administration has repeatedly beaten back Congress's subpoena power

The White House has used the slow roll in the Courts against Congress, making it difficult for Congress to wait on the Courts knowing the political costs of doing so grow for Congress as public attention moves on. Party leaders in the House (Schiff and Pelosi) were faced with this calculation and decided to not stymie political momentum in the courts. The congressional subpoena reflects the teeth in congressional oversight. A noted legal scholar, Julian Davis Mortenson (UMich Law Professor), claims that the Trump Administration has been "orders of magnitude" less cooperative and that there has been a real shift in unilateralism and executive ascendancy (CQ Magazine February 10, 2020). Without the subpoena and without the ability to bring White House Officials and documents in front of Congress, there is very little way to hold the executive branch accountable.

Meanwhile, presidents have long perfected their ability to push deep into policy-making in ways that have increasingly neutered Congress. Presidents routinely make broad interpretations of laws to shift the policy status quo. As we mentioned previously, President George W. Bush pushed on his policy discretion in usurping wide authority to torture suspected terrorists and in surveilling American citizens. Similarly, with the context of legislative deadlock as his narrative, President Obama was able to broaden his discretion by granting legal status to the Dreamers, pursuing the nuclear deal with Iran, and by increasing regulation of coal-fired power plants. Congress could in theory push back on such legislative interpretations and/or pass new legislation explicitly directing their policy preferences and not allow executive maneuvering. But almost universally, Congress has been unable or unwilling to stop presidential policy-making. Congress has made the Faustian-bargain to applaud presidential policy-making and/or usurpation of power when it is popular with their party's constituents and pursue public positions against such unilateral action when it is carried out by an opposition party president. It is a trade for political opportunism in return for the atrophy of their own policy-making power and constitutional prerogatives. And with party competition so tight in our contemporary politics, congressional action designed to protect its own processes and prerogatives would be a fool's errand—only to stand by and watch the opposition party either undo any process or rules in how congressional policy-making is carried out or by simply handing the ball off to the same party president to unilaterally make policy on his own. This is especially true in the hyper-partisan environment where party leaders have no incentive to care about the rules of the game but only about how policy wins or losses differentiate and shape the party's reputation (Lee 2016).

Data and analysis

Now, we move to an empirical analysis in order to explore some basic patterns of public opinion in the realm of foreign policy. In the front end of our analysis, we elaborated on the research puzzle; we observe wide and growing public support for US engagement and leadership in the international arena. So with conditions ripe for a reelection oriented Congress to act, what has the congressional response been and



why? We offer a variety of evidence surrounding this puzzle by looking at patterns in congressional activity in the realm of international and defense policy in roll-call votes, passage of laws, and congressional oversight hearings. Our expectations here are simple. We have discussed the falling off of legislation in the last several congresses and we would expect to see similar low levels of congressional oversight if Congress has retreated the playing field to the presidency.

The analysis begins with some simple descriptive over time patterns in public opinion taken from The Chicago Council on Global Affairs 2019 report, “Rejecting Retreat: Americans Support US Engagement in Global Affairs (Smeltz et al., 2019). The Rejecting Retreat survey demonstrates that there is a significant majority and growing appetite among US citizens to engage the world. There are increasing levels of support for a variety of issues from security and military alliances, global institutions, and to international trade.

FIGURE A

Rejecting Retreat: Americans Support US Engagement in Global Affairs (2019, pg.3). The Chicago Council on Global Affairs.

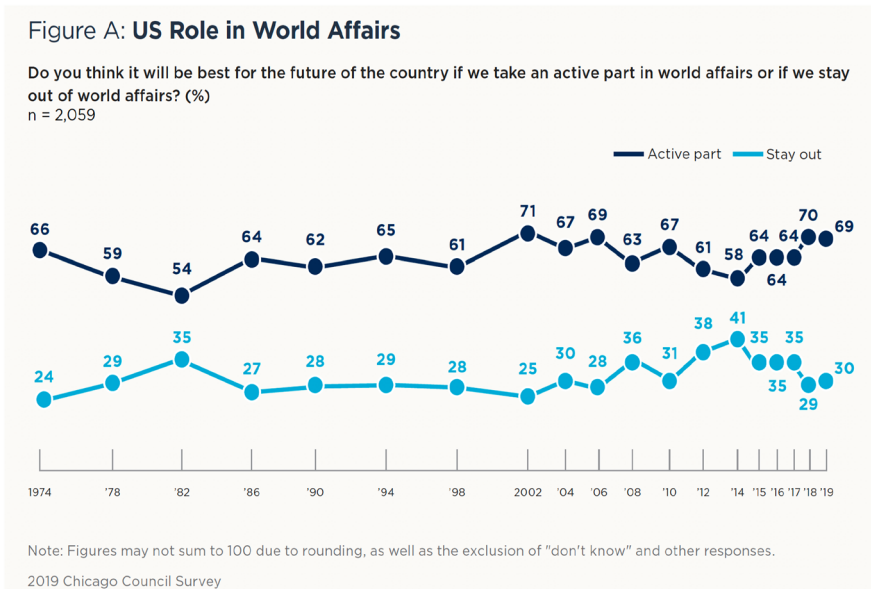


Figure A from the report illustrates that significant majorities of Americans think the country’s future will be best served by taking an active role in world affairs. Most recently, Figure A shows that about 70% of respondents from the survey wanted active engagement by the USA while those who preferred the USA stay out of world affairs dipped to about 30%. Figure B from

