Errors in Public Management and Congressional Oversight

Jongkon Lee*

Abstract: It is widely believed that "fire alarm" oversight (i.e., reactive oversight that responds to the complaints of interest groups) rather than "police patrol" oversight (i.e., precautionary congressional surveillance), better promotes the performance of government agencies by efficiently reducing bureaucratic moral hazard. However, fire alarm oversight can lead to bureaucrats being falsely accused by interest groups who provide biased information to members of Congress of failure to properly implement a policy, thereby causing an unnecessary administrative delay in public management. This article suggests a formal model that compares fire alarm and police patrol oversight and examines the development of congressional oversight mechanisms in the United States.

Keywords: congressional oversight, moral hazard, administrative delay, management error

INTRODUCTION

In modern society, elected officials commonly delegate policy making to bureaucrats (Huber & Shipan, 2002), and bureaucratic agencies frequently enact policies that diverge from those preferred by the elected officials (Epstein & O'Halloran, 1999; Lee, 2016, 2013). In other words, moral hazard, in this case bureaucrats who are protected when a policy fails constructing policy in ways that benefit them, has been a common public management problem. To illustrate, the Clean Air Act (PL 91-604), which was enacted in 1970, required the Environmental Protection Agency (EPA) adopt emission standards for hazardous air pollutants. Senator Edmund Muskie (D-ME), the main author of the legislation, stressed that the bill "intends that all Americans in all parts of the country shall have clean air to breathe" (116 Cong. Rec. 42381). However, the agency only included eight pollut-

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ants as hazardous air pollutants when it devised the legislation (which was eventually amended in 1990), even though at the time there were hundreds of airborne carcinogens (Graham, 1985; Schoenbrod, 1993). The EPA thus protected its own interests by letting various corporations producing airborne carcinogens off the hook, leaving politicians to deal with dissatisfied voters.

To address this problem, elected officials have developed two different congressional oversight methods: the "police patrol" approach and the "fire alarm" strategy (McCubbins & Schwartz, 1984). The former refers to precautionary and active surveillance over public agencies. Traditionally, Congress has used police patrol oversight as a way to detect failure to enact legislative goals, drawing on field observations, scientific studies, and agency documents to do so. In contrast, the latter refers to reactive and passive oversight that responds to complaints from interest groups. Congress has established rules and procedures that enable interest groups to examine administrative actions and charge misbehaving agencies (McCubbins & Schwartz, 1984; Ogul & Rockman, 1990). Fire alarm oversight is carried out through methods such as the notice-and-comment procedure (e.g., Shapiro, 2007), advisory committees (e.g., Balla & Wright, 2001), and litigation (e.g., Boyd & Sievert, 2013; Bellamy, 2013).

Because active surveillance entails a high information-collection cost (Stern & Wiener, 2006), legislators frequently abdicate police patrol oversight over the bureaucracy (Ogul, 1976). Instead, they rely on interest groups who see bureaucratic moral hazard to sound fire alarms. In this regard, Mathew McCubbins and Thomas Schwartz (1984) have noted that fire alarm oversight is a more efficient way to monitor public agencies than police patrol oversight because much of the oversight burden is then borne by interest groups. Their view has gained more acceptance, especially in the United States, owing to the sharp growth of interest groups (Baumgartner et al., 2009; Berry & Wilcox, 2007); diverse interest groups have provided legislators with detailed administrative information (Grossman & Helpman, 2001), and the bountiful resources of interest groups have led to a strengthening in fire alarm methods (Gordon & Hafer, 2005).

Nevertheless, in reality, police patrol oversight is still common and is prevalent even nowadays (Aberbach, 1990; Acs, 2018). For example, the Government Performance and Results Modernization Act enacted in2010 (PL 111-352) contains several police patrol clauses. It requires the comptroller general to evaluate the implementation of the act and to submit a report to Congress. In addition, the law cuts down on the number of fire alarm oversight methods at the disposal of interest groups, enabling federal agencies to rely on interim final rules and direct final rules and thereby avoid the notice-and-comment rulemaking procedure that provides for

a period in which the general public can comment on proposed rules. This aspect of law might be intended to address the fact that fire alarm oversight can cause another management problem—serious administrative delays (Jovanović & Pilić, 2013; Asimow, 1994). Although fire alarm oversight is efficient in preventing bureaucratic moral hazard, it can be disingenuous (Lupia & McCubbins, 1994). Interest groups frequently provide biased or partial information to legislators (Grossman & Helpman, 2001; Schlozman & Tierney, 1986) and intentionally reframe policy issues (Baumgartner et al., 2009). These false fire alarms can hinder the timely administration of policy, thereby negatively affect public performance (Hickman & Thomson, 2016; Rakoff, 2000).

These two problems—administrative delay and moral hazard—can result from type 1 and 2 errors in public management. They might determine the quality of good governance (Rockman & Hahm, 2011). A type 1 error results in a false positive (it amounts to the error of rejecting a true null hypothesis), whereas a type 2 error implies a false negative (it is the error of failing to reject a false null hypothesis). Given the hypothesis of an accountable bureaucracy, a type 1 error happens when legislators incorrectly reject the idea there is no statistically significant relationship between accountability and bureaucracy, which can then result in them unnecessarily interfering with policy implementation, which can in turn cause administrative delays. In contrast, a type 2 error occurs when legislators incorrectly reject the idea that there is a statistically significant relationship between accountability and bureaucracy; the result here may be that bureaucrats engage in moral hazard. These two errors are closely related and are generally traded off, so that attempting to reduce the occurrence of one of these errors increases the likelihood of the other error occurring. Thus, the results of these errors— administrative delay or moral hazard—might vary depending on political situations that lead actors to try to reduce the occurrence of one or the other.

