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The Evolving Textbook Congress

Polarization and Policy Making on Capitol Hill in the 21st Century

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In 2009, the U.S. Congress, led by House Democrats, sought to tackle the issue of climate change and pass major energy legislation. The American Clean Energy and Security Act (ACES), sponsored by Rep. Henry Waxman (D-CA) and Sen. Edward Markey (D-CA), proposed a "cap and trade" system to limit the amount of greenhouse gases that companies could emit nationally. "Emission permits" would be bought and sold in a marketplace, and the cap would be reduced over time to curb carbon dioxide gases. The ambitious bill generated significant controversy. Environmental groups lobbied for the measure while the petroleum and natural gas industries and conservative advocacy groups sought to block its passage. The bill passed in the House by a slim 219–212 vote, with just 8 Republicans in support. But, the following year, ACES died in the Senate, when Majority Leader Harry Reid (D-NV) acknowledged that he did not have the sixty votes necessary to overcome a Republican-led filibuster.

Since 2010, President Obama has been urging the Congress to pass climate change legislation. But little has been accomplished congressionally, with meaningful policy change made more difficult since the Republicans regained majority control of the House in 2011. In his 2013 State of the Union address, Obama announced that he was prepared to move forward without legislative action. "If Congress won't act soon to protect future generations, I will," he said (Restuccia and Dixon 2013). Working through the Environmental Protection Agency (EPA), Obama in 2014 established a new regulation that would cut carbon emissions produced by coal-burning power plants by 30 percent from 2005 levels by 2030. Congressional Republicans were immediately up in arms about the executive "overreach" and warned of significant job losses in the coal industry. Obama made no apologies for seizing the initiative, however, and castigated Congress for failing to tackle climate change. And, in June 2014, the Supreme Court largely upheld the EPA's authority to regulate greenhouse gases, though the decision also left open the possibility of future judicial review of rules imposing limits on power plant emissions.

On combating carbon pollution, then, national policy making in the 21st Century is being led primarily by the president with significant input from the judiciary. Individual lawmakers have certainly taken positions and made public statements, but Congress is not a central institutional player in climate-change-mitigation policy making.

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Executive-led policy making on core national issues is not the way James Madison intended the U.S. political system to work. When the framers established the Constitutional system in 1787, they cast Congress in the starring role. Article I established Congress as the premier site of political representation and lawmaking in the national government. And Congress lived up to its star billing for some time. Policy making in the 19th century was predominantly a legislative branch affair. The president typically played the part of patronage dispenser and occasional veto player, and the federal bureaucracy remained modest in scale and scope (Kernell and Jacobson 2006). The federal courts determined the meaning of the law, arbitrated jurisdictional disputes between the states and the national government, and served as a surrogate for a more fully developed administrative apparatus (Skowronek 1982). Nonetheless, the courts' role in governance was essentially procedural and reactive. Party politics was the driver of substantive debates, and Congress remained the key institutional forum where sectional and economic interests and clashing ideas about the future of the republic vied for influence (Cooper 2009).

As the 20th century dawned, the American state expanded, new regulatory agencies emerged, and Congress struggled to maintain its institutional prominence. During the Progressive and New Deal eras, the president became far more active in domestic affairs, and the size of the executive branch mushroomed. To be sure, the outpouring of social legislation during the Great Society was a joint production of the White House and Congress (Zelizer 1999), but Richard Nixon's effort to preempt congressional authority in areas such as impoundments and war powers forced Congress to reassert its basic constitutional prerogatives (Sundquist 1981; Schickler 2001). By the 1960s, the federal judiciary had also emerged as a formidable rival and partner to the political branches through its willingness to take a "hard look" at bureaucratic discretion, interpret statutes, and articulate rights claims (Kagan 2001).

