

Divided Government, Legislative Productivity, and Policy Change in the US and France

Frank R. Baumgartner, UNC-Chapel Hill (Frankb@unc.edu)
Sylvain Brouard, Sciences Po Bordeaux (s.brouard@sciencespobordeaux.fr)
Emiliano Grossman, Sciences Po Paris (emiliano.grossman@sciences-po.fr)
Sebastien G. Lazardeux, St. John Fisher College (slazardeux@sjfc.edu)
Jonathan Moody, Penn State University (jwm284@psu.edu)

Abstract

The concept of “divided government” is more complicated than scholars have allowed. We expand our knowledge of divided government by considering France as well as the US, by looking at all laws as well as important laws, and by distinguishing among four levels of divided v. unified government rather than a simple dichotomy as has been done in the past. Democratic governance requires that parties address important issues and they do so regardless of the patterns of institutional control. We find that periods of unified government show higher levels of production of important laws in the US, but we find no difference for overall legislative productivity. We find the same results in France.

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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 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 law-making is affected by divided government. Law-making requires more time and energy than under unified government, but it does not render government impossible. Divided government has often been seen as leading to stalemate (Tsebelis 2002; Edwards 1997; Binder 1999) or conversely as neutral on legislative productivity (Mayhew 1991; Conley 2011).

The paper will distinguish among various forms of divided government, apply them in both the US and France, and demonstrate that they have similar effects in both systems. Most previous studies have used a simple dichotomy: Government is either divided or not. We distinguish among four levels of division and show that the most unified governments are indeed more productive in terms of the passage of major legislation. However, we find no difference in legislative productivity overall; divided government affects only major bills, not routine ones. A strict definition of divided government is one where the President must cooperate with at least some members of the opposition party in order to legislate. By this definition, most of the so-called unified governments have actually been at least weakly divided, and strongly unified governments have been exceedingly rare. By providing a more complete definition of divided government, we show that some form of divided government is the norm in the US. We also compare the US to one of the few other western systems where divided government occurs: France.

Using a revised definition of just what constitutes divided v. unified government, we present evidence on legislative productivity in line with expectations from the punctuated equilibrium approach (see Jones and Baumgartner 2005). We posit that electoral incentives always push policymakers to attempt to solve policy problems, and so policy changes occur under divided as well as under unified government, as all sides of the political spectrum bring their attention to new issues from time to time, regardless of institutional control. In line with this argument, we expect that divided government should carry no effect on overall levels of legislative productivity. While divided government increases the cost of policy change, laws designed to maintain the status quo or implementing incremental changes are not affected. However, because of their significance, the enactment of landmark legislation creates higher levels of friction in the decision-making process, and fewer landmark policy changes are thus expected under divided government. The study clearly highlights that if divided government does not imply general legislative gridlock, it does render important policy change more difficult.

DEFINING DIVIDED GOVERNMENT IN FRANCE AND IN THE US

The United States

The most prominent study of divided government in the US, and the book that launched an entire literature on this topic (Mayhew 1991), underscores the routine, usual, common nature of divided government in the US, as exemplified by its title: *Divided We Govern*. In fact, even in a situation of unified control of the presidency, the House, and the Senate, it is rare that the President's party achieves a filibuster-proof majority in the Senate. Some opposition legislators typically must support the President's position to pass legislation. Thus, *strongly* 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 *weakly unified* government when the President has a majority in the Senate but that majority is not filibuster-proof. 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 inter-party cooperation and compromise. We posit an effect only on important legislation because the required level of compromise may be easier to achieve for relatively routine matters. The importance of compromise during periods of shared governance is illustrated by President Obama's remarks expressing his frustration in the State of the Union address of 2009: "If the Republican leadership is going to insist that 60 votes in the Senate are required to do any business at all in this town—a supermajority—then the responsibility to govern is now yours as well."

Things used to be even more difficult. The conditions to enact cloture according to Rule XXII of the standing rules of United States Senate were modified in 1975. 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. Taking into account this institutional change, the period under study—1946 to 2006—features only six years of "strongly unified government"—four of the Kennedy-Johnson years (1963 to 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. And while Carter was not able to take advantage of his large majorities, which he lost in the mid-term elections of 1978, the 1960s were indeed one of the greatest eras of legislative productivity with many landmark pieces of legislation being adopted during that period.

Weakly unified government has been the rule for 18 years over the post-war period. The most common situation has been divided government, which in the US can be either weak or strong depending on whether the party of the President faces a hostile majority in one of the chambers (weakly divided), or in both (strongly divided). Strongly or weakly divided government has been the case for 35 of the 59 years we analyze in this paper, 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 US from 1948 to 2006. Mayhew's title, *Divided We Govern*, fits the data perfectly.

France

The situation in France is not quite the same as the US, 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 this is as far as commonalities go. France also has a form of divided government called *cohabitation*—when the President and the Prime Minister are partisan rivals. The situation is different from the US, though. Whereas in the US the executive cannot be divided, in France both the two chambers of the legislature and the executive may be divided or unified (Siaroff 2003). Only the National Assembly and the Prime Minister are certain to belong to the same partisan camp. The unified or divided control of the executive, on the one hand, and of the legislature, on the other, interact to shape the nature of government control in France; accordingly, there are four possible situations.

