

# 6

## CONGRESS

### 6-1 Congress, the Troubled Institution

Steven S. Smith

*Political scientist Steven S. Smith outlines major trends in congressional politics—the polarization of Congress, the abuse of congressional procedures by the parties, the flow of power from Congress to the president, and the low public esteem of Congress. He shows how these developments are related to one another and concludes that while some reforms would improve Congress, the underlying polarization will require a more basic change in American politics.*

Congress is a troubled institution. At the moment, Congress appears handcuffed by deep partisan polarization, seems to thwart the will of the people in failing to act on important problems, looks weak in comparison with the president, and is held in low esteem by most Americans. Presidents of both parties complain about its slowness; the media highlights the institution's arcane procedures; and scandals involving members of Congress surface on a seemingly regular basis. Even legislators who retire from Congress carp about the institution to which they so frequently sought reelection.

Congress's struggle to legislate, observers claim, has enabled a runaway presidency. If Congress fails to act when the public, or some part of the public, expects it to do so, the president is encouraged to move unilaterally—often by issuing executive orders—without much concern for a congressional response. Lee Drutman, a political scientist who writes numerous columns and blogs, summarized the common theme: “A gridlocked Congress is a weak Congress, and

a weak Congress makes the president more powerful, which serves to ratchet up the polarization another few notches” (“How a Too-Strong Presidency and a Too-Weak Congress Are Destroying the American Experiment,” *Los Angeles Times*, March 5, 2017). Former representative Lee Hamilton, once chairman of the House Committee on Foreign Affairs, of a select committee to investigate a White House scandal, and of a joint committee to improve Congress's organization, observed in 2015 that “Congress, or at least its leadership, is unconcerned about how ineffective and even irrelevant the institution has become when it comes to policy making.”

It also is true that Congress is *potentially* the most powerful national legislature in the world. It is formally independent of the chief executive, its jurisdiction is very broad and sets its own agenda, and its members are elected independently of the executive. The executive and judicial branches cannot spend money without its approval, the president needs the approval of the Senate to appoint senior executive

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officials and judges and to implement treaties, and Congress has wide-ranging powers to investigate the executive branch. Congress has the constitutional powers to limit the excesses of an aggressive president, but its members must choose to exercise them.

Nevertheless, in everyday politics Congress is at a severe political disadvantage in its relationship with the president. Congress does not speak with one voice, cannot move quickly most of the time, and is quite permeable to outside influence. Unlike the White House, Congress is large and unwieldy, it is bicameral, its deliberations are quite visible, and its floor proceedings are televised. Citizens, including lobbyists, are free to roam the halls of Congress's office buildings and visit the offices of members. Outside groups are instrumental to legislators' seeking funding for the campaigns they must mount to retain their jobs.

Congress's political weaknesses have been exposed in recent years. Partisanship, deadlock on key issues, readiness to defer to the president in a crisis, and public despair with its performance have plagued Congress. This essay outlines and evaluates those weaknesses.

## THE UNPOPULAR CONGRESS

The popularity of Congress ebbs and flows with the public's confidence in government. When the president's ratings and trust in government improved after the tragic events of September 11, 2001, Congress's approval ratings improved, too (Figure 1). Nevertheless, Congress's performance ratings are almost always below those of the president and the Supreme Court. When President George W. Bush earned approval ratings in the 20s, Congress managed to fall into the teens. When President Obama's approval rating sometimes dipped to the low 40s, Congress dropped to all-time lows—reaching 9, 10, and 11 percent at times in 2011 to 2013—and managed to reach 20 percent only a couple of times since early 2011. President Trump fell to 34 in the late summer of 2017, and Congress slipped to 16 percent at the same time.

The legislative process is easy to dislike—it often generates political posturing and grandstanding, it

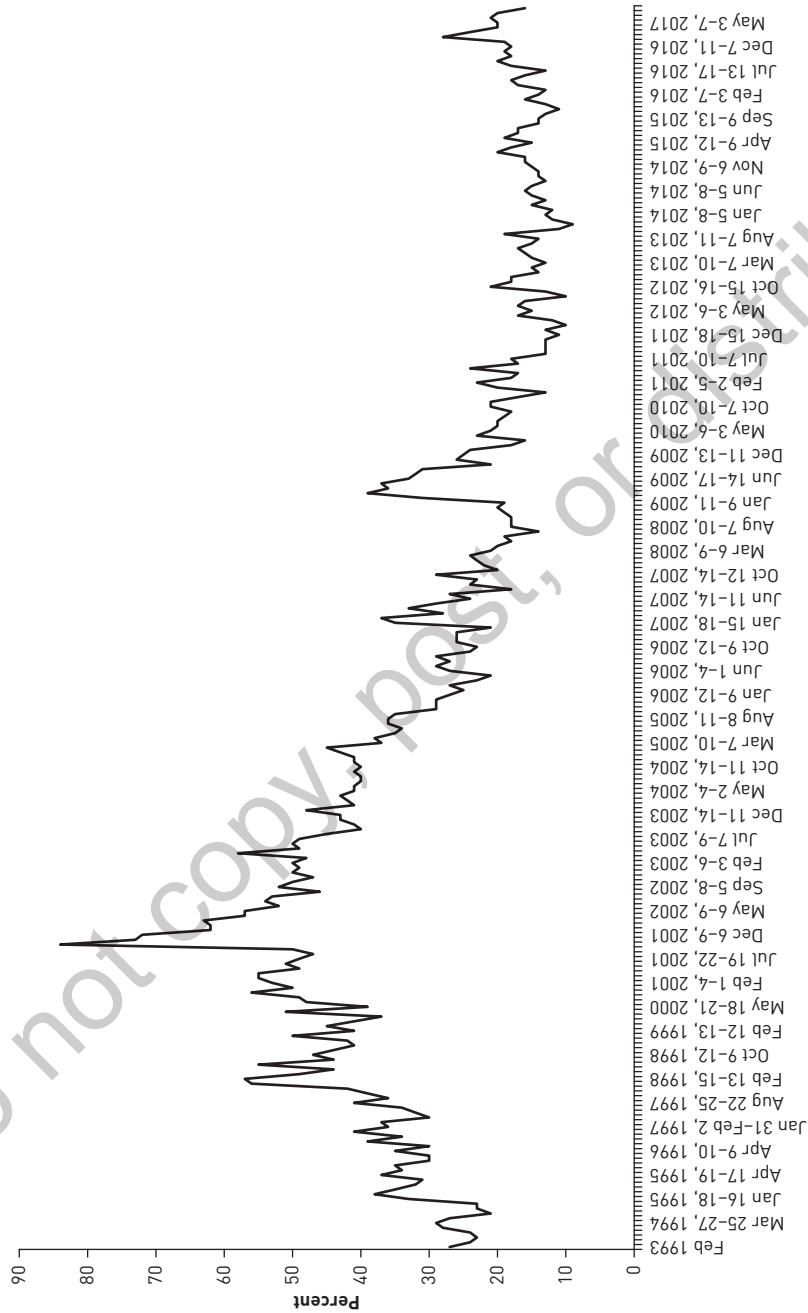
necessarily involves bargaining, and it often leaves broken promises in its trail. Members of Congress often appear self-serving as they pursue their political careers and represent interests and reflect values that are controversial. And the intense partisanship that Congress has exhibited in the past two decades is quite distasteful to many Americans. The public relations efforts of the congressional parties probably make matters worse by emphasizing such partisan and derisive messages. In contrast, the Supreme Court is cloaked in ritual and is seldom seen or heard by the general public. The president is represented by a single, large professional public relations machine.

Scandals surely contribute to Congress's low standing. In fact, Congress seems to be a never-ending source of comic relief, like the joke about the legislator who kept referring to the presiding officer as “Your Honor.” There is no doubt that a large majority of today's members behave ethically. In fact, the ethical standards applied by the public, the media, and Congress itself are likely higher today than at any other time. Yet there is no denying that the seemingly regular flow of scandals harms Congress's standing with the American people. I have been following these scandals for years—and on average, we have a new scandal more than once a year.

Incumbents and candidates for Congress contribute to the generally low esteem of their colleagues in another way. Many of them, maybe most, complain about Congress—they run for Congress by running against Congress. This is an old art form in American campaigns. Candidates promise to end “business as usual” in Washington and to push through reforms to “fix” Congress—to end partisanship, reform the system of congressional perks and earmarks, stop the influence of money and special interests, and so on. While Congress languishes with mediocre approval ratings, individual members of Congress continue to do quite well. Typically, Gallup finds that about 70 percent of the public approve of the way their own U.S. representative is handling his or her job. Most incumbents, typically more than 90 percent, successfully gain reelection when they seek it.

Congressional campaigns have become personal and often very ugly. In the polarized environment of the recent past, candidates win their parties' primaries

**FIGURE 1** ■ Percentage Who Approve of Congress's Job Performance, 1993–2017



Source: Data from Gallup.

## HIGHLIGHTS OF CONGRESSIONAL ETHICS SCANDALS IN THE PAST TEN YEARS

In 2008, Senator Ted Stevens (R-AK) was convicted of seven counts of failing to include on his Senate financial disclosure forms gifts related to the renovation of his Alaska home. Stevens was defeated for reelection in November 2008.

- In 2008, Representative Tim Mahoney (D-FL) confessed that he had had an extramarital affair with a staff member. Shortly after news reports indicated that Mahoney attempted to buy the staff member's silence, his wife filed for divorce and he was defeated for reelection.
- In 2010, Representative Charles Rangel (D-NY) was censured for violating House rules in using his office to raise money for a college building named after him, failing to disclose financial assets, and violating New York City rules by housing his campaign committees in rent-controlled apartments.
- In 2011, Senator John Ensign (R-NV) resigned his seat before a Senate investigation into his activities following an extramarital affair with a staff member. The activities included payments to the staff member's family and arranging for the staff member's father to be hired as a lobbyist.
- In 2011, Representative Anthony Weiner (D-NY) resigned from Congress after the public disclosure of his Twitter message to a woman with a link to a sexually suggestive photo of himself. Weiner admitted to having "exchanged messages and photos of an explicit nature with about six women."
- In 2012, Congresswoman Laura Richardson (D-CA) was fined by the House for breaking federal law and House rules in pressuring her staff to campaign for her and destroy evidence. After her reprimand by the House, she was defeated for reelection by a fellow Democrat.
- In 2013, Congressman Jesse Jackson Jr. (D-IL) pled guilty to using campaign money to buy personal items.
- In 2013, Congressman Trey Radel (R-FL) was arrested for buying cocaine from an undercover officer. He resigned from office in early 2014.
- In 2013, former Congressman Rick Renzi (R-AZ) was convicted of using his office for personal financial gain and stealing from a family insurance business to pay for his 2002 campaign. Renzi did not run for reelection in 2008.
- In 2014, Congressman Vince McAllister (R-LA), a married man, was caught on a surveillance camera kissing a married staffer and was asked to resign. He did not seek reelection in 2016.
- In 2015, former Speaker Denny Hastert (R-IL) pled guilty to arranging bank withdrawals to hide his misconduct with high school boys when he was a teacher decades earlier.
- In 2015, Senator Robert Menendez (D-NJ) was indicted for accepting stays at luxury hotels and campaign contributions in exchange for intervening with federal officials to obtain visas for friends, for a contract dispute, and for other issues. His trial ended in a hung jury.

to get on the general election ballot by demonstrating their commitment to party principles. In the general election campaign, the candidates demonize their opponents. The winning candidates emerging from these campaigns have acquired a partisan style that they carry with them into Congress, reinforcing the partisan polarization.

Despite all these good reasons for Congress to be unpopular, it is impossible to ignore Congress's

actual performance on important issues in recent years. Congress has been exceptionally partisan and has not accomplished much on issues that matter to most Americans. Americans do not always agree on what should be done on health care, climate change, infrastructure, and other issues, so it may not be possible for Congress's job approval to reach high levels for long. But when Congress does little or nothing, it can make nearly all Americans dissatisfied.

In fact, Congress has not been accomplishing much in recent Congresses. Figure 2 shows the low number of bills enacted in recent Congresses, which comports with most observers' views of congressional action in recent years. That number is somewhat misleading. Because some bills have been combined into much larger bills—omnibus appropriations, large reconciliation bills, and others, the result has been somewhat fewer but larger measures. Nevertheless, there is no doubt that Congress has struggled to meet the expectations of the diverse public on important issues, and this is reflected in the small number of Americans who approve of the way Congress is doing its work.

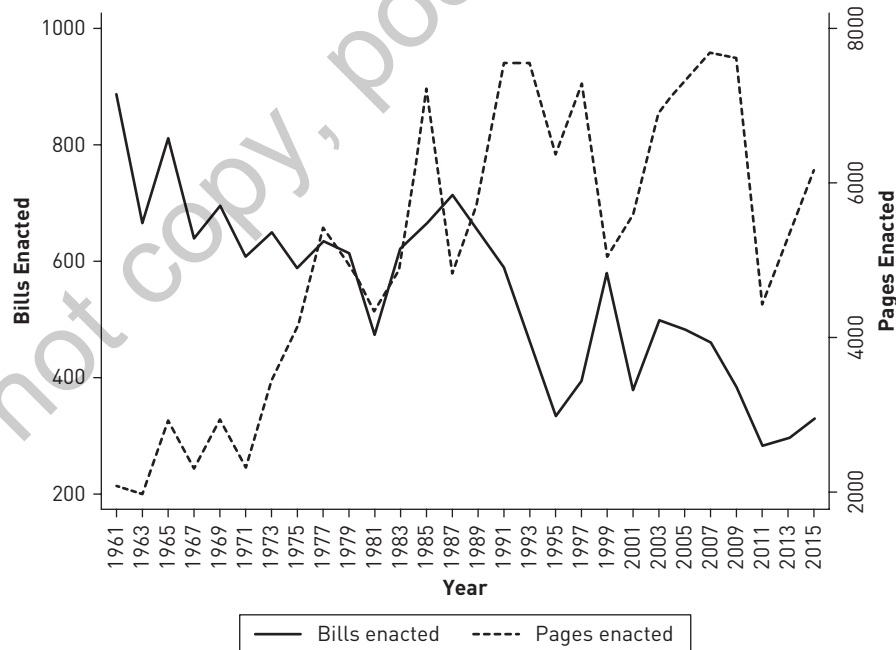
### A DEEPLY PARTISAN CONGRESS

The partisan tone of legislators may be the most conspicuous feature of congressional politics over

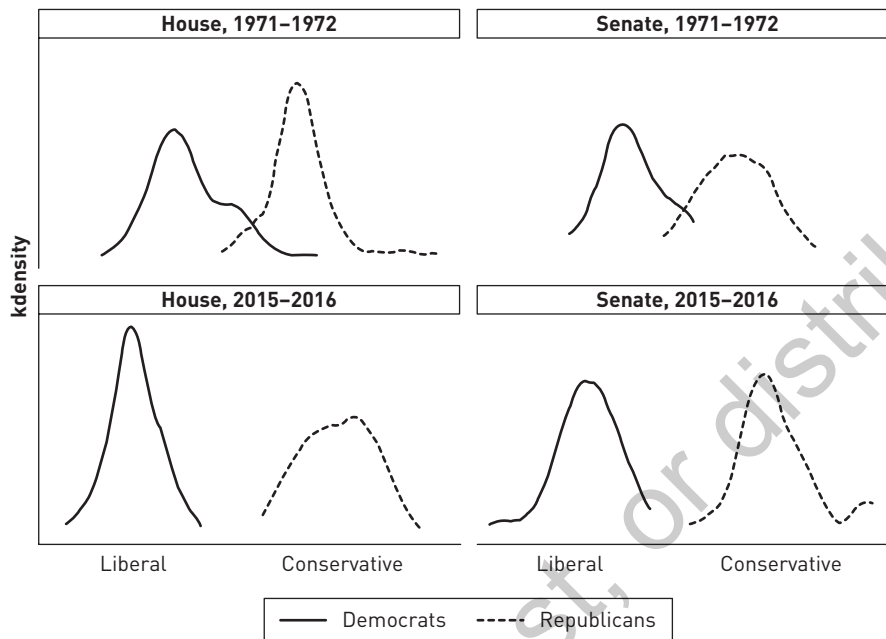
the past quarter century. There is more to it than the derisive nature of the legislators' rhetoric. Deep and wide differences exist between the parties, and it is obvious in legislators' floor voting behavior. In Figure 3, I show the distribution of members of the House and Senate on a liberal–conservative scale. The scale is based on a statistical analysis of all roll-call votes. Here, I show the distribution for two Congresses: the 92nd (1971–1972) and the 114th (2015–2016).

