Polarized We Govern?[1]

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INTRODUCTION

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"Most of the imbalances I have analyzed…have not been major, permanent, systemic problems. More precisely, at least during recent generations, many alleged problems have proven to be nonexistent, short-term, limited, tolerable, or correctable." (Mayhew 2011, p. 190).

"We hope that Mayhew is right and that this difficult patch will prove to be routine, short term and self-correcting…But we doubt it. These are perilous times and the political responses to them are qualitatively different from what we have seen before." (Mann and Ornstein 2012, p. 111).

In October 2013, Congress and the president hit an impasse over funding the government and increasing the nation's borrowing limit. Lawmakers' inability to reach common ground shut down the government and brought the country perilously close to defaulting on its debt. Such legislative drama–coupled with Congress's paltry legislative records since 2011–has fueled debate over whether the U.S. national political system is irreparably dysfunctional. Thomas Mann and Norman Ornstein (2012, XIV) offer the most pungent critique, arguing that transformation of the Republican Party into an "insurgent outlier" has paralyzed our governing institutions. In contrast, David Mayhew (2011) urges caution, arguing that anti-majoritarian biases in American politics are rarely permanent. In short, Mayhew says that our political system is self-correcting; Mann and Ornstein suggest instead that the Republican Party has forced our legislative machinery off the rails.

In this paper, I tackle the debate between Mayhew and his critics and offer new data to evaluate the problem solving capacity of Congress and the president in recent, polarized times. To be sure, it can be hard to see the forest through the trees; a better assessment might be made a decade hence. Still, the evidence points us towards middle ground. On one hand, a model of legislative stalemate (Binder 2003) that was developed to explain patterns in legislative performance in the second half of the 20th century accounts fairly well for Congress's legislative performance in recent years. This suggests that recent congressional deadlock may be different in *degree* from past deadlock, but not necessarily in *kind*. On the other hand, we see a marked increase in the frequency of legislative deadlock over the past decade, and the most recent Congress in 2011-2012 ranks as the most gridlocked during the postwar era (albeit tied with the final two years of the Clinton administration). Moreover, even when Congress and the president manage to reach agreement on the big issues of the day, these deals are often half-measures and second-bests. In short, whether our political system will self-correct in the coming years remains an open question.

SETTING THE SCENE

At the close of the 112th Congress in early January 2013, numerous Washington observers charged that the 112th Congress was the most dysfunctional Congress ever. Brinkmanship and last-minute deals prevailed. With a newly elected Republican majority in the House and a small Democratic majority returning in the Senate, lawmakers' disagreements nearly caused a governmental shutdown in April of 2011 and came close to forcing the government to default on its obligations that summer. In the following Congress in October 2013, lawmakers actually went over the brink, failing to pass a bill to fund government operations and bumping right up against Treasury's debt limit. Beyond fiscal policy deadlock, legislators' efforts in both Congresses to reach long-term solutions on perennial issues of transportation, agriculture, education, environment and others often ended in stalemate. As Senator Joe Manchin (D-WV) summed up Congress's performance early in 2013, "Something has gone terribly wrong when the biggest threat to our American economy is the American Congress" (as cited in Steinhauer 2012). Judging by the public's reaction, Congress's performance was abysmal. At times only ten percent of the public would admit to pollsters that they approved of Congress's on-the-job performance.

It is tempting to pin the entire blame for inaction on heightened partisan polarization. The first two years of the Obama administration, however, complicate the finger pointing. In the 111th Congress, under unified Democratic party control with a short-lived filibuster-proof Senate, Congress and the president produced a legislative record deemed to rival Lyndon Johnson's accomplishments in the mid 1960s; as Norman Ornstein argued, Congress's record was "at least on par with the Great Society" (Murray 2012). With GOP support ranging from some to none, the Democratic Congress enacted a mammoth economic stimulus bill, adopted landmark

health care reform, revamped the financial regulatory system, abandoned the military's "Don't Ask, Don't Tell" policy, ratified a new arms control treaty, temporarily extended Bush era tax cuts, and more.

The divergent records of the 111th and 112th Congress pose a challenge for judging Congress's recent legislative performance. Three questions arise. First, how well do journalists' descriptions capture Congress's legislative performance across the four years? One approach counts the number of accomplishments that meet a threshold of landmark significance, as ably executed by Mayhew (1991, 2005). In more recent work, Mayhew (2011) implies that a denominator might be useful: He analyzes the fate of key presidential proposals over the past sixty years. Once we account for the demand for legislation as well as its supply, are the 111th and 112th Congresses still rivals for the best and worst Congresses respectively of the postwar period? Below, I update a time series on legislative gridlock to provide a better metric for judging the records of recent congresses.

Second, with a longer time series on legislative deadlock, how well do existing empirical models of legislative gridlock perform? To assess whether "this time is different," I use my model from *Stalemate* (originally tested with data from 1947 to 2000) to generate predicted levels of legislative deadlock over the past decade. To the extent that the model consistently over- or underestimates legislative gridlock, such a finding would encourage us to consider how and why legislative dynamics might be different today than before. If instead the model yields relatively accurate predictions—even in a period when the institution seems to have hit its modern nadir—then we might hesitate to conclude that the system is no longer self-correcting. To be sure, this is an easier judgment after significant passage of time. Still, such analysis should help us to put recent Congresses' collective capacity for identifying and resolving problems into perspective.

Third, Mann and Ornstein (2012, XIV) suggest that the source of Congress's recent dysfunction lies largely in the behavior of today's Republican party—termed an "insurgent outlier." After confirming the asymmetric polarization that Mann and Ornstein point to as evidence of the GOP's outlier status, I consider other ways to think about the import of Republican preferences and strategies on congressional performance. Assessments of the short-term corrigibility of our political system depend in part on what we conclude from such evaluations. I suggest that some caution may be in order in drawing firm conclusions about the ability of our political system to self-correct in the near term given its recent off-road travel.

THE LANDSCAPE OF CONGRESSIONAL DEADLOCK

The contemporary study of legislative performance began with publication of David Mayhew's *Divided We Govern* (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 as V.O. Key observed in the 1960s, "Common partisan control of executive and legislature does not assure energetic government, but division of party control precludes it" (Key 1964, 688). Decades later, scholars (including most prominently James Sundquist) 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 (Sundquist 1988–89).

