

The Dysfunctional Congress

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Abstract

Is the US Congress dysfunctional? The American public thinks so: In the summer of 2014, just 7% approved strongly of Congress (Riffkin 2014). Still, legislative scholars disagree about the severity of Congress's legislative challenges. Is legislative deadlock a sign that Congress can no longer identify and resolve major public problems? Or are Congress's difficulties temporary and correctable? In this article, I review theoretical and empirical literatures on the dynamics of lawmaking and evaluate alternative methods for testing lawmaking theories. Finally, I draw on recent research to put contemporary stalemate into historical perspective. I argue that even when Congress and the president have reached agreement on the big issues of the day, Congress's problem-solving capacity appears to have fallen to new lows in recent years. Whether and how well our political system can or will self-correct in the coming years remains an open question.

Most of the imbalances I have analyzed. . . have *not* been major, permanent, systemic problems. More precisely, at least during recent generations, many alleged problems have proven to be nonexistent, short-term, limited, tolerable, or correctable.

(Mayhew 2011, p. 190)

We hope that Mayhew is right and that this difficult patch will prove to be routine, short term and self-correcting. . . . But we doubt it. These are perilous times and the political responses to them are qualitatively different from what we have seen before.

(Mann & Ornstein 2012, p. 111)

INTRODUCTION

Is the contemporary US Congress dysfunctional? The American public thinks so: Just 7% approved strongly of Congress in June of 2014 (Rifkin 2014), reflecting a strong downward trend in Congress's public standing over the past decade. Even as public confidence in Congress flirts with the zero lower bound, legislative scholars disagree about the nature of Congress's legislative challenges. Episodes of legislative deadlock—including an impasse over funding that shut down the federal government in the fall of 2013—fuel debate about whether Congress has lost its ability to identify and resolve major public problems. Echoing the electorate's dismal view of its national legislature, Mann & Ornstein (2012, p. xiv) offer the toughest critique: They argue that transformation of the Republican Party into an “insurgent outlier” has paralyzed our governing institutions. Mayhew (2011), in contrast, urges caution: Antimajoritarian biases in American politics, he suggests, are rarely permanent. In short, Mayhew says that our political system is self-correcting; Mann & Ornstein suggest instead that the Republican Party has forced our legislative machinery off the rails.

No one can say today, of course, whether Congress's current legislative difficulties are permanent. So we cannot now fully resolve the debate between Mayhew and his critics. However, Congress's loss of public legitimacy begs that we investigate the dynamics that drive congressional lawmaking and evaluate Congress's recent legislative performance. In this article, I review major theoretical and empirical literatures on the causes of legislative stalemate and evaluate competing methods for testing theories of lawmaking. I also draw on recent research to put contemporary stalemate into historical perspective over the past half century. I find that even when Congress and the president manage to reach agreement on the big issues of the day, the intense partisanship and electoral competition of recent years appears to be undermining Congress's broader problem-solving capacity. Whether and how well our political system can or will self-correct in the coming years remains an open question.

THEORETICAL APPROACHES TO THE STUDY OF LAWMAKING

The study of congressional lawmaking is deeply rooted within political science. Indeed, the origins of the political science discipline lie partially in the study of American national institutions—their legal structures, institutional details, and broader function or performance in the American political system. Attention to Congress's lawmaking performance would not have seemed unusual to any of the first political scientists. Before the American Political Science Association was launched in 1906, Frank Goodnow and other Columbia University professors contemplated creating an American Society for the Study of Comparative Legislation (Gunnell 2006). Today, we might view the early work as descriptive and normative. Still, such studies sought to bring social science to bear on questions about politics and policy. Those scholars naturally turned to analyses of

the separation of powers, asking whether congressional, presidential, and administrative bodies were sufficiently accountable to the broader needs of the country. Wilson's (1885) *Congressional Government* fits this vein perfectly: He decried the domineering congressional committees that he claimed thwarted the interests of the majority party and the president.

Political science's early focus on the study of laws and institutions took a back seat by mid-century, as the discipline turned to new questions and measures introduced by the behavioral revolution. Drawing from the fields of psychology and sociology, political scientists came to consider individuals, their roles, and their behaviors as central building blocks in the study of politics. Political action stemmed from the aggregation of individual behavior. Viewing the political world as a place in which individuals filled roles, followed rules, and were socialized into compliant behavior, political scientists evinced relatively little interest in institutions at midcentury. As Shepsle (1989, p. 133) has observed, institutions were "empty shells to be filled by individual roles, statuses and values. There was no need to study institutions; they were epiphenomenal." Some legislative scholars remained dedicated to the study of institutions in this period. Polsby's (1968) work on the institutionalization of the US House and Cooper's (1970) work on the origins of the committee system come to mind. But Shepsle's comment captures the broader behavioral focus of the era.

Legislative scholars returned to the study of institutions with the adoption of economic modes of analysis in political science in the 1970s. Instead of seeing institutions as unimportant in the building of theory, scholars now considered the analytical relevance of actors' policy preferences and the structure and procedures of the legislative game. Influence conferred by rules and organization empowered certain individuals in the pursuit of their preferences. Legislative scholars applied economic models to a wide set of applications within the study of Congress, including the organization of its committees (Krehbiel 1991, Weingast & Marshall 1988, Cox & McCubbins 1993), bargaining and coalition building (Baron & Ferejohn 1989, Snyder & Groseclose 1996), and relations with the executive (McCubbins et al. 1987, Ferejohn & Shipan 1990). The flowering of legislative research was impressive and offered bedrock contributions to our understanding of legislative strategy and choice. Still, the analytical focus remained at the micro level. Theory was tuned to explain how rationally motivated individuals pursued their goals and how institutional features served to enhance or constrain purposive behavior.