In the early 1970s, Democrats were far more liberal than Republicans on average but there were both conservative Democrats and liberal Republicans. In the House, nearly half the membership fell between the most liberal Republican and most conservative Democrat. In the Senate, more than a third of the membership occupied the overlapping region. These large blocs of legislators in the middle of the policy spectrum dictated outcomes on many important issues.

**FIGURE 2** ■ Number of Bills and Number of Pages of New Law Enacted, 1961 to 2016



Source: Data from Brookings Institute, Vital Statistics on Congress, <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>.

**FIGURE 3** ■ Distribution of Liberal–Conservative Scores in 1971–1972 and 2015–2016

Source: Common space scores (voteview.com).

The pattern has been different since the late 1980s. The middle has been vacated, with the Republicans moving more to the right than Democrats moved to the left. No longer is there a sizable group of moderate legislators to whom party and committee leaders must appeal to build a majority coalition on most important measures. By voting behavior, not just rhetoric, the parties are sharply polarized.

The polarization of congressional parties apparent in Figure 3 was the product of two major processes—one grounded in policy views and one generated by the party's electoral interests. These processes have some common origins.

First, the polarization of policy attitudes in the congressional parties is real—the parties differ more in their views of policy issues than they did a generation ago. The 1960s and early 1970s was a period of social upheaval. The civil rights movement, the women's movement, the Vietnam War, the youth culture, and other developments generated a reaction that

attracted the support of conservatives of both parties, particularly in rural America and the South. *Roe v. Wade*, the 1973 Supreme Court decision on abortion, seemed to catalyze Christian conservatives (formerly a dormant group in American politics), who mobilized within the Republican Party in most parts of the country. Republican candidates and strategists recognized an opportunity to join economic and social conservatives in a larger coalition that could upset the long-standing Democratic majorities, comprising northern liberals and southern conservatives.

The realignment of political values and party preferences that started in the late 1960s began to alter the composition of Congress in the 1970s. In the South, many conservative Democrats were replaced by Republicans, making the congressional Democrats more uniformly liberal and reinforcing the conservative forces among congressional Republicans. In the Northeast, Midwest, and West Coast, Republicans (many of whom occupied the

moderate region of the policy spectrum) lost to Democrats (most of whom were liberal), which reinforced the liberal trend among congressional Democrats and the conservative trend among Republicans. In the 1980s, the Republicans began to elect conservative leaders from the South, and the Democrats lost the mix of southern leaders who were important to the party in the mid-20th century.

As the composition of the party elites changed, the electorate began to sort itself so that political attitudes on economic and social issues were more strongly aligned with party preferences. In nearly every part of the country, the electorate supporting Democrats became more liberal and the electorate supporting Republicans became more conservative. The result was that political pressures from home became more uniform among the legislators of each party. It became more difficult for moderates to win primary elections, particularly on the Republican side, and make it to the general election ballot.

The successive elections of the 1970s, 1980s, and 1990s brought in legislators more polarized by party. This polarization was enhanced by the strategies of party leaders, first among Republicans and then among Democrats. Republicans in the House, led by Georgia's Newt Gingrich, sought disciplined voting within the party to force Democratic leaders to draw support from conservative Democrats to win floor votes. Conservative Democrats, in turn, would have more difficulty gaining reelection in their conservative districts and states.

Second, in recent decades, the keen contests for party control of the House and Senate and the frequent change in party control surely have contributed to the sharp polarization. During the period between 1955 and 1980, Democrats held a majority of seats in both houses, often enjoying very large majorities. But since the early 1980s, the realignment of southern and mountain west states in favor of the Republicans made the party more likely to gain a majority of seats in the House and Senate. Since 1980, party control of the Senate has switched seven times and party control of the House has switched three times. Many majority parties have been small, and future party control of the House and Senate often have been in doubt. Presidential elections have

been very competitive. Political scientist Frances Lee (2016) observes that accumulating electoral demands have put intense pressure on party leaders to build an attractive party record and undermine the appeal of the opposition. This has many consequences for the legislative process: Compromise with the opposite party is discouraged, showing a united front for the party is more important, and public relations takes precedence over legislating. Message politics trumps legislative politics, as Lee puts it.

In recent decades, these developments fed on each other. As each party became more cohesive, its leadership could become more assertive and more pressure could be put on misfits within the party. As national party leaders, local party activists, and the electorate sorted themselves, primary election winners became more polarized and the electorate was more frequently given a choice between quite liberal Democrats and quite conservative Republicans. Only liberal legislators had a chance to be elected as a leader among congressional Democrats; only conservative legislators had a chance to be elected as a leader among congressional Republicans. The congressional parties became more polarized, and their leaders were pressured to pursue more aggressive partisan strategies. For the public, Congress looked less and less attractive.

These two forces—policy attitudes and electoral pressures—shape the voting records of legislators, as captured in Figure 3. Majority party leaders, who are pushed to be more aggressive by their cohesive parties, look for opportunities to require floor votes on issues that will divide the parties—that will enhance the political standing of their party and harm the opposition. Minority party leaders respond with proposals, often as amendments to majority party legislation, that force majority party legislators to cast politically costly votes. This pattern, when repeated many times in a 2-year Congress, generates a voting record that looks very partisan.

It bears noting that drawing district lines to stack House districts with the partisans of one party does not explain the polarization we have witnessed. The Senate, for which state lines are never changed, suffers from the same party polarization as the House. Instead, a sorting of the electorate and legislators into parties with

distinctive political attitudes is what has accounted for the durable pattern of the past two decades.

## LEGISLATIVE PATHOLOGIES IN CONGRESS

The consequences of partisan polarization in Congress are quite different in the two houses. Polarization in the House has yielded a streamlined, centralized process that can speed legislation to passage, but this is a process that often excludes the minority party in ways that intensify minority frustration and partisan passions. In contrast, polarized parties and supermajority rule in the Senate are a recipe for delay and inaction, an outcome that encourages both parties to engage in a blame game that frustrates everyone. Because both houses must approve legislation, Senate obstructionism is enough to kill many bills.

Let's begin with the House. The House majority party is able to control the floor agenda and pass legislation as long as it is reasonably cohesive. This is the product of several features of the modern House:

- The Speaker, as leader of the majority party, serves as the presiding officer and can freely recognize members to make motions on the floor, such as calling up bills for consideration.
- The Committee on Rules can report resolutions that, if adopted by a House majority, can bring bills and conference reports to the floor and limit debate and amendments. A cohesive majority party can get these resolutions, called *special rules*, adopted.
- The Speaker appoints conference committees and can structure their membership to suit his or her party's needs.

Polarized parties mean that a majority party, when cohesive, can readily gain House approval of special rules, limit minority opportunities to offer proposals, pass legislation, and control conference

committee negotiations with the Senate. These features of a polarized House speed legislative action.

Unfortunately for the House minority party, partisan polarization also tends to produce a process so dominated by majority party members that minority party members get excluded from meaningful participation. Both Democratic and Republican majority parties have moved decisions on the most important policies from standing committees (where the minority is represented proportionately in most cases) to the leadership and informal work groups of the majority party (where the minority is not represented at all). Both Democratic and Republican majority parties have so restricted floor amendments on major bills that the minority party often does not have a meaningful opportunity to propose alternatives and attract some support for them among majority party members.

A polarized House is not without its risks for the majority party. If there is a majority party faction that refuses to go along with its own party leadership, the refusal of the leaders of the two parties to work with each other leads to paralysis. This happened for a few weeks in 2017 when the Republican Speaker's effort to pass legislation for a replacement to the Affordable Care Act (Obamacare) faced opposition from a faction of Republicans. While refusing to make concessions to attract Democratic support, the Speaker had to make further adjustments to the bill to pass something, the effect of which probably made the bill less popular with the public.

In contrast, the Senate has the following features:

- The majority party's leader does not preside and instead attempts to move the Senate by making motions from the floor.
- Most motions can be filibustered—that is, subjected to unending debate—and so the minority can attempt to obstruct action on bills it dislikes.
- To overcome a filibuster or threatened filibuster of most bills, a three-fifths majority of all elected senators (60 when 99 or 100 seats are filled) is required to invoke cloture (close debate) and get a vote to pass a bill.



- The ability of the minority to filibuster proposals to change the rules means that the majority party cannot put in place rules similar to those that so advantage a House majority party. A two-thirds majority of senators voting (67 when 100 senators are voting) is required to invoke cloture on legislation that changes the rules.

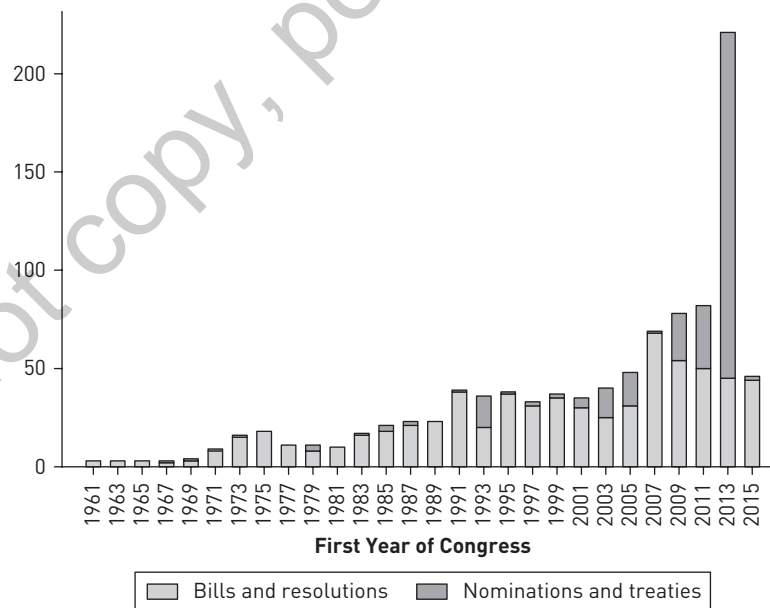
Polarized parties mean that a sizable minority party—one that has 41 or more members—can block majority party legislation on the floor. This feature of a polarized Senate can delay or even kill legislation.

For the Senate, public expectations that the majority party can pass its legislation often fail to reflect the fact that the minority party possesses the parliamentary tools to prevent that from happening. And the minority party has been exploiting those parliamentary tools with greater frequency. Figure 4 shows the number of measures—legislation and

nominations—subject to cloture petitions filed to end or prevent filibusters in Congresses since 1961. Plainly, the record of filibustering since the late 1980s is very different from previous decades. Minority obstructionism has become the norm on important measures and has extended from a wide variety of presidential nominations to executive and judicial positions.

Partisan polarization contributes to filibustering in powerful ways. A minority party leader finds it much easier to employ obstructionist tactics when no one from his or her party objects. Moreover, the obstructionism is more likely to succeed in blocking majority party legislation—forcing compromise or killing legislation—when the minority party is united and can prevent cloture. In response, the majority party leader attempts cloture more frequently, often several times on the same bill. The majority party members complain about minority obstructionism, and minority party members

**FIGURE 4 ■ Number of Measures and Nominations Subject to Cloture Motions, 1961–2016**



Source: [www.senate.gov](http://www.senate.gov).

Note: Figures for the 113th Congress are through August 31, 2014.

complain that the majority is too quick to attempt to shut off debate and minority amendments.

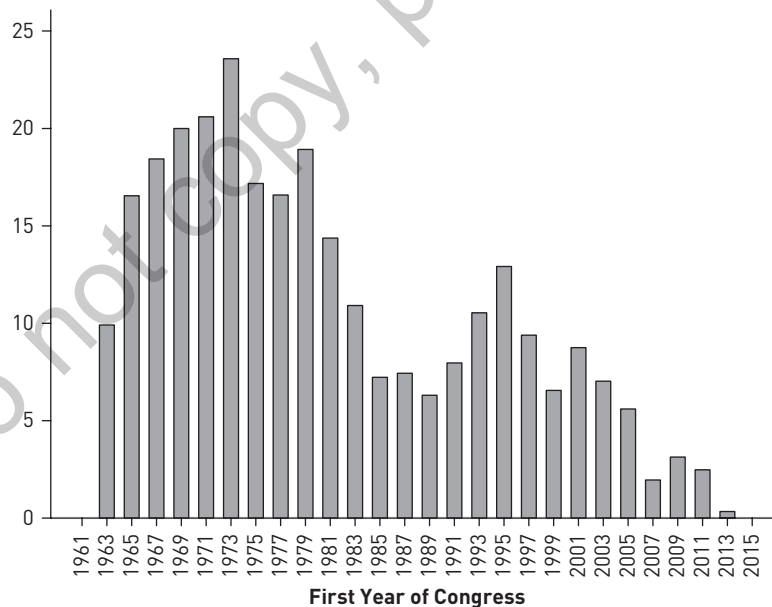
Do filibusters matter? They do. In the polarized Congress of the past two decades, filibusters have made the Senate the primary burial ground of legislation. Political scientist Barbara Sinclair has demonstrated that in Congresses since the early 1990s, 33 of 80 major bills that died at some stage had passed the House but died in the Senate; only 3 died in the House after passing the Senate (others passed neither house or were vetoed). In contrast, in the 1970s and 1980s, only 12 of 42 major bills that died at some stage had passed the House but died in the Senate; 8 died in the House after passing the Senate.

Figure 4 shows that the minority obstruction expanded from legislative measures (bills and resolutions) to nominations. In 1993, Democratic president Bill Clinton's first year in office, Republicans began to obstruct action on nominations with some frequency. Democrats followed suit in the middle

years of the Republican Bush administration (2001–2009), but Republicans made obstruction of presidential nominations a regular practice under Democratic president Obama starting in 2009. In response, the Democratic Senate majority in the fall of 2013 forced a rules change on nominations to require only a simple majority for cloture on all nominations except those for the Supreme Court. The huge number of cloture motions on nominations shown in Figure 4 for 2013–2014 reflects the Republican response, which was to force Democrats to go through the cloture process on even more nominations. The number of legislative measures subject to cloture slipped a little as Democrats simply gave up trying to push some measures.

In the polarized Congress, conference committees have fallen into disuse. Because conference committees approve compromise legislation with the majority support of conferees from each house, the like-minded majority party conferees do not need

**FIGURE 5** ■ Percentage of New Public Laws That Went Through a Conference Committee, 1963–2014



Source: Park, Smith, and Vander Wielen [2018].

the support of minority party members and can largely ignore them. As a result, majority party members consult with one another without any minority legislators or staff present and appear to announce outcomes. In recent Congresses, this went so far as to circumvent conference committees altogether (Figure 5) by having majority party and committee leaders of the two houses negotiate compromises without appointing conference committees and then having the agreements incorporated as amendments between the houses or even as new bills. Even the formality of minority party participation is avoided.

