

Legislative Productivity and