France also has an incongruent bicameral parliament composed of a lower chamber—the National Assembly—and a higher chamber—the Senate (Lijphart 1999; Tsebelis and Money 1997). MPs of both chambers are elected according to different electoral systems: French 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 rightwing parties. Situations of divided legislatures have existed several times in the history of the Fifth republic. From 1958 to 1968, the Gaullists found a stable majority in the National Assembly but failed to do so in the Senate, where the moderate Christian-Right and moderate Left held a large number of seats. A rightwing majority controlled the Senate when the National Assembly was controlled by a leftwing coalition (1981-1986 and 1988-1993). Finally, a new situation of divided legislature started in September 2011, with a conservative national Assembly and a leftist Senate¹

The parliamentary character of the semi-presidential system implies that the Prime Minister (and the cabinet) and the lower chamber 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 for a tight control of the parliamentary agenda by the cabinet (Brouard 2011; Huber 1992). Given the large agenda-setting powers of the French government, the National Assembly and minority cabinets, particularly formal ones, may be considered congruent. We will assume that in the French semi-presidential system, the control of the cabinet and of the lower chamber are always unified. We will call opposition a party or a coalition of parties that are not part of the coalition supporting the cabinet.

¹ For the first time since 1958, the left obtained a stable majority in the Senate following the senatorial elections of September 2011. As our data on legislative productivity do not cover the current legislature, we do not analyze this situation. But it reinforces our point that the patterns of divided and unified control of the legislature are more complicated than is commonly assumed.

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

(Insert Table 1 about here)

Table 1 summarizes the above discussion: it 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 (1974-1981; 1995-1997; 2002-2007). Unified executive and divided legislature happened during the Mitterrand presidency when a leftwing coalition held a majority in the lower house (1981-1986; 1988-1993) but the Senate was dominated by conservatives. A divided executive and a unified legislature characterized the two periods of *cohabitation* under Mitterrand's presidency. In each case (1986-1988 and 1993-1995) the Socialist President was confronted with a rightwing cabinet, Assembly, and Senate. Finally, the pinnacle of divided government was reached between 1997 and 2002 when both the legislature and the executive branches were divided. Right-wing President Chirac was in opposition to a leftwing cabinet and the conservative Senate was in opposition to a leftist Assembly. Just as in the US, where the patterns of divided government are more complicated than a simple dichotomy would suggest, so too in France the simple unified v. *cohabitation* situation does not capture the full range of situations that have occurred, and which we think can have substantial impacts on the production of important laws.

A more complete definition of divided government 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 policy-making. 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 both the relations within the executive, and between the executive and legislative branches (Irondele 2008). 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” (Irondele 2008; Balme 2008), 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,² 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 Senate may use well-known instruments of parliamentary procedures (amendments, motions, quorum calls) to delay the usual law-making process and to influence the speed and outcomes of legislative proceedings (Tsebelis and Money, 1997). The Senate was also 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

² Article 10 states that “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.”

Assemblée (Verdier 1998). In addition, the Senate may *de facto* veto both constitutional laws and organic laws³ dealing with the Senate.

Thus we expect that opposition control of these two institutions will increase the level of institutional friction. The obvious consequence is that the majority has incentives to anticipate the opposition's answer to any policy change and to avoid too many policy conflicts.

In summary, in France, both the executive and the legislature can be divided. As for the US, we consider that strongly 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 weakly unified. Divided government in France, according to this definition, also expands well beyond what is traditionally called cohabitation. From 1978 through 2007, the period under study, strongly unified governments can be observed in regular alternation with weakly unified governments as well as with weakly and strongly divided ones. Strongly unified governments were in place under Giscard (1978 to 1981) and Chirac (1995 to 1997 and again from 2002 to 2007). President Mitterrand experienced either weakly unified government, with a unified executive and divided legislature (1981 to 1986 and 1988 to 1993), or weakly divided government, with a divided executive and a unified legislature (1986 to 1988 and 1993 to 1995). President Chirac had two periods of strongly unified government (1995 to 1997 and 2002 to 2007) and one period of strongly divided government, as his coalition retained control of the Senate (1997 to 2002).

The US and France compared

(Insert Figure 1 about here)

Figure 1 illustrates the complications associated with the labels “unified” and “divided” in both countries. Part A shows the US. For each President since Truman, the dark shadings

³ That is laws related to the organization of the state apparatus.

indicate weakly unified government; lighter shadings show periods of weakly divided (when the president had a simple majority in one chamber) or strongly divided (when he had a simple majority in neither), and the white areas are the ones with a President enjoying a filibuster-proof Senate majority (strongly 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 to the 50-percent line, and 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. Further, while there are periods of strongly unified government, it is apparent how seldom those are, with some level of shared control being much more common in both countries.

From the amount of variation across our defined types of unified and divided government we can already begin to speculate about the levels of legislative productivity. More pointedly, 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 strongly unified government. But, before turning to the presentation of our data, we turn first to what other scholars have said about legislative productivity in divided government.

LEGISLATIVE AND POLICY EFFECTS OF DIVIDED GOVERNMENT

Debates on the effects of divided government on policy outputs have largely been dominated by Mayhew's contribution in the US. 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 divided government (henceforth DG) sparked lasting debates (McKay 1994; for early reviews, see Brady 1993). Unlike most other contributions (Alesina and Rosenthal 1996; Laver 1999; Fiorina 1996), Mayhew was not interested in the origins of divided government in the US. Rather, he proposed an original way to put to test a piece of accepted wisdom on US 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," i.e., periods of over-activism, than by the institutional and political context.

