

CHAPTER TWO

MAJOR THEORETICAL UNDERPINNINGS

The objective of this chapter is to provide context for the key issues of the dissertation by addressing relevant major theories or themes of the public administration literature. The chapter establishes the theoretical grounding of (1) Rosenbloom's concept of legislative-centered public administration, (2) the classic literature on congressional oversight, and (3) the limited literature on the importance of congressional reporting requirements in congressional oversight of public management that are developed further in this dissertation.

Congressional reporting requirements are an important but often overlooked tool that brings issues and information about the issues to the Congress for consideration in the public policy process. Congressional committees impose these requirements on agencies to submit reports that cover topics of interest to either Members of Congress or individual agencies or interest groups that have an agenda they want to pursue in the governmental process.

Related public administration literature that also touches on this topic is improving information for decision-makers—both for the Congress and the rest of the government and society. The academic literature on the topic of improving information for decision-making is especially rich in the field of public administration. In many respects, one can argue that the literature on public policy analysis is premised on providing information to decision-makers in order to better formulate, administer, and oversee public policy. In other words, providing information to the Congress about what is occurring throughout the government and making appropriate decisions can be tied to Congress' constitutional oversight role. It is also important to point out that Congress uses the same tools for oversight of the executive branch as it does on its own operations to determine what it needs to do to perform its role in the federal system. Although interesting, I have not covered political science classics such as Schattschneider¹ and Hecló,²

¹ Schattschneider, E. E. (1975), *The Semisovereign People: A Realist's View of Democracy in America*, (Dryden Press, Hinsdale, Ill.).

² Hecló, Hugh (1978), "Issue Networks and the Executive Establishment," in *The New American Political System*, Anthony King, ed. (American Enterprise Institute, Washington, DC).

because surprisingly they do not shed much light on the topic of this dissertation. This did not disappoint me, but, on the contrary, was encouraging that this is a fruitful topic for a dissertation.

In addition, I briefly touch upon some aspects of organizational learning that apply to congressional oversight and cover them in Chapter 6. However, while literature on organizational learning and related concepts might apply to Congress and its use of reporting requirements, Rosenbloom's discussion of Congress' reliance on executive branch agencies for obtaining information is more applicable to the goals of this dissertation in trying to improve the congressional reporting process to be in line with Rosenbloom's call for a legislative-centered public administration.

While Rosenbloom's work is the principal theoretical lens for looking at this dissertation topic, many other authors, and their respective themes in their works on the importance of congressional oversight in general, and congressional reporting requirements in particular, contribute to the theoretical underpinnings of the discussion in the dissertation. Together, these authors' works are the major anchors to the dissertation topic. For example, Johannes (1976), whose early work laid the foundation for the importance of reporting requirements for public administration, is discussed to show the early thinking about the importance of congressional reporting requirements along with more recent authors.

2.1 ROSENBLOOM'S LEGISLATIVE-CENTERED PUBLIC ADMINISTRATION

David Rosenbloom (2000) provides context for how Congress has changed over the past 50 years in its oversight relationship with executive agencies.³ Most importantly for this dissertation, he developed the framework for demonstrating how the legislature is part of the public administration process. Rather than abdicate its authority over agencies during the 1930s New Deal era, Congress passed several statutes that made agencies extensions of Congress, and also gave Congress supervision over the agencies on a continuing basis, by requiring reports

³ Rosenbloom, David H. (2000), Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999, The University of Alabama Press, Tuscaloosa, AL.

from the agencies about their operations. Rosenbloom defines a “legislative-centered public administration” as--

. . . a theoretical construct derived from the major discussions, decisions, and actions taken by Congress with regard to federal administration. Its evolution began during the New Deal as Congress felt increasingly displaced and began to search for an appropriate role in the burgeoning administrative state. It speaks to Congress’s institutional interests as well as to the values that should inform administrative performance. It is part justification, part explanation of deep institutionalized congressional involvement in administration within the parameters of the constitutional separation of powers.⁴

Rosenbloom’s book is organized into five chapters with the first one discussing the broad problem of repositioning Congress in the Administrative State. The second and third chapters, respectively, discuss agencies as extensions of Congress in carrying out public policy and efforts by Congress to develop capacity for oversight activities. The fourth chapter discusses relationships between agencies and congressional efforts to work for their constituents. The last chapter addresses Rosenbloom’s view of the role of Congress in the modern Administrative State. Congress has a legitimate role in oversight and is not necessarily micro-managing executive branch agency operations through the imposition of burdensome, costly, or irrelevant obligations on executive entities as Congress performs its oversight responsibilities, including through the imposition of reporting requirements.⁵

Rosenbloom emphasizes the Legislative Reorganization Act of 1946, in particular its provision for standing committee oversight of agency administration of programs, as one of the “most important contributions to Congress’ treatment of agencies as extensions.” According to Section 136 of the Act:

To assist Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the Senate and the House of Representatives shall exercise continuous watchfulness of the execution of administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee and; for that purpose, ***shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.*** (Emphasis added)⁶

⁴ Ibid. pp. 131-2.

⁵ See Gilmore, et al.

⁶ Op. Cit.