In *Divided We Govern* (2005a, 36), Mayhew returns us to these pursuits by asking a simple and accessible question about Congress's performance in the postwar era: "Were many important laws passed?" Mayhew's empirical goal is to set up a test of the effect of divided party control on the level of lawmaking. Toward that end, he identified landmark laws in a two-stage process that combined contemporary judgments about the significance of Congress's work each session with policy specialists' retrospective judgments about the importance of legislation. Based on these data, Mayhew generated a comprehensive list of landmark laws enacted in each Congress between 1946 and 1990 (subsequently updated through 2012). Mayhew then tested whether the presence of divided government reduced the number of major laws enacted 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 disentangles several other influences on Congress's performance. Some of those forces–including legislators' electoral incentives–point towards constancy in the record of lawmaking. But other forces, Mayhew demonstrates, 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 to explain and measure variation in Congress's legislative performance over the postwar period (among many others, see Binder 2003 and 2011, Brady and Volden 1998, Edwards et. al. 1997, Krehbiel 1998). Perhaps the most prominent theoretical response to Mayhew's work is Krehbiel's *Pivotal Politics*. Krehbiel's work, however, is less a challenge to Mayhew's argument than a formal elaboration: he provides a theoretical framework for explaining why party control is less important to explaining patterns of lawmaking than the distribution of lawmakers' policy

preferences interacting with the rules of the legislative game. In contrast, I suggest elsewhere (1999, 2003) that the shape of the parties after each election shapes the capacity of Congress and the president to legislate. Unified party control fuels legislative capacity, but sharply polarized parties–coupled with bicameral hurdles to compromise–undermine it.

Divergent analytical perspectives are compounded by debates over how best to measure Congress's legislative capacity. Much of the methodological debate centered on whether a measure of Congress's legislative capacity requires a denominator–a baseline against which to compare Congress's output. Mayhew's concerns about the difficulty of defining and identifying a relevant and measurable denominator were well-taken. Still, I offered in *Stalemate* (2003) 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. The result is a ratio of failed measures to all issues on the agenda each Congress. My sense is that this measure of gridlock is up to the task, largely because it meets key benchmarks we might impose to judge a measure's construct validity. The measure identified Lyndon Johnson's Great Society Congress as the most productive of the postwar period and determined that Clinton's second session congresses were the most deadlocked. Both assessments comport with historical and contemporary coverage of Congress's postwar performance.

As I explained in detail in Appendix A to *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 *Times* attention to an issue in any given Congress as an indicator of issue salience, I identified for each Congress between the 80th (1947-8) and the 106th (1999-2000) the most salient issues on the legislative agenda.[2] 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 score captures the percentage of agenda items left in limbo at the close of the Congress.

Figures 1a and 1b display the size of the policy agenda from 1947 to 2012, coupled with the number of failed legislative issues each Congress. All issues are included in the top figure; salient issues in the bottom. Looking first at the smoothed trend line in the overall number of legislative issues mentioned 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

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2 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 each Congress.

women's movements of the 1970s. Only in recent years do we see a slight increase in the size of the agenda, no doubt reflecting both later efforts to renew the spate of landmark laws of the earlier, activist period and newer issues brought to the fore by the war on terror, global climate change and so on.[3]

FIGURE 1A: NUMBER OF LEGISLATIVE ISSUES APPEARING IN THE NEW YORK TIMES EDITORIAL PAGES: 1947-2012

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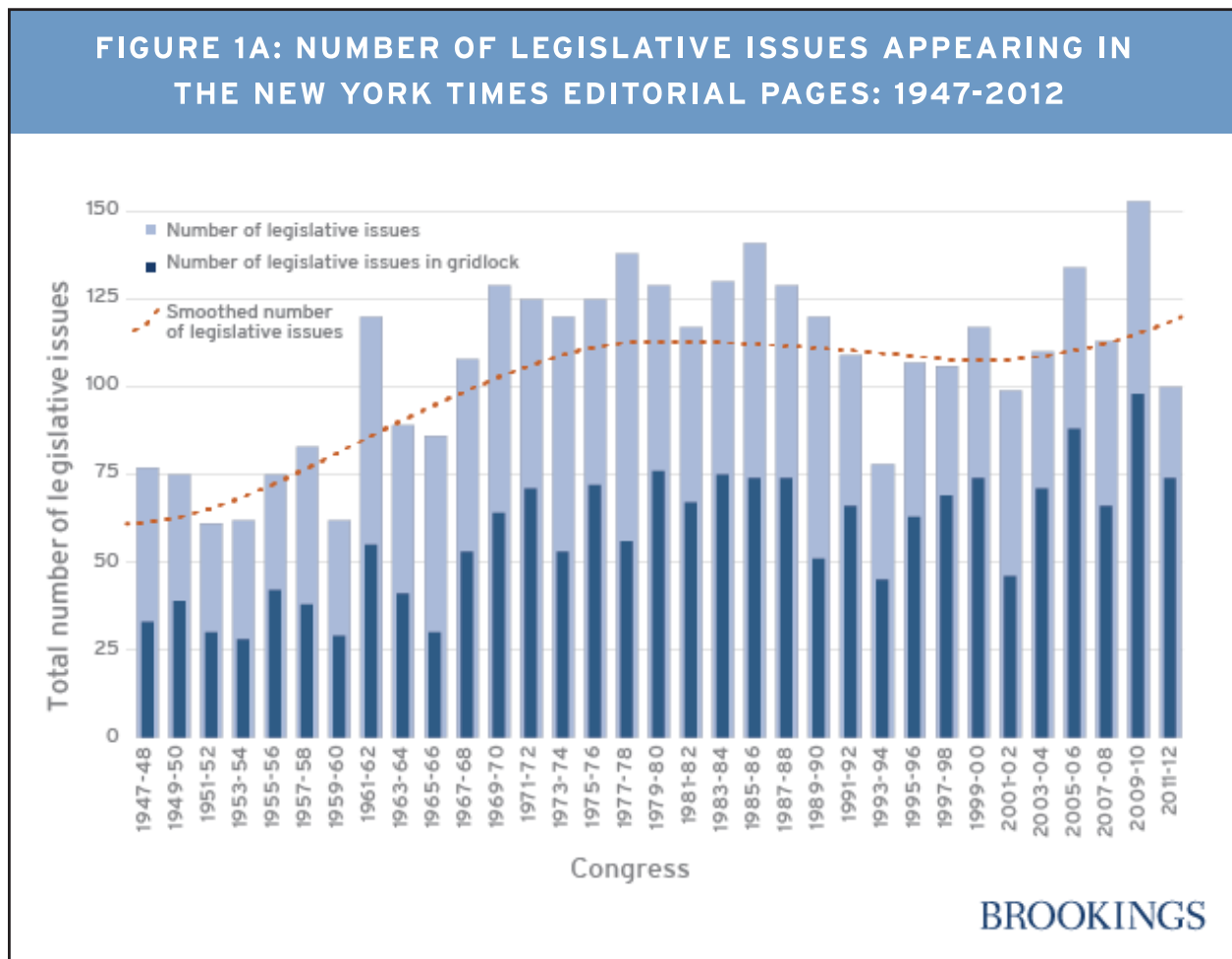
3 Note that across all levels of salience, the relationship between party control and the number of issues on the legislative agenda is not statistically significant at conventional levels. When I control for Democratic presidents (under the assumption that Democratic presidents generate larger agendas than do Republicans) and a simple time trend, party control appears to weakly affect the size of only the moderately salient agenda (1-tailed t-test <.05). (The analysis below examines only more salient issues.)

