# Divided Government, Legislative Productivity, and Policy Change in the USA and France

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*The concept of "divided government" is more complicated than scholars have allowed. In the USA, truly unified government, where the president enjoys a filibuster-proof majority in the Senate as well as a majority in the House, is rare. In France, truly unified government has been more common, but divided government has also occurred several times. Democratic governance requires that parties address important issues and they do so regardless of the patterns of institutional control. Nevertheless, policy changes or important laws are affected by the higher level of institutional friction associated with divided government. Looking at both the USA and France, we find that periods of unified government show higher levels of production of important laws in the USA, but we find no difference for overall legislative productivity.*

## Introduction

In early August 2011, the Republican-controlled House of Representatives, the Democratic-controlled Senate, and President Barack Obama finally agreed on a compromise to increase the debt ceiling just hours before a federal payment default. The divided government (henceforth DG) produced by the 2010 election proved able to cope with this issue but only when faced with a major economic crisis. This recent story perfectly exemplifies how lawmaking is affected by DG. Lawmaking requires more time and energy than under unified government, but it does not render government impossible. DG has often been seen as leading to stalemate (Binder 1999; Edwards, Barrett, and Peake 1997; Tsebelis 2004) or conversely as neutral on legislative productivity (Conley 2007; Mayhew 1991).

The article will distinguish various forms of DG. A strict definition of DG is a political situation where the governing party must cooperate with

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at least some members of the opposition party in order to legislate. By this definition, most so-called unified governments have actually been divided, and strictly unified governments have been exceedingly rare. In fact, some form of DG is the norm in the USA. It clarifies a concept that most studies of DG in the USA simply defined as split-party control of the presidency and Congress, without clarifying whether a split Congress was part of or foreign to the concept. Second, it allows extending the concept to other political systems. In that regard, we compare the USA to one of the few other Western systems where DG occurs: France.

Legislating is to a large extent problem solving (Adler and Wilkerson 2012; Jones and Baumgartner 2005). As there is a constant flow of problems to solve, and as all sides of the political spectrum bring their attention to new issues from time to time, policymakers seek solutions to new issues on a continual basis, regardless of institutional control. Of course, DG may make compromise more difficult, but this should affect major policy changes much more than routine adjustments. We expect that DG should have no effect on overall levels of legislative productivity, only on land-mark pieces of legislation. Our empirical results clearly demonstrate that if DG does not imply general legislative gridlock, it does render important policy change more difficult.

## Defining DG in the USA and France

### The USA

The most prominent study of DG in the USA, and the book that launched an entire literature on this topic (Mayhew 1991), underscores the com-monplace nature of DG in the USA, as exemplified by its title: *Divided We Govern*. *Strictly* unified government requires the president's party to control a filibuster-proof majority in the Senate and to have a majority in the House. Only in this case, the presidential party is not dependent on the cooperation of (a part of) the opposition party to legislate. By contrast, there is only *formally unified* government when the president has a major-ity in the Senate but that majority is not filibuster-proof. In fact, the postwar period has seen only six years of "strictly unified government"—four of the Kennedy–Johnson years (1963–1966 when Democrats held between 66 and 68 seats in the Senate), and Jimmy Carter's first two years in office (when Democrats held 61 seats). No Republican president has ever enjoyed such control.[1]

We make this distinction and believe it affects important legislation but not routine lawmaking because as long as the president must contend with a potential filibuster, then any significant legislation will require at least some interparty cooperation and compromise. Formally unified gov-ernment has been the rule for 18 years over the postwar period. The most common situation has been DG, which in the USA can be either weak or strong depending on whether the party of the president holds a majority

in one of the chambers (weak) or in none (strong). Strong or weak DG has been the case for 35 of the 59 years we analyze in this article, with most of those being strongly divided. Thus, one can see that the president faces a hostile majority in at least one chamber, and usually both, most of the time. This is the natural or most common order of things in the USA in the postwar period. Mayhew's title, *Divided We Govern*, fits the data perfectly.

## France

The situation in France is not quite the same as the USA but does not differ as much as sometimes thought, nor as clearly as a simple dichotomy would suggest. Both countries have a bicameral legislature and a directly elected president, but France also has a divided executive. Attention in France has focused on DG in the form of *cohabitation*—when the president and the prime minister are partisan rivals—but as in the USA, the situation is more complicated than a simple dichotomy. Whereas in the USA, the executive cannot be divided, in France, both the legislature and the executive may be divided or unified, creating four possible situations (Siaroff 2003). Only the National Assembly and the prime minister are certain to belong to the same partisan camp.

French deputies and senators are elected according to different electoral systems: Representatives or *députés* are elected by direct suffrage according to a two-round majoritarian system; senators are elected by an electoral college made up of the *députés* and various local elected representatives. Thus, both chambers may or may not be controlled by the same parties or coalition. Therefore, we define divided and unified legislatures by whether or not there is shared control of the National Assembly and the Senate by the left- and right-wing parties. Even if until very recently the Senate has never been under control of the political left,[2] it has been in the opposition several times during the Fifth Republic (1958–1968). A right-wing majority controlled the Senate when the presidency was held by Socialist F. Mitterrand (1981–1995) as well as when the National Assembly was controlled by a left-wing coalition (1981–1986 and 1988–1993).

The parliamentary character of the semi-presidential system implies that the prime minister (and the cabinet) and the lower chamber will always belong to the same coalition: The prime minister must have the confidence of the Assembly. In fact, the rationalized parliamentarism in place at least until 2009 has allowed a tight control of the parliamentary agenda by the cabinet (Brouard 2011; Huber 1992). We will call opposition a party or a coalition of parties that is not part of the coalition supporting the cabinet.

Table 1 shows the possible combinations of unified and divided control in France.

Table 1 features the four theoretical possibilities of power distribution. The four quadrants match real-world cases. Unified government occurred mostly at the beginning and at the end of the period under scrutiny

TABLE 1
**Patterns of Government Control in France**

|  | Divided Legislature | Unified Legislature |
|---|---|---|
| Divided executive | Senate and presidency in opposition (1997–2002) | Presidency in opposition (1986–1988, 1993–1995) |
| Unified executive | Senate in opposition (1981–1986, 1988–1993) | Unified government (1974–1981, 1995–1997, 2002–2007) |

(1974–1981, 1995–1997, 2002–2007). Unified executive and divided legislature happened during the Mitterrand presidency when a left-wing coalition held a majority in the lower house, but the Senate was dominated by conservatives (1981–1986 and 1988–1993). A divided executive and a unified legislature characterized the two periods of *cohabitation* under Mitterrand's presidency, when he was confronted with a right-wing cabinet, Assembly, and Senate (1986–1988 and 1993–1995). Finally, the pinnacle of DG was reached between 1997 and 2002 when both the legislature and the executive branches were divided. Right-wing President Chirac and the Senate were in opposition to a left-wing cabinet and National Assembly. Just as in the USA, where the patterns of DG are more complicated than a simple dichotomy would suggest, so too in France the simple unified versus *cohabitation* situation does not capture the full range of situations that have occurred. These are not just academic distinctions; our analysis shows they have substantial impacts on the production of important laws.