Following Mayhew's analysis of major legislation, a first group of authors re-examined and questioned Mayhew's list of major bills. Especially, his post-hoc methodology for constructing the list of major legislation ("sweep two") was criticised 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 and colleagues (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 divided government 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 “divided government” 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, intra-party fractionalization or party-internal divisions should be as important as divided government (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.

It has, moreover, spurred new research on the effect of DG on certain types of policies such as trade and budget deficits and public spending. The results are not straightforward here. Alt and Lowry (1994), for instance, find some evidence for partisan difference in spending patterns, especially in response to deficit crises, but they come to the conclusion that aggregate affects are hardly significant. More largely, economists tend to consider that more divided governments, coalitions or institutions tend to increase the necessity to cut budgetary “deals” and, thus, to increase spending (Alesina and Perotti 1995; McCubbins 1991).

In the area of trade policy, conclusions have also been critical of Mayhew’s work. Milner and Rosendorff (1997) show that DG increases the chances of more protectionist attitudes in trade negotiations, especially in interaction with certain other factors, such as upcoming elections. Lohmann and O’Halloran (1994, 628) tend to confirm that US governments are significantly more protectionist under DG than under unified government. A more recent analysis by Karol (2000) argues that DG is not a central variable, but that cross-party coalitions

are more likely to occur on protectionist measures than on trade liberalization. On the whole, all of these analysts agree that everything else equal, DG favours protectionism or, at least, harms trade liberalization.

In France, the debate has been equally heated in the public sphere, but a lot weaker in academic circles. The essential reason is that France has experienced *cohabitation* for only nine out of 51 years since the creation of the 5th Republic. It is true that all those periods occurred within the past 25 years. But 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 divided government allows us to broaden the tests of the effect of DG on legislative productivity beyond the US case which so far has dominated the literature.

Early on, French political scientists feared the *cohabitation* as they considered France to be unfit for it. It was only in 1986, that is, 28 years after the creation of the 5th 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. But 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). Fundamentally, legal scholars assume

that cohabitation has little or no effect 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). In fact, to some extent, most scholars assume that cohabitation is all about changing political systems. According to this line of argument, France regularly switches between parliamentary and presidential government (Lijphart, 1998; Duhamel 2003). Yet, the effects of cohabitation on legislative production have hardly been studied. The few studies that exist have mainly been realised by non-French scholars and rely on case-studies. Conley (2007; 2011) analyzed French legislative productivity and failed to find an impact of cohabitation on legislative production..

Finally, veto player theory (Tsebelis 1999) applied to divided government predicts gridlock. The underlying logic is straightforward when applied to the US. Under unified government, there is only one veto player whereas under divided government there are at least two veto players. And as the number and/or the distance between veto players increases, the policy space preferred by veto players to the status quo quickly shrinks to zero. More precisely the prediction is that divided government 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; 2002).

On balance, then, most subsequent work considers that Mayhew's conclusions are at least partially wrong, due to insufficient specification of his explanatory model or the very quality of the data he worked with. Moreover, any comparative work, such as in this paper, has to be more precise on institutional rules, political processes and party systems. Those vary over time and from country to country. Any comparison will thus have to develop clear and testable assumptions concerning institutional differences and their likely effects.

Towards a new perspective on divided government

Our own take relies on the punctuated equilibrium approach (see Jones and Baumgartner 2005). 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 et al. (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. But 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. 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 divided government. For example, if the European Union 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

US, if the Farm Bill is up for renewal because it included a sunset provision, divided control of government will not stop the President and the Congress from reaching a new agreement. From this perspective, there are many good reasons to expect that legislative productivity should not be affected by divided government.

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 divided government to affect the content of any 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, divided government 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 2010). Friction increases when decision-making becomes more complex or costly. Therefore, we expect divided government to decrease policy change. Conversely the structural bias towards the status quo and incremental changes is reinforced by divided government for two reasons. Attention scarcity implies that if policy change is more time and energy consuming, then fewer policies should see major adjustment and therefore a greater number should see only marginal adjustments or incremental change under divided government. 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.

Thus, we do not expect a strong effect of divided government on the level of legislative productivity but we expect a strong negative one on the level of policy change. Divided

government should lead to as many minor adjustments as in unified government, but to fewer pieces of major legislation.

Datasets and Measures

The French and American policy agendas projects provide the data to test the above arguments. US data are available for the period of 1948 to 2006 from 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 to 2008 and come from the French agendas project, similarly supplemented with public election results data.

Dependent variables

Number of laws: Since we are interested in the impact of formal and substantive forms of divided government on law production, we first estimate their effect the on rate of production of laws.⁴ The number of laws promulgated in France between 1979 and 2008 is 2,830. In the United States, it is 12,115 for the period of 1948 to 2006. Graphical and statistical analyses of the number of laws reveal that especially in the United States, 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.

(Insert Figure 2 here)

Key Laws: Second, we use a measure of key laws as a proxy for policy change. In the United States, 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*. The French *Revue*

⁴ 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. In the analysis that follows, we measure productivity per month for the case of France.

Politique et Parlementaire (RPP) offers a list of significant legislation, but the parliamentary publication does not do so for the period from 1990 to 1996. In consequence, we chose a separate measure of importance. We consider as key laws those laws that have intrinsic institutional consequences 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* (that is laws dealing with the organization of the state, the economic, social or environmental policy of the nation, or the institutional framework of the nation), i.e. laws that must be ratified by referendum.

