DIVIDED WE GOVERN

PARTY CONTROL, LAWMAKING, AND INVESTIGATIONS 1946–1990

DAVID R. MAYHEW

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YALE UNIVERSITY PRESS

NEW HAVEN ◆ LONDON

Set in Baskerville and Gill Sans types by Rainsford Type.
Printed in the United States of America by Vail-Ballou Press, Binghamton, New York.

Library of Congress Cataloging-in-Publication Data
Mayhew, David R.
Divided we govern : party control, lawmaking, and investigations, 1946–1990 / David R. Mayhew.
p. cm.
Includes bibliographical references and index.
ISBN 0-300-04835-1 (cloth)
0-300-04837-8 (pbk.)
1. Political parties—United States. 2. Bills, Legislative—United States. 3. United States. Congress. 4. United States—Politics and government—1945– I. Title.
JK2261.M36 1991
328.73'077—dc20 91-13216
CIP

A catalogue record for this book is available from the British Library.

The paper in this book meets the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources.

10 9 8 7 6 5 4 3

ACKNOWLEDGMENTS

For help with research on this project, I am grateful to Matthew Berger, Rogan Kersh, David Kinsella, Grant Reeher, and Christopher Soper. For thoughtful reactions to an early draft—though I very likely ignored too much good advice—I am indebted to Bruce Ackerman, R. Douglas Arnold, Charles M. Cameron, Robert A. Dahl, James Fesler, Morris Fiorina, John Gilmour, Loch Johnson, Frederick M. Kaiser, Joseph LaPalombara, Robert Peabody, Grant Reeher, Francis E. Rourke, Byron Shafer, Rogers Smith, Patricia Sykes, and Richard Valelly. For helpful discussions, I thank John Mark Hansen, Herbert Kaufman, William Keech, Philip Klinker, J. Morgan Kousser, Peter Schuck, and H. Bradford Westerfield. For his invaluable criticism as the manuscript's anonymous referee, I am indebted to Frank J. Sorauf. I relied on the fine libraries at Boston University, the California Institute of Technology, and Yale University, and on the Library of Congress. The last phase of the work was supported by a Sherman Fairchild Fellowship at the California Institute of Technology.

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1 ◆ INTRODUCTION

Since World War II, divided party control of the American national government has come to seem normal. Between the 1946 and 1990 elections, one of the two parties held the presidency, the Senate, and the House simultaneously for eighteen of those years. But control was divided for twenty-six years, it is divided right now, and we may see more such splits. Some opinion studies suggest that today's voters prefer divided control on principle: Parties jointly in power are seen to perform a service by checking each other.[1]

Of course, divided control is not a new phenomenon. During a twenty- two-year stretch between 1874 and 1896, to take the extreme case, the two parties shared control of the government for sixteen years.[2] But after that, the country settled into a half-century habit of unified control broken only by two-year transitions from one party's monopoly to the other's that closed out the Taft, Wilson, and Hoover administrations. It is against this immediate background that the post–World War II experience stands out.

Should we care whether party control is unified or divided? That depends on whether having one state of affairs rather than the other makes any important difference. Does it? Much received thinking says yes. The political party, according to one of political science's best-known axioms about the American system, is "the indispensable instrument that [brings] cohesion and unity, and hence effectiveness, to the government as a whole by linking the executive and legislative

1. See Everett Carll Ladd, "Public Opinion and the 'Congress Problem,' " *Public Interest* 100 (Summer 1990), 66–67, and Morris P. Fiorina, "An Era of Divided Government" (MS, 1989), pp. 16–18.

2. Evidently, the 1873 depression and reactions against Reconstruction lowered the Republicans from their post–1860 dominance to rough electoral equality with the Democrats. The 1893 depression and the McKinley-Bryan election of 1896 elevated them again.

branches in a bond of common interest."[3] In the words of Woodrow Wilson, "You cannot compound a successful government out of antagonisms."[4]