These patterns have intensified and even personalized partisan conflict. Legislators who value a meaningful voice in policymaking are either frustrated with being excluded (the House minority party) or with having a majority but not the supermajority required to pass legislation (the Senate majority party). Tolerance of the other party has become very thin. Distrust of the other side is so widespread that opportunities for real cross-party deliberation are ignored.

Largely because of the Senate (and often with the contribution of divided party control of the House, Senate, and presidency), polarized parties create a strong bias against passing legislation. In fact, more major legislation has been killed since the parties became so polarized in the late 1980s than in the previous two decades. A polarized Senate gets hung up on filibusters while a House, Senate, and presidency controlled by different and polarized parties cannot agree on legislation.

### AGGRESSIVE PRESIDENTS AND A WEAKENED CONGRESS

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Over the past decade, the power of Congress has been challenged on several fronts. A series of crises—terrorism, the war in Iraq, and the economic crisis—led the president to seek and receive broad powers with little detailed direction in the legislation from Congress. The president also has asserted broad powers without any participation from Congress and has acted through executive orders or other means. And President George W. Bush and his top advisers claimed a general theory

of presidential power, now called the theory of the unitary executive, which posits that the president can control the actions of all executive branch agencies, even when the law gives authority directly to department and agency officials.

This is a large and complex subject; so I can only introduce the major ways Congress has yielded power to the president in recent years. Congress, under the basic constitutional framework, must delegate some power to the executive branch to implement policies it deems desirable. Unless the president has constitutional power of his own, Congress can detail how the delegated power is to be used. Failure to provide the detail, or at least to limit the delegation to a short period or carefully control spending for the purpose, grants the president power that Congress could reserve for itself.

### Emergencies and National Security

Incentives to delegate broad power to the president are greatest in emergencies, particularly national security emergencies. A president argues that the national interest requires that he quickly be given authority to act with the flexibility required to meet unknown contingencies. Legislators can hope that their institution's control over spending and oversight activities will keep the executive in check, but in practice, the president's advantage in public relations, control over information, and partisan considerations may limit Congress's ability to check the use of power once it is delegated to the president. In a Congress highly polarized by party, the tendency to grant unfettered power to the executive is exceptionally great when the same party controls the houses of Congress and the White House.

During 2001 to 2006, the 6 years of Republican majorities in Congress and a Republican president, the fight against terrorism and the wars in Iraq and Afghanistan led Congress to grant sweeping powers to President Bush. By historical standards, Congress held very few hearings on the broad sweep of issues during the period—prewar intelligence, the conduct of the war in Iraq, the National Security Agency's surveillance program, the treatment of detainees, and reform of the intelligence apparatus. The use

of federal dollars and constitutionality of executive actions were frequently questioned by legislators and the media but seldom in congressional hearings or investigations. Once the Department of Homeland Security was created in 2003 from 22 agencies, Congress did not seriously scrutinize the functioning of the new department until one of its units, the Federal Emergency Management Agency, mismanaged the response to Hurricane Katrina. In the intensely partisan atmosphere of Washington, serious oversight of a Republican administration by a Republican Congress could only give the opposition opportunities to score points. Partisan convenience, rather than a commitment to check the use of power, seemed to drive the congressional oversight agenda.

In the meantime, President Bush took existing trends in presidential assertions of unilateral power to a much greater extreme. The administration broadened its interpretation of executive privilege to deny information to Congress. President Bush used executive orders more broadly to direct executive agencies, sometimes in contravention of statute. He used signing statements liberally when signing legislation into law to assert that he would not implement features of the law that he considered unconstitutional infringements on his power.

President Obama promised to end wars and give greater consideration to civil liberties in his administration, but Congress found itself responding ineffectually to initiatives taken by the executive branch. Disclosures about the extent to which the National Security Agency gathered data on Americans' electronic communications made clear that members of Congress, even members of the intelligence committees, were unaware of the reach of the agency. The president's decision to use military force against the Islamic State forces in Iraq and Syria was met with no immediate congressional action to endorse or object to it. In 2017, a House committee voted to repeal the 2001 use of force resolution that Congress approved after the September 11 attacks, which the Trump administration continued to cite as a basis for its actions in Afghanistan, Iraq, and Syria, and the Senate rejected the repeal. At this writing (November 2017), Congress has not approved a repeal or a new use of force resolution,

and the United Nations has not authorized international action under its auspices.

On one issue, sanctions imposed on Russia by Obama executive orders after Russia took the Crimea from Ukraine, Congress acted contrary to President Trump's preferences, but the issue had strong overtones of domestic politics. Trump and his campaign advisors were under investigation for being involved with Russia during and just after the 2016 presidential campaign. Trump wanted to keep sanctions in his hands, but both Democrats and Republicans in Congress preferred to put the sanctions in law. Congress did so with near unanimous votes in both houses and even added sanctions on Russia and expanded the reach to Iran and North Korea. Rather than face a Congress poised to override a presidential veto, Trump signed the bill without a public ceremony.

New challenges in national security have created additional challenges to Congress's ability to set policy by law. These challenges include non-state terrorism, cyberattacks, and advanced technologies, including robotics, and often involve activities that readily move across international borders. Presidents have become more active in setting economic sanctions, changing immigration rules, and expanding or contracting military support to other regimes without the meaningful involvement of Congress or its leaders.

### **The Bush Theory of a Unitary Executive**

President Bush and key figures in his administration subscribed to the theory of a unitary executive. The theory holds that the president has direct authority over all parts of the executive branch. Bush administration officials used the logic of the argument to justify presidential signing statements and other intrusions into statutory governance of executive agencies. To be sure, there is a compelling argument that the commander-in-chief role assigned to the president by the Constitution gives the president strong authority over the use of the armed forces. But it is reasonable to argue and seems historically accurate to say that Congress is free to direct or constrain other executive agencies by law, which the president is obligated to observe.

Democrats, once again in the majority after the 2006 elections, objected to Bush's view of his powers but were able to do little about it before the end of Bush's second term. They did step up oversight activities, forced dozens of administration officials to testify, and attempted to impose a timetable for withdrawal from Iraq, but the president proved to have a strategic advantage in most of these confrontations with Congress. Once his policy was in place, he could rely on Senate Republicans to obstruct votes on unfriendly legislation and, if need be, veto legislation to block it. And he could delay or assert executive privilege when unfriendly congressional committees attempted to investigate executive actions—and the approaching end of his second term meant that he did not have to delay for long. President Obama, of course dealing with a friendly Congress, ordered executive agencies to ignore President Bush's signing statements unless they first consulted the Department of Justice.

Obama did not endorse the unitary executive perspective but, like all modern presidents, interpreted his inherent or implicit powers under the Constitution very broadly. With a Democrat in the White House, it became congressional Republicans' turn to criticize presidential overreach in the treatment of illegal immigrants, targeting of U.S. citizens abroad who are engaged in terrorist activities, implementation of health care reform, and even raising of the minimum wage for federal contractors. After they regained a House majority in the 2010 elections, Republicans occasionally sought to check the use of presidential power, but the Democratic Senate stood in the way.

While President Donald Trump and his legal team have not explicitly endorsed the theory of a unitary executive, the president has expressed an expansive view of presidential power. In one prominent case, the president's executive order to bar visas for people from seven Muslim countries, the administration asserted both broad power to protect national security in bending immigration rules and the right to do so without judicial review. Nevertheless, in other cases, such as the president's order to ban transgender individuals from the military, some administration officials have resisted the president's demands—although it has not always been clear how

serious he was about them. The lack of coherence in White House pronouncements in Trump's first year appears to have undermined effective presidential control of the executive branch.

## Emergencies and the Economy

Emergencies can motivate even an opposition Congress to grant sweeping authority to a president, as the Democrats did in 2008 in response to the economic crisis. As Wall Street investment banks were about to collapse in late 2008, the Bush administration asked for and received a \$700 billion authorization for the Troubled Asset Relief Program (TARP) to “restore liquidity and stability to the financial system” by purchasing soured assets (mainly mortgage-backed securities) and stabilizing the banking system. The fear, widely shared by economists and administration officials, was that the economy would suffer badly if major financial institutions failed. While some Republicans opposed the bill, most Republicans and nearly all Democrats supported the legislation. To the surprise of many members of Congress, the administration used most of the first half of the TARP funds to buy ownership stakes in banks and insurance companies to shore up their balance sheets.

Congress appeared nervous about a broad delegation of power to the Treasury and so imposed multiple mechanisms overlapping oversight and reporting responsibilities. The Congressional Oversight Panel was created to review the work of the Treasury and report to Congress every 30 days. The comptroller general of the General Accountability Office, an arm of Congress, was required to monitor the program and report every 60 days. The Treasury office was required to file reports with Congress, a special inspector general was created, and a board comprising executive officials was established to oversee implementation of the bill and report to Congress quarterly.

The oversight was likely to be taken seriously, but the delegation of power nevertheless represented one of the vaguest delegations of power for an authorization of such a large sum of money. Moreover, the administration moved so quickly in dedicating the funds that congressional oversight would long postdate irreversible executive branch action.

Later reports indicated that the executive branch had a difficult time accounting for the way the banks used federal funds.

### The Continuing Battle over Appointments

The tension between Congress and the president persists, and Congress often suffers when the president can act unilaterally on a matter on which the public appears to side with him. During his first term, President Obama was regularly frustrated by Senate Republicans who refused to allow the Senate to vote on his nominees to executive and judicial positions. The president normally has the opportunity to make appointments on his own when Congress is in recess, appointments that last for the remainder of the next session of Congress. To block President Obama from making recess appointments, the Republican-controlled House refused to allow the Senate to recess. The House was able to do this by exploiting the constitutional provisions that “neither house . . . shall, without the consent of the other, adjourn for more than three days” (Article I, Section 5). Lacking authority to adjourn, the Senate agreed with the House to hold a pro forma legislative session every 3 days, which, in a long-accepted interpretation, meant that the Senate was not in recess and the president was not authorized to make recess appointments.

In early 2012, President Obama decided to proceed with recess appointments while the Senate was holding pro forma sessions once every 3 days. In the most noteworthy case, the confirmation of a director for the Consumer Financial Protection Bureau had been held up in the Senate since July 2011. Republicans in Congress complained bitterly about the president’s move, but the new director took office. Backed by an opinion from his Justice Department, President Obama argued that the periodic pro forma sessions at which no legislative business was conducted were not sufficient to deny the president his constitutional power to make recess appointments. The dispute was settled in court in mid-2014—and the president lost. It did not matter much for Obama, at least not at first. By then the Senate had adopted the practice of closing debate on nominations by a simple majority, which meant that

Republicans could no longer block Senate action on Obama’s nominees.

Oddly, in 2017, a Republican Senate used pro forma sessions to prevent President Trump from making recess appointments during Congress’s August break. Senate Republicans were concerned that Trump, who had been critical of decisions made by Attorney General Jeff Sessions, a former senator, would fire Sessions and replace him while the Senate was away. The step taken by the Senate prevented other recess appointments from being made, too.

### DIRECTIONS FOR REFORM

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Partisanship, mean and ugly campaigns, congressional gridlock, and the low esteem of Congress feed on one another. They have produced a dysfunctional Congress that alienates the public, discourages qualified people from running for seats in the House and Senate, and far too often fails to act on serious problems. Presidents fill the voids created by a handcuffed Congress when they can, weakening congressional participation in important policy arenas and undermining the representational basis for policymaking.

What can be done? First, it is important to keep in mind that the partisan polarization behind much of Congress’s problems is not readily remedied by Congress. We have a right to expect more civil and tolerant behavior by legislators and their leaders, but we cannot expect legislators to move far from the policy positions that got them elected. In the short run, the burden is on American voters to elect more moderate candidates who, as legislators, will demand less partisan behavior from their leaders and insist on the compromises necessary to address the policy challenges facing the country. I am not hopeful.

Reformers have pursued three lines of argument. First, many reformers have argued that changes in how members of Congress are elected could produce more civil campaigns and more moderate legislators. Second, some reformers have suggested an end to candidate-centered campaigns and a return to party-run campaigns. Third, some observers advocate a return to “regular order” in Congress. And fourth, some critics simply argue for more effective leaders.

I'm not optimistic about any of these recommendations, but they deserve consideration.

Many reformers focus on the current electoral system, which requires a candidate to first appeal to a small base of partisans in a primary to make it to the general election ballot. There is evidence that more extreme candidates tend to survive primaries; so reformers have suggested three kinds of reforms. One reform is the top-two, or nonpartisan blanket, primary. All candidates, whatever their party affiliation, compete in a single primary, and the top two vote-getters run in the general election. Because the top two candidates may be from the same party, there is an incentive to advocate moderate views to attract broad support in the electorate. California has used such a system since 2012. It may be too small an experiment and too soon to evaluate the effect on the kinds of people elected.

Another possibility is to do away with primaries and use instant run-off voting, in which voters rank candidates. All first-place ballots are counted; if a candidate receives a majority, he or she is elected. If no candidate has a majority, the bottom candidate is dropped and that candidate's supporters have their second-place ballots counted along with the rest. The process continues until a candidate wins a majority. The need to appeal to people who might list a candidate as a second or third choice, it is argued, will encourage candidates to broaden their appeal. A third approach is to abolish primaries and allow parties to nominate whom they choose by their own methods. Parties seeking to win a plurality in the general election, some reformers argue, will lead major parties to nominate moderate candidates and reward moderate incumbents with renomination.

Placing more control over campaigns in the hands of local party leaders follows the same logic as the election reforms. If the two major parties control campaign funds and strategies, they will focus on winning the support of middle-of-the-road voters and the winning candidates will be more moderate, at least on average. Incumbent legislators who seek reelection will be motivated to keep those local party organizations satisfied with their performance to gain renomination. Proposals to provide public

funding for campaigns to parties but not candidates fall into this category.

The call for "regular order" needs a little explanation. There is no official legislative process for most legislation—the House and Senate rules allow a variety of means for writing bills and considering alternatives. The term refers to the committee–floor–conference committee process that was typical for major legislation in the mid-20th century. Some, maybe many, legislators believe that a more committee-oriented process with a series of venues for bipartisan deliberation is likely to encourage collaboration across party lines and improve legislation.

Other reforms for congressional procedures have been proposed. In both houses, some legislators argue, policymaking and interpersonal relations would be improved with fewer 3- and 4-day weeks and more 5-day weeks, having less conflict between floor and committee sessions, and perhaps keeping legislators in Washington for more weekends. In this view, the current part-time work schedule limits the time legislators have to work with each other and undermines bipartisan efforts. In the House, the majority party might learn that the minority has good ideas; in the Senate, the minority might prove less obstructionist.

Finally, critics often observe that top party leaders seem to encourage, or at least facilitate, sharp partisanship. They do this, it is argued, by failing to observe regular order and taking the lead in message politics. Leaders more committed to the public good and less to their parties' interests would reduce partisan tensions.

I give low odds that these reforms will work as hoped, at least in the next few Congresses. Voters are easy to blame, but they often have inadequate choices, which makes the election process reforms attractive. Unfortunately, even if top-two primaries or instant run-off voting were adopted across the country, activist groups in the parties and outside funders would continue to recruit and back candidates they favored. Shifting more influence to local party leaders does not take control of local parties away from more extreme factions within them. And both unorthodox forms of legislating and partisan leaders are a function of legislators' expectations and demands, which are unlikely to change until we get a new breed of legislators in office.

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## 6-2 Legislating in Polarized Times

Sarah A. Binder

*Sarah A. Binder outlines the effects of divided party control of the institutions of government and partisan polarization on the policymaking process.*

*The single most important thing we want to achieve is for President Obama to be a one-term president.<sup>1</sup>*

—Senate Minority Leader Mitch McConnell (R-KY)

Nearly 2 years after the election of President Barack Obama and a Democratic Congress in 2008, Senate Republican leader Mitch McConnell of Kentucky on the eve of the 2010 midterm elections declared his party's top goal: to prevent Obama from securing a second term. McConnell failed to block Obama's reelection. But Republicans retook the House in 2010 and the Senate in 2014, and Donald J. Trump won the White House in 2016. McConnell's strategy—keeping GOP fingerprints off Democratic initiatives—enabled voters to hold Democrats accountable for the government's performance and propelled Republicans back to power.