FIGURE 1B: NUMBER OF SALIENT LEGISLATIVE ISSUES APPEARING IN THE NEW YORK TIMES EDITORIAL PAGES: 1947-2012
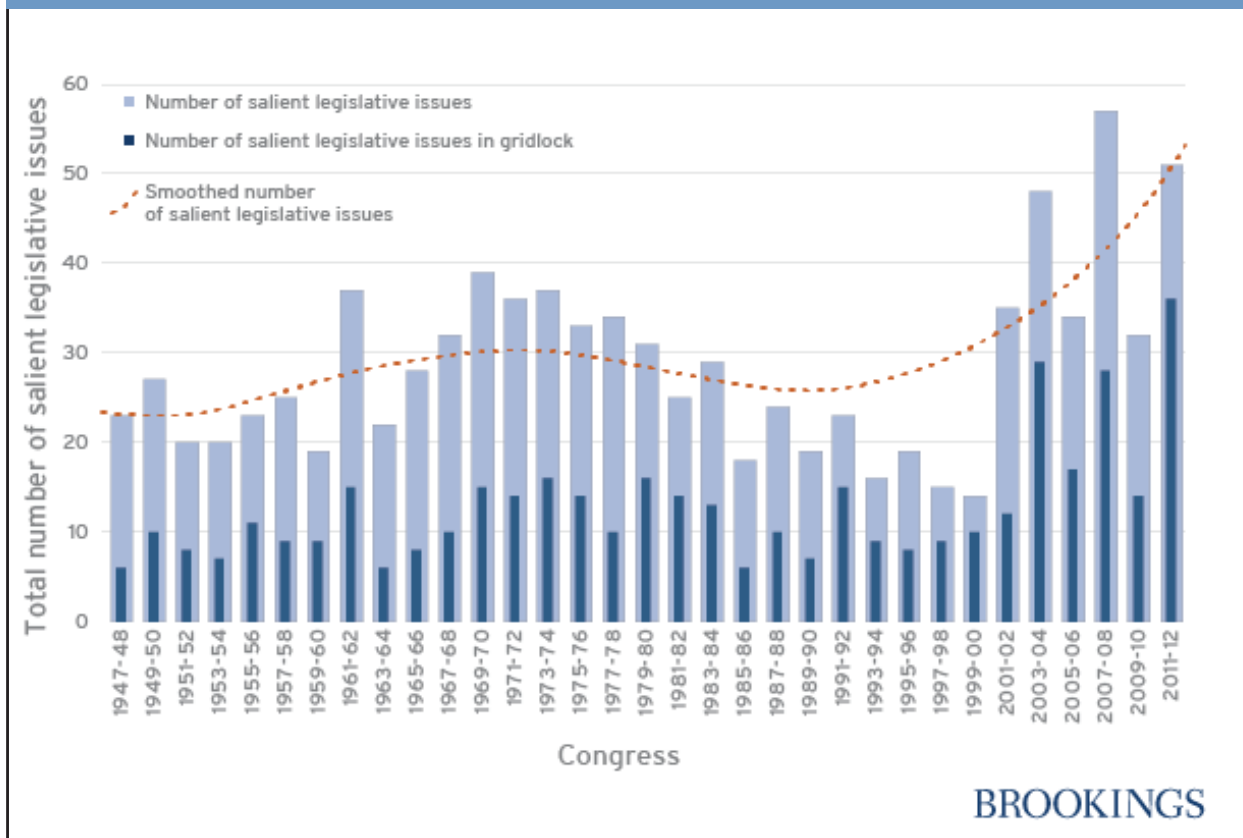
The trend in the number of salient issues in the bottom figure is more eye-catching. The overall size of the agenda increases only incrementally over the most recent decade, but the number of salient issues rises markedly in the 108th (2003-4), 110th (2005-6) and 112th (2011-12) Congresses. This jump in the number of issues attracting heightened levels of editorial writers' attention raises questions about the comparability of my original time series and the updated series for the most recent decade. However, as I detail in the Appendix, I can rule out potential methodological issues that might limit the reliability and validity of the longer times series. First, the Times does not appear to have changed its practices in terms of the overall number of editorials written daily over the longer period (ranging from three to five editorials per day), although it seems plausible that Congress attracts a greater share of the writers' attention over the past decade. Second, although there have been some changes in the electronic databases containing the editorials, such differences do not appear to be inflating the number of mentions of legislative issues on the editorial page. Third, the *Times'* expansion of its weekend opinion pages in recent years does not appear to have affected the number of published, unsigned editorials. In short, the data suggest a marked increase in the number of big ticket legislative issues attracting the attention of the Times' editorial board. It

is also possible that the increase gridlock in recent years has indirectly fueled the size of the salient agenda, as the big issues of the day remain unresolved and thus recur on the nation's agenda. Failure to address reform of immigration law, entitlement programs, and the tax code, for example, likely helped to fuel the size of the salient agenda in recent years. Finally, a spate of new issues in the past decade likely caught the attention of the Times' editorial writers, including homeland security, global warming, cyber security, the return of deficits after the 1990s, the U.S. wars in Iraq and Afghanistan, the onset of financial crisis, and the worst economy since the Great Depression.

