

Divided government and party success: is the Congress or the executive branch more beneficial to a party's desired legislative outcomes if only one can be controlled?

Harrison Gowland*

*School of Politics and International Relations, University of Kent

Abstract- This paper deals with a text analysis-based review of federal legislation in the United States from various congressional sessions during periods of divided government – that is, periods of time during which the Congress of the United States and the executive branch of the United States government were controlled by different parties – to determine whether control of the executive branch or Congress is more beneficial to a party's stated desired political outcomes as outlined in each party's public platform, dating back to the administration of President Richard Nixon. The definition for 'significant' legislation for the purpose of this analysis is rooted in the methodology published by Mayhew for *Divided we Govern* combined with that of Clinton and Lapinski in 2006. The paper's contribution to the academic field is demonstrated as filling a gap in the divided government literature dealing with whether control of Congress or the executive branch is more useful to a party to control in periods of divided government as aforesaid. The findings indicate that there is a Congressional advantage in terms of enacting party preferences into law, though potential pitfalls not previously identified by existing academic literature such as Clinton and Lapinski (2006) mean further study is warranted. This essay presents the data backing this case up rather than making a theoretical argument for why it is the case in the first place, though provides various explanations that may open avenues for further study.

I. LITERATURE REVIEW

PART ONE: BRIEF REVIEW OF THE ACADEMIC BACKGROUND AND DEMONSTRATION OF THIS PAPER'S CONTRIBUTION TO THE ACADEMIC FIELD

Divided government as a political phenomenon in the United States is a much litigated subject in the academic literature; periods of time during which the United States Congress, the legislative arm of the federal government of the U.S., and the executive branch, chaired by the President of the United States and responsible for carrying out laws enacted by Congress, are controlled by different parties. This report attempts to answer the question of whether, in such periods of divided government, is it more beneficial to a party's desired legislative outcomes to control the executive branch or to control Congress?

While divided government as generally understood today is somewhat of a modern phenomenon, interpretations and

academic study of the dividing of power within the U.S. government go back to almost the foundation of the country. Federalist #51, one of many essays written in defense of the U.S. constitution in the 18th century, remarks that the only solution for "maintaining... the necessary partitions of power..." would be "contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places" (Madison, 1788). This idea of checks and balances – that is, ensuring that no one institution of government becomes overly powerful due to its being restricted by the others – has been generally accepted as the motivation behind the text of the U.S. Constitution, if it hasn't always achieved that ideal.

In its modern incarnation, the idea of government divided on party lines has its supporters – "Is [divided government] a good thing? On balance, I believe it is... [I]t offers the country a way to self-correct on public policy. Democrats tend to peel back Republican tax cuts, while Republicans tend to peel back Democratic regulations — except those provisions on both sides that are broadly popular" (Cost, 2018) – and detractors – "Divided government does not work nearly as well as unified government, when one party holds all three power centers... [it] results in deadlock and a diffusion of political accountability for the outcomes of government" (Cutler L., 1990).

A great deal of academic work, such as that done by Cost and Cutler, does exist on the subject of divided government:

- David Mayhew's seminal work *Divided We Govern* argues that there is no statistically significant consequence for the passage of significant acts by the U.S. legislative system in periods of divided government¹;
- Edwards et al. find "no relationship between divided government and the amount of significant legislation the administration opposes or that passes" (Edwards, Barrett, & Peake, 1997);

¹ *Divided We Govern* found that 12.8 significant acts of legislation were passed and signed in periods of unified party control of both Congress and the presidency on average as opposed to 11.7 in divided government (Mayhew D. R., 1991).

- Coleman and Parker’s review of the available literature concludes that, to the contrary, “party control matters... [one scholar] finds that the production of important legislation is significantly greater during periods of unified government” (Coleman & Parker, 2009);
- Cutler rejects the idea that the “decline in party cohesion at the legislative level” is something you can “entirely blame... on the existence of a divided government” (Cutler L. N., 1988) on grounds of the American culture of generally not voting for the same party for every office up for election; and
- Krehbiel’s work in his book *Pivotal Politics* rejects divided government as the primary cause of legislative gridlock, instead pointing to his own “preference-based model... that reflect[s] institutional features” for an explanation.

A vast majority of the primary scholarship on the subject of divided government, then, insofar as my study was able to unearth it, focuses around the narrow question of what the consequences of divided government are for the legislative process and the resulting volume of significant legislation or potential lack thereof. I argue, however, that this precision focus means the academic community has missed an opportunity to tackle an equally interesting question that I feel is consequential insofar as it connects to the competing power of the two institutions partaking in the legislative process: in terms of the legislation that ends up enacted, is it more beneficial to a party’s desired political interests to control the executive branch or Congress?

PART TWO: JUSTIFICATION OF – AND ISSUES INHERENT TO –
METHODOLOGY AND OPERATIONALISATION OF PAPER’S STUDY
DEMONSTRATED IN THE LITERATURE

A review of the literature reveals that my decision to analyse the passage of laws exclusively is the best way of analysing the respective utility of both institutions for the purpose of coming to an answer. A considerable proportion of the academic studies so far cited have focused primarily (if not entirely) on laws passed, in fact.

