

Lawmaking

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Abstract

The goal of this essay is to present foundational and cutting-edge research that has influenced how researchers study the lawmaking process within American politics. By assessing the most influential research on legislative politics to date, we are able to highlight the research that is moving the discipline forward. Specifically, we focus not only on the outcomes produced by the lawmaking process but also the institutional influences that shape what ultimately becomes law. Our discussion outlines how institutional rules and procedural context are important considerations in determining how legislative chambers and the executive interact to govern and create new laws. This is especially important as the polarization among the public and political elites continues to grow and reflects fluctuations in party divisions during the past century. These changes in the political context of each institution have created challenges in the lawmaking process, necessitating new and unorthodox procedures to deal with these difficulties as they arise. We also provide guidance in discussing new questions, which have not yet been fully addressed by scholars to date, as well as where to look for new sources of data that will help researchers begin to find answers to those questions. We believe that expanding upon existing research agendas will provide greater opportunities to learn more about the important role of both chambers and the executive in designing and implementing legislation.

INTRODUCTION

Lawmaking is the process by which a policy solution is proposed, considered in the legislature, and if passed, forwarded to the desk of the executive to be signed or vetoed. If the bill is enacted into law, the policy will be implemented and monitored until another change is made. Laws are adapted in response to changes or problems that arise within our own society, which makes the lawmaking process such an interesting and rich line of research. The legislative process by which decisions have been made at the federal and state level has rarely changed over time; however, because decisions are made collectively, the context within each chamber alters the probability that a change in the law will be a long-term solution or a simple fix.

The foundation of the lawmaking process in the United States emerges from the legislative process, which will be the focus of our discussion in this

essay. However, as research questions become more complex, it is important to test how the enforcement and interpretation of laws may have an effect beyond simply legislation. This relates to the regulatory power of government agencies over specific industries through the use of administrative rules (c.f. Bertelli, 2012; Carpenter, 2010; Lewis, 2010; Yackee & Yackee, 2010). Furthermore, how a court rules on a given case may set a precedent that extends coverage of the enforcement of a statute (c.f. Bullock & Gaddie, 2009; Melnick, 1983). As administrative rules and court rulings increasingly become tools to evade the longer legislative process, we have begun to see the executive and judicial branch increase their own autonomy and control over the lawmaking process.

Our intent is to highlight research that has advanced the legislative subfield by identifying important trends and providing a general foundation of how laws are developed in the United States. Specifically, we discuss those political forces that influence the fate of legislation in the US Congress. Scholars have found that electoral considerations, polarization, timing within the session, and supermajority thresholds contribute to this process in multiple ways. A comprehensive understanding of the lawmaking process provides scholars with the opportunity to better understand the interactions between the legislature and executive, which already set defined boundaries and observations to test theories that integrate multiple subfields within the study of American politics.

FOUNDATIONAL RESEARCH

A discussion of how laws are made often begins with a simplified expectation of how Congress initiates most standard legislation. The consistent process by which Congress considered legislation, for most of the twentieth century, provides examples of a straightforward and repeatable framework that can easily be understood. The important actors in Congress could be identified because of their significant authority at different stages throughout the process, such as party leaders and committee chairs. These positions are also a reflection of a legislator's membership in the majority party and seniority within the chamber. Their power is reinforced by the institutional norms of apprenticeship and specialization, which fostered reciprocity between lawmakers (Matthews, 1960).

This story is representative of an era characterized as the "Textbook Congress" lasting from the 62nd Congress (1911–1913) to the 94th Congress (1975–1977) (c.f. Rohde, 1991; Shepsle, 1989; Sinclair, 1997). This period was initiated by a transfer of power from the Speaker to the larger chamber in 1910. The Speaker was removed from the Rules Committee, members of Congress could now call for the discharge of a bill from the committee, and

committee positions and chairmen became elected by the caucus (Brown, 1922; Hasbrouck, 1927). This change, popularly known as the Cannon Revolt, diminished the influence of party leaders by decentralizing the Speaker's power over the caucus (Cooper & Brady, 1981). By abolishing the hierarchical control the Speaker held over the legislative process, committee chairmen became empowered to play larger roles within the chamber (Polsby, 1968).

