

Congressional Investigations and the Electoral Connection

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Though theories of contemporary politics establish predicted empirical regularities, many underlying assumptions cannot be directly tested. However, critical moments in American political development offer opportunities to test these assumptions—and, by extension—the theories they support. We utilize one such historical moment to test existing theories of Congressional oversight of the bureaucracy. We leverage the 17th Amendment to evaluate the assumption that incentives motivated by the “electoral connection” drive members of Congress to investigate more vigorously during divided government. We show that the 17th Amendment “treatment” substantially increased the Senate’s propensity to investigate when encountering an opposition president.

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I. INTRODUCTION

On May 5, 2014, Speaker of the House John Boehner announced that he would form a committee—led by Representative Trey Gowdy (R-SC)—to investigate the attack on the American embassy in Benghazi, Libya. “[Gowdy] shares my commitment to get to the bottom of this tragedy,” argued Boehner, “[...] he will not tolerate any stonewalling from the the Obama administration” (“Boehner Taps Rep. Trey Gowdy to Lead Benghazi Select Committee”). For their part, the Democrats did not see this inquiry as a dispassionate search for “the truth” or a constructive effort to prevent future attacks. Instead, Representative Elijah Cummings (D-MD) characterized the inquiry as “an an effort to go after Hillary Clinton. Period” (“Newly Relevant Benghazi Panel Spooks Dems”). In order to minimize the potential political costs they might be forced to incur as a result of the investigation, Democrats are taking aim at the motivation(s) of those conducting it. The inquiry, they argue, does more to promote the individual political goals of Republican lawmakers than to provide information relevant to any future policy change.

The political battle between Democrats and Republicans over the Benghazi investigation, and the intentions of those participating in it, echo the terms of a long-standing discussion within political science. Motivated by questions focusing on *why* Congress investigates the executive branch, *under what conditions* it is more or less likely to investigate and *what impact* investigations have on policy or the political standing of the president, scholars studying congressional behavior have long aimed to shed light on this specifically legislative function. The research generated by these studies suggests that investigations serve the individual political goals of legislators (Parker and Dull 2009; Kriner and Schwartz 2008); they allow Congress to check the authority of the executive branch (Kriner and Schickler 2014); and they provide legislators with an opportunity to collect and synthesize policy-relevant information prior to proposing new legislation (Mayhew 1991). These studies also make clear that the prevailing political context influences legislators’ decisions to investigate.

While the findings of these studies shed light on a critical area of legislative behavior, they have in common one basic limitation: the theoretical and empirical insights they provide are limited to the post-New Deal era. With few exceptions, studies of congressional investigations propose theories and report empirical findings that do not address member behavior prior to the election of Franklin Roosevelt. As a consequence, we cannot be sure if the insights provide by these studies are

time-bound, or if they can specify behavioral regularities among lawmakers across the full life-span of the legislative branch. The analysis to follow will begin to explore investigatory behavior in the “pre-modern” years. More specifically, we aim to determine if one major theoretical component of contemporary studies—the electoral incentive—motivates investigations in the years between 1791-1927.

As we discuss in greater detail below, our strategy for identifying the impact of the electoral incentive on investigations is to compare the propensity of the House and Senate to investigate the executive branch in the years before and after enactment of the 17th Amendment. From 1789 until 1913—when Congress adopted the 17th Amendment—members of the Senate were chosen indirectly by state governments. Among members of the House of Representatives, however, the electoral incentive has been comparatively consistent. Members of the “lower” House have *always* been directly responsible to the voters themselves. The same cannot be said of their Senate counterparts. Before 1913, Senators were directly responsible to members of their respective state legislatures, and only indirectly responsible to the voters.

In this study, the 17th Amendment acts akin to a “treatment” imposed on Senators serving after its enactment. This constitutional change made senators, like their counterparts in the House of Representatives, “direct agents” of the voters (Gailmard and Jenkins 2009, 324). As Gailmard and Jenkins (2009) demonstrate, changing senators’ electoral constituency led to changes in their behavior. We build on their analysis by further demonstrating how the the electoral incentive generated new patterns in investigatory activity. Once they become directly responsible to “the people,” we argue, senators *should* begin to mirror investigatory activity within the House. By compiling and analyzing an original dataset of congressional investigations from 1791-1926, we substantiate this claim and, in so doing, make clear how the electoral connection drives investigatory activity through a significant portion of the nation’s history.

Before making clear how the 17th Amendment factors into our analysis, however, it is useful to identify the three basic explanations for why reelection-motivated MCs investigate the executive branch: (1) MCs use investigations protect Congress “institutional power” from executive aggrandizement; (2) investigations allow MCs correct “policy mistakes”; (3) investigations allow MCs to engage in public “position-taking” (Mayhew 1974). Following this discussion, we identify the theoretical expectations structuring our claims about the link between the electoral incentive and congressional

investigations. We then explain the data and methodology of our analysis before presenting our results and concluding.

II. WHY INVESTIGATE?

In seeking to understand *why* MCs commit time to investigations of the executive branch, our analysis relies on what Arnold (1990) calls the “logic of congressional action.” Like Arnold, we explain trends in investigatory behavior by analyzing the individual political calculations of “rational” legislators. We treat members of Congress as strategic actors and we assume that their decisions reflect calculated judgments about how best to pursue their ambitions. More specifically, we assume that reelection is the “proximate” goal of all members of members of Congress (MCs).¹ Reelection may not be the only goal pursued by the individual member of Congress, but it is the one goal they “pursue at the expense of all others” (Mayhew 1974; Carson and Jenkins 2011, 27). Legislators make decisions about how to vote and how to commit their time with the electoral incentive as their first priority. Of course the electoral incentive may manifest in different ways and lead to different behaviors. More specifically, it may lead members to investigate in order to contest the president, to motivate policy change, or simply to facilitate the pursuit of personal power.