The volume of such reports is certainly great, as noted by Rosenbloom in the chapter dealing with Congress' supervision of agencies.⁷ He cites Vice President Al Gore's National Performance Review report that stated, "In fiscal year 1993, Congress required executive branch agencies to prepare 5,348 reports."⁸ Gore complained that such activity can be dysfunctional and much of the reporting is "duplicative," traps administrators in a "blizzard of paperwork," and diverts everyone from "looking at results." However, Rosenbloom then goes on to discuss the Government Performance and Results Act of 1993 (P.L. 103-62) and the cooperative relationship envisioned to develop meaningful performance goals and provide useful reports to Congress. So while there is some truth to Gore's complaint, there is also recognition that such reports are a necessary requirement for Congress to properly fulfill its oversight role and legitimate place in the U.S. Administrative State.

It must be noted that not everyone agrees with Rosenbloom's premise calling for a legislative-centered public administration. The Constitution establishes a separation of powers between the legislative, executive, and judicial branches. American government is organized by a system of checks and balances such as a presidential veto, congressional discipline over the armed forces, and the judicial appointing power with confirmation by the Senate. The separation of power and checks and balances that go with it maintain the constitutional balance demanded by the separation of powers doctrine. The Constitution imposes on the president the duty to "preserve, protect and defend the Constitution of the United States" and "faithfully execute the Office of President of the United States" (II, 1). One could predict that, in the context of the Bush/Cheney administration, arguments would be made for a swing toward the executive in the separation of powers, with the call for an executive-centered public administration. As pointed out by Phillip Cooper (2005), the Bush/Cheney administration "would consistently reject the premise that Congress could demand reports, indicating in signing statements that it would construe such language in terms of request for reports rather than requirements."⁹

⁷ Ibid, p. 80.

⁸ Gore, Al (1993), NPR report, p. 34.

⁹ Cooper, Phillip J. (2005), "George W. Bush, Edgar Allen Poe, and the Use and Abuse of Presidential Signing

2.2 THE ROLE OF CONGRESS IN EXECUTIVE OVERSIGHT

Joel Aberbach (1990) is a core literature source because he discusses the importance of congressional oversight in general, and the tools used by committees to perform oversight functions.¹⁰ Aberbach surveyed committee staff to determine the frequency of use and effectiveness of 14 common oversight techniques (see Table 1.3 in Chapter 1). Respondents rated frequency on a scale of 1 to 5, with 1 being very frequently, 2 frequently, 3 occasionally, 4 rarely, and 5 never. Respondents then rated effectiveness on a scale of 1 to 4, with 1 being very effective, 2 moderately effective, 3 not very effective, and 4 ineffective.

Aberbach concluded that most of the 14 oversight techniques rated between very effective and moderately effective. However, a few techniques, such as program evaluations done by the agencies and agency reports required by Congress, are scored above 2.5 and, therefore, closer to the not very effective level. He also noted that reports prepared by other than committee staff fit in a “comprehensive review” dimension, but are generally downplayed in studies of congressional oversight. These components are among the least frequently employed oversight techniques, but are used according to committee staff. The GAO, Congressional Budget Office (CBO), and Congressional Research Service (CRS), which are legislative support agencies, also perform oversight of the executive branch. From my experience, legislative-support agency staffs rely extensively on other support agency reports, as well as executive branch reports, to do their work, including writing reports and testimony for Congress. Legislative support agency products rank higher in frequency of use (second, with an effectiveness rank of eight) than most other oversight tools ranked by Aberbach. However, staff communication with agency personnel was ranked first in terms of frequency and effectiveness.

Also according to Aberbach, there is “a lively debate in the United States about how the president and Congress do and ought to relate, and about the significance of recent clashes

Statements,” *Presidential Studies Quarterly*, Vol. 35, no. 3 (September), p. 523.

¹⁰ Aberbach, Joel D. (1990), *Keeping a Watchful Eye: The Politics of Congressional Oversight*, Washington, D.C., The Brookings Institution.

between the two over control of the bureaucracy.”¹¹ Aberbach’s article focuses on the causes and consequences of increased congressional review and specification of administrative behavior. It examines congressional oversight, congressional micromanagement, struggles over control of regulations and interpretations of statutes, and efforts by the White House to increase its control over appointments to executive positions. Aberbach concludes with an overview of the sources of tension between the Congress and the presidency and an analysis of the conditions under which they could more successfully share power. In a section titled “Micromanagement by Congress,” Aberbach observes that:

Oversight can be frustrating for Congress because the executive may ignore the results of oversight endeavors if they are not backed by some sanction. This is particularly likely when the president is following an “administrative presidency” strategy—one of the times, ironically, when oversight is most likely—since that approach de-emphasizes legislation (both its passage and attention to its intent) and stresses instead the accomplishment of goals through administrative means.¹²

In a later article, Aberbach (2002) observed a key contextual shift from “advocacy” to “opposition” that accompanied a large drop in legislative hearings and meetings. He found that the drop in committee activity predated the Republican control of both chambers of Congress and that the drop was a result of bills bypassing committees and the rise of omnibus legislation, especially massive continuing resolutions. The article does not discuss what impact these changes have had on reporting requirements, Aberbach does include a section on the Government Performance and Results Act (GPRA), calling it “perhaps the most promising oversight reform in years.”¹³ He concludes that:

What seems clear is that Congress needs to reinvigorate its authorization and appropriations processes—despite omnibus appropriations bills, the level of appropriations committee hearings and meetings show declines similar to those of authorizing committees—if it is going to take advantage of the opportunities presented by GPRA, and for GPRA to work well requires a linkage of performance data to congressional authorization and appropriation decisions.¹⁴

¹¹ Aberbach, Joel D., “Sharing Isn’t Easy: When Separate Institutions Clash,” Governance, Vol.11, no. 2 (1998): 137, 16 pages.