A more complete definition of DG allows us to incorporate how important elements of the institutional powers of the French presidency and of the Senate can affect the lawmaking process. Concerning presidential powers, the constitutional text does not set the foundations for presidential supremacy in policymaking. In fact, the Constitution reserves important powers for the government. Under Article 20, "the government shall determine and conduct the policy of the Nation." Nevertheless, although it has no legal basis—the notion does not appear in any official text—the *domaine réservé* constitutes a regulatory mechanism for the relation both within the executive and between the executive and legislative branches (Irondelle 2009). According to this tradition, the president is to play a preeminent role in defense and foreign policy. Even if the "reserved domain" has become more and more a "shared domain" (Balme 2009; Irondelle 2009), the presidential predominance in these two fields has operated all along the Fifth Republic, even during the three experiences of divided executive. As a result, the president has an effective, if informal, veto power in those two policy areas (Leuffen 2009). A hostile government will be less inclined to take into account presidential preferences in other policy areas. Nevertheless, the president may slow down the legislative

process using different institutional tools such as: asking for a new reading of the law,[3] refusing to sign ordinances, or refusing the opening of supplementary parliamentary sessions. The president might also use the strategy of "going public" to increase the level of contention and embarrass the government in an effort to abort policy changes.

The effect of policy types on law production is also related to the institutional powers of the French Senate. The most important impact of the Senate during divided legislature periods is to delay the usual lawmaking process. The Senate was comparatively active, under the third cohabitation, when President Chirac encouraged the conservative majority in the *Sénat* to counter the Socialist majority of Prime Minister Lionel Jospin in the *Assemblée* (Verdier 1998). In addition to this power to delay, the Senate may de facto veto constitutional laws and organic laws[4] dealing with the Senate.

In summary, in France, both the executive and the legislature can be divided. As for the USA, we consider that strictly unified government only applies when the majority party does not require the cooperation of the opposition party to pass legislation. Thus, most of the so-called unified governments are in reality only formally unified. DG in France, according to this definition, also expands well beyond what is traditionally called cohabitation. From 1978 through 2007, the period under study, strictly unified governments were in place under Giscard (1978–1981) and Chirac (1995–1997 and again 2002–2007). President Mitterrand experienced either formally unified government with a hostile Senate (1981–1986 and 1988–1993) or a strongly divided government facing two opposing chambers (1986–1988 and 1993–1995). President Chirac had two periods of strictly unified government (1995–1997 and 2002–2007) and one period of strongly divided government, as his coalition retained control of the Senate but lost the Assembly and therefore the prime minister's office (1997–2002).

**The USA and France Compared**

Figure 1 illustrates the complications associated with the labels "unified" and "divided" in both countries. Part A shows the USA. For each president since Truman, the dark shadings indicate strongly divided government, lighter shadings show periods of weakly divided or what we have called formally unified government, and the white areas are the ones with a president enjoying a filibuster-proof Senate majority (strictly unified government). Lines show the level of the president's party's support in the House and Senate, and the horizontal, dotted and dashed lines indicate the critical majority point in the House and the filibuster point in the Senate. Our definitions of divided and unified government relate to whether the partisan composition of the House and Senate are above or below those critical lines.
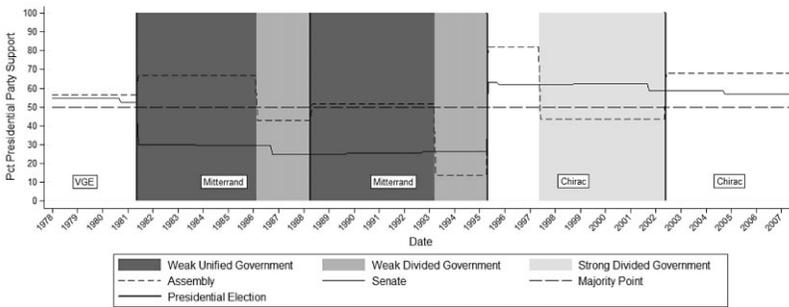
Part B shows the situation for France. The percentage of seats controlled by the president's coalition is shown in comparison with the 50% line, and

## FIGURE 1
## Periods of Divided and Unified Government: A. USA; B. France

A. USA
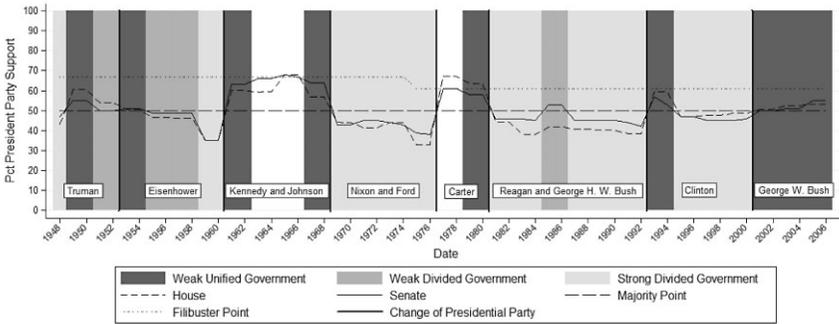


B. France



shadings represent the combinations of possible situations as described above. As we can see, each country experiences each of our newly defined types of unified and divided government during our period of study. Furthermore, periods of strictly unified government are rare.

Given that large blocks of time in both countries are characterized by some level of shared control, it would indeed be surprising if leaders were unable to produce legislation except in the scarce periods of strictly unified government. However, before turning to the presentation of our data, we turn first to what other scholars have said about legislative productivity in DG.

### Legislative and Policy Effects of DG

Debates on the effects of DG on policy outputs have largely been dominated by Mayhew's contribution in the USA. Similar debates exist in France. We put forth an original perspective based on a punctuated-equilibrium perspective.

