

The Macropolitics of Congress

Edited by

E. Scott Adler and John S. Lapinski

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Lawmaking and History

David R. Mayhew

The "macropolitics" of Congress has become a success story. That would seem to be the main lesson to draw from the uniformly fine chapters of this volume. They are a heterogeneous lot. It would be gratuitous to try to summarize them one by one, probably unhelpful to reach for overarching generalizations (I cannot think of any) or in the cases of several chapters pointless, given my own background, even to comment.

Instead I would like to discuss a few of the chapters, or rather to address questions raised for me by a few of them. All my comments bear on the relation between databases and their accompanying theories, on the one hand, and actual legislative history as I see it on the other.

AGENDA SIZE

Charles R. Shipan asks in chapter 6: Does divided government increase the size of the legislative agenda? Yes it does, and significantly so, he plausibly demonstrates in his analysis of congressional lawmaking, both achieved and attempted, from 1947 through 1992. This is a welcome answer to a first-rate question. It casts light on whether policy change taken by itself (numerator indexing, let us call it) or, alternatively, policy change as a proportion of proposed policy change (ratio indexing, let us call it) should serve as a preferred measure of government production or productivity. If, in the context of divided versus unified government, legislative agenda sizes are appreciably endogenous, they are, to put it another way, artifactual. That realization advances the idea of relying on numerator indexing rather than ratio indexing as a gauge of government production.

I speculated about this subject, although I did not address it squarely, in writing my own work *Divided We Govern* in 1991. My judgment back then was that actual policy change is what observers of the American regime should be chiefly interested in. All the rest can be a kind of vapor that surrounds real legislative action without being very real itself. Politicians are always proposing

things. Parties are always proposing things. That is what politicians and parties are expected to do. But such offerings are often vague, shifting, untested, infeasible, or otherwise insubstantial. In general, a sensible public will discount all of them at a very high rate. Actual government production is the news chiefly worth paying attention to. To be sure, legislative enactments themselves can be vaporous achievements: Implementation is yet to come. But enactments ordinarily possess a certain solidity.

In addition, however, I did suspect back then that agendas are in certain interfering ways artifactual. That could be because, as in Shipan's account, both parties are in a good position to contribute to them under conditions of divided party control and thus render them on average larger. Another concern I had was personal idiosyncrasy, which might or might not iron out over time. This implicates particularly the presidency, where one person rather than a party has a chance to promote an agenda on Capitol Hill. Presidents can aim for large agendas or small ones. At opposite extremes, consider two historical instances. In 1913, incoming president Woodrow Wilson, fresh from the example of his acclaimed governorship in New Jersey, is said to have aimed for exactly three legislative achievements: banking reform, tariff reduction, and corporate regulation. That was all. He got them. That is a shrewd route to a perfect record. At the other extreme, President Harry S. Truman during the election season of 1948 asked the Republican 80th Congress to enact a lengthy laundry list of bills, assuming that they would not. They did not. That was a shrewd way to inject a large denominator into the system and then blame a "do nothing" Congress for its weak performance. In recent years, there is the instance of Newt Gingrich on the congressional side. Whatever else the Contract with America may have achieved in 1995, it brought into play a large congressional agenda. One result, in the circumstances of 1995-96, although I have not made any calculations, might have been a lowered ratio of accomplishment for that Congress.

To be sure, there is a political reality to the agendas of Wilson, Truman, Gingrich, and others. They are not nothing. On this subject, ratio studies are accordingly one good way to proceed.¹ But the taint of artifactuality that attaches to agendas, combined with their relatively high vapor content, argues for keying on actual changes from status quo policy to index government production or productivity.

POLICY REPRESENTATION

From my vantage point as an analyst of lawmaking, the work by Robert S. Erikson and his coauthors (see chapter 3) is a major achievement. It reaches across several subareas of political science, it is inventively grounded in both theory and data, and it embeds policymaking in public opinion in a way no one had succeeded in doing previously. The authors' coding of congressional

enactments since 1952 into liberal-tilting or conservative-tilting ones, as well as a large residual category tilting neither way, seems to be nicely done. It relies on judgments by expert contemporary observers (Erikson, MacKuen, and Stimson 2002, chap. 9). The result is a convincing dynamic of "policy representation" geared to the left-right dimension.

An unsettling by-product of the analysis, however, is the authors' documentation that liberal-tilting laws have outnumbered conservative-tilting ones by nine to one! At the per-Congress level: "On average, the net change (Laws) is between five and six major laws in the liberal direction, each Congress." What are we to make of this remarkable half-century march to the left? Is it believable? Has American public policy really been cumulating that way?