Investigations may serve to undermine a president, or executive branch power writ large. They afford legislators an opportunity to identify and publicize executive mismanagement or malfeasance and, by extension, to cast down on presidential leadership. For example, the investigation led by Senator Thomas Walsh (D-MT) shed light on bribery and influence-peddling within the Harding Administration. The “Teapot Dome” investigation (and scandal) centered on then-Interior Secretary Albert Fall’s decision to lease a government-controlled petroleum reserve to a private oil company without a competitive bidding process (Schlesinger and Burns 1975). Yet the controversy around “Teapot Dome” did not just embarrass President Harding and his fellow Republicans. Through this investigation—and the related 1927 Supreme Court decision *McGrain v. Daugherty*—Congress also won the power to compel testimony from witnesses appearing before a committee. While legislators did not yet have the authority to issue subpoenas, authorization to compel testimony provided them

¹While it is true that Mayhew’s analysis focuses on the behavior of contemporary MCs, research by Jenkins and Carson (2011), Katz and Sala (1996), Kernell and McDonald (1999) and Theriault (2003) makes clear that the electoral incentive helps to explain legislator behavior during the 19th century as well.

with a new and powerful tool.

Investigations may also check presidential power by undermining the president's political influence. More specifically, material generated through the investigatory process may be used by legislators to weaken public support for the president. As public support declines, so does a president's "power to persuade" and the likelihood that he will be able to implement his desired policy agenda (Neustadt 1991; Kriner and Schickler 2014). Kriner and Schickler (2014), for example, find a clear link between increased investigatory activity and declining presidential approval. To the extent that a president relies on public support for the enactment or implementation of his policy agenda, therefore, he is undermined by "successful" congressional investigations. Kriner and Schickler's finding is also important because their analysis is one of the few that sets out to determine the extent to which investigations systematically undermine presidential leadership. Stated differently, it is often assumed that investigations afford MCs an opportunity to "check and balance" the president. More often than not, however, this assumption is not tested or measured. As a consequence, it remains unclear if/how frequently Congress' institutional powers are bolstered by investigations.

Investigations may not always serve to "check" the presidency, but this is not their only purpose. Indeed, in his historical examination of Congress' investigatory power, Taylor (1955) argues that the "traditional purpose of all legislative inquiries" is to "inform the legislature" (85). Taylor's argument gives voice to a commonly invoked explanation for why members investigate the executive branch: by seeking for and receiving relevant "information," Congress is better prepared to legislate and/or correct policy "mistakes." In this context, mistake can take on two different meanings.

A policy implemented by executive branch administrators may be generating harmful consequences for voters or powerful interest groups and the reelection-motivated legislator, concerned as she is with creating and maintaining a reputation for skillful policymaking, may use the investigation as a mechanism for identifying a policy problem and for considering potential solutions. The knowledge gained through an investigation can be applied to any potential legislative "fix." Policy that is being implemented effectively may also prove itself "mistaken" if it departs from the political preferences of an individual MC (or group of MCs). In this case, an investigation—like an oversight hearing—may generate a legislative fix if it calls attention to a policy that presents political problems for lawmakers. Legislators, in other words, may be able to turn the political momentum generated by an investigation into a successful effort to rein in the discretionary authority of executive branch administrators. The

“informative” value investigations suggests that legislators use them to catalyze policy change.

Here again it is important to note that the link between investigations and policy change is more frequently asserted than demonstrated. In his discussion of the “police patrols versus fire alarms” literature, Moe (1987) strongly contests the argument that oversight leads to policy change. His findings suggest that the link between hearings and discrete policy change is empirically tenuous. Moe’s claim should also inform our perspective on the policy impact of congressional investigations. In the absence of evidence, we cannot be sure investigations lead to policy change just as we cannot be sure that investigations afford legislators an opportunity to check the power of the executive branch. Instead, they may serve primarily as an opportunity for MCs to increase their individual power and thus the likelihood of reelection..

The final explanation for why Congress investigates—the explanation we test below—is grounded in the claim that investigations provide MCs with individual political benefits. It may be the case that investigations do not bolster Congress’ institutional prerogatives or reliably motivate policy change. For an individual legislator, however, being *seen* as an advocate for one or both of these goals can increase her probability of reelection. Stated differently, investigations afford opportunities for self-interested members to craft reputations and to distinguish themselves from their colleagues.

Schickler (2007), for example, illustrates how Harry Truman’s chairmanship of a Senate subcommittee investigating the Roosevelt administration’s misuse of public funds allowed the Senator to cultivate a reputation for impartiality and “honest-dealing”. Similarly, our discussion of the Republican-led investigation of the attack in Benghazi suggests that investigations may allow legislators to shore up support among the party base. The goal pursued by Truman—cultivating a reputation for “honesty” and “independence”—may be different from the goal pursued by contemporary Republicans—cultivating reputations for determined opposition to Democratic leadership. Yet the investigation serves as a common vehicle for pursuing individual political goals.