### Mayhew and Beyond

Mayhew's contribution to the analysis of DG sparked lasting debates (McKay 1994; for early reviews, see Brady 1993). Unlike many other contributions (Alesina and Rosenthal 1996; Fiorina 1996; Laver 1999), Mayhew was not interested in the origins of DG in the USA. Rather, he proposed to test a piece of accepted wisdom on U.S. political life: that DG is detrimental to decision-making efficiency. According to that assumption, unified government is more conducive to the enactment of major legislation than DG. Mayhew proved this argument wrong showing that DG and unified government present highly similar patterns of legislative productivity. In order to do so, his analysis relied in particular on a list of "important legislation." His analysis concluded that important legislation was more constrained by "surges," that is, periods of overactivism, than by the institutional and political context.

Following Mayhew's analysis of major legislation, a first group of authors reexamined and questioned Mayhew's list of major bills. Especially, his post hoc methodology for constructing the list of major legislation ("sweep two") was criticized by many as being largely independent from the immediate political context. Some of those analyses showed some partisan effect using reorganized versions of Mayhew's data (Coleman 1999; Howell et al. 2000).

An original contribution by Edwards, Barrett, and Peake (1997) showed that the effect of DG was more visible if one takes into account major pieces of legislation that *failed* rather than those that passed. They showed that presidents are more likely to veto legislation under DG than under unified government. Binder (1999) showed that under DG, laws are less likely to address the main issues of the time. Other criticisms concerned the lack of consideration for the variety of situations that the term "DG" covers and/of for certain institutional rules, such as the need for a *supermajority* to avoid filibustering in the Senate (Coleman 1999). Finally, some authors argued that the role of parties had to figure more prominently in the analysis (Chiou and Rothenberg 2003). In particular, intraparty fractionalization, or party-internal divisions, should be as important as DG (Binder 1999; Thorson 1998). Beyond the mere question of legislative productivity, Mayhew's work has had a lasting influence, even on the many works that maintain that DG does affect output negatively.

In France, the debate has been equally heated in the public sphere, but weaker in academic circles. The essential reason is that France has experienced *cohabitation* for only 9 out of 51 years since the creation of the Fifth Republic. It is true that all periods of DGs occurred within the past 25 years. However, it should also be noted that the constitutional reform of 2000, which brought the presidential mandate in line with the mandate of the legislature, should weaken the chances of DG, at least for the foreseeable future (Grossman and Sauger 2009). Independent from this constitutional revision, the fact that France has experienced significant periods

of DG allows us to broaden the tests of the effect of DG on legislative productivity beyond the U.S. case which so far has dominated the literature.

Early on, French political scientists feared the occurrence of DG—or *cohabitation* as it would later be coined—as they considered France to be unfit for this. It was only in 1986, that is, 28 years after the creation of the Fifth Republic, that it eventually occurred. The French constitution was ambiguous on the relative powers of the premier and the president in the case of DG, and it appears that the framers of the constitution of 1958 gave little thought to the possibility of leftist control. This seemed in fact very unlikely at the time. However, in retrospect, with different timing of presidential and legislative elections, any shift in power from right to left would make at least a short period of cohabitation mathematically unavoidable.

There are few empirical studies of the policy outputs associated with French DG. Most existing studies have, moreover, been conducted by legal scholars, several of whom have undertaken important in-depth analyses (Cohendet 1993) and found that it has little impact on legislative productivity. Only few political scientists have openly addressed the issue, focusing on the origins and institutional tensions rather than on policy outputs (Parodi 1997, 2002). The few studies that exist have mainly been realized by non-French scholars and rely on case studies. Conley (2011) recently analyzed French legislative productivity and concluded: "In and of itself cohabitation does not affect productivity" (p. 173).

Finally, veto player theory (Tsebelis 1999) applied to DG predicts grid-lock. The underlying logic is straightforward when applied to the USA. Under unified government, there is only one veto player, whereas under DG there are at least two. Moreover, as the number and/or the distance between veto players increases, the policy space jointly preferred by veto players to the status quo quickly shrinks to zero. More precisely, the prediction is that DG should be associated with higher policy stability. The theory was tested comparatively but only on a short span of time and only in the domain of labor legislation in parliamentary systems (including France) (Tsebelis 1995, 1999, 2004). We provide a larger scale test here.

## Toward a New Perspective on DG

Our own take relies on the punctuated equilibrium approach (see Jones and Baumgartner 2005) and the problem-solving one (Adler and Wilkerson 2012). Governments in all countries are constantly bombarded with a greater number of problems, some of them outright crises, than they can possibly resolve. Attention shifts from topic to topic as domestic actors mobilize, as external crises force issues onto the agenda, and for a variety of other reasons. For example, Baumgartner, Brouard, and Grossman (2009) showed that the policy domains in which successive presidents and governments of the left and right in France have legislated

have not been systematically different from one another. Governing is unlike campaigning; governments do not have the luxury of picking and choosing all the issues they address. Of course, they may inflect activities one way or another to reflect their priorities. However, little research so far has addressed squarely the relative importance of those issues that can be manipulated, picked, or chosen, as opposed to those that governments simply cannot avoid and that are forced upon the governmental agenda by exogenous events (Adler and Wilkerson 2012). Christopher Green-Pedersen and Peter Mortensen (2010) have shown that members of the parliamentary opposition may focus their questions on those issues most likely to embarrass the government but that the government cannot simply ignore these questions, especially once the media take interest.

Because elections are permanently on the horizon, leaders also seek accomplishments that they can take to the voters in order to claim their continued support. For the same reason, we can hypothesize that, whatever the balance of power, problems must be addressed. Legislation is therefore passed under DG. For example, if the European Union (EU) requires France to pass new legislation to be in compliance with a new Brussels directive, it makes little difference whether the executive is in a period of unified or shared control. In the USA, if the Farm Bill is up for renewal because it included a sunset provision, DG will not stop the president and the Congress from reaching a new agreement.[5] If legislation is in response to external crises, recurring legislation that must be renewed, or to the demands of external actors such as the EU, there should be no effect of DG.

Nevertheless, who is in power and the pattern of government control certainly affects the content of legislation. Beyond the nature of the policy itself, we also mean the level of policy change. We expect DG to affect the content of policy because it forces those in power to negotiate more intensely and to reach a more difficult compromise than would be necessary if the executive could simply ignore opposition parties in the legislature. Put simply, DG increases the cost of policy change. Several studies show that increased institutional friction leads to less policy change (e.g., Jones, Larson-Price, and Wilkerson 2009). Friction increases when decision making becomes more complex or costly. Therefore, we expect DG to decrease policy change. Conversely, the structural bias toward the status quo and incremental changes is reinforced by DG for two reasons. Attention scarcity implies that if policy change is more costly in time and energy, then fewer policies should see major adjustment under DG. Policy disagreement might also explain why some policy changes are not possible: If the existing policy is located between the policy preferences of the majority and the opposition, the most likely agreement between both sides is the status quo. E. Balladur, right-wing French prime minister under left-wing President F. Mitterrand, illustrates this point: "We [Balladur and Mitterrand] were not in agreement on everything. In that case, the status quo was preserved; the status quo, that is the policies that had been

defined before my appointment as head of the government" (Balladur 1995, 81). A concrete example is the extension of voting rights in local elections for non-EU foreigners. This long-standing priority of left-wing parties has never been implemented because the left has never governed in strictly unified government, and right-wing parties have always vetoed it.