We also include laws that have been enacted by applying the “guillotine” or the urgency procedures of the Constitution (that is, articles 49.3 and 45.2). The guillotine allows the government to make any law a matter of confidence. The law is adopted without a vote in parliament unless the National Assembly censures the government, in which case the prime minister and his cabinet must resign (Huber 1996). The urgency provision allows the government to fast-track the legislative procedure by limiting debate on a bill. 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 laws⁵ and ordinary laws that have been adopted by public vote or ordinary laws that have been referred for a constitutional review before their promulgation.⁶ 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

⁵ As we have mentioned earlier, organic laws are laws related to the organization of the state apparatus.

⁶ Organic laws are automatically referred for constitutional review. This is why we only kept organic laws that have been adopted by a public vote.

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 particularly note that “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 Presidents⁷ 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.”⁸ 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 since it 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. We are confident that our measure passes a reasonable validity test as it includes all the great laws of the Fifth Republic such as the Barre plans of 1976 and 1979, the decentralization laws, the suppression of the death penalty, and the retirement law of 1993. In contrast to legislative productivity overall (where we saw a downward trend over time in the US), the number of key laws shows no trend up or down over time in either country.

⁷ The Conference des Presidents includes the Speaker of the National Assembly, the 6 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.

⁸ Assemblée Nationale website at <http://www.assemblee-nationale.fr/connaissance/collection/6.asp> accessed January 29th 2010.

(Insert Table 2 and Figure 3 about here)

Independent variables

Divided Government: Because we believe that divided government actually aggregates very different institutional situations under the same conceptual frame, we have chosen to test the effect of divided government as it is commonly understood as well as a more complete operationalization of patterns of government control. For both countries, we have strongly unified, weakly unified, weakly divided, or strongly divided situations, though as we have explained above the definitions of these categories differ slightly in the two countries. However, the key commonality is that in the strongly unified situation the President lead without the cooperation of any opposition party members, and that the ability of the opposition to bargain and negotiate with the President is greater as we move toward the strongly divided situation. In the analysis below, we test both the traditional dichotomous definition of divided government and our new more fine-grained operationalization of the concept.

Election years: For France, we expect that elections will have a strong negative impact on legislative activity since legislative elections disrupt the normal course of the legislature. For the US, 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. We control for this in the US with a variable called “session” which is explained below and expect a negative coefficient in France and a positive one in the US.

Ideological space for change: As we mentioned earlier, the veto model of legislative productivity (Tsebelis 1995; Krehbiel 1998) point to the importance of variation in the ideological position of veto players in expanding or contracting the space for policy change. We therefore examine if the ideological distance between the majority and the opposition (distance) during divided government as well as the ideological distance within the majority (cohesiveness) influence law production.

We call cohesiveness the measure of the intra-majority 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:

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

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 cohesiveness =

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

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 US 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 divided government. 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 United States, we use Bailey's measure (Bailey 2007) and calculate the distance between the weighted mean score of the Republican and Democratic party for each Congress.

Session and Session length: Finally, we add two control variables to take into account the specificities of the organization of legislative work in the two countries. In the US, 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 non-election 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 paper will test four main hypotheses. Note that legislative productivity is measured by the number of laws, and policy change is measured by the number of key laws.

H₁. The problem solving (or null) hypothesis: DG has no effect on legislative productivity.

H₂. The friction hypothesis: DG reduces policy change.

H₃. The internal cohesiveness hypothesis: Ideological cohesiveness within the governing party or coalition increases legislative productivity and policy change.

H₄. The polarization hypothesis: During divided government, the ideological distance between majority and opposition reduces legislative productivity and policy change.

Results

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

(Insert Table 3 about here)

Table 3A shows no significant effect of the various definitions of divided government on the number of laws in the United States. Indeed it has been under weakly divided governments that the legislative productivity has been greatest. The pattern is different regarding important laws, as they are more likely to be passed during strongly unified government. The difference between strongly unified and strongly divided is statistically significant ($p=.01$). On average about 60 percent more important laws are promulgated under strongly unified governments as compared to strongly divided ones. While the strict definitions produce statistically distinguishable differences, the traditional definition of divided government (strongly and weakly unified vs. weakly and strongly divided) fails to show important or significant differences. Analyzed using the four different types of government control, strongly unified government is always significantly associated with the highest number of key laws.⁹ Beyond this, there is no consistent pattern. Interestingly, there are more key laws under strongly divided government than under weakly divided government. These results from the US are congruent

⁹ The mean between strongly and weakly unified governments is significant at $p=.03$, between strongly unified and weakly divided governments at $p=.001$, strongly unified and strongly divided governments at $p=.077$.

with our expectations regarding the definition of divided government and its effect of the legislative production and policy changes. There is no consistent pattern with regards to overall productivity, but there appears to be an impact for the passage of important laws.

For France, Table 3B shows roughly similar results: Overall legislative productivity is not affected, but the passage of important laws is lowest in periods of strongly divided government. Even if strongly unified governments enact more laws than strongly divided governments, this difference is not significant. There is no predictable pattern regarding legislative productivity in France. Under cohabitation (or divided executive), the number of 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 US case, the average number of important laws does not show a clear pattern as there is no significant difference of means. The highest production of important laws is under weakly divided government when the President is alone in the opposition. Under strongly unified government 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.

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 3A and B.