FIGURE B

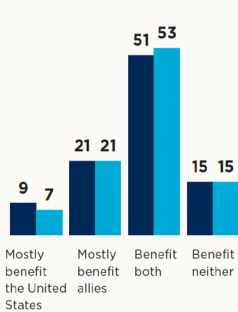
Rejecting Retreat: Americans Support US Engagement in Global Affairs (2019, pg. 4). The Chicago Council on Global Affairs.

Figure B: **US Security Alliances**

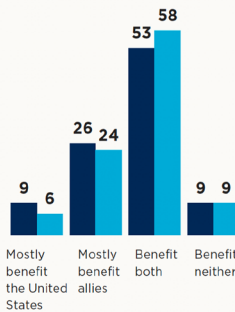
Which of the following comes closest to your view on US security alliances in [East Asia/Europe/the Middle East]? Do they: (%)

■ 2017 ■ 2019

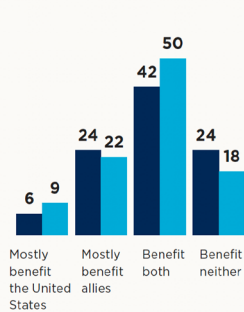
East Asia (n = 688)



Europe (n = 696)



Middle East (n = 675)



Note: Figures may not sum to 100 due to rounding, as well as the exclusion of "don't know" and other responses.

2019 Chicago Council Survey

the report’s survey shows that strong majorities view that security alliances benefit mostly the USA or both the USA and the members of the alliance. Moreover, these majorities have mostly grown in the past couple of years, from 2017 to 2019, respectively. Lastly, Figure C demonstrates the



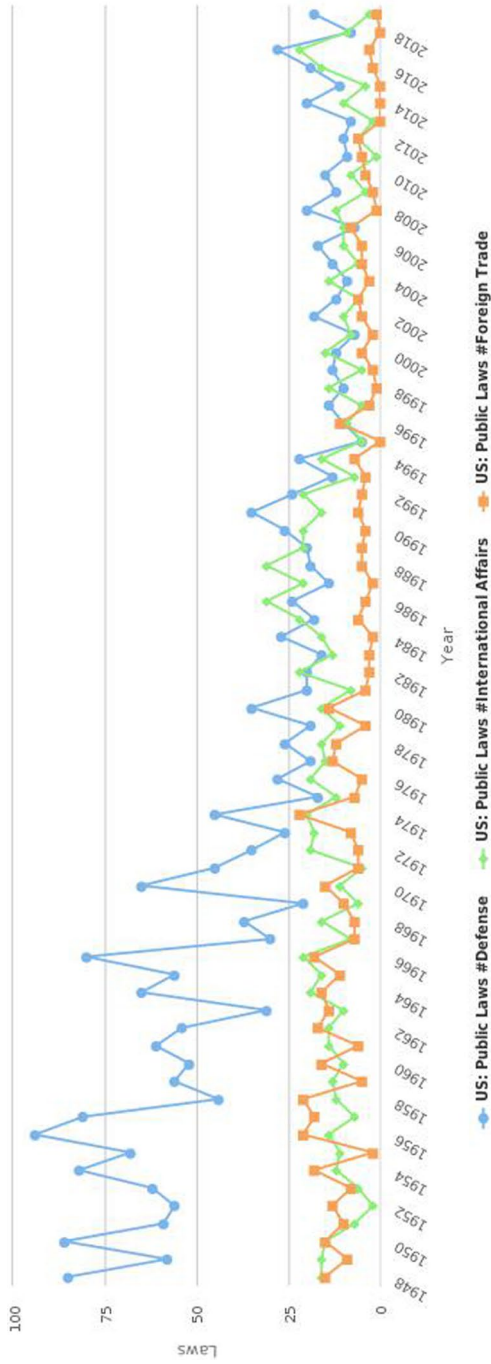


Fig. 1 International Affairs, Defense, and Trade Laws, 1948–2018. Figures 1 generated from the policy agendas site, October 27th, 2020: <http://www.congressionalbills.org/policyagendas.html>