Thus, we do not expect a strong effect of DG on the level of legislative productivity, but we expect a strong negative one on the level of policy change. DG should lead to as many minor adjustments as in unified government but to fewer pieces of major legislation.

## Data Sets and Measures

The French and American policy agendas projects provide the data to test the above arguments. U.S. data are available for the period of 1948–2006 from http://www.policyagendas.org and have been supplemented with various public sources for such variables as the size of the legislative majorities. French data span the period of 1974–2008 and come from the French agendas project (http://www.agendas-france.fr), similarly supplemented with public election results data.

### Dependent Variables

*Number of Laws.* As we are interested in the impact of DG on law produc-tion, we first estimate their effect the on number of laws passed.[6] The number of laws promulgated in France between 1979 and 2008 is 2,830. In the USA, it is 12,115 for the period of 1948–2006. Graphical and statistical analyses of the number of laws reveal that especially in the USA, there are problems with the stationarity of the data, a point we will address in the analysis section. Figure 2 shows the production of laws over time in the two countries.

*Key Laws.* Second, we use a measure of key laws as a proxy for policy change. We look for external signs of "importance" rather than looking for directional information, which is more subjective and often less reliable. We build on the approach originally developed by Mayhew. In the USA, we use the most important laws from the Policy Agendas Project that is based on the amount of coverage in the annual *Congressional Quarterly Almanac*. For France, there is no preexisting measure. We develop our own measure of key laws, which are laws that have intrinsic institutional con-sequences as well as laws that are considered significant by key political actors, namely, the government and its majority and/or the opposition. Because constitutional laws are laws that modify the institutional structure of the country, we count all constitutional laws as key laws. For the same reason, we include all *lois référendaires* (i.e., laws dealing with the

FIGURE 2
**Number of Statutes per Year in the USA and France: A. USA;
B. France**

A. USA
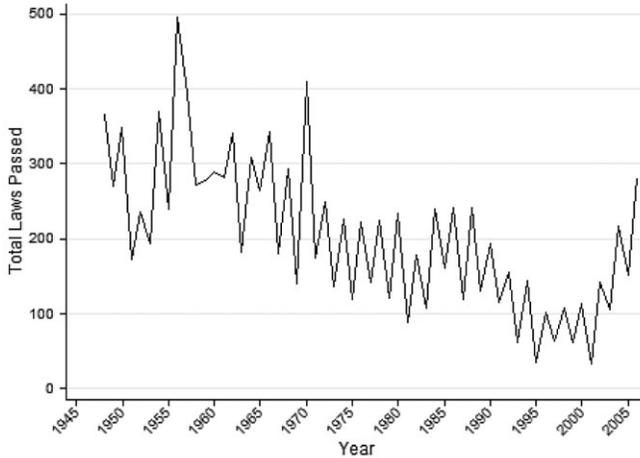


B. France
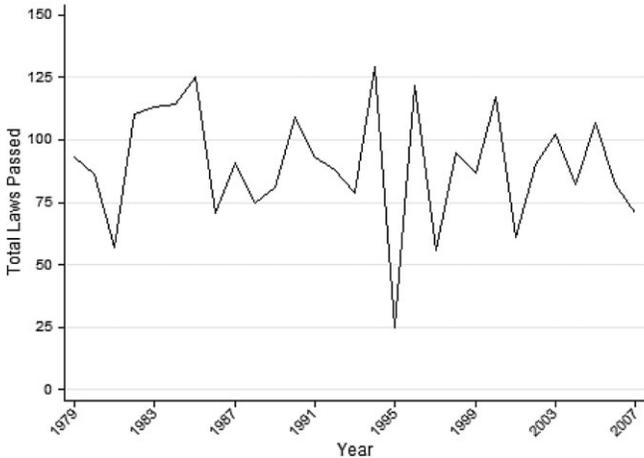


organization of the state, the economic, social or environmental policy of
the nation, or the institutional framework of the nation), that is, laws that
must be ratified by referendum.

We also include laws that have been enacted by applying the "guillo-
tine" or the urgency procedures of the Constitution (i.e., Articles 49.3 and
45.2). By using one of these two procedures (guillotine and urgency) on a
bill, the government expresses the fact that this bill is an essential piece of

its agenda. Finally, we count as key laws those organic laws[7] and ordinary laws that have been adopted by public vote or ordinary laws that have been referred for a constitutional review before their promulgation.[8] Each of these two actions (public vote on an ordinary or organic law, referral of an ordinary law to the Constitutional Council) reveals that the law is considered important by the majority and/or the opposition. The public vote has previously been used as an indicator of importance (Lazardeux 2009) because it is recognized as such by the main actors involved in the legislative process. The information services of the National Assembly note: "The use of a public vote allows, on topics of acknowledged significance, to record the position of each member of the assembly. . . . The Conference of Presidents[9] has therefore followed the custom, on the most important texts, to organize a solemn vote that takes the form of a public vote at a date and time that maximizes the presence of deputies."[10] The public vote specifically provides a useful instrument for each camp to publicly differentiate its policy preferences from those of the other camp in front of its electorate. The referral of a law to the constitutional council also has electoral underpinnings as its represents a way for the minority to signal to its electorate its willingness to fight the most significant policy proposals of the governing majority (Brouard 2009).

Table 2 summarizes the number of key laws in the French case. From a total of 2,764 laws, 846 are considered "most important" in the analysis below. Graphical (Figure 3) and statistical analyses of the number of key laws only show cyclical patterns in both countries.