¹² Ibid.

¹³ Aberbach, Joel D. (2002), “What’s Happened to the Watchful Eye?” Congress and the Presidency, Spring 2002: Vol. 29, no. 1: 3-23.

¹⁴ Ibid, p. 18.

Schick (1983) also discussed oversight as a means for Congress to regain lost power from the executive: “It is from this perspective that members of Congress find oversight wanting. They sit at more hearings, commission more audits and studies, have access to more data, but do not feel that they really control what happens downtown.”¹⁵ Aberbach points out that one way for Congress to try to overcome this limitation is to specify precisely what it wants done by the executive branch and, to the extent possible, to put these specifications into law. According to Aberbach, precise specification—“congressional micro-management, as it is often called”—is now an even more valuable tool with the Supreme Court’s invalidation of the legislative veto in I.N.S. vs Chadha in 1983.

Louis Fisher (1972, 1981 and 1997) has written several books that discuss the relationships between the Congress and the President and executive branch.¹⁶ His books cover important principles about Congress’ needs and rights in obtaining information from the executive branch. He also covers the importance of congressional reporting requirements. In Fisher’s 1997 book, he talks about constitutional principles and observes that the Constitution neither explicitly grants Congress the power to investigate; nor does it give the President the privilege of withholding information.¹⁷ He points out that the Supreme Court has held that the exercise of both powers, when essential for the proper functioning of each branch, is implied in the Constitution. In 1927, the Court announced that a legislative body “cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change” Therefore, the Court concluded that investigation is a prerequisite for intelligent lawmaking. In 1974, however, the Court decided that the President’s interest in withholding information for the purpose of confidentiality is implied in the Constitution: “to the extent this interest relates to the effective discharge of a President’s powers, it is constitutionally based.”

¹⁵ Schick, Allen, editor (1983), Making Economic Policy in Congress, Washington, D.C., American Enterprise Institute, p. 166.

¹⁶ Fisher, Louis (1972), President and Congress: Power and Policy, New York, The Free Press; (1981), The Politics of Shared Power: Congress and the Executive, (Washington, D.C. : Congressional Quarterly Press; and (1997), Constitutional Conflicts Between Congress and the President, 4th edition, revised (Lawrence, KS: University Press of Kansas, 1997). See especially Chapter 6 of Fisher’s 1997 book: “Power Over Knowledge: Seeking and Withholding Information.”

Fisher concluded that these implied powers meet head-on whenever Congress--in an attempt to carry out its investigative function--is denied information by a President who invokes executive privilege. He asks which power should yield and then concludes that this question is not answerable. While it would be satisfying to discover a formula that is both unequivocal and trustworthy, Fisher says that too much depends on individual circumstances. He observes "To subordinate one branch to another would destroy their coequal status and disrupt the system of separated powers. We are left with a search for general boundaries and guideposts that satisfy constitutional principles as well as practical realities."

In his 1972 book, Fisher deals more explicitly with congressional reporting requirements as an oversight tool to monitor the executive branch.¹⁸ He comments that Congress has at its disposal a number of methods for overseeing agencies' operations. Congress can direct that agencies submit reports on a regular basis, consult with specified committees, and even at times include committees in the decision-making process. An agency, for example, may be allowed to act only after it "comes into agreement" with certain committees. In other cases, Members of Congress may work directly with the executive branch and its agencies. Fisher cites the example of the Trade Expansion Act of 1962 (P.L. 87-794), which directed that there be two members from the House Ways and Means Committee, and two members from the Senate Finance Committee, to participate as delegates in tariff bargaining sessions.

Similar to the comments cited above, Fisher again points out that congressional requests for information can, at times, be denied by a President. Presidents have justified withholding of information based on the need for secrecy or on the ground that it would violate the confidence and trust that must exist between the President and his assistants.

In the context of the time in which Fisher's book was written, he observed that efforts were then underway to increase the amount of reporting to Congress. He then cites several examples of this trend:

¹⁷ Ibid.

¹⁸ Louis Fisher (1972), President and Congress: Power and Policy, (New York, The Free Press, pp. 81-82.

- A bill introduced by Senator Clifford Case in 1970, to provide for regular reporting of executive agreements.
- Senator Sam J. Ervin, Jr. recommended in 1971 that the Office of Management and Budget report instances of impounded funds on a regular basis.
- Also in 1971, Senator Lawton Chiles proposed that the Administration report information on the revenue that is lost because of various tax provisions. If these revenue losses were translated into positive terms, into what is called “tax expenditures,” the amounts would be more visible and therefore more susceptible to congressional oversight.¹⁹

In his 1981 book, Fisher discussed other instances of power struggles between Congress and a Presidential Administration regarding access to information, including a controversial Office of Science Technology (OST) report.²⁰ Fisher recounted how White House antagonism toward the science unit, which is located in the Executive Office of the President, increased after several former presidential science advisers testified against Nixon’s proposal for an antiballistic missile system. The OST Chairman within the President’s Science Advisory Committee then testified and campaigned publicly against the Administration’s supersonic transport (SST). Rep. Henry Reuss asked OST for a copy of a report that criticized the SST, but the Nixon White House refused to release it. Nixon aide John Ehrlichmen said OST had no control over the document because it was a presidential report that was “in the nature of inter- and intra-agency memoranda which contained opinions, conclusions and recommendations prepared for the advice of the President.”