At a concrete level, this means at least that significant lawmaking can be expected to fall off when party control is divided. "Deadlock" or "stalemate" will set in. Variants of this familiar claim could be cited endlessly. Randall B. Ripley argued in a 1969 study, for example: "To have a productive majority in the American system of government the President and a majority of both houses must be from the same party. Such a condition does not guarantee legislative success but is necessary for it."[5] V. O. Key, Jr., wrote: "Common partisan control of executive and legislature does not assure energetic government, but division of party control precludes it."[6] Ripley argued again in 1983: "In general, not much legislation is produced in [circumstances of divided control], particularly on domestic matters. What domestic legislation does pass is likely to be bland and inconsequential."[7] Lloyd N. Cutler concluded in a recent piece attacking divided control: "Putting . . . aside [Reagan's tax cut in 1981 and tax reform in 1986], there has never been in modern days any successful domestic legislative program at a time of divided government."[8] These authors do not

3. James L. Sundquist presents this crystallization of the familiar party-government view in "Needed: A Political Theory for the New Era of Coalition Government in the United States," *Political Science Quarterly* 103 (Winter 1988–89), 614. At pp. 616–24, Sundquist undertakes an especially useful review of the theoretical case for unified party control.

4. Quoted in ibid., p. 618.

5. Randall B. Ripley, *Majority Party Leadership in Congress* (Boston: Little, Brown, 1969), p. 168, and more generally pp. 11–18 and chap. 5. This seems to be the only serious empirical study of the effects of unified versus divided party control.

6. V. O. Key, Jr., *Politics, Parties, and Pressure Groups*, 5th ed. (New York: Crowell, 1964), p. 688, and more generally pp. 656, 687–88.

7. Randall B. Ripley, *Congress: Process and Policy* (New York: W. W. Norton, 1983), p. 355, and more generally pp. 347–56.

8. Lloyd N. Cutler, "Some Reflections about Divided Government," *Presidential Studies Quarterly* 18 (1988), 490. See also Cutler, "The Cost of Divided Government," *New York Times*, November 22, 1987, p. IV:27; Hedrick Smith, *The Power Game: How Washington Works* (New York: Random House, 1988), chap. 17 ("Divided Government: Gridlock and the Blame Game"); and James L. Sundquist, "The Crisis of Competence in Our National Government," *Political Science Quarterly* 95 (1980), 183–208. "At such times [that is, of divided

argue that unified party control always generates large collections of notable legislation. But they can be read to predict that it should generate, over a long period of time when contrasted with divided control, considerably more such legislation.

Another familiar claim has to do with congressional oversight. It is that Congress acting as an investigative body will give more trouble to the executive branch when a president of the opposite party holds power. That propensity can be viewed as bad or good. Woodrow Wilson might say that accelerated probing of the executive provides just another kind of unfortunate "antagonism." From another perspective, it can be expected to keep presidents and bureaucrats in line better. Either way, what causes the effect is a predicted difference between unified and divided control. Morris S. Ogul has written, "A congressman of the president's party is less likely to be concerned with oversight than a member of the opposition party."[9] Republican leaders of the Eightieth Congress under Truman were said, perhaps apocryphally, to follow a strategy of "open with a prayer and close with a probe." Seymour Scher concluded, after studying congressional oversight of the regulatory agencies in 1958–61: "When the leadership of the majority party in Congress believes it can cause sufficient embarrassment, with accompanying profit for itself, to a past or current opposition president who is held responsible for the performance of his agency appointees, committee oversight tends to be used for this purpose."[10]

I shall argue in this work that the above claims are wrong, or at least mostly or probably wrong. They do not, to be sure, address the

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government], the normal tendency of the U.S. system toward deadlock becomes irresistible. Harmonious collaboration, barring national crisis, is out of the question. The president and Congress are compelled to quarrel. No presidential proposal can be accepted by the legislature without raising the stature of the president as leader. Similarly, no initiative of Congress can be approved by the president without conceding wisdom to his enemies. The conflict, bickering, tension, and stalemate that characterized the fourteen years of divided government [under Eisenhower, Nixon, and Ford] were inevitable." Sundquist, p. 192.

9. Morris S. Ogul, *Congress Oversees the Bureaucracy: Studies in Legislative Supervision* (Pittsburgh: University of Pittsburgh Press, 1976), p. 18.