Our use of simple counts of laws and key laws raises some possible concerns of measurement validity. For example, during times of DG, leaders might potentially bundle several key pieces of legislation into an

TABLE 2
**Constructing a List of Most Important Laws for France**

| Type of Law | "Most Important" Laws | Other Laws |
|---|---|---|
| Constitutional laws | 18 | 0 |
| Lois référendaires[a] | 3 | 0 |
| Organic laws | 19 | 51 |
| Ordinary laws | 779 | 766 |
| Treaties and Conventions | 77 | 1,101 |
| Total | 846 | 1,918 |

Note: All constitutional and referendary laws are considered to be important, by definition. For organic laws, they must be adopted by public vote or by the use of article 49.3. For ordinary laws, they must be adopted by public vote, using urgency (45.2), the guillotine (49.3), or referred to the constitutional council. Treaties and conventions are counted as major laws according to the same rules as above: if they are subject to articles 45.2 or 49.3 or referred to the constitutional council.
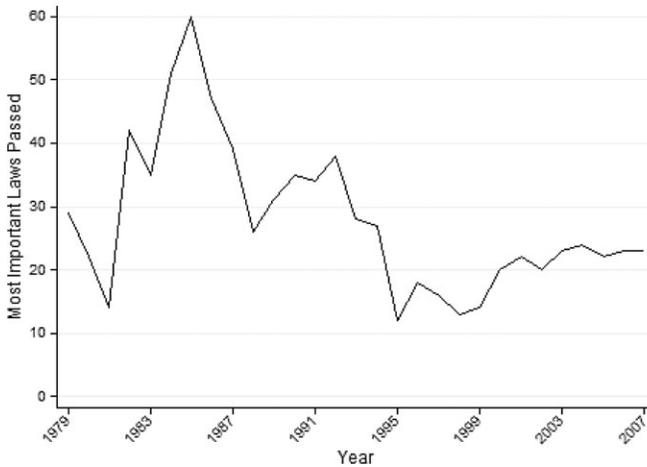[a]Laws that were adopted by referendum are classified as Lois référendaires even if they are de jure constitutional laws, organic laws, etc.

FIGURE 3
**Number of Key Laws: A. USA; B. France**

A. USA
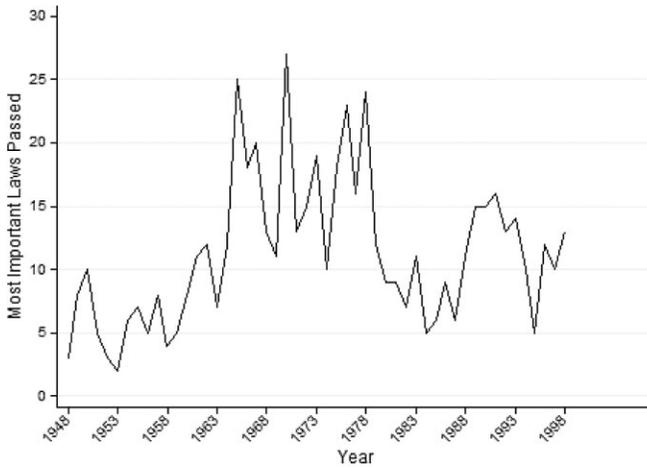


B. France



omnibus bill. However, no theory suggests a systematic bias in the use of this procedure under divided or unified government. In fact, it would be unlikely under true unified government as there are no incentives to package legislation as such; it would also be unlikely under DG as it is difficult to stabilize a bargain in a multidimensional environment. J. Huber (1996) shows that in France when laws are multidimensional, restrictive rules are used more frequently, reflecting the greater difficulty of reaching

a stable equilibrium. Beyond these theoretical reasons for not expecting bundling of diverse proposals into fewer larger pieces of legislation during DG, a quick review of the length of French laws shows that this is not a concern. From 1990 to 2008, there were 185 key laws passed during periods of strictly unified government, and these averaged approximately 83,000 characters, whereas the 242 key laws passed under other forms of government averaged only 49,000 characters. For all laws (not counting ratifications of international agreements, which are highly similar in scope no matter the form of government), laws under strictly unified government average 43,000 characters, with laws passed under all other forms averaged about 30,000. Thus, we have both theoretical and empirical grounds to be confident that we need not worry that DG leads to fewer, but longer, pieces of legislation.

Independent Variables

*Divided Government.* Because we believe that DG actually aggregates very different institutional situations under the same conceptual frame, we have chosen to test the effect of DG as it is commonly understood as well as our more complete operationalization. For France, we examine four possible configurations of government control: strictly unified government (when the president has a majority in the Senate and in the Assembly and therefore a prime minister from his own party coalition), formally unified government (when only the Senate is in the opposition), weakly divided government (when only the president is in the opposition), and strongly divided government (when the president does not control the Assembly, and therefore not the cabinet either, but has a majority in the Senate). For the USA, we also test the effect of four configurations: strictly unified government (president with a filibuster-proof Senate and a majority in the House), formally unified government (president without a filibuster-proof Senate), weakly divided government (president in the minority in one chamber), and strongly divided (president opposed by both chambers).

*Election Years.* For France, we expect that elections will have a strong negative impact on legislative activity as legislative elections disrupt the normal course of the legislature. For the USA, elections are part of the normal two-year cycle of legislative work so we do not posit an election effect. In fact, years with elections typically have a higher level of productivity, but this is because of the calendar of legislative work, with the year before an election also being the second session of the Congress; in most two-year Congresses, more hearings and investigations occur in the first year and more laws are passed in the second year.

*Ideological Cohesiveness and Distance.* As we mentioned earlier, the veto model of legislative productivity (Krehbiel 1998; Tsebelis 1995, 2004)

points to the importance of variation in the ideological position of veto players in expanding or contracting the space for policy change. We therefore examine the ideological distance between the majority and the opposition (distance) during DG as well as the ideological distance within the majority (cohesiveness).

We call cohesiveness the measure of the intramajority ideological distance. Cohesiveness indicates the standard deviation from the weighted mean of the ideological position of governing party(ies). We first calculate this weighted mean:

$$\text{WM} = \frac{\sum_{i=1}^{n}(I_{pi} * M_{pi})}{\sum_{i=1}^{n} M_{pi}},$$

where $I_{pi}$ is the ideological position of party$_i$ and $M_{pi}$ is the number of seats held by party$_i$.

Cohesiveness represents the deviation from this mean. Hence,

$$\text{cohesiveness} = \sqrt{\frac{1}{\left(\sum_{i=1}^{n} M_{pi}\right)^{-1}} \sum_{i=1}^{n}(I_{pi} - WM)^2}.$$

Conceptually, this measures if the parties of a coalition are concentrated around the ideological mean of the coalition or if there is a strong deviation from the mean position among those who make up the governing coalition. The expectation is that a larger deviation will decrease law production. We adapt this measure to the USA by using the standard deviation from the mean of the majority party using Bailey's (2007) data.