The institutionalization of Congress allowed more legislators in the House to play an active role within their given sphere of influence. This was especially true for legislators with greater tenure, given that both parties abided by the norm of seniority in the selection of a chairman for each committee (Kingdon, 1989). Owing to the large number of committees in both chambers, many legislators were provided the opportunity to serve as a committee chair, diluting legislative authority across both chambers. The Legislative Reorganization Act of 1945 consolidated these dispersed policy jurisdictions into fewer committees and reduced the number of committees by 29 in the House and 18 in the Senate. This changed the lawmaking process by reducing the number of committee chairs, but enhanced the authority of any remaining chairs within each chamber by enhancing their gatekeeping power. However, the growing ideological divide between northern and southern Democrats threatened the party's central role in policymaking because defections led to the emergence of the Conservative Coalition as a voting bloc (Brady & Bullock, 1980).

The Textbook Era ended in the mid-nineteen seventies (1973–1977), specifically as the House delegated more control to party leaders over the lawmaking process (Davidson, 1990). Through the Subcommittee Bill of Rights of 1973, House Democrats divorced the choice of subcommittee chairs from the parent committee chairman, diluting the power of committee chairs without reducing the power of party leaders.¹ In addition, party leaders in 1974 were given the tool of multiple referral, providing an alternative path to pass legislation by assigning sections of a bill to separate committees. The literature focuses on these events as an important milestone in our study of congressional lawmaking and the beginning of the post-reform congress. As a result, previous research emphasized the competition between committees and the Speaker over which positions provided the greatest source of partisan control in determining policy outcomes (c.f. Ornstein, 1975; Rohde, 1991).

1. The Democratic caucus decided that subcommittee chairs would be chosen by seniority on the committee, subcommittee chairmen would receive their own budget and staff, and at the beginning of each Congress committee chairs could be elected by a secret ballot if only 20% of the members requested a secret vote (Rohde, 1991).

These changes reflect lawmakers' understanding that a cohesive caucus provides a strategic advantage for the majority to control the passage of legislation by delegating power to leaders. The elections of 1968 and 1974 generated substantial turnover by introducing junior Democratic members from the northern states who were more likely to be liberal (Sinclair, 1981). This member replacement contributed to greater party unity among Democrats, generating new demands within the caucus to limit the powers of committee chairs. Moreover, the emerging polarization between the parties made the opposition from the minority stronger, also increasing the demand for reform within the majority party. The institutional changes in the US House of Representatives during the 1970s raised a number of questions about party success in Congress, procedural choice, and the sharing of power between chambers and the executive in the lawmaking process.

CUTTING-EDGE RESEARCH

New questions have emerged with respect to what influences the legislative behavior of individual elected officials. As elected officials tasked with representing their constituencies, there is an expectation that legislators evaluate the potential electoral consequences before any legislative activity. However, the context of a decision can generate variation in how legislators participate within the chamber. Both approaches provide alternative explanations of how laws are made by identifying the factors that contribute to a legislator's preferred policy outcome.