Figure 2 shows the mean level of gridlock (aggregated over the 80th-112th Congresses, 1947-2012) across different levels of salience. The far left line shows the average level of deadlock (roughly 54 percent) on the least salient issues (mentioned by the Times only once in a Congress). The far right line shows the average level of deadlock (roughly 43 percent) on the most salient issues (mentioned by the *Times* five or more times in a Congress). The data suggest that more salient issues are slightly less prone to deadlock than are less salient issues; in other words, issue salience is not simply a proxy for legislative conflict. Granted, the confidence intervals overlap as we move from least to most salient policy issues. But we can at least draw a distinction between gridlock on issues receiving only passing reference from the *Times* (such as the future of AmeriCorps) and issues that attract considerable, sustained attention (such as immigration reform). The higher level of deadlock on the low salience issues suggests that these are issues that get little attention on Capitol Hill, have few champions or critics (beyond the *Times*' editorial writers), and thus can probably safely be ignored in examining Congress's legislative capacity.

FIGURE 2: AVERAGE LEVEL OF DEADLOCK, BY ISSUE SALIENCE
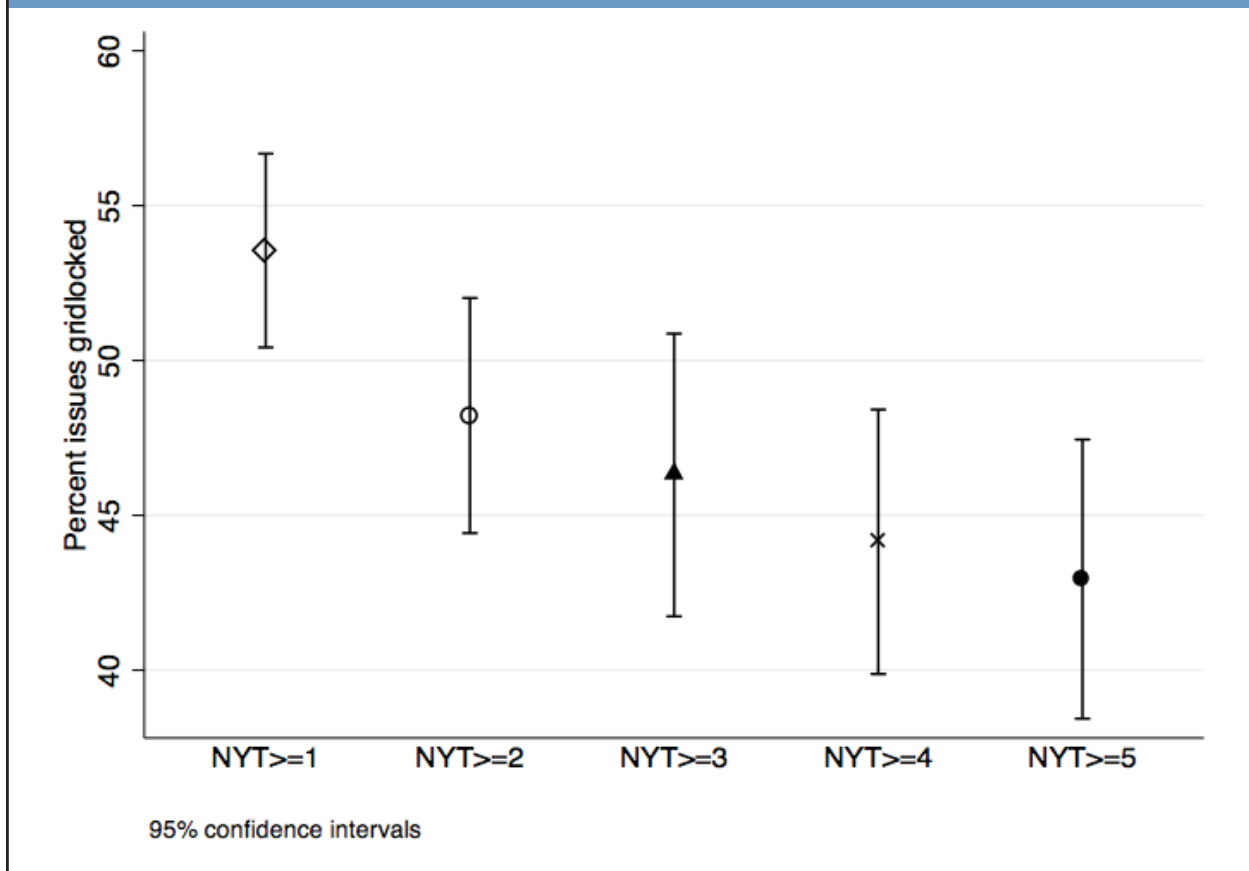
The updated times series of the degree of legislative deadlock on salient issues each Congress between 1947 and 2012 appears in Figure 3. Four features of the times series stand out. First, the frequency of deadlock shows a secular increase over time. Second, the direst claims about the 112th Congress are essentially true. By this measure, the 112th Congress can claim to be the "worst Congress ever" over the postwar period, although the title is shared with the last Congress of the Clinton administration in 1999-2000. In both Congresses, almost three-quarters of the most salient issues remained unresolved at the end of the Congress. Coming on the heels of the 1998 GOP effort to impeach President Clinton and in the run up to a fiercely competitive contest for the White House, we probably shouldn't be surprised about the essentially dead heat between the Congresses to claim the dysfunctional honor.
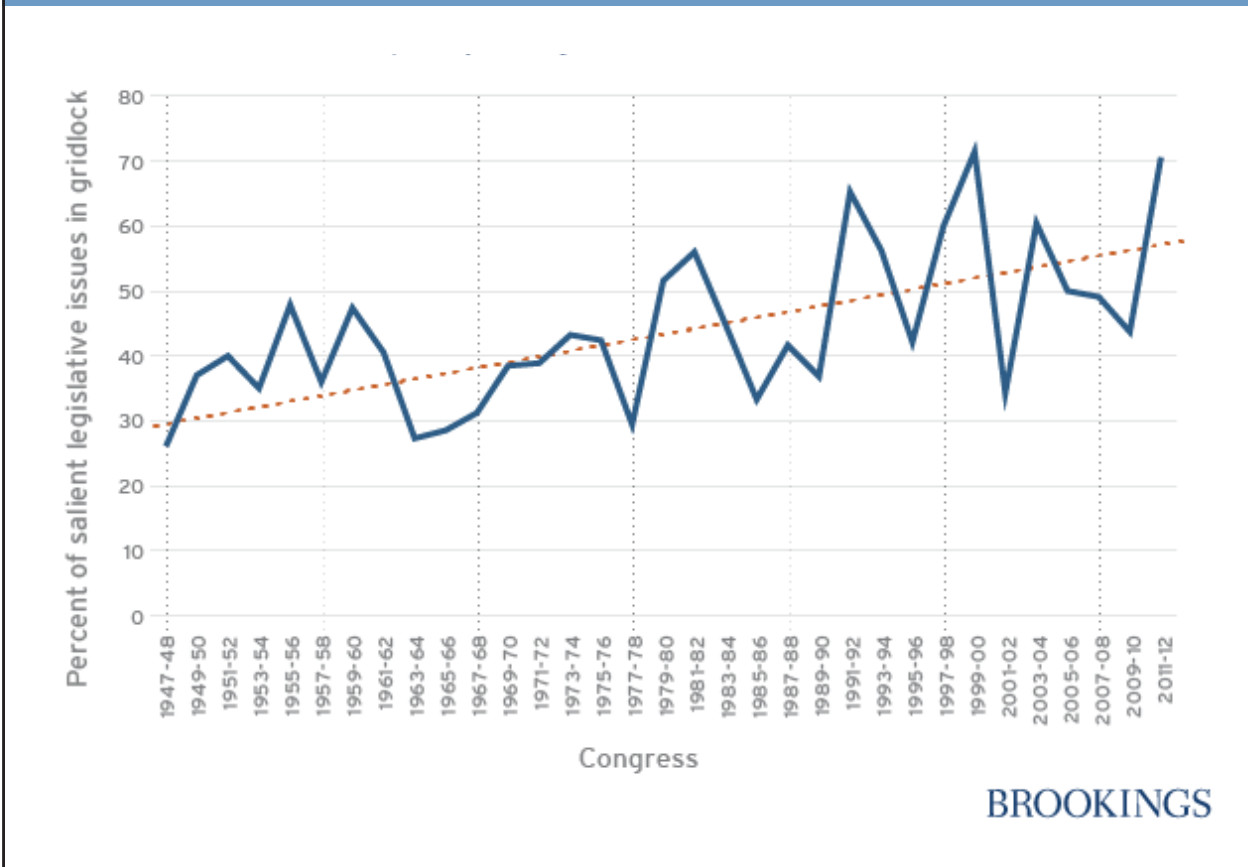
Still, caution is in order in comparing the two Congresses. Some of the issues considered "successfully" addressed in the 112th Congress might never have been deemed acceptable outcomes in previous Congresses. For example, Congress and the president have traditionally authorized and funded federal highway programs in multi-year reauthorization bills. But following expiration of highway programs in 2009, Congress and the president passed a series of temporary reauthorizations to keep federal programs running. Even when the parties were finally able to agree to a multi-year bill in 2012, that agreement only reauthorized two years of highway programs; conflict over raising the federal gas tax stymied efforts to finance a traditional six-year bill. I code the highway bill as a successful legislative response, even though the two-year bill avoided making any decisions about how to ensure the solvency of federal highway trust funds after the end of the two years. 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 over 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.