In response, Congress amended the Freedom of Information Act (FOIA) in 1974 and applied its provisions to the Executive Office of the President, except for the president’s “immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President.” As a result, two citizens went to court to compel the OST director to release the report. A district judge dismissed the complaint after maintaining that the report was a presidential document and that OST was not an “agency” for FOIA purposes. He ruled that OST was part of the president’s staff and, therefore, the report was protected by the doctrine of executive privilege. An appellate court reached a different conclusion, however, and classified

¹⁹ Ibid.

OST as an agency and made the report an agency record available through FOIA. The legislative history of the OST convinced the appellate court that Congress anticipated that the office would function as an entity distinct from the President's staff. This ruling was based on the prior actions of a House committee that had noted that, in contrast to previous science advisers to the president, the OST director would be available for questioning by congressional committees. The decision was not appealed.

In contrast to Fisher's discussion of conflict between the Congress and executive branch over access to information, Walter Oleszek (2001) offers us a more bureaucratic and housekeeping explanation of the role of reporting requirements.²¹ He starts by offering a brief definition of the term "reporting requirements" and observing that numerous laws require executive agencies to submit periodic reports to Congress and its committees. He cites one scholar's explanation:

Reporting requirements are provisions in law requiring the executive branch to submit specified information to Congress or committees of Congress. Their basic-purpose is to provide data and analysis Congress needs to oversee the implementation of legislation and foreign policy by the executive branch.²²

Oleszek commented that some reports are of minimal value because they are couched in broad language that reveals little about program implementation, while other reports may be more specific. However, the reporting requirements generally encourage self-evaluation by the executive branch and promote agency accountability to Congress. Oleszek cites the example of when Congress became exasperated with Pentagon delays in implementing a major reorganization of defense offices. Congress then directed the Secretary of the Army "to report every 30 days to Congress on what he was doing to put the legislation into place."

Oleszek also brought up the important point that Congress and the executive branch periodically recommend the elimination of certain reports. He noted that at the time he was writing the book there were more than 3,000 reports submitted to Congress. He said that the impulse to eliminate reports sometimes reflects legislative and executive concern about "micromanagement" of

²⁰ Louis Fisher, The Politics of Shared Power : Congress and the Executive, (Washington, D.C. : Congressional Quarterly Press, 1981), pp. 141-142.

²¹ Walter J. Oleszek, Congressional Procedures and the Policy Process, 5th edition (Washington, D.C.: CQ Press, 2001), pp. 271-272.

executive affairs by legislative committees. For example, Senate Armed Services Chairman Sam Nunn expressed dismay that over a fifteen-year span (1970-1985) the number of reports required of the Defense Department increased twelve fold (from 36 to 458). Oleszek concludes that this kind of concern about reporting requirements involves seeking an appropriate weighing of Congress' need for information about agencies and programs against the imposition of burdensome, costly, or irrelevant obligations on executive entities.

Harris (1964) provides criteria for evaluating congressional controls over the executive branch, such as hearings, reporting requirements, and other oversight tools.²³ Harris agreed that on the whole Congress would respond affirmatively to each of the questions posed under these criteria with regard to its oversight activities. For example, he states that "Congress must know if its legislative policies are faithfully, competently, and economically carried out, and if they are having desired effects." Information from agencies is an important tool in this regard. Harris' seven criteria or tests are:

1. Is the kind of control being considered authorized or implied in the Constitution, and is it in conformity with the basic division of powers between the two branches?
2. Do the controls provide Congress with the information it needs to discharge its basic responsibilities?
3. Are the legislative controls effective in bringing to light administrative abuses or arbitrary actions that have occurred in the past, and in preventing them in the future?
4. Do the controls operate in a way that allows executive officers the discretion and flexibility they need if they are to administer government programs effectively and be held responsible for results?
5. Do the controls, as applied in specific cases, reflect the policies and wishes of Congress as a body rather than the wishes of a small segment of Congress?
6. Do the controls tend to strengthen and enforce the internal disciplines of the executive branch, or do they duplicate and weaken them?
7. Finally, is a specific control a suitable one to be exercised by a legislative body?²⁴

²² Ellen C. Collier, "Foreign Policy by Reporting Requirement," *Washington Quarterly* (Winter 1988): 75.

²³ Harris, Joseph P.(1964), Congressional Control of Administration, Washington, D.C., The Brookings Institution,.

²⁴ Ibid.

This last question relates specifically to the appropriate use of information and decision-making by Congress vis-à-vis the executive branch. Harris notes that some decisions, such as those specifically relating to major public policies, are ideally suited to be made by a legislature. Indeed, that is the legislature's function in a democratic society. However, there are other types of decisions that are not suitable to be made by a legislative body. He notes that only those who have appropriate information, expertise, and experience can make a large proportion of governmental decisions wisely and in an effective time span. In these instances, executive branch officials are more likely to have these qualifications--and it is appropriate for Congress to make sure that they do. But, in Harris' view, Congress and its committees are not likely to have the requisite knowledge and, even if they did, they are not organized to put it into action. When considering whether congressional requirements for information need to be imposed on the executive branch, the question of whether Congress is getting into micro-management of government programs needs to be asked.

