

Chapter 1

Introduction

I've earned capital in this election—and I'm going to spend it for what I told the people I'd spend it on, which is. . . . Social Security and tax reform, moving this economy forward, education, fighting and winning the war on terror.

—President George W. Bush, November 4, 2004

The campaign is over. Democrats are ready to lead, prepared to govern and absolutely willing to work in a bipartisan way.

—Nancy Pelosi, November 8, 2006

On November 4, 2004, two days after the GOP triumph both in the presidential and Congressional elections, the reelected president George W. Bush held a press conference and emphasized what he considered to be a mandate emanating from the electoral results. Bush, who had won barely 51 percent of the popular vote, aggressively proclaimed that “the people have spoken and embraced your [his] point of view, and that’s what I [he] intend to tell the Congress.” Bush continued and stated that he would use *political capital* he had allegedly earned in order to pursue his policy agendas.

Ironically, Bush’s optimistic and simplistic view of the political landscape in his relationship with Congress reminded several pundits of the uneasy relationship between the former president Clinton and his first Congress. Clinton’s election in 1992 ended the twelve-year-long divided government, and there was an enormous expectation that the first unified government since 1980 would turn out decisive action and adopt innovative programs. In embracing the public’s expectation, Clinton announced that he anticipated his first hundred days to be the most productive period since Franklin Roosevelt (Fiorina 1996, 159). However, by 1994, the optimism surrounding the unified government was found to be wrong in everyone’s eyes. In the 103rd Congress, Clinton’s health care plan never made it to the floor, and he abandoned his proposal of the energy tax in the 1993 budget reconciliation bill. In addition, Republican filibusters successfully killed many of Clinton’s legislative initiatives, including the economic stimulus package and campaign finance reform bill.

As for the 109th Congress after the 2004 election, parallel to the 103rd Congress, President Bush suffered the Clintonite legislative quandary in the Republican unified government. Although Bush, in his second term, advocated swift policy changes including the partial privatization of Social Security, the guest worker program, antiterrorism surveillance, and extension of the 2001 and 2003 tax cuts, only the latter two were enacted in a modified version. The indication is that a factor other than divided government leads to legislative stalemate. David Mayhew's *Divided We Govern* (1991) examined the amount of significant laws enacted, and remarkably challenged the myth of an adversarial effect of divided government on governmental effectiveness. By extending his analysis of the amount of important laws to the year 2002, Mayhew (2005) has recently reasserted his claim that party control of government has no impact on legislative productivity. Further, scholars of the preference-based school have contended that preferences of individual legislators, rather than party control of the government, influence legislative productivity (Krehbiel 1996, 1998; Brady and Volden 1998, 2006). Specifically, the researchers observe that a passage of legislation needs the support of the *supermajority* of legislators, otherwise a minority of legislators would block the bill by mounting a filibuster or extracting and supporting the presidential veto.

This book extends and tests the assumption of nonpartisan, supermajoritarian lawmaking in the U.S. Congress. Presented herein is the theory that a sizable change from one Congress to the next in the preferences of the minority legislators who are ideologically more extreme decreases the potential of gridlock. Nonetheless, this book does not focus on *the amount of enacted laws* as a measure of legislative stalemate. If several significant policies are packed in a few omnibus bills, the modest quantity of the omnibus measures underestimates the significance of their policy output. Thus, the ratio or number of enacted bills does not suggest the significance of policy output by Congress. Accordingly, this book embraces a definition of gridlock as an *inability to change policy*, and attempts to explain *policy change*, or inversely *policy stability*, in legislative output.

109th Congress

In his State of the Union speech in January 2005, President Bush revealed the agendas for his second term, including the creation of individual accounts in the Social Security program, the guest worker program, the extension of the tax cuts of 2001 and 2003, and the reauthorization of the antiterrorism surveillance program. Among these agendas, the bills of social security reform and the guest worker program were not enacted because they failed to gain support

from a *supermajority* of the members in Congress. The tax cuts extension and reauthorization of the Patriot Act were diluted to win support from moderate members in Congress, and eventually passed.

Social Security Reform

President Bush's Social Security reform plan would introduce individual investment accounts for workers younger than fifty-five years of age. Up to 4 percent of the workers' wages could be apportioned in the accounts, and the account holders could invest the allocated funds in the stock market. Later, Bush admitted that his plan would also reduce the amount of benefits to retirees. The Democratic minority in Congress immediately expressed its adamant opposition to Bush's proposal. It became evident that Democrats in the Senate would filibuster any legislation of Social Security overhaul unless a bill was modified to gain support from some Democrats. On March 3, 2005, amidst public opinion polls showing overall opposition to Bush's plan, the Bush administration launched a "60 stops in 60 days" tour to enhance public support for Bush's Social Security reform and pressure the Democrats. However, by the end of the tour, it became apparent that all Democrats remained opposed to the presidential proposal, and even some Republicans were against it.