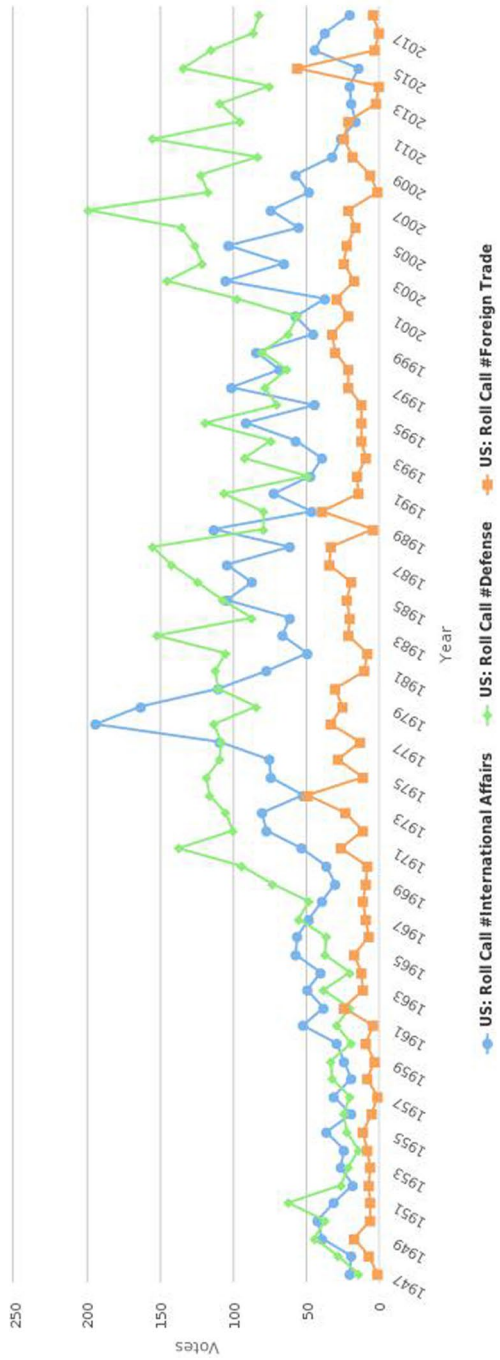
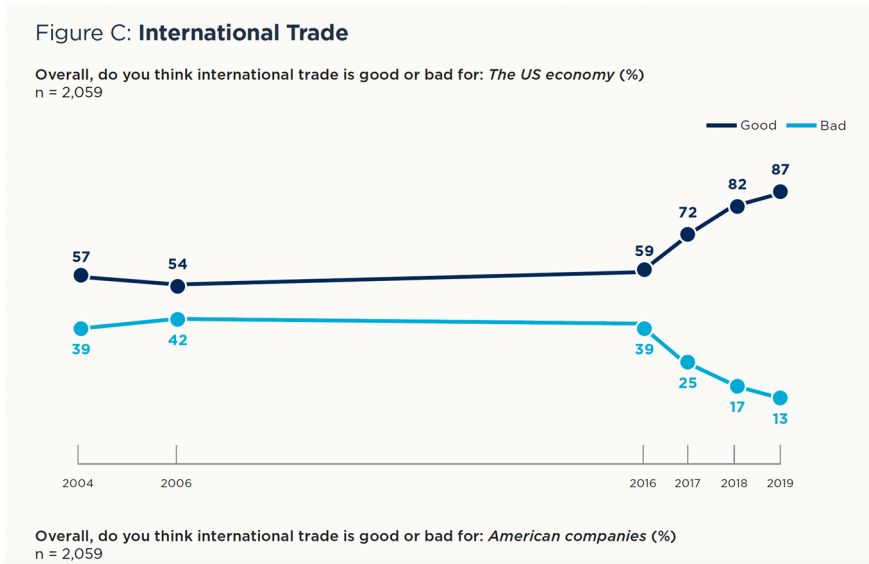


Fig. 2 International Affairs, Defense, and Trade Roll-Call Votes, 1947–2017. Figures 2 generated from the policy agendas site, October 27th, 2020: <http://www.congressio.natibills.org/policyagendas.html>



FIGURE C

Rejecting Retreat: Americans Support US Engagement in Global Affairs (2019, pg. 5). The Chicago Council on Global Affairs.



strong economic preferences within the USA for international trade. About 87% of respondents viewed international trade as good for the economy and similarly about 83% viewed international trade as good for American industries. These economic preferences show a stark growth especially starting in 2016. So the descriptive patterns in public opinion that we see over time suggest evidence that large majorities of Americans want strong US leadership across issues on the world stage.

Given these over time patterns in public opinion, we have suggested that Congress should have an incentive to utilize its procedural and substantive powers to influence US engagement. But what do we see from congressional behavior over time? To answer this question, we utilize data from the policy agendas project to assess congressional behavior in the realm of foreign affairs.