By contrast:

- Congressional investigations, while worthy of academic interest in and of themselves, are difficult to measure in terms of my dissertation’s framework insofar as, in modern terms, any power in those investigations lies exclusively with the majority party in the chamber, and “divided government generates more and more intensive congressional investigations” (Parker & Dull, 2009)², with the party in control of the chamber setting the terms of the debate and the targets of their investigative fire;

² The Parker and Dull text adds the caveat that the intensiveness is contingent on “partisan and temporal factors” (Parker & Dull, 2009).

- Executive activity, such as the issuance of executive orders and proclamations, was briefly considered for addition into the analysis that comprises the core of this paper, but it was ultimately excluded on grounds of the fact that “throughout U.S. history presidents have relied on their executive authority to make unilateral policy without interference from either Congress or the courts” (Mayer, 2002), and while Congress does have some power over executive order revocation, executive orders, similarly to congressional investigations, are heavily one-sided insofar as institutions involved are concerned³. This is not to mention that the Federal Register which handles the compiling and recording of executive orders issued by the federal government does not have a comprehensive accessible dataset thereof, making a text analysis even more difficult, the sheer volume of such orders notwithstanding.

As such, I feel it would be more productive to consider enacted legislation specifically in terms of the research question, as it provides both a system in which the presidency and Congress have considerable weight – the president with their veto power and Congress having the exclusive power to draft the specific text of the law – and a dataset of legislation that is the perfect balance between statistically significant, enabling a conclusion to be fairly reached, and small, making it possible to actually review in a reasonable timeframe.

In terms of the research question, we first have to look at a broader subset of academic literature in American political science to put the methodology for this work together. For instance, what, empirically speaking, is a party’s desired legislative outcome?

The makeup of the institutions defy analysis in this respect, as King points out in his work on Congress, for a few reasons, mostly linked to a historic lack of party discipline in the U.S. Congress.

There is a “lack of party cover in the United States [which] means that elective officeholders find it hard to take tough decisions” or comply with the party whip for fear of losing re-election in a constituency that opposes the party line (King, 1997), making it difficult to use the stated goals of the party delegation in Congress, for instance, to determine a party’s goals at large. This is because individual members’ goals will differ, potentially considerably, from each other, with the consequence that “[b]y the standard of most European parliaments, levels of

³ Additionally, the question of how divided government affects a president’s attitude towards crafting executive orders has already been heavily litigated in the academic literature; Fine and Warber found that “presidents behave differently with respect to distinct types of executive orders during periods of unified and divided government” (Fine & Warber, 2012), while Mayer’s work finds that “even within the bounds of their constitutional powers, presidents have been able to “legislate” in the sense of making policy that goes well beyond simple administrative activity” (Mayer, 2002).

party voting” – that is, voting along a strict party line, “when majorities of the two congressional parties, the Democrats and the Republicans, oppose one another”, a style that is more commonly seen in Westminster systems like that operational in the United Kingdom and Canada – “in the United States Congress are relatively low”⁴ (Patterson & Caldeira, 1988).

This, then, makes it difficult to assert a party platform through the lens of an analysis of its congressional membership as, because of other concerns, primarily relating to the electoral connection, congresspeople have personal rather than party agendas at the forefront of consideration.

There’s also the matter of the president to consider. While the presidency avoids the same issue of having numerous members with differing personal agendas, vested as it is in one individual, but the president doesn’t run the entire federal government by themselves.

In an American context, the president is the head of a cabinet of individuals, each leading a department of individuals and, as Neustadt points out in *Presidential Power*, these cabinet officials “have departmental duties and constituents... in the White House, a president does not monopolize effective power. Even there persuasion is akin to bargaining”, noting that “[n]othing in the Constitution keeps a well-placed aide from converting status into power of his own, usable in some degree even against the president”, citing Sherman Adam’s stint as assistant to President Dwight Eisenhower⁵ and that “[t]he more an officeholder’s status stem from sources independent of the President”, such as career officials in, for instance, the State Department, “the stronger will be his potential pressure on the President” (Neustadt, 1991).

The point here is that the president is the chief executive constitutionally speaking; however, they chair a sprawling federal bureaucracy and are, put simply, one person: significant shades of the executive branch’s responsibility mathematically must be delegated to the various cabinet officials who, as Neustadt argues, can and often do have their own ideas about the direction in which to take the country, and the president’s power to bring them around can be limited, meaning trying to analyse the party platform through the lens of what the executive branch wants is as, if not more, difficult than trying to ascertain the will of parties’ congressional delegations.

Given these are the case, it is difficult to comprehend through the lens of the individuals in the institutions themselves what the party’s desired goals are. Congress is a hodge-podge of members with independent agendas, and the executive branch – despite being headed by one individual – is a sprawling federal bureaucracy staffed with huge swathes of career staff who can have differing views on the country’s direction and the power to

⁴ The Patterson and Caldeira text adds the caveat that there is a significant difference between the Senate and House, noting “striking differences between the House and Senate in the correlates of partisan cleavage” (Patterson & Caldeira, 1988).

⁵ Adams was reportedly “no more dependent on the President than Eisenhower on him” (Neustadt, 1991).

act on it with limited presidential power to intervene given the sheer scale of the government.