Obama's relationships with Democratic and Republican Congresses over the course of 8 years in office—as well as President Trump's early experiences with a Republican Congress—provide windows into the politics of legislating in polarized times. Under Obama, Republicans' bare-knuckle strategy—reflecting and fueling ideological and partisan polarization—largely undermined Democrats' capacity to govern, producing some of the least productive Congresses since World War II. Under Trump, a fractured GOP majority has been unable to leverage unified control of government to advance its policy agenda. In this chapter, I review the forces that shape Congress's legislative capacity, explore the politics of stalemate during the Obama years, and probe the deadlock that has thus far undermined Trump's first year in office.

### THE LANDSCAPE OF CONGRESSIONAL DEADLOCK

The contemporary study of legislative performance began with publication of David Mayhew's *Divided We Govern* in 1991, 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 percent of the time; between 1955 and 1990, two thirds of the time. And scholars observed in the 1960s, unified party control of the executive and the legislature does not guarantee a productive Congress, but divided control tends to undermine it. Decades later, scholars 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 *Divided We Govern*, Mayhew returned us to these matters 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

<sup>1</sup>Source: Updated from an original essay commissioned for the 6th edition of this volume.

two-stage process that combined contemporary judgments about the significance of Congress's work 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 2016). Mayhew then tested whether the presence of divided government reduced the number of major laws enacted in each Congress.

The key 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 fails to yield significantly higher levels of lawmaking. It matters little whether a single party controls both the White House and Congress: Not much more gets done than under divided party control. Having absolved divided government as a cause of legislative inaction, Mayhew disentangled several other 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, presidential cycles, and issue coalitions that cut across the left–right divide.

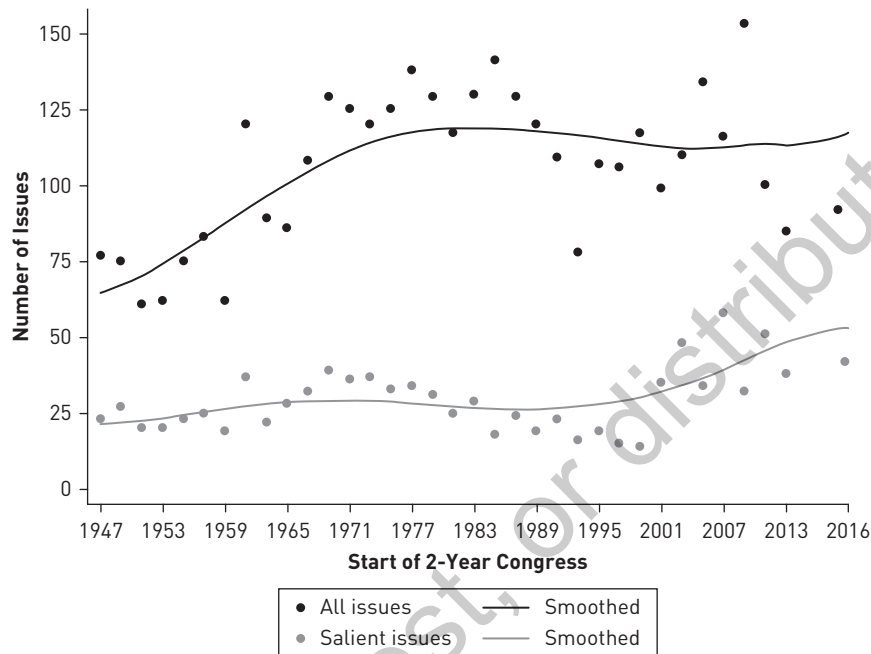
Mayhew's work provoked theoretical and methodological debates about how best to explain and measure variation in Congress's legislative performance over the postwar period. Much of the methodological debate focused on whether a measure of Congress's legislative capacity requires a denominator—a baseline against which to compare Congress's output. Mayhew argued against denominators, noting the difficulty of defining and identifying a valid and reliable measure. In contrast, in my own work, I offered a measure that captures the *degree* of legislative deadlock by isolating the set of salient issues on the agenda and then determining the fate of those issues in each Congress.<sup>2</sup> The result is a ratio of failed measures to all issues on the agenda for 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 identifies

Johnson's Great Society Congress as the most productive of the postwar period and the 2013–2014 Obama Congress (in which Republicans drove the government to shut down and nearly defaulted on the nation's debt) the most deadlocked. Such assessments comport with historical and contemporary coverage of Congress's postwar performance.

As I explained in detail in Appendix A to my book, *Stalemate*, 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 the *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.<sup>3</sup> I then turned to news coverage and congressional documents to determine whether or not 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 scores—now updated through the end of the Obama administration in 2016—capture the percentage of agenda items left in limbo at the close of the Congress.

Figure 1 displays the size of the policy agenda through 2016.<sup>4</sup> Looking first at the smoothed number of legislative issues mentioned in each Congress in the *Times* editorials, 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 and well beyond. Today, the overall agenda is roughly double its size in the wake of the Second World War.

The trend in the number of salient issues is more eye-catching. The overall size of the agenda increases only incrementally over the postwar period, but the number of salient issues rises markedly in the most recent Congresses—doubling in size over the long postwar haul. It is possible that the recent rise in deadlock on the most important issues of the day has helped fuel growth in the agenda: Big issues remain

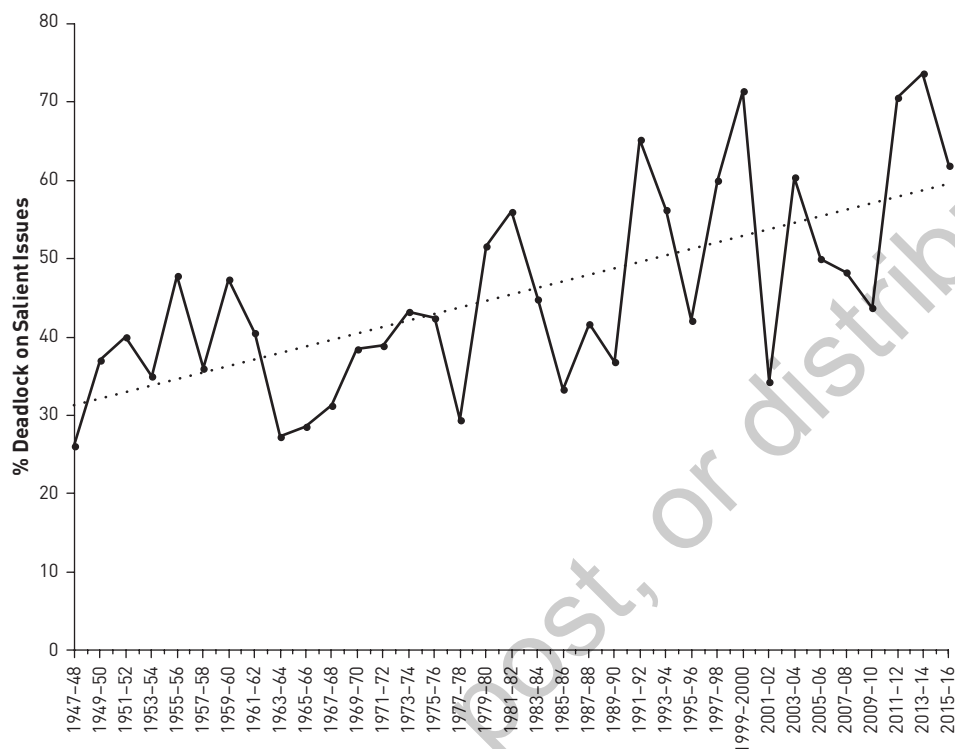
**FIGURE 1** ■ Size of the Legislative Agenda (1947–2016)

unsolved and thus recur on the nation's agenda in following years. Past failures to reform immigration law, entitlements, and the tax code, for example, likely helped increase the number of salient issues on the agenda during the Obama years. Moreover, a spate of new issues in the past decade likely caught the attention of the *Times*' editorial writers, including the war on terror, global climate change, the rise of new technologies, and in 2008, the onset of financial crisis and the worst economy since the Great Depression.

The updated time series of the degree of legislative deadlock on salient issues in each Congress between 1947 and 2016 appears in Figure 2. Six features of the time series stand out. First, the frequency of deadlock shows a secular increase over time. Perceptions that Congress struggles more today than it did decades ago hit the mark. Second, the direst claims about Congressional performance during the Obama administration are true. Despite a remarkably productive Congress in 2009 and 2010 when

Obama enjoyed a filibuster-proof, 60-vote majority in the Senate for several months, most of the Obama years are marked by record levels of deadlock. By this measure, the 113th Congress can claim to be the "worst Congress ever"—at least since the end of World War II. In fairness, the title should be shared with the last Congress of the Clinton administration in 1999 and 2000 and with the dismal 112th Congress (2011–2012). In all three Congresses, almost three quarters of the most salient issues remained unsolved at the end. No surprise that public approval of the 113th Congress bottomed out at 7 percent when legislative stalemate closed down nonessential parts of the federal government for 3 weeks.

Third, caution is still in order when comparing recent Congresses. Some of the issues considered "successfully" addressed in recent Congresses might never have been deemed acceptable outcomes in previous Congresses. For example, Congress and the president traditionally fund federal highway construction for multiyear periods. But following

**FIGURE 2 ■ Frequency of Legislative Stalemate (1947–2016)**

expiration of highway programs in 2009, Congress and the president enacted a series of temporary reauthorizations to keep federal programs running. Even when the parties were finally able to agree to a multiyear bill in 2012, that agreement reauthorized only 2 years of highway programs; conflict over raising the federal gas tax stymied efforts to finance a traditional 6-year bill. I code the highway bill as a successful legislative response even though the 2-year bill avoided decisions about how to ensure the solvency of federal highway trust funds after the end of the 2 years. Lawmakers did not resolve the financial impasse until late in the fall of 2015, when legislators raided the capital surplus of the Federal Reserve to replenish the highway trust fund.<sup>5</sup> Another problem—how to raise the federal debt ceiling in the summer of 2011—was resolved in part by establishing the “supercommittee” to come up with more than a trillion

dollars in federal savings. The 2011 deficit reduction package is scored a success even though the supercommittee that resulted from the agreement eventually failed. In other words, the 71 percent deadlock score for the 112th Congress likely underestimates the true level of legislative stalemate.

Fourth, Obama’s first 2 years in office (the 111th Congress, 2009–2010) were relatively productive compared with Congress’s performances over the past decade (with the exception of the 9/11 Congress). But Congress’s record in the 111th fell far shy of the records of the Great Society Congresses. To be sure, the 111th Congress was nearly 30 points more productive than was 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.

Fifth, a brief look at the 107th Congress, spanning before and after the attacks of September 11, 2001, 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 percent 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 2 years in office. But the 107th Congress's performance was shaped by the events of September 11. Eight of the thirty-five salient issues in that Congress stemmed directly from the attacks of September 11. And on those eight issues, Congress and the president mustered a perfect record—enacting the Patriot Act, writing the Authorization for the Use of Military Force, addressing the needs of 9/11 victims, and more. Even on less salient issues stemming from September 11, congressional deadlock stood at barely 10 percent, with just a single issue left in legislative limbo. But any cooperative spirit and unity of purpose did not extend to the rest of the policy agenda. If we exclude the issues related to September 11, Congress and the president deadlocked on just under half of the salient policy matters. Congress does appear to retain the capacity to act swiftly when a true crisis occurs—as evidenced further in 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 normal policy agenda.

Finally, a drop in deadlock during Obama's last 2 years in office bears notice. True, Congress deadlocked on roughly 60 percent of the agenda, but the uptick in productivity is palpable after gridlocking on nearly three quarters of the agenda in the previous Congress. Why were Congress and the president suddenly more productive? As I explore in detail below, Republicans in the 2014 midterm

elections captured the Senate while keeping control of the House—creating a unified Republican front in Congress for the first time during the Obama presidency. On taking office, GOP leaders outlined a narrow agenda and seemed intent on showing voters that they could be trusted with control of Congress. As such, both parties had an incentive to occasionally go to the bargaining table. The result was a set of serious reforms, including agreements on long-simmering issues: revamping the No Child Left Behind education programs, financing a long-term highway construction bill, resolving a long-standing Medicare payment challenge, and easing spending constraints across the federal budget—a remarkable record after years of deadlock.

## EXPLAINING PATTERNS OF GRIDLOCK

The longer time series allows me to re-pose the question that motivated *Stalemate*: How do we account for Congress's uneven legislative performance over time? In that work, I used the measure of the frequency of legislative gridlock to test alternative institutional and electoral explanations for variation in congressional stalemate. 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 it opposes. But party control alone, I argued, was insufficient to explain variation in Congress's performance.

I pointed instead to two other factors that shape Congress's record. First, the smaller the ideological center, the tougher the time Congress has 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, 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.

Expanding my purview beyond the initial *Stalemate* study to include the George W. Bush and Obama administrations, partisan polarization remains consequential. Declining moderation—controlling for party control and bicameral conflict—still generates more frequent bouts of deadlock. With moderation at barely a tenth of its postwar high, nearly 75 percent of salient issues were mired in deadlock in 2013 and 2014. Regardless of whether we view polarization as a function of ideological differences, strategic disagreement by partisans seeking electoral advantage, or a mix of the two, the results are clear: When ideological or electoral incentives yield intensely partisan behavior, lawmakers and the president struggle to find broadly palatable solutions to the range of problems they face.<sup>6</sup>

In contrast, the impact of party control on legislating over the longer period appears attenuated. On average, once we control for the polarized nature of today's parties, unified governments are barely more productive than divided ones. To be sure, unified Democratic control of government after the election of 2008—coupled with a short-lived, filibuster-proof Senate majority of 60 Democratic senators—yielded major legislative dividends in 2009 and 2010: Congress and the president crafted the Affordable Care Act, rewired the nation's financial sector in the Dodd-Frank Wall Street Reform Act, advanced major arms control, and dumped the military's "Don't Ask, Don't Tell" policy, among other accomplishments. But the impact of unified party control more generally over the longer period is harder to detect. Given the Trump administration's struggle to advance its agenda with slim Republican majorities in 2017, unified party control is certainly no silver bullet for securing major policy change.

Why do we observe high levels of deadlock regardless of party control? 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.<sup>7</sup> For example, increased minority party exploitation of its parliamentary rights would help explain the litany of legislative measures left in limbo after Senate Democrats lost their filibuster-proof majority in the winter of 2010, as well as the heavy load of measures left undone at the close of the Republican-led 108th Congress (2003–2004). Then Minority Leader McConnell's 2010 avowal to make Obama a one-term president no doubt helped undermine the traditional power of unified party control in driving legislative agreement. Refusing to come to the bargaining table undercut the legislative success of the Obama administration.

The results also suggest a weakening of the impact of bicameral differences on the prospects for lawmaking. But my measure of bicameral differences (which taps the level of discord when the chambers review the decisions of House–Senate conference committees) is arguably a victim of rising levels of polarization. Congress, however, rarely goes to conference to resolve bicameral disagreement. The sharp decline in conferencing partially reflects the overall decline in major lawmaking in Congress. But it also reflects leaders' preference to negotiate deals behind closed doors rather than in the typically more open forum of a House–Senate conference committee.<sup>8</sup> Whatever the reason, the measure no longer offers a robust way to capture the degree of bicameral conflict. In short, the model likely underestimates the impact of bicameral disagreement on Congress's ability to solve problems. After all, we know that the two chambers have taken markedly different approaches to numerous salient issues in recent years, including climate change, reform of the immigration laws, and repeal of Obamacare and Dodd-Frank. Summed up, electoral, partisan, and institutional forces systematically influence the prospects for major change in Washington, indelibly shaping the legislative interactions of Congress and the president.