On June 23, Republican Sen. Jim Demint (R-SC) introduced a bill (S 1302) to create individual accounts in Social Security program. The bill proposed to use the current Social Security surplus to fund individual accounts. On July 14, several Republican members in the House Ways and Means Committee introduced a similar measure (HR 3304). By August, however, the Republicans in the Senate Finance Committee failed to agree on the sizes of individual accounts and benefit cuts. Also, Democrats and interest groups successfully lobbied moderate Republicans not to support the Social Security bills. In October 2005, sensing political risk for the midterm election the following year, the House GOP leaders, including J. Dennis Hastert (R-IL) and Roy Blunt (R-MO), urged that the Social Security debate be postponed until after the 2006 election.¹ Thus, by the end of 2005, the Social Security reform plan was stalled, and no action had been taken on any measures.

Guest Worker Program

In the beginning of the 2004 presidential election year, Bush revealed his plan for a temporary guest worker program. On January 7, 2004, Bush asked Congress to consider offering the legal status of "temporary worker" to illegal immigrants residing, and those wishing to find employment, in the

United States. Nonetheless, after the 2004 election, the Republican majority in Congress, especially in the House, was cautious toward Bush's proposal. In December 2005, the Republican majority in the House voted a bill (HR 4437) to enhance border security and increase the severity of penalties for illegal entry into the United States. Under the bill, illegal presence in the country, currently a civil violation, would become a felony, punishable by a year in a prison. The measure did not contain any guest worker provisions.

On March 27, 2006, the Senate Judiciary Committee passed its own bipartisan legislation (S 1033), the so-called Kennedy-McCain bill, by a 12-5 margin. In contrast to the House bill, the measure would allow the current illegal immigrants in the United States to temporarily stay in the country and apply for temporary worker visas first and permanent residence visas subsequently. The House and Senate Judiciary bills divided public opinion on the immigration issue. While human rights groups, in conjunction with farming and hotel lobbies, protested against the House bill, numerous groups marched to oppose the Kennedy-McCain plan and advocated a reduction in illegal immigrants. Also, several Republican legislators expressed their concern that the guest worker provision in the Senate Judiciary bill would give amnesty to the illegal immigrants who were currently present in the nation. Soon, President Bush expressed his skepticism toward the conservative wing within his party, who opposed the Senate measure. Bush stressed that "[m]y judgment is, you cannot enforce the border without having a temporary guest worker program—the two go hand in hand."²

Although several Republican senators maintained their opposition to the Kennedy-McCain bill, Senators Chuck Hagel (R-NE) and Mel Martinez (R-FL) proposed a compromise plan to gain a filibuster-proof support, at least sixty votes, for the Senate Judiciary bill. The Hagel-Martinez plan would strengthen border security, introduce a temporary guest worker program, and allow present illegal immigrants to apply for work and residence visas. On April 6, 2006, it appeared that more than sixty senators supported the Hagel-Martinez plan. Nonetheless, the Senate minority leader, Harry Reid (D-NV), requested majority leader Bill Frist (R-TN) not to consider amendments proposed by the opponents of the Hagel-Martinez measure. Reid also asked Frist to disclose who would represent the Senate in conference committee. In response to Frist's rebuff of Reid's requests, Reid filed to invoke cloture to limit the debate on the measure. The next day, the cloture was defeated 38-60. In return, Democrats blocked a GOP effort of cloture on the bill on border security (S 2454) by 36-62. Thus, as of April 7, 2006, the bipartisan effort to enact a guest worker program was broken apart.

On April 25, 2006, President Bush invited several Democratic and Republican senators, including Frist and Reid, to the White House. President Bush expressed his wish for an end to the legislative impasse and his support for the Hagel-Martinez measure. In May, the Senate held two weeks of debate on the bill, and the bipartisan coalition led by John McCain and Edward M. Kennedy defeated any amendments that were likely to increase opposition to the bill. Also, majority leader Frist informed minority leader Reid who would represent the Senate in conference committee. On May 25, the Senate finally passed the Comprehensive Immigration Reform Act of 2006 (S 2611) by a filibuster-proof margin, 62-36. Overwhelmed by excitement, Senate majority leader Frist could not refrain from expressing his delight, stating, "This is a momentous day for the United States Senate, in large part because we have demonstrated what is the very best about this body."³ Similarly, Chuck Hagel (R-NE), one of the cosponsors of the measure, stressed the significance of the passed bill, saying that "[t]his bill represents, at least in my brief ten years in the Senate, the most remarkable coalition of leadership I have seen."⁴

