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PART I

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I

Congress and the Politics of Problem Solving

This is the most dysfunctional political environment that I have ever seen. But then you have to juxtapose that with [this Congress being] one of, at least, the three most productive Congresses since 1900... Making sense of all that can make your head burst.

Norman Ornstein (Fahrenheit, Rucker, and Sonmez 2010)

This was, by far, the most productive Congress in American history... Why? Because we heard the message the American people sent us last month: They don't want us to sit around and waste their time. They want us to work together and work for them.

Senate Majority Leader Harry Reid (Bolton 2010)

How is it that a legislature like Congress – so rife with dysfunction and partisanship – can nevertheless meet many of the demands of voters and pass much-needed legislation? In this book we consider why and how Congress is able to address problems in society despite the many reasons mustered for why it cannot. According to many recent accounts, congressional politics has become so polarized and dysfunctional that lawmakers are incapable of cooperating on even the most mundane issues. Reelection and partisanship are such all-consuming concerns that individual legislators no longer contribute to the work of the chamber. Congress has been variously described as the “Broken Branch” (Mann and Ornstein 2006), the scene of a “Second Civil War” (Brownstein 2007), and a venue for “Fight Club Politics” (Eilperin 2007).

Claims about congressional dysfunction are hardly new. A review of scholarly research reveals remarkably similar statements in previous decades. In the 1990s, scholars debated how to “fix” or “remake”

Congress (Robinson 1995; Thurber and Davidson 1995). In the 1980s, there was a “crying need” for reform (Penner and Abramson 1988). The 1970s saw a Congress that was “against itself” (Davidson and Oleszek 1977). In the 1960s it was “out of order” (Bolling 1965) and “in crisis” (Davidson, Kovenock, and O’Leary 1966). Even as far back as the 1940s, reforms meant to address a “Congress at the crossroads” (Galloway 1946) were ultimately judged to have “failed” to address Congress’s ills (*Life Magazine* 1947). These are just a small taste of the many books, articles, and reports over the years that have portrayed Congress as an ineffective lawmaking body in need of serious restructuring.

All is not well with Congress. The institution rarely responds as quickly or as completely as many would prefer. Electoral dynamics sometimes create incentives for parties in Congress to highlight their differences rather than their common concerns. Yet, Congress also accomplishes more than is generally appreciated, and much more than many scholarly perspectives would lead us to expect. Contemporary legislative research often portrays the policy preferences of lawmakers as central to understanding policy making and change in Congress. We argue that preferences often take a back seat to another concern – problem solving. On many issues, legislators seek common ground because they share common electoral incentives. Evidence in support of this perspective is hiding in plain sight. As observers have concluded that Congress is broken or failing, the institution has been addressing significant societal problems – the struggle for civil rights, military conflicts in every part of the globe, access to affordable health insurance, environmental and energy crises, educational disparities, tax reform, economic recessions – and many other visible and less visible challenges.

Conflict in Congress is neither all consuming nor is it the defining characteristic of lawmaking. Research documenting partisan polarization focuses on the growing percentage of roll call votes that pit a majority of one party against a majority of the other (McCarty, Poole, and Rosenthal 2006; Roberts and Smith 2003; Theriault 2008). Yet, at the end of the day, partisan *agreement* has been the historical norm in congressional politics, even for important issues. Most bills in the modern era pass with bipartisan support (see Carson, Finocchiaro, and Rohde 2010; Lee 2005, 308). Similarly, although the number of laws passed by Congress has declined somewhat in recent decades (from an average of about 750 laws per term in the 1940s and 1950s, to approximately 450 laws per term in the 1990s and 2000s), the number of pages of legislation enacted has increased by more than 300 percent (from around 2,600 pages of statutory language per term, to well more than 6,000 pages). Congress

also continues to engage in as much regular oversight of federal agencies and programs as it ever has (Aberbach 2002; Ainsworth, Harward and Moffett 2010). And as mentioned, the recent 111th Congress (2009–10), initially characterized as one of the most dysfunctional in years, turned out to be one of the most productive in generations (Fahrenheit, Rucker, and Sonmez 2010; Hulse and Herszenhorn 2010).