This article examines the development of congressional oversight in the United States with regard to the trade-off between administrative delay and moral hazard. After suggesting a simple formal model, this article examines the implications the model suggests in the context of U.S. procedural laws. Even though numerous formal models of congressional oversight have been proposed, they have not discussed fire alarm and police patrol methods, especially in terms of problems of administrative delay and moral hazard that these methods can lead to. This study offers a way to discuss decisions pertaining to what congressional oversight method to use in a more generalized manner.

THE MODEL

Game Setup

To compare fire alarms and police patrols with regard to the possibility of administrative delay and moral hazard, I use a simple signaling game. In this game, there are only two strategic actors, the legislature (denoted by L) and the agency (denoted by A). Rather than including interest groups as strategic players, this game assumes that nature, as the per game theory framework in which nature assumes the role of parties with no strategic investment in the outcome of the game, decides the quality of signals depending on oversight mechanisms chosen by the legislature. The sequence of the game is as follows.

1) L chooses its oversight mechanism: fire alarm or police patrol.
2) After observing L's decision, A can decide either that it will hold itself accountable by implementing a given legislative policy or that it will not implement the policy because it doesn't suit its interests and thus will engage in moral hazard.
3) Nature sends a warning signal about the probability of moral hazard occurring, depending on the chosen oversight mechanism (fire alarm or police patrol) and A's action.
4) Given a warning (or no warning) signal, L selects either delegation or congressional intervention.

At the beginning of the game, L chooses either fire alarm or police patrol as its oversight strategy. Then, depending on L's decision, one of two different subgames will be played: the fire alarm subgame or the police patrol subgame. The numerous forms the subgames can take are suggested in figures 1 and 2. For both subgames, L's oversight mechanism decision is known to A. Moreover, depending on the chosen oversight mechanism and A's behavior, there is a different probability that L receives a warning message that there is moral hazard. However, the warning messages are not always correct. In particular, those of fire alarm oversight are highly suspect (Bawn, 1994).

Figure 1. Police Patrol Subgame

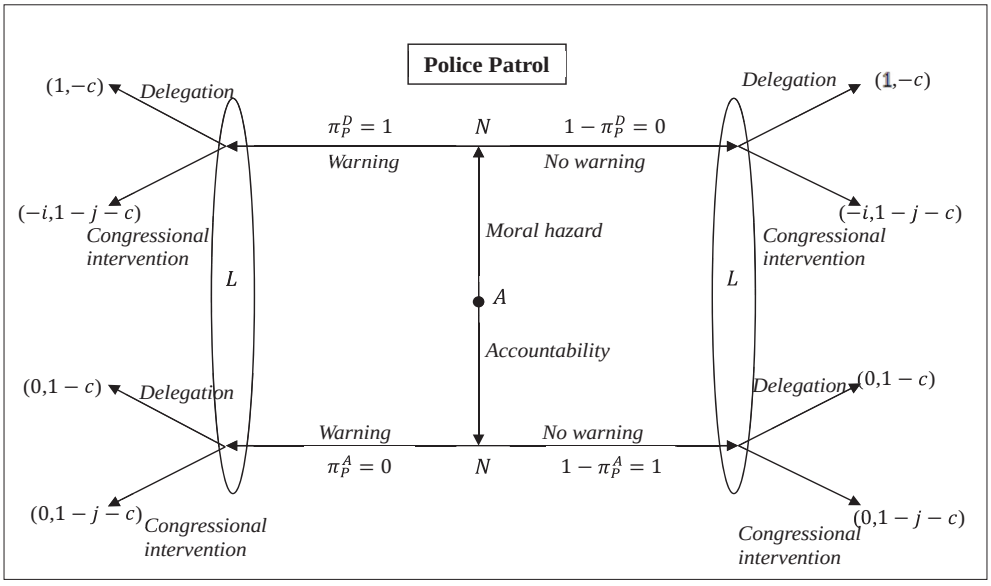
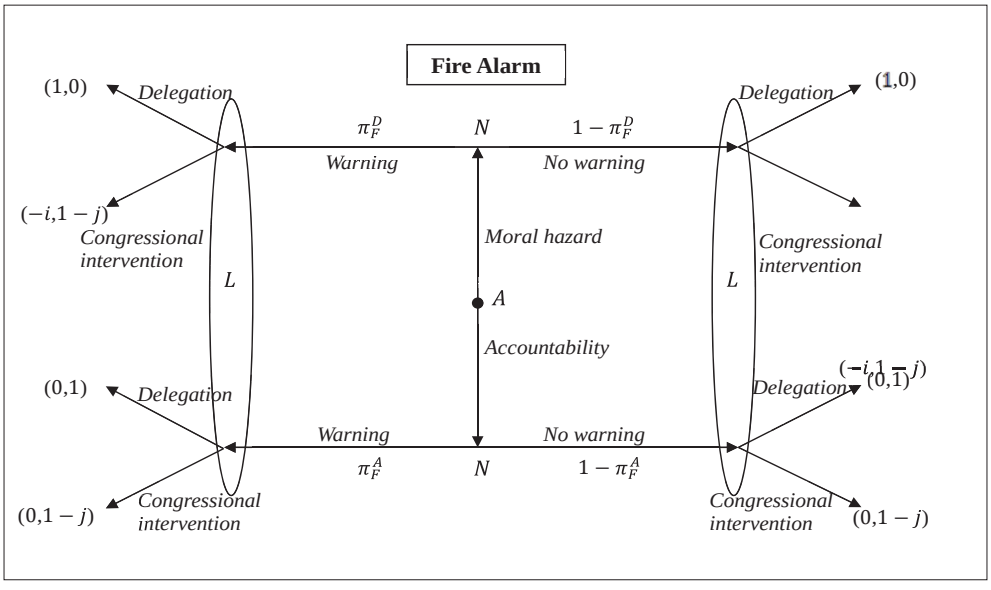