2.3 CONGRESSIONAL REPORTING REQUIREMENTS

Johannes (1976), whose work was cited in some detail in Chapter 1, is another major scholarly source for the dissertation because he details the nature and extent of congressional reporting requirements in two articles that deal exclusively with this topic 30 years ago.²⁵ Johannes discusses Congress' heavy reliance on the President and executive agencies for major legislative proposals and the information needed to process them. He argues that if the executive branch does not prove responsive to a perceived problem, the Congress can induce action by holding hearings, conducting its own studies, or introducing bills on its own. But a major tool that Johannes explores is Congress' formal efforts to alert the executive branch to a possible policy problem by getting that branch to assemble data on problems through formal reports. Thus Congress requires by statute that the President, departments, agencies and commissions investigate problems and propose legislative solutions and report back to Congress. He concludes that "The temptation may be great to dismiss such statutory requirements as formalistic, ineffective, and perhaps trivial, but doing so would do no credit to those members of

²⁵Johannes, John R. (1976), "Study and Recommend," *Western Political Quarterly* 24 (December, 1976): 589-596; and "Executive Reports to Congress," *Journal of Communication* (Summer, 1976): 53-61.

Congress who, increasingly over the years, have voted for them.”²⁶ He notes that what makes these provisions interesting is that by this means Congress is placing the responsibility for, and shifting the burden of, learning and legislative initiation to the executive branch. He observed that the subject was ripe for study because, except for national or presidential commissions, very little was known about reporting requirements in general and about policy-making reports in particular.

Ripley and Franklin (1980) also offer the same general observations that are discussed above about reporting requirements, when they state “Congress may require that parts of the bureaucracy make certain information available to it through reporting requirements in statutes. These requirements vary considerably in form and content. Some are highly visible because they are contained in major statutes and focus on reports from the President.”²⁷ They then recount some of the key reporting requirements cited by authors above. For example, they note that the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-334) requires that the President report annually on the amount of impounded funds and the amount of tax expenditures (that is, the amount of revenue lost through various tax provisions foregoing income). In addition, the War Powers Act of 1973 (P.L. 93-148) requires the President to report to Congress on American troop commitments.

Ripley and Franklin make the point that reporting requirements generally are directed at bureaucrats lower in the executive hierarchy and are less visible. Also, the kind of information requested can range from details about programs to rationales about decisions. However, the point of the reporting requirements is the same, which is to increase the amount of information that Congress has, and to increase the consultation between congressional committees and agency bureaucrats. They offer the example of the Joint Committee on Atomic Energy (JCAE) to demonstrate how a committee can use the reporting technique to extend its influence over an agency. The JCAE exercised dominant influence over the Atomic Energy Commission during its existence, buttressing its influence with a large variety of reporting procedures, legislative veto provisions, and statutory rights to virtually all information held by the agency.

²⁶ Ibid.

²⁷ Ripley, Randall B., and Grace A. Franklin, Congress, the Bureaucracy, and Public Policy, the Dorsey Press,

Ripley and Franklin also make note of the number of reporting requirements by citing the work of Johannes (1976), discussed above. They cite his analysis of all congressional reporting requirements which showed that in the 30 years since World War II the number of reports required rose from around 300 to over 1,000 and that these requirements fell into major categories, as follows:

1. Various parts of the executive branch are often required to submit “policymaking” reports such as evaluations of existing programs and recommendations for future action.
2. “Post facto” reports are often required simply recounting actions taken.
3. “Advance notification” reports must be filed for a specific period of time before an action is taken. This gives members of Congress or of a specific committee a chance to object, propose changes, or react in other ways.²⁸

Ripley and Franklin’s review of Johannes work showed that in the 92nd Congress (1971-72) 261 new reporting requirements were included in statutes, and of these, 50 percent were of the post facto variety, 40 percent were of the policymaking variety, and 10 percent were of the advance notification variety. Using the same categories and analyzing data since 1945 the authors found that policymaking reporting requirements had become an increasingly important congressional technique.

They also reported that the sources of the reports and the routing of them also varied a great deal. For example, in 1974 only 18 percent of all reports to be made (about 1,050) were to come either directly from or through the President. Forty-eight percent came from cabinet level departments directly to Congress; and 16 percent came from independent agencies directly to Congress. In addition, others came from sources such as federally chartered private corporations and a variety of boards and commissions.

Homewood, IL, 1980, pp. 75-76.

²⁸ Ripley, Randall B., and Grace A. Franklin (1980), Congress, the Bureaucracy, and Public Policy, the Dorsey Press, Homewood, IL.

Mezey (1989) observed that for Congress to effectively determine what the required information is and to process that information when it comes in from the rest of the government requires adequate staff.²⁹ However, Mezey describes the historic imbalance of information resources between the Congress and the executive branch. Because of the vast information resources available in the bureaucracy, and therefore available to the President, the Congress was traditionally considered to be at some disadvantage compared to the President when it came to making informed policy decisions. Mezey notes that Congress worked to correct this imbalance during the reform era of the 1970s, primarily by expanding and improving its professional staff support. For example, between 1970 and 1986, the size of committee staff increased 250 percent; personal staff increased by 60 percent, and the size of support agencies doubled. These trends were reversed in the mid-1990s when the Republicans took control of both houses of Congress and instituted cuts in committee staff and support agencies. However, other oversight mechanisms and reporting requirements such as those required under GPRA were instituted to try to rationalize and enhance Congress' ability to learn as an institution.