(Insert Tables 4 and 5 about here)

Table 4 presents our results for the US. In the first model, we use the traditional dichotomous definition of divided government, and in the second model we show the four-fold classification; the models are identical in other respects. Table 5 presents the same models for France. For the US the model tested includes our divided government variables (with unified or

strongly unified government as the omitted category and the other categories entered as separate dummy variables) and controls for a time trend, the congressional session (as there are typically more laws passed in the second year of a two-year Congress), our cohesiveness measure, and an interaction term for the ideological distance between majority and opposition parties during periods of divided government.¹⁰ For France, the model is the same with some adjustments: as there is no trend to the data over time (see Figure 2), we omit the time variable. Similarly we include controls for the length of the legislative session (they are all of set length in the US, but vary in France); and we include a variable for whether the session is immediately before a legislative election which in France can be expected to depress legislative productivity. Our measures of divided government, cohesiveness, and distance, are similar to the US. Tables 4 and 5 present the results of these specifications to predict the total number of laws in each country, and Tables 6 and 7 below show the same models for important laws.

Results from the two models can be compared directly. The US results show significant downward trend, an important cyclical factor (the second session having more laws than the first), no impact of cohesiveness, and a negative impact for distance (though this variable is statistically significant only in the second model). Most importantly, neither of the models shows a systematic impact of divided government on legislative productivity. Table 5 shows a similar presentation for France. The insignificant coefficients divided government in both models mirror the results for the US. The only significant coefficients are those for election years and length of parliamentary sessions. And neither cohesiveness nor distance between

¹⁰ This variable is included only during divided government since during unified government the distance from the opposition should have no impact. Including the distance variable as well as the interaction term showed no significant effects for distance in any model.

opposition and majority affect law production in France. So while Table 3 suggested that there were few differences, these multivariate results more strongly demonstrate that divided government has no effect on legislative productivity, in either country. In Tables 6 and 7 we turn our attention to key laws.

(Insert Table 6 and 7 about here)

Tables 6 and 7 show the same models as those presented in the previous tables but here the dependent variable is the number of key laws (see Figure 3). Here we see significant negative effects of divided government in both countries. Table 6 shows the results for the United States. In both models we see a downward trend over time, but no effect of the session; important laws may be passed either in the first or second years of a two-year Congress. Similarly, we see no effect of ideological cohesiveness or of the distance between majority and opposition. Divided government, in the first model, is an important negative influence on the passage of key laws, however. In the second model, each of the three levels of divided government is statistically less productive than the baseline category of strongly unified government. There does not appear to be a strong ordering to the categories, but each is negative, and all are statistically significant.

These results are also confirmed in the French case, as shown in Table 7. In this case, several of the control variables are important predictors, including session length, whether there is an election on the horizon, cohesiveness, and distance. In the first model, cohabitation is an important and significant predictor, and in the second model the different forms of divided government are all negative, but only the strongly divided government variable reaches significance. Overall, the results show the theoretical and empirical justifications for disaggregating “divided government” into more fine-grained subsets, and they show the

importance of distinguishing between legislative productivity overall as compared to the passage of key laws. In both countries, divided government has no effect on productivity overall, but it has an important and statistically significant depressive effect on the passage of key laws.

Returning to the four hypotheses that we introduced earlier, the results clearly confirm the problem solving hypotheses that there should be no effect on legislative productivity. The friction hypotheses, that divided government reduces policy change, is similarly confirmed for both countries. The internal cohesiveness idea, that ideological closeness among the ruling party produces greater productivity and policy change, finds little support in the data. And finally, we find little support for the polarization hypotheses, that the ideological distance between majority and opposition during divided government reduces productivity and policy change. For major laws, distance actually has a positive impact in the French case, though there is no effect in the US. For productivity overall, we find a negative impact in the US and no impact in France. In all, then, the problem solving and friction ideas are most clearly confirmed and the other results show mixed or no significant findings.

Discussion

Our results confirm Mayhew's "divided we govern" idea of the normalcy of divided government. If divisions between the branches of government made it impossible to govern, both the US and France would have spend large portions of post-war history in frustrating stalemate, as divided government has been very common in both countries. Indeed, what we have called strongly unified government has been exceedingly rare in the US. So, our analysis makes clear that the ability to compromise with the opposition is part of the normal functioning of government in both countries. We extend Mayhew's analysis geographically by including France; theoretically by distinguishing among various levels of division that may be present; and conceptually by

distinguishing between legislative productivity in general and the production of important laws. While we find no effect on productivity overall, we do find that divided government makes it harder to reach the grand compromises necessary to produce major policy changes.

Our findings are 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 configuration of who is in power, whatever the setting (United States or France), governments govern. In fact, the only true determinants of legislative productivity in the United States and France over the period over scrutiny have to do with constraints in the legislators' ability to do their work. US 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. Overall, these results paint a rather positive picture of political system and their ability to respond to change.

While there are few effects on productivity, there are important depressive effects on major laws. We believe these laws reflect more important policy changes. Here, the data show that key policy change by and large happens when a unified executive is able to push through reforms without opposition from the legislative chambers. The critical results in Tables 6 and 7 are that the production of key laws is heightened when there is a situation of strongly unified

government, and similar findings hold in both countries. This, of course, will be good news for the proponents of a Westminster system, as it shows the superior efficiency of an institutional structure where executives and legislatures are congruent in producing true reforms. But it also indicates that, even in France, where the concept of checks and balances is not at the core of the logic of institutional design, institutional and partisan configurations can block some key legislation pushed by the majority. Even in France, dramatic policy shifts are reduced during times of shared government.