Despite legislative scholars' return to the study of institutions, macro politics received little attention in the late 1980s and early 1990s. If micro politics emphasizes the individual as the critical analytical unit, think of macro politics as the study of outputs—policy outcomes, lawmaking, and systemic performance (electoral, constitutional, or institutional). Legislative scholars never completely turned a blind eye to the study of congressional performance: Scholars evaluated patterns in legislative outputs, considering both the impact of divided party government (Sundquist 1968) and the relative balance of power between Congress and the president (Chamberlain 1948). Still, there was little attention to the development of macro-level theory during the postwar period. We gained detailed analyses of legislative performance in different eras but were left with little in the way of generalizable explanation. Nor did other scholars take up these works to test their implications in other periods or contexts. Micro-level analyses—first advanced by sociological perspectives in the 1950s and 1960s and then followed by economics-based theory in the 1970s and 1980s—dominated legislative studies.

The 1991 publication of Mayhew's *Divided We Govern* (2005 [1991]) arguably marks the origins of the contemporary study of legislative performance. This was the first book to bring systematic, quantitative evidence to bear in testing claims about the impact of divided party control on the production of landmark laws. To be sure, *Divided We Govern* came on the heels of a series of works by presidential and legislative scholars perplexed and frustrated by the frequent periods of divided party government that prevailed after World War II. Between 1897 and 1954, divided

party control of government occurred 14% of the time; between 1955 and 1990, two-thirds of the time. And as Key (1964, p. 688) observed in the 1960s, “Common partisan control of executive and legislature does not assure energetic government, but division of party control precludes it.” Decades later, scholars (including most prominently Sundquist 1988–1989) were still calling for a new theory of coalitional government to explain how Congress and the president could secure major policy change in the presence of divided government.

In the second edition of *Divided We Govern* (2005 [1991], p. 36), Mayhew returned us to these pursuits by asking a simple and accessible question about Congress’s performance in the postwar era: “Were many important laws passed?” Mayhew’s empirical goal was to set up a test of the effect of divided party control on the level of lawmaking. Toward that end, he identified landmark laws in a two-stage process that combined contemporary judgments about the significance of Congress’s work in each session with policy specialists’ retrospective judgments about the importance of legislation. Based on these data, Mayhew generated a comprehensive list of landmark laws enacted in each Congress between 1946 and 1990, subsequently updated through 2012 (Mayhew 2014a). Mayhew then tested whether the presence of divided government reduced the number of major laws enacted by each Congress.

The signal contribution of *Divided We Govern* was the null result for the impact of divided government on lawmaking. Unified party control of Congress and the White House in Mayhew’s study failed to yield significantly higher levels of lawmaking. The key takeaway from *Divided We Govern* was that it matters little whether a single party controls both the White House and Congress: Not much more gets done than under divided party control. Mayhew absolved divided government as a cause of legislative inaction and then attempted to disentangle several other primary influences on Congress’s performance. Some of those forces—including legislators’ electoral incentives—point toward constancy in the record of lawmaking. But other forces, Mayhew demonstrated, appear to be important alternative sources of variation in explaining congressional productivity, including shifting public moods or tastes for activist government, presidents’ electoral cycles, and issue coalitions that cut across the left–right divide.

Mayhew’s work spawned theoretical and methodological debate about how best to explain and measure variation in Congress’s legislative performance over the postwar period (among many others, see Kelly 1993, Edwards et al. 1997, Brady & Volden 1998, Krehbiel 1998, Coleman 1999, Jones 2001, Binder 2003, Chiou & Rothenberg 2003). One prominent theoretical response to Mayhew’s work is Krehbiel’s *Pivotal Politics* (1998; see also Brady & Volden 1998 for similar theoretical work that came out simultaneously). Krehbiel’s and Brady & Volden’s studies are not strictly challenges to Mayhew’s argument because all three place little analytical weight on political parties in shaping legislative outcomes in Congress. Instead, Krehbiel and Brady & Volden introduce a new theoretical framework for conceptualizing the conditions that foster lawmaking. The key contribution is to introduce the concept of legislative “pivots”—institutional actors endowed with key structural rights.

The key insight of these studies—dubbed the “pivotal politics theory” by Krehbiel (1998)—is that constitutional and extraconstitutional institutional rules create “pivotal” players on whom collective choice depends. In the congressional context, that collective choice is of course the making of public law. Focusing on the presidential veto and the Senate filibuster, both Krehbiel and Brady & Volden argue that the cloture and veto pivots are the critical actors for determining whether changes in public policy will be adopted. Any existing policy that is located between these pivots (the “gridlock interval”) cannot be changed, assuming that legislative politics follows a single dimension and that lawmakers’ votes reflect their sincere preference. In other words, legislative stalemate can occur even in the presence of a congressional majority that favors a policy change.

The pivotal politics theory has important implications for understanding the conditions under which Congress and the president will in theory be able to agree to major policy change. First, policy outcomes are consistent with the views of the supermajority pivots of the legislature. With a conservative president and a conservative majority, any effort to move policy substantially to the right would be blocked by a liberal filibuster pivot; right-of-center status quos would also remain unchanged, because a conservative president would veto any movement left of the policy and the veto would be sustained by the veto pivot. Not surprisingly, the conditions that make policy ripe for change include elections that change the preferences of the pivotal players and major exogenous shocks that might alter the location of the policy status quo, leaving it outside the existing gridlock interval.