Third, although the 111th Congress was relatively productive compared to Congress's performances over the past decade (with the exception of the 9/11 Congress), the 111th fell far shy of the records of the Great Society Congresses. To be sure, the 111th Congress was nearly thirty-points more productive than the 112th. But even the widely-heralded 111th Congress left a lengthy list of major issues in legislative limbo, including proposals to address education, campaign finance, global warming, immigration, and gun control. In short, even with the 111th Congress's unified party control and its short-lived, filibuster-proof majority, lawmakers struggled to surmount significant barriers to major policy change.

Finally, a brief look at the 107th Congress, spanning before and after the attacks of September 11th, 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 two years in office. But the 107th Congress's performance was shaped by the events of September 11th. Eight of the thirty-five salient issues in that Congress stemmed directly from the attacks of September 11th. 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 11th, congressional deadlock stood at barely ten percent, with just a single issue left in legislative limbo.[4] 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 11th, 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 as well 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 regular policy agenda.

EXPLAINING PATTERNS OF GRIDLOCK

The longer time series allows me to repose 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. Unlike Mayhew (1991) but similar to Mayhew (2011, 78), I found that unified party control of Congress and the White House reduced the frequency of deadlock. Divided government—aided by parties' influence over the content of the floor agenda—empowers the opposition party to block agenda issues they oppose. But party control alone, I argued, was insufficient to explain variation in Congress's performance.

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4 There were eight issues related to September 11th that attracted less than four *Times* editorials.

I pointed instead to two other factors that shape Congress's record. First, I argued that the smaller the ideological center, the tougher time Congress has in securing policy agreement. The rise of polarized political parties–even before the Bush and Obama presidencies– complicated the challenge of building coalitions of sufficient size to overcome the multiple veto points institutionalized on Capitol Hill. Second, I suggested that bicameral policy differences interfere with the crafting of policy coalitions, even in periods of unified party control.[5] Although electoral and policy differences between the branches tend to garner the most attention in Washington, policy differences between the House and Senate also seem to complicate lawmakers' capacity to find common ground acceptable to both chambers. The results of the 2010 and 2012 congressional elections–delivering control of the House to Republicans while keeping the Senate in Democratic hands–make plain the barriers imposed by bicameral differences.