Our study 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 here taken a different approach by refining the concept of divided government. By highlighting the various forms of divided governments, we were also able to show vividly how rare truly unified government actually is, in the US 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 divided government periods, we could almost make this title ours. 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. However, we agree with him that regular legislation appears to be unaffected by divided government. More generally, his argument that divided government is something close to the normal state of things, and therefore should not be seen to make governing impossible, proves accurate for the case of France as well as the United States as he had noted. The US has known strongly unified government for only six of the last 64 years, and France for just 14 of the last 33. *Divided We Govern*, indeed.

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Tables and Figures

Table 1. Patterns of Government Control in France

	Divided legislature	Unified legislature
Divided executive	1997-2002 Strongly Divided Government	1986-1988; 1993-1995 Weakly Divided Government
Unified executive	1981-1986; 1988-1993 Weakly Unified Government	1974-1981; 1995-1997; 2002-2007 Strongly Unified Government

Table 2. Constructing a List of Most Important Laws for France.

Type of Law	“Most Important” Laws	Other Laws
Constitutional laws	18	0
<i>Lois référendaires</i> ¹¹	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.

¹¹ Laws that necessitate ratification by referendum after their adoption are classified as *Lois référendaires* even if they are *de jure* constitutional laws, organic laws, etc. Laws were counted if they were adopted by the legislature. Whether they were later ratified by public referendum is not important here since we are testing the ability of the political system to produce legislation, and not the role of the public on lawmaking.

Table 3. Legislative Productivity under Divided and Unified Government

A. United States

Traditional Classification	Laws	Important Laws
Unified	218.13	12.72
Divided	196.57	10.52
Revised Classification		
Strongly Unified	244.00	17.00
Weakly Unified	209.50	10.58
Weakly Divided	276.38	5.88
Strongly Divided	172.93	12.00
B. France		
Traditional Classification	Laws	Important Laws
Unified	35.33	13.93
Cohabitation	36.49	13.02
Revised Classification		
Strongly Unified	39.99	11.51
Weakly Unified	30.68	16.36
Weakly Divided	44.75	19.26
Strongly Divided	26.57	5.52

Note: Values are averages per year (US) or per month (France).

Table 4. Predicting legislative production in the US, 1948 to 2006.

	Traditional Definition of Divided Government	Revised Definition of Divided Government
Constant	5.48*** (0.21)	5.60*** (0.24)
Time	-0.02*** (0.00)	-0.02*** (0.00)
Session	0.50*** (0.07)	0.50*** (0.06)
Divided Government	-0.04 (0.07)	
Weakly unified		-0.10 (0.12)
Weakly divided		-0.03 (0.12)
Strongly divided		-0.16 (0.11)
Cohesiveness	0.20 (0.19)	0.12 (0.19)
Divided*Distance	-0.14 (0.14)	-0.15** (0.05)
AIC	52.79	52.64
-2-log-likelihood	557	559
McFadden's pseudo-R2	0.23	0.23
N	50	50

Note: Entries represent negative binomial coefficients (standard errors in parentheses). The omitted (baseline) category is unified government in the first model and strongly unified government in the second model. The inclusion of a lagged dependent variable does not affect the results presented above but increases the pseudo R2.

*** p < .001. **p < .01 *p < .05

Table 5. Predicting legislative production in France, 1979 to 2008.

	Traditional Definition of Divided Government	Revised Definition of Divided Government
Constant	3.16*** (0.22)	3.33*** (0.18)
Session length	0.01*** (0.00)	0.01*** (0.00)
Legislative election	-0.15* (0.10)	-0.17* (0.10)
Cohabitation	0.40 (0.26)	
Weakly unified		-0.41 (0.49)
Weakly divided		-0.08 (0.36)
Strongly divided		0.09 (0.24)
Cohesiveness	0.00 (0.02)	-0.03 (0.02)
Divided*Distance	-0.01 (0.01)	0.01 (0.01)
AIC	36.16	36.21
-2-loglikelihood	297	299
McFadden's pseudo-R2	0.18	0.18
N	33	33

Note: Entries represent negative binomial coefficients (standard errors in parentheses). The dependent variable is the number of laws per month of parliamentary session. The omitted variable is unified government (in the traditional model) or strongly unified government (in the revised model).

*** p < .001. **p < .01 *p < .05

Table 6. Predicting Policy change in the US, 1948 to 2006.

	Traditional Definition of Divided Government	Revised Definition of Divided Government
Constant	1.47** (0.46)	1.84*** (0.45)
Time	0.02*** (0.00)	0.01* (0.00)
Session	0.03 (0.13)	0.02 (0.12)
Divided government	-0.30** (0.15)	
Weakly unified		-0.42* (0.20)
Weakly divided		-1.00*** (0.24)
Strongly divided		-0.39* (0.19)
Cohesiveness	0.70 (0.40)	0.72 (0.37)
Divided*Distance	-0.11 (0.10)	-0.08 (0.09)
AIC	50.51	49.91
-2-log-likelihood	318	310
McFadden's pseudo- R2	0.04	0.08
N	50	50

Note: Entries represent negative binomial coefficients (standard errors in parentheses). The omitted (baseline) category is unified government in the first model and strongly unified government in the second model.

*** p < .001. **p < .01 *p < .05

Table 7. Predicting Policy Change in France, 1979 to 2008.