In sharp contrast to the sense of satisfaction and achievement in the Senate regarding the immigration reform bill, some House Republicans were concerned that the measure would reward current illegal immigrants who had broken the law, thereby attracting more immigrants to seek illegal entrance into the country. A few members even asked the House Speaker, J. Dennis Hastert, not to participate in the conference committee. House Majority Leader John Boehner (R-OH) stated, "I don't underestimate the difficulty in the House and Senate trying to come together in an agreement." After Hastert discussed the matter with several committee chairs in the House in August and September, the Speaker decided to postpone the discussion on the Senate measure until after the 2006 midterm election. Hastert stressed that the guest worker program was premature and the border security might be given priority. Haster stated, "We have a border that is bleeding to death. And we have to make sure we can stop that bleeding and get the patient well enough to fix other things."⁵ Soon after Hastert's decision, the House passed the U.S.-Mexican border fence bill (HR 6061), and the Hagel-Martinez bill was stalled until the end of the 109th Congress.

Reauthorization of Patriot Act

The House and Senate committee hearings on the reauthorization of sixteen provisions in the 2001 antiterrorism law (PL 107-56), known as the "Patriot Act," began in early April 2005. These sixteen provisions would expire

by the end of that year. The provisions included controversial elements, such as sections allowing federal agencies to install wiretaps and to subpoena corporations, schools, and other organizations for various records and documents. President Bush not only wanted to make all the provisions permanent, but also sought to expand the FBI's subpoena power to obtain any records without approval from a judge or grand jury. On June 7, the Senate Intelligence Committee approved a bill that granted much of what Bush requested. The Committee bill (S 1266), approved by 11-4 vote, would allow the FBI to issue search warrants in terrorism investigation without prior approval from a judge or grand jury. The bill would also expand the Foreign Intelligence Surveillance Act (FISA) to give the FBI more authority to seize business, medical, and library records. Almost immediately, the Senate Intelligence bill was harshly criticized by Democrats and civil liberty groups, who were concerned about potential abuses and violations of civil rights by the federal government.

In the House, Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-WI) introduced the bill (HR 3199), that would make all sixteen provisions permanent. Nonetheless, Sensenbrenner was soon forced by the bipartisan pressure in his committee to support an amendment to impose a ten-year expiration deadline on the provisions granting federal authority in using wiretaps and accessing business records. Subsequently, the Judiciary Committee passed the measure with the amendment on July 13, 2005, by 23-14 vote. On the same day in the Senate, as a compromise measure, the Senate Judiciary Committee chairman, Arlen Specter (R-PA) introduced the cosponsored bill (S 1389) with Sens. Dianne Feinstein (D-CA) and Jon Kyl (R-AZ) to set four-year, rather than ten-year, expiration dealines for the contentious provisions. The Senate Judiciary Committee unanimously passed the bill on July 21. On July 29, the Senate substituted the text of the Senate Judiciary bill into the House Judiciary bill (HR 3199) and passed it by voice vote.

On November 16, 2005, the GOP leaders in the House and Senate reached an agreement to place seven-year expiration dates on the two contentious provisions. However, the compromise plan was soon jettisoned when six senators, including three Republican members, threatened a filibuster against the measure. In early December, the GOP leaders in the two houses, joined by Vice President Dick Cheney, agreed with a conference report, imposing a four-year expiration on the two provisions. Still, the six senators, who requested more restrictions on federal authority to detain records, expressed obstinate opposition. Thus, as Senate Judiciary Committee chairman Specter remarked, a "unique combination of forces from the right and left" objected to the anti-terrorism bill.⁶ On December 16, the Senate failed to invoke cloture on the

conference report against the filibuster by 52-47. On the cloture vote, four Republicans, including Larry E. Craig (ID), Chuck Hagel (NE), Lisa Murkowski (AK), and John E. Sununu (NH), joined forty-one Democrats in voting against cloture.⁷ Outraged by the stalemate, President Bush called the filibuster “irresponsible,” and criticized it on the grounds that “it endangers the lives of our citizens.”⁸ On December 21, the Senate passed a six-month extension of the Patriot Act (S 2167), but the House passed a five-week extension and the Senate concurred.

In 2006, legislators faced a February 3 deadline for the reauthorization of the Patriot Act. In January, the White House Office and Justice Department staff met with John E. Sununu, and agreed on the additional changes to the conference report (HR 3199). One change excluded traditional libraries from recipients of “national security letters,” which are requests for subscriber records from phone companies and Internet providers. Other changes included allowing the recipients of business records requests to challenge gag orders in court, and removing the requirement that recipients of national security letters disclose the name of attorneys they consult. On February 1, the House voted to extend the Patriot Act again until March 10. The Senate voted to approve the same extension the next day. On February 9, Republican senators Craig, Hagel, and Murkowski expressed their support for the conference report with the changes offered by the White House. The changes were included in a separate measure (S 2271), and the Senate passed the bill, 95-4, on March 1. Subsequently, the Senate passed HR 3199 on March 2, and the House passed S 2271, by 280-138, on March 7. President Bush signed both the bills on March 9, a day before the expiration of the Patriot Act.