More specifically, investigations allow members to pursue reelection by affording them opportunities to stake out anti-administration positions, to burnish credentials with loyal partisans and to cultivate reputations as political problem-solvers. Yet the potential gains to be won through investigations are not uniform across all possible political contexts. Indeed, an important line of research aims to demonstrate *when* legislators stand the reap the greatest rewards for committing time and energy to a congressional investigation. Investigations threaten the political standing of

the party holding the White House. Accordingly, they “enable members and partisan congressional majorities to differentiate themselves from an opposing party and presidential administration” (Parker and Dull (2009, 325)). We share this perspective. Following Parker and Dull (2009), Kriner and Schwartz (2008), and others, we argue that investigations are more likely under divided government. The potential rewards to be won for such differentiation are at their peak when a congressional majority of one party successfully challenges an opposition party president.

As we have noted, existing research establishes a link between divided government and congressional investigations (but see Mayhew 1991). This link is generated by the electoral incentive. Our goal is not simply to echo the arguments of those whose work preceded our own. We depart from existing work in two important ways. First, we analyze an understudied historical period to evaluate the generalizability of existing work. Second, we explicitly test the theorized link between the electoral incentive and congressional investigations by leveraging a change in Senate behavior—increased probability of investigation under divided government—following enactment of the 17th Amendment.

III. INVESTIGATIONS IN THE “PRE-MODERN” ERA

Our analysis focuses on an era overlooked by those studying the link between divided government and investigations. Following Mayhew (1991), most analyses of investigatory activity begin with the later years of the New Deal. After all, New Deal reforms were responsible for creating much of the administrative apparatus that generates the investigations themselves. Without an executive branch bureaucracy, in other words, MCs had far less to investigate. Additionally, the Senate did not have subpoena power until Congress enacted the Legislative Reorganization Act of 1946 and all House committees did not win this authority until 1974. As a consequence, the legislative branch lacked an institutional resource vital for completing investigations.

While the institutional reforms implemented during the New Deal mark a clear turn toward centralized authority, the process of national administrative expansion had begun before the Depression and the election of Franklin Roosevelt. The New Deal itself was in many ways the fulfillment of a political project initiated by Populists and Progressives in the years between the end of the Civil War and the end of the Wilson presidency. Goldman’s (1958) analysis of the Populist/Progressive reform

movements identifies within both an “increasing urge to centralize” as a way of counteracting the endemic corruption that characterized the “Gilded Age.” This urge manifested in two forms: through a “greater dependence on federal rather than state action and on executives rather than legislatures” (Goldman 1958, 79-80). More concretely, reforms initiated by Theodore Roosevelt and Woodrow Wilson—changes to civil service policies, new partnerships between government and private industry and enhanced regulatory authority over the marketplace—point to a “gradual accretion of national administrative forms and procedures throughout the early years of the 20th century” (Skowronek 1982, 286). The opportunities for investigation, in other words, increased significantly even before the New Deal era had commenced.

National administrative expansion increases the opportunities for congressional investigations, but that development alone does not explain why legislators investigate. Investigations emerge as an attractive political strategy if MCs can plausibly link the misdeeds and/or incompetence of administrators to a sitting president and his party. Over the time period we examine, political outcomes and governmental performance are often tied to a specific presidency (Milkis 2009; Eisenach 1994; Tulis 1987). Whether presidents are creatures of their party (as they were in the 19th century), or leaders of their party (a trend beginning in the 20th century), their opponents in Congress stand to gain by making them responsible for administrative failure. Accordingly, one way in which Congress responds to the burgeoning administrative state and the “rise of the presidency” is by engaging in investigations. Indeed, as Figure 1 illustrates, the number of investigations increases steadily over time.

It is also important to note that legislative scholars identify the period between 1890-1910 as a “significant moment in the rise of congressional careerism” (Carson and Jenkins 2011, 29). According to Carson and Jenkins (2011), the increasing importance of seniority within Congress, as well as the move to reform election laws and procedures, contributed to the rise of the lawmaker who sought to build a sustain a career within the legislative branch (29). Congressional careerism, in turn, increases the value of those behaviors that facilitate re-election. For those members of Congress in the opposition party, investigations provide an opportunity to undertake “salient” or “visible” legislative action. Accordingly, the investigation proves a useful forum for ambitious MCs even before the New Deal. During the Progressive era, rooting out corruption and mismanagement, and then blaming both on the sitting president, represents a useful electoral strategy.

If we move further backward in time, plausible links between investigations and the electoral incentive continue to exist. Perhaps most importantly, ambitious 19th century lawmakers were also careerist—they simply pursued a different kind of career. More specifically, careerism in the 19th century more closely resembled “political careerism” than “congressional careerism.” This distinction suggests that ambitious legislators have not always sought a prolonged tenure at the national level. Instead, the politically ambitious “moved from a local (state) position to Congress and then back again” (Carson and Jenkins 2011, 30). Also unlike their 20th century counterparts, those serving in the 19th century were dependent on the party apparatus to pursue their ambitions. Yet these distinctions in no way undermine our claim that investigations aid the ambitious, or that the electoral connection leads MCs to more frequently investigate under divided government.

It is true that the political environment prevailing in 1918 looked much different from the political environment of 1868 or 1804. Between 1791 and 1926, the presidency grew more powerful, the president’s relationship to Congress and the party shifted multiple times, and national-level organization transitioned from a “state of courts and parties” to a more fully bureaucratized regime (Skowronek 1982; James 2000; Milkis 1993; Bense 1991). These shifts are important because one might argue that they lead the election imperative to shift in salience. Stated differently, one might contest our argument by claiming that legislators see the link between investigations and the electoral incentive differently at different historical moments. While this critique is not without force, we argue that fluctuations in how members perceive the salience of congressional investigations do not undermine the basic link between the investigations we examine and the reelection incentive. Our discussion of why lawmakers investigate, combined with the historical details just provided, aim to support the theoretical link we draw between the electoral incentive and investigations.