The present era finds Congress on the political defensive, both on Pennsylvania Avenue and in elite discourse. A policy-driven president, more willing to steer government unilaterally (Howell 2003), and a vast if overloaded bureaucracy, politicized to engineer the president's preferred outcomes (Lewis 2008), have transformed the executive branch into a formidable policy-making force under Republican and Democratic presidents alike. The federal judiciary continues its activist bent, in a liberal direction on social issues such as same-sex marriage and a more conservative direction on economic policy, federalism, and voting rights issues. Congress, by comparison, often seems feckless and feeble in the face of national challenges. Heightened levels of partisan polarization, in tandem with close levels of party competition that bring control of Congress within reach of both parties in every election, seem to have made it harder for lawmakers to reach timely agreements on the issues of the day (Binder 2003; Sinclair 2006; Lee 2013). Public confidence in the institution is at a postwar low: in a recent Gallup survey, only 7 percent of the public said they approved of Congress's job performance (Riffkin 2014). Lawmakers have also been sharply critical of the institution. As Sen. Joe Manchin (D-WV) stated about Congress's inability to keep the government funded without threatening a default on the national debt, "Something has gone terribly wrong when the biggest threat to our American economy is the American Congress" (see Steinhauer 2012).

To be sure, distress about Congress's ineffectiveness is nothing new. Reformers have criticized Congress's lack of productivity and limited problem solving capacity since the 1940s (Adler and Wilkerson 2012; see Polsby 1990). But some experts insist that the current legislative dysfunction is different from the past, in degree if not in kind, and that Congress has become "the broken branch" (Mann and Ornstein 2006). Even when Congress manages to act, its performance is often disappointing. As Sarah Binder argues, "Half-measures, second bests, and just-in-time legislating are the new norm, as electoral, partisan and institutional barriers limit Congress's capacity for more than lowest common denominator deals" (Binder 2014, 18).

Yet other scholars argue that the American political system has self-correcting properties, and that many of the alleged problems in legislative performance will prove to be limited and short-term (Mayhew 2009; Sinclair 2009; Shepsle 2009). Both sides of the debate tend to offer general assessments of the institution's overall capacity, with relatively little analysis of Congress's ability to perform specific problem-solving tasks such as developing policy options and confronting trade-offs.[1]

The goal of this volume is to offer a more nuanced assessment of Congress's performance in the contemporary American state. We seek to understand and evaluate how well Congress fulfills its roles as lawmaker and representative body across key domestic policy areas, including health, energy, and fiscal policy. In doing so, we recognize that the behavior of the institution and its members is mediated by contextual forces, including polarization and economic inequality, the growing complexity of activist government, declining public trust in government, fiscal pressures, and a vast increase in the number and variety of interest groups. How have these broad changes in the social and economic environment shaped the internal operation of Congress? How has Congress in turn used its governing capacities to address problems and remake the economy and the society? Any effort to answer these questions must recognize that Congress's performance cannot be understood in a vacuum, but only within the separation of powers system of which it is a part (Mayhew 2009). The crucial issue is not only how many bills Congress passes, but also how it governs in cooperation and competition with other political actors and institutions.

Because Congress is the foundation of the American state, the study of Congress has long been at the center of American political science. Some of the most important works on American politics emerged within the legislative politics subfield during the 1970s, 1980s, and 1990s. This is an opportune moment to take a fresh look at some of these arguments. In an era of gridlock and polarization, do the classic scholarly models and approaches – including David R. Mayhew's "electoral connection," Richard Fenno's "congressmen in committees," and Keith Krehbiel's "pivotal politics" – still provide purchase on congressional behavior? That is, do the typical ways of approaching the study of the postwar Congress still apply today? Or do procedural developments, such as the decline in "regular order" in the law-making process and the near requirement of sixty votes in the Senate on most policy issues, suggest that attention should shift away from individual members and committees to parties and the "unorthodox" mechanisms that party leaders use outside regular order, including party task forces, complex floor procedures, and the budget reconciliation process (Sinclair 2011; 2014)?