Tax Cuts Extension

In his 2006 fiscal year budget proposal, President Bush requested a 2010 extension for all of the 2001 and 2003 tax cuts. They included a two-year extension of the reduced 15 percent capital gains and dividends rate, which was set to expire in 2008, and a permanent extension of the “business tax break” including research and development credits. Because of the growing deficit, the GOP leaders found the permanent extension of the R&D and other credits difficult. They focused on the extension of the capital gains and dividends rate, and decided to pass the legislation within the “budget reconciliation process,” which prohibits a filibuster. Based upon the Congressional Budget Act of 1974, a budget resolution could specify reconciliation instructions to write bills that increase or decrease revenue or spending. The procedure was originally intended to reduce budget deficits.

On March 17, 2005, the House narrowly adopted its version (H Con Res 95) of the fiscal 2006 budget resolution by a 218-214 vote. The Senate also barely adopted its version (S Con Res 18) of the budget resolution by 51-49 on the same day. The final budget resolution (H Con Res 95) adopted by conference committee in April instructed the House Ways and Means and the Senate Finance Committees to identify \$70 billion in tax cuts through 2010 in the reconciliation procedure. On November 15, the House Ways and Means Committee approved, by a 24-15 vote, its \$56 billion tax cut reconciliation bill (HR 4297), which included a two-year extension of the tax cut on the capital gains and dividends. The House passed the committee's bill 234-197 on December 8.

In the Senate, Finance Committee Chairman Charles E Grassley (R-IW) had proposed a five-year, \$68.8 billion tax cut measure, including the extension of the capital gains and dividends rate through 2009, a year short of 2010, in order to win support from moderate Republicans. Nonetheless, Grassley faced strong opposition to the bill from fellow Republican Olympia J. Snowe (R-ME) within the committee. After unsuccessful negotiations among the GOP leaders and Snowe, the provision for the capital gains and dividends was eventually removed from the bill, and the Senate passed the \$57 billion tax cut measure (S 2020) with support from a supermajority of the members on November 18, 2005, by a 64-33 vote. Thus, in contrast to the House bill (HR 4297), the Senate measure did not include the extension of tax cuts on capital gains and dividends. Also, unlike the House package, the Senate bill would reduce the effect of the alternative minimum tax (AMT) on middle-class families.

On February 2, 2006, notwithstanding adamant objection from all the Democrats and a few Republicans, the Senate passed the House bill (HR 4297) by a 66-31 vote, but only after amending the measure to assimilate most of the text of the Senate bill (S 2020). After months of negotiations over the conference report, Republican leaders offered the provision to raise \$3 billion in revenue over five years and managed to gain support from a few Democrats. On May 10, the House approved the conference report (HR 4297), which included the extensions of both the investment income rate and the patch on the AMT, by a 244-185 vote. The next day, the Senate cleared the measure on a 54-44 vote. Three GOP senators, including Olympia J. Snowe (ME), Lincoln Chafee (RI), and George V. Voinovich (OH), joined Democrats in voting against the conference report, while three Democrats voted for the measure.

Divided Government-Gridlock Hypothesis

As the 103rd and 109th Congresses exemplify, unified government, as well as divided government, can result in low efficacy in lawmaking—the problem

popularly known as gridlock, impasse, or stalemate. Nonetheless, most scholars before the 1990s focused on the different partisan control of the executive and legislative branches as a major cause of gridlock. Woodrow Wilson observed that the Madisonian separation of powers could cause political conflict and inconsistency. Wilson advocated unified government, stating that “harmonious, consistent, responsible party government” connecting the “President as closely as may be with his party in Congress” is necessary for a well-functioning governance (Ranney 1954, 31–32). Wilson’s view was later embraced by the doctrine, if not positive theory, of “responsible parties.” Schattschneider (1942) advocated American democracy based upon political parties. He emphasized that political parties were the most legitimate and effective bodies to represent majorities. Key (1964) argued that the political parties linked and united the two branches. Key contended that “common partisan control of executive and legislature does not assure energetic government, but division of party control precludes it” (1964, 688). Ripley agreed, stating that “the President and a majority of both houses must be from the same party” for governmental productivity (1969, 168).