Figure 2. Fire Alarm Subgame

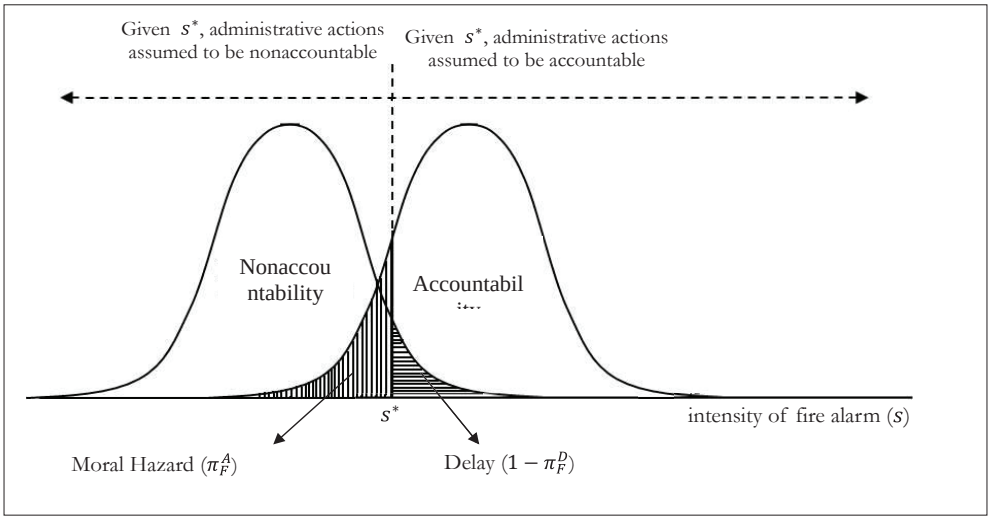


These two subgames are identical, except for two points. First, because *L* cannot externalize the oversight cost when it selects a police patrol rather than a fire alarm strategy, such a cost (denoted by *c*) is inevitable if *L* chooses a police patrol at step 1. This cost is generally exogenous, determined by information technology development. In contrast, when *L* sounds a fire alarm, there is no investigative cost.

Second, the subgames are different with respect to the probability of erroneous messages. The probability of erroneous messages is lower in the case of police patrol oversight. If police patrol oversight is working, then *L* can appoint as monitoring agents of the legislature those who share its ideological position. And then *L* can acquire unbiased information from the monitoring entity. In other words, $\pi_P^D = 1$ and $\pi_P^A = 0$ for the precautionary police patrol subgame. In this article, π denotes the probability that congressional oversight methods alert legislators, given specific bureaucratic behaviors; the superscript represents oversight methods, that is, i.e., police patrol (*P*) or fire alarm (*F*), and the subscript denotes bureaucratic behaviors, that is, drift (*D*) or accountability (*A*).

On the other hand, the probability of erroneous messages with a fire alarm is higher because fire alarms can be disingenuous. To simplify, it is assumed that $\pi_F^A(s) < \pi_F^D(s) \in (0,1)$, where *s* denotes the intensity level of the fire alarm. As more interest groups participate in sounding the alarm, the intensity increases, and bureaucratic moral hazard may be curbed or prevented. However, significant administrative delay might result. In other words, the intensity of fire alarm oversight affects the relative possibility of legislators rejecting true null hypothesis or failing to reject a false null hypothesis. In the figure 2, π_F^A and $1-\pi_F^D$ represent the administrative delay and moral hazard that can ensue from fire alarm oversight. Because more intensive fire alarm oversight increases the possibility of delay but reduces the possibility of moral hazard, both π_F^A and π_F^D are positively correlated with the intensity of fire alarm oversight. To simplify, given the normal distributions of moral hazard and accountability, the possibility of moral hazard and delay occurring are traded off as in figure 2. At the intensity level of s^*, a lot of moral hazard could be detected by fire alarm oversight. However, in the case of $1-\pi_F^D$ (moral hazard cannot be detected. In addition, the case of π_F^A indicates that accountable behavior can be misconstrued as nonaccountable. When the intensity of the fire alarm increases from s^* to a higher point, the size of $1-\pi_F^D$ decreases and that of π_F^A increases, and vice versa.

Figure 3. The Relationship between the Intensity of Fire Alarms and Moral Hazard and Administrative Delay



After receiving warning messages or after receiving none, L should choose one of two different options at step 4: delegation or intervention. Congressional intervention implies that L decides to manage bureaucratic actions. There are diverse methods Congress can use to limit bureaucratic discretion, such as enacting legislative veto measures. However, congressional intervention of this sort is not free. In order to interrupt policy implementation, legislators have to expend political resources. Thus, it can be assumed that congressional intervention incurs a cost of $j \in (0,1)$ to L, regardless of oversight types.[1] On the other hand, if A's moral hazard is blocked by L's congressional intervention, then the agency cannot acquire any slack from the drift and will be punished by the legislature. The penalty is denoted by $i > 0$. Using this game setup, in the next section I describe the perfect Bayesian equilibria (PBE) for fire alarms and police.

Equilibrium Outcomes and What They Imply

Given this game setup, the main difference between fire alarm and police patrol equilibrium outcomes is that pure strategy equilibria are available only under fully

1. The political cost j is assumed to be less than 1. If j is greater than 1, the option of congressional intervention is strictly dominated, and there is only one kind of equilibrium, where the legislature always chooses delegation regardless of warning messages. Therefore, $j \in (0,1)$ is assumed in this game.

separating signals (e.g., π^{D}=1 and π^{A}=0) as assumed in the police patrol subgame. Otherwise, only mixed strategy PBE are available.