	Traditional Definition of Divided Government	Revised Definition of Divided Government
Constant	2.63*** (0.18)	2.43*** (0.23)
Session length	0.01*** (0.00)	0.01*** (0.00)
Legislative election	-0.33* (0.12)	-0.32** (0.12)
Cohabitation	-1.35** (0.35)	
Weakly unified		-0.77 (0.58)
Weakly divided		-0.47 (0.42)
Strongly divided		-0.60* (0.29)
Cohesiveness	-0.08*** (0.02)	-0.03 (0.03)
Divided*Distance	0.07*** (0.01)	0.03* (0.01)
AIC	34.83	35.67
-2-log-likelihood	231	235
McFadden's pseudo-R2	0.18	0.18
N	33	33

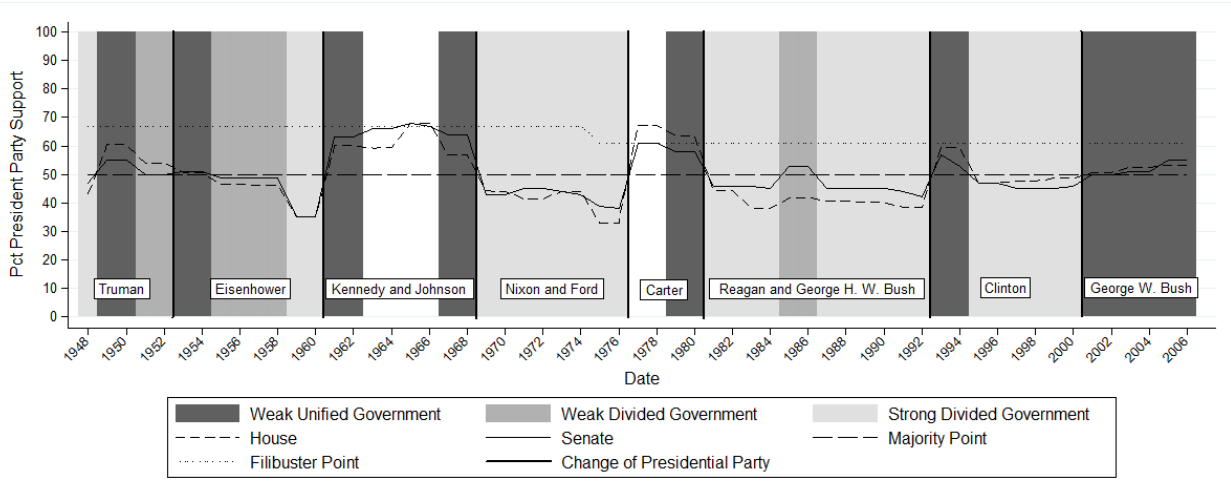
Note: Entries represent negative binomial coefficients (standard errors in parentheses). The dependent variable is the number of key laws per month of parliamentary session.

The inclusion of a lagged dependent variable does not affect the results presented above but increases the pseudo R2.

*** p < .001. **p < .01 *p < .05

Figure 1. Periods of Divided and Unified Government.

A. United States



B. France

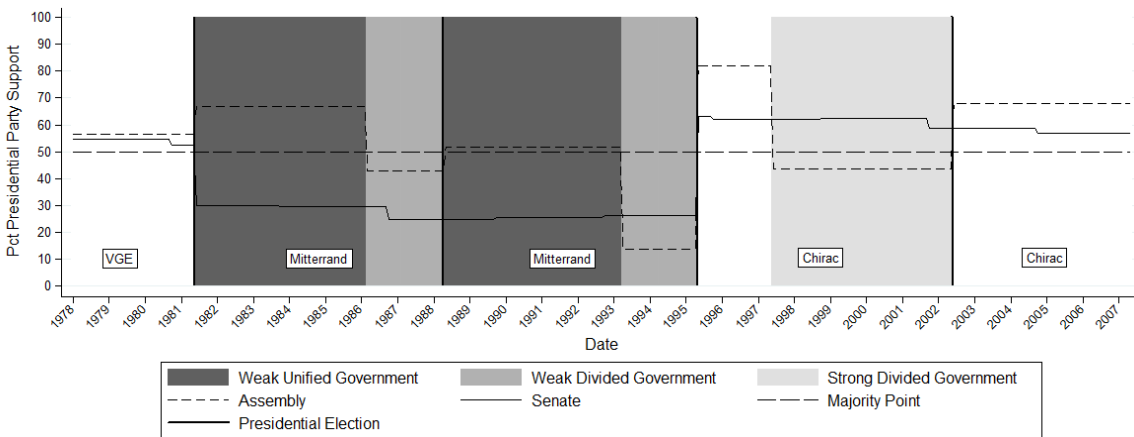
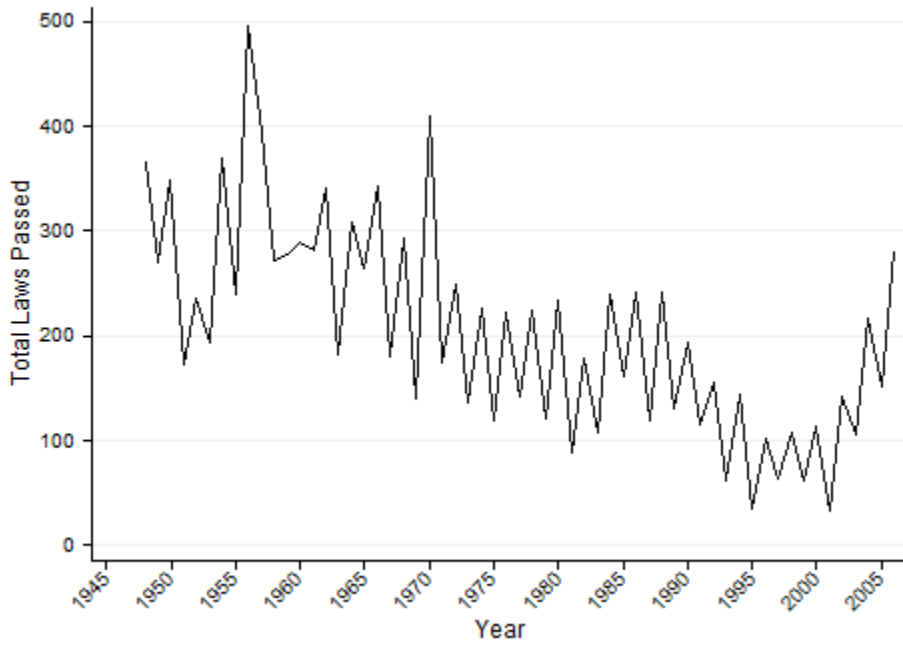