The solution to this issue is somewhat outside the scope of the literature review and will be enumerated in the closing paragraphs of this chapter and in more detail in the methodology chapter.

Second, there is the question of what legislation to consider. The U.S. Congress, for all the common wisdom that it is increasingly unable to pass legislation or get things done, has passed a great number of laws in the time period enumerated in the methodology section of this paper. What laws are significant enough for inclusion?

It is a serious problem for American political scientists attempting to analyse federal legislation. As expressed by Clinton and Lapinski, “testing theories of lawmaking, as well as building new ones, on trivial legislation seems to us to be suspect” (Clinton & Lapinski, 2006).

In determining things like congressional productivity and legislative efficiency, one generally only wants to consider legislation that is empirically significant, and it is especially so in this case: a party could support a bill to rename a federal post office building, for instance, but this wouldn’t really be worth the same as, say, the 2009 stimulus package passed during President Obama’s first term that, among other things, appropriated \$4.7 billion for a “Broadband Technology Opportunities Program” alone (Government Publishing Office, 2009).

Mayhew, writing for *Politico*, explained the crux of the issue: “There is a weighting problem. ...[S]ome congressional enactments are vastly more important than others. And there is a bundling problem.” Any solution must take into “account... Congress’ creeping tendency over the decades to bundle a lot of items into single big bills” (Mayhew D. R., 2013).

In context of this paper, then, only significant legislation is sought as meeting the criteria of the research question, and they must be weighted such that we can determine how much policy of significance a party managed to successfully enact into law during their tenure in one or the other institution of legislative governance, number of bills passed notwithstanding given the bundling problem that Mayhew enumerates.

Academics have differing solutions to the significance problem. Ansolabehere et al. in 2017 offer the following definition of significant legislation:

“First, is the bill important in historical context? When we look back on the legislation from our current perspective, did this bill accomplish something important, such as establish a major governmental agency, introduce a major policy change, declare war, or pass a constitutional amendment? Second, was the bill viewed as an important legislative accomplishment in its own time? This type of bill is harder to identify and requires histories or the Congressional Record to

determine its importance. For example, some slavery-related bills that preceded the Civil War did not have long-lasting significance due to the abolition of slavery, but they were major legislative accomplishments addressing the critical issue of their time. In making these assessments, we relied on historical treatments of the Congress and politics of the period, such as the Antebellum period, the New Deal, and so forth.” (Ansolabehere, Palmer, & Schneer, 2018).

The emphasis on contemporary reaction to bills is carried through a number of differing approaches to the issue; Mayhew:

“uses contemporary sources to discern which policies were considered innovative at the time of their enactment, examining end of session and end of Congress commentaries in the *New York Times* and *The Washington Post*. He defines innovative policies as those that the authors of those commentaries saw as particularly promising pieces of legislation to emerge during a particular session of Congress. These commentaries were supplemented by works that related contemporary descriptions of legislative activities. This approach produced 211 pieces of innovative policy.”⁶ (Kelly, 1993)

Clinton and Lapinski point out a potential flaw in this handling of the measurement of the significance of legislation, noting that:

“there is no necessary relationship between the posited criteria of innovation and consequence and whether a statute is sufficiently note-worthy to appear in a review of the legislative session by major newspapers or a policy history... Mayhew admits that coverage of an enactment may also be affected by other characteristics, such as how controversial it is. Certainly legislation that fundamentally changes the nature of government would be controversial, but controversy may also stem from the political environment rather than the enactment itself. It is not implausible that identical legislation might result in substantially different levels of controversy depending on the political environment” (Clinton & Lapinski, 2006).

These studies all point to a number of key problems inherent to the task this question posits and indeed to any empirical study attempting to grapple with the significance of federal legislation as compared to each other:

- [1] The question of whether a bill is genuinely innovative and consequential in the frame intended by Mayhew

⁶ Edwards et al. use Mayhew’s strategy as a guide to their own analysis of potentially significant legislation for their own work, *The Legislative Impact of Divided Government* and concur “that “innovative and consequential” are at the heart of what most political observers mean when they term legislation “important”” (Edwards, Barrett, & Peake, 1997).

and Edwards, Barrett and Peake, or simply extensively reported for being controversial;

- [2] The question of what actually constitutes an innovative and consequential bill;
- [3] The question of to what extent historical context should be considered, as in the Civil War example posited by Ansolabehere et al..

Clinton and Lapinski openly acknowledge the possibility that “the task of constructing the “best” measure is impossible” (Clinton & Lapinski, 2006). In their efforts to construct a dataset comprising the work of a number of previous scholars, as well as the *American Political Science Review* and *Political Science Quarterly* for congressional sessions between 1889 and 1947, they assert that resolving the differences between methodologies is a task of some considerable difficulty (Clinton & Lapinski, 2006).

The academic literature then is, in my opinion, clear that there has to be some tempering of news-based analysis of legislation with other data, such as context and consequent historical significance. The question of how to measure these competing analytics will be dealt with in the methodology section.