This volume is also concerned with analyzing the effects of growing partisan polarization in Congress. There is a scholarly consensus that Congress has polarized over the last three decades (Sinclair 2006; Poole and Rosenthal 2007); the two parties have become increasingly ideologically homogenous (Democrats liberal, Republicans conservative) as well as distinct from one another. The effect of increased polarization on Congress's ability to perform its constitutional functions and representational duties is much more of an open question, however (Nivola and Brady 2008). We explore the consequences of polarization throughout the volume, and do so by policy area.

A final goal of the volume is bring into dialogue two separate research communities: traditional Congress scholars and public policy scholars. Both sets of scholars often focus on law making, but they seldom speak to one another. The rising prominence of deductive theory and large-*N* roll call analyses has led to the marginalization of policy substance within congressional studies (Lapinski 2013). The focus has been on how institutions, rules, and procedures are formed and influence the behavior of members and party caucuses. At the same time, policy scholars have tended to focus on presidents, bureaucracies, and the media as the key sites of agenda setting, decision making, and implementation. We believe that congressional and public policy scholars can learn a great deal through closer intellectual engagement, and we hope this volume takes a significant step toward encouraging productive exchange.

THE ESSAYS

A volume of this kind, with a topic as broad as "Congress and policy making in the 21st century," could be assembled in a multitude of ways. The four headings under which we have grouped the essays – "Congressional Policy Making in a Polarized Age," "Congress and Society," "Congress and Economic Policy," and "Congress and Domestic Policy Dilemmas" – do not exhaust the connections to be drawn among them, but this organization highlights some central themes. We describe these themes in the following, in the context of summarizing the content of the various chapters.

In Part I, "Congressional Policy Making in a Polarized Age," we begin with two essays that explore the broader setting in which the major actors of Congress – members, committees, and parties – seek to advance their legislative objectives. These essays draw attention to the factors that increase the probability of policy gridlock, as well as the factors that open the window to major legislative accomplishment. Significant in the chapters included in Part I is the insistence that it is possible to generalize about the politics of policy making on Capitol Hill. While no two bills are alike, there are nonetheless systematic patterns in how Congress makes policy that reflects the procedural rules of the game, the evolving partisan and ideological context in which each chamber operates, and the nature of proposed policy changes themselves.

A central theme that emerges from this volume is that congressional parties are far stronger and more prominent today than they were in the 1970s when classic books by scholars such as David R. Mayhew and Richard Fenno were published. Nonetheless, some of the authors argue that individual lawmakers remain an important unit of analysis for understanding congressional behavior. Members vary greatly in their law-making activities. Some law makers leave a major imprint on the legislative process while others are far more passive participants.

In Chapter 2, Craig Volden and Alan E. Wiseman focus on the role of skillful "policy entrepreneurs" in bringing about legislative action. These are members who – because of ideological commitment or simply the desire for power or impact – invest their (scarce) time and energy in sponsoring bills and moving them forward in areas where the electoral rewards for doing are often lacking. Drawing on James Q. Wilson's classic policy typology, Volden and Wiseman argue that any legislative proposal can be classified in terms of those who benefit and those who are harmed by the proposal. If the citizens who support a proposal are broadly distributed across society but the opponents are concentrated – as is the case with respect to the thorniest issues before Congress in the early 21st century, such as mitigating climate change – the potential for legislative gridlock is high. The opponents of the policy proposal will place tremendous pressure on Congress not to act, while the supporters (each of whom has a low per capita stake in the outcome, and therefore lacks a strong incentive to engage in political action) are unlikely to be effective advocates. Policy change can be secured under such difficult policy circumstances only if policy entrepreneurs advocate for the proposal on behalf of its dispersed supporters. Volden and Wiseman carefully review law-making activities – including bill sponsorship, committee action, and floor passage – across nineteen issue areas from the 93rd to the 107th Congress (1973–2002) and find that policy gridlock is indeed much greater in entrepreneurial domains compared with those where entrepreneurial politics is less prevalent, with only 2 to 3 percent of sponsored bills becoming law in entrepreneurial areas compared with 6 percent in less entrepreneurial areas. However, there are members who are willing to take on the difficult challenge of pushing legislation forward even in such difficult circumstances. Highly skilled entrepreneurs such as Henry Waxman (D-CA) and Philip M. Crane (R-IL) have been able to use their innate abilities, political knowledge, and institutional positions to overcome the hurdles to action in areas such as health and foreign trade.