10. Seymour Scher, "Conditions for Legislative Control," *Journal of Politics* 25 (1963), 541. A committee of a Democratic House grilled Eisenhower's regulatory appointees, but after the 1960 election, "members of both parties on the committee were agreed that the prospect was remote of a Democratic

only differences that one might expect to find between unified and divided control. Other claims, such as that divided party control generates fiscal disorder or other kinds of "incoherence," will be taken up in the concluding chapter. But the main argument in the following pages will be that unified as opposed to divided control has not made an important difference in recent times in the incidence of two particular kinds of activity. These are, first, high-publicity investigations in which congressional committees expose alleged misbehavior in the executive branch: Such extravaganzas seem to go on regardless of conditions of party control. And second, the enactment of a standard kind of important legislation: From the Taft-Hartley Act and Marshall Plan of 1947–48 through the Clean Air Act and $490 billion deficit-reduction package of 1990, important laws have materialized at a rate largely unrelated to conditions of party control. To see this pattern, one has to peer through a Capitol Hill haze that can feature delay, suspense, party posturing, ugly wrangling, and other presentations. One has to look at actual enactments. There, the pattern is as stated.

Not to be taken up here is the question of whether a separation-of-powers regime like the American can be expected to generate its own distinctive kind of investigative or lawmaking activity. That is a separate matter. Also separate is the question of whether Democrats and Republicans push in opposing ideological directions when they make laws. Of course they often do. Ideological direction will enter the argument here in chapters 4 and 6, and partisan as well as other causes of it will be discussed. But the basic concern in this work, as regards lawmaking, is not with direction but with motion—whether much gets done at all.

My method will be simply to compare what took place in investigating and lawmaking, in circumstances of unified as opposed to divided party control, from the Eightieth Congress of 1947–48 through the 101st Congress of 1989–90. That is, I compare some reality with other reality; I do not hold up reality against some abstract model of how government ought to work. I classify each two-year inter-election period between 1946 and 1990 as "unified" or "divided"— one or the other. The "unified" segments include two years of Republican rule under Eisenhower in 1953–54, and sixteen years of Democratic rule under Truman in 1949–52, Kennedy and Johnson in 1961–68, and

majority continuing its inquiry into agency relations with their regulated clientele once the new [Kennedy] administration's appointees began to appear in the agencies' top positions" (p. 538).

Carter in 1977–80. The "divided" times include two years of a Democratic president facing a Republican Congress under Truman in 1947–48; eighteen years of a Republican president facing a Democratic Congress under Eisenhower in 1955–60, Nixon and Ford in 1969–76, Reagan in 1987–88, and Bush in 1989–90; and six years of a Republican president along with a Republican Senate and Democratic House under Reagan in 1981–86.

Does the unique 1981–86 pattern require special handling? Under a limiting-case assumption, the answer is no for legislating but yes for investigating. It takes the assent of all three institutions—Senate, House, and presidency—to pass a bill. If one assumes that each party unanimously opposes the other, any institution run by one party can and will block bills favored by the other two run by the other party. This holds for an odd-man-out blocking House (as in 1981–86) just as for an odd-man-out blocking presidency (as under Nixon). (The argument assumes that a president is not completely immobilized by having to confront veto-proof two-thirds majorities of the opposite party in both houses of Congress; no president ever faced an opposition like that between 1946 and 1990.) Thus for lawmaking purposes, 1981–86 is formally just like any other divided time. In undertaking investigations, however, each house of Congress ordinarily runs its own enterprise. Hence more probes of the executive might be expected when both houses confront an odd-man-out president (as under Nixon) than when just one house confronts a president of the opposite party (as in 1981–86 under Reagan).

Why choose to examine 1946 through 1990? First, as a matter of research design, the period's mix of "unified" and "divided" segments affords a good contrast. The segments are not far apart in number and they are rather well scattered across the four decades. And each party had at least one spell of complete rule and one of controlling the presidency but not Congress. Second, forty-two years is a long span over which many sorts of idiosyncrasy should iron out. Generalizations accordingly gain strength. Third, the post–World War II era seems to constitute, in some relevant background respects, a natural modern unit. The New Deal and the war raised the government to heights of activity from which it never entirely came down. Basic U.S. commitments in foreign and defense policy date to the late 1940s. The Employment Act of 1946 officially made macroeconomic management the government's job. With these commitments, it seems a good bet that the country's resulting busy and non-stop agendas in

the areas of defense, foreign policy, and economics have affected relations between presidents and Congresses, even if one cannot be certain exactly how. In addition, Franklin Roosevelt strengthened the presidency as an independent institutional actor in the 1930s and 1940s. The custom of presenting "the president's program" as a comprehensive annual legislative agenda dates to Truman's administration in the late 1940s.[11] The La Follette-Monroney Act of 1946 helped to equip Congress as a counterpart of the modern presidency (even if most of the massive growth in Capitol Hill staffing came later). Finally, the televising of particularly newsworthy congressional investigations began in 1948.[12]

If these arguments are valid, can conclusions about unified versus divided control during 1946 through 1990 be extrapolated to any time beyond that era? Perhaps to coming decades more safely than to periods before the 1940s, though what would emerge from a suitable study of earlier times is an open question. A treatment of lawmaking in chapter 6 will suggest that at least some patterns during the second half of the twentieth century look a lot like ones during the first half.