We also examine the effect of the ideological distance between the majority and the opposition on law production during DG. We measure this distance as the ideological distance between the majority and opposition party(ies) on the left–right scale of the Party Manifesto database weighted by the number of seats held by both camps. For France, we use Lazardeux's (2009) data. For the USA, we use Bailey's (2007) measure and calculate the distance between the weighted mean score of the Republican and Democratic parties for each Congress. This distance measure allows us to compare situations in which DG requires a "far reach" across the partisan divide versus those where the partisan division is relatively minor.

*Session and Session Length.* Finally, we add to control variables to take into account the specificities of the organization of legislative work in the two countries. In the USA, the two years between every legislative election typically show a see-saw pattern where the first year (or session) shows more hearings but fewer laws and the second session of a Congress shows more legislative productivity (and fewer hearings). This seasonality must be accounted for so we include a dummy variable called "session," which

takes the value 1 in election years and 0 otherwise. The French case presents a slightly different problem: the variable length of parliamentary sessions. The possibility to call for "extraordinary sessions" has been resorted to rather systematically in the past few years, thereby lengthening the average length of parliamentary sessions. Election years are an exception from that perspective. They are on average about half as long as parliamentary sessions in nonelection years. Yet, those years feature a higher legislative productivity, in terms of the average number of laws adopted divided by session length, measured in days. In order to account for this peculiarity, we add the absolute length of the parliamentary session (measured in days) as a control variable to the French models.

Summarizing, our article will test four main hypotheses:

*Hypothesis 1: The problem-solving (or null) hypothesis: Patterns of government control do not affect law production.*

*Hypothesis 2: The friction hypothesis: When decision making is more complex due to the patterns of government control, policy change (number of key laws) decreases.*

*Hypothesis 3: The veto player–internal cohesiveness hypothesis: When ideological cohesiveness of a governing party (or coalition) decreases, law production and policy change decrease.*

*Hypothesis 4: The veto player–polarization hypothesis: When ideological distance between majority and opposition increases during DG, law production and policy change decrease.*

## Results

Table 3 presents the rate of legislative productivity according to the different definitions of patterns of government control.

Table 3 shows no significant effect of the various definitions of DG on the number of laws in the USA. Indeed, weakly divided governments have the greatest legislative productivity. The pattern is different regarding important laws, as they are more likely to be passed during strictly unified government. The difference between strictly unified and strictly divided is statistically significant ($P = 0.01$). On average, about 60% more important laws are promulgated under strictly unified governments as compared to strictly divided ones. Although the strict definitions produce statistically distinguishable differences, the traditional definition of DG (strictly and formally unified vs. weakly and strictly divided) fails to show important or significant differences. Strictly unified government is always significantly associated with the highest number of key laws.[11] Beyond this, there is no consistent pattern. These results from the USA are congruent with our expectations regarding the definition of DG and its effect of the legislative production and policy changes.

For France, Table 3 shows roughly similar results concerning the average number of laws per month.[12] Under cohabitation (or divided executive), that is, the common definition of DG in France, the number of

TABLE 3
**Legislative Productivity under Divided and Unified Government**

| Government Status | Laws | Important Laws |
|---|---|---|
| A. USA[a] | | |
| Strictly unified | 244.0 | 17.0 |
| Strictly divided | 201.0 | 10.5 |
| Weakly and strongly divided | 196.6 | 10.5 |
| Strictly and formally unified | 218.1 | 12.7 |
| Formally unified | 209.5 | 10.6 |
| Weakly divided | 276.4 | 5.9 |
| Strongly divided | 172.9 | 12.0 |
| B. France[b] | | |
| Unified executive | 35.3 | 13.9 |
| Divided executive | 36.5 | 13.0 |
| Unified legislature | 41.7 | 14.2 |
| Divided legislature | 29.4 | 13.0 |
| Formally unified | 30.7 | 16.4 |
| Weakly divided | 44.7 | 19.3 |
| Strongly divided | 26.6 | 5.5 |

[a]Values reported are averages per year.
[b]Values reported are averages per month during which Parliament was in session.

laws passed is actually slightly higher than under a unified executive. Conversely, we find the most important difference to be between unified and divided legislatures. Departing from the U.S. case, the average number of important laws does not show a clear pattern. The highest production of important laws is under weakly divided government when the president is alone in the opposition. No matter which definition of unified government adopted, we do not observe a significant increase in the number of important laws. However, the production of key laws is at its minimum under strongly divided government quite in line with results for the United Kingdom.

In Tables 4 and 5, we move beyond the simple averages. The tables present negative binomial models for rates of legislative productivity; the dependent variables are the total number of laws, as described in the first columns of Table 3.

As expected, the policymaking cycle in Congress gives rise to more laws during the second, or electoral, year of each congressional term. If distance has no independent impact, the coefficient is systematically negative (reaching statistical significance only once) when interacted with DG, indicating that increases in political polarization under DG are detrimental to law production. Most importantly, none of the various operationalizations of DG significantly affects overall law production.[13] The three models presented show the impact of different ways of thinking of DG. Model 1 presents "divided," which is the broadest definition: anything

TABLE 4
**Predicting Legislative Production in the USA, 1948–2006**

|                          | Model 1         | Model 2         | Model 3          |
|--------------------------|-----------------|-----------------|------------------|
| Constant                 | 5.49*** (0.21)  | 5.48*** (0.21)  | 5.6***  (0.24)   |
| Time                     | −0.03*** (0.00) | −0.02*** (0.00) | −0.02*** (0.00)  |
| Session                  | 0.49*** (0.07)  | 0.5***  (0.07)  | 0.5***  (0.06)   |
| Divided                  | −0.11   (0.11)  |                 |                  |
| Weakly and strongly div. |                 | −0.04   (0.07)  |                  |
| Formally unified         |                 |                 | −0.1    (0.12)   |
| Weakly divided           |                 |                 | −0.03   (0.12)   |
| Strongly divided         |                 |                 | −0.16   (0.11)   |
| Cohesiveness             | 0.16    (0.19)  | 0.2     (0.19)  | 0.12    (0.19)   |
| Divided * Distance       | −0.12*  (0.05)  | −0.14   (0.14)  | −0.15** (0.05)   |
| AIC                      | 52.78           | 52.79           | 52.64            |
| -2 log-likelihood        | 558             | 557             | 559              |
| McFadden's pseudo-$R^2$  | 0.23            | 0.23            | 0.23             |
| N                        | 50              | 50              | 50               |

*Note*: Entries represent negative binomial coefficients (standard errors in parentheses). The omitted (baseline) category for the USA is strictly unified government (where the president has not only a majority in both chambers, but a filibuster-proof majority in the Senate). The inclusion of a lagged dependent variable does not affect the results presented above but increases the pseudo-$R^2$.
***$P < 0.001$; **$P < 0.01$; *$P < 0.05$

but the case where the president controls the House as well as a filibuster-proof majority. Model 2 presents a more traditional definition, "weakly and strongly divided," where the president is opposed by a majority in one or two chambers, respectively. Finally, Model 3 presents each level of DG separately: formally unified (presidential majorities, but subject to a possible filibuster in the Senate), weakly divided (opposition controls one chamber of Congress), and strongly divided (president opposed by both the House and Senate). None of the DG coefficients is significant.