Figures 1 and 2 break down public laws and roll-call votes by issue type including international affairs, defense, and international trade. Figure 1 shows the steepest postwar decline in public laws passed in the area of defense. But there is also been a notable drop during the early 1990s into a relatively narrow range of defense laws,



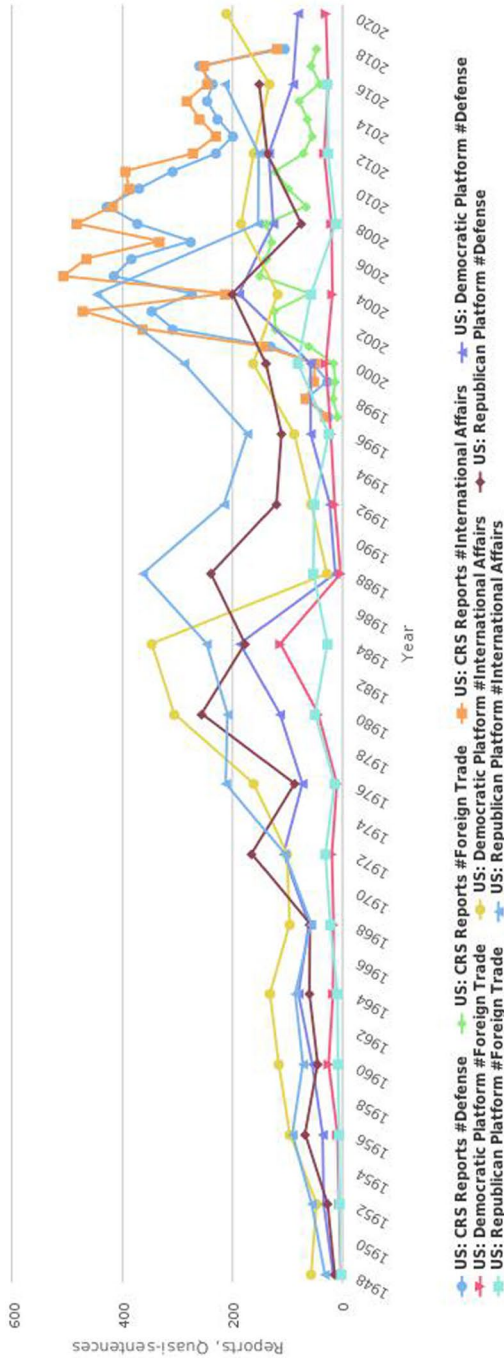


Fig. 3 Generated from the policy agendas site, October 27th, 2020: <http://www.congressionalbills.org/policyagendas.html>. From The Lugar Center, Congressional Oversight Hearing Index Data, accessed Sept. 1, 2020. <https://oversight-index.thelugarcenter.org/>



Table 1 House prestige, policy, and constituency committees average oversight scores

Congress	Prestige	Major policy	Constituency	AVG. All House
111th (2009–10)	85.9	75.5	80.5	79.6
112th (2011–12)	88.3	89.3	81.1	85.3
113th (2013–14)	66.0	89.0	75.0	78.4
114th (2015–16)	51.0	91.2	88.1	82.6
115th (2017–18)	62.3	73.7	67.5	68.8
116th (2019–20)	90.0	94.3	80.0	86.8
AVG. Oversight	73.9	85.5	78.7	80.3

Table 2 Senate prestige, policy, and constituency committees average oversight scores

Congress	Prestige	Major policy	Constituency	AVG. All Senate
111th (2009–10)	85.6	99.0	96.3	93.5
112th (2011–12)	88.8	80.3	80.0	83.4
113th (2013–14)	77.8	68.3	65.8	71.3
114th (2015–16)	87.2	80.5	74.5	78.8
115th (2017–18)	67.0	54.8	77.5	65.7
116th (2019–20)	59.4	57.5	62.8	58.7
AVG. Oversight	77.6	73.4	76.2	75.2

Table 3 Model 1 OLS regression model explaining committee oversight scores, 111th–116th congress

Independent variables	β /(S.E.)
House indicator	5.03! (2.85)
Unified Gov	– 1.77 (3.08)
Constant	75.81** (2.14)

S.E. are robust

! $p < .10$

* $p < .05$

** $p < .01$

typically fewer than a couple dozen a year. Public laws passed in international affairs witnessed a similar drop in the early 1990s to a yearly range around twenty or below. And the public laws in foreign trade have hit a low ebb with just a handful passed in the last decade. Not surprising, we see similar patterns in the roll-call votes across these same issue areas over time. For example, Fig. 2 shows a decline in International Affairs related votes, especially in the last two decades and a dearth of votes on foreign trade. Even defense votes buoyed at least in part by the annual National Defense Authorization Act have declined some since the mid-2000s.