I first consider fire alarm equilibrium. When *A*'s strategy is to be accountable, *L*'s best move is delegation, regardless of the receipt of warning messages. However, given that decision, *A* can profitably engage in moral hazard. Likewise, if *A*'s strategy is moral hazard, then *L*'s best move is congressional intervention, regardless of warning messages. In this case, *A* can profitably embrace accountability. Thus, given *L*'s choice of a fire alarm at step 1, pure strategy equilibria are impossible; only mixed strategy equilibria are available. If we want to denote mixed strategies of players, we can suppose that *A* engages in moral hazard with the probability of *a* and behaves accountably with the probability of 1-*a*. Moreover, suppose that *L* delegates with the probability of β when *L* receives a warning signal and that *L* delegates with the probability of γ when *L* receives no warning. In this game setting, there are two different PBE, where *L* should use a mixed strategy in only one information set.[2]

Suppose that no fire alarm are raised, and so *L* adopts the pure strategy of delegation. The equilibrium outcome of the case is then $=\frac{j\pi_F^A}{\pi_F^D-j\pi_F^D+j\pi_F^A}$ from the equation u_L (delegation|fire alarm)=u_L (congressional intervention | fire alarm). Likewise, *A* also should be indifferent between the options of engaging in moral hazard and being accountable. Then, β^*=1- $\frac{1}{\pi_F^D(1+i)}$ and γ^*=1. Under the PBE, the equilibrium payoff of *L* is Eu_L ($\cdot|\ \alpha^*, \beta^*, \gamma^*$)=1- $\frac{j\pi_F^A}{\pi_F^D-j\pi_F^D+j\pi_F^A}$. There is one other PBE, when *L* uses the pure strategy of congressional intervention after a fire alarm has been raised. This PBE is available where α^{**}, = $\frac{j(1-\pi_F^A)}{1-(1-j)\pi_F^D-j\pi_F^A}$, β^{**}=0, and, γ^{**}=$\frac{i}{(1-\pi_F^D)(1+i)}$. The equilibrium payoff for L from the PBE is u_L ($\cdot|\alpha^{**}, \beta^{**}, \gamma^{**}$)=1-*j*.

Lemma 1. There are two kinds of fire alarm mixed strategy PBEs. The equilibrium strategies are

(1) $\alpha^* = \frac{j\pi_F^A}{\pi_F^D-j\pi_F^D+j\pi_F^A}$, $\beta^* = 1-\frac{1}{\pi_F^D(1+i)}$, $\gamma^* = 1$, and $Eu_L(\cdot\,|\alpha^*,\beta^*,\gamma^*) = 1-\frac{j\pi_F^A}{\pi_F^D-j\pi_F^D+j\pi_F^A}$ and

(2) $\alpha^{**} = \frac{j(1-\pi_F^A)}{1-(1-j)\pi_F^D-j\pi_F^A}$, $\beta^{**} = 0$, $\gamma^{**} = \frac{i}{(1-\pi_F^D)(1+i)}$, and $Eu_L(\cdot\,|\alpha^{**},\beta^{**},\gamma^{**}) = 1-j$.

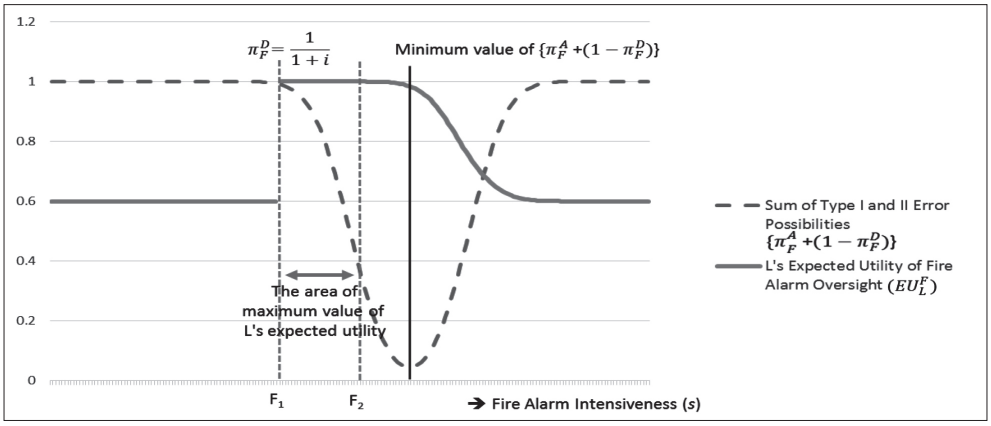
The two PBE suggested by lemma 1 imply that Congress either always delegates if there is no warning signal (γ^*=1) (but adopts a mixed strategy when it

2. Because *L*'s payoff is dependent only on *A*'s choice and *L*'s decision but $\pi_F^D \neq \pi_F^A$, there is no equilibrium in cases in which *L* uses mixed strategies for both information sets.

receives warning signals) or that it always intervenes if there are warning signals ($\beta^*=0$) (but adopts a mixed strategy when it does not receive warning signals). For the two PBE, the focal point could be dependent on the sizes of π_F^A and π_F^D. If interest group society is underdeveloped, then the intensity of fire alarms will be very low, resulting in $\pi_F^A < \frac{1}{1+i}$, which would make β^* negative. Thus, the PBE of a^{**}, β^{**} and γ^{**} sshould be focal, if interest group society is underdeveloped. In contrast, given the assumption that interest group society is sufficiently developed and that therefore the intensity of fire alarms is not low, $Eu_L(\cdot|a^*, \beta^*, \gamma^*)$ is strictly greater than $Eu_L(\cdot|a^{**}, \beta^{**}, \gamma^{**})$. Moreover, A may be better off under α^*, β^* and γ^*, compared with α^{**}, β^{**} and γ^{**}. Therefore, if interest group society is sufficiently developed, then it is highly probable that the PBE of α^*, β^* and γ^* is focal.