If Volden and Wiseman show that policy making in Congress in the 21st century cannot be characterized properly without attending to the nature of the policy challenges Congress faces and the effectiveness of individual lawmakers as policy entrepreneurs, Barbara Sinclair emphasizes in Chapter 3 that congressional performance also cannot be understood without accounting for the impact of partisan polarization. The best-known model attempting to explain policy gridlock and policy change holds that increasing polarization inhibits legislative productivity: As the two parties become more internally ideologically homogeneous, and more distant from each other, it becomes harder for leaders to build a winning coalition for a policy change that is preferred by all its members to the status quo. Sinclair argues that while this model has yielded useful insights, its explanation of the policy consequences of polarization is incomplete, because it only captures the direct effect of polarization. What also needs to be recognized, she argues, is that polarization facilitates stronger party leadership and greater internal rewards for team behavior, especially in the House of Representatives. She argues that the net impact of polarization on legislative productivity depends on whether partisan control of the branches and chambers is unified or divided, and illustrates her claim by examining policy making in the 111th (2009–10) and 112th (2011–12) Congresses.

Having begun with a section that looks at the role of general factors such as member entrepreneurship and polarization in both encouraging and impeding congressional productivity across issue areas, we move to sections that explore in more fine-grained detail how the contemporary Congress responds to specific political challenges and policy problems. Congress does not exist in a vacuum. As a representative body, one of the Congress's most important roles is to mediate between government and the conflicting sets of preferences and demands emanating from the activists, policy elites, interest groups, and ordinary citizens who comprise America's ever-changing society. An open question is whether congressional responses will map onto, reinforce, alter, or ignore the cleavages found in society. Over the past fifty years, American society has changed in fundamental ways. The civil rights and women's movements of the 1960s and 1970s opened mainstream American life to new groups, revised norms about the meaning of equality, and both reinvigorated and tested the nation's commitment to fair play (Patterson 1997). As these vast changes in the membership of the American social community were occurring, American families were also being buffeted by powerful economic and demographic forces, including globalization, technological change, and shifts in family patterns (Levy 1999). These forces have combined with shifts in the political landscape, such as the decline of unionization, to generate rising income inequality in the United States (Hacker and Pierson 2011). While the period of the 1940s through the 1970s was characterized by the "Great Compression," in which the distribution of income between rich and poor became more equal than it had been previously, the period since the 1980s has witnessed the emergence of what some refer to as a "New Gilded Age," marked by a growing gap between the middle class and the rich (Bartels 2010). How has the contemporary Congress responded to demands from previously stigmatized social groups to further liberalize access to American civic life? And how has Congress responded to rising income inequality? In Part II of the book, Rick Valelly and Nicholas Carnes take up these questions by looking at the interplay between Congress and society.

In Chapter 4, Valelly recounts the fascinating saga of the repeal during the lame-duck session of the 111th Congress (just before the Republicans regained control of the House) of "Don't Ask, Don't Tell," the statutory ban on gay men and women serving openly in America's armed forces. The case merits close attention from scholars of Congress and public policy not only because it ended an era of official federal discrimination against an identity-based minority, but also because it illustrates the importance of individual members' parliamentary skills in making Congress work (a point quite consistent with Volden and Wiseman's emphasis on entrepreneurship). Drawing on John Kingdon's classic model of the policy-making process (Kingdon 2002), Valelly describes how recognition of the DADT's flaws connected temporally with favorable electoral results and changes in the menu of policy solutions to make repeal possible in 2010–11. But while a window of opportunity opened, there was no guarantee that repeal would be accomplished before the window closed. The legislative tale Valelly tells is complicated, with many unexpected twists and turns, but one key to success was the strategic partnership between Congress and the Pentagon. Rather than ordering an end to discrimination in the armed forces, members of Congress set in motion a "self-repeal" by the military that Congress then certified. This strategic collaboration between Congress and the Pentagon ensured that repeal would gain support in Congress not only from social liberals committed to gay rights, but also from conservatives who were unwilling to second guess a decision by respected military leaders.