Table 4 Model 2 OLS regression model explaining committee oversight scores, 111th–116th congress

Independent variables	$\beta/(S.E.)$
House indicator	6.72* (2.91)
Unified Gov	- 3.11 (2.86)
GOP_majority	- 10.09** (2.94)
Constant	81.30** (2.32)

S.E. are robust
 $!p < .10$
 $*p < .05$
 $**p < .01$

Table 5 Model 3 OLS regression model explaining committee oversight scores, 111th–116th congress

Independent variables	$\beta/(S.E.)$
House indicator	5.89* (2.91)
Unified Gov	4.36 (4.48)
GOP_majority	- 5.18 (3.68)
Trump_unified	- 13.63** (5.68)
Constant	78.63** (2.54)

Source Lugar Hearings Data accessed Oct. 27, 2020, <https://oversight-index.thelugarcenter.org/>
S.E. are robust
 $!p < .10$
 $*p < .05$
 $**p < .01$

Figure 3 takes a different look at evidence but offers mostly the same overall patterns of decline Fig. 3 includes the over time frequency of CRS reports and sentences contained in party platforms in these same issue areas. The figure shows a clear falling off of CRS reports generated for Congress across international affairs, foreign trade, and defense. There is a little more variation in the party platforms raising these issues, but the story is mostly the same pointing toward a decline in activity in these policy areas. Based on these over time trends from Figs. 1–3, there is little evidence especially during the last two decades that Congress is bent on loading up its policy-making agenda in international affairs related issues. Even in terms of position-taking, there is just little evidence that Congress wants to show off its policy chops in “form or substance” in the realm of foreign affairs.

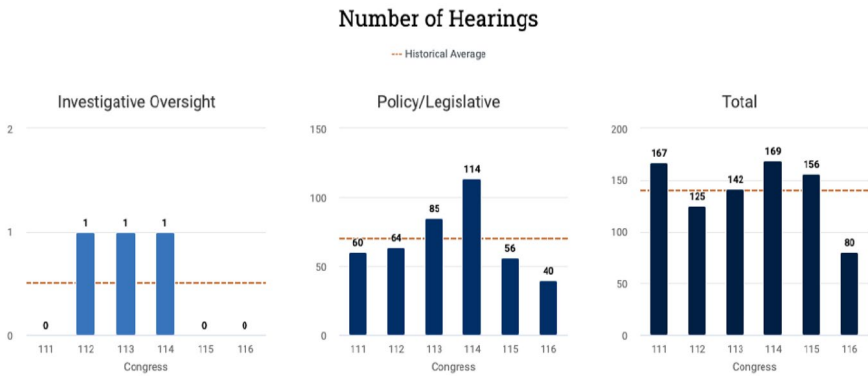


Table 6 Senate foreign relations hearings & scores, 111th–116th congress

	Number of Hearings			Committee Hearing Performance	
	Investigative/Oversight	Policy/Legislative	Total Hearings	Score	Grade
111th Congress	0	60	167	71%	C-
112th Congress	1	64	125	64%	D
113th Congress	1	85	142	79%	C+
114th Congress	1	114	169	100%	A
115th Congress	0	56	156	66%	D
116th Congress*	0	40	80	48%	F
Historical average	0.5	69.8	139.8		

* Adjustments have been applied so that committees' grades are not lowered by the constraints on hearings caused by Covid-19 [oversight-index.thelugarcenr.org/covid-19-statement]

Figure: Senate Foreign Relations Hearings by Type, 111th-116th Congress



The analysis takes one final cut at evidence of congressional oversight activity from the 111th (2009–10) to the current 116th (2019–20) Congress. We relied upon The Lugar Center, Congressional Oversight Hearing Index to create a data set of hearing activity and individual committee oversight “grades” that allows comparisons across committees for both the House and Senate.⁵ We created variables in the data set that allows us to aggregate committees into types including prestige, policy,

⁵ The Lugar Center methodology for oversight hearing scores for each committee are calculated from a point system taken on three possible values for hearings conducted in eight possible categories of hearings including agency conduct, private sector oversight, policy, legislative, closed, nominations, fact finding, and field. The overall oversight hearing “grade” is generated for every committee for every Congress in the data set. Grades range from As (90–100) to F (59–below) and include pluses and minuses. Each committee’s grade is based on the points Achieved from that committee’s highest performance over the six Congresses. More detailed description of the point and oversight hearing grading system can be found on the Lugar Center site, <https://oversight-index.thelugarcenr.org/faq/methodology/>.