Mezey also observed that although Congress succeeded in upgrading its information resources, it still lacked "the ability to turn information into knowledge [and] to bring information to bear upon its public policy decisions."³⁰ Other congressional authorities Mezey quotes in his study shared this assessment. Shick (1983) quotes a number of congressional scholars about their views of Congress' ability to learn and make informed policy decisions. He quoted Robert Reischauer, then a Brookings Institution economist, as concluding that even though Congress generally gets good advice and has an effective information-gathering system, it sometimes ignores this advice in the face of political forces. Reischauer states, "Whether Congress chooses to use information or not is a political question." Mark Nadel, also quoted by Schick, was somewhat more harsh, saying "Congress is almost completely impervious to systematic policy analysis . . . the dominant factor in the use of analysis is not whether it is correct or technically competent, but which side it supports." It should be noted that the three authors had experience in congressional support agencies. Robert Reischauer later became Director of the

²⁹ Mezey, Michael L., Congress, the President, & Public Policy, Boulder, CO, Westview Press, 1989.

³⁰ See Mezey, p. 134.

Congressional Budget Office, Mark Nadel was an executive at GAO, and Allen Schick was a Senior Specialist at the Congressional Research Service, Library of Congress.

Dodd and Schott (1979) also discuss the structure and paradox of congressional oversight, including those aspects associated with access to information.³¹ They note that while information is the lifeblood of the congressional process, much of the information that Congress needs to make its judgments must come from executive agencies. They point out that, in fact, it is often the agencies' role as specified in legislation to possess the expertise, advanced technology, and financial resources needed to gather the data and interpret it. However, much of this information is sensitive in nature and sometimes the agencies have reasons, legitimate and sometimes not, for not wanting to provide this information to Congress where it could be leaked or used against them. In addition, as the number of committees and subcommittees proliferated, so did the demands for information from the agencies. Similar to Mezey, they note that as a way of increasing congressional information, Congress sought to use statutory reform to force more open information processes on the executive; expanded its own staff system within committees, initiated the use of computer facilities, and enlarged and improved its support agencies.³²

The writings of Hackman and Wageman (1995) can also apply to congressional reporting requirements and the collaboration between congressional and agency actors to successfully work together on needed information.³³ They nicely summarize the empirical, conceptual and practical issues associated with Total Quality Management (TQM) that can be applied to organizational learning, and by extension to how Congress learns. They outlined four principles to guide organizational strategies to improve performance. These principles could be applied on a broader level than is currently being done to the congressional oversight process. It should be noted, however, that GPRA has built-in requirements for consultation and feedback between Congress and the executive branch for review of performance plans, thus attempting to incorporate these principles. These principles are:

³¹ Dodd, Lawrence C., and Richard L. Schott (1979), Congress and the Administrative State, New York, John Wiley and Sons.

³² See Dodd and Schott, pp.180 to 186.

³³ Hackman, J. R., and R. Wageman (1995), "Total Quality Management: Empirical, Conceptual and Practical Issues," Administrative Science Quarterly, 40: 309-342.

- Focus on work processes: the quality of products and services can be directly linked to the processes that produce them.
- Analyze variability: front-line employees should analyze and control variability in both processes and outcomes.
- Management by fact: systematic collection of data, the use of statistics, and testing solutions experimentally.
- Learning and continuous improvement: a commitment to a continuous cycle of quality enhancement.³⁴

Hackman and Wageman returned to the writings of the TQM movement's founders--W. Edwards Deming, Joseph Juran, and Kaoru Ishikawa--to assess the coherence, distinctiveness, and likely perseverance of the TQM management philosophy as practiced in the U.S. From their review of the literature they identified five core features that can serve as criteria for determining if TQM is being followed in an organization or process. The questions are:

1. Are organizational members assessing customer requirements and measuring performance against requirements continuously?
2. Are suppliers chosen on the basis of quality, rather than on the basis of cost, and are organization members working with suppliers to improve suppliers' quality practices?
3. Are members operating interdependently, as teams, across traditional organization functions, rather than independently or in ways that maintain functional separateness?
4. Are members using statistics and scientific reasoning to formulate and test hypotheses about work processes and strategies for performance improvement?
5. Are members using process management heuristics (i.e., brainstorming, flow charts, cost and effect diagrams) to enhance team problem solving and decision-making?³⁵

In this case, the questions could be applied to the processes Congress uses for oversight of executive branch agencies.

³⁴ Hackman, J. R., and R. Wageman (1995), "Total Quality Management: Empirical, Conceptual and Practical Issues," *Administrative Science Quarterly*, 40: 309-342.

³⁵ Ibid.

Norton (1976) provides a history of congressional oversight of the executive branch from the Nation's founding to modern times.³⁶ He notes that the manner of best assuring executive implementation of public policy in accordance with legislative intent has been a perennial problem confronting policymakers since the beginning of the republic. James Madison discussed the issue in 1787 when he wrote in the Federalist that, in establishing a government "administered by men over men," the great difficulty would be to enable that government not only to "control the governed" but also to obligate it to control itself. The underpinning for oversight is the Constitution's system of checks and balances among the legislative, executive and judicial branches of government. Madison described this aspect of the government in Federalist No. 51 as establishing "subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner that each may be a check on the other." At the end of the next century, Woodrow Wilson equated oversight with lawmaking--which was usually seen as the preeminent function of a legislature--when he wrote that "Quite as important as legislation is vigilant oversight of administration."