In addition, we limit our analysis to investigations of alleged wrongdoing, misconduct, or gross inefficiency. Members of Congress initiate the investigations we explore knowing that “success” will highlight one or more misstep by the president or executive branch administrators. Accordingly, even though the 19th century president was not responsible for the “party brand” in precisely the same way modern presidents are, legislators in both parties would understand the political threat posed by this kind of an investigation. Finally, we use enactment of the 17th Amendment as an opportunity to empirically verify the link between the electoral incentive and congressional investigations. If we can identify a link between the direct election of senators and an increased propensity to investigate

under divided government, we have further reason to believe that MCs have consistently utilized investigations to pursue individual political rewards.

Our claims about the opportunities to investigate, and the political usefulness of investigations between 1791-1926 are important to discuss because they substantiate an important facet of our argument. We claim that investigations have the same political and electoral effects in the years prior to the New Deal even if those studying investigations have chosen to focus on the post-New Deal era. In other words, the electoral incentive motivates MCs to investigate in the period we study for the same reason that it motivates modern lawmakers.

Stated more explicitly, we make the following claims: (1) members of the House of Representatives—always directly accountable to the voters themselves—are more likely to pursue the political benefits afforded by investigations under divided government; (2) senators holding office *prior* to enactment of the 17th Amendment should be less likely than those in the House to investigate during divided government; (3) senators holding office *after* enactment of the 17th Amendment should adopt more “House-like” behavior and should more frequently investigate under divided government. Together these three claims lead to the hypothesis that we test below:

Electoral Hypothesis: When MCs are directly electorally accountable to voters, divided government will increase a chamber’s propensity to investigate. When no direct electoral connection exists, there should be no discernible difference between divided and unified government.

IV. DATA

Our empirical focus calls for a dataset of congressional investigations conducted by the House and Senate from 1789-1927. Again, we confine our analysis to investigations of alleged wrongdoing, misconduct, or gross inefficiency. To be included, the investigations must be initiated by Congress and target some individual, department, or agency within the executive branch.² In general, the investigations were formally initiated by resolution; in some cases, the resolution resulted in the

²Some of the histories consulted recount internal investigations of representatives accused of taking bribes—or the alleged misconduct of private corporations. Investigations such as these have been excluded. Moreover, our analysis turned up a non-trivial number of investigations into the administration of the District of Columbia, which were also excluded.

formation of a select committee. Studies which empirically analyzed the post-war era collected observations of congressional investigations one of two ways: (1) by systematically surveying contemporary accounts (Mayhew 2005, Kriner and Schwartz 2008), or (2) by culling the *CIS Index* of congressional hearings (Parker and Dull 2009, McGrath 2013). Our temporal sweep presents a set of unique challenges. First, the contemporaneous rater used by past work, the front page of the *New York Times*, has only existed since 1851. In addition, we are concerned, as Parker and Dull (2009) note, that variation in the “criteria determining when a single investigation will achieve” enough prominence to be consistently mentioned on the front page could produce a biased sample (321). Given its limited scope, and since several major developments in newspaper reporting occurred between 1789-1927, we sought alternate means of culling historical investigations.³

The U.S. Congressional Serial Set contained in the *CIS Index* began publication in 1817, years prior were be culled from the American State Papers.⁴ To extract observations of theoretical interest, we conducted keyword searches of published Congressional hearings and reports from 1789-1927.⁵ This returned roughly 300 observations of congressional investigations into alleged misconduct or mismanagement by officials, agencies and departments of the executive branch. A key concern, however, is that document searches may fail to reveal observations of truly *consequential* investigations. That is, it may be that the mechanisms outlined earlier only operate among a particular category of investigations: those that were consequential or those that acquired sufficient “political importance”(Mayhew 2005, 9). Another concern is that terminology associated with congressional investigations may have changed over time, such that earlier observations of investigations may be unduly omitted. For these reasons, and because of the issues outlined with potential contemporaneous news coverage, we supplemented our analysis with a handful of retrospective raters. Specifically, we collected secondary accounts which dealt exclusively with congressional investigatory activity during the time in question: Weber (1912), Eberlings (1928), Dimock (1929), Taylor (1955), and Schlesinger & Bruns (1975). All told, systematic searches of congressional publications, along with these retrospective raters, yielded 353 congressional investigations from 1789-1927.⁶

³For instance, the time-series spans the era of party-run newspapers, which may have influenced which investigations were reported.

⁴These resources were accessed via ProQuest Congressional.

⁵A full description of our coding procedure and inter-coder reliability can be found in the Appendix.