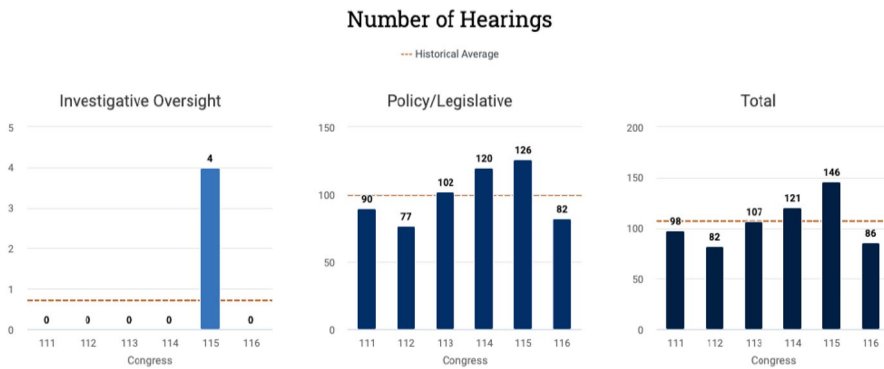


Table 7 Senate intelligence hearings score, 111th–116th congress

	Number of Hearings		
	Investigative/Oversight	Policy/Legislative	Total Hearings
111th Congress	0	90	98
112th Congress	0	77	82
113th Congress	0	102	107
114th Congress	0	120	121
115th Congress	4	126	146
116th Congress*	0	82	86
Historical average	0.7	99.5	106.7

* Adjustments have been applied so that committees' grades are not lowered by the constraints on hearings caused by Covid-19 [oversight-index.thelugarcenter.org/covid-19-statement]

Figure: Senate Intelligence Hearings by Type, 111th-116th Congress



and constituency committee types (Davidson et al. 2020).⁶ Table 1 includes the average oversight hearing grades for the House prestige, policy, and constituency committee groupings by Congress. One can see that there are relatively few “A” grades, but the major policy committees earn two of the three As. Moreover, the averages of the overall grades by committee type are in the C range for the House prestige and constituency committees (73.9 and 78.7, respectively), while the average for the House major policy committees was 85.5 for the six congresses. Table 2 shows that the Senate committees tend to have lower oversight hearing grades in comparison to

⁶ The prestige committees for the House include Appropriations, Ways & Means, Budget, and Rules. Senate prestige committees include Appropriations, Finance, Budget, Foreign Relations, and Armed Services. Major Policy committees in the House include Financial Services, Education & Workforce, Energy & Commerce, Foreign Affairs, Judiciary, and Oversight. The policy committees for Senate were Homeland Security, Judiciary, HELP, and Small Business. Finally, Agriculture, Armed Services, Natural Resources, Transportation, Small Business, Science, VA, and Homeland Security were coded as House constituency committees. Senate constituency committees included Agriculture, Commerce, Energy, and Environment & Public Works.



Table 8 Senate armed services hearing scores, 111th–116th congress
Committee History

	Number of Hearings			Committee Hearing Performance	
	Investigative/Oversight	Policy/Legislative	Total Hearings	Score	Grade
111th Congress	5	90	117	93%	A
112th Congress	5	76	97	80%	B-
113th Congress	1	91	109	84%	B
114th Congress	0	105	146	100%	A
115th Congress	2	94	141	96%	A
116th Congress*	1	69	92	81%	B-
Historical average	2.3	87.5	117.0		

* Adjustments have been applied so that committees' grades are not lowered by the constraints on hearings caused by Covid-19 [oversight-index.thelugarcenter.org/covid-19-statement]

Figure: Senate Armed Services Hearings by Type, 111th-116th Congress

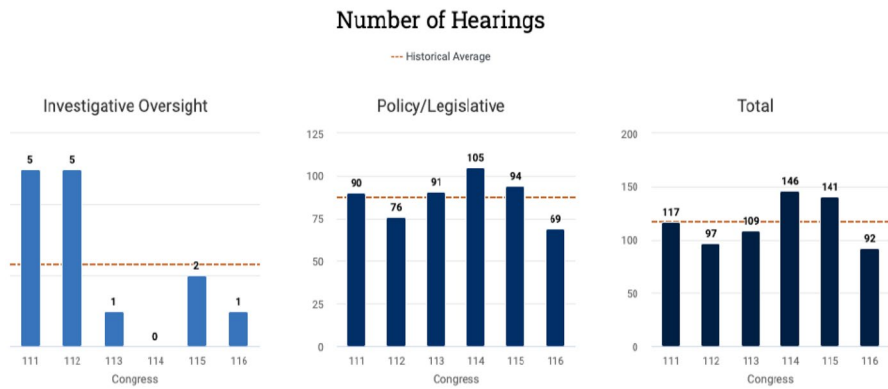


Table 9 House foreign affairs hearings & scores, 111th–116th congress
Committee History

	Number of Hearings			Committee Hearing Performance	
	Investigative/Oversight	Policy/Legislative	Total Hearings	Score	Grade
111th Congress	0	51	132	50%	F
112th Congress	8	79	188	86%	B
113th Congress	6	99	224	99%	A
114th Congress	7	100	218	100%	A
115th Congress	2	62	173	67%	D
116th Congress*	5	39	117	60%	D-
Historical average	4.7	71.7	175.3		