In the discussion of the importance of congressional oversight in Chapter 1, Kaiser (1997) was cited as highlighting the principles and purposes of congressional oversight over executive branch administration of public policy.³⁷ While Kaiser notes the objectives of oversight, it is also important to keep in mind that some of these objectives apply to whether oversight and reports themselves are needed, or if they are an unfair and burdensome imposition on the executive branch and a waste of taxpayer money.

Kaiser and McMurtry (1997) discuss congressional oversight of GPRA mandated reports on agencies' strategic plans.³⁸ They note that GPRA gives Congress the opportunity to participate in the development, review, and approval of the plans. Agencies' strategic plans are crucial to the effective implementation of GPRA. This is not only because they specify their missions, long-

³⁶ Norton, Clark F. (1976), "Congressional Control Over Federal Government Programs," Washington, D.C., Congressional Research Service.

³⁷ Kaiser, Frederick M. (1997), "Congressional Oversight," Washington, D.C., Congressional Research Service.

³⁸ Kaiser, Frederick M., and Virginia A. McMurtry (1997), "Government Performance and Results Act: Implications for Congressional Oversight," Washington, D.C., Congressional Research Service.

term goals, and implementation strategies, but also because of the impact the plans will have in setting the stage for establishing and assessing future performance plans and goals. The authors note a GAO observation that several practices are critical for the strategic planning process to be successful:

- Involve the stakeholders;
- Assess their internal and external environments;
- Align their activities, core processes, and resources to support mission-related outcomes; and
- Consult adequately with Congress.³⁹

Thompson (2001) brings congressional oversight up-to-date by talking about the recent experiences of the Clinton presidency.⁴⁰ He notes that early in the history of the National Performance Review some observers speculated that the prescriptions it contained in its reports, if implemented, would shift authority over the bureaucracy from Congress to the executive branch. However, Thompson states that, to the contrary, a review of the actual impact of NPR on relations between key institutional actors finds that NPR has served to strengthen the congressional role in administrative matters in important ways. He says that a key to this outcome has been the recent tendency toward the disaggregation of administrative structures and systems in the federal government. NPR promoted this disaggregation.⁴¹ Thompson concludes that the NPR has been an executive-centered reform program and states:

The proposition that organizational performance will improve to the extent that managers are freed from excessive constraints implies greater autonomy for executive branch officials and diminished involvement in administrative matters by legislators. The Report of the National Performance Review is explicit on the point that Congress should curb its proclivities to micromanage the executive, recommending, for example, that Congress refrain from imposing excessive

³⁹ U.S. General Accounting Office (1997), Agencies' Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review (GGD-10.1.16), Washington, D.C., p. 1.

⁴⁰ Thompson, James R. (2001), "The Clinton Reforms and the Administrative Ascendancy of Congress," American Review of Public Administration, vol. 31, no. 3): pp. 249.

⁴¹ It should be noted, however, that the current Bush Administration has not followed the approach toward disaggregation (e.g., aggregating numerous agencies into the Department of Homeland Security).

reporting requirements and allow greater flexibility in the use of appropriated funds.⁴²

Nevertheless, Thompson also points out an example of how reports can be useful to Congress in carrying out its oversight of executive agencies. He cites critical 1995 reports by the General Accounting Office (GAO) and a special committee convened under the auspices of the National Science Foundation that resulted in Congress cutting funding for the IRS' Tax Systems Modernization pending a report by the Treasury Department on how the project would be put back on course. Congress created the National Commission on Restructuring the Internal Revenue Service in 1996 to investigate the IRS' management problems. The commission concluded in its report that the modernization failed in part because of the constraints imposed by federal personnel rules. The commission recommended that IRS be provided with special management flexibilities, which were included in legislation that implemented the commission's recommendations.

According to Tiefer (1998), congressional oversight of agency action has been, in the fifty years since the passage of the Administrative Procedure Act of 1946, the most fundamentally important aspect of government.⁴³ Although no codified procedures control the application of this oversight, the processes of Congress instill an order on oversight acts. Overall, no other judicial, administrative, or congressional process can match the flexibility and responsiveness of congressional oversight. Tiefer summarizes the history and tools of oversight, including differences in the way oversight is conducted in the House and Senate, and provides an update of oversight activities during the Clinton Administration. He notes the importance of congressional reporting requirements during the Clinton years in two areas as follows:

In recent years, one of Congress' most important oversight tools in this area [budget process] was the creation of the Prospective Payment Assessment Commission and the Physician Payment Review Commission in the 1980s, with the requirement that they make annual reports to Congress. These commissions have given Congress the power to decide where to make savings in hospital and physician reimbursements. The very visible 1997 budget deal, with its large

⁴² Thompson, James R. (2001), "The Clinton Reforms and the Administrative Ascendancy of Congress," American Review of Public Administration, vol. 31, no. 3, and 2001): pp. 249.

⁴³ Tiefer, Charles (1998), "Congressional Oversight of the Clinton Administration and Congressional Procedure," Administrative Law Review, Winter, v50 n1, pp.199-216.