In the 1980s, with divided government becoming increasingly common, scholars viewed it as a major cause of gridlock (Sundquist 1980, 1988, 1992; Cutler 1988; Fiorina 1996, 2003). These scholars observed that divided government provided electoral incentives for interpartisan conflict between the two branches. Fiorina, for example, argued that a majority party in Congress “has every incentive to reject presidential initiatives; to accept them is to acknowledge the president’s competence and sagacity, hence, to support his reelection” (2003, 86).

However, by compiling a list of significant legislative enactments during the period from 1947 through 1990, Mayhew (1991) challenged conventional wisdom and revealed that divided government did not decrease the amount of important legislation enacted. Since Mayhew’s groundbreaking contribution, an increasing number of scholars have reexamined the theoretical and empirical grounds of the divided government–gridlock nexus. Several scholars have questioned Mayhew’s measure of the volume of enacted laws; they have alternately explored a *ratio* of the enacted legislation to the entire legislative agenda, and proclaim an impact of divided government (Binder 1999, 2003; Coleman 1999; Edwards and Barrett 2000).

The divided government–gridlock theorem entails two central premises: party unity and majority rule. As for party unity, the majority party in divided government, which is the president’s opposition party, could reject the presidential legislative initiatives if and only if its members are united to maintain sufficient votes to reject the presidential proposals. Several scholars argue that

legislators are united along with the party in order to solve collective action and coordination problems (Cox and McCubbins 1993, 2005; Aldrich 1995; Aldrich and Rohde 2000). Aldrich (1995) contends that since the transaction costs of bargaining and negotiating are lower within rather than across parties, legislators are more likely to be united within their parties. In their *conditional party government* theory, Aldrich and Rohde argue that parties become cohesive and disciplined when party members have homogeneous preferences within parties but heterogeneous preferences across parties (Rohde 1991; Aldrich and Rohde 2000). Also, Kiewiet and McCubbins (1991) assert that the legislators have incentives to engage in “common investment” in a party since the party label is a brand name for them. Consequently, Cox and McCubbins’s (1993) *Legislative Leviathan* hypothesis maintains that majority parties function as cartels to serve the party and make legislative decisions solely for the electoral interest of the party.

Apropos of majority rule, a majority party can block the presidential initiatives if and only if the majority of votes on the floor (and in committees) could reject bills. Aldrich and Rohde (2000) stress that a majority party enjoys substantial advantages in committee assignments, committee leadership, and the majority floor leader’s power over the floor agenda through rigid control of the Rules Committee. Similarly, Cox and McCubbins (2005) contend that the majority party leaders are able to block unfavorable legislation from reaching the floor with the support from committee chairs, the speaker, and members of the Rules Committee.

Supermajoritarian and Nonpartisan Lawmaking

While the divided government–gridlock hypothesis is predicated upon party unity and majority rule, there are some theoretical and empirical questions about these assumptions. When voting behavior is examined, some scholars observe that the partisanship of the two parties has been increasing since the 1980s (Rode 1991; Bond and Fleisher 2000; LeLoup and Shull 2003; Jacobson 2004). Many of these studies are based upon *party unity* scores, which are the percentage of members voting with a majority of their party on *party-split votes*, if not on all roll call votes. As Figure 1.1 and Figure 1.2 illustrate, party unity scores in the House and Senate have been increasing since the 1980s. Researchers contend that the Southern realignment followed by the civil rights revolution, as well as the Reaganite conservative movement, enhanced the ideological coherence within the two parties and increased the ideological distance between them. In particular, Figures 1.1 and 1.2 show that the party unity scores since the 1990s have reached a pinnacle, ranging from 85 to 95.

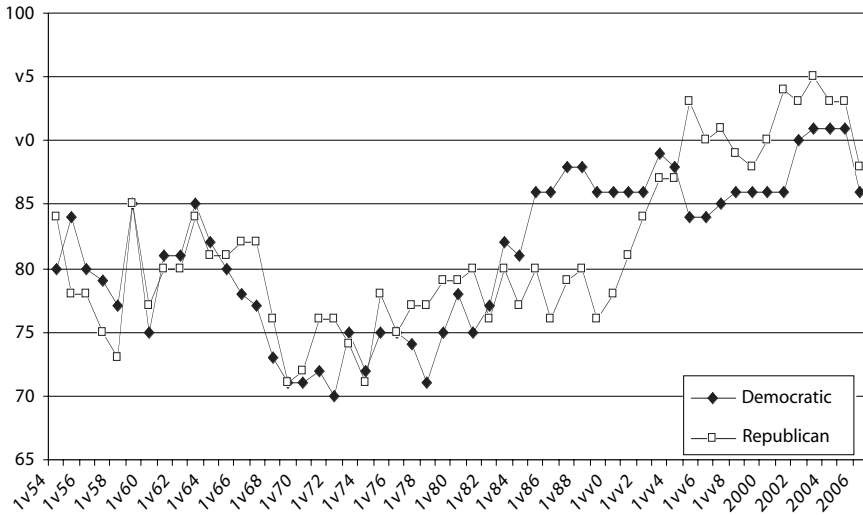


Figure 1.1 Party Unity Scores: House 1954–2006

Adapted from Norman J. Ornstein et al, *Vital Statistics on Congress* (2008, Brookings Institution Press).