Second, the pivotal politics model precludes an analytical role for political parties. Legislators in the basic model are individual utility maximizers rather than partisans seeking collective electoral or policy goals for the party (as proposed by Rohde 1991, Cox & McCubbins 1993, and others). Parties are mere aggregations of individuals rather than pivotal actors endowed with formal blocking rights. One of the model's advantages is that it helps to explain why unified party control often fails to produce major policy change. Failure to secure the support of the filibuster pivot has hamstrung many a new majority party, including Democrats under President Bill Clinton when he tried in 1993 for a large stimulus bill and Republicans under President George W. Bush when he pushed in 2005 for privatizing Social Security. The pivotal politics model also helps to explain the challenges faced by President Barack Obama's Democratic majority in 2010 after the loss of its filibuster-proof Senate majority—requiring compromise with the Republicans in, for example, crafting the landmark Dodd–Frank Act that revamped the financial regulatory system.

The model also suggests that legislative gridlock would occur in periods of divided government, say with a Democratic-controlled Congress and a Republican in the White House. In this scenario, a liberal congressional majority's effort to move centrally located policy to the left would be thwarted by a right-side filibuster pivot, as well as a right-side presidential veto. The veto pivot, whose vote would be necessary to override the president's veto, is also unlikely to prefer the liberal majority's bill proposal to the status quo. Policy gridlock results. Given the pivotal politics model's implication that gridlock can occur under both unified and divided government, the model provides the theoretical basis for Mayhew's null effect for divided government. The broader implication of these nonpartisan models is that policy change is likely only in the context of large, bipartisan coalitions. Moreover, as Krehbiel argues, the model helps to account for the other empirical regularities identified by Mayhew, including the "honeymoon" effect, in which new presidents secure major policy change. The pivotal politics model suggests that gridlock will indeed be broken if a new president pushes major change when he inherits extreme status quo points that are "out of equilibrium" (Krehbiel 1998, p. 46) from the new array of congressional and presidential preferences.

In the 15 years since the publication of *Pivotal Politics*, other legislative scholars have challenged the nonpartisan account of Mayhew (2005 [1991]), Krehbiel (1998), and Brady & Volden (1998) by building theory that expects party influence over the shape of policy outcomes. In my work on gridlock (Binder 1999, 2003), for example, I suggest that both interbranch and intrabran­ch conflict—coupled with the ideological distribution of the two major parties—shape the prospects for major legislative change. First, I show that the degree of partisan polarization matters, as ideologically distant parties make harder the crafting of large bipartisan majorities necessary for durable policy change (see also McCarty et al. 2006). Second, I capture the impact of intra-branch conflict, showing that deadlock stems in part from bicameral differences in House- and Senate-favored policy outcomes. Although Chiou & Rothenberg (2008) raise questions about how bicameral differences should be measured, I suggest that intrabran­ch and interchamber conflict

may be equally likely to raise the bar against successful coalition building. Evidence that there are policy consequences of bicameralism (as opposed to unicameralism) is further suggestive of the potential impact of interchamber differences on legislative performance (Heller 1997).

More formally, Cox & McCubbins (2005) offer a party cartel model, in which the key agenda setter is the majority party leadership. As a pivotal agenda setter, the majority party median is able to gate-keep access to the floor agenda, systematically keeping proposals off the floor when the party prefers the policy status quo. Such exercise of negative power forms the core of the party cartel theory, which Cox & McCubbins test with “roll rates” that capture the frequency with which the majority party loses to the minority on floor votes. The party cartel account theorizes a role for the majority party’s positive power: The party has the ability to move policy outcomes off center toward the majority party’s preferences. But the model pays far more attention to the cartel’s negative power. In short, the party cartel model informs us about a majority’s ability to keep issues off the table but leaves open the question of the conditions under which parties can mold policies to their advantage.

Chiou & Rothenberg (2003) also offer alternative party-centric accounts, incorporating the preferences of the majority party median to test variations of party models, and suggest that party cohesion—with or without presidential leadership—may be sufficient to enhance legislative productivity. Primo et al. (2008) also theorize that incorporating partisan pivots might enhance our ability to explain legislative outcomes, in particular variation in Senate confirmation of presidential appointments to the federal bench. Of the several competing pivotal politics models that they attempt to fit to judicial confirmation data, the best-fitting model incorporates the majority party median and the 60th senator (who can make or break a filibuster) as the anchoring pivots. In other words, tests of the pivotal politics model that incorporate party actors lend some credence to the position that nonpartisan accounts might overlook the impact of party on legislative outcomes [see also Smith (2007), who explores the limitations of party-based theories].

More recent work encourages scholars to look beyond Mayhew’s focus on party dynamics to explain patterns of lawmaking. Lapinski (2013), for example, argues for the incorporation of policy substance into explanations of legislative performance, drawing from Lowi’s (1964) classic adage that policy shapes politics. Lapinski argues that exogenous events can make some policy status quos ripe for change, while leaving others unchanged, requiring scholars to model lawmaking by broad policy areas. Still, Lapinski does not explain why partisan polarization (for example) appears to dampen lawmaking in some policy domains but not others.