How does this basic model hold up when we incorporate the records of the Congresses between 2001 and 2012? [6] In Table 1, I show the results for a streamlined version of the original models (Binder 1999, 2003), estimating a grouped logit model to account for the variation in the size of the agenda each Congress (i.e. the size of the denominators).[7] The estimates deliver a reasonably similar story to my earlier work: Congress still struggles to legislate when partisan polarization rises and when the two chambers diverge in their policy views.[8] To more carefully judge how well the model predicts today's lawmaking, I estimate the model based only on the original data (1947-2000) and use those estimates to generate predicted values of deadlock for the most recent decade. These steps allow me to assess

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5 I measure the degree of bicameral divergence by comparing House and Senate voting behavior on conference reports considered in both chambers (which allows me to compare House and Senate preferences on identical leg-islative measures). I find the percentage difference in House and Senate support for each report and then calculate the mean difference on all conference reports in a given Congress (counting voice vote approval as 100 percent sup-port).

6 A brief note about the measurement of moderation. I identified the size of the political center in Binder (1999) by using Poole and Rosenthal's W- NOMINATE scores: Moderates were those legislators closer to the midpoint of the two parties than to their own party medians. In response to criticism, I revised the measure in Binder (2003): Still using W-NOMINATE, I divided the percentage of moderates for each chamber and congress by the distance between the two party medians (as measured by W-NOMINATE). Because the state of the art for NOMINATE is now DW-NOM-INATE, I have recalculated the entire time series of polarization (using DW-NOMINATE to both identify the centrists in each party and chamber and to measure the distance between party medians). Regardless of how measured, po-larization drives up deadlock–even though the two measures don't track each other as closely as one might expect.

7 Because the dependent variable is constructed from grouped data (total number of failed legislative issues per Congress, divided by the total number of policy issues on the agenda each Congress) with unequal size groups, the OLS assumption of uniform variance is violated. That is, given agendas of varying size over the 33 congresses, heteroskedasticity will be present across the disturbances. The solution in this case is to model variation in grid-lock with weighted least-squares estimates in a grouped logit equation. Because the percentage data are bounded between 0 and 1, the logit function is more appropriate than weighted least squares through OLS.

8 As in the earlier work, I test for (and reject the presence of) serial autocorrelation. A Dickey-Fuller test strongly rejects the possibility that a unit root exists. Durbin-Watson, Breusch-Godfrey Lagrange multiplier, and Portmanteau Q tests fail to reject the null hypothesis of no first order autoregressive or moving average errors.

whether recent legislative deadlock is greater or less than what we might expect based on the legislative world captured by the original model. As shown in Table 2, the original model does a decent job of predicting the number of failed legislative issues in three of the past six Congresses (109th, 110th, and 111th). In the remaining Congresses, the model misses the mark. The model over predicts failure in the 107th Congress (2001-2), not surprising given Congress's legislative responsiveness in the wake of September 11th. Interestingly, the model under predicts legislative failure in the 108th Congress, likely reflecting in part (as discussed below) Democrats' willingness to filibuster GOP initiatives in a period of unified party control. And the model under predicts legislative deadlock in the 112th Congress (2011-12), confirming the common observation that legislative dysfunction reigned in the 112th. That said, the model's average error over the past decade is roughly a single failed legislative issue, suggesting that the original model continues to help to explain patterns in legislative deadlock even in more polarized times.

TABLE 1: DETERMINANTS OF LEGISLATIVE GRIDLOCK, 1947-2012

Independent variable	Coefficient
Divided government	.231 (.156)[a]
Bicameral differences	7.350 (3.267)*
Moderation	-.876 (.368)*
Constant	-.541 (.380)
N	33
F	7.28***

Notes: The entries are weighted least squares logit estimates for grouped data (standard errors in parentheses). [a] p<.1, *p<.05, **p<.01, p< .001 (one-tailed tests).

TABLE 2: PREDICTING DEADLOCK, 2001-2012

Congress	Actual # of failed issues	Predicted # of failed issues	Error (actual-predicted)
107 (2001-2)	12	17	-5
108 (2003-4)	29	25	4
109 (2005-6)	17	17.1	-.1
110 (2007-8)	28	28.14	-.14
111 (2009-10)	14	15.5	-1.5
112 (2011-12)	36	29	7
Average			.84

What broader conclusions can we draw from the updated analysis? First, the results confirm the media's recent focus on the impact of polarized parties on Congress's ability to legislate. That said, because we typically use lawmakers' floor voting records, it is difficult to disentangle the extent to which partisan polarization captures ideological differences across lawmakers or members' partisan "team play" behavior. As Lee (2009) shows using other vote-based data, a good portion of the party polarization we see in floor voting likely reflects a dose of both. Here, I avoid treading into methodological and theoretical debates about distinguishing between partisan behavior and policy preferences. Regardless of whether we deem polarization a function of ideological differences, strategic disagreement by partisans seeking electoral advantage (Gilmour 1995) or a mix of the two, the results are clear: When ideological and electoral incentives propel the parties to the wings, abandoning the political center, lawmakers struggle to find broadly palatable solutions to the range of problems they face.

Second, the results confirm my earlier conclusion about the impact of bicameral differences on the difficulty of legislating. Even after controlling for the level of polarization and party control of the two branches, policy differences between the two chambers matter to Congress's ability to legislate. As House and Senate chamber medians diverge in their policy views—regardless of whether party control is unified or split between the chambers—legislative deadlock grows. Notably, the 112th Congress's split party control is not driving the statistical effect. Bicameral

differences drive up the level of deadlock even if we drop the observation for the 112th Congress.

Although statistically significant, the impact of bicameral differences is likely muted in these estimates because of the method used to tap policy differences between the chambers. My measure exploits chamber votes on conference reports since such votes allow me to compare the views of House and Senate lawmakers on identical legislative measures. For each conference report that was considered on both the House and Senate floors, I determined the percentage of each chamber voting in favor and then calculated the difference between House and Senate levels of support.[9] Averaging over all conference reports voted on in a given Congress produces a measure of bicameral policy disagreement, ranging from a low of two percent in 1955-6 to a high of 11 percent in 1993-4. Applying the method to the most recent Congresses, the 112th Congress's bicameral disagreement reaches just under ten percent.