Why, then, do criticisms of Congress overshadow its accomplishments? “Conflict,” Pamela Shoemaker and Stephen Reese conclude, “is more inherently interesting than harmony” (1996, 117; see also Fiorina, Abrams, and Pope 2005). Given the options of portraying the congressional glass as half-full or half-empty – of focusing on conflict versus consensus – there seems to be a longstanding bias toward the latter (Durr, Gilmour, and Wolbrecht 1997; Hibbing and Larimer 2008; Ramirez 2009). Speaking to CNN, House Speaker John Boehner (R-OH) caustically remarked, “It would surprise people that 90 percent of the time, members of Congress on both sides of the aisle get along. But, you know, that’s not news for those of you in the news business” (Boehner 2011). Rep. Henry Waxman (D-CA), reflecting on an important enactment that received little coverage, opined that the news media “are conditioned to assume that the most important political issues are the ones that create the greatest amount of public drama and culminate in gavel pounding showdowns on the House floor. . . . This set me to pondering the old line about a tree falling in the forest: When a law of real consequence is enacted without anyone noticing, does it still count as an accomplishment?” (Waxman 2010, 136–7). A similar bias toward conflict also seems to pervade scholarly research on Congress, possibly for the same reasons. One goal of this book, in contrast, is to understand better the *agreement* that also seems to be such an important and understudied aspect of congressional lawmaking.

THE POLITICS OF PROBLEM SOLVING

We assert that there is value in looking beyond the conflict to consider what legislatures are able to accomplish and why. We frame our investigation in terms of “problem solving.” David Mayhew, a leading figure of modern congressional studies, has defined problem solving as “a widespread, shared perception that some state of affairs poses a problem and that policymaking should entail a search for a largely agreed upon solution” (2006, 221). Although lawmakers often favor differing policy solutions, they appreciate that many of their supporters are more concerned

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with whether a perceived problem is addressed than the specifics of how it is addressed (Fiorina 1981; Lenz 2012).

In December 2010, President Barack Obama explained his support for extending the Bush tax cuts in problem-solving terms:

For the past few weeks there's been a lot of talk around Washington about taxes and there's been a lot of political positioning between the two parties. But around kitchen tables, Americans are asking just one question: Are we going to allow their taxes to go up on January 1st, or will we meet our responsibilities to resolve our differences and do what's necessary to speed up the recovery and get people back to work?¹

In the end, the salience of the issue and a sense of urgency (the new law was passed just two weeks before the old one expired) helped forge an agreement that might not otherwise have emerged in the absence of such pressure. Moreover, the final version of the bill received bipartisan support – most Democrats and Republicans – in both chambers.²

A problem-solving perspective recognizes that Americans share common concerns on many issues (Fiorina, Abrams, and Pope 2005; Page and Shapiro 1992; Stimson 1999). They expect the government to defend the nation, reduce crime, promote economic growth, improve transportation, advance health and safety, and ensure access to education – to name a few. Support for these government functions has hardly wavered over the past three decades. Wanting to address problems and successfully addressing them are two different matters however. Lawmakers appreciate that isolating the causes of societal problems can be difficult and that changing conditions alter the effectiveness of existing policies. As one lawmaker put it, “I cannot recall any project of any size that has ever been presented to this committee that came out in the end like the witnesses testified it would at the outset” (Davidson and Oleszek 2004, 9).

We investigate how endogenous structures (committees) and processes (temporary legislation) enhance Congress's ability to address problems in society. We also highlight understudied institutionalized routines and incremental policy adjustments that are important aspects of the legislative playbook (Lindblom 1959; Pressman and Wildavsky 1984). Finally, we turn our attention to the consequences of problem solving for arguably the most important contribution of legislatures – policy change.

¹ Statement by President Barack Obama in a press conference, <http://www.whitehouse.gov/the-press-office/2010/12/06/statement-president-tax-cuts-and-unemployment-benefits> (accessed April 20, 2012).