Medicare savings, merely constituted the latest fruit of such oversight enacted in a reconciliation bill.

Congress has made more intense use of one particular oversight-assisting statute. In 1993, Congress enacted the Government Performance and Results Act (GPRA) that requires agencies to set goals for their performance and then to measure their performance and report on it to Congress. GPRA has allowed the GAO to review agency performance effectively, and congressional committees to conduct powerful oversight.⁴⁴

Thus, as demonstrated by Tiefer's examples cited above, congressional reporting requirements during the Clinton Administration evolved to go beyond the micromanagement complaints expressed by some to become useful tools for congressional oversight and to enhance Congress' role in the administrative state.

In addition to the literature sources discussed above, I examined relevant sources of articles and reports that are directly tied to the dissertation topic. See for example, Karen Robb's article in Federal Times reporting on "Dumping Costly Reporting Burdens: Managers Take Aim at Excessive Paperwork." Other sources of information included key laws and their legislative histories, as well as Government Accountability Office and Congressional Research Service reports and testimonies. Like Rosenbloom's and Johannes' views of the role of Congress in the modern administrative state, these sources of information provided details as to the contemporary state of congressional reporting management and the importance of reports to Congress. These sources of information also provided insight into how to achieve a legislative-centered public administration.

2.4 CONCLUSIONS

While much has been written about congressional oversight, little has been written about congressional reporting requirements. Rosenbloom's observation noted in Chapter 1 thus appears to be correct. The topic of reporting requirements would make a contribution to our

⁴⁴ Tiefer, Charles (1998), "Congressional Oversight of the Clinton Administration and Congressional Procedure," Administrative Law Review, Winter 1998, v50 n1, pp.199-216.

knowledge of Congress and federal administration. Rosenbloom is clearly the most important influence on the thrust of this dissertation. He provides background and context for the special responsibility Congress has in the U.S. public administrative system and the way Congress has changed over the last 50 years to provide oversight of executive agencies. Rosenbloom discussed the important role of standing committee oversight of agency administration of programs as one of its “most important contributions to Congress’ treatment of agencies as extensions.”⁴⁵ The practice of treating agencies as extensions, however, may have been overdone in the last 30 years resulting in an excessive number of reporting requirements imposed on agencies. As pointed out in the NPR report, Congress required agencies to prepare 5,348 reports and complained that much of the reporting is “duplicative,” traps administrators in a “blizzard of paperwork,” and diverts everyone from “looking at results.”⁴⁶ Although Rosenbloom acknowledges that the volume of such reports is great, he also points out the cooperative relationship envisioned in GPRA to develop meaningful performance goals and provide useful reports to Congress. Rosenbloom concludes that reports to Congress are a necessary requirement for Congress and help to fulfill its oversight role and place in the U.S. administrative state. This dissertation builds on Rosenbloom’s conclusions by examining the reporting requirements process and exploring approaches that would serve both Congress and the agencies by expanding the cooperative arrangement envisioned in GPRA to management of the other reporting requirements Congress imposes on agencies. This examination addresses both the implementation of various reporting requirements and steps to ensure that the various reports are truly necessary to meet congressional information needs.

The literature describing the role of Congress in executive oversight is important for the dissertation because it discusses the importance of congressional oversight and the tools used by committees to perform oversight functions. This literature, and particularly the work of Joel Aberbach, provides contextual perspective as to where congressional reporting requirements fit in the broader picture of congressional oversight of the executive branch. This dissertation further explores the use of reporting requirements, including ways to improve their frequency of

⁴⁵ Rosenbloom, p. 66.

⁴⁶ NPR, p. 34.

use and effectiveness as a legislative oversight tool, thus contributing to a legislative centered public administration.

Johannes, whose early work laid the foundation for the importance of reporting requirements for public administration, was especially important in serving as a catalyst for developing congressional reporting requirements into a dissertation topic. He began the exploration of Congress' formal efforts to alert the executive branch to policy problems and issues by requiring that information be collected in formal reports. As noted above, other authors have subsequently addressed the increasing use of reporting requirements as an oversight tool. Together, these authors' works are the major anchors to the dissertation topic.

While the literature discussed in this chapter provides the necessary background for the rest of the dissertation, other authors will be discussed later where they make a particular contribution to the discussion. For example, Joy Clay's definition of what constitutes a "management process" will be discussed in Chapters 3 and 4; and Beryl Radin's critique of GPRA and other performance-reporting requirements, leading to her observation of a "crowded management space," will be discussed in Chapters 4 and 6. The literature on congressional oversight in general, and Rosenbloom's legislative-centered public administration in particular, will be instructive for exploring how the reports management process can be improved in order to better serve Congress, agencies, and the American citizenry. As we proceed through the following chapters, ask yourself if the current reports management process is a product of effective communication--defined by the Mercatus Center as following the three principles of transparency, benefits to the community, and forward-looking leadership--between congressional committees and the agencies that are required to submit reports. In addition, ask yourself if there is effective communication between the committees and agencies and those who maintain the tracking systems that inventory reporting requirements and log when the reports are delivered to Congress. Could the congressional reports management process be improved to contribute to Rosenbloom's call for a legislative-centered public administration? The next chapter discusses the mechanisms currently in place in both houses of Congress and four selected departments and agencies to manage the congressional reporting requirements process and track the reports that are submitted to Congress on a daily basis.