New work by Grossmann (2014) also challenges contemporary accounts that emphasize the impact of broader electoral trends on the likelihood of policy change, such as Erikson et al.’s (2002) *The Macro Polity* and Baumgartner & Jones’s (1993) *Agendas and Instability in American Politics*. Grossmann suggests a more insular model of policy change in which major lawmaking emerges from coalitions of elite policy makers and activists embedded in issue-specific networks. Finally, Adler & Wilkerson (2013) challenge accounts of lawmaking that emphasize the constraining effect of partisan polarization on legislative outcomes. Focusing on policy areas subject to periodic reauthorizations, Adler & Wilkerson suggest that there is more bipartisanship than meets the eye in legislative politics. Congressional committees’ routine reassessment of existing laws fosters the role of committees as problem solvers within Congress. However, one might argue that many short-term authorizations in recent years are actually the price that policy proponents pay to secure any reauthorization at all. Moreover, it remains to be seen whether Adler & Wilkerson’s account is consistent with the diminished authority of congressional committees (Cohen 1990) and the demise of seniority (and thus expertise) as a key determinant of committee leadership (Deering & Wahlbeck 2006).

MEASURING CONGRESSIONAL PERFORMANCE

Competing theoretical accounts of legislative performance provide an excellent view of the range of institutional, ideological, and electoral forces that might shape congressional lawmaking. Moreover, they generate a set of hypotheses about the conditions under which Congress should be highly productive or mired in stalemate. However, absent a robust metric of legislative performance, we can neither arbitrate across the theories nor evaluate the degree of congressional dysfunction. Not surprisingly, legislative scholars disagree about how best to measure Congress's legislative capacity. Much of the methodological debate centers on whether we need a denominator—a baseline against which to compare Congress's legislative output. Mayhew's (1991) "landmark laws" approach provides a numerator: a count of the major laws enacted by each Congress and the president as judged by both contemporary journalists and historical observers. Others, including Kelly (1993), Clinton & Lapinski (2006), and Howell et al. (2000), build on Mayhew's numerator approach to count episodes of lawmaking in different ways, recognizing for example types of laws or degrees of salience.

The limitations of counting laws are now well known. Enumeration of laws provides an excellent measure over time of what Congress has produced but precludes assessment of what Congress accomplished relative to the major issues on the policy agenda. Moreover, changes in legislative strategy—for instance, the increase in omnibus legislation beginning in the late 1980s that aggregated bills into mammoth legislative packages (Krutz 2001)—complicate comparisons of laws over time. Even Mayhew (2014b) has deplored the practice of "counting things."

The key alternative to simple counts appears in *Stalemate* (Binder 2003): a measure of legislative deadlock that isolates the set of salient issues on the nation's agenda and then determines the fate of those issues in each Congress. The result is a ratio of failed measures to all issues on the agenda of each Congress. My sense is that this measure of gridlock is up to the task, largely because it meets key benchmarks we might impose to judge a measure's construct validity. The measure identified Lyndon Johnson's Great Society Congress as the most productive of the postwar period and determined that Clinton's second-session Congresses and the 2011–2012 Obama Congress were the most deadlocked. Such assessments comport with historical and contemporary coverage of Congress's postwar performance.

As I explain in detail in *Stalemate* (Binder 2003, Appendix A), I devised a method for identifying every policy issue on the legislative agenda based on the issues discussed in the unsigned editorials in the *New York Times*. Using the level of *Times* attention to an issue in any given Congress as an indicator of issue salience, I identified for each Congress between the 80th (1947–1948) and the 106th (1999–2000) the most salient issues on the legislative agenda. I then turned to news coverage and congressional documents to determine whether Congress and the president took legislative action in that Congress to address each salient issue. The measurement strategy produced a denominator of every major legislative issue raised by elite observers of Capitol Hill and a numerator that captured Congress's record in acting on those issues. The resulting gridlock score captures the percentage of agenda items left in limbo at the close of the Congress.

Figure 1 displays the size of the policy agenda updated through 2012, coupled with the number of failed legislative issues in each Congress. Looking first at the smoothed trend line in the overall number of legislative issues mentioned in each Congress in the *Times* editorials (**Figure 1a**), the size of the overall agenda increases as expected with the return of large liberal majorities during the mid 1960s and stays at this expanded level through the advent of the civil rights, environmental, and women's movements of the 1970s. Only in recent years do we see a slight increase in the size of the agenda, no doubt reflecting both later efforts to renew the spate of landmark laws of the