² House (R 139–36; D 138–112); Senate (R 37–5; D 44–14)

IMPLICATIONS FOR LEGISLATIVE STUDIES

Problem solving does not figure prominently in legislative research. If anything, the prevailing theme of existing research is that lawmakers are unable or unwilling to engage in problem solving. “Lost in the political system’s focus on conflict and controversy,” argue Alan Gerber and Eric Patashnik, “is the tremendous common ground – among ordinary citizens and political elites alike – over government’s role in contemporary American society” (2006, 3). There are exceptions. In *Congress and the Common Good*, Arthur Maass argues that “government conducts a process of deliberation that results in decisions that are based on broader community interests, and it designs and implements programs in accordance with these decisions” (1983, 5). In *The Dysfunctional Congress: The Individual Roots of an Institutional Dilemma*, Kenneth Mayer and David Canon document how legislative theories provide little reason to expect legislatures to produce collectively beneficial policies, before observing that “Congress *does* legislate in the national interest and *has* created general benefits at the expense of localized and concentrated interests” (1999, 39; emphasis in original). Still other authors have examined specific instances of lawmakers doing “the right thing” (such as domestic military base closings or reforming Social Security) by enacting policies that serve the public interest (Arnold 1990; Becker 2005; Muir 1982; Weaver 1988). But in the main, the emphasis of research is on the reasons why Congress fails to fulfill its policy responsibilities.

The primary goal of this book is to understand why and how legislators do engage in problem solving on a routine and sustained basis. We see four main contributions to contemporary legislative research. The first is to draw attention to agenda scarcity and limited capacity in legislatures and their implications for policy making. Scarcity receives little attention in existing legislative research. Leading theories of legislative organization implicitly assume that lawmakers’ preferences dictate not only the content of the winning policy alternative but also the composition of the legislative agenda (Cox and McCubbins 2005; Krehbiel 1991; Weingast and Marshall 1988). This overly narrow focus neglects important questions about how issues get on the legislative agenda, the considerations influencing what lawmakers prefer in any given debate, and even the substance of the issues that shape a party’s “reputation” within the electorate.

The second contribution is to bring an issue perspective to bear on the study of legislative operations and output (Fenno 1973; Lowi 1964). For the better part of a generation, legislative scholars have favored all-encompassing explanations of legislative institutions and behavior. Our work builds upon recent studies demonstrating the value of incorporating policy specific factors into the mix (Clinton and Lapinski 2006; Lapinski 2008; Lee 2009). To a large degree, we confirm what scholars such as E. E. Schattschneider, Theodore Lowi, Frank Baumgartner, Bryan Jones, and others have long noted – that issues often organize activity and conflict in legislatures. Specifically, many issue debates begin with the shared premise that Congress must act. For such “compulsory” issues, lawmakers face considerable pressure to find common ground in timely fashion (Walker 1977). The dynamics of lawmaking are importantly different for other “discretionary” issues where the need for action is less urgent.

Third, this book refocuses attention on the governing contributions of legislative committees. In leading theories of congressional organization, the policy caretaking activities of committees are downplayed or ignored altogether. In partisan theories, committees are portrayed as mere extensions of the majority party leadership. In distributive theories, committees serve limited particularistic purposes. In informational theories, the focus is on the “signaling” contributions of committees. Where are the policy development contributions of committees in these theories? A problem-solving perspective clearly situates committees at the center of governing. It provides a richer account of how committees contribute to the policy-making process than the existing informational perspective. Drawing on original and extensive empirical data on bill referral patterns, we offer new insights into a number of longstanding topics related to committee roles, such as the purposes and effects of committee reforms, patterns of bill-sponsor success, agenda setting, and the dynamics of policy attention.

Fourth, this book advances the study of policy change beyond “major” statutory enactments (i.e., primarily those identified by Mayhew 1991). We lower the threshold for what constitutes a significant enactment to one that encompasses a substantially larger swath of all laws. We then propose a new approach to studying policy changes by exploring those contained within a single law and those that might be part of many different laws. Testing problem-centered explanations for policy change against more familiar preference-centered accounts, we find that policy change in Congress is largely problem driven.

Scarcity, Agendas, and Issue Priorities

A problem-solving perspective emphasizes that “the most important part of the legislative decision process [is] the decision about which decision to consider” (Bauer, Pool, and Dexter 1963, 405). Time and resources are scarce commodities in all legislatures (Cox 2006; Döring 1995, 223). Scarcity means that “even if agreement can be reached on what a problem is and how to solve it, there remains the formidable question of weighing problems according to their importance in the context of scarce time, attention, and money. Which ones should be tackled and solved?” (Mayhew 2006, 222).