⁶Though many observations were mentioned by more than one source, we are reluctant to model a latent variable (“importance” or “significance”) as past work has among lawmaking (Clinton and Lapinski 2006) and presidential directives (Chiou and Rothenberg 2013). The theoretical perspective outlined earlier should be sufficiently general to

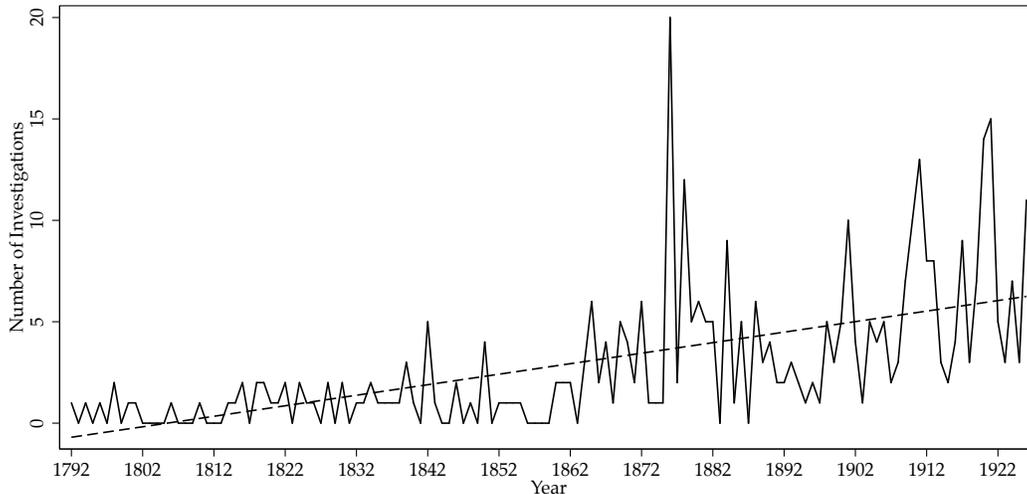
Not surprisingly, the quantity of investigations is far lower in the historical sweep considered.⁷ By comparison, during the post-war period, Parker and Dull (2009) find 1,015 investigations. We offer two explanations for the difference. First and foremost, the our analysis encompasses the time period during which the instrument itself was developing. Eberling’s (1928) history, for instance, notes that though the investigatory power was prevalent at the time of the Founding in American state legislatures, it is not among Congress’s enumerated powers. As a result, whether Congress could compel testimony and punish offenders remained a contestable institutional question into the 1830s. Second, the scope and scale of administrative activity on the part the federal government is meager compared with the post-war period.⁸ While our theoretical perspective looks into *demand* for investigations—that is, why and in what circumstances Congress would want to investigate—there is also a *supply* story. It is not the case that Congress simply invents instances of alleged wrongdoing out of thin air. As the size and scope of the federal government increase, the *supply* of potential wrongdoing should increase. Put simply, we likely observe fewer investigations because Congress had less to investigate. Each of these explanations also suggest that the raw count of investigations should trend upward—which *Figure 1* confirms. However, we have no reason to expect that this trend cuts against—or provides an alternative explanation for—the hypotheses laid out earlier.

underlie the universe of congressional investigatory activity—as opposed to those which are recounted in histories and reported in newspapers.

⁷Note, we have no reason to suspect that our data collection process systematically omits many investigations. In his historical account, Dimock (1929) counted 335 total investigations during the time in question.

⁸Recent historical work has challenged the idea that 19th century governance was merely clerical and minor in scope (e.g. Balogh 2007), but we take the notion that this period is *comparatively* minor to be a stylized fact.

Figure 1: *Congressional Investigations through the 19th Century*



V. EMPIRICAL ANALYSIS

In order to test the Electoral hypothesis, we perform two types of analyses. First, we analyze the total number of investigations per year (or per Congress). Second, we disaggregate the investigations by major department or agency. There are a number of advantages to structuring the data in multiple ways. Overall, they represent somewhat distinct questions—though we have no reason to suspect that our theoretical expectations should be altered given that distinction. The first analysis looks into what influences the number of investigations in a given year, whereas the second looks at what influences the probability a department will be investigated in a given year. Past analyses have structured their analyses in terms of yearly counts (Mayhew 2005, Kriner and Schwartz 2008, Parker and Dull 2009). These analyses allow us to test theories of legislative oversight in the aggregate. Our second empirical strategy is most akin to McGrath (2009), who analyzes standing-committee years. The advantage of disaggregating the investigations by department is that it may uncover different empirical patterns based upon issue area and the development of administration. This is particularly important for our historical period and theoretical focus. Merit systems were adopted in different departments, at different rates, and the investigation of some departments may be more electorally beneficial than others during divided government—based upon variable association with the President.

Though analyzing Congresses and years is fairly straightforward, analyzing department-years requires more explanation. First, given that executive departments and agencies are nested within each other, they must be analyzed at a level that provides stable and meaningful units. This means that investigations specific to subordinate agencies are coded as investigations of the larger department. For instance, investigations of the Freedman’s Bureau and Isthmian Canal Commission were coded as an investigations of the War Department, since the Secretary of War was directly responsible for their administration. Investigations of the United States Reclamation Service and Bureau of Pensions, on the other hand, are coded as investigations of the Interior Department. Direct investigations of the President encompass investigations of those who are directly appointed by and responsible to the President and are not part of a regular cabinet department (e.g. territory secretaries). Though most of our units are cabinet departments (or eventually became cabinet departments), we also include the GPO, Civil Service Commission, Federal Trade Commission, and Federal Reserve. Though we argue it is appropriate to include them as comparable units, they account for a sufficiently small number of observations that omitting them does not substantively alter the results we present later.

Finally, some investigations do not explicitly target a single department. Instead, they are described as general investigations of the executive branch. For example, in 1822, the House led an investigation into the expenditures and accounting procedures of all executive departments. These instances pose a challenge because it may these “general” investigations actually had an intended target department. Thus, though these investigations are included in our Congress/years analyses, they are omitted from our department-years model. We present a summary of our departmental units, the years which were included for our analyses, and the number of investigations by chamber in *Table 1*. Overall, not surprisingly, the Department of War is the most frequently investigated in the dataset—it is one of the oldest (second only to State), the most expensive, and has been treated with general suspicion by political leaders since the Founding.⁹ Moreover, wartime actions of the department tend to invite Congressional inquiry.¹⁰ Given its vintage, the State Department was investigated with the least regularity. Those with knowledge of Congressional history will not

⁹See, for example, the well-known dialogue between Robert Yates and Alexander Hamilton in *Brutus 10* and *Federalist 24*.