This study requires, above all, some plausible ways of identifying important investigations and laws. My decision rules for doing so are set out in considerable, though I think necessary and readily understandable, detail in chapters 2 and 3. I hope the resulting uses of data will be a contribution. Surprisingly, for all the work done on legislative behavior, laws and investigations are seldom tackled in a way that is reasonably systematic yet tries to sort out the significant from the trivial.[13] That is because, to do so, a line has to be walked between being unconvincingly anecdotal on the one hand, and being irrelevantly indiscriminate and safe in quantifying evidence on the other. I have tried to walk that line. I have undertaken to select, compare, and for some purposes add up items of evidence that cannot be subjected to these treatments in any indisputable way. As one conse-

11. Richard E. Neustadt, "Presidency and Legislation: Planning the President's Program," *American Political Science Review* 49 (1955), 980–1021.

12. The first televised hearing featured a House Un-American Activities Committee interrogation of Alger Hiss. See Allen Weinstein, *Perjury: The Hiss-Chambers Case* (New York: Alfred A. Knopf, 1978), p. 44.

13. A classic work that makes such an effort is Lawrence H. Chamberlain, *The President, Congress, and Legislation* (New York: Columbia University Press, 1946).

quence, I hedge my conclusions. As another, in chapters 2 and 4, I rely heavily on the technique of presenting large displays of material that will be generally familiar to the reader, so as to enlist reader participation in judging what claims are valid.

The plan of the book is as follows. In chapter 2, I outline a methodology for selecting, and then present, a list of particularly well publicized postwar investigations of alleged executive misbehavior. Discussion ensues about the incidence of such probes in times of unified as opposed to divided party control. Chapters 3 and 4 taken together provide a comparable treatment of important postwar statutes; the methodology appears in chapter 3 and the presentation and discussion in chapter 4. Chapters 5 and 6 are a two-part speculative discussion aimed at explaining the non-patterns detected earlier. Why, that is, has unified versus divided control not seemed to cause any appreciable difference in the incidence of such probes and enactments? A number of possible explanations are introduced and considered. Turned upside down, these become positive accounts of what arguably *does* occasion investigations and lawmaking. Chapter 7 brings some parting order to this discussion and then briefly takes up five additional differences that unified versus divided control might be thought to make. Again I argue, if inconclusively, that it probably does not.

2 ◆ HIGH-PUBLICITY INVESTIGATIONS

Beyond making laws, Congress probably does nothing more consequential than investigate alleged misbehavior in the executive branch. Consider the Teapot Dome investigation of the 1920s, Senator Joseph McCarthy's search for Communists in the Army and State departments in 1953–54, the Watergate inquiries of 1973–74, and the Iran-Contra hearings of 1987. All these investigations attracted the media. When that happens, a probe can sometimes gain the attention of the public, weigh down the White House, trigger resignations of leading officials, and register a long-term impact on public opinion and government policy. Occasionally a probe leads to a dramatic confrontation that seems to decide something or frame an important question or issue. Thus in 1948, in a House Un-American Activities Committee (HUAC) probe spearheaded by Richard Nixon, Whittaker Chambers confronted Alger Hiss about whether Hiss had been a spy. Attorney Joseph Welch shamed Senator McCarthy in a televised hearing in 1954. Senator J. William Fulbright and Secretary of State Dean Rusk tangled on camera about Vietnam in 1966. Senator Sam Ervin dealt Old-Testament fashion with Nixon's various lieutenants in 1973. And Oliver North reacted feistily to questioners John Nields, Jr., and Arthur Liman in 1987.