If Congress has demonstrated a capacity to promote social equality in civic life, Nicholas Carnes's Chapter 5 highlights the reluctance of the legislative branch to push back against the forces generating rising inequality in the economy. Using legislative report card data on high-stakes legislation related to economic inequality, Carnes examines the determinants of congressional support for twenty-four bills and amendments during the 2011–12 congressional session with important implications for economic inequality, such as a bill to repeal the estate tax, increases in the minimum wage, and a bill to enact the so-called Buffet Rule. He finds that the two parties are separated by an enormous gulf: Democrats are much more supportive of steps to reduce economic inequality than Republicans. There are also important intraparty differences that stem from divergent opinions across districts. Members who represented constituents who care less about inequality or who were more conservative were more likely to support politics that would increase inequality. In addition, Democrats are more likely to support inequality-increasing policies when they represent less heavily unionized districts. Carnes's findings about the responsiveness of legislative voting on inequality to both constituent opinion and union penetration underscore the importance of looking at Congress as an institution embedded within society. As he writes, "Our legislative branch itself isn't the problem – it's the *inputs* into the legislative process that make it difficult for Congress to deal with inequality."

Part III of the book examines how Congress shapes national economic policy in three important areas – taxation, budgeting and appropriations, and monetary policy. These areas are each distinctive in some ways, but all three provide tests of Congress's capacity to overcome partisan and ideological divisions to fund government, promote good economic outcomes for the country, and maintain an institutional balance of power with the executive.

Article 1, Section 8, of the Constitution gives the Congress the power to tax, but *how* Congress chooses to exercise that power has become one of the flashpoints of modern American politics (Campbell 2011). A key puzzle is why majority parties in Congress are able to achieve their tax policy goals sometimes, but not at other times, even when their goals enjoy political support and are backed by economic logic. Alexander Hertel-Fernandez and Theda Skocpol take up this puzzle in Chapter 6 by examining why Democrats have had such a hard time raising revenues or reconfiguring the politics of taxation to reflect their preferences despite favorable political and economic conditions. The authors contrast Democrats' efforts in 2009–10 to allow tax cuts for upper-income earners to expire – which would have helped to combat rising income inequality – with Republicans' major tax-cutting drive during the first term of the George W. Bush administration. The comparison between the Democrats' handling of tax policy at the start of the Obama administration and the Republicans' tax policy during the early Bush years might seem asymmetric since it is inherently easier, all else being equal, to cut taxes than to raise them. Hertel-Fernandez and Skocpol forcefully argue, however, that repeal of the Bush tax cuts for top incomes was politically advantageous for Democrats at a time when the vast majority of ordinary Americans were struggling economically, and that mainstream economic analysis indicated that a full extension of the Bush tax cuts was a much less effective stimulus measure than alternatives, such as extending unemployment insurance. To explain the divergent capacities of the two parties on tax politics, Hertel-Fernandez and Skocpol highlight four factors: the timing of tax initiatives in relation to economic trends; management of the majority party's congressional caucus; agenda setting by party leadership; and mobilization of outside interests. In sum, their analysis suggests that both state and society need to be foregrounded to fully explain congressional behavior.