¹⁰One exceptional example is the Committee on the Conduct of War, which continued throughout the Civil War and consequently provides an extensive historical record of the war itself.

be surprised by the high frequency of investigations of the Interior Department, given numerous scandals involving corruption and fraud of pensions, public lands, and Native American accounts.

Table 1: *Investigations by Department and Chamber*

Department	Years	House	Senate
President	1791-1926	8	5
War	1791-1926	43	24
State	1791-1926	7	6
Treasury	1791-1926	33	15
Post Office	1792-1926	26	16
Navy	1798-1926	21	14
Printing*	1813-1926	7	11
Interior	1849-1926	31	28
Agriculture	1862-1926	15	5
Civil Service Commission	1883-1926	2	3
Justice	1870-1926	14	6
Commerce	1901-1926	5	6
Labor	1914-1926	3	3
Federal Trade Commission	1914-1926	0	1
Federal Reserve	1914-1926	1	0

*Note: The GPO was not formally established until 1861

We analyze the adoption of the 17th Amendment as a potential electoral connection “treatment”. Recall that, our expectation is that the adoption of the 17th amendment should increase the Senate’s incentive to investigate during divided government. The House’s propensity to investigate during divided government, however, should be present both before and after the introduction (*Table 2*). In this way, the House acts as a kind of placebo case—it will be influenced by other well known developments in American politics in the early 19th century (e.g. the rise of Progressivism, the growth of the administrative state), without receiving the treatment of interest.

Table 2: *Summary of Expectations*

	Pre-17th	Post-17th
Senate	≈ 0	+
House	+	+

For our first analysis, the number of investigations per year as a dependent variable. Our key independent variable is an indicator for divided government, coded “1” if the chamber in question

and the presidency are controlled by different parties, and “0” otherwise. One concern of this and all preceding analyses, is variation in the process that generated divided government in the 19th century. As Engstrom and Kernell (2005) have convincingly argued, the frequency of divided government in the 19th century was held “artificially” low due to the impact of state electoral laws. While this does not alter our expectations regarding the process that generates investigations, it does mean that our key statistical enterprise—comparing periods of divided and unified government—is more difficult. There are simply fewer observations of divided government to use a comparison group. To estimate the effect of the 17th amendment, we also include an indicator which takes a value of “1” after 1912. Specification of this point poses a challenge for the analysis. The first Senators to be elected (or re-elected) under the new system campaigned in 1914. We code the first year of this system as 1913, to take into account that incumbents would likely adjust their behavior prior to the first election. The measure itself was approved by Congress in 1912, so we argue this assumption is reasonable. In fact, specification of the break in 1913 likely renders expected empirical findings more difficult to uncover, given that some Senators were elected by popular vote (or primary) earlier—moreover, Senators may have anticipated the move in advance of adoption of the resolution.

For each model, we also include the total annual expenditures of the federal government in order to control for the size of bureaucracy.¹¹ As we have suggested, the trend in our dependent variable may partially be the result of an increase in the availability of departments, agencies, and programs to investigate. To account for the fact that congressional investigations may be the direct result of wartime inquiries into the conduct of the military, we include a dummy variable coded “1” during the War of 1812, the Mexican American War, the Civil War, the Spanish American War, and World War I. We also include an indicator variable for the reconstruction period. As *Figure 1* clearly shows, the trend in our dependent variable obfuscate the expected effects. That is, we may observe more investigations during divided government post-17th amendment because investigatory activity is trending upwards for reasons unrelated to the treatment. For that reason, we include also include a lagged dependent variable, and estimate the model with robust standard errors.

The results from these initial models are summarized in *Table 3*. Overall, our quantity of interest is the estimated effect of divided government on investigations, conditional on the presence or absence of the 17th Amendment. For that reason, we include this result in-text. Note, however, the full

¹¹These data come from the Census Bureau report, *Historical Statistics of the United States, 1789-1945*.

model results for the proceeding analyses are reported in *Tables 6-8* of the Appendix, for those interested in the regression coefficients. But before discussing the results below, it is important to note that, as expected, across the complete time series, the House is significantly more likely to investigate the executive branch during divided government. The coefficient on the divided government variable is significant at the 0.05-level, and overall, divided government tends to result in an additional investigation per year. However, the predicted increase in investigations only provides preliminary support of our expectations. As expected, there is an increase in the predicted number of investigations for the Senate, but this quantity is not precisely estimated. Moreover, though there is a corresponding increase in the House, the predicted increase post-17th Amendment is not statistically distinguishable from the Pre-17th Amendment period.

Table 3: *Predicted Increase in Number of Investigations during Divided Government*

	Pre-17th	Post-17th
Senate	0.28	0.40
House	0.82*	1.83

*p<0.1, **p<0.05, ***p<0.01

Full models reported in Appendix, Table 6.