Figure 2. Number of statutes per year in the US and France.

A. United States



B. France

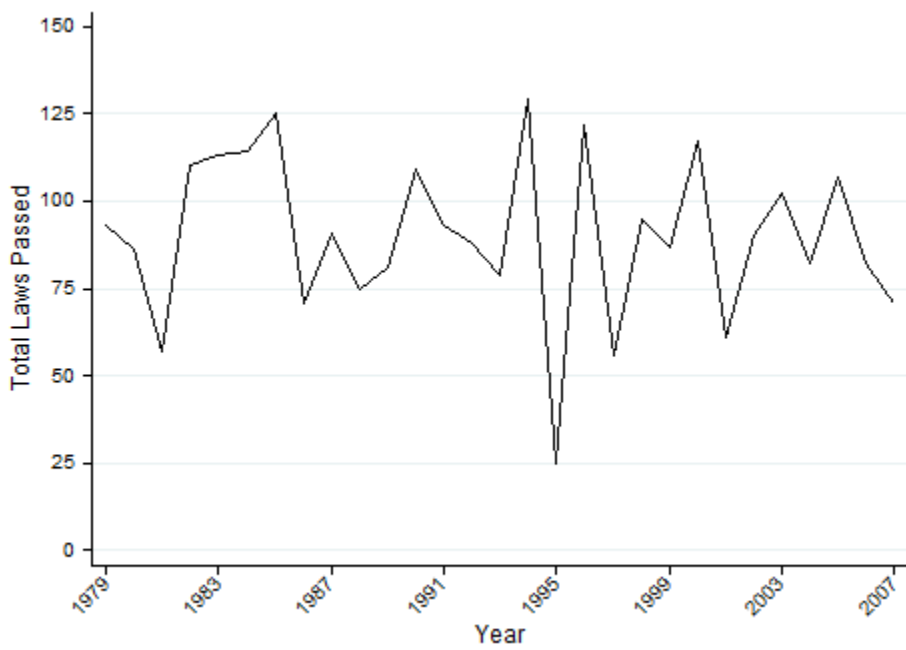
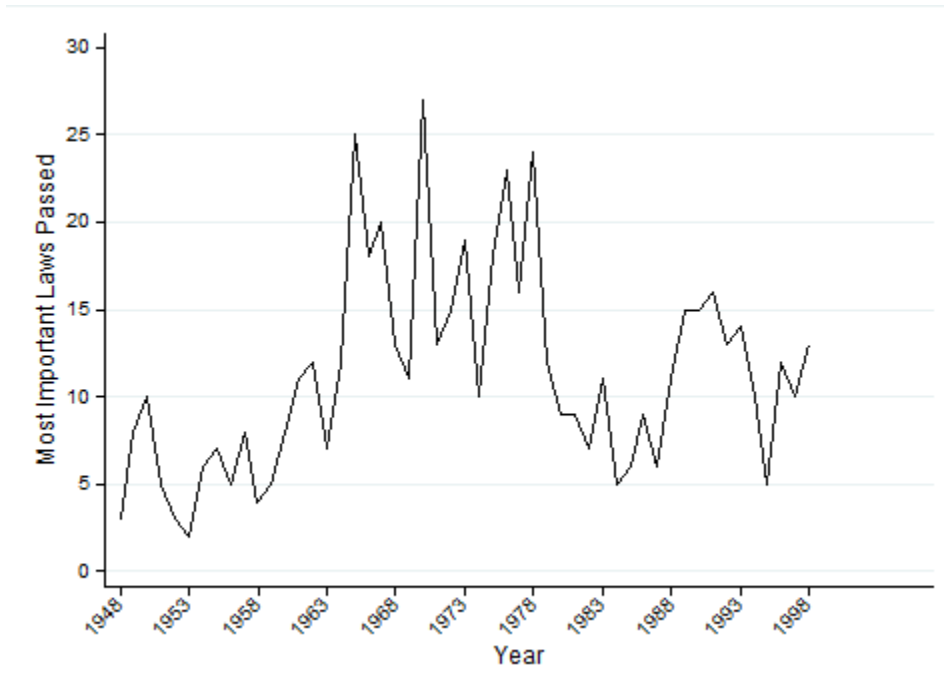


Figure 3. Number of key laws.
A. United States



B. France