## LESSONS FROM THE OBAMA YEARS

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The relationship between the Obama White House and Congress illustrates the difficulties of governing in a polarized era: The Constitution forces the branches of government to share power, but political and institutional forces today complicate the parties' ability to resolve differences. These lessons offered by the Obama presidency remind us about the power and limits of unified party control of government, as well as the fragility of the concept of bipartisanship in polarized times. Still, the Obama years also remind us that the parties often retain incentives to cooperate despite the intensity of partisan competition in Washington—suggesting a limited but important capacity for deal making, even in a polarized era.

To fully understand the governing challenges faced by the Obama administration, I return to Senator McConnell's vow to make Obama a one-term president. McConnell waited until the fall of 2010 to declare his party's goal. But his party's strategy colored all 8 years of Obama's two terms in office. As McConnell stated that fall,

We worked very hard to keep our fingerprints off of these proposals. Because we thought—correctly, I think—that the only way the American people would know that a great debate was going on was if the measures were not bipartisan. When you hang the “bipartisan” tag on something, the perception is that differences have been worked out, and there's a broad agreement that that's the way forward.<sup>9</sup>

As Ezra Klein of *Vox* summed up McConnell's strategy, “Bipartisanship isn't a function of the ideas in a policy proposal; it's a function of whether the minority party signs on to a policy proposal.”<sup>10</sup>

Seeking to prevent bipartisan support for Obama's proposals, House and Senate GOP leaders cajoled rank-and-file Republicans to resist collaborating and negotiating with Democrats on most salient measures.<sup>11</sup> To do otherwise would signal GOP acceptance of Obama's initiatives—if not his

presidency. Even on must-pass measures—such as annual spending bills and the periodic requirement that Congress raise the government's legal borrowing limit—GOP leaders stalled until the last minute, hoping (often erroneously) that they would gain leverage by pushing measures to the brink. Moreover, Republican-aligned media (such as Fox News) and other organizations (such as Heritage Action, the activist arm of the conservative Heritage Foundation think tank) pressed Republicans to resist Obama's proposals by highlighting or threatening that lawmakers could face a primary election challenge from their right if they cooperated with the Democrats.

McConnell's strategy paid dividends for Republicans innumerable ways. First, GOP tactics limited the ability of unified party control to deliver substantial policy gains to the party in power. During Obama's first 2 years in office, Republicans largely refused to cooperate in the Democrats' efforts to stimulate the economy in the wake of the worst financial crisis since the Great Depression of the 1930s, to rewire the nation's financial regulatory system, and to revamp the nation's health care system. Their strategy left Democrats to cobble largely partisan coalitions for the most salient problems on the agenda—exposing them to charges of partisan maneuvering and overreach, even when Democrats adopted proposals that Republicans had previously championed. For example, Democrats based Obamacare largely on “RomneyCare,” the health care model adopted in Massachusetts by the future 2012 Republican presidential nominee, Mitt Romney. Similarly, in crafting the Dodd-Frank Wall Street Reform Act, Democrats adopted key proposals from the GOP, including the proposal of forcing the Federal Reserve to dedicate a steady stream of funding to finance the new Consumer Financial Protection Bureau. Despite their genesis in GOP currents, both programs were relentlessly attacked by Republicans after enactment—leading to legislative efforts to repeal them and legal challenges to their constitutionality.

Second, McConnell's strategy surely contributed to Democrats' loss of the House (2010) and the Senate (2014). Taking advantage of an increasingly partisan electorate—one that often favors Republicans in

off-year elections—Republicans recruited a cadre of Tea Party–inspired and other political newcomers who successfully nationalized the midterm elections as referenda on Obama’s record. To be sure, fermenting Republican opposition among the electorate also put the party’s leadership in the grassroots’ crosshairs. Both Speaker John Boehner (R-OH) and House Majority Leader Eric Cantor (R-OH) lost their jobs. But the party’s opposition to Obama eventually helped Republicans take back control of both branches of government—and arguably the White House in 2016—ending a short-lived experiment in Democratic control of government.

Third, McConnell’s play also empowered Republicans to influence the ideological makeup of the Supreme Court. McConnell extended his tactic of resolute opposition to Obama by refusing to allow Senate consideration of Obama’s pick for the Supreme Court after the sudden death of conservative justice Antonin Scalia early in 2016. Most Republicans running for reelection in 2016—even those facing voters in states won by Obama in 2012—supported the GOP’s refusal to consider or vote on the nomination of U.S. judge Merrick Garland for the Supreme Court, even though Garland had previously received support from conservative Senate Republicans. Democrats highlighted Republicans’ brazen disregard for advice and consent in their widespread unwillingness to even meet with the president’s nominee. But the GOP strategy worked. With Trump in the White House the following year, McConnell and the GOP banded together to ban filibusters of Supreme Court nominees and put an arch conservative on the bench in 2017. It is possible that future Supreme Court vacancies might be filled only when the president’s party controls the Senate.

Finally, winning back control of the Senate in 2014 led McConnell to revise his playbook for the final 2 years of the Obama administration. With control of Congress in GOP hands and a wide-open race for the White House approaching in 2016, McConnell adopted a minimally more constructive legislative stance, telling his colleagues that the party needed accomplishments to run on in 2016. “I don’t want the American people to think that if they add a Republican president to a Republican

Congress, that’s going to be a scary outcome. I want the American people to be comfortable with the fact that the Republican House and Senate is a responsible, right-of-center, governing majority,” noted McConnell late in 2014.<sup>12</sup>

Toward that end, Republicans in 2015 came to the negotiating table to resolve long-stalemated health, education, and economic issues. Among other deal making, the two parties resolved the annual “doc fix” cliffhanger that required changes to Medicare reimbursement formulas, overhauled the long-expired No Child Left Behind education law, negotiated a 2-year budget deal to prevent scheduled cuts in domestic and defense funding, and provided long-term funding for federal highway and mass transit programs. In each of these bipartisan bargains, both parties brought to the table their most preferred politics, often crafting “win-win” deals that combined the top priorities of both parties.<sup>13</sup> For example, to finally resolve the “doc fix” stalemate, lawmakers matched Republicans’ preference for Medicare cuts with Democrats’ desire to expand funding for community health programs. Both parties gained from coming to the negotiating table. Of course, McConnell encouraged resolution of these long-stalled proposals to ensure that Senate Republicans running for reelection in blue states in 2016 would have a record to run on—confirming that a majority’s electoral prospects often condition its governing strategies. Although the 2016 elections diminished GOP margins in both chambers, Republicans kept control of Congress and returned the White House to Republican hands.

## A PREVIEW OF TRUMP AND THE REPUBLICAN CONGRESS

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McConnell’s strategy no doubt aided the election of Donald Trump in 2016. Undermining Obama legislative accomplishments fueled public dissatisfaction with Washington and with Democrats’ capacity to solve public problems. In that sense, McConnell’s strategy succeeded: The return of unified GOP control for the first time since 2006 promised Republicans a straight course to



achieving McConnell's favored right-of-center agenda, including cutting taxes, repealing Obamacare, and paring back government regulation of the economy. Republicans stood poised at the outset of 2017 to reverse Obama's policy legacy.

The election of Trump, however, threw a wrench in McConnell's expectation of a center-right governing majority. To be sure, many of Trump's priorities overlapped with conservatives'—including tax cuts, deregulation, and repeal of Obamacare. But major components of Trump's electoral appeal were ideologically anathema to conservative lawmakers: favoring protectionism over free trade, fiscal stimulus over deficit cuts, saving rather than remaking entitlements, disengagement from rather than proactive leadership of international affairs, and reconciling with rather than challenging despotic Russian leader Vladimir Putin. After the November elections, tensions among GOP elites were aired publically as Trump assembled his administration and as some Republicans staked out positions that challenged Trump's priorities.

Unified party control has thus far paid limited dividends for Republicans. As of fall 2017, disagreements among Republicans—about how to replace Obamacare, confront Russia, revise taxes, and

so forth—generated more deadlock than action. Despite new governing majorities, Republicans stalemated on the effort to repeal and replace Obamacare, and lawmakers were struggling to agree on a package of tax cuts well into the year. With historically low approval ratings, a tempestuous personality, and a chaotic, inexperienced White House, Trump could hardly provide political cover for a fractured Republican majority—and thus proved little help in paving the way forward toward consensus. And partisan polarization remained high—limiting Democrats' appetite for helping Republicans advance a conservative agenda.

As we watch the Trump administration and its struggles to advance its agenda in Congress, we are left with a national legislature plagued by low legislative capacity in a period of polarized parties. Half measures, second bests, and just-in-time legislating—or no action at all—are a new norm. Even if President Trump were to succeed in getting Washington back on track, Congress and past presidents' recent difficulties have been costly—both to the long-term fiscal health of the country and to its citizens' trust in government. Attending to the nation's policy needs and regenerating public trust remain tough tasks for the future.

## NOTES

1. Glenn Kessler, "When Did McConnell Say He Wanted to Make Obama a 'One-Term President'?" *The Washington Post*, September 25, 2012, accessed October 21, 2017, [https://www.washingtonpost.com/blogs/fact-checker/post/when-did-mcconnell-say-he-wanted-to-make-obama-a-one-term-president/2012/09/24/79fd5cd8-0696-11e2-afff-d6c7f20a83bf\\_blog.html?utm\\_term=.f268219c39f3](https://www.washingtonpost.com/blogs/fact-checker/post/when-did-mcconnell-say-he-wanted-to-make-obama-a-one-term-president/2012/09/24/79fd5cd8-0696-11e2-afff-d6c7f20a83bf_blog.html?utm_term=.f268219c39f3).
2. Sarah A. Binder, *Stalemate: Causes and Consequences of Legislative Gridlock* (Washington, DC: Brookings Institution Press, 2003).
3. I consider salient issues those matters on which *The New York Times* editorialized four or more times in a given Congress. This salience filter brought the number of major issues successfully addressed roughly in line with Mayhew's number of landmark laws enacted in each Congress.
4. I discuss the methodological challenges of updating the dataset in the appendix (pp. 20–22) to Sarah A. Binder, "Polarized We Govern," *Governance Studies Strengthening American Democracy Series*, no. 86, May 2014, accessed October 19, 2017, <http://www.brookings.edu/research/papers/2014/05/27-polarized-we-govern-congress-legislative-gridlock-polarized-binder>.
5. Gabe Rubin, "Fed Is a 'Piggy Bank' for Highway Bill," *Morning Consult*, December 2, 2015, accessed October 21, 2017, <http://morningconsult.com/2015/12/fed-is-a-piggy-bank-for-highway-bill/>.
6. On strategic disagreement as a cause of deadlock, see John Gilmour, *Strategic Disagreement: Stalemate in American Politics* (Pittsburgh, PA: University of Pittsburgh Press, 1995). On the impact of competitive parties, see Frances E. Lee, *Insecure Majorities* (Chicago, IL: University of Chicago Press, 2016).

7. See Steven S. Smith, *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate* (Norman: University of Oklahoma Press, 2014).
8. The willingness to filibuster the Senate motions needed to go to conference also hampers the use of conference proceedings to resolve differences.
9. Joshua Green, "Strict Obstructionist," *The Atlantic*, January/February 2011, accessed December 11, 2017, [https://www.theatlantic.com/magazine/archive/2011/01/strict-obstructionist/308344/?single\\_page=true](https://www.theatlantic.com/magazine/archive/2011/01/strict-obstructionist/308344/?single_page=true).
10. Ezra Klein, "Obamacare Didn't Pave the Way for Donald Trump. The GOP's Response to It Did," *Vox*, March 9, 2016, accessed October 21, 2017, <http://www.vox.com/policy-and-politics/2016/3/9/11182590/obamacare-donald-trump>.
11. For a full treatment of the Republican strategy and its normative and empirical consequences, see Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks*, rev. ed. (New York: Basic Books, 2016).
12. Paul Kane, "New Senate Majority Leader's Main Goal for GOP: Don't Be Scary," *The Washington Post*, January 4, accessed October 21, 2017, [https://www.washingtonpost.com/politics/new-senate-majority-leaders-main-goal-for-gop-dont-be-scary/2015/01/04/80d27196-9074-11e4-a900-9960214d4cd7\\_story.html?utm\\_term=.bf4839e56570](https://www.washingtonpost.com/politics/new-senate-majority-leaders-main-goal-for-gop-dont-be-scary/2015/01/04/80d27196-9074-11e4-a900-9960214d4cd7_story.html?utm_term=.bf4839e56570).
13. On the politics of achieving bipartisan agreements, see Sarah A. Binder and Frances E. Lee, "Making Deals in Congress," in *Solutions to Political Polarization in America*, ed. Nathaniel Persily (New York: Cambridge University Press, 2015).

### 6-3 Congressional Committees in a Continuing Partisan Era

*John H. Aldrich and David W. Rohde*

*In the essay below, John Aldrich and David Rohde describe the theory of conditional party government. This theory posits that a cohesive party, one in which the party members agree on most issues, will empower its leadership to play a central role in policymaking. With cohesive majority parties over the last three decades, majority party leaders have directed the actions of standing committees and assumed a direct role in designing legislation.*

The two principal organizing structures of Congress are the political parties and the committee system. During the history of the institution, the relative influence of the two has shifted back and forth. From 1890 to 1910, the majority party dominated the House of Representatives, with the Speaker empowered to appoint committees and their chairs and to control the legislative agenda. After the revolt against Speaker Joe Cannon in 1910, power shifted to committees, whose leaders were selected based on seniority. From the 1920s through the 1970s party influence was relatively weak, and that period became known as the era of committee government. Then, beginning with the reform period in the 1970s, institutional changes were adopted that strengthened parties and weakened the sway of committees and their chairs. Moreover, the extent and intensity of partisan conflict in Congress increased. Of course, even in strong party eras Congress members did not abandon the committee system. Speaker Cannon's powers, for example, were exercised in large part through the committee system. This shifting balance of power therefore reflects the degree of autonomy of the committees and their chairs from their legislative party organizations, as well as any additional, independent powers granted the party.

In this chapter we discuss the transformation of the party-committee balance from the 1970s to the present, focusing mainly on the House but also considering the Senate. We begin by considering the Democratic Party reforms of the 1970s that launched

the transformation and how the Democrats applied the party leadership's new powers. Then we consider further developments after the Republicans won control of both houses in the 1994 elections. We also discuss additional institutional changes that the GOP made and the ways in which the Republican Party leadership interacted with the committee system to achieve its legislative goals. The return of the Democratic majority after the 2006 elections gives us a single but important session to examine the party-committee balance under new party (and committee) leadership. We will also briefly discuss Senate committees and then offer some conclusions.