One answer is yes, the trend as measured is believable, at least to a considerable degree. Notwithstanding the Reagan revolution, the Gingrich revolution, and other conservative expressions, the argument would go, the actual role of U.S. conservatives is to prevent liberals from enacting more programs, not to reverse ones that have already been enacted. In general, rollback moves are not attempted or else they fail. That answer captures the history of, for example, entitlements programs quite well.

But another answer is that measurement error of a sort may be entering in. (It would be largely my own error in *Divided We Govern*.) Perhaps many liberal-tilting enactments are later undermined, chipped away at, or otherwise negated through processes, for example appropriations processes, that are not as flashily public as the initial enactments of the laws. Such instances of attrition might not make it onto "important laws" lists. Possibly this line of thinking has some truth in it too. For example, many high-reaching housing programs created through statute after statute from the 1940s through the 1960s seem to have withered away rather than been repealed. The higher the incidence of trajectories of this latter sort, the more clouded is the idea of a nine-to-one liberal edge in laws.

Yet I believe there is a third answer. Consider the following list of congressional enactments. All of them were selected from the list of important post-1946 laws included in *Divided We Govern* (1991) or else, since 1991, from updates I have posted through 2002 at <http://pantheon.yale.edu/~dmayhew/>.

- 1954 Authorization of the St. Lawrence Seaway
- 1954 Atomic Energy Act (laying the basis for a private atomic energy industry)
- 1955 Reciprocal Trade Act extended (with reformulated presidential authority)
- 1956 Federal Highway Act (authorizing the interstates)
- 1956 Upper Colorado River Project (big dams, irrigation)
- 1958 Creation of the National Aeronautics and Space Administration (NASA)
- 1962 Trade Expansion Act (promoted by President Kennedy)

- 1962 Communications Satellite Act (creating a private corporation to run it)
- 1968 Central Arizona Project (more big dams, irrigation)
- 1970 Rail Passenger Service Act (establishing Amtrak)
- 1973 Authorization of the trans-Alaska pipeline
- 1973 Regional Rail Reorganization Act (establishing Conrail)
- 1973 Structuring of Health Maintenance Organizations (HMOs)
- 1974 Foreign Trade Act (new "fast-track" authority to the White House)
- 1976 Copyright law revision (to cover photocopying, cable-TV royalties, etc.)
- 1978 Airline deregulation
- 1979 Foreign Trade Act extension (the Tokyo Round to reduce barriers)
- 1979 Chrysler Corporation bailout
- 1980 Trucking deregulation
- 1980 Depository Institutions and Monetary Control Act (deregulation of S&Ls)
- 1982 Garn-St. Germain Depository Institutions Act (more S&L deregulation)
- 1984 Cable Communications Policy Act (remake of cable-TV regulation)
- 1989 Bailout of failed savings and loans
- 1992 Deregulation of electric utilities
- 1993 Approval of North American Free Trade Agreement (NAFTA)
- 1994 Approval of General Agreement on Tariffs and Trade (GATT)
- 1996 Deregulation of telecommunications
- 1999 Deregulation of banking
- 1999 Y2K planning act (to ward off computer problems on January 1, 2000)
- 2000 Approval of Permanent Normal Trading Relations with China (PNTR)
- 2001 Bailout of airlines after September 11, 2001
- 2002 Federal terrorism insurance (an aid to construction industry)

In the language of Ira Katznelson and John Lapinski (see chapter 4), all 32 of these statutes are probably classifiable as "domestic: planning and resources" or "domestic: political economy." To put it another way, all of these statutes have either shaped the infrastructure within which the country's instruments of production have operated, or else they have directly shaped the structure of those instruments of production. For the years since World War II, it would be hard to come up with any other list of enactments as vital to the American business community.

Here is the point: Of the 27 of these laws enacted through 1996—the most recent year reached by the Erikson et al. coding scheme—*not one* scores as either liberal-tilting or conservative-tilting in that coding scheme (and again,

nothing seems to be wrong with the coding scheme). They were not seen by expert observers as liberal or conservative victories. All are plausibly rated "neutral." It is a good bet that the five laws listed above that were enacted during 1999–2002 would be rated "neutral," too, if they were comparably judged. The lesson seems to be: To a remarkable degree, elements of the U.S. business community have gotten what they needed from Congress during recent generations through statutes that have been, so to speak, "off cleavage." Granted, the needs or wants of the business community do not exactly equate to "conservatism." Still, the promotion and upkeep of private capitalism does somehow seem to be a fundamental interest of conservatism. Indeed, in the American brand of conservatism, is anything else as fundamental? The volume and importance of the items listed above seem to add a prominent qualifying asterisk to the evident nine-to-one liberal advantage among statutes that were enacted *on* cleavage.