This chapter addresses undertakings such as these—congressional committee "exposure probes" of the executive branch that draw considerable publicity. Clearer specification is needed. An "exposure probe," let us say, is a committee investigation that dwells on the alleged misbehavior of some person, group, or organization. Many congressional oversight enterprises do not have that kind of concern and hence do not qualify as "exposure probes." Also, much committee oversight that does dwell on misbehavior draws little media attention. That large universe of activity has no relevance here either. The objective is to zero in on a category of investigations that gain a kind

of political importance exactly because they *do* draw considerable publicity. Finally, some congressional probes of misbehavior that do succeed in attracting a lot of media attention have targets other than the executive branch. In recent decades those have included union racketeers, Hollywood Communists, organized crime, drug firms, General Motors, and disk jockeys who took payola. That kind of probe is irrelevant here too. So this chapter deals with only one class of events that fall under the rubric of congressional oversight activity. It is not a representative class, but it is a particularly important one.

Note also that, since high publicity is one threshold, the events at issue here stemmed from media decisions about what was hot "news" as well as from congressional action. That has to be borne in mind. The media organ I rely on in this chapter, the *New York Times*, seems to have adhered to more or less the same "news sense" during, say, fifteen- or twenty-year intervals from 1946 through 1990, though not throughout the entire period. The *Times*'s changes in coverage routines do not impede the analysis much, but they will be discussed. At any time, of course, members of congressional committees have to take steps to make "newsworthy" items available for there to be anything to report.

Precisely how should we recognize a relevant probe? An investigation enters this chapter's data set if it generated a specified kind of content in one or more *New York Times* front-page stories, on at least twenty days (not necessarily consecutive), during any Congress between 1946 and 1990. The test for content is as follows. A front-page story becomes relevant if it featured a committee-based charge of misbehavior against the executive branch, or an executive response to such a charge.

Committee-based means that someone or some set of people involved in or accommodated by a committee investigation made the charge. It might have been the full committee (as in a report), a committee member, a committee's party majority or minority, a committee staff member, a witness who testified (including a member of the executive branch who criticized part of that branch), or even an outsider who wrote a smoking-gun letter that a committee member disclosed. According to this criterion, note that a committee might have generated charges even if its leaders or party majority preferred not to. By stipulation, any senator or House member's preliminary call for an investigation also counts as relevant story content, as in "Senator Jones Demands Full Probe of Justice Department."

To continue with terms, *misbehavior*, as applied to the conduct of executive or administrative affairs, means any of a wide variety of kinds of behavior that members of Congress and the public commonly regard as improper or incompetent. The offenses might include treason, disloyalty, usurpation, corruption, conflict of interest, other illegalities, maladministration, bad policy planning, bad faith, or simply making mistakes. In the sector of foreign and defense policy, where the executive enjoys constitutional leeway, the offenses might include unconstitutional, deceptive, ill-conceived, or ill-managed use of that leeway. It makes no difference here whether allegations of any of the various offenses from 1946 through 1990 were in fact valid, partly valid, or fantasy. Some were evidently fantasy. Excluded, in principle, are congressional criticisms that addressed the executive's policy positions rather than its past or present conduct. The aim is to confine the analysis to oversight processes and stay away from relations between the branches as co-participants in lawmaking. This distinction turned out to be rather easy to enforce, though there were some close calls.

Against the executive branch means against some unit, or a past or present official(s) or employee(s), of the executive branch. That includes the armed services and the regulatory agencies. Alger Hiss is the signal instance of a past rather than present official who drew investigation. Hiss left the State Department in December 1946. HUAC went after him in August 1948. Targeting Hiss was, among other things, a way to assault the policy-making apparatuses of both the Roosevelt and Truman administrations.

An executive response is a reply to a committee-based charge by some relevant past or present executive official. Here is a clear instance: "Secretary Smith Calls Jones Corruption Charge Outrageous." Some responses were delivered in committee testimony, some in news conferences, speeches, or other settings. Whether executive acts or utterances qualified as responses to committee charges was often a matter of judgment. Eisenhower, for example, spoke in above-the-fray abstractions about McCarthyism, but it seems quite clear that responding to the senator is what he was doing.[1] Proximity in time between a charge and an executive expression was one sensible qualifying test. If sources besides congressional committees—judges, the

1. See Fred I. Greenstein, *The Hidden-Hand Presidency: Eisenhower as Leader* (New York: Basic Books, 1982), pp. 175–76, 189–212.