There is also the question of making sure that any analysis is relevant to present day American politics. Some studies have shown that party polarisation – that is to say, the degree to which the beliefs of parties diverge towards greater ideological extremes, making compromise between, in this case, the two less likely - has increased in the United States over time, which may have an effect on the results – even as recently as the election of America’s current president, Donald Trump. One such study argues that Trump “has tapped into and exacerbated the personal and social identities now wrapped up in party politics” (Charnock, 2018).

As a result, polarisation has become more acute, potentially having some statistical effect on the rate of laws being enacted in the legislative system that needs to be taken account for. Hughes and Carlson for LSE’s US Centre argue that “Divided party control of policymaking increases the time it takes to enact important legislation. These legislative delays are even greater when the two parties are ideologically polarized” and that data demonstrates that “the level of party polarization conditions whether or not divided government influences the pace of the legislative process” (Hughes & Carlson, 2015).

Since, then, party polarisation is argued to have some effect on the legislative process, and there is evidence to suggest that such polarisation has a statistically significant effect in some capacity on the legislative process, any study attempting to make a judgement on legislative outcomes likely needs to use recent data for it to be relevant to a modern academic and sociological examination of current political party interaction.

This review, in sum, demonstrates the extent of the difficulties in attempting to measure the significance of federal legislation and informs the methodology used to ascertain what legislation is significant for the purposes of this research question.

PART THREE: SUMMARY OF FINDINGS OF LITERATURE REVIEW
AND A REVIEW OF EXISTING PROGRESS WITHIN THE ACADEMIC
LITERATURE TOWARDS ANSWERING THE RESEARCH QUESTION

This literature review, in sum, represents the breadth of the existing literature around the subject and the academic examination in the scholarship of the significant problems relating to operationalizing my research question.

In brief, the academic literature does deal significantly with the question of divided government in a very narrow way: dealing specifically with the consequences of divided government for concepts such as legislative efficiency or political gridlock within and without Congress.

However, while no existing academic literature deals with the question of whether it is more beneficial to a party's political interests to control the executive branch or Congress, existing scholarship does provide us with the tools that we need to efficiently come to an answer or, at the very least, avoid significant operational and methodological pitfalls.

How, for instance, is a party's desired political outcomes to be measured? Academics like Anthony King implicitly warn against trying to view a party's goals through the lens of any individual or groups of individuals affiliated with it because of their own focus on winning re-election at any cost (King, 1997), not to mention that the "contriving of the interior structure" of the government by the Constitution (Madison, 1788), not only in terms of explicit separation of powers between institutions but in terms of implicit separation of powers between individuals within institutions, especially within the sprawling bureaucracy of the executive branch, makes, in my view, an extrapolation of individual wants to party desires unproductive to a considerable degree.

Other issues relating to significance of legislation are also raised by previous attempts to answer the question of federal legislative significance, such as by Mayhew, Clinton and Lapinski and Edwards et al., and it is clear that no absolute answer exists in the literature, with Clinton and Lapinski openly asserting that developing a perfect model for analysing legislative significance is "impossible" (Clinton & Lapinski, 2006).

However, while not perhaps scientifically or empirically perfect, some method that combines analysis of newspapers of record and other media institutions of merit's view of enactments' contemporaneous significance as well as a consideration of retrospective content that reviews the legislation in its historical context and makes a judgement on how consequential it was in that light.

This can be achieved in the former case through sources such as the *Washington Post* and the *New York Times*, and in the latter case with sources such as "the *New American Nation* series... [which] focuses on statutes that are retrospectively notable and "stand the test of time." (Clinton & Lapinski, 2006) and *Congressional Quarterly*, which publishes "[t]he *CQ Almanac*... a compendium of legislation from each annual session of

Congress" as well as a number of "special volumes and series... reviewing significant government activities" (Encyclopaedia Britannica, 2010), among others.

Some aggregation, then, of the Mayhew findings, which are primarily focused on legislation's reception in journals such as the *New York Times*, and analysis of those findings based on how important they were considered retrospectively, should be utilised to resolve questions of weighting, the importance of which will be enumerated in the methodology section.

II. OPERATIONALISATION AND METHODOLOGY

Based on the findings and issues raised by previous studies, and in order to minimise the amount of legislation necessary to analyse, a number of key concepts require definition, namely what the study considers significant legislation to be, how that legislation is compared to a party's desired political outcomes, and how important each piece of legislation is considered to be.

The determination of how important legislation is is fundamental to this study's methodology. Each piece of legislation in the study is given a certain number of points based on how significant it is, and inasmuch as that piece of legislation follows through on a policy favoured by one of the two parties, those points are counted towards the institution under the control of that party.

To clarify by way of example: the 2009 stimulus bill passed under the Obama administration, given:

- its significance in its time – with the media calling it, variously, "the centerpiece of President Obama's early agenda" (Herszenhorn, 2009), "a plan breathtaking in size and scope" (Kane, 2009), and "costly and controversial" (CNBC, 2010)⁷; and
- how it was viewed retrospectively, for instance that it "did a vast amount of good" (Krugman, 2014), that there is "widespread agreement among economists that the stimulus act has helped boost the economy" (Wolfers, 2014), and that it "raised the real (inflation-adjusted) GDP by as much as 4.5%, reduced unemployment by more than a full percent, and increased the number of full-time jobs by between 2 and 4.8 billion" (Weatherford, 2012), among other arguments.