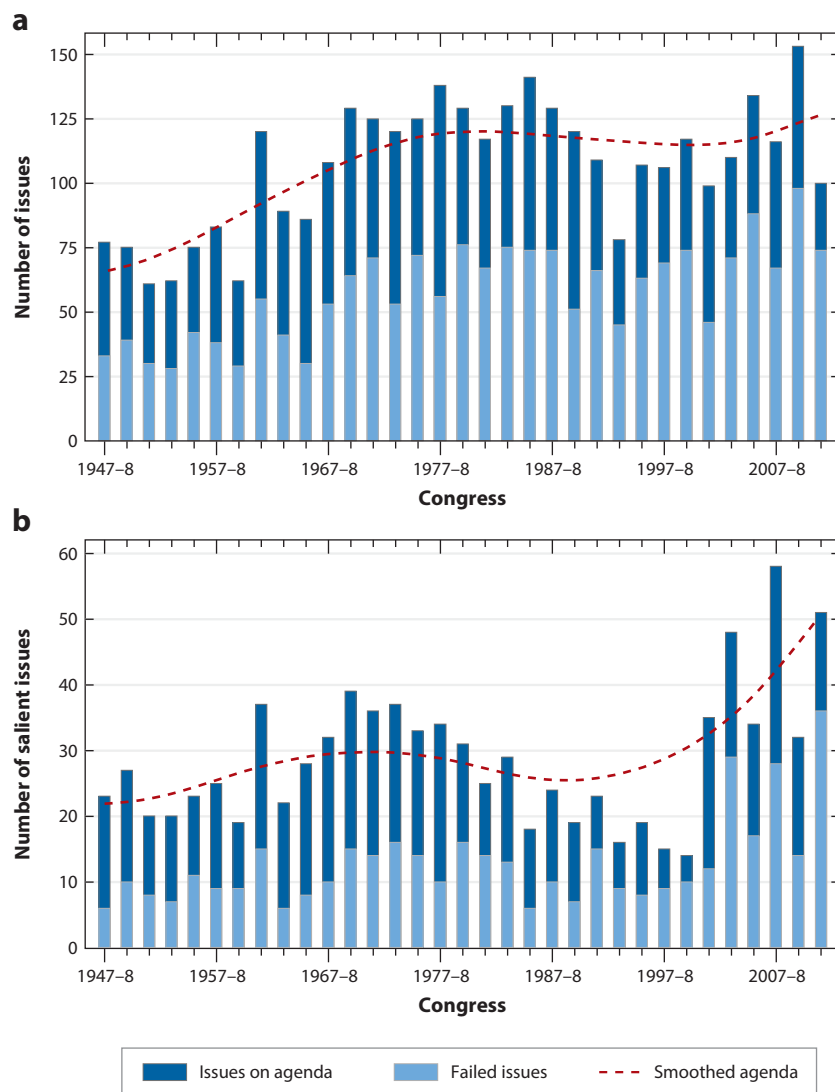


Figure 1

Size of the legislative agenda from 1947 to 2012, showing (a) all issues and (b) salient issues. Light blue bars indicate the number of issues that ended in deadlock in each Congress.

earlier, activist period and newer issues brought to the fore by the war on terror, global climate change, and so on.

The trend in the number of salient issues in **Figure 1b** is more eye-catching. The overall size of the agenda increases only incrementally over the most recent decade, but the number of salient issues rises markedly in the 108th (2003–2004), 110th (2005–2006), and 112th (2011–2012) Congresses. Of course, it is possible that the increased gridlock in recent years has indirectly fueled the growth of the salient agenda, as the big issues of the day remain unresolved and thus recur. Failure to address reform of immigration law, entitlement programs, and the tax code, for example, likely helped to swell the size of the salient agenda in recent years. Moreover, a spate of new issues

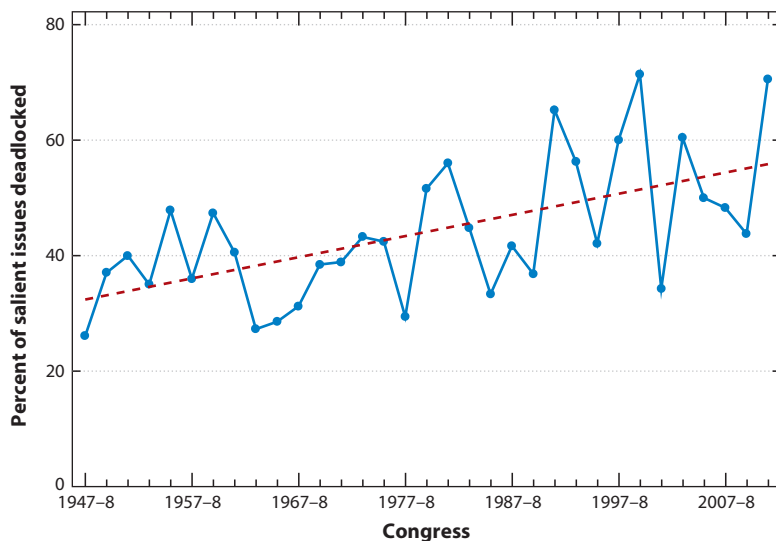


Figure 2

Frequency of legislative gridlock in Congress from 1947 to 2012.

in the past decade likely caught the attention of the *Times*' editorial writers, including homeland security, global warming, cyber security, the return of deficits after the 1990s, the US wars in Iraq and Afghanistan, the onset of financial crisis, and the worst economy since the Great Depression.

The time series of the degree of legislative deadlock on salient issues in each Congress between 1947 and 2012 appears in **Figure 2**. Four features stand out. First, the frequency of deadlock shows a secular increase over time. Second, the direct claims about the 112th Congress (2011–2012) are essentially true. By this measure, the 112th Congress can claim to be the “worst Congress ever” over the postwar period, although the title is shared with the last Congress of the Clinton administration in 1999–2000. In both Congresses, almost three-quarters of the most salient issues remained unresolved at the end of the Congress. Given that these two Congresses came on the heels of the 1998 Republican effort to impeach President Clinton and in the run up to a competitive contest for the White House, respectively, we probably should not be surprised by their dead heat to claim the “most dysfunctional” honor.

Still, caution is in order in comparing the two Congresses. Some of the issues considered “successfully” addressed in the 112th Congress might never have been deemed acceptable outcomes in previous Congresses. For example, Congress and the president have traditionally authorized and funded federal highway programs in multi-year reauthorization bills. But following expiration of highway programs in 2009, Congress and the president passed a series of temporary reauthorizations to keep federal programs running. Even when the parties were finally able to agree to a multi-year bill in 2012, that agreement only reauthorized two years of highway programs; conflict over raising the federal gas tax stymied efforts to finance a traditional six-year bill. I code the highway bill as a successful legislative response (Binder 2014) even though the two-year bill failed to ensure the solvency of federal highway trust funds after the end of the two years. Not surprisingly, lawmakers found themselves at another impasse over highway funding in the summer of 2014. Another problem, how to raise the federal debt ceiling in the summer of 2011, was resolved in part by establishing the Joint Select Committee on Deficit Reduction (otherwise known as the

“Super Committee”) to come up with more than a trillion dollars in federal savings (Steinhauer & Pear 2011). Steinhauer & Pear characterize the 2011 deficit-reduction package as a success even though the Super Committee that resulted from the agreement eventually failed. In other words, the 71% deadlock score for the 112th Congress underestimates the true level of legislative stalemate.