* Adjustments have been applied so that committees' grades are not lowered by the constraints on hearings caused by Covid-19 [oversight-index.thelugarcenter.org/covid-19-statement]



Table 10 House intelligence hearings & scores, 111th–116th congress

Committee History

	Number of Hearings		
	Investigative/Oversight	Policy/Legislative	Total Hearings
111th Congress	0	2	4
112th Congress	1	20	25
113th Congress	1	24	27
114th Congress	0	22	26
115th Congress	0	12	19
116th Congress*	10	10	24
Historical average	2.0	15.0	20.8

* Adjustments have been applied so that committees' grades are not lowered by the constraints on hearings caused by Covid-19 [oversight-index.thelegarcenter.org/covid-19-statement]

Figure: House Intelligence Hearings & Scores, 111th-116th Congress

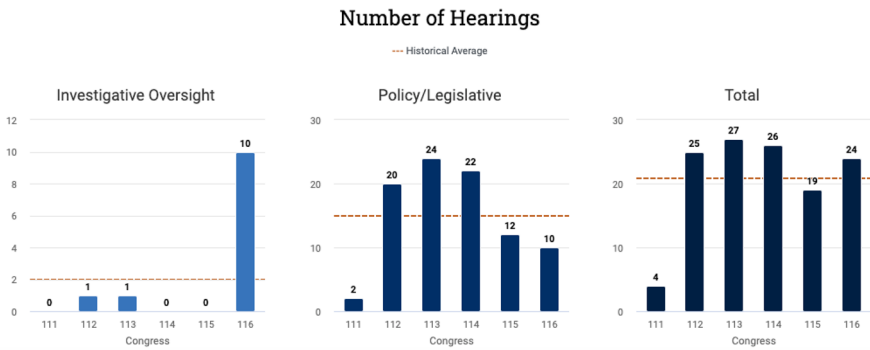


Table 11 House armed services hearings & scores, 111th–116th congress

Committee History

	Number of Hearings			Committee Hearing Performance	
	Investigative/Oversight	Policy/Legislative	Total Hearings	Score	Grade
111th Congress	1	142	185	100%	A
112th Congress	3	140	159	96%	A
113th Congress	1	105	128	72%	C
114th Congress	0	121	140	80%	B-
115th Congress	5	101	125	76%	C
116th Congress*	2	78	94	67%	D
Historical average	2.0	114.5	138.7		

* Adjustments have been applied so that committees' grades are not lowered by the constraints on hearings caused by Covid-19 [oversight-index.thelegarcenter.org/covid-19-statement]



the House (Table 1). In fact, there were seven scores across the three categories that equated to a D or F grade. And the overall averages for each committee type in the Senate for the six congresses were all in the C grade range. It would seem that congressional activity in oversight hearings has also languished significantly in the last decade, much like we saw in lawmaking. This general downward trend in congressional oversight is consistent with Fowler's over time analysis (2015).

Utilizing the same oversight data, we ran OLS regression models of oversight scores to see the extent that variation in scores can be explained by chamber, unified government, and party majority. Table 3, 4, and 5 contain the OLS model results. Even though this period covers just a short time (12 years), the story we glean is interesting. Model 1 in Table 3 includes the basic specification with a dummy variable coded 1 for the House committee scores and 0 for Senate committee scores. Similarly, there is a dummy variable for when there was unified government (111th and 115th Congress) coded 1, and 0 for divided. The House indicator in the model approaches statistical significance, while there seems to be no impact of unified government on oversight grades. The model in Table 3 includes an indicator for when either chamber was controlled by the Republican Party. Here, Model 2 shows again that unified government has no impact. The House indicator from Model 2 is now significant suggesting that House committee oversight scores are appreciably higher than Senate committee oversight scores. Moreover, the model indicates that when Republican majorities control a chamber, oversight scores are significantly lower. Lastly, Model 3 in Table 5 adds one more variable to the specification to assess whether there was a difference in party control under unified government. We see that hearing scores were significantly lower during the Republican-controlled 115th Congress as compared to unified government during the 111th under Democratic majorities. So there are some chamber and party differences in oversight hearing activity even during the relatively short span of the last six congresses. As a last piece of evidence, we do break out individual committees—those most associated with jurisdictions in foreign affairs to assess scores and hearing activities in Tables 6, 7, 8, 9, 10, 11. One can see for example that Senate Foreign Relations fairs far worse as compared to Senate Armed Services during these last six congresses.⁷ However, we do find the highest hearing score for SFR during divided government (114th Congress) and similarly for House Foreign Affairs. This result somewhat parallels Fowler's finding that public hearing activity by the Senate Foreign Relations Committee tended to increase under divided government (Fowler 2015). Overall though, given the dismal oversight scores in recent congresses for SFR, it would seem there is very little US presidents should fear from this once dominant legislative guardian of US foreign policy.