This example illustrates how the various pieces of legislation under consideration by this study will be analysed. Taking cues from the Clinton and Lapinski study's point that viewing legislation based on how it was received at the time is fraught with potential for misreading legislation's significance because it

⁷ Though it should be noted that some media organisations focused on it inasmuch as it was opposed by Republicans, with Slate arguing that "voting against the stimulus is win/win for" them (Beam, 2009).

was controversial in its time, I have decided to weigh retrospective views more heavily than contemporary ones, with a weighting of 1.5 to retrospective views to 0.65 to those issued contemporaneously. I feel this step is necessary – and its place in the overall methodological framework is explained in a moment – as it allows institutions to claim more credit for legislation that was more significant. I don't feel it a controversial assertion that not all legislation is equally significant, and recognition of this fact is important in reaching a fair assessment of which institution is more useful in achieving a party's desired political outcomes.

This study will use as its base point the datasets created by David Mayhew for *Divided We Govern*, made available by Yale University's CampusPress⁸, specifically those bills he identifies as having been passed under periods of fully divided government⁹, processed as follows:

1. The legislation is identified within the important enactments dataset as having passed during a period of fully divided government;
2. The text of the bill, as well as the text of a) the summary of the bill provided by Mayhew and b) references to it made retrospectively about its effect are compared to the most recent party platform announced at a party's national convention via key term searching¹⁰ - for instance, searching for terms such as "mortgage", "sub-prime", "crisis", "lending", "banking", etc., in terms of the 2008 banking crisis - as made available by the *American Presidency Project* of UC Santa Barbara.
3. Once it is ascertained how many policies in a party platform are fulfilled by the passage of some given legislation, the institution controlled by the party receives $((c) + (r*1.25)) * (p1 + p2)$ points, where:
 - a. c is the number of contemporaneous references made to the legislation in newspapers of record, such as the *New York Times* and the *Washington Post*. The number here is multiplied by 0.75 to decrease its weighting to

⁸ Available at

<http://campuspress.yale.edu/davidmayhew/datasets-divided-we-govern/>.

⁹ Hereafter for the purpose of this study, the terms "fully divided government" and "divided government" are used synonymously and interchangeably, and used to refer to Congressional sessions during which both chambers of the U.S. Congress – the House of Representatives and the Senate – are controlled by the party not in control of the White House or, put more simply, that the entire Congress and the executive branch are controlled by opposing parties as was the case, for instance, under the entire administration of Richard Nixon.

¹⁰ In the United States, a party sets out its official policy platform for the following period of four years at national conventions, at which it also nominates its candidate for the upcoming presidential election, and it is the text of these platforms, approved by party committees, which form the backbone of what this study considers to be the desired political outcomes of the Democratic and Republican parties.

avoid the controversy trap expressed by Clinton and Lapinski;

- b. r is the number of retrospective references made to the legislation in newspapers of record, reports of academic or otherwise intellectual merit, such as *Presidential Studies Quarterly* or the *American Journal of Political Science*. The number is here multiplied by 1.5 to give these references a higher weighting than contemporary sources;
 - c. $p1$ is the number of policies the legislation clearly fulfils from the relevant party platform – the legislation clearly fulfils a policy if it is obvious from a straight comparison of the text of the legislation and the text of the policy that the object of the legislation is to fulfil that policy, or if based on a review of retrospective analysis of the legislation it gave effect to the policy in the party platform. Accounting for the possibility of multiple policies being satisfied by a bill accounts for the problem Mayhew set out in *Politico* of bundling;
 - d. $p2$ is the number of policies the legislation appears to fulfil multiplied by 0.65. Legislation appears to fulfil a policy if it can be inferred from the text of the bill that the legislation appears to match up with the text of the platform to a reasonable degree of confidence, or if based on a review of retrospective analysis the legislation appears to give effect to the policy in the party platform with some degree of confidence, but such degrees of confidence are not total.
4. Once all the important enactments in Mayhew's dataset for the period are exhausted, the point scores are totaled, and a conclusion based on the point scores is inferred.

The logic of the study runs that if one institution has a considerably higher score than the other, then the results would appear to suggest that it is more beneficial to a party's desired political outcomes to control that institution in particular if it is not possible to control both in periods of fully divided government.

This methodology raises another issue, however; if it is based on how many references are made to specific legislation, then the sources of those references have to be enumerated – otherwise, the potential number of references to a given piece of legislation in the wider media or internet could potentially be unlimited and thus break the formula set out earlier. To that end, the following sources are used for determining current and retrospective references:

- *The New York Times*;
- *The Washington Post*;
- *Congressional Quarterly* and *CQ Roll Call*;
- *American Journal of Political Science*;
- *Presidential Studies Quarterly*;
- *Legislative Studies Quarterly*

References outside of these sources is not considered for the purposes of this study.

As a measure to ensure that the data is as relevant to the modern political process based on concerns raised following review of the Hughes & Carlson and Charnock papers, this study will cover legislation dating from 1991 through 2016, the most recent year for which Mayhew's data on a fully divided government is available, giving a significant volume of legislation and allowing the study to make a reasonable conclusion that can be inferred to the modern American political system. It is unfortunately currently impossible to analyse legislation passed under the Trump administration through the lens specified by this study as the administration has yet to have to face a Congress fully controlled by the other party.