Third, although the 111th Congress was relatively productive compared to Congress’s performances over the past decade (with the exception of the 107th, which was in session at the time of the 9/11 attacks), the 111th fell far short of the records of the Great Society Congresses. Granted, the 111th Congress was nearly 30 percentage points more productive than the 112th. But even the widely heralded 111th Congress left a lengthy list of major issues in legislative limbo, including proposals to address education, campaign finance, global warming, immigration, and gun control. In short, even with the 111th Congress’s unified party control and its short-lived filibuster-proof majority, lawmakers struggled to surmount significant barriers to major policy change, as Krehbiel (1998) would lead us to expect.

Finally, a brief look at the 107th Congress is instructive. Overall, the Congress (with unified Republican control of both branches for just a few months early in 2001) was fairly productive, leaving just 34% of the policy agenda in 2001 and 2002 in stalemate. Indeed, the 107th Congress outperformed the 111th—somewhat unexpectedly given the accolades earned by Congress at the end of Obama’s first two years in office. But the 107th Congress’s performance was shaped by the events of September 11, 2001. Eight of the 35 salient issues in that Congress stemmed directly from the 9/11 attacks. And on those eight issues, Congress and the president mustered a perfect record: they enacted the Patriot Act, wrote the Authorization for the Use of Military Force, addressed the needs of 9/11 victims, and more. Even on less salient issues stemming from 9/11, congressional deadlock was extraordinarily rare, with only a single issue left in legislative limbo. Still, a cooperative spirit and unity of purpose did not extend to the rest of the policy agenda. If we exclude the issues related to 9/11, Congress and the president deadlocked on just under half of salient policy issues. Congress appears to have retained the capacity to act swiftly when some crises occur, also evidenced by Congress’s 2008 bailout of Wall Street after the Federal Reserve and Treasury allowed Lehman Brothers to go under. However, as we might expect, legislative unity dissipates when Congress turns its attention back to the regular policy agenda. Moreover, not every crisis spurs action. Stalemate over enhancing restrictions on gun ownership in the wake of the killing of schoolchildren in Newtown, Connecticut, in 2012 is a prime example (James 2013).

IS CONGRESS DYSFUNCTIONAL?

Armed with models of lawmaking and a measure to capture the degree of legislative deadlock over the postwar period, I return to the question that motivates this article: Is Congress dysfunctional? One approach to answering this question involves refitting a model of legislative stalemate that I originally tested on the postwar Congresses of the twentieth century (Binder 2003). With a longer time series that includes the first “Tea Party Congress” after the election of 2010, I can now estimate the model based only on the original data (1947–2000) and then use those estimates to generate predicted values of deadlock for the most recent decade. This approach allows us to assess whether recent legislative deadlock is greater or less than what we might expect based on the legislative world of the postwar era captured by the original model.

In *Stalemate* (Binder 2003), I used the measure of the frequency of legislative gridlock to test alternative institutional and electoral explanations for variation in congressional stalemate. Unlike Mayhew (2005 [1991]) in *Divided We Govern* but similar to his findings in *Partisan Balance*

(2011, p. 78), I found that unified party control of Congress and the White House reduced the frequency of deadlock. Divided government—aided by parties’ influence over the content of the floor agenda—empowers the opposition party to block agenda issues they oppose. But party control alone, I argued, was insufficient to explain variation in Congress’s performance.

As outlined above, I pointed instead to two other factors that shape Congress’s record. First, I argued that the smaller the ideological center, the tougher time Congress has in securing policy agreement. The rise of polarized political parties—even before the Bush and Obama presidencies—complicated the challenge of building coalitions of sufficient size to overcome the multiple veto points institutionalized on Capitol Hill. Second, I suggested that bicameral policy differences interfere with the crafting of policy coalitions, even in periods of unified party control. Although electoral and policy differences between the branches tend to garner the most attention in Washington, policy differences between the House and Senate also seem to complicate lawmakers’ capacity to find common ground acceptable to both chambers. The results of the 2010 and 2012 congressional elections—delivering control of the House to Republicans while keeping the Senate in Democratic hands—make plain the barriers imposed by bicameral differences.

How does this basic model hold up when we incorporate the records of the Congresses between 2001 and 2012? In short, the estimates deliver a reasonably similar story to my earlier work: Congress still struggles to legislate when partisan polarization rises and when the two chambers diverge in their policy views (for details on the estimations, see Binder 2014). Moreover, when I use the original model (1947–2000) to generate predicted values of deadlock for the most recent decade (2001–2012), the original model does a decent job of predicting the number of failed legislative issues in three of the past six Congresses (109th, 110th, and 111th). In the remaining Congresses, the model misses the mark. The model overpredicts failure in the 107th Congress (2001–2002), not surprising given Congress’s legislative responsiveness in the wake of 9/11. The model underpredicts legislative failure in the 108th Congress, likely a partial reflection of Democrats’ willingness to filibuster Republican initiatives in a period of unified party control, again lending credence to the blocking power of the filibuster (Binder & Smith 1997). And the model underpredicts legislative deadlock in the 112th Congress (2011–2012), confirming the public’s sense that legislative dysfunction reigned in the 112th. That said, the model’s average error over the past decade is roughly a single failed legislative issue, suggesting that the original model continues to help to explain patterns in legislative deadlock even in more polarized times.