One might think that the gulf between House Republicans and Senate Democrats after the 2010 elections would have been reflected in a much higher bicameral difference score. Most likely, the conference report-based measure understates bicameral differences: Lawmakers' use of conference committees to resolve inter-chamber differences has declined sharply in recent years. Between 1947 and 2000, the number of conference agreements averaged roughly one hundred per Congress; between 2001 and 2012, just over twenty per Congress. The trend may have hit rock bottom in the 112th Congress, with just seven final agreements reached via conference committee. The drop reflects both the low level of lawmaking overall, as well as the regularized involvement of party leaders in negotiating bicameral agreements. When agreements are crafted at the last moment—the April 2011 expiration of spending authority for the government, the July 2011 debt ceiling brinkmanship, and the December 2012 fiscal cliff—no need (let alone time) for formal conference committee proceedings. Note finally, each of these is an example of *successful* policy engagements—meaning that the number of conference reports is not necessarily endogenous to legislative gridlock.

Third, the effect of party control appears attenuated. *Stalemate* identified an independent effect of party control on legislative performance: the frequency of deadlock was higher in periods of divided, rather than unified, party control. In his recent work (Mayhew 2011, 78), Mayhew also identifies a party effect: unified party control increases the chances that presidential proposals will be enacted. Still, in the longer time series presented here, divided party government shows only limited impact on lawmakers' capacity to govern. The parameter estimate is positive, as we would expect from *Stalemate*, but misses standard levels of statistical significance (one-tailed test, p = .07). Looking more closely at the level of gridlock over the past decade, the record of the 108th Congress (under unified Republican control in 2003-4) seems to diminish the effect of party control. In 2003-4, 60 percent of the agenda

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9 Voice votes are coded as 100 percent chamber support for the conference agreement.

was left in limbo at the end of the Congress; in comparison, deadlock in periods of unified party control over the longer postwar period averaged 40 percent. If we re-estimate the model excluding the 108th Congress, the parameter estimate for divided government is statistically significant, driving up the frequency of gridlock.

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

I suspect that the recent, rising proclivity of opposition party senators to insist on sixty votes for adoption of most amendments and measures has undermined the legislative power of majority parties in period of unified party control (see also Smith 2014). For example, increased minority party exploitation of its parliamentary rights would help to explain the litany of legislative measures left in limbo after Democrats lost their filibuster proof majority in the winter of 2010, as well as the heavy load of measures left undone at the close of the Republican-led 108th Congress.[10] As electoral incentives increase for the minority party to play a more confrontational role in the Senate and as the costs of filibustering decline (Smith 2014), unified party control might prove a less powerful tool for driving the legislative process.

DISCUSSION AND CONCLUSIONS

The middle of the road is a dangerous place to be. Still, my analysis suggests that there is a good deal of truth both to Mayhew's sanguine view looking forward in American politics and to Mann and Ornstein's more dire analysis of the state of Congress and its legislative capacity. To be sure, in many ways Congress's recent legislative performance fits the well-established pattern from *Stalemate*: when elections yield more polarized parties and chambers, bargaining is more difficult and compromise is more often out of reach. To the extent that recent Congresses fit the broader pattern established in the postwar period, we might be

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10 In the 108th Congress, six salient measures attracted filibusters on the Senate floor—leaving three of the six in legislative limbo at the close of the Congress.

on safe ground concurring with Mayhew that the recent "imbalances" during the Obama administration are not likely to be "permanent, systemic problems." That is an empirical judgment of course to be confirmed over time.

Still, three reservations temper such a conclusion. First, levels of legislative deadlock have steadily risen over the past half-century. Stalemate at times now reaches across three-quarters of the salient issues on Washington's agenda. Granted, legislators differ over what issues and conditions constitute "problems" (Mayhew 2006). That might increasingly be the case as the parties polarize: lawmakers today even disagree about basic scientific facts (such as the evidence on whether or not the earth is actually warming). But the absolute level of deadlock does raise eyebrows. Moreover, issues left in limbo on the agenda rarely disappear from the policy agendas. Although a larger agenda in itself might account for Congress's sluggish record, pushing issues off to the future sometimes makes problems worse.

Second, even when Congress and the president muster agreement on a policy solution, such agreements sometimes manage to create new problems. For example, some economists argued that fiscal policy brinkmanship in the 112th Congress—last minute decision-making that increased uncertainty about future policy—harmed the economy and set back the economic recovery (Stevenson and Wolfers 2012). Moreover, markets' dismay over Congress's dysfunction that summer led to the first-ever downgrade of the U.S. sovereign credit rating. If both congressional inaction and action make problems worse, then it's hard to see how quickly the political system will rebound from its current partisan impasse. The system no doubt is corrigible, but it might take a long time to right itself.

Third, it is not clear whether current levels of polarization are going to subside anytime soon. On two dimensions—both the degree of polarization and the parties' relative contribution to polarization—Poole and Rosenthal (Voteview 2012) concur with critics about the unprecedented nature of recent polarization. The distance between the parties ideologically has all but returned to heights not seen since the end of the 19th century. Partisan polarization appears to be on the verge of passing historical levels in the Senate and has surpassed House records stemming from the turn of the century. In addition, such polarization might be deemed "asymmetric": Republicans (particularly in the House) have moved farther to the right than Democrats have moved to the left. One might wonder whether the asymmetric pattern stems in part from Republicans' minority status: having lost the White House in 2008, the GOP is unleashed to shoot for the conservative moon (in part pulled by their Tea Party voters). So long as some degree of polarization is driven by sheer partisan team play—in which the opposition party is more likely to object to proposals endorsed by the president—then extreme levels of polarization will continue to lead to unprecedented levels of deadlock. As Obama put it, Republicans seem to need a "permission structure" that allows them to engage in the business of crafting legislative compromise that could lead to agreements with Obama and

the Democrats. This is, in a word, an *unorthodox* barrier to getting both parties back to the business of negotiating. Whether both House and Senate wings of the Republican Party can self-correct and how long it takes to do so remain to be seen.