Figure 3, in which j=.4 is assumed, uses lemma 1 and the argument about focal points to specify the comparative statics about L's expected utility of fire alarm oversight (hereinafter denoted by EU_L^F) and the sum of the possibility of moral hazard or administrative delay. As the figure shows, the curves of EU_L^F and the sum of the possibility of moral hazard or administrative delay are not identical, thereby indicating that congressional oversight strategies are not be dependent on this sum. In particular, when interest group society is underdeveloped (i.e., if the fire alarm intensity point is far left from F_1 at which $\pi_F^A = \frac{1}{1+i}$), the curve of EU_L^F is flat at 1-j. In this scenario, legislators have little incentive to enfranchise more interest groups to scrutinize administrative actions, even though the effort could decrease the sum of the possibility of moral hazard or administrative delay. However, once the intensity of the fire alarm is sufficiently close to F_1, Congress is more likely to allow interest groups to serve as watchdogs over administrative actions,. Third, when the intensity of the fire alarm becomes excessive—in particular when $s>F_2$ in figure 3— Congress is likely to disenfranchise interest groups in order to maximize EU_L^F, even though such a congressional action could increase the sum of the possibility of moral hazard or administrative delay (because the maximum point of EU_L^F is different from the minimum point of the sum).

Figure 4. Comparative Statistics of L's Expected Utility from Fire Alarm Oversight



In addition, as lemma 1 suggests, when interest group society is underdeveloped, the PBE of α^{**}, β^{**} and γ^{**} is focal and Congress responds to all fire alarms at the equilibrium (i.e., $\beta^{**}=0$). However, as interest group society develops and the PBE of α^{*}, β^{*} and γ^{*} becomes focal, Congress is less likely to respond to fire alarms, as the probability, $\beta^{*}=1-\frac{1}{\pi_F^D(1+i)}$, in which π_F^D is increasing with the intensity of the fire alarm indicates.

On the other hand, in contrast to fire alarms, the unique police patrol PBE is a pure strategy equilibrium: *L* opts for congressional intervention when receiving a warning signal and chooses delegation otherwise, and *A* always selects accountability in equilibrium. Thus, the expected payoff of *L* under a police patrol equilibrium is 1-c.

Lemma 2. If *L* chooses the police patrol method, a pure strategy equilibrium is the unique PBE: L chooses congressional intervention on receiving a warning signal and chooses delegation otherwise, and *A* always selects being accountable.

Lemma 3. Provided that interest group society is sufficiently developed, when $\frac{j\pi_F^A}{\pi_F^D - j\pi_F^D + j\pi_F^A} = \frac{\pi_F^A/\pi_F^D}{\frac{1}{j}-1+\pi_F^A/\pi_F^D}$, L prefers police patrol oversight to fire alarm oversight.

From lemmas 2 and 3, we can conclude that when $\frac{\pi_F^A/\pi_F^D}{\frac{1}{j}-1+\pi_F^A/\pi_F^D} \geq c$, legislators prefer police patrol oversight to fire alarm oversight. Although it is hard to precisely decipher the size of political coordination costs (*j*) and investigation costs (*c*), it

is at least clear that *j* is not decreasing and *c* is not increasing in the U.S. context and that owes to party polarization, divided government, and highly developed information technology. Moreover, interest groups have proliferated at a high rate in the United States, which has meant that the intensity of fire alarms is significantly higher, thereby increasing π_F^A/π_F^D, resulting in legislators doubling down on police patrol oversight in recent decades.

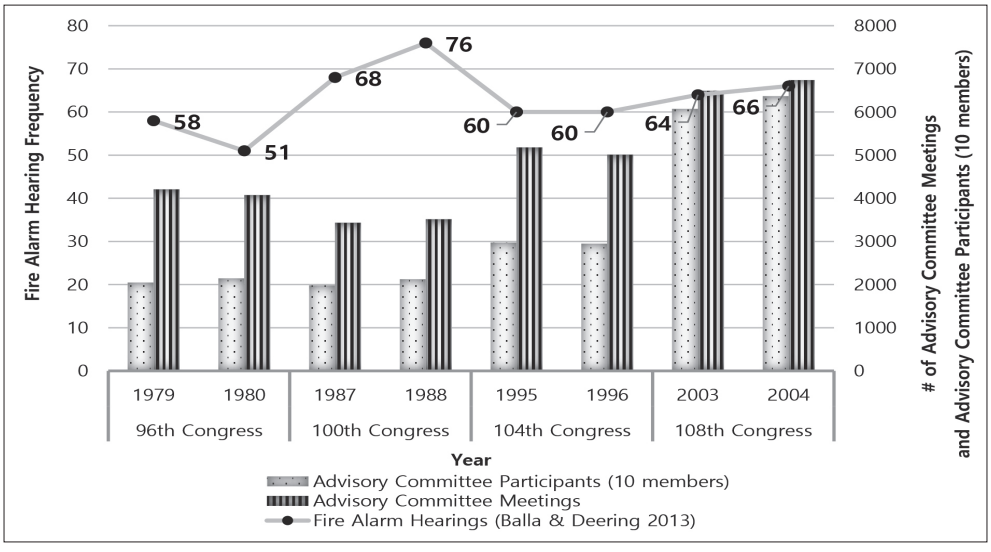
THE EVOLUTION OF CONGRESSIONAL OVERSIGHT MECHANISMS