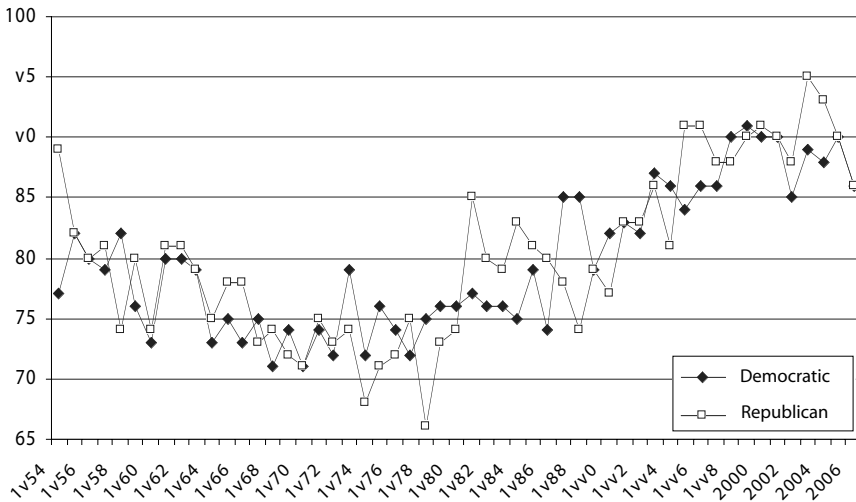


Figure 1.2 Party Unity Scores: Senate 1954–2006

Adapted from Norman J. Ornstein et al, *Vital Statistics on Congress* (2008, Brookings Institution Press).

Nevertheless, since the majority party almost always holds a *narrow* majority, even the seemingly ultra-high unity scores of the majority party do not indicate an ability to maintain majority votes on the floor. For instance, Table 1.1 shows the party unity scores of the majority party in the Senate from the 102nd to 109th Congresses (1991–2006). In the Senate, the majority party held fewer than sixty out of the one hundred seats. In the table, *Loyal Member* is calculated from the number of the majority party members multiplied by the party unity scores. Thus, Loyal Member indicates an average number of the majority party members voting with the party. Significantly, in all the examined Congresses, the majority party has maintained fewer than fifty loyal members, which indicates *minority* votes in the Senate. Of course, a few members of the minority party may have voted with the majority party on some bills. Nevertheless, the indication is that the high party unity scores of the majority party since the 1990s do not guarantee the majority party's ability to maintain majority votes. When there are few or no defections of minority party members, the majority party is unable to sustain a majority in voting on the floor. For instance, in the 109th Congress, the Social Security reform legislation was stalled because the measure was opposed by a few moderate Republicans and all Democrats. When the majority party needs votes from the minority party members, as it usually does, the majority party will have to modify the legislation. For example, as explained before, the Senate in the 109th Congress barely passed the tax cuts extension measure because the GOP leaders won support from a few Democrats by modifying the legislation.

Next, the *party unity* scores are the percentage of members voting with their party on *party-split* votes, but not on all roll call votes. If more than 50 percent of the majority party members, say 70 percent of the majority party members, vote with the minority party on a bill, the vote is considered to be a bipartisan

Table 1.1 Majority Party Unity Scores in Senate 1991–2000

Congress	Majority Party	Majority Party Members	Majority Party Unity Score	Loyal Members
102	D	56	82.5	46
103	D	57	86.5	49
104	R	52	91	47
105	R	55	88	48
106	R	55	90.5	49
107	D	50	87.5	43
108	R	51	94	47
109	R	55	88	48

vote and thereby the low party unity on the measure (70) is excluded from the calculation. This suggests that the party-split votes, which is the denominator in the measurement, could have inflated the party unity scores. Figure 1.3 shows the percentage of party-split vote, which is calculated from the percentage of roll calls on which a majority of voting Democrats opposed a majority of voting Republicans. The figure illustrates that party-split votes have increased in the early 1990s. Nonetheless, the average percentage party-split vote from 1954 to 2006 is 47 percent both in the House and Senate. The same figure for the last decade (1996–2006) includes 49 percent and 56 percent in the House and Senate, respectively. Thus, overall, the party-split votes account for approximately one-half of all recorded votes. Mayhew (1991, 2005) stresses the presence of *cross-cutting issue cleavages*, which are the issues that divide legislators *within* parties. Mayhew argues that civil rights, labor-management relations, anti-Communist policy (2005, 140–41), and recently, foreign trade (2005, 215) are examples of issues that have divided legislators' voting behavior in a nonpartisan manner.