#### THE COMMITTEE SYSTEM AND THE ERA OF COMMITTEE GOVERNMENT

The most important thing to recognize about the House and Senate committee systems is that they are designed institutions. That is, they are created by the membership to serve the interests of the chamber and its members. Committees, through division of labor, permit the chamber to stretch its capabilities by having only a subset of members consider each issue and piece of legislation in detail. Furthermore, committees encourage the development of expertise through members' specialization in the issue areas covered by their committees' jurisdictions.<sup>1</sup> In addition to these benefits to the chamber, committees also provide benefits to individual members. Richard Fenno has argued that members of Congress pursue one or more of three

Source: Excerpted from *Congress Reconsidered*, 10th ed., ed. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, D.C.: CQ Press, 2009), 217–229, 232–240. Some text and accompanying endnotes have been omitted. Please consult the original source.

goals: reelection, power within the chamber, and good public policy.<sup>2</sup> The achievement of each of these goals is potentially influenced by committee membership. Members can use committee service to identify themselves with issues that are important to constituents and to secure benefits for their districts, thus enhancing their chances for reelection.<sup>3</sup> Committee and subcommittee chairmanships also provide members with positions of power in the chamber. And committee members are in the best position to influence public policy within their committees' jurisdictions.<sup>4</sup>

Congress used committees to conduct business from the beginning of the institution, although it took most of a century for the system to develop into the form we know today.<sup>5</sup> Standing committees (that is, permanent committees with recognized substantive jurisdictions) were widely used by the 1820s. They included members from both the majority and minority parties, and as the committees developed expertise their parent chambers began to defer to their judgments on legislative policy. Throughout the 1800s, the influence of the majority party leadership over committees grew. Speakers had the right to appoint committee members and chairs, and they chaired the Rules Committee, which set the terms of debate for bills on the House floor. The Speaker lost these powers in the revolt against Speaker Cannon in 1910. After that the Speaker could no longer appoint committees, and each party developed its own procedures for that purpose. Seniority in committee service became the almost inviolable basis for choosing committee chairs. Moreover, the Rules Committee was autonomous and the Speaker barred from serving on it.

As a result of these developments, committees became largely independent from party influence. Because committee chairs were chosen and maintained in power by seniority, they had no particular incentive to be responsive to the wishes of their party or its leaders in producing legislation. The chairs shaped their committees' agendas, appointed subcommittees (and usually chose their chairs), and decided when hearings would be held and how bills would be handled. These developments might have been less consequential if the committee leaders were ideologically representative of their party, but that was not the case. From 1930 on, the Democrats were usually in the majority,

and because southern Democrats were more likely to accumulate seniority than their northern counterparts, they were disproportionately represented among committee leaders. Conservative southerners often allied with Republicans to block or alter Democratic legislation, a situation that greatly frustrated northerners. Although that pattern had begun in the 1930s, their frustration became particularly pronounced in the 1950s and 1960s.

### PARTY REFORM: GATEWAY TO THE PARTISAN ERA

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Initial attempts at reform of committee government included a successful effort in 1961 to expand the Rules Committee to reduce the influence of southern conservatives on the panel. Then in 1970 Congress passed the Legislative Reorganization Act. It contained a number of important features, such as the requirement that committees make public roll call votes, and it generally required committees to permit the public to attend their meetings. The act also made it much easier to obtain recorded votes on amendments on the House floor and set the stage for electronic voting, which markedly sped up floor voting. These changes started to shift the locus of legislative decision making from the committees to the floor. The reorganization act, however, took no action to revise the seniority system or to reduce the powers of committee chairs.<sup>6</sup> The conservative coalition was able to block any such actions that would have undermined their institutional position.

However, the makeup of the House (and Senate) membership was changing. The Voting Rights Act of 1965 had enfranchised black voters in the South, and their strong tilt to the Democratic Party was liberalizing the party's voter base there. Reinforcing that effect was the gradual departure from the party of conservative voters who no longer saw the Democrats as standing for their interests. As a consequence of these developments, new southern Democrats were becoming more like their northern colleagues, and the Democratic membership in Congress was becoming less divided and more homogeneous.<sup>7</sup> This set the stage for efforts to strengthen the majority party leadership relative to

the committee system. Since the revolt against Cannon, the diverse memberships of the congressional parties had been reluctant to enhance party power because their very diversity meant that there would be great uncertainty about the ends for which that power would be used. That is, members could not be sure what policies leaders would seek, and so individual members feared that powerful leaders would seek policies far different from their own preferred outcome. If, on the other hand, the preferences of party members were to become more similar, members would not have to be as concerned that leaders with preferences different from theirs would be chosen, and it would be safer to grant leaders stronger powers.

This relationship is the essence of the theoretical perspective that we have labeled *conditional party government*, or CPG for short.<sup>8</sup> If the legislators in a party have very heterogeneous policy preferences, they will not be likely to grant strong powers to their leadership. As policy preferences become more homogeneous, members will be progressively more likely to empower their party leaders because they will have less reason to fear the use of those powers. This tendency will be further reinforced as the positions of the two parties become more different because the consequences to each party's members of the other party's winning the competition to control policy will become more and more negative.

By the early 1970s, liberal Democrats were a clear majority of the House Democratic caucus, but not of the entire House membership. Because they could not muster a majority on the floor for the kinds of reforms they favored, the liberals targeted the rules of the Democratic caucus instead. Only Democrats could vote on these efforts, which combined strategies dealing both with committees and with the party and its leadership. First they sought to undermine the independence and power of committee leaders, so that the remaining conservatives would be less able to impede passage of their desired legislation. This strategy followed two tracks. First, the liberals wanted to end the automatic nature of the seniority system. To this end the caucus adopted rules providing for a secret ballot vote on all committee chairs at the beginning of every Congress. If the prospective chair (usually still the most senior Democrat on the committee) was

voted down, there would be a competitive election of the chair in the caucus. This change was shown to have real consequences in 1975 when three southern Democrats were removed from committee chairmanships and replaced by more loyal northerners. Chairs were put on notice that they could not buck their party's policy wishes with impunity.

The second track of the strategy involved adopting rules that restricted the powers of those chosen as chairs. The principal vehicle was a set of rules known as the Subcommittee Bill of Rights, which required that committee members bid for the chairs of subcommittees in order of seniority, ending the ability of full committee chairs simply to appoint those positions. Subcommittees had to receive specific jurisdictions, and committee legislation had to be referred to subcommittees accordingly. In addition, subcommittee chairs would control their own budgets and staffs, rather than the chair of the full committee doing so.

The other strategy of the reformers was to give more powers to the party leadership. The Speaker received the right to appoint the chair and the Democratic members of the Rules Committee. That meant that the leadership could again control the flow of legislation and strategically shape the terms of floor consideration. In addition, the power to assign Democrats to other committees was vested in a new Steering and Policy Committee, most of whose members were party leaders or appointed by the Speaker. The reformers wanted the leadership to have more influence over the allocation of prized assignments, to make members more responsive to the leaders. Finally, the Speaker was given the authority to refer bills to more than one committee and to set deadlines for reporting, further reducing the ability of committees to act as roadblocks.

## PARTISANSHIP TAKES HOLD: 1983–1994

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The reforms were adopted by the mid-1970s and some of their consequences were quickly apparent, but divisions remained in the Democratic caucus, preventing the full effects of the changes from being visible. Indeed, many observers complained that the reforms had merely made Congress less efficient by

further decentralizing power to subcommittees. This viewpoint was reinforced by Ronald Reagan's success in 1981 at splitting off southern Democrats to support his budget and tax proposals. The recession of 1982, however, helped bring fifty-seven Democrats to the House, including many moderate-to-liberal southerners. Consequently the conservative coalition was no longer a majority of the House. The newcomers made up over one-fifth of the Democratic caucus, and they provided support for stronger use of the leadership's powers to advance the party agenda and to compete with the priorities of the Reagan administration.

As we noted earlier, one reform strategy sought to induce committee chairs to refrain from blocking party bills and to support the Democratic Party's legislative program. After the removal of the three southern chairs in 1975, committee chairs recognized that their continued hold on their positions depended to a degree on their party support, and their behavior changed accordingly. Research shows that members who occupied, or were close in seniority to, committee chairs dramatically increased their levels of party support between 1971 and 1982.<sup>9</sup> For example, in 1973–1974 the party unity score of Rep. Jamie Whitten, D-Miss., was thirty-eight points below the party average and eighteen points below the average for southern Democrats. Anticipating a liberal challenge when the chairmanship of the Appropriations Committee (where he ranked second) became vacant, Whitten began to change his behavior. By 1988, Whitten's party unity score was not only higher than the average southern Democrat's, it was two points higher than the average Democrat's.<sup>10</sup> Moreover, the Democratic caucus continued to use the mechanism for voting on chair candidates to pressure or remove committee leaders whose performance was deemed unsatisfactory.

The other reform strategy was to strengthen the party leadership, and it had a substantial impact on the relationship between the leadership and committees. As Barbara Sinclair has said, "Party and committee leaders must work together . . . since both are agents of and ultimately responsible to the Democratic Caucus."<sup>11</sup> In the changed environment, most committee leaders came to think of themselves as part of a team with the majority leadership.

Committee chairs realized that they could not act independently of party priorities in drafting legislation. In turn, they expected party leaders to provide adequate staff support and assistance in moving bills to passage on the floor.<sup>12</sup>

One of the most important tools available to the party leadership was control of the Rules Committee. During the 1980s, the Democrats increasingly used the resolutions (called "special rules") that set the terms for floor consideration of legislation to structure the agenda to the advantage of the party.<sup>13</sup> For example, special rules could bar amendments completely, giving members a take-it-or-leave-it choice between the bill the leadership favored and nothing. Or the rule could permit just those amendments that the leadership wanted to consider, barring others that the Republican minority wanted but that would cause policy or electoral difficulties for some Democrats. Moreover, if the reporting committee had not adequately taken the majority party's wishes into account, special rules could be used to alter the bill as reported to bring the policy closer to the preference of the majority. This was done multiple times on defense authorization bills reported from the Armed Services Committee.

Not surprisingly, the majority party's use of its powers provoked anger and frustration among Republicans. One response from the GOP was to change its party rules to mimic those of the Democrats, so as to make its own leadership more able to compete. For example, the Republicans gave the minority leader the right to make Republican appointments to the Rules Committee and created a new committee assignment system in which the leadership had more voting power. The party leader was also empowered to designate "leadership issues," and on those bills all members of the party leadership were obliged to support the positions of the Republican Conference.

The Republicans also adopted progressively more confrontational tactics to protest their treatment and to undermine the Democratic majority. Some complaints came from GOP leaders and mainline conservatives, but most active were members of a group of populist conservatives known as the Conservative Opportunity Society (COS), led

by Newt Gingrich of Georgia, then a backbencher. Gingrich and COS believed that the Republicans would be a perpetual minority unless they stopped going along with the Democrats as a means of attempting to have some influence on legislation. Instead, they argued that the GOP had to draw contrasts with the Democrats and let the public make a choice. The COS organized protests against the Democrats' management of the chamber and fought against the use of special rules to control the agenda and limit Republican influence. These efforts culminated in late 1988, when Gingrich filed a formal complaint with the House Ethics Committee against Speaker Jim Wright, D-Texas. The ensuing investigation led to Wright's resignation from the House.

## REPUBLICAN RULE AND ITS CONSEQUENCES: 1994–2000

Republican confrontations with the Democratic majority continued into the 1990s, especially after President Bill Clinton was elected in 1992, restoring unified government. The GOP was able to take advantage of the political context in 1994, successfully exploiting negative public feelings about government performance, the condition of the nation, and Clinton personally.<sup>14</sup> The Republicans won majority control of both houses of Congress for the first time since the election of 1952. The new majority in the House chose Newt Gingrich as their Speaker, and the party set out to transform the operation of the chamber to set the stage for major changes in government policy.

### Republican Procedural Changes

Gingrich's transforming efforts commenced almost immediately.<sup>15</sup> Little more than a week after election day he made clear his intent to depart from the seniority system in selecting committee chairs to a greater extent than the Democrats ever did, announcing that he had chosen Bob Livingston, La., as the new chair of the Appropriations Committee. Livingston ranked fifth in committee seniority but was considered more ideologically dependable

and more effective than the more senior committee members. A few days later, Gingrich again bypassed seniority to select more dependable chairs for Judiciary and Commerce. Gingrich was asserting the right to name the new chairs before the newly elected majority had yet arrived in Washington, and the Republican Conference members tacitly ratified his decisions by their acquiescence.

The powers of committees and their chairs were also changed significantly. Three committees were abolished outright, and most remaining committees were limited to five subcommittees. These actions eliminated twenty-five subcommittees and 12 percent of full committee slots. As one COS member said, "Our system will prevent members from getting locked into the status quo."<sup>16</sup>

The Republican leadership gave its chairs the right to appoint subcommittee chairs and control over committee staff. This reflected Gingrich's view that chairs should control their committees, but he also believed that the party should control the chairs. He required committee chairs to consult with him before choosing subcommittee heads, and he pressured one chair to name two freshman representatives to head subcommittees. Gingrich also required each member of the Appropriations Committee to sign a "letter of fidelity," pledging to cut the budget as much as the Speaker wanted. To further weaken the capacities of committee leaders to build an independent power base, the Republicans adopted a six-year term limit for all committee and subcommittee chairmen.

Gingrich also announced a new Republican committee assignment process, and it was adopted by the Republican Conference in December. It gave the Speaker control over a much larger fraction of votes on the Committee on Committees. Republican House members also confirmed their leader's right to appoint the members and chair of the Rules Committee. Overall, under the new GOP majority, committees had less independent power and the party leadership had more.

It is worth noting one thing that the GOP did not do. It didn't adopt a wholesale realignment of committee jurisdictions, as some reformers had wanted. The existing pattern of jurisdictions had too many implications for the reelection, policy,

and power goals of members, and most of them were unwilling to accept the risks involved in major change.<sup>17</sup> When the GOP took over the majority, Gingrich authorized Rep. David Dreier of California (vice chair of a joint committee on congressional reform in the previous Congress) to draft four plans of varying comprehensiveness for revamping the committee system. After it became apparent that there would be significant resistance from the chairs and members of affected committees, Gingrich opted for a version of the least-extensive plan. Thus we see that although Republican members were willing to support strengthening their leadership's influence over committees, they were not willing to sacrifice their other interests that were served by the committee system.

### Party Leaders and Committees

The rules changes that the new Republican majority adopted thus set the stage for greater influence by party leaders over the activities and legislative products of committees. Because of limited space we can only present a few examples, mostly drawn from the 104th Congress (1995–1997), which we can then compare with the first session under the Democratic majority in the 110th.

*Influencing Bill Creation in Committees.* Majority leadership involvement in the crafting of bills in committee did not originate with the 104th Congress. As Sinclair shows,<sup>18</sup> such activity had become more frequent as committee autonomy decreased in the postreform era. It was, however, still infrequent in the Democrat-controlled Congresses, as most leader activity involved stages of the process after initial drafting. The 104th marked a major increase in this role for majority leadership.

The most extensive instance of leadership influence on bill creation was the drafting and revision of the legislation designed to implement the Contract with America.<sup>19</sup> Although there was substantial initial consultation on general matters during the crafting of the contract, the top GOP leaders determined which issues would be included and many of the particulars. For example, it was Gingrich who decided that school prayer would not be included. Committee consideration of these predrafted bills was largely pro forma,

a necessary consequence of the leadership's pledge to pass them in the Congress's first hundred days.

The contract was of central importance, but the leadership's involvement in committees' initial consideration of bills was not limited to that legislation. Another example involves the major reform of agriculture subsidy policy that became known as the Freedom to Farm Act. In September 1995, the GOP leadership sent a letter to the Agriculture Committee chair, Pat Roberts of Kansas. They wrote, "We give the committee leave" to write major budget-cutting farm legislation. They indicated that they hoped the committee would support Roberts's bill, but if not "we will feel compelled" to bring the bill to the floor allowing unlimited amendments, or to replace the committee's bill with true reforms.<sup>20</sup> Moreover, during the consideration of the bill in committee, John Boehner of Ohio (a member, who was also GOP Conference chair) went so far as to say, "If this committee can't do it [make \$13 billion in cuts called for in the budget plan], the future of this committee is seriously in doubt."<sup>21</sup> Rarely in congressional history has the majority leadership sought to dictate to and threaten a committee in so direct a fashion.