In this section, I examine the implications of the model developed in the previous section—namely, that the extent to which legislators support interest groups is directly related to the extent of interest group society development, that the extent to which legislators respond to fire alarms is directly related to the level of development of interest group society, and that in face of the proliferation of interest groups, legislators resort to doubling down on the police patrol approach— by reviewing US procedural laws that affect agency rulemaking. Because they have been the main vehicle for fire alarm oversight (Mashaw, 1990; McCubbins et al., 1987, 1989) and almost all the US federal agencies are required to follow the procedures, the history of oversight mechanisms can be sketched relatively easily. The notice-and-comment procedure described in the Administrative Procedure Act of 1946 (PL 79-404) is the most common fire alarm mechanism (Hall & Miler, 2008). The procedure has allowed diverse interest groups to scrutinize agency rulemaking processes. As Michael Asimow (1994, 127) puts it, the Administrative Procedure Act "energizes constituents who will alert legislators to instances in which agencies stray from the path of righteousness." Nevertheless, Congress did not enact additional fire alarm procedures until the 1960s. This supports the implication that in the face of an underdeveloped interest group society, legislators have little incentive to enact more fire alarm statutes.

Beginning in the 1960s, the structure of interest group society began to change. In the wake of a significant increase in the number of interest groups, in part because of civil rights movements (Berry & Wilcox, 2007; Baumgartner et al., 2009), Congress passed several procedural statutes that enfranchised more interest groups to scrutinize agency rulemaking processes, which the model predicts. The Freedom of Information Act of 1966 (PL 89-487), for example, which is an amendment of the Administrative Procedures Act, required federal agencies to open their records to the public, enabling interest groups to more easily examine bureaucratic behaviors. Likewise, the National Environmental Policy Act of 1969 (PL 91-190) mandated that all federal agencies

prepare environmental assessments and environmental impact statements. Because the law called for public consultation and participation (e.g., through the Citizen's Advisory Committee on Environmental Quality) in assessing environmental impacts, this law legitimized the opinions of local communities and environmental groups. The Government in the Sunshine Act of 1976 (PL 94-409) required that every part of every meeting of an agency be open to public observation and that advance notice be given to the public before agency meetings took place. Congress also enacted the Regulatory Flexibility Act in 1980 (PL 96-354), which directed federal agencies to analyze the potential impact of regulations on small business. This law directed federal agencies not only to notify and solicit comments from small entities (e.g., small businesses, small organizations, and small governmental jurisdictions) concerning regulatory flexibility agendas but also to ensure that small entities were given an opportunity to participate in the rulemaking process of any rule that could have a significant economic impact. In addition, the Federal Advisory Committee Act of 1972 (PL 92-463) established structured opportunities for interest groups to participate in agency policy-making process through advisory committees. These procedural laws mandated bureaucratic agencies to enfranchise diverse policy stakeholders in the policy-making process. One of the main legislative intents of these procedural laws in this period was to provide significant opportunities for interest groups to intervene in agency rulemaking and to raise fire alarms when moral hazard appeared.

Figure 4. Advisory Committee Meetings and Fire Alarm Hearings, 1970-2004



As interest groups have proliferated dramatically in almost all policy areas since the 1980s, however, the intensity of fire alarms increased, as reflected in the steep growth in the number of negotiated rulemaking and the number of advisory committee participants steeply during this period (see figure 4). This change means that administrative delays have become more likely. More formally, in figure 3, the intensity of the fire alarm has gradually become higher than F_2 . Regarding this issue, many studies have pointed out that agency rulemaking might have been ossified by public participation in administrative policy making and subsequent judicial review initiated by interest groups (Pierce, 1988; McGarity, 1992; Mashaw & Harfst, 1990; Pierce, 1995). The number of rules that were withdrawn during the notice-and-comment process, the result of adverse reactions from interest groups (Levin, 1999; Noah, 1999), also rose dramatically in this period. The number of significant rulemaking withdrawals made by cabinet departments increased from about 20 in the 1980s to more than 100 in the 2000s (O'Connell, 2011), despite the fact that the number of rules published in the Federal Register has continually decreased (Kerwin & Furlong, 2011).[3] In some policy areas such as health care, where interest groups have proliferated at a high rate, the numbers of withdrawals was even higher. For example, between 1999 and 2008, the Centers for Medicare and Medicaid Services had to withdraw more than 50% of its proposed rules owing to hostile comments from health-related interest groups.[4] Moreover, even when agencies successfully promulgated rules, they had to make "extremely resource-intensive and time-consuming" efforts (McGarity, 1992, 1419), which delayed timely administration (Hickman & Thomson, 2016; Rakoff, 2000).

3. The number of all rulemaking withdrawals made by cabinet departments was less than 100 in the 1980s but had increased to more than 400 by 2002 (O'Connell, 2011). In contrast, the number of proposed rules was 6,329 in 1982, and it significantly decreased to 4,525 in 1992 and to 3,775 in 2008 (Kerwin & Furlong, 2011).
4. See the *Unified Agenda of Regulatory and Deregulatory Actions* for documentation of rulemaking withdrawals. Not only the Centers for Medicare and Medicaid Service, but many other health-related federal agencies have been forced to withdraw rules on account of interest group pressure. The ratios for the Substance Abuse and Mental Health Services Administration, the Health Resources and Services Administration, and the Centers for Disease Control and Prevention were 65%, 52%, and 38%, respectively, for the years 0000-0000. In contrast, the ratios were generally smaller in policy areas with fewer active interest groups, such as, for example, transportation policy (indeed, the number of transportation policy interest groups even decreased during the 2000s); the ratios for the Federal Aviation Administration, the Federal Highway Administration, the National Highway Traffic Safety Administration, and the Maritime Administration were less than 10% for the years 0000-0000.