As for majority rule, the assumption largely ignores the various supermajoritarian procedures in Congress. In accordance with Senate Rule XXII, senators maintain the right to engage in extended debate, the so-called filibuster, subject to a cloture vote, which can be successfully invoked by sixty or more senators. Thus, a minority (n=59) of leftist senators or rightist senators can block

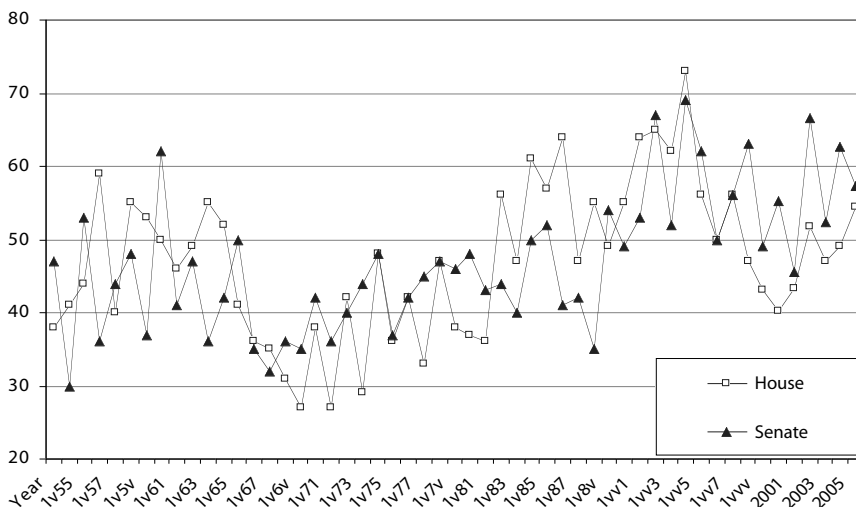


Figure 1.3 Percentage Party-Split Vote on Roll Calls 1954–2006

Adapted from Norman J. Ornstein et al., *Vital Statistics on Congress* (2008, Brookings Institution Press).

bills they dislike. Today, scholars observe that *threats* of filibuster are more common than actual filibusters and the former is as effective as the latter for blocking legislation (Sinclair 2007, 67–72; Oleszek 2004, 239–46). According to Barbara Sinclair (2002, 252–53; 2006, 211–24), approximately one-half of major legislation in the 1990s and early 2000s was filibustered or threatened with prospective filibuster.

Also, Article I, Section 7 of the United States Constitution, grants the president the authority to veto legislation, which in turn is subject to the ability of Congress to override the veto by a two-thirds vote of the members present and voting in the two chambers. This indicates that one-third plus one members whose preferences are close to the president's preference in *either* congressional chamber could reject unfavorable legislation. However, the mere number of exercised (and sustained) vetoes might not indicate the overall effect of presidential veto power since the *threat* of veto against a bill could sufficiently discourage the legislators from adopting it *ex ante* (Hinckley 1985; Kiewiet and McCubbins 1988; Edwards, Barrett, and Peak 1997; Sinclair 2007; Cameron 2000; Deen and Arnold 2002).

Scholars of the preference-based school contend that the minority party could challenge a majority with filibusters and presidential vetoes, and thereby gridlock could occur in unified government (Krehbiel 1996, 1998; Brady and Volden 1998, 2006). Jones (2001) finds that legislation is more likely to fail when the ideological positions of the two parties are highly polarized, but the impact of party polarization decreases as the majority party approaches the size of a supermajority. More precisely, Mayhew argues that many pieces of legislation are rejected because they fail to gain support from the *necessary broad majorities* (2005, 216). Consistent with Mayhew's observation, the bills regarding Social Security reform and the guest worker program failed in the 109th Congress because they did not receive bipartisan support. The extension of the Patriot Act was passed with bipartisan support after the bill was modified. The 109th Congress barely passed the tax cuts extension package without bipartisan support, but the measure was in the "reconciliation procedure," which prohibited a filibuster. Thus, the assumptions of robust party unity of the majority party and of majoritarian procedure are in a precarious state. The theoretical foundation, as well as the empirical findings, of the connection between divided government and gridlock are still fragile and need cautious examination.