Is this off-cleavage pattern involving the business sector any surprise? If it is placed in the full context of 216 years of U.S. national history, it does seem to be. Questions of foreign trade, banking and currency, "internal improvements" (to use the nineteenth-century term), and more generally issues of economic structure and infrastructure used to be exactly *on* cleavage. For generation after generation, from Alexander Hamilton through Herbert Hoover on one side and Thomas Jefferson through Cordell Hull on the other, nothing seems to have defined the American parties and their ideologies more cleanly than tariff policy, unless it was banking and currency policy. Consider Hamilton's credit and banking initiatives, the Jay Treaty in 1795–96, the banking controversy under Jackson and Van Buren, the Republican tariff hikes in 1861, 1890, 1897, 1922, and 1930, the Democratic tariff cuts in 1894, 1913, and 1934, and the controversy between Bryan and McKinley over silver versus gold. Internal improvements—questions of roads, railroads, rivers and harbors—also tended to divide the parties of the nineteenth century, with Whigs and then Republicans on the pro side and Democrats on the anti side.

It may not be wise to discern a "left-right" or a "liberal-conservative" cleavage in American history before, say, 1900 or so. Before that time these terms may be anachronistic. Yet any analyst sifting through congressional enactments back then, looking for major ones that tilted one way or another on the decisive ideological cleavages of those times, would no doubt have identified such statutes as Hamilton's banking plan, the Jay Treaty, the Walker Tariff of 1846, the Pacific Railway Act of 1862, and the McKinley Tariff of 1890. Proceeding into the early decades of the twentieth century, such a list might include the Aldrich-Vreeland Currency Act of 1908, the Underwood-Simmons Tariff of 1913, the Smoot-Hawley Tariff of 1930, the Glass-Steagall Banking Act of 1933, the Reciprocal Trade Agreements Act of 1934, and the Public Utilities Holding Company Act of 1935 (restructuring the utilities industry). Instruments like these would very likely have been rated as *on* cleavage.

Why the contrast between then and now? What seems to have happened is that the relation between capitalism and American electoral politics underwent a basic shift in the mid-twentieth century, perhaps as a joint result of the New Deal and World War II (see Gerring 1998, chap. 7). A range of issues that once made the ideological juices flow ceased to do that. "Anti-monopoly," as Alan Brinkley has written (1995), went out of fashion as an ideological litmus test. The country seems to have settled into an acceptance of private capitalism and the need to sustain it.

This does not mean that parties and ideological activists have had nothing to fight about since World War II. Liberal or conservative policy victories remained available or became so, as witnesses the Erikson list, in the areas of welfare state provision, taxation levels, regulation of labor markets, environmental protection, consumer protection, civil rights, and (this is outside the Erikson data set) hawk versus dove stances on foreign policy. But old standbys such as trade and banking went off cleavage, and new questions having to do with the structure or infrastructure of production arose without making it on cleavage. Consider the following contrasts: The enactment of the Public Utilities Holding Company Act of 1935 featured one of the twentieth century's great high-wire showdowns between "antimonopoly" forces and private capitalism, whereas the comprehensive deregulation of electric utilities six decades later in 1992 was technocratic and unexciting—a page-19 event. The Federal Reserve Act of 1913 remains one the Democratic Party's proudest accomplishments, whereas the highly important deregulation of the banking and related industries in 1999 was a cross-party, hard-to-understand, backroom deal.

Am I implying that the 32 statutes listed above were not, or could not have been, achievements that deserve the name "policy representation"? That is not my aim. Exhibited in the Erikson study is *one kind* of policy representation—that is, a kind associated with neatly liberal-tilting or conservative-tilting victories. Yet all of the 32 statutes listed above generated new policies, many of them emerged from spirited public controversy (consider NAFTA), and in all cases the records would probably show that dense representation was somehow going on. Lacking, for what it is worth, was the clear left-right victory motif.

THE 107TH CONGRESS OF 2001–2

The recent Congress of 2001–2 was unusually productive, and the content of its policy enactments was, to say the least, unusual.² How does that Congress fit into contemporary analytic tendencies, including those of this volume? Below are 16 enactments that seemed to emerge as important.³ (As it happens, 15 of them, all but the Bush tax cut, were enacted under conditions of divided

party control after the defection of Senator James Jeffords in early 2001 gave control of the Senate to the Democrats. The Republicans controlled all three elected branches in early 2001 when the Bush tax cut passed.)