The continued success of incumbent politicians in their quest for reelection has encouraged research in the relationship between legislative actions and incumbent vote share. Incumbent politicians have multiple advantages in how they can increase their popularity, which does impact the larger lawmaking process. Legislators have the opportunity to advertise their work, claim credit for popular policies in the district, and influence the policy process in a way that clearly promotes the incumbent's position on an issue (c.f. Mayhew, 1974). However, the success of these strategies in representing constituents relies on the salience of the issue within the electorate. Therefore, constituents are often thought of in two ways: interested constituencies, such as interest groups and single-issue activists, and the mass public. By considering the behavior of the constituents we can recognize legislators' attempt to appeal to various voters in an effort to develop their reelection constituency (c.f. Arnold, 1990). As representatives, legislators work to deliver on the campaign promises they made as a candidate to specific constituencies (Sulkin, 2011). Incumbents must balance their support for the preferences of their constituency and goals of their political party, because taking an unfavorable position could result in electoral defeat (Canes-Wrone, Brady, & Cogan, 2002;

Carson & Engstrom, 2005). Also, incumbents are punished by the electorate in the following elections, when they vote as a loyal partisan on divisive and salient votes, which may split the two parties (Carson, Koger, Lebo, & Young, 2010). By understanding the benefits and consequences of activities that are the core foundation of the electoral connection, new cleavages that allow researchers to better determine the relationships surrounding the lawmaking process appear in the behaviors of politicians.

Partisan theories of lawmaking challenge the expectation that most decisions reflect the best outcome for the majority of the population under a majority vote. In a setting without any restrictions, the selection of a policy alternative should reflect the version that benefits the median legislator (c.f. Black, 1948; Krehbiel, 1998; Weingast, 1989). However, by setting the agenda and restricting what gets scheduled for a vote, the majority party is able to control the policy alternatives presented to lawmakers. Thus, the Speaker of the House, in coordination with the House Rules Committee, is able to manipulate the choice of the median voter by issuing special rules with the intention of biasing policy decisions in the majority's favor (c.f. Cox & McCubbins, 2005; Roberts, 2010). It is important to note that the majority party is far more willing to give party leaders the power to determine policy alternatives when parties are homogeneous, as well as distinct from one another (c.f. Aldrich, 1995; Aldrich & Rohde, 2000). Furthermore, party leaders in the US House also have powers of positive agenda control to bring a bill to the floor out of order (c.f. Finocchiaro & Rohde, 2008). The counterargument is that the preferences of individual legislators still matter and constrain the success of the majority party (c.f. Krehbiel, 1998; Schickler & Rich, 2003). For example, how much leaders restrict policy alternatives to generate policy outcomes depends on the willingness of the median legislator to support the party.

Recent studies have recognized that the party receives heightened loyalty from its members on procedural votes, because a legislator's vote may be separate from their position on the underlying issue (c.f. Cox & Poole, 2002; Jenkins, Crespin, & Carson, 2005; McCarty, Poole, & Rosenthal, 2006; Tiefer, 1989). The same relationship exists in the Senate, but results in a somewhat different story (Lee, 2009; Theriault, 2008). The loyalty of fellow partisans on procedural votes is vital to the Senate Majority party's ability to efficiently manage the chamber, given the absence of restrictive rules (Den Hartog & Monroe, 2011). This hook has encouraged a more in-depth consideration of the lawmaking process in the US Senate. Our current understanding of the Senate as an institution is expanding beyond the importance of the filibuster, which is one of the institution's most unique processes (c.f. Binder & Smith, 1997; Koger, 2010; Madonna, 2011; Wawro & Schickler, 2006).

FUTURE RESEARCH

Previous research has used roll call votes or enactments as manageable samples of legislative activity to compare trends across time, with the justification that new laws affect society and allow for comparisons between Congress and the executive branch. As a result, new research has emerged on divided government and effective governance by passing landmark legislation (c.f. Clinton & Lapinski, 2006; Mayhew, 1991). Future research can now look beyond what laws are passed, compared to the major legislation considered, to understand the demand for certain policy changes. From the opposition's perspective, keeping a bill from being considered is just as efficient as defeating a bill by an up-or-down vote. In addition, by collecting more data about how a bill is amended, researchers can estimate how much a proposed bill changes through the lawmaking process as other legislators contribute to the final version (c.f. Carson, Madonna, Owens, & Sievert, 2012; Gelman, Lynch, Madonna, & Owens, 2012).