In addition, lawsuits filed by interest groups as fire alarms have increased inefficiency in policy making and implementation.[5] The number of administrative appeals in the U.S. Courts of Appeals was only 456 in 1961. That number increased to 887 in 1979 and exploded to 2,454 in 1984. Likewise, the number of civil cases involving the U.S. government was 621 in 1961 but steeply increased to 1,882 in 1979 and 4,483 in 1984 (Davis & Songer, 1988).[6] A striking example of the level of appeals was offered by former EPA administrator William Ruckelshaus during a 1984 conference, where he noted that more than 80% of the EPA's rules had been challenged, causing serious administrative inefficiency.[7]

As a result, the intensity of fire alarms increased and U.S. legislators came to be averse to enfranchising more interest groups. Facing serious administrative delays in the 1990s, Congress began deemphasizing participatory administration in the name of "result-oriented" government (US General Accounting Office, 1993). Rather than encouraging interest groups to participate in agency rulemaking process, Congress tacitly allowed agencies to avoid the notice-and-comment procedure—the most important enfranchising mechanism imposed by the Administrative Procedures Act. In particular, in the mid-1990s, agencies initiated the use of "interim final rules" and "direct final rules" in earnest.[8] The U.S. Justice Department, for example, promulgated an interim final rule regarding the registration requirement of sex offenders on February 28, 2007, stating that the notice-and-comment procedure could cause further delay in rulemaking, which would thwart the legislative intent of Congress (72 FR 8897). These methods allow agencies to avoid the notice-and-comment procedure and so can deprive policy stakeholders of opportunities to participate in the rulemaking process and to raise fire alarms. Although

5. Through litigation, interest groups can publicize the presence of moral hazard and inform elected officials of administrative problems indirectly. As Asimow (1994, 133) notes, "Judicial review might facilitate oversight by drawing congressional attention to possible departures by the agency from the original coalitional deal." In other words, interest groups can trigger fire alarms through lawsuits (e.g., Boyd & Sievert, 2013; Bellamy, 2013; Law, 2009). Because the ideological stances of Congress and the courts are not identical, legislators have sufficient incentive to intervene in correcting moral hazard themselves.
6. The increase in administrative appeals has been reaffirmed by many other studies such as Golden 2010.
7. See Ruckelshaus, 1984.
8. The Administrative Procedures Act allows agencies to bypass the public comment process, if there is "good cause" to exempt the rulemaking from the notice-and-comment requirements. Thus, rules can go directly to the final rule stage, if there is good cause to expedite the enactment of noncontroversial rules (direct final rules) or to enact rules immediately in emergency situations (interim final rules).

these exceptional procedures were recommended by the Administrative Conference of the United States, not enacted by the legislature, Congress has not challenged them. In the 1990s, bureaucratic agencies rapidly increased their use of these methods, bypassing notice-and-comment rulemakings (Asimow, 1999; O'Connell, 2008). This trend persisted in the 2000s. For example, according to the Unified Agenda of Regulatory and Deregulatory Actions, the ratio of direct final and interim final rules to notice-and-comment rules across all federal agencies increased from less than 0.2 in the mid-1990s to about 0.35 in the mid-2000s. However, Congress has disregarded the increasing use of interim final and direct final rulemakings, though these rulemaking processes can disenfranchise many policy stakeholders and despite the U.S. General Accounting Office's (GAO; later, the Government Accountability Office)warning that publishing rules without a notice of proposed rulemaking generally limits the public's opportunity to participate in the rulemaking process (see US General Accounting Office, 1998).

The reason legislators have not taken any meaningful action to control these rulemaking behaviors may be that they have had less incentive to enfranchise policy stakeholders with the proliferation of interest groups. Because it is highly difficult to infringe on the vested participation rights of policy stakeholders through disenfranchising provisions, legislators could not attempt to enact laws that directly prevent participation in the administrative process. However, Congress has tried to restrict participation indirectly. For example, Congress enacted the Negotiated Rulemaking Act (PL 101-648) in 1990. Since the 1980s, negotiated rulemaking had been praised as an effective method for limiting administrative inefficiency by discouraging judicial challenges and administrative appeals (Harter, 1982; Susskind & Cruikshank, 1987), and several agencies, such as the EPA and the Federal Aviation Administration, initiated negotiated rulemaking to limit administrative inefficiency in their rulemaking process. Though the law seemingly favors the participation of interest groups, it in effect limited participation to just several well-organized interest groups (Rose-Ackerman, 1994).[9] The law limited membership on a negotiated rulemaking committee to 25 members, disenfranchising many minor interest groups. In addition, Congress has very rarely inserted enfranchising provisions into procedural statutes over the last few decades. Compared with major procedural statutes prior to the 1990s, which had many provisions to enfranchise interest groups, those of the 1990s such as the Government Performance and Results Act of 1993 (PL 103-62) and the Government Management Reform Act of 1994 (PL 103-

9. Congress also passed the Administrative Dispute Resolution Act (PL 101-552) with a legislative intent similar to that of the Negotiated Rulemaking Act.

356) do not include enfranchising provisions. Though these laws have important provisions regarding annual performance plans and management improvement, they did not allow interest groups to participate in the rulemaking process. These congressional decisions to enfranchise or disenfranchise interest groups support the implication of the model that legislators enfranchise more interest groups when interest group society is moderately developed but seek to cut back on interest group participation once the culture has become entrenched.