In short, this study examines significant legislation passed between 1991 and 2016 by the U.S. Congress cross-referenced with then-active party platforms, and measures the degree to which parties in control of either the executive branch or Congress manage to enact their party policies based on to what extent those policies are achieved by significant enacted legislation.

This study argues that if one institution or another is more successful in achieving party policies, then that institution is more useful to the party in achieving their desired political outcomes.

It should be made clear that this study is descriptive in intent and does not attempt to offer any underlying theory or hypothesis for what the results show or will show. Observations are made in the conclusion section as regards potential explanations for further study based on the findings, but the conclusion delivers the findings as measured and no explanation for why any state of affairs is the case is offered explicitly.

III. FINDINGS, CONCLUSION AND EVALUATION

Between 1991 and 2016, a total of 57 important enactments were identified by the Mayhew dataset as passing under fully divided government.

I have created two lists for each act, and those lists are enumerated below. The formula set out in the methodology for determining the number of points given to each institution differ based on which party is being considered, and so each list represents one of the two major parties.

Some bills were removed from the final list; among them was the line-item veto bill, so removed because it was later ruled unconstitutional, and the Strategic Arms Reduction Treaty as the House of Representatives was not constitutionally required to vote on it, as treaties are ratified in Congress by the Senate only. Five laws were removed for this reason.

Fiscal budgets have also been removed as they are generally huge omnibus spending bills that make text analysis difficult to perform. This represented five laws.

Bills that either neither party connected to in their platform, which one party didn't connect to and the other opposed – such as the Economic Emergency Stabilization Act in the Republican Party's case, as their platform argued against supporting bailouts for private businesses - or which both platforms opposed are not included, except in the case of Cable Television Consumer Protection and Competition Act for demonstrative purposes. Six laws were removed for this reason.

Bills that had scores that were too low to move the needle in a meaningful direction – generally lower than four points – were also excluded. Ten laws were removed for this reason, the majority in later years where retrospective sources are harder to find.

Laws where both sides scored the same were also removed, as they have no effect on the final result. Eleven laws were removed for this reason.

Twenty laws then made up the final dataset.

Point scores are based, in summary of the methodology, on the number of times the bills were mentioned in contemporaneous and retrospective sources as enumerated prior multiplied by the number of policies the bill satisfies in each party's platform:

Enactment	Democratic Party	Republican Party
Persian Gulf resolution (1991)	0 (Congress)	5.25 (presidency) ¹¹
Intermodal Surface Transportation Efficiency Act (1991)	8.25 (Congress)	6.18 (presidency)
Civil Rights Act (1991)	10.4 (Congress)	7.8 (presidency)
FREEDOM Support Act (1992)	17.7 (Congress)	12.8 (presidency)
Cable Television Consumer Protection and Competition Act (1992)	0 (Congress)	0 (presidency)
Congressional Accountability Act (1995)	26.775 (presidency)	15.3 (Congress)
Lobbying Disclosure Act (1995)	0 (presidency)	13.6 (Congress)
Private Securities Litigation Reform Act (1995)	0 (presidency)	13.9 (Congress)

¹¹ Reference was found to the Persian Gulf Resolution in the *New York Times*, *Congressional Quarterly*, the *American Journal of Political Science* and *Legislative Studies Quarterly*. This footnote exists to serve as an example – other explanations for point scores are enumerated in the appendices.

Personal Responsibility and Work Opportunity Act (1996)	7.4 (presidency)	22.2 (Congress)
Telecommunications Act (1996)	0 (presidency)	16.65 (Congress)
Antiterrorism and Effective Death Penalty Act (1996)	21.15 (presidency)	32.91 (Congress)
Health Insurance Portability and Accountability Act (1996)	31.5 (presidency)	63 (Congress)
Illegal Immigration Reform and Immigrant Responsibility Act (1996)	0 (presidency)	8.3 (Congress)
Food and Drug Administration Modernization Act (1997)	11.65 (presidency)	0 (Congress)
Transportation Equity Act for the 21 st Century (1997)	21 (presidency)	15.75 (Congress)
Quality Housing and Work Responsibility Act (1998)	14.5 (presidency)	0 (Congress)
Education Flexibility Partnership Act (1999)	5.3 (presidency)	10.6 (Congress)
USA Freedom Act (2015)	12.95 (presidency)	9.71 (Congress)
Puerto Rico Oversight Management and Economic Stability Act (2016)	7.1 (presidency)	0 (Congress)
21 st Century Cures Act (2016)	11.6 (presidency)	5.8 (Congress)
Total	207.275	263.86
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	Executive branch control	Congressional control
Total	202.955	264.07

CONCLUSION AND EVALUATION

FINDINGS AND INTERPRETATION

The score totals appear to point to an advantage held by Congress.