When studying individual legislative behavior, non-roll-call-based measures such as bill sponsorship and bill cosponsorship have been analyzed to observe an incumbent's supportive position of the legislation (c.f. Schiller, 1995, 2006; Meinke, 2008). However, a legislator's specific issue position cannot be easily matched, given multiple sections within a bill, if we expect interested constituencies to have particularized policy demands. One way to increase the number of observations where a legislator offers an observed position on the floor is to consider amendment sponsorship. Each amendment can be viewed as an individual reaction by the chamber to the bill under consideration (c.f. Carson, Madonna, & Owens, 2013; Crespin, Rohde, & Vander Wielen, 2011; Den Hartog & Monroe, 2011; King, Orlando, & Rohde, 2012b). As information about the day-to-day activities of politics becomes readily available to voters, there is the opportunity for incumbents to benefit electorally from their floor activity (Sulkin, 2011; Carson, Madonna, Owens, & Sievert, 2012).

Roll call votes are still valuable given they record a common binary choice that can measure a legislator's position on an issue relative to others in the chamber. One advantage of studying the lawmaking process is the wealth of information that allows for scientific comparisons of how each actor within an institution behaves in relation to the same vote. Two examples of research that incorporates this comparison are NOMINATE and IDEAL, which provide measures of the probability a legislator is liberal or conservative on two dimensions (c.f. Poole & Rosenthal, 1997; Clinton, Jackman, & Rivers, 2004). With these measures of legislator ideologies, researchers can better measure trends in aggregate and individual legislator behaviors, especially the effects of polarization. Moreover, because of the high frequency in which votes are

taken, these estimates are stable across relevant congresses, which assist in comparing how institutional contexts have evolved.

Analyzing the lawmaking process allows researchers to better understand the relevant interactions when institutions bargain with one another. This may even help in identifying the cause of a contentious signing statement or an executive order. In addition, there is a well-defined opportunity to measure a legislator's attempt to craft a position or earn credit for addressing an issue concerning their constituents. Another reason to consider legislative activity beyond bills enacted into law is the notion that "congressman seem to have gotten into trouble by being on the *wrong side* in a roll call vote, but who can think of one where a member got into trouble for being on the *losing side*? (Mayhew, 1974, p. 118)." This potentially places a legislator's responsibility to govern at odds with the goal of being reelected. The challenge with evaluating the lawmaking process is determining the scope of one's sample and the time-consuming nature of coding data using detailed resources such as the *Congressional Record*. After that, the well-bounded constraints and steps within the lawmaking process allow for future research to contribute to our understanding of what influences policy compromise or gridlock. In the event that the high transaction costs of lawmaking create gridlock, short-term policy changes can be instituted efficiently when the president acts unilaterally (c.f. Howell, 2003).

By comprehensively studying lawmaking, researchers can generate stronger inferences about the strategies and adaptive behavior of the minority party (King, Orlando, & Rohde, 2012a; Krehbiel & Wiseman, 2012; Smith, 2007, 2014). This also allows for predictions of the extent to which the rules of the House narrow the appeal of a policy to the larger public, while the Senate's rules promote compromises that will broaden the appeal of a proposal. Thus, the constitutional requirement that both chambers pass an identical version of the bill serves as the mechanism that leads the bicameral process to moderate the final policy outcome, compared to whether the original proposal had been adopted. Moreover, it is the size of the majority party coalition in the Senate that provides aids in the adoption of major policy reforms (Carson, Madonna, & Lynch, 2011).