This does not mean that legislators have always single-mindedly refrained from enfranchising interest groups. Instead, they introduced fire alarm provisions for specific policy areas where fire alarm intensity was sufficiently low, that is, where interest groups had not proliferated much. For example, legislators enacted the Small Business Regulatory Enforcement Fairness Act of 1996 (PL 104-121), amending the Regulatory Flexibility Act. Because small business groups had not proliferated at a high rate (see Leech et al., 2005, 24-25), this act contained several fire alarm provisions. The law required the EPA and the Occupational Safety and Health Administration to convene panels to review rules for small business regulatory fairness and directed the Small Business Administration to designate an ombudsman for small business and agriculture regulatory. However, even in this case, the fire alarm oversight mechanisms were not very significant. The ombudsman is not a strong fire alarm method. This method cannot change, stop, or delay a federal agency enforcement action. Also, the panels have played no more than a symbolic role (Shapiro, 2007).

In addition, as interest group society became sufficiently developed, Congress has become less likely to respond to fire alarm signals. There is no consensus on an index for congressional responsiveness to fire alarm signals, but Steven Balla and Christopher Deering (2013) invented a measure to count the number of fire alarm hearings. Event-driven oversight hearings—as distinct from routine oversight hearings—could, they suggest, represent congressional hearings initiated by fire alarm signals. Depending on the measure, figure 4 indicates that the number of fire alarm hearings have not linearly increased with the numbers of advisory committee meetings and participants. Rather, the figure shows that legislators were less likely to respond to fire alarm signals relative to the growth of interest groups during the 1990s and 2000s, whereas the number of fire alarm hearings had grown along with the development of interest group society until the 1990s. This congressional behavior generally supports the implication of the model that when interest groups are relatively underdeveloped, legislators will tend to respond to all fire alarms, but that as interest group society develops, they are less likely to respond to fire alarm signals.

Furthermore, Congress has reinforced police patrol oversight provisions in the laws since the 1990s, thus supporting the idea that in light of interest group proliferation, legislators are inclined to strengthen these methods of oversight. Before the mid-1990s, though several administrative laws had required agencies to submit administrative reports to Congress, the legislature had rarely used these instrumentalities to investigate agencies such as the Government Accountability Office and the Congressional Budget Office.10 That changed with, for example, the 1993 Government Performance and Results Act, which declared its purpose as improving "congressional decision making" and not only directed agencies to submit annual performance plans and annual performance reports to Congress but also required the comptroller general to report to Congress on the implementation of this act, including regarding prospects for compliance by federal agencies. The 1994 Government Management Reform Act likewise directed the secretary of the treasury to submit an audited financial statement for the preceding fiscal year to Congress and required the GAO to audit the financial statement. The 1996 Congressional Review Act, as a part of the Small Business Regulatory Enforcement Fairness Act, continued this trend, requiring agencies to submit their major rules to Congress and the GAO before they take effect and directed the comptroller general to report on each major rule to the committees of jurisdiction of each house of Congress. For the first time, Congress established a mechanism by which the legislature could review and overturn virtually all federal agency rules. These changes in U.S. procedural laws affecting rulemaking supports the implication of the formal model that legislators may seek to strengthen their oversight mechanisms as interest groups significantly proliferate.

CONCLUSION

McCubbins and Schwartz (1984) argued that fire alarm oversight is more efficient for monitoring public agencies than police patrol oversight in that much of the oversight burden can be borne by interest groups that sound alarms rather than by the legislators. In other words, MsCubbins and Schwartz proposed that moral hazard in public management could be efficiently prevented by fire alarm oversight. Many subsequent studies have generally concurred with this view (McCub-

10. Though the Federal Advisory Committee Act allowed the comptroller general to access to administrative records for audits, the law does not require the GAO to investigate agencies for specific issues.

bins et al., 1987, 1989; Lupia & McCubbins, 1994; Hall & Miler, 2008). However, these studies have generally neglected the fact that very intense fire alarms may generate another administrative delay, another serious management problem, and that the two problems tend to be traded off.

This article has sought to clarify the strong and weak points of police patrol and fire alarm oversight in their relation to the problems of administrative delay and moral hazard in public management and has examined the congressional choices in managing oversight methods. The kind of relationship that obtains between the executive and legislative branches depends on political situations, which therefore strongly affect congressional oversight strategy decisions (Lee, 2015). This paper outlines the various strategies legislators can adopt by suggesting a formal model that takes into account different political environments. Thanks to the formal modeling, the study's findings might be generalizable in different political settings. In particular, this article explains congressional strategies for enfranchising interest groups, responding to fire alarm signals, and choosing between fire alarms and police patrols. The formal model indicates that the effect of fire alarm oversight is not absolute but dependent on the growth of interest groups. In particular, though highly intensive fire alarms can almost entirely eliminate the possibility of moral hazard, the consequence of that level of intensity is administrative delays. Hence, Congress has been reluctant to enact procedural laws to enfranchise more policy stakeholders in the agency policy-making process, as interest groups have proliferated at a high rate and so, subsequently, have fire alarms. Moreover, Congress has tacitly allowed agencies to avoid the notice-and-comment procedure, which is one of the most important fire alarm mechanisms, through direct final rulemaking and interim final rulemaking. In addition, since the 1990s, legislators have reinforced police patrol oversight; Congress has enacted several precautionary police patrol oversight laws including the Government Performance and Results Act, the Government Management Reform Act, and the Congressional Review Act instead of enfranchising more policy stakeholders. These procedural statutes emphasizing precautionary police patrol oversight and curtailing fire alarm oversight are reasonable political outcomes that address both administrative delay and moral hazard.

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