Naturally, we are concerned that structuring our data in this way has underpowered our estimation—and that, relatedly, the total number of investigations per year is too blunt a dependent variable to adequately answer our research question. Appropriately, then, we turn to the analysis of investigations specific to departments. Our dependent variable is a dichotomous indicator for whether a department had an investigation initiated by a given chamber, in a given year.¹² Our key independent variable, again, is whether the chamber and the presidency were controlled by different parties. As control variables, we include the aggregate percentage of civil service employees covered by merit systems and the total expenditures of the federal government in a given year. The inclusion of the “rate” of merit employment is particularly important.¹³ Even if Congressional

¹²Note, this dichotomous explicitly conflates joint investigations with investigations of the same department by different chambers in the same year. We argue that this is appropriate because our intent is to capture the chamber’s willingness to engage in investigatory activity, not necessarily the decision to engage in a distinct investigation (as opposed to doing so jointly).

¹³Ideally, we would include the percentage covered by civil service by department. While there some early Civil Service Commission reports include this information, later reports focus almost exclusively on the testing and

incentives largely drive the propensity to investigate, the “supply” side of investigations—the presence of alleged wrongdoing—could confound our analysis. Merit reform came about in part, in response to charges of maladministration—so the rate of merit-based employees may influence the supply of wrongdoing to investigate.¹⁴

Given our panel data, we must account for the possibility that the investigation of one department will “crowd out” investigation of another in any given year. Moreover, we are concerned that there may be diminishing returns to investigating a department, such that we are unlikely to observe consecutive investigations year-to-year. This is especially problematic, because the dependent variable is coded as the *initiation* of an investigation, not the duration. Some investigations last more than one year, rendering an investigation in the following year very unlikely. To account for this, we control for the number of years since last investigation in a given department. Additionally, given that our theoretical focus is what renders departments more likely to be investigated over time, we include department-fixed effects—isolating *within* variation. Finally, we estimate four Logit models (one for each chamber and each period in question) with robust standard errors.¹⁵

We summarize the results of these models in *Table 4*, again, zeroing in on the quantity of interest: the marginal increase in the probability a department will be investigated during divided government, conditional on whether the the 17th Amendment has been enacted. The full model results are presented in the Appendix. Overall, the models provide strong support for the effect of the 17th amendment on the propensity to investigate. Across all departments, prior to the 17th Amendment, divided government has no appreciable relationship with investigations. However, strikingly, after the introduction of popular election, divided government increases the probability of an investigation by 23 percentage points. Importantly, as expected, a department is significantly more likely to be investigated by the House during divided government in both the pre- and post-17th periods.

application process. We have yet to find a data source that would provide us within-panel variation. Alternatively, given we know in what year civil service systems were introduced (and in some cases, abolished). Inclusion of a indicator variable coded “1” if employees in the department were covered by civil service regulations does not alter the results we present later.

¹⁴Note, we do not include a dummy variable for war years in this regression, because the propensity to investigate the military will be captured by the War Department dummy, given that we include department-fixed effects.

¹⁵Clustering errors by year does not alter the main result we present later, that the Senate was more likely to investigate during divided government.

Table 4: *Marginal Increase in Probability of Investigations during Divided Government (All years)*

	Pre-17th	Post-17th
Senate	0.01	0.23**
House	0.05**	0.26***

*p<0.1, **p<0.05, ***p<0.01

Full models reported in Appendix, Table 7.

It is important to note that it is not appropriate to compare the precise values of these marginal effects. For instance, though it appears that the 17th Amendment may have influenced a corresponding increase in the likelihood of House investigations, this effect is largely an artifact of comparing two unbalanced panels. That is, the pre-17th period encompasses a time series in which the baseline probability of investigation was much lower—for reasons we have discussed earlier. If we adjust the time series to include a comparable number of years, the apparent difference contracts. We present one such example in *Table 5*, in which the pre-17th models only include years after 1892. Note, the results remain the same, with no appreciable effect in the Senate before the Amendment, and constant evidence of an effect in the House. Here, the selection of 1892 is entirely arbitrary. But this pattern is the same, regardless of the cut-point selected: pre-17th Amendment, divided government only increases the probability of a House investigation; post-17th Amendment, a similar effect appears in the Senate.

Table 5: *Marginal Increase in Probability of Investigation during Divided Government (After 1893)*

	Pre-17th	Post-17th
Senate	-0.04	0.23**
House	0.13**	0.26***

*p<0.1, **p<0.05, ***p<0.01

Full models reported in Appendix, Table 8.

Despite the robustness of these findings across model specifications, it is important to entertain the possibility that—given the historical moment we consider—the observed effect in the Senate may be the result of multiple treatments. That is, other political developments beyond the introduction

of direct election of Senators may be driving the difference in time series. One possibility, as we have mentioned, is that the size and scope of government or the rise of the administrative state, may be driving “demand” for investigations. Features of the analysis and data above mitigate this concern. First, if size of government is a pre-requisite to the effect of divided government, it is not clear why we would observe an effect for the House in the pre-17th Amendment period. Second, we attempted, when possible, to control for this through the proxy of government expenditures. Importantly, all results hold up with this control variable included. Another possibility is that progressivism—and more specifically, the idea of accountability propagated by reformers—was a critical prerequisite to the observed pattern. This is complicated by arguments that the “height” of the progressive movement occurred as the 17th amendment was enacted. Again, it is not clear why there would be a pre-17th Amendment effect in the House if progressivism drove the trend. Beyond this, providing a critical test of this argument is difficult—as is any idea-based casual logic. After all, the 17th Amendment was itself a progressive reform, so progressivism could be considered an antecedent cause. Whether it had some independent effect on legislative behavior is probably untestable. Moreover, it is difficult to explain the critical link between divided government and investigations with the ideas of the progressive movement.