Policy Stability

David Mayhew's *Divided We Govern* (1991, 2005) sparked a wave of scholarship on the politics of gridlock. The post-Mayhewian studies have focused on

various quantifications of legislative productivity as a measure of gridlock. In contrast, by following the definition of gridlock as an inability to change policy (Kernell 1991; Krehbiel 1998; Brady and Volden 1998; Chiou and Rothenberg 2003; Tsebelis 2002), this book essentially focuses on policy change as an indicator of gridlock. Mayhew defines innovative legislation as that which newspaper articles contemporaneously evaluated as important legislation *or* policy analysts retrospectively assessed as legislation with consequential impact (2005, 37–49). However, innovative laws must result in innovative policy. In the policy context, the innovativeness of laws indicates a new direction away from the status quo policy. Accordingly, several scholars define gridlock as an inability to change the policy of the status quo. Krehbiel defines gridlock as “the absence of policy change in equilibrium in spite of the existence of a legislative majority that favors change” (1998, 26). Thus, as Krehbiel acknowledges (1998, 5), gridlock is equivalent to what some scholars call policy stability (Hammond and Miller 1987; Riker 1992; Tsebelis and Money 1997; Tsebelis 2002). Tsebelis defines policy stability as “the impossibility of significantly changing the status quo” (2002, 6). Tsebelis stresses the importance of studying policy stability as an indicator of governmental decisiveness, but also as an explanatory variable for governmental stability and judicial independence.

Plan of the Book

This book explores the assumption of nonpartisan, supermajoritarian lawmaking in the U.S. Congress. The book proposes various explanatory models and conducts empirical tests pertinent to the influence of the preference of the minority legislators on policy change. The next chapter examines the various measurements of legislative productivity by Mayhew and other scholars, followed by the discussion of whether or not legislative productivity reflects the innovativeness of policy output by Congress. Subsequently, the chapter proposes policy stability as an indicator of gridlock in the policy context. The chapter measures policy stability, or inversely policy change, based upon the ADA scores, and examines the variation in the indicator.

Chapter 3 studies the supermajoritarianism of the U.S. Congress. Accordingly, the chapter proposes the *pivotal interval movement model*, based upon the Brady-Kehbiel-Volden school of preferential, nonpartisan theory of lawmaking. The pivotal interval movement model presumes that a *gridlock interval* between the filibuster and override pivots in the previous Congress is transformed to a status quo interval for the new Congress. The model introduces a concept, *residuum*, which is a portion of the gridlock interval of the previous Congress

not overlapped by the gridlock interval of the new Congress. This suggests that when the residuum is wide, the policy output of legislation is more likely to change. However, in contrast to the nonpartisan basis of the pivotal interval movement model, the cartel agenda theory by Cox and McCubbins (2002, 2005) maintains that the majority party successfully blocks measures it dislikes. In order to compare the cartel assumption with the pivotal interval movement model, chapter 3 constructs the *cartel interval movement model* predicated upon the partisan assumptions of the cartel agenda model. Consequently, two contending hypotheses are generated from the two models of the interval movement.

In chapter 4, empirical models are employed to analyze the influence of the width of the residuum of pivotal and cartel gridlock intervals, separately, on policy change. The models focus on the nominal and weighted ADA policy change scores in twenty-seven Congresses from 1953 to 2006. In addition to the various measurements of the residuum, the independent variables of divided government, budgetary situation, public liberal mood, and start of the presidential term are included in the models.

Chapter 5 presents the veto players model to explain policy change. Parallel to the pivotal interval movement model, the veto players model is predicated upon the assumption of nonpartisan, supermajoritarian lawmaking. In contrast to the pivotal interval movement model, however, the veto players model is based upon a two-dimensional policy space. The chapter plots the preferences of veto players, including the filibuster, veto, and House median pivots, in two-dimensional Cartesian space. These veto players are likely to support legislation within their unique indifference curves, which circle their respective ideal points and pass through the status quo point. On the other hand, the veto players are likely to reject bills outside their indifference curves. Since all the veto players must *unanimously* support a bill for passage to occur, only legislation in the intersection of all the four indifference curves, so-called winset, are likely to pass. The empirical analysis examines the influence of the area of the winset on policy change.

Chapter 6 studies the blockage of agendas from reaching floor consideration. A party is *rolled* when a majority of its members vote against a measure, a majority of the opposite party's members vote for the measure, and the motion passes on a final-passage vote. Cox and McCubbins (2002, 2005) find low roll rates of the majority party, and argue that the majority party's negative agenda power is unconditional. The chapter first examines the validity of roll rates as a measure for partisan negative agenda power. Subsequently, the empirical study analyzes: (1) the floor bills a party has opposed, and (2) influence of the

distance between the status quo and the floor median points on the percentage legislative agendas that reach the floor.

The book concludes in chapter 7 by summarizing and comparing the findings on policy change. The chapter discusses influences of party and supermajoritarianism. The chapter also indicates potential reforms to alleviate gridlock in the American government.