Table 5 shows a similar presentation for France. We present four models because the possible types of DG are slightly more complicated there, as discussed in the text. The insignificant coefficients for each way of operationalizing DG mirror the results for the USA. The only significant coefficients are those for election years and length of parliamentary sessions. Moreover, neither cohesiveness nor distance between opposition and majority affect law production in France.

If Tables 4 and 5 show no impact of DG for legislative productivity overall, Tables 6 and 7, which present identical models for the production of major laws, reveal important negative effects for DG in both countries. Table 6 shows the results for the USA. In each of the three models, the various ways of measuring DG all show a large and significant negative effect. Furthermore, Model 3 shows that, compared to strictly unified

TABLE 5
**Predicting Legislative Production in France, 1979–2008**

|  | Model 1 | | Model 2 | | Model 3 | | Model 4 | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Constant | 3.49*** | (0.24) | 3.37*** | (0.22) | 3.38*** | (0.23) | 3.33*** | (0.18) |
| Session length | 0.01*** | (0.00) | 0.01*** | (0.00) | 0.01*** | (0.00) | 0.01*** | (0.00) |
| Leg. election | –0.18* | (0.10) | –0.18* | (0.10) | –0.18* | (0.10) | –0.17* | (0.10) |
| Divided | 0.10 | (0.26) | | | | | | |
| Divided executive | | | 0.22 | (0.30) | | | | |
| Divided legislature | | | | | 0.15 | (0.27) | | |
| Formally unified gov. | | | | | | | –0.41 | (0.49) |
| Weakly divided gov. | | | | | | | –0.08 | (0.36) |
| Strongly divided gov. | | | | | | | 0.09 | (0.24) |
| Distance | –0.01 | (0.01) | –0.01 | (0.00) | –0.01 | (0.00) | | |
| Cohesiveness | 0.00 | (0.01) | 0.00 | (0.02) | –0.01 | (0.01) | –0.03 | (0.02) |
| Divided * Distance | 0.00 | (0.01) | –0.01 | (0.01) | –0.01 | (0.01) | 0.01 | (0.01) |
| AIC | 35.11 | | 35.2 | | 35.06 | | 36.21 | |
| -2 loglikelihood | 298 | | 298 | | 298 | | 299 | |
| McFadden's pseudo-$R^2$ | 0.18 | | 0.18 | | 0.18 | | 0.18 | |
| N | 33 | | 33 | | 33 | | 33 | |

*Note*: Entries represent negative binomial coefficients (standard errors in parentheses). The dependent variable is the number of key laws per month of parliamentary session.
***$P < 0.001$; **$P < 0.01$; *$P < 0.05$

TABLE 6
**Predicting Policy Change in the USA, 1948–2006**

|  | Model 1 | | Model 2 | | Model 3 | |
| --- | --- | --- | --- | --- | --- | --- |
| Constant | 1.33** | (0.44) | 1.47** | (0.46) | 1.84*** | (0.45) |
| Time | 0.01** | (0.00) | 0.02*** | (0.00) | 0.01* | (0.00) |
| Session | 0.02 | (0.13) | 0.03 | (0.13) | 0.02 | (0.12) |
| Divided | –0.52** | (0.19) | | | | |
| Formally and strongly divided | | | –0.3** | (0.15) | | |
| Formally unified | | | | | –0.42* | (0.20) |
| Weakly divided | | | | | –1*** | (0.24) |
| Strongly divided | | | | | –0.39* | (0.19) |
| Cohesiveness | 0.62 | (0.40) | 0.7 | (0.40) | 0.72 | (0.37) |
| Divided * Distance | –0.08 | (0.09) | –0.11 | (0.10) | –0.08 | (0.09) |
| AIC | 50.96 | | 50.51 | | 49.91 | |
| -2 log-likelihood | 315 | | 318 | | 310 | |
| McFadden's pseudo-$R^2$ | 0.05 | | 0.04 | | 0.08 | |
| N | 50 | | 50 | | 50 | |

*Note*: Entries represent negative binomial coefficients (standard errors in parentheses). The omitted (baseline) category for the USA is strictly unified government (where the president has not only a majority in both chambers but over 60% in the Senate).
***$P < 0.001$; **$P < 0.01$; *$P < 0.05$

government, each of the various forms of DG has a negative sign and is significant, even if there is no consistent ordering to the value of the coefficients. Distance has a significant negative impact only when the various types of DG are distinguished.

TABLE 7
**Predicting Policy Change in France, 1979–2008**

|  | Model 1 | Model 2 | Model 3 | Model 4 |
|---|---|---|---|---|
| Constant | 1.80*** (0.29) | 2.51*** (0.27) | 2.38*** (0.32) | 2.43*** (0.23) |
| Session length | 0.01*** (0.00) | 0.01*** (0.00) | 0.01*** (0.00) | 0.01*** (0.00) |
| Leg. election | −0.33** (0.13) | −0.31* (0.12) | −0.29* (0.14) | −0.32** (0.12) |
| Divided | −0.71* (0.33) | | | |
| Divided executive | | −1.25** (0.39) | | |
| Divided legislature | | | −0.76* (0.37) | |
| Formally unified gov. | | | | −0.77 (0.58) |
| Weakly divided gov. | | | | −0.47 (0.42) |
| Strongly divided gov. | | | | −0.60* (0.29) |
| Distance | 0.03*** (0.01) | 0.00 (0.01) | 0.00 (0.01) | |
| Cohesiveness | −0.01 (0.01) | −0.08*** (0.02) | 0.02 (0.02) | −0.03 (0.03) |
| Divided * Distance | −0.03** (0.01) | 0.06*** (0.02) | 0.03** (0.01) | 0.03* (0.01) |
| AIC | 35.43 | 35.32 | 35.30 | 35.67 |
| -2 log-likelihood | 233 | 232 | 240 | 235 |
| McFadden's pseudo-$R^2$ | 0.18 | 0.18 | 0.16 | 0.18 |
| N | 33 | 33 | 33 | 33 |

*Note*: Entries represent negative binomial coefficients (standard errors in parentheses). The dependent variable is the number of key laws per month of parliamentary session. The inclusion of a lagged dependent variable does not affect the results presented above but increases the pseudo-$R^2$.
***$P < 0.001$; **$P < 0.01$; *$P < 0.05$

These results are also confirmed in the French case, as shown in Table 7. Negative and significant coefficients are associated with DG, divided executive (usually understood as cohabitation) as well as divided legislature. When the various types of DG are introduced, the signs are systematically negative, though not in a clean and predictable order and not always significantly so. Finally, we found no compelling evidence in favor of the veto player hypothesis. Cohesiveness generally shows no significant effect. Internal distance within the majority only affects negatively the number of key laws when DG is operationalized as a divided executive. Distance does show a significant effect but in different directions. In three of the models, during DG, as distance between majority and opposition increases, the number of key laws increases too. This is in direct opposition to the expectations derived from the veto player hypothesis.

