

The Other Side of Gridlock

Policy Stability and Supermajoritarianism in U.S. Lawmaking

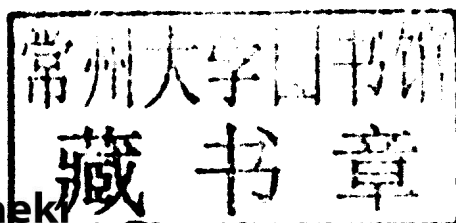
Manabu Saeki



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The Other Side of Gridlock

To
Steven A. Shull,
my mentor

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P R E F A C E

This book is about policy stability, or lack of policy change, in the U.S. government. When I was a graduate student a few years ago, the potential relationship between divided government and the so-called gridlock was a ubiquitous and controversial issue in such courses as public policy, public administration, political parties, presidency, Congress, presidential-congressional relations, and even research methods! I was interested in the issue at that time, and was especially impressed by the works of Mayhew (1991), Krehbiel (1998), and Brady and Volden (1998). However, I was taking many courses and had to deal with other academic issues (and admittedly nonacademic issues) as well. After I became a university professor and started teaching legislative politics, I was fascinated by the theoretical, as well as the empirical, controversies pertaining to divided government and gridlock. When I read *Setting the Agenda* by Cox and McCubbins (2005), I thought that the partisan model and the nonpartisan supermajority model should be empirically compared, thereby leading me to write this book.

As I will detail in this book, since David Mayhew's *Divided We Govern* (1991), the politics of gridlock has become one of the most salient and controversial issues in political science. By compiling a list of significant legislative enactments during the period from 1947 through 1990, Mayhew challenged conventional wisdom and argued that divided government did not decrease the amount of important legislation enacted in the United States. Scholars in the post-Mayhewian wave 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 allegedly found an impact of divided government (Binder 1999, 2003; Coleman 1999; Edwards and Barrett 2000). On the other hand, scholars of the supermajoritarian school have contended that gridlock could occur in unified as well as divided government because the proximity between the status quo and preferences of pivotal legislators could cause gridlock (Krehbiel 1996, 1998; Brady and Volden 1998; Chiou and Rothenberg 2003).

In spite of the vast number of studies of gridlock, most studies have focused on various quantifications of legislative productivity as measures of gridlock.

In contrast, this book shifts the target of study from the amount of laws to policy output. 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 aims to explain policy change, or inversely policy stability. In order to compare the influences of divided government, the majority party in Congress, and the preferences of supermajoritarian pivotal legislators on policy change, applied models of gridlock interval movement, veto players, and pre-floor agenda block are constructed in this book. These models generate hypotheses pertinent to the influence of predictors, and the hypotheses are empirically tested.

I wrote most of the manuscript in summer 2007 and had a great time. While I wrote in my house, I enjoyed the New Orleans' Rue de la Course Espresso coffee (no, I don't drink sake in the day time, unlike a few congressional scholars I know) and the music flowing from my Sony speakers. There is no doubt that Miles, Bird, Dolphy, Woody Shaw, Wallace Roney, Geri Allen, and others inspired my work.

Friends and colleagues greatly contributed to this project. I would like to acknowledge Roy Bonnette, Keith Krehbiel, Sang Lee, David Mayhew, Margaret Gonzalez-Perez, Keith Poole, and Corina Schulze for their helpful suggestions. Also, I thank Wei Wei Hsing, Jason Husser, and Amritendu Maji for their research assistance; and Sarah Binder, George Edwards, and David Rhode for access to their data.

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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 deadlines 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