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

Ultimately, Mayhew may well be correct that our political system will weather this rough patch with little harm done. Even so, we are left in the meantime with a national legislature plagued by low legislative capacity. Half-measures, second bests, and just-in-time legislating are the new norm, as electoral, partisan and institutional barriers limit Congress's capacity for more than lowest common denominator deals. Even if lawmakers ultimately find a way to get their institution back on track, Congress's recent difficulties have been costly—both to the fiscal health of the country and to its citizens' trust in government. The economy will eventually regain its footing. Regenerating the standing of Congress in the public's eye will no doubt be much harder.

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APPENDIX: MEASURING THE SIZE OF THE LEGISLATIVE AGENDA

In *Stalemate*, I detail my method for retrieving and coding *New York Times* editorials between 1947 and 2000 to determine the size and content of the legislative agenda over the postwar period. Briefly, for the period 1947-1980, I used *NYT* microfilm to locate and code the daily, unsigned editorials written by members of the *Times* editorial board; for the period 1981-2000, I used Lexis to locate editorials electronically. I found no issues of comparability between the two times periods raised by relying on different methods for retrieving editorials. More recently, to update my measure of legislative gridlock for the period 2001-2012, I relied on ProQuest's electronic version of the *New York Times*.

Figure 1a above shows the number of legislative issues retrieved for each Congress from the *New York Times* between 1947-2012. Figure 1b above shows the number of salient issues on the legislative agenda (those issues on which the *NYT* wrote more than four times in a given Congress on that particular legislative issue). The secular increase in the number of legislative issues over time and the jump in the number of salient issues after 2000 raise questions about comparability of the two time series (before and after 2000). First, does the change in data source for locating editorials affect our ability to locate relevant editorials? Second, has there been a change in practice in terms of the overall number of editorials produced daily by the New York Times? Affirmative answers to either question complicates my ability to combine the pre and post 2000 editorials into a single time series to tap the size and content of the legislative agenda.

I conduct several tests to ensure that neither of these potential methodological pitfalls is driving the increase in editorials over the longer time series. First, I took several steps to confirm that the ProQuest search was accurately capturing the universe of unsigned daily editorials. The *New York Times* typically publishes three or four unsigned editorials each day, only some of which address legislative issues. It turns out that each data retrieval strategy (e.g. Lexis versus ProQuest) captures a different total number of editorials each year because of differences in the search query and in the queried database. Despite these differences, however, each method appears to successfully identify the three to four daily, unsigned editorials.

To confirm that the proper editorials were queried, I compared editorials drawn from the different search mechanisms. To confirm that the ProQuest search captured the correct editorials (dropping signed editorials or political cartoons), I located editorials in the hard copy of the *New York Times* for one week in February 2014 and one week in March 2014 and compared those to the search results from Lexis, ProQuest, and the *New York Times* website. The Lexis search retrieved some unsigned editorials that appeared only in the international and online editions of the *Times*. Incorporating such editorials after 2000 would make it

difficult to include the pre and post 2000 editorials in a single measure. However, a random check of 100 editorials from the ProQuest search suggested that it is unlikely that any of these erroneously retrieved editorials (that appeared in the on-line or international editions) addressed legislative issues. In other words, although the electronic searches for the period after 2000 caught an array of editorials that would not have been coded based on the Lexis or microfilm coding, it does not appear that these additional editorials addressed legislative matters (and thus were excluded by the coding scheme that dropped non-legislative editorials).

As a second precaution, I calculated the number of editorials per day for the 110th Congress (2007-8) to identify days on which the number of retrieved editorials was unusually high. I used ProQuest to compare their collection of scanned hard copies of the newspapers with my original ProQuest search results for days with more than ten editorials.[11] This step revealed three patterns. First, many of the editorials were duplicate copies of nearly identical editorials (for instance, that had appeared in different editions of the same day's paper). Second, given ProQuest's coding scheme for editorials, the search queries were mistakenly capturing *signed* editorials. Finally, my original ProQuest search retrieved some editorials that appeared only in regional editions of the *New York Times*. These regional editorials should not have been included in the list of agenda items because the prior search methods would not have captured them and their relegation to the regional section could imply local issues rather than national ones for Congress.

After identifying the regional edition editorials, I checked to see whether they had been originally coded as legislative issues. If so, they were removed from my database of issues on the legislative agenda. This search yielded fifteen editorials that appeared in regional editions of the *New York Times*. In two cases, agenda issues mentioned in these regional editorials (Indian Point safety assessment and suburban development in the 109th Congress) were removed from the database because those editorials constituted the only mention of the issue in that Congress. In only one case did removing the regional editorial mention of an issue (Amtrak in the 110th Congress) affect the salience of an issue in that Congress: the total number of Amtrak mentions fell from 4 to 3, thereby dropping Amtrak from my list of "salient" issues for the Congress. In the remaining cases, salience scores fell by a single mention, but none of those changes removed an issue from the list of "salient" issues for the Congress.

Third, I investigated whether changes to the weekend edition of the *New York Times* could have resulted in increases in the number of editorials captured in the search query as

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11 Unfortunately, my access to Brookings' ProQuest subscription expired after the original searches for 2001-2012 had been conducted. Instead, for this test I had to rely on George Washington University's ProQuest subscription. Identical queries on the two ProQuest Times databases typically return a different number of editorials, potentially due to different underlying collections of Times editions in the two databases or different coding of alternative types of publications on the opinion pages.

compared to before 2000. Although the editorial board has experimented with various weekend formats over the past several years, the number of unsigned editorials has remained at roughly three or four per each weekend day. On occasion, the editorial board has run special series that included many editorials, but judging on a comparison of the number of editorials in each December month from 1994 to the present, such instances appear to be rare and appear to occur at roughly the same rate over time.

These tests increase confidence that neither the change in methodology for retrieving editorials after 2000 nor a changes in the *Times'* daily editorials practices are driving the steady increase in the size of the agenda after 2000 or the elevated number of salient issues after 2000. Eliminating those two potential explanations for the increased size of the agenda leaves us with the more palatable conclusion that the elite policy agenda has simply grown and become more complicated–not surprising given the introduction of new issues (e.g. the war on terror and homeland security) and more complex ones (e.g. global warming) over the course of the last decade.

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