Does Congress’s exceedingly low public standing in this period stem from Capitol Hill’s paralysis? The literature on congressional approval is helpful on this score. Durr et al. (1997) offer the most widely cited analysis of congressional approval, modeling variation in public confidence in Congress between 1974 and 1993. Perceptions of the economy, legislative action (whether passing or blocking action), and episodes of congressional scandal drive much of the variation in the public’s view of Congress. Viewing recent surveys in this light (Riffkin 2014), much of Congress’s radically diminished standing surely stems from the onset of the Great Recession in 2007 and the sluggish economic recovery since then. In other words, the dire economy rather than historic levels of deadlock might shape Congress’s standing. That said, other studies controlling for the economy and scandal suggest that legislative stalemate can drive down approval (Binder 2003, ch. 6). Moreover, Hibbing & Theiss-Morse (1995) make plain the public’s disgust with partisan bickering and legislative conflict, suggesting that congressional stalemate in recent years likely compounds the public’s already low opinion of their national legislature. Still, experimental evidence shows that preferences for bipartisanship can vary by individuals’ partisan orientation, suggesting a more complicated relationship between citizens’ political views and their perceptions of lawmakers and Congress (Harbridge & Malhotra 2011).

What broader conclusions can we draw from this analysis? First, the results confirm scholars' findings about the impact of polarized parties on Congress's ability to legislate. However, because we typically use lawmakers' floor voting records, it is difficult to disentangle the extent to which partisan polarization captures ideological differences across lawmakers or the partisan "team play" behavior of members. As Lee (2009, 2015) shows by using other vote-based data, a good portion of the party polarization we see in floor voting likely reflects a dose of both. Here, I avoid treading into methodological and theoretical debates about distinguishing between partisan behavior and policy preferences (but see McCarty et al. 2001). Regardless of whether we deem polarization a function of ideological differences, strategic disagreement by partisans seeking electoral advantage (Gilmour 1995), or a mix of the two, the results are clear: When ideological or electoral incentives yield intensely partisan behavior, lawmakers struggle to find broadly palatable solutions to the range of problems they face. Counter to the expectations of the American Political Science Association's "Toward a More Responsible Two-Party System" (APSA 1950), loyal and cohesive parties undermine rather than facilitate problem solving in Congress.

Second, the results highlight the impact of bicameral differences on the difficulty of legislating. Even after controlling for the level of polarization and party control of the two branches, policy differences between the two chambers matter to Congress's ability to legislate. As the House and Senate react differently to bicameral policy compromises—regardless of whether party control is unified or split between the chambers—legislative deadlock grows. Notably, bicameral differences dampen legislative productivity even if we exclude the 112th Congress, in which a Republican House and Democratic Senate disagreed repeatedly about what issues belonged on the congressional agenda and how to resolve them.

Third, the effect of party control appears attenuated. *Stalemate* (Binder 2003) identified an independent effect of party control on legislative performance: The frequency of deadlock was higher in periods of divided, rather than unified, party control. In his recent work, Mayhew (2011, p. 78) also identifies a party effect: Unified party control increases the chances that presidential proposals will be enacted. To be sure, unified Democratic control of government after the election of 2008—coupled with a short-lived filibuster-proof Senate majority—yielded major legislative dividends in 2009 and 2010 (Murray 2010): Congress and the president overhauled federal healthcare programs, reformed the financial regulatory system, advanced major arms control, and dumped the military's "don't ask don't tell" policy, among other accomplishments. Still, the analysis reported here suggests that divided party government today has only a limited impact on lawmakers' capacity to govern. Why do we observe high levels of deadlock regardless of party control?

This question would not puzzle Krehbiel (1998), whose pivotal politics model suggests that policy change is a function of the location of the status quo and the preferences of supermajority pivots on the left and right of the median voter. Given the implicit threat of a filibuster and thus the inevitable need for a supermajority coalition in the Senate, in equilibrium party control of a chamber should not matter to the frequency of legislative agreement. Of course, if the median (in recent years, a member of the majority party) and the filibuster pivot are relatively close to each other along the left–right policy dimension, then we should rarely expect filibusters to derail Senate bills: The median can easily accommodate the demands of the filibustering senator by amending the measure. That perhaps is why Mayhew (2011) finds little systematic or sustained evidence of an antimajoritarian Senate. However, once the median and the filibuster pivot begin to diverge markedly as the parties polarize, the 60th senator's policy demands might be harder for the majority to accommodate—thus increasing the frequency of both filibusters and legislative deadlock (Koger 2010).

I suspect that the recent, rising proclivity of opposition-party senators to insist on 60 votes for adoption of most amendments and measures has undermined the legislative power of majority

parties in periods of unified party control (see also Smith 2014). For example, the minority party's increased exploitation of its parliamentary rights would help to explain the litany of legislative measures left in limbo after Democrats lost their filibuster-proof majority in the winter of 2010, as well as the heavy load of measures left unaddressed at the close of the Republican-led 108th Congress. As electoral incentives increase for the minority party to play a more confrontational role in the Senate and as the costs of filibustering decline (Smith 2014), unified party control might prove a less powerful tool for driving the legislative process.