One additional concern might be that the post-17th period we consider does not offer much in the way of variation on our key independent variable. The only instance of split Presidency-Senate control occurs in the 66th Congress. The next occurrence of divided government falls within the well-studied post-war period (80th, 1947-1949). Still, we argue this limitation renders the association we uncover more suggestive of the explanation we provide at the outset. If, as has been suggested by past scholarship, congressional investigations of the bureaucracy are incentivized by the desire to reap electoral rewards—then the electoral connection is a prerequisite to the empirical regularity that divided government induces more investigations. We, then, would expect that prior to the introduction of the direct electoral connection, no such pattern would be present—that is precisely what we find in the Senate.

VI. CONCLUSION

Our analysis is built around two central claims: (1) the electoral incentive motivates legislators to more frequently investigate the executive branch under divided government; (2) the theoretical link between the electoral incentive and congressional investigations is observable by comparing Senate and House investigatory behavior before and after enactment of the 17th Amendment. Finding that the Senate’s probability of investigating the executive branch increases significantly in the immediate post-enactment years demonstrates that this constitutional reform led to a meaningful change in legislator behavior. This finding is particularly striking, given that past research has found that the Senate exhibits less investigatory activity during divided government, compared with the House. Finally, it highlights the salience of the electoral incentive in an era that is frequently overlooked by Congress scholars. In short, our analysis helps to affirm the theoretical validity of the electoral connection by testing for and identifying its effects at a critical moment in American political development.

At the same time, this analysis raises some additional questions about the effect of the “treatment” and Congress’ propensity to investigate. For example, we find that in the immediate post-enactment years the probability of an investigation increases in *both* the House of Representatives and the Senate. Yet the 17th Amendment had no direct impact on members of the “lower” House of Congress. This finding calls for additional examination. It could be that the effects of enactment were not confined to the Senate. Perhaps members of the House, worried that Senate investigations would dilute the political salience of House-led investigations, responded by “picking up the investigatory pace.” In addition, it is important to consider how introduction of civil service reforms influences investigatory behavior. Does the merit system, in other words, enhance or diminish the propensity to investigate? Additional research is also necessary before this question can be answered.

Congressional investigations have the potential to generate long-lasting political change. The Watergate investigation forced President Richard Nixon from office and contributed to a significant legislative reform agenda; Senator Harry Truman’s investigation of the Roosevelt Administration helped secure him the vice-presidential nomination; The Teapot Dome investigation encouraged the Supreme Court to ensure that Congress had the authority to compel testimony from witnesses. The historical significance of congressional investigations compels political scientists to explain when

they are more or less likely to be initiated, as well as how they allow ambitious legislators to pursue individual ambitions. Our analysis contributes to this line of research and, ideally, demonstrates that investigations in the “pre-modern” era also deserve scholarly attention.

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Appendix

Table 6: *Investigations by Year and Chamber*

	House (1)	Senate (2)
Divided Gov.	0.537** (1.95)	0.272 (0.84)
17th Amend.	0.799** (2.57)	0.336 (0.82)
Total Expenditures	1.25e-11 (0.32)	8.29e-11* (1.64)
War Years	-0.0738 (-0.29)	-0.0229 (-0.06)
Reconstruction Years	0.711* (1.74)	0.0614 (0.13)
Investigations _{t-1}	0.0760 (1.51)	0.299*** (4.44)
Constant	-0.0490 (-0.34)	-0.608*** (-3.40)
ln α	-0.424 (-1.70)	-0.443 (-0.96)
N	134	134

Negative binomial coefficients with t statistics in parentheses, robust standard errors

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 7: Investigations by Year and Department

	House 1791-1912	House 1913-1927	Senate 1791-1912	Senate 1913-1927
Divided Gov.	0.45** (2.28)	1.552** (2.44)	0.28 (0.89)	1.548** (2.06)
Total Expenditures	1.05e-09** (2.91)	-1.11e-10* (-1.92)	1.29e-09** (3.00)	-6.61e-11 (-1.19)
Civil Service Rate	0.15 (0.25)	4.095 (1.23)	1.69** (2.43)	8.179** (2.49)
Years Since Last Investigation	-0.02 (-1.44)	0.206* (1.84)	-0.005 (-0.50)	-0.0134 (-0.36)
Constant	-1.56*** (-6.17)	-3.264 (-1.37)	-2.73*** (-8.29)	-5.341** (-2.34)
<i>N</i>	1024	139	1024	167
Departments	12	10	11	11

Logit coefficients with *t* statistics in parentheses, robust standard errors, department fixed effects (omitted), * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 8: Investigations by Year and Department

	House 1893-1912	House 1913-1927	Senate 1893-1912	Senate 1913-1927
Divided Gov.	1.134** (2.18)	1.552** (2.44)	-0.284 (-0.37)	1.548** (2.06)
Total Expenditures	-5.20e-10 (-0.24)	-1.11e-10* (-1.92)	-1.05e-09 (-0.73)	-6.61e-11 (-1.19)
Civil Service Rate	8.531** (2.46)	4.095 (1.23)	1.071 (0.64)	8.179** (2.49)
Years Since Last Investigation	0.0246 (0.62)	0.206* (1.84)	-0.00215 (-0.16)	-0.0134 (-0.36)
Constant	-5.665*** (-3.31)	-3.264 (-1.37)	-0.644 (-0.56)	-5.341** (-2.34)
<i>N</i>	212	139	212	167
Departments	11	10	11	11

Logit coefficients with *t* statistics in parentheses, robust standard errors, department fixed effects (omitted), * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$