*Bypassing Committees and Postcommittee Adjustments.* In some instances, the Republican leadership simply bypassed committees altogether to achieve its policy and political goals. Gingrich had personally picked the chair of the Judiciary Committee, the independent-minded Henry Hyde of Illinois. Hyde was suitably responsive to the leadership and the Republican Conference during the speedy processing of a large number of bills from the Contract with America. However, the bill to repeal the 1994 ban on assault weapons, which Hyde opposed, went to the floor without committee consideration. When asked why Judiciary was not given the opportunity to consider the bill, the chairman said: "We have a reputation of being deliberative."<sup>22</sup>

Another device for bypassing committees was the use of leader-appointed party task forces.<sup>23</sup> Often, but not always, task forces had the assent of committees (or at least of their leaders), and they usually contained some members of the appropriate committees. A key difference, however, was that they contained only Republicans, and at times they were used to



secure a different policy outcome than the committee of jurisdiction preferred. For example, in 1995 the Government Reform and Oversight Committee approved a bill to abolish the Commerce Department that was insufficiently radical to satisfy many of the GOP freshmen. The dissenters expressed their displeasure, and in response the leadership chose a different, more radical bill to accomplish the goal. The source of the bill was a GOP task force set up by Gingrich and chaired by a freshman. The bill had no hearings and no committee markup.<sup>24</sup>

The leadership could also use its control over the Rules Committee to make adjustments in the content of legislation after the committees had made their decisions. Barbara Sinclair's research shows that under the Republicans this kind of action was most frequent in the "revolutionary" 104th Congress, occurring on nearly half the major bills. But postcommittee adjustments continued to occur in later Congresses, for example, on more than one-third of the major bills in the 105th Congress.<sup>25</sup> One instance was the 1997 budget resolution, when Gingrich supervised adjustments to placate dissident Republicans and the White House. Another occurred in 1999, when moderate Republicans threatened to oppose the GOP tax bill because it was not sufficiently concerned with deficit reduction. Speaker Hastert brokered a change that made the tax rate cut dependent on a declining national debt.<sup>26</sup>

*Special Rules and Control of the Floor.* As we noted earlier, leaders of the majority can use their powers to support and defend the decisions of committees or to undermine them if the committees have not produced a result the party wanted. One way is through their general control of the floor agenda.

We saw that when they were in the minority, GOP members frequently attacked the Democrats for writing rules that barred them from offering amendments. As the majority in the 104th, however, they demonstrated that they were quite prepared to do the same thing. In one instance, on the rescissions bill (legislation to make cuts in previously appropriated funds) taken up in March 1995, the Rules Committee wrote a rule that had the effect of blocking cutting defense spending to increase social

spending. The rule prompted strong objections from a number of GOP moderates.<sup>27</sup>

In another example, a group of conservative Democrats wanted to offer a substitute amendment for the Republican Medicare reform plan, but the Rules Committee barred their amendment. Gene Taylor, D-Miss., said, "I am furious. . . . The Republicans came to power promising change, open rules." He charged, "They are no more fair than the Democrats."<sup>28</sup>

## NOT EVERYTHING IS PARTISAN

To this point we have focused our attention on the increased partisanship in Congress and on the strengthening of the influence of the party structure relative to committees. In this section we want to emphasize that one should not overinterpret these patterns. Specifically, it is important to recognize that much of Congress's business does not involve party conflict, as the data displayed in Table 1 demonstrate.<sup>29</sup> The table shows data from three Congresses on the proportion of bills over which there was some conflict, either in committee or on the floor. The standard for conflict was very minimal: Was there even one roll call on the bill on which there was a minority larger than 10 percent? Despite this low threshold, however, only about one-third of the bills saw any conflict at all.

Why was there so seldom conflict on legislation, if Congress has become ever more partisan over the period covered by these data? The reason is that the agenda that Congress deals with is multifaceted and diverse, and only a portion of it deals with the types of issues that provoke interparty disagreement. The parties care intensely about bills that relate to divisions among their members, their activists, and their electoral coalitions—things such as tax policy, the scope of government, regulation of business, and social issues such as abortion and gay rights. Most legislation, however, does not tap into these divisive subjects. Much legislation involves renewal of, or funding for, existing programs with wide support in the country or Congress, or proposals for new policies with many perceived benefits. This type of bill provides all members the

**TABLE 1 ■ Conflict on Legislation in the 96th, 100th, and 104th Congresses**

	96th Congress (1979–1980)	100th Congress (1987–1988)	104th Congress (1995–1996)
Prestige committees	51.3% (150)	65.7% (67)	76.3% (93)
Policy committees	40.7% (317)	28.7% (394)	34.3% (376)
Constituency committees	20.8% (438)	17.8% (499)	23.8% (315)
All committees	32.8% (905)	25.6% (960)	35.1% (784)

*Note:* Given above are the percentages of bills considered by those committees that exhibited some conflict, either in committee or on the floor (the number of bills in each category is in parentheses). See endnote 29.

chance to (in David Mayhew’s words) “claim credit” or “take positions” and thereby enhance their chances for reelection.<sup>30</sup> Because members do not run directly against one another, there is not a zero-sum relationship among them, and all members can potentially benefit from the adoption of legislation.

This relationship is readily apparent in Table 1 when we consider different types of committees.<sup>31</sup> The prestige committees—those most important to the party leadership—deal with more conflictual legislation in every Congress and also exhibit a systematic increase in conflict over time. The policy committees, which process most of Congress’s substantive legislation, reveal an intermediate level of conflict and no systematic increase. Finally, the constituency committees—those most involved with providing electoral benefits to members—show the least amount of conflict on legislation.

Not only does the propensity for partisan disagreement vary across types of committees and from bill to bill, but it also varies within a single piece of legislation. Consider the Freedom to Farm Act that we mentioned earlier, which in 1996 sought to reform federal farm policy. Table 2 shows the results of two roll calls on that bill.<sup>32</sup> The first vote involved an effort to cut the peanut price support program, a typical “distributive” policy issue that had offered electorally important benefits to some members from agricultural districts. In this instance, within both the Democratic and

Republican parties, the members from the agriculture committees responded quite differently from other members, being much less inclined to support the abolition of peanut supports. Differences between the parties are small, and differences within them are large.

The second vote was on the Democrats’ substitute proposal, which sought to keep farm policy closer to the status quo. Here the interparty differences are great. Only one Republican supported the Democrats’ proposal, but 86 percent of the Democrats did. Moreover, the voting of committee members is virtually the same as that of members not on the committees. Thus some issues can provoke partisan responses while others do not, even within a single bill.

## SENATE CONTRASTS

Committees are less central to the work of the Senate than of the House because of a number of institutional differences between the two chambers. First, the Senate must deal with essentially the same legislative jurisdiction with less than one-fourth the number of members. Senators are therefore spread more thinly and are less specialized. For example, in 2001 senators served on an average of 3.3 standing committees and 8.9 subcommittees; the corresponding numbers for representatives were 1.9 and 3.9.

**TABLE 2 ■ Votes on the 1996 Freedom to Farm Act**

	Phase out peanut supports	Democratic substitute
<b>Republicans</b>		
Agriculture committees	8.8% (34)	0.0% (34)
Others	61.3% (199)	0.5% (200)
All members	53.6% (233)	0.4% (234)
<b>Democrats</b>		
Agriculture committees	20.0% (25)	100.0% (23)
Others	48.5% (163)	84.8% (164)
All members	44.6% (188)	86.6% (187)
<b>All members</b>		
Agriculture committees	13.6% (59)	40.4% (57)
Others	55.5% (362)	38.5% (364)
All members	49.6% (421)	38.7% (421)

*Note:* Given above are the percentages of members voting “aye” on the two votes (the number of members is in parentheses). “Agriculture committees” means representatives who are on either the Committee on Agriculture or on the Appropriations Subcommittee on Agriculture and Rural Development. “Others” includes all other members.

On the other hand, only about half of House members are the chair or ranking minority member of a committee or subcommittee, whereas most senators are, giving them an institutional power base on which to focus.<sup>33</sup>

The Senate’s rules and traditions also vest more power in individuals and small groups than those of the House. The most familiar manifestation of this is the ability of a minority to block passage of legislation through filibuster, but there are many other aspects of the institution that reinforce individual power to delay or block Senate action. The House is

a “majoritarian” institution, in which the majority can work its will with even one more vote than the minority, but in the Senate the majority must usually pay attention to at least some minority views to achieve any results.

Another major difference is the role of the House Rules Committee that we discussed earlier. Through special rules, the majority party can decide which amendments, if any, may be considered on the floor. Moreover, regular House rules require that amendments be germane. In the Senate, neither of these conditions holds. Usually the only way to limit amendments is if senators *unanimously* consent to do so, and amendments need not be germane. Thus the Senate floor plays a much larger role in shaping the content of legislative outcomes than does the House floor, and it is much easier for senators who do not serve on the committee with jurisdiction to have an impact.

As a result of these differences, both Senate committees and Senate parties have been institutionally weaker than their House counterparts, and individual senators have been more consequential. Furthermore, because the majority party leadership usually has had to deal with some members of the minority, partisan conflict in the Senate has tended to be less frequent and less vitriolic. Nevertheless, over the last couple of decades party conflict has intensified in the Senate as well.<sup>34</sup> We have already considered some of the similarities and differences between the House and Senate over appropriations. As another example, in 1995 the new GOP majority adopted some rules to enhance party influence in the Senate. As in the House, six-year term limits were imposed on committee chairs. Chairs were to be chosen by successive, secret ballot votes, first among Republican committee members, then in the whole GOP Conference. Moreover, on some aspects of the Senate’s business partisan conflict was as vigorous as any seen in the House. The prime example was confirmation of judicial nominations, in which only the Senate has a role. Democrats used the power of the filibuster to block nominations by President George W. Bush that they regarded as unacceptable, while frustrated Republicans railed against their actions. . . .

## THE HOUSE UNDER SPEAKERS HASTERT AND PELOSI

We developed the theory of conditional party government to explain the ebb and flow of party influence in Congress over time. We have argued that as the policy preferences of party members become more homogeneous, and as the ideological centers of gravity of the two parties become more divergent, rank-and-file members will be progressively more willing to delegate strong powers to their leaders to advance the party's program and to benefit it electorally. In this chapter we described how the relationship between the party organizations in Congress and the committee systems changed, arguing that the changes were in accord with the expectations of CPG, especially after the Republican takeover in 1994. Although most observers found the arguments and evidence persuasive with respect to the Gingrich Congresses, some also raised the reasonable question of whether CPG would continue to account for congressional organization and policy making.<sup>35</sup> In this concluding section, we address that issue by discussing developments in Congress in the last decade, during the speakerships of Dennis Hastert and Nancy Pelosi.

CPG theory has a number of key features that we have to account for to demonstrate continued applicability: (1) Have intraparty homogeneity and interparty divergence remained high? (2) If so, has the majority party in particular continued to delegate strong powers to its leadership? and (3) Has the majority leadership continued to exercise its powers to facilitate achievement of the party's legislative and electoral goals?

With regard to the first question, the data are unequivocal. All research on the subject shows that the polarization of the parties continues.<sup>36</sup> The median positions of the parties on roll call measures have even been a bit farther apart during the last ten years than they were in the 104th Congress. Moreover, the proportion of Congress that takes positions in the middle of the ideological spectrum is smaller than ever. This evidence indicates that the underlying "condition" for CPG is still well satisfied. We will now consider the other two features of the

argument separately for the periods of Gingrich's two successors, as each provides a separate opportunity to test the predictions of CPG against data based on new members, leaders, and circumstances.

### Hastert's Speakership

The selection of Dennis Hastert, R-Ill., as Speaker provided a strong challenge for CPG theory because on taking office he promised that regular procedures would be restored. However, with regard to the willingness of members to delegate power to party leaders, none of the significant authority granted to the Republican House leadership was rescinded. To the contrary, Hastert sought and was granted additional power. For example, in late 2002 Hastert asked the GOP conference to give him and the party even more influence over the Appropriations Committee by requiring that the chairs of its subcommittees be approved by the party Steering Committee.<sup>37</sup> In addition the Speaker arranged to give the Steering Committee the right to approve full committee chairs. In 2001 and 2003, under Hastert's leadership, the committee bypassed a number of more senior and more moderate members to pick more junior and more conservative candidates for chairmanships. For example, Chris Shays of Connecticut, who had joined with Democrats against his party leaders in the successful fight for campaign finance reform legislation, was passed over for chair of the Government Reform Committee (where he was most senior) in favor of Tom Davis of Virginia, who had served on the committee only half as long. And in 2005, in perhaps the strongest use of leadership power against a committee chairman in a century, Chris Smith of New Jersey was removed from the top spot on Veterans Affairs because of his persistent efforts to increase spending on veterans programs. The leadership had warned Smith to be more compliant with their priorities or risk punishment.<sup>38</sup> When he continued, the threats were fulfilled.

Moreover, regarding the continued exercise of leadership powers, Hastert and his colleagues showed that they were more than willing to manipulate the legislative process for majority party advantage. For example, Hastert and then-Senate majority

leader Bill Frist, R-Tenn., presented a compromise that they had negotiated on the Medicare bill in late 2003, and Hastert pressured Ways and Means Committee chair Bill Thomas of California to accept it against his will.<sup>39</sup> Around the same time, majority leader Tom DeLay of Texas gave the Armed Services Committee chair an ultimatum to pass the defense authorization bill within two days, or else the leadership would strip out a popular provision and send it to the floor alone.<sup>40</sup>

Thus the Republican leadership continued to pressure and influence committees' actions. They also continued to use the tools at their disposal to structure the floor agenda and actions taken after bills are passed. Despite Hastert's promise to restore the use of regular procedures, the GOP continued to use restrictive special rules to block the Democrats from offering many of their preferred amendments. David Dreier, R-Calif., noted as chair of the Rules Committee that he used to complain about Democrats' use of special rules but that he learned "pretty quickly" that the majority party needed to use that device. "I had not known what it took to govern," he acknowledged. Now "our number one priority is to move our agenda."<sup>41</sup> Indeed, Don Wolfensberger, former head of the Republican staff on the Rules Committee, concluded, "By the 107th Congress (2001–2003) . . . the Republicans had far exceeded the Democrats' worst excesses in restricting floor amendments."<sup>42</sup>

The GOP leadership in both chambers at times restricted minority members from participation in the deliberations of conference committees. (These are temporary panels set up to resolve differences in legislation after bills have been passed by both houses.) For example, in 2003 only two moderate Democratic senators and no House Democrats were permitted to participate in the conference on the Medicare bill, and on the energy bill no Democrats at all were permitted in conference meetings. In using all of these techniques, the Republicans denied that they were being unfair to the Democrats. They contended that they were just doing what was necessary to enact their legislative agenda. As Speaker Hastert said in an interview in late 2003, "While a Speaker should strive to be fair, he is also judged by

how he gets the job done. The job of the Speaker is to rule fairly, but ultimately to carry out the will of the majority."<sup>43</sup>

## Pelosi's Speakership

The transition to Democratic rule after the elections of 2006 offered another opportunity to assess the predictions of CPG theory, especially the expectation that while polarization continued, the House Democrats could be expected to delegate strong powers to their leadership. The rules package for the 110th Congress that Speaker Nancy Pelosi, Calif., and her allies drafted and submitted confirmed the accuracy of that expectation. The package included all the main leadership powers that the Democrats exercised the last time they were the majority, plus some new ones from the era of Republican control. The most striking of these was Pelosi's decision to retain the six-year term limit for committee chairs. Moreover, she did not even inform senior Democrats of this decision until shortly before the vote on the new rules. Many of them objected (including John Dingell, the incoming chair of the Energy and Commerce Committee, who said, "I think it's dumb"), but all party members including Dingell voted for the provisions.