DISCUSSION AND CONCLUSIONS

The middle of the road is a dangerous place to be. Still, my analysis suggests that there is a good deal of truth both to Mayhew's (2011) sanguine view looking forward in American politics and to Mann & Ornstein's (2012) more dire analysis of the current state of Congress and its legislative capacity. In many ways, Congress's recent legislative performance fits the well-established pattern from *Stalemate*: When elections yield more polarized and partisan parties and chambers, bargaining is more difficult and compromise is more frequently out of reach. To the extent that recent Congresses fit the broader pattern established in the postwar period, we might be on safe ground concurring with Mayhew (2011, p. 190) that the recent "imbalances" during the Obama administration are not likely to be "permanent, systemic problems." That is an empirical judgment that can only be confirmed in the future.

Still, five reservations temper such a conclusion. First, levels of legislative deadlock have steadily risen over the past half century. Stalemate at times now reaches across three-quarters of the salient issues on Washington's agenda. Granted, legislators differ over what issues and conditions constitute "problems" (Mayhew 2006). That might increasingly be the case as the parties polarize: Lawmakers today even disagree about basic facts (with many Republican lawmakers, for example, disbelieving concrete, scientific evidence of global climate change). But the absolute level of deadlock is remarkable. Moreover, pushing problems off to the future sometimes makes them worse. Inaction on climate change, for example, makes future remediation more difficult and costly. Faced with deadlock over long-term solutions, lawmakers often patch over differences with temporary measures when confronted with a finite deadline for action. The frequency of legislative solutions that "kick the can down the road" exasperates congressional critics and illustrates Congress's exceedingly low legislative capacity in recent years.

Second, even when Congress and the president muster agreement on a policy solution, such agreements sometimes create new problems. For example, some economists argued that fiscal policy brinkmanship in the summer of 2011 over raising the nation's borrowing limit harmed the economy and set back the economic recovery (Stevenson & Wolfers 2012). Moreover, the fiscal headwinds created by the Budget Control Act of 2011 are often noted as one key cause of the nation's sluggish recovery from the Great Recession (Bernanke 2014). If both congressional inaction and action make problems worse, then it is unclear how quickly the political system will rebound from its current partisan impasse. The system no doubt is corrigible, but it might take a long time to correct itself.

Third, it is not clear whether current levels of partisanship are going to subside anytime soon. Partisan polarization appears to be on the verge of passing historical levels in the Senate and has surpassed House records stemming from the turn of the century. In addition, many argue that such polarization is asymmetric: Republicans (particularly in the House) have moved farther to the right than Democrats have moved to the left. One might wonder whether the asymmetric pattern stems in part from Republicans' minority status: Having lost the White House in 2008, the GOP is unleashed to shoot for the conservative moon (in part pulled by their Tea Party voters). So long

as some degree of polarization is driven by sheer partisan team play—in which the opposition party is more likely to object to proposals endorsed by the president—then extreme levels of partisanship will continue to lead to unprecedented levels of deadlock. Whether the House and Senate wings of the Republican Party can self-correct and how long it would take remain to be seen. Republican capture of the Senate in the 2014 midterm elections—creating a Republican congressional majority for the first time since 2006—provides a first test of the party’s ability to craft bipartisan solutions.

Fourth, if we move beyond legislative productivity as the benchmark for judging congressional performance, the assessment is still grim. Congress in recent years has struggled to fund federal programs on time and to conduct effective oversight of the executive branch, and the Senate has been wrapped until recently in partisan knots over the confirmation of presidential appointees. Consider the following. It has been almost two decades since Congress last passed the full slate of spending bills to fund the federal government before the start of the fiscal year (Tollestrup 2011). At its most extreme level of dysfunction, the federal government shut down and nearly defaulted on its obligations in the fall of 2013, when Republicans held government funding and the nation’s debt ceiling hostage to their demand to defund the Affordable Care Act (Weisman & Parker 2013). Partisanship also pervades congressional oversight, to the extent that Congress conducts any (Mann & Ornstein 2012). And partisan and institutional obstacles in the confirmation process have left dozens of federal judgeships vacant in recent years, raising doubts about the judiciary’s ability to dispense justice in a timely manner (Binder & Maltzman 2009). Across a broad spectrum of Congress’s responsibilities, we see very low institutional capacity—no doubt putting Congress’s powers vis à vis the other branches at risk.

Fifth, changes in the structure of electoral competition in recent decades likely alter lawmakers’ calculations about coming to the bargaining table. As Lee (2013, p. 777) observes, margins of party control in the House and Senate since 1980 have been half the size (on average) of margins between 1933 and 1980. Presidential elections have also been close; the last landslide Electoral College win occurred in 1984. Close party competition for control of Congress and the White House appears to affect party politics in Congress (Lee 2013). Fierce electoral competition brings control of national institutions within reach for both parties, limiting lawmakers’ incentives to compromise with the other party. Why settle for half a loaf of policy, when a full loaf can be delivered to the party base upon winning unified party control? As Fiorina (2006, p. 245) notes, “with majority status that much more valuable, and minority status that much more intolerable, the parties are less able to afford a hiatus between elections in which governing takes precedence over electioneering.” Congress’s legislative capacity seems to be a victim of increased party competition in a period of polarized elites.

Ultimately, Mayhew may well be correct that our political system will weather this rough patch with little harm done. Even so, we are left in the meantime with a national legislature plagued by low legislative capacity. Half measures, second bests, and just-in-time legislating are the new norm, as electoral, partisan, and institutional barriers limit Congress’s capacity for more than lowest-common-denominator deals. Even if lawmakers ultimately find a way to get their institution back on track, Congress’s recent difficulties have been costly—both to the fiscal health of the country and to its citizens’ trust in government. The economy will eventually regain its footing. Regenerating public support for Congress will likely prove harder.

DISCLOSURE STATEMENT

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