Enactments during calendar 2001:

Bush tax cut. \$1.35 trillion over 11 years (provisional) repeal of the estate tax, cuts in top rates, doubling of child credit, relief from the marriage penalty, some immediate tax rebates. Largest tax reduction in 20 years.

Education reform. To redirect aid to poorest schools, mandate annual testing of student performance, hold schools accountable, hike federal spending. Bipartisan measure maneuvered by the White House and Senator Edward Kennedy. First major overhaul of the Elementary and Secondary Education Act since its enactment in 1965.

The following five enactments during 2001 ensued from the terrorist attacks of September 11:

Use-of-force resolution. Authorized president to use force against nations, organizations, or individuals involved in acts of terrorism or its harborers, including in Afghanistan.

USA Patriot Act. Sweeping new government powers to track and detain suspected terrorists and combat related money-laundering.

\$40 billion emergency spending. For defense, domestic security, recovery of New York.

Airline bailout. \$15 billion to airlines for grounding of flights, passenger drop-off, victim benefits.

Airport security. New government program to hire 30,000 airport screeners and inspect all baggage.

Enactments during calendar 2002:

Campaign finance reform. To ban soft money contributions to parties and curb attack ads just before elections. McCain-Feingold bill in Senate version, Shays-Meehan bill in House version. First major overhaul of campaign finance regulation since 1974.

Agriculture subsidies. \$180 billion over 10 years including a \$40 billion hike in grain and cotton subsidies; new environmental and conservation efforts. A rollback from free-market-oriented agriculture act of 1996.

Corporate responsibility act. Broad new regulation of businesses and their auditors, stiffer penalties for fraud, new oversight board for accountants. Sarbanes-Oxley Act. After Enron scandal. Toughest new restrictions since the 1930s.

Fast-track trade authority. Broad new presidential authority to negotiate trade deals with other countries subject to unamendable up-or-down congressional votes. Old authority had lapsed in 1994. New adjustment

assistance and health insurance aid for workers unemployed due to foreign competition.

Election reform. \$3.86 billion to the states to upgrade voting equipment and election administration. "Provisional ballots" and "second chance voting" to be allowed, computerized voter lists linked to driver's licenses to be required.

Iraq resolution. Authorized president to use armed forces "as he determines to be necessary and appropriate" to defend against "the continuing threat posed by Iraq" and to enforce all relevant UN Security Council resolutions on Iraq.

New Homeland Security Department. To fold 170,000 federal employees from 22 agencies into a new cabinet-level department charged with defending against terrorism. Broad presidential authority to hire, fire, and reassign employees. Largest government reorganization since 1947. Proposal hatched by Senator Joseph Lieberman, embraced by the White House.

Terrorism insurance. Government to reimburse insurance industry up to \$100 billion a year for claims resulting from future terrorist attacks. An aid to construction industry.

Commission created to investigate September 11 attacks. To probe government's failure to anticipate the attack. Ten members, five from each party. To report in 18 months. This was the commission that came to be cochaired by Thomas Kean and Lee Hamilton.

Obviously, the dominant theme in this mix is the government's response to the September 11 attack. Eight of the 16 enactments—9 if the White House's logic on Iraq is accepted—were reactions to that attack. What does that say about the 107th Congress? One answer might be: Well, all this post-September 11 action should not really count. It is off the charts. Political science can take a holiday until Congress reverts to its familiar, more agreeable agendas like taxes and the welfare state on which most academic analysis dwells. I believe that that answer would be a mistake. Reacting to emergencies is as enduring a theme of congressional lawmaking as anything else. In lawmaking terms, the best analogues of the Congress of 2001–2 are probably those of 1861–63 during the Civil War, 1917–18 during World War I, and 1941–42 and 1943–44 during World War II. Issuing from those Congresses were enactments providing for immense spending, taxing, and delegation, even if the U.S. Code was not greatly altered (see Heitshusen and Young, chap. 5). Some of those moves proved to be long-lasting. As a consequential revenue enactment, probably nothing in American history tops the shift, by statute, to income tax withholding during World War II via the Current Tax Payment Act of 1943 (Murphy 1996). Another candidate for a good analogue is the Congress of 1933–34, particularly its "hundred days" phase of early 1933. Although the New Deal is

ordinarily discussed under "party programs," it is well to remember that, in general, "the significant enactments of the Roosevelt One Hundred Days of 1933 [were] driven by the exigencies of the Great Depression, crisis economic conditions that were uniquely traumatic to the nation" (Freundreis, Tatalovich, and Schaff 2001, 868). The economy was collapsing.