There are a few potential explanations:

- Congress has the power to draft the text of the law, whereas the president merely has the authority to either approve it or turn it down once Congress passes it. As a result, the text of the law will always be something that Congress must favour in at least some capacity before it reaches the president's desk.
- Perhaps party platforms are less specific when the party controls the administration rather than Congress – in other words, it becomes more difficult to apply policy successes to a party because their platform is more general, defying the model's methodology.
- This model does not account for how these laws are enforced, merely the intent specified by the law's enactors and the president at the time of its signing. As a result, the gap may be tighter when actual enforcement is compared to the provisions of the party platform; with this being said, executive action, as pointed out in the literature review, is not often a process that Congress has much influence in; "throughout U.S. history presidents have relied on their executive authority to make unilateral policy without interference from... Congress" (Mayer, 2002). Additionally, enforcement and the legislative process are two separate processes, and so this explanation would not change the fact that Congress appears to have more success in achieving their party objectives through the legislative process itself as set out in the research question.

One argument for a more even estimation of the power of the president and the Congress to have their respective parties' wills enacted into law would be that there is another statistic worth considering: the average number of points per law enactment for Congress is 13.2, whereas the same number for the executive branch is 10.3; there is only a marginal gap between Congress and the executive branch's average success per law.

This analysis accounts for various outlier laws in the data, such as the Antiterrorism and Effective Death Penalty Act of 1996, a highly retrospectively significant law which happened to connect to two separate law-and-order policies in the Republican party platform and increased the point score by a significant factor.

This view however makes the difference between Congress and the presidency more striking. Taking the same figures and creating an average number of points earned per policy enactment, significance accounted for – 11.75 – there is actually a gap of over five times that number between the Congressional and executive totals – 61.115 - representing a gap of around five policies achieved between Congressional and presidential parties.

In other words, Congressional parties in the main achieved five more policies from their platforms than their presidential counterparts, making them more rather than less likely to achieve their party objectives.

In sum, based on the findings of this study, I conclude that it is more useful to a party's desired political outcomes to control the Congress, rather than the executive branch, of the United States federal government.

EVALUATION

DIFFICULTIES RELATING TO THE EVALUATION OF FEDERAL LEGISLATION'S SIGNIFICANCE

This study demonstrates neatly the difficulties with attempting to measure significance of federal legislation.

Some pieces of legislation, for instance, under this operationalization received a large boost as a result of controversy in the present connected to a bill that was also controversial in the past, rather than retrospectively on the merits of the bill; one example was the Health Insurance Portability and Accountability Act, which appeared primarily in retrospective sources on account of how its privacy rules were violated by unscrupulous medical providers.

It is partially for this reason that an average of all of the law scores was also taken, to serve the dual purpose of further illustrating which institution if any was more successful in terms of delivering party objectives and attempting to alleviate the concerns expressed in the Clinton and Lapinski study. This methodology also becomes harder to implement as legislation becomes more recent; the availability of modern sources in terms of the operationalisation become fewer and fewer, meaning scores become lower even if they are more significant because of the mathematical impossibility of gathering modern views.

DIFFICULTIES RELATING TO TABULATING POINT SCORES

The tabulation of point scores for bills was not without difficulty; since the primary method of determining how far a bill complied with a party policy was based on text-analysis – specifically, searching for key terms within the party platforms and basing the results on the findings of my, essentially manual, comparison – leave the results potentially open to error. I was unable to determine a method by which I could calculate a margin of error given the necessarily manual method of checking the party platforms that was used to perform this study, but I am confident that very occasional misestimations of the text's meaning – the estimations themselves based on the summaries provided by David Mayhew for *Divided we Govern* - do not change the core conclusions of my dissertation, which is that Congress has a significant advantage in terms of making laws that support their party's interests.

APPENDIX: JUSTIFICATION FOR BILL SCORES

To save on word count, not all bills have had their justifications enumerated here; rather, an illustrative selection of the whole has been listed to help elucidate the general method by which points are issued.