Congress currently struggles not only to raise taxes, but also to pass the appropriations and budget bills to provide for federal spending. Indeed, as Nolan McCarty observes in Chapter 7, the House and Senate have been increasingly unable to pass or reconcile budget resolutions. Moreover, Congress is often unable to pass appropriations bills on time. As a result of the collapse of "regular order" in the congressional budget process, Congress has been forced to rely on continuing resolutions and omnibus bills to keep the government's fiscal machinery running, circumventing the traditional annual appropriations process. On the basis of statistical models of appropriations delays, McCarty argues that split chamber control, divided government, and heightened partisan polarization are associated with impaired congressional procedural performance on fiscal policy. Pundits bemoan the collapse of regular order, viewing it as a sign of a dysfunctional Congress. The empirical question remains, however, whether poor procedural performance has any clear impact on fiscal policy outcomes or the broader U.S. economy. McCarty finds that there is no clear relationship between the tardy passage of appropriation bills and either spending or deficit levels, seemingly ruling out first-order effects on major fiscal aggregates. At the same time, McCarty does uncover some modest evidence that poor procedural performance increases policy uncertainty, although the causal mechanism remains unclear.

Legislative debates over taxes and spending often receive a great deal of media attention because they are public and because they frequently highlight congressional dysfunction. The irony is that the Federal Reserve Board's monetary policy decisions – which are made behind closed doors – arguably have a much larger influence on economic growth, inflation, and employment. Congress created the Fed, and in theory Congress could abolish it. An important subject for inquiry is how much influence Congress has over the Fed's decision making – and how that influence is used. Supervising the Fed poses a dilemma for Congress. On the one hand, Congress wants to hold the Fed accountable for its policy decisions, particularly during periods of high unemployment. On the other hand, Congress recognizes that central banks need to be able to make decisions without excessive political interference in order to develop the institutional autonomy and policy credibility necessary to keep the inflation rate stable and low. In sum, there is a trade off between independence and democratic accountability. Why and when does Congress seek to revise the degree of independence it affords the Fed?

In Chapter 8, Sarah Binder and Mark Spindel track congressional attention to the Fed in the postwar era. They find that lawmakers' prescriptions for the Fed are largely driven by changes in economic conditions. When the economy is doing well, lawmakers propose stronger powers for the Fed; when the economy falters, lawmakers look for ways to reduce the Fed's independence. While congressional attention to the Fed is sporadic and ad hoc, the authors' results suggest that Congress is not powerless to bring democratic values to bear on the contours of monetary policy.

The final section of the book examines how Congress responds to three of the most difficult domestic policy dilemmas: controlling health care costs, reforming the immigration system, and increasing energy efficiency. Each dilemma presents members with a different mix of constituency pressures, partisan divisions, ideological cleavages, and interest group alignments. In each case, we see members struggling to find a path forward that allows Congress to address the underlying policy dilemma without jeopardizing members' individual reelection chances. Finding such a path is never easy for an institution with 535 members, and sometimes impossible.

In Chapter 9, Jonathan Oberlander examines the role of Congress in health care cost control, past, present, and future. Health experts agree that a great deal – perhaps as much as one-third – of U.S. medical spending is wasteful and does not improve health outcomes (Health Affairs 2012). While waste could be trimmed without harming patients, there are many reasons to expect that Congress will not be able to control the level or growth of health care spending. A dollar spent on medical care is a dollar of income to hospitals, drug companies, and doctors, all of whom are represented by powerful lobbies who seek to protect their members' concentrated interests in health care debates. Moreover, millions of citizens work in the health care sector, and there is a deep-seated fear among many Americans that health care cost controls will reduce the access to and quality of medical care enjoyed by insured Americans. The challenges of controlling health care costs are amplified by Congress's fragmented committee structure, myopia, and partisanship. As Oberlander writes, "There seemingly could not be a worse match between the magnitude of a policy problem and the depths of institutional incapacity." Yet, Oberlander argues, Congress's record in health care cost containment is, if hardly perfect, better than commonly believed. Under pressure to reduce the federal budget deficit, Congress has repeatedly enacted measures – often attached to omnibus legislation – to constrain Medicare spending. Congress has done so mainly by reducing payments to providers, not by directly cutting Medicare benefits. To make up for the lost Medicare revenues, providers have shifted at least some of their costs onto the states and private insurers. In sum, Congress has done far more than many assume – but much less than is needed to solve the health care