Legislative scholars have devoted very little attention to the implications of scarcity for policy making. More commonly, the implicit assumption is that there is no scarcity. For example, gridlock theory portrays policy change solely in terms of the location of the policy status quo and the preferences of policy makers (Krehbiel 1998). Any policy status quo outside of the gridlock interval is immediately reformed – there is no scarcity problem that compels lawmakers to decide which issues should be priorities. Policy studies, in contrast, have long noted that scarcity has important implications for legislative agendas and prospects for policy change. One of the most specific is Jack Walker’s 1977 study of the U.S. Senate.

According to Walker, senators “exercise little discretion over the scheduling of items for debate. Much of the business transacted by the Senate is either mandated by the Constitution or required for the maintenance of the vast federal establishment” (1977, 424). Walker then goes on to describe the Senate’s issue agenda as made up of a spectrum of items ranging from “required” to “chosen” (Figure 1.1). At the required end of the spectrum are “recurring” legislative issues, such as annual appropriations bills and programs and statutes on short-term authorizations, as well as “politically necessary” issues such as those driven by salient events like the 9/11 terrorist attacks or a massive oil spill. At the opposite “chosen” end of the agenda spectrum are a much smaller set of discretionary issues “selected from the numerous possibilities offered up by the Senate’s legislative activists” (1977, 425). Importantly, Walker argues that lawmakers have limited opportunities to take up discretionary issues because mandated or required issues consume much of the available agenda space.³

³ In this book, we will propose a differentiation of issues that is very similar to Walker’s. Specifically, we distinguish between “compulsory” and “discretionary” issues, whereas he distinguishes between “required” and “chosen” issues. The main reason for the departure is that we are not just interested in what is on the agenda (i.e., what was “chosen”). We are also interested in comparing what *might* have been on the agenda to the actual agenda.

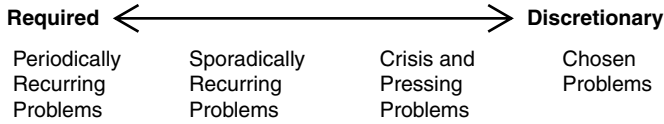


FIGURE 1.1. Walker's Typology of Problems and Agenda Items.

Source: Walker 1977.

John Kingdon (1995) makes a similar point when he portrays policy change as an episodic, event-driven process (see also Baumgartner and Jones 1993). Rather than trying to shift the agenda, policy entrepreneurs recognize that their best opportunities lie in “coupling” their policy ideas to issues that are already on the agenda (1995, Ch. 8). Kingdon specifically references reauthorizations, salient events, presidential attention, and elections as key events prompting policy attention shifts in the face of agenda scarcity. It is easy to appreciate why elected lawmakers would want to respond to publicly salient events or issues that the president highlights. It is harder to appreciate why legislators pass temporary laws requiring reauthorization if one of the consequences is that it limits their opportunities to advance other personal or partisan policy goals.

We argue that decisions to authorize laws and programs on a temporary basis are often attempts to prioritize problem-solving activities. When laws are permanently authorized, inaction has minimal policy consequences. When a law expires, however, the consequence of inaction is often more severe – it is “no policy.” Temporary authorizations encourage busy legislators to invest in collectively beneficial problem-solving activities, such as program oversight and policy updating, by altering expectations about whether an issue will make it onto the agenda. As the responsibilities of the federal government have grown, so has the number of programs authorized on a short-term basis.

The Dynamics of Issue Attention and Policy Change

In 2003, a Republican-led Congress and a Republican president passed the Medicare Modernization Act (P.L. 108-173), the “largest expansion of the welfare state since the creation of Medicare” (Fiorina 2006). Media coverage and subsequent scholarly studies of the debates highlighted the differences among the parties, chambers, and even members within the majority party over the details of the reform (Eilperin 2007; Sinclair 2006). But why was a dramatic expansion of the Medicare entitlement on the agenda at all under a Republican government?