The empirical story we have paints a vivid picture or rather a puzzle. To the extent, we observe strong majorities in public opinion—large and growing majorities of Americans wanting political leaders engaging in the world and seeing the

⁷ This result is also consistent with Fowler (2015). She finds the decline in oversight greater for Senate Foreign Relations as compared to Senate Armed Services. Senate Armed Services demonstrated penchant toward budget hearings and routine program administration which illustrates its bias toward responding to narrow organized interests in the defense establishment.



benefits of alliances and trade for the USA—it would seem Congress has little or no interest. All sorts of congressional activity in the realm of foreign affairs has fallen off to the point of collapse. The twin congressional pillars of power in oversight and lawmaking have all but shut down in the face of growing public opinion supporting leadership abroad.

Conclusion

This paper has shown that large and growing majorities of Americans have preferences for the USA to take a leadership role in the realm of foreign affairs including key issues such as alliances and trade. It would seem that the weight of the reelection imperative with the backing of such large majorities would incline Congress to utilize its significant tools to shape foreign affairs (Mayhew 1973). Indeed, it is a striking condition that would seem to unite single-minded seekers of reelection into the service of foreign affairs—and to reacquaint members of Congress with their significant constitutional levers of power. There has been important work emphasizing that such changing political landscape along with foreign policy issues can differentially impact congressional motivations and activity (e.g., Carter and Scott 2009). Yet, not only do we not see any such resurgence in congressional activism but, quite to the contrary we see dramatic patterns of disengagement and decline. Congress has seemingly forfeited its position in shaping foreign policy to an increasingly imperial presidency.

The analysis shows mostly patterns of over time decline in congressional roll-call voting, lawmaking, and hearings across issues in foreign affairs. We also employed the most recent data over the last six congresses from the Lugar Center on congressional hearings. Here, we found relatively low scores on oversight hearing activity across prestige, policy, and constituency committees. There was some interesting variation with party control for instance we saw the oversight scores for the House major policy committees sharply increase going from unified to divided government (111th and 116th Congress). But, most of the time, the oversight activity has languished especially during 112th–114th Congresses which are also congresses associated with some of the lowest lawmaking output in contemporary times. And the story for the Senate suggests that judicial nominations at the expense of most other legislative activity has all been part of a calculated strategy in the Senate. Oversight hearings have hit bottom in the last couple of congresses under Majority Leader McConnell (R-KY), especially notable was the decline in oversight of Senate Foreign Relations.

What can explain such congressional decline in foreign affairs? We think the best case explanation in understanding this faltering is that partisanship and party competition have left MCs with hardly any incentive to participate in steering the nation's foreign policy, instead leaving it to the president and joining on to claim credit or take positions against as the politics demand. There is less risk associated with such a political strategy and presidents have readily stepped in under the guise of “emergency” and congressional deadlock to take Congress's rightful role. The



incentives for legislating have been mostly replaced by the permanent campaign and differentiating party reputations while also taking on united opposition to make legislating compromise with the other side untenable (Lee 2016; Mann and Ornstein 2013). And as the Republican Party has shifted sharply rightward, the only reward for taking on legislative compromise is a well-funded primary challenger. So there's very little incentive to work through the difficult and complex foreign policy issues in Congress anymore. With less incentive for lawmaking, it follows there is less need for policy oversight or legislative investigation if Congress is not preparing the groundwork for legislative activity. And the police patrol oversight does not offer many opportunities to score points or differentiate party brands with policy wonks and bureaucrats. Also notable is the increased use of the Congressional Review Act especially under GOP majorities have used to eliminate regulations rather than rewrite statutory legislation. There are of course other factors at work with congressional decline more generally such as declining expertise, staff, spending on legislative appropriations, and the demise of regular order to name a few.

There is however, a much more dire worst-case explanation of congressional decline. It may be that the Republican Party no longer functions like a normal coalition-building party—so there is no reason to participate in the Congressional policy-making process. Rather, it is at least possible that we are witnessing a transformation away from the system of shared powers envisioned by the Framers and toward something more in-line with a parliamentary system where the teams are in alignment with their president and, conversely, against the other teams'. Even if the two parties are changing asymmetrically, as Mann and Ornstein have argued, the result may be the same—we may be watching the end of the Madisonian system and the emergence of a new more permanent form of presidential governance in foreign affairs.⁸

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⁸ We know, and are uncomfortable about how polemical this argument may sound. However: (1) the data supports the viewpoint, and (2) while we are both Democrats we are troubled by actions of Democratic presidents that run afoul of the Madisonian framework, such as Clinton’s moves on Cuba after Helms-Burton or Obama’s OLC’s contorted view of the applicability of reporting under the War Powers Act when flying “over” hostilities in Libya. While we do not see these acts as equal and on balance to actions taken under Bush (43) and Trump, and reject the argument that both sides do it equally, nevertheless the movement away from shared governance in foreign affairs is clear and alarming, in our view.



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