There is also much to be gained in applying new methods that use seminal theories from the past to draw inferences about the lawmaking process. By continuing to add additional longitudinal data to test hypotheses within the subfield, researchers have the opportunity to compare how the number of bills or length a policy is considered may vary at different periods in time and across issues. Recently, appropriation bills have been used because they have fixed deadlines and are essential to the operation of the government (c.f. Woon & Anderson, 2012). Also, dollar amounts allow studies to quantify the degree policy proposals change throughout the lawmaking process (Fenno,

1966; Kiewiet & McCubbins, 1991). The increasing polarization in Washington from the early 1980s onward has coincided with the increasing political salience of the national debt, which has affected how the government is able to budget and appropriate funds. Perhaps a more important need in the sub-field is an exogenous measure of the public's demand for policy. One example is how often an issue was mentioned in the editorial pages of the *New York Times*, which allows for the observation of issues that were important to the public but may not have been enacted into law (c.f. Binder, 2003). There is great promise in any attempt to expand this measure, but it requires one to determine the policy issues for which constituencies are willing to punish or reward their representative's position.

Historical data and cases allow studies to validate the generalizability of lawmaking theories through America's political development, by testing whether conclusions are consistent under different institutional circumstances. We can observe the development of procedural reforms, as well as the institutional precedents that foreshadowed how lawmakers are able to manipulate the policy process. Studying lawmaking can isolate the importance of certain actors' influence across multiple decision points. There is also variation in electoral accountability of incumbents historically, such as the institution of the direct election of senators or the more recent threats of a challenge within the party's primary (c.f. Jacobson, 2013; Meinke, 2008). Furthermore, as the executive branch became more institutionalized over time, there is the opportunity to study variation in congressional oversight of the bureaucracy and president (Ragsdale & Theis, 1997).

The institutional reforms within the executive and legislative branch in the past 40 years have provided new and alternative ways to pass legislation to overcome institutional challenges that would continue to protect the status quo. However, these reforms have not limited the previous precedents within the institutions. New reforms have sought to address the challenge at hand by balancing the goals of efficiency and deliberation, as well as the electoral interests of the majority party (c.f. Binder, 1997, 2006; Dion, 1997; Valelly, 2009).² This has provided a niche industry studying the effects individual chamber-specific procedures have on policy outcomes or what is considered on the floor. For instance, the motion to recommit is the vote to send a proposal back to the committee; however, if it is recommitted with instructions, the motion serves a similar purpose as an amendment and is immediately voted on the floor (c.f. Krehbiel & Mierowitz, 2002; Roberts, 2005). The omnibus bill combines multiple individual bills into one proposal to make the proposal more popular by tying the fate of multiple shared benefits to one bill (c.f. Krutz, 2001). On the other hand, Senate-specific

2. The one exception in this instance would be in 1806, when the Senate removed the motion to proceed with the previous question (Binder & Smith, 1997; Smith, 1989).

procedures such as the blue slip, when used strategically, can provide the minority party with significant influence in blocking a nomination (c.f. Binder, 2007; Binder & Maltzman, 2002; Black, Madonna, & Owens, 2011). Another example is the motion to table, which is often used by the Senate majority party to quickly dispose of minority-sponsored proposals (Carson, Madonna, & Owens, 2012; Den Hartog & Monroe, 2011; King, Orlando, & Rohde, 2012a; Marshall, Prins, & Rohde, 1997; Smith, Ostrander, & Pope, 2013). In addition, leaders have utilized other unorthodox procedures to forgo the committee system by bringing controversial bills directly to the floor, or skipping the subcommittee stage in recent years.

Given the repeated and stable interactions in the lawmaking process, there are always opportunities for new questions about how particular decisions can impact laws to build from the theoretical foundations that have been set forth by scholars of the House, Senate, and the Presidency. Lawmaking is a complex process and the scope of a research question may bias the expected influence of each institution, if all are not considered together. The conclusions drawn from one chamber, such as the House of Representatives, are indeed instructive of the legislative behavior at that stage. However, one should be cautious before inferring that any bias introduced by the House majority party will endure following debate in the Senate, or be found within the bill as it is signed into law. Therefore, future research on bicameralism and the interactions between the President and Congress are opportunities for new research to examine which legislation is likely to become law by building from these current emerging trends.

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