There seem to be two implications here for political science analysis. First, a shift of status quo policy outside the congressional "gridlock interval" can be spectacularly caused by events other than elections. This is not a trivial point. Even in relatively normal times, interelection events can be necessary and very close to sufficient causes of major lawmaking (although of course the exact contours of the enactments are up for grabs). Consider the Marshall Plan in 1948, the McCarran Internal Security Act of 1950 (enacted at the peak of McCarthyism during the Korean War), the National Aeronautics and Space Act of 1958 (just after *Sputnik*), pharmaceutical drug regulation in 1962 (after the thalidomide scare), the Civil Rights Act of 1964 (after the Birmingham police dogs), the Economic Stabilization Act of 1971 (giving wage-price control authority to Nixon), the Emergency Petroleum Allocation Act of 1973, the bailout of New York City in 1975, an economic aid package for the former Soviet republics in 1992, and the Corporate Responsibility Act of 2002 (after the collapse of Enron). In the emergency contexts of 1861, 1917, 1933 (the U.S. banking system was collapsing in the late Hoover months *after* the election of November 1932), 1941, and 2001, it was searing interelection events brought on legislative drives that absorbed entire sessions of Congress.

The second implication involves level of conflict. Emergency contexts tend to press Congress toward unanimity, or at least toward lopsided results. This puts a strain on dimensional interpretations of congressional performance: How can one tell whether a roll call fits onto a general left-right (or something like that) dimension if every member votes yes? Political scientists have a habit of cold-shouldering unanimous, or nearly unanimous, congressional roll calls on the ground that they are unimportant. They are "hurrah" votes as in honoring national nasturtium week. Leaving out such votes is a great aid to statistical analysis. But there is a cost. Roll call analysis becomes motored by a theory of conflict rather than by a theory of lawmaking or policymaking. By what defensible standard, for example, can it be said that the congressional declaration of war against Japan in 1941, which drew one nay vote in the House and none in the Senate, and the use-of-force resolution in 2001, which brought the same pattern, were unimportant?

NOTES

1. As in Binder 2003. Binder has her own plausible coding scheme for arriving at biennial ratio-type indexes.

2. The succeeding Congress of 2003–4 was not particularly interesting or productive.

3. Two of the entries are joint resolutions rather than regular statutes: the use-of-force resolution following September 11, 2001, and the Iraq resolution of November 2002. In the list of laws in *Divided We Govern* and my biennial website updates to it through 2002 I did not include joint resolutions (see Mayhew 1991, 41). Yet it is hard to do justice to the legislative harvest of 2001–2 without including these two resolutions. In hindsight, I think I made a mistake not to include major joint resolutions previously. Certainly they can be important, and they emerge from the same process as ordinary laws—enactment by majorities in both congressional houses with the option of a presidential veto and a two-thirds override. Recently, I have checked back through 1947 to see which joint resolutions I should have included earlier. There are not very many. The plausible increments, all granting authority to presidents in topical foreign policy areas, are the Formosa resolution of 1955, the Middle East resolution of 1957, the Tonkin Gulf resolution of 1964, and the Persian Gulf resolution of 1991. For a discussion, see the currently posted material on my website that covers 1991–2002, as well as the 2005 edition of *Divided We Govern*.

REFERENCES

- Binder, Sarah A. 2003. *Stalemate: Causes and Consequences of Legislative Gridlock*. Washington, D.C.: Brookings Institution Press.
- Brinkley, Alan. 1995. *The End of Reform: New Deal Liberalism in Recession and War*. New York: Knopf.
- Erikson, Robert S., Michael B. MacKuen, and James A. Stimson. 2002. *The Macro Polity*. New York: Cambridge University Press.
- Freundreich, John, Raymond Tatalovich, and Jon Schaff. 2001. "Predicting Legislative Output in the First One-Hundred Days, 1897–1995." *Political Research Quarterly* 54:853–70.
- Gerring, John. 1998. *Party Ideologies in America, 1828–1996*. New York: Cambridge University Press.
- Mayhew, David R. 1991. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–1990*. New Haven: Yale University Press.
- . 2005. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–2002*. 2nd ed. New Haven: Yale University Press.
- Murphy, Kevin. 1996. "Child of War: The Federal Income Tax." *Mid-America* 78(2): 203–29.

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