CPG theory would also lead us to expect the vigorous exercise of leadership powers on behalf of the party's program in the new Congress, with the support of the vast majority of Democratic representatives. This expectation is also borne out. Pelosi selected six bills—all high priorities for the party—to be considered in the first one hundred hours of legislative business. These bills bypassed committee consideration and were put together without GOP input. All were considered under closed or restrictive rules, so that Republicans were blocked from offering amendments. The Democrats successfully completed consideration of all six well before the hundred-hour deadline.

Of course the Democratic Party is not so homogeneous that it lacks any recalcitrant members. John Dingell was one, and his committee had jurisdiction over one of the Democrats' priority issues for the new Congress: the energy bill. Seeking to return processes to the regular order of the past, Dingell proceeded to

construct a bill according to his own lights, and his committee's draft included two significant provisions that were at odds with leadership priorities: They were an attempt to preempt states from regulating greenhouse gases from automobiles and a provision to override a recent Supreme Court decision confirming the authority of the Environmental Protection Agency to act to combat global warming.<sup>44</sup>

Pelosi called Dingell and some other members of the Energy Committee to a meeting in her office with the leadership. There she demanded that Dingell remove the two provisions from the draft bill. After some negotiations, Dingell agreed to comply.<sup>45</sup> Rep. Henry Waxman, D-Calif., chairman of the Energy Committee's Oversight Subcommittee, who attended the meeting, later said, "I have never seen a speaker take such an active and forceful role on policy. . . . [Former Speakers] Tip O'Neill or Tom Foley would not have told John Dingell or Dan Rostenkowski [a former Ways and Means chair] not to report out a bill, or what kind of bill to report out of committee. . . . [Dingell] was shocked by her action."<sup>46</sup> Pelosi also succeeded in other conflicts with Dingell, including the creation of a select committee on global warming and pushing through a floor amendment to the energy bill on renewable energy standards, over the chairman's objections.<sup>47</sup>

Despite these conflicts, it should be clear from our earlier discussion that CPG theory does not anticipate that the general relationship between the leadership and the committee chairs would necessarily be confrontational. Just as the Speaker is the top agent of the party caucus, chairs are agents too in the current era, of both the party and the leadership. Party leaders would prefer that they be faithful agents who can be trusted to pursue shared goals on their own. Leaders must also, however, be able to monitor activity and constrain chairs if they stray. That occurred in the 2007 interactions over energy policy. As majority leader Steny Hoyer, D-Md., put it, "There is a necessity for a unity of voice and purpose in the Democratic Party . . . and the only way you're going to do that was to have a central management to create consensus, not simply individual discrete committee agendas."<sup>48</sup> But as Barney Frank, D-Mass., chairman of the Financial Services Committee, said,

"This is not a zero-sum game. . . . It's a mutually supportive relationship."<sup>49</sup>

Pelosi also repeatedly demonstrated her willingness to employ control of the floor agenda through special rules to give preference to party priorities. As was the case with the six bills with which the Democrats opened the Congress, special rules that restricted or prohibited amendments were applied to the overwhelming majority of bills that came to the floor during 2007. These rules were drafted at the direction of the Democratic leadership, and partisan conflict over procedural arrangements reached unprecedented levels. In the 100th Congress, when there were substantial efforts at procedural manipulation under the direction of Speaker Wright, 90 percent of the Democrats opposed 90 percent of the Republicans on only 18 percent of the floor votes on special rules. In the 104th Congress, the first with Newt Gingrich as Speaker, that proportion increased to 58 percent. In the first session of the 110th Congress, however, fully 99 percent of the special rules votes saw this degree of party conflict!<sup>50</sup>

Another development in this Congress regarding the Rules Committee is a remarkable and telling indicator of how much the relationship between parties and committees has changed since the pre-reform era. Before 1974, when the Speaker regained the right to appoint the majority members and the chair of the Rules Committee, the committee was an independent center of power, and many members desired appointment to it so that they could exercise influence within the House. Virtually all appointees to Rules had to serve a number of terms in office before they could secure a place. Moreover, the committee was deemed so important and desirable that it was designated an "exclusive" committee—a member of it could serve on no other standing committee. In 2007, however, when the Democrats had to appoint five new members because they had regained majority status, four of the five were freshmen. The exclusive designation was removed, and Rules Committee members were given additional committee assignments as well. Having lost its independent power, Rules was no longer as important or desirable a post. It was merely an extension of the majority party leadership.

Control over special rules is not the only procedural advantage the majority leadership can bring to bear on behalf of its party. For example, in April 2008 President Bush sought approval for a trade agreement that his administration had negotiated with Colombia. He expected that a vote would take place within sixty legislative days because of the stipulation in congressional rules known as “fast-track,” giving such measures priority.<sup>51</sup> Bush knew that there was opposition to the agreement among some Democrats, but he judged that the short time frame and the oncoming election would exert pressure on Congress to comply with his wishes. Democrats, on the other hand, had been trying to persuade the administration to take some additional action to help economically distressed Americans before they addressed the trade deal. Speaker Pelosi responded to the Bush stratagem by bringing to the House floor a rules change that stripped fast-track procedures from this trade agreement. The change, which puts off a vote until the Speaker decides the time is right, secured the support of all but ten Democrats.

Moreover, the new Republican minority has sought to use its limited capabilities to encourage solidarity among its members and to compete with the majority. For example, Rep. Walter Jones, R-N.C., a generally conservative member who nonetheless had become a vigorous opponent of the war in Iraq, was passed over twice during the

110th Congress for the top minority position on a subcommittee of the Armed Services Committee because of his deviation from party orthodoxy.<sup>52</sup> Also, Jeff Flake, R-Ariz., another conservative who frequently disagreed with his party leaders in the previous Congress about their support for too much spending, was removed from his place on the Judiciary Committee. The minority leader, John Boehner, R-Ohio, later informed him that the action was taken because of Flake’s verbal attacks on party leaders.<sup>53</sup>

Thus all indications are that the theoretical account offered by CPG is as applicable in 2008 as it was in 1995. Partisan policy disagreement is at least as strong and partisan conflict just as intense. Indeed, these conditions continue to be reinforced by the close division of the two chambers. In every election since 1994, members of both parties have believed that they had a good chance to win majority control. That perception makes every decision on policy and legislative strategy potentially a high-stakes choice, giving the majority party strong incentive to use its institutional powers to the maximum. Therefore, as long as the legislative parties remain ideologically homogeneous and the ideological divergence between the two parties remains great, and as long as the partisan division of the chambers is close, we expect conditional party government theory to continue to provide a good explanation for congressional organization and activity.

## NOTES

1. This interest in developing and sharing expertise is the central focus in the “informational” theory of legislative organization presented by Keith Krehbiel in *Information and Legislative Organization* (Chicago: University of Chicago Press, 1991).
2. Richard F. Fenno Jr., *Congressmen in Committees* (Boston: Little Brown, 1973), chap. 1.
3. Indeed, David Mayhew contended that the institutional structure of the Congress was principally designed to foster members’ reelection. See David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974). Also see E. Scott Adler, *Why Congressional Reforms Fail:*

*Reelection and the House Committee System* (Chicago: University of Chicago Press, 2002).

4. See Richard C. Hall, *Participation in Congress* (New Haven: Yale University Press, 1996); and C. Lawrence Evans, *Leadership in Committee* (Ann Arbor: University of Michigan Press, 2001).
5. For more information on the history of the committee system, see Joseph Cooper, *The Origins of the Standing Committees and the Development of the Modern House* (Houston: Rice University Studies, 1970); and Christopher J. Deering and Steven S. Smith, *Committees in Congress*, 3rd ed. (Washington, D.C.: CQ Press, 1997).

6. For a detailed analysis of the growth of amending activity on the floors of both chambers see Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, D.C.: Brookings Institution Press, 1989).
7. For more details, see David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991), chap. 3.
8. See Rohde, *Parties and Leaders*, chap. 2; and John H. Aldrich, *Why Parties? The Origin and Transformation of Political Parties in America* (Chicago: University of Chicago Press, 1995), chaps. 6 and 7. An alternative (but compatible) theory of partisan organization of Congress is offered by Gary W. Cox and Mathew D. McCubbins, *Legislative Leviathan* (Berkeley: University of California Press, 1993).
9. Sara Brandes Crook and John R. Hibbing, "Congressional Reform and Party Discipline: The Effects of Changes in the Seniority System on Party Loyalty in the House of Representatives," *British Journal of Political Science* 15 (1985): 207–226. See also Fiona M. Wright, "The Caucus Reelection Requirement and the Transformation of Committee Chairs," *Legislative Studies Quarterly* 25 (2000): 469–480.
10. See Rohde, *Parties and Leaders*, 75–76.
11. Barbara Sinclair, *Legislators, Leaders, and Lawmaking: The U.S. House of Representatives in the Postreform Era* (Baltimore: Johns Hopkins University Press, 1995), 164.
12. For more details on this transformed relationship see Sinclair, *Legislators, Leaders, and Lawmaking*, chap. 9; and Rohde, *Parties and Leaders*, chap. 4.
13. Much has been written about the new role of the Rules Committee. See, for example, Bruce I. Oppenheimer, "The Rules Committee: New Arm of Leadership in a Decentralized House," in *Congress Reconsidered*, ed. Lawrence C. Dodd and Bruce I. Oppenheimer (New York: Praeger, 1977), 96–116; Stanley Bach and Steven S. Smith, *Managing Uncertainty in the House of Representatives* (Washington, D.C.: Brookings Institution Press, 1988); Sinclair, *Legislators, Leaders, and Lawmaking*, chap. 8; and Rohde, *Parties and Leaders*, 98–118.
14. See Gary C. Jacobson, *The Politics of Congressional Elections*, 5th ed. (New York: Longman, 2001), 178–185.
15. The discussion in this section is drawn from John H. Aldrich and David W. Rohde, "The Transition to Republican Rule in the House: Implications for Theories of Congressional Politics," *Political Science Quarterly* 112 (1997–1998): 541–567; and C. Lawrence Evans and Walter J. Oleszek, *Congress under Fire: Reform Politics and the Republican Majority* (Boston: Houghton Mifflin, 1997).
16. Quoted in Guy Gugliotta, "In New House, Barons Yield to the Boss," *Washington Post*, December 1, 1994, 1.
17. See Adler, *Why Congressional Reforms Fail*.
18. Sinclair, *Legislators, Leaders, and Lawmaking*, 163–197.
19. For more detail on the contract and Congress's actions on it, see James G. Gimpel, *Fulfilling the Contract: The First 100 Days* (Boston: Allyn and Bacon, 1996).
20. *Washington Post*, October 8, 1995, A5.
21. *Roll Call*, October 2, 1995, 20.
22. *Washington Post*, March 26, 1996, A9.
23. Task forces had been used before the GOP majority took over. See Sinclair, *Legislators, Leaders, and Lawmaking*. For more recent details on task force use, see Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, 2nd ed. (Washington, D.C.: CQ Press, 2000).
24. See *CQ Weekly*, September 23, 1995, 2886; *Roll Call*, October 12, 1995, 3. For more systematic analysis of bypassing committees, see Charles J. Finocchiaro, "Setting the Stage: Party and Procedure in the Pre-Floor Agenda Setting of the U.S. House," PhD diss., Michigan State University, 2003; and Sinclair, *Unorthodox Lawmaking*.
25. Sinclair, *Unorthodox Lawmaking*, 94.
26. *Ibid.*, 211 and 20, respectively.
27. *Roll Call*, March 20, 1995, 18.
28. *Congressional Quarterly Weekly Report*, October 21, 1995, 3207.
29. The data are adapted from Tables 1–4 in Jamie L. Carson, Charles J. Finocchiaro, and David W. Rohde, "Consensus and Conflict in House Decision Making: A Bill-Level Examination of Committee and Floor Behavior," paper delivered at the annual meeting of the Midwest Political Science Association, Chicago, April 2001. The data include all public bills and joint resolutions referred to a committee and either reported by the committee or debated on the floor.



30. See Mayhew, *Congress: The Electoral Connection*, 52–73.
31. The classification was developed by Deering and Smith, *Committees in Congress*, 3rd ed., chap. 3. The prestige committees are Appropriations and Ways and Means; the policy committees are Banking, Commerce, Education, Foreign Affairs, Government Operations, and Judiciary; the constituency committees are Agriculture, Armed Services, Interior, Merchant Marine, Science, Transportation, and Veterans Affairs. (Committee names change over time. These are the names for the 96th Congress.) The committees that the authors term “unrequested” are omitted, as are Rules and Budget because they consider few bills. Note that bills referred to more than one committee are counted for each committee to which they were referred.
32. These data are taken from Mark S. Hurwitz, Roger J. Moiles, and David W. Rohde, “Distributive and Partisan Issues in Agriculture Policy in the 104th House,” *American Political Science Review* 95 (2001): 915.
33. The dominant role of Senate subcommittee chairs is discussed in C. Lawrence Evans, *Leadership in Committee: A Comparative Analysis of Leadership Behavior in the U.S. Senate* (Ann Arbor: University of Michigan Press, 2001).
34. For discussions of various ways in which parties can be consequential in the Senate, see *Why Not Parties? Party Effects in the United States Senate*, ed. Nathan W. Monroe, Jason M. Roberts, and David W. Rohde (Chicago: University of Chicago Press, 2008).
35. See, for example, Lawrence C. Dodd and Bruce I. Oppenheimer, “Congress and the Emerging Order: Conditional Party Government or Constructive Partisanship?” in *Congress Reconsidered*, 6th ed., ed. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, D.C.: CQ Press, 1997), 390–413.
36. See, for example, Richard Fleisher and Jon R. Bond, “The Shrinking Middle in the U.S. Congress,” *British Journal of Political Science* 34 (July 2004): 429–451; and Sean Theriault, “The Case of the Vanishing Moderates: Party Polarization in the Modern Congress,” manuscript, University of Texas, 2004.
37. Remember that the Steering Committee is weighted toward leadership influence. See *Roll Call*, November 18, 2002, 1.
38. *CQ Weekly*, July 26, 2003, 1910.
39. *Washington Post*, November 30, 2003, A8.
40. *CQ Weekly*, November 8, 2003, 2785.
41. Jim VandeHei, “Using the Rules Committee to Block Democrats,” *Washington Post*, June 16, 2003, A21.
42. Don Wolfensberger, “The Motion to Recommit in the House: The Creation, Evisceration, and Restoration of a Minority Right,” paper prepared for the Conference on the History of Congress, Stanford University, December 5–6, 2003, 31.
43. *Roll Call*, November 17, 2003, 4.
44. See Richard E. Cohen, “Power Surge,” *National Journal*, July 21, 2007, 23.
45. *The Hill*, June 19, 2007, 3.
46. Quoted in Cohen, “Power Surge,” 22.
47. *The Hill*, February 6, 2007, 1. Pelosi did, however, agree to Dingell’s request that the select committee would not have any legislative jurisdiction.
48. Quoted in *Washington Post*, July 9, 2007, A4.
49. Quoted in *Roll Call*, November 5, 2007, 22.
50. The data on the 100th and 104th Congresses come from the PIPC House roll call database (“Roll Call Voting Data for the United States House of Representatives, 1953–2004,” compiled by the Political Institutions and Public Choice Program, Michigan State University). The data are available from Michael Crespín’s Web site, <http://crespin.myweb.uga.edu>. The data on the 110th Congress were compiled for this essay.
51. Fast-track legislation had expired in July 2007, but since the Colombia agreement was negotiated before expiration, the rules continued to apply to it.
52. See *The Hill*, October 16, 2007, 3.
53. See Robert D. Novak, “Bad Behavior?” January 13, 2007, at <http://townhall.com>.

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