## Discussion

These results confirm Mayhew's *Divided We Govern* idea of the normalcy of DG and extend the analysis both geographically by including France and theoretically by distinguishing among various levels of division that may be present, and by distinguishing between legislative productivity in general and the production of important laws. The findings are also consistent with a view of lawmaking that places emphasis on problem solving. Most of the governments' legislative activity consists in insuring

the normal functioning of the political system and in responding to the issue of the day and other sudden exogenous crises. Whether their motivation is self-interested (publicizing their achievements to their electors) or driven by the common good, politicians do play this role. The results of our analyses of overall legislative productivity (Tables 4 and 5) show this quite clearly. Whatever the partisan of institutional configuration, whatever the setting (USA or France), governments govern.

In fact, the only true determinants of legislative productivity in the USA and France over the period under scrutiny have to do with constraints in the legislators' ability to do their work. U.S. lawmakers legislate less during the first year as they concentrate on their other activity, oversight. French legislators legislate less when they are given less time to do so (either because of shorter legislative sessions or the occurrence of elections). Hence, declines in overall legislative productivity have much less to do with partisan bickering and cross-institution tensions as with outside constraints put on the workload of lawmakers.

Moreover, our results show important nuances in the different values of the French and American systems. Indeed, the data show that key policy change by and large happens when a unified executive is able to push through reforms without opposition. The critical results in Tables 6 and 7 are that the production of key laws is heightened under strictly unified government, and similar findings hold in both countries. This highlights the "decisiveness" of such institutional–political configurations. However, it does not imply that these decisions will have the capacity to stick over the long term. This institutional–political configuration, however, lacks "resoluteness," that is, the ability to commit to established policy decisions (Cox and McCubbins 2001, 22). However, it also indicates that, even in France, where the concept of checks and balances is not at the core of the institutions, institutional and partisan configurations can block some key legislation pushed by the majority.

Whereas our empirical focus has been on the USA and France, our findings may have broader relevance. The question at the core of the literature on DG has been to know if rivals can govern together, or if it leads to stalemate. Looking at two widely different institutional and cultural settings, we have shown first that truly unified government is rare, that some form of working "across the aisle" is common in both countries, and that while it has some impact on the production of major policy change, by no means can it be said to create paralysis. These findings could stimulate further studies in a range of institutional situations beyond the U.S.-focused definition of DG.

Our article also answers the Mayhew question from a novel perspective. As we pointed out in our review of the literature, Mayhew's study has been questioned on its operationalization of important laws and on his findings. We have provided a more generalizable conceptualization of DG, one that recognizes its various forms and that can be applied to a range of constitutional structures. By arguing that DGs came in different types, we

were able to specify how each institutional actor may affect lawmaking. We also point out how rare truly unified government actually is, in the USA or in France. Hence, if Mayhew's clever title *Divided We Govern* was meant to argue that there was no more gridlock under unified and DG periods, we could not agree more. We do reach a different finding than Mayhew in that we find landmark policy change occurs more often under (strongly) unified government than under any form of shared control. More generally, his argument that DG is something close to the normal state of things, and therefore cannot be seen to make governing impossible, proves accurate for the case of France as well as the USA. The USA has known strongly unified government for only 6 of the last 64 years, and France for just 14 of the last 33. *Divided We Govern*, indeed.

## Notes

1. Before 1975, two-thirds of the "present and voting" senators had to agree to end debate and stop a filibuster. In 1975, the threshold was lowered to three-fifths of the "duly chosen and sworn" senators. So the filibuster point moved from 66 to 60 in that year.
2. Senate elections in France are indirect, with local elected officials dominating the electoral college, and this overrepresentation of rural areas explains the consistent rightward tilt in the Senate's political ideology. Nonetheless, the balance tilted toward the left for the first time in more than 50 years in September 2011. As our data on legislative productivity do not cover the current legislature, we do not analyze this situation. However, it reinforces our point that the patterns of divided and unified control are more complicated than is commonly assumed.
3. Article 10 states: "The President of the Republic shall promulgate Acts of Parliament within fifteen days following the final passage of an Act and its transmission to the Government. He may, before the expiry of this time limit, ask Parliament to reopen debate on the Act or any sections thereof. Such reopening of debate shall not be refused."
4. That is, laws related to the organization of the state apparatus.
5. Even if less widespread in France than in the USA, some laws are designed with explicit sunset provisions. For example, in 1994, three bioethics laws were passed with the provision that they be revised after 10 years. When they were revised in 2004 and in 2011, the revision was set at 7 years later (La documentation française 2011).
6. In France, legislative and presidential elections have taken place in the middle of the year, and the two elections usually take place at different times. Election years being truncated years, we have two data points for these years. For example, 1993–1 denotes the preelection period of 1993 and 1993–2 the postelection period. The number of laws enacted in 1993 is therefore split between laws enacted before the legislative elections and laws enacted after these elections. In the analysis, we measure productivity per month.
7. As we have mentioned earlier, organic laws are laws related to the organization of the state apparatus.
8. Organic laws are automatically referred for constitutional review. This is why we only kept organic laws that have been adopted by a public vote.
9. The Conference des Presidents includes the Speaker of the National Assembly, the six vice-speakers, the leaders of the parliamentary party caucuses,

the presidents of legislative committees, and other members of the Chamber. The government is represented by one of its members, customarily the minister in charge of relations with Parliament.

10. Assemblée Nationale website at http://www.assemblee-nationale.fr/connaissance/collection/6.asp accessed January 29, 2010.

11. The mean between strictly and formally unified governments is significant at $P = 0.03$, between strictly unified and weakly divided governments at $P = 0.001$, strictly unified and strongly divided governments at $P = 0.077$.

12. The results are averaged per month to take into account the variable length of the legislative session.

13. We also include a "time" variable to control for the long-term downward trend in U.S. law production.

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