- Persian Gulf Resolution: The Democrats score zero because I could not find a link between their then-current platform and the effect of the resolution. The Republicans score 5.25 as their platform made overt reference to maintaining U.S. presence in the Persian Gulf and “supporting the independence and stability of the states in the region” (Republican Party, 1988); on the one hand, the resolution does expand U.S. presence in the region, but on the other it is hard to see how going to war with Iraq also supports its stability and independence, so I applied the 0.75 penalty multiplier. The resolution was viewed significantly by Congressional Quarterly and somewhat by later academics, who point out the groundwork it set up for President Bill Clinton to take similar action.
- Intermodal Surface Transportation Efficiency Act (ISTEA): The Democrats score 8.25. Their platform makes reference to “federal support for... infrastructure” and later asserts that “we can rebuild America... rebuild our roads” (Democratic Party, 1988), which qualifies as a connection to the main thrust of the bill, which was heavy investment in the road networks of the United States. The Republicans score 6.18; I could not find any reference to highway investment in the platform, though they did commit to “improved transportation safety” (Republican Party, 1988), which is somewhat of a secondary objective of the legislation. I felt it would be dishonest to give both the highway investment – multiple billions of dollars – and airbag requirements the same weight, so I applied the 0.75 multiplier.
- Civil Rights Act of 1991: The Democrats score 10.4; their 1988 platform openly references “assuring equal access to... employment... regardless of race” (Democratic Party, 1988), which is a direct objective of the 1991 Civil Rights Act, passed as it was in part as a response to the charged 1988 *Patterson v. McLean Credit Union* racial job discrimination case. It was referenced extensively in the *New York Times* in its day, but neither of the two newspapers, *Congressional Quarterly*, *CQ Roll Call* nor the academic journals mentioned it retrospectively. The Republicans score 7.8; they make no overt reference to equal access to employment regardless of race, but make more indirect references to “[removing] intentional and unintentional barriers to... employment” (Republican Party, 1988) among other things, and thus have the 0.75 multiplier applied.
- FREEDOM Support Act of 1992: The Democrats score 17.7, as their platform directly references “Helping to lead an international effort to assist the emerging—and still fragile—democracies in Eastern Europe and the former Soviet Union build democratic institutions in free market settings, demilitarize their societies and integrate their economies into the world trading system” (Democratic Party, 1992), whereas the Republicans score 12.8, the same score multiplied by 0.75, for their less detailed reference to “[encouraging] developing nations to adopt both democracy and free markets” (Republican Party, 1992), missing the Soviet connection.
- Cable Television Act of 1992: Both parties score zero; neither platform makes clear reference to wanting to make broadcasting more available to local broadcasters in their then-current platforms.
- Congressional Accountability Act of 1995: The Democratic Party gets an unimpeded score for this act; they promised to “make government more decentralized, more flexible, and more accountable” (Democratic Party, 1992) in 1992. They also get a 0.75 score for their other policy of wanting to “act against sexual harassment in the workplace” (Ibid.) but for not specifying it to Congress. It clearly meets a Republican policy, as well; “Both houses of Congress must guarantee protection to whistle blowers to encourage employees to report illegality, corruption, sexual harassment and discrimination” (Republican Party, 1992).
- Lobbying Disclosure Act of 1995: The Democrats score zero, their platform making no reference to lobbying reform. The Republicans reference “too much influence by lobbyists... [blocking] true reform” (Republican Party, 1992), a situation the bill attempts to help resolve, granting them an unimpeded score.
- Private Securities Litigation Reform Act of 1995: Searches for “tort”, “fraud”, “securities”, “litigation” and other terms did not turn up any direct matches. The closest connection was a reference in the Republican platform to “[calling] for greater use of judicial sanctions to stop frivolous lawsuits” (Republican Party, 1992), but this is only similar to the intent of the Private Securities Litigation Reform Act in broad strokes. It receives a 0.75 penalty.
- Personal Responsibility and Work Opportunity Act of 1996: The Democrats achieve their policy of wanting to force people who have been on welfare for a period of two years into work; the Republicans, however, achieve a coup here, increasing enforcement of child support laws, punts the responsibility for establishing welfare systems to the states, and to a lesser extent in terms of the platform, encouraging remaining within wedlock. They receive a 2.75 multiplier for the two definitive policy achievements – state-based systems and child

support law enforcement – and the unclear wedlock provision.

- Antiterrorism and Effective Death Penalty Act: This bill received extensive mention in both contemporary and modern sources, particularly in the *New York Times*. It met two separate Republican policies: control of chemical weapons and better enforcement of the death penalty (which received a 0.75 multiplier, as habeas corpus modification did not appear in the Republican platform but the policy appears to meet with the spirit of the text if not the text itself). It also met the Democratic policy of wanting to better regulate chemical weapons.

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University of Kent, School of Politics and International Relations
Self-Assessment Document – Stage 2/3

Name: Harrison Gowland

Module Code: PO679

We encourage all Stage 2 and 3 students on this module to complete and submit this self-assessment document together with their assignments as it will help them reflect on their work, consider feedback received on previous assignments, possibly improve future performance, and allow us to target our comments to concerns students may have regarding particular aspects of their work.

How well do you think you did the following (tick the appropriate box):	Very well	Quite well	Average	Poorly	NA
Demonstrated knowledge of the main literature/authors in the field?	X				
Made use of appropriate range of sources?	X				
Showed comprehensive knowledge of the topic?		X			
Answered the question directly and effectively?		X			
Summarised and analysed the reading material?	X				
Provided a strong and identifiable line of reasoning?		X			
Demonstrated independent thought?	X				
Used good examples?	X				
Wrote clearly and concisely?			X		
Used appropriate referencing?		X			
Taken into account feedback received on previous assignments?		X			

Please answer the following questions:	
What do you think you did best in this assignment?	The literature review was, I think, comprehensive inasmuch as it detailed an extensive background to the divided government scholarship and linked it to the research question by pointing out how it identifies key issues that my methodology grapples with.
What do you think you did least well in this assignment?	I think the methodology itself might have had a few flaws – were I to run this study again, I might choose different contemporaneous and retrospective sources as the root of my significance data.
What did you find the hardest part of this assignment?	The text analysis of the legislation. While Mayhew's sum-ups of the laws from his <i>Divided we Govern</i> dataset were useful, trying to perform key term comparison analysis on the various party platforms proved somewhat of a slog.
What was the most important thing you learned in this assignment?	I think I've learned a lot about essay structure and referencing; the importance of having an easily identifiable throughline and backing it up with academic scholarship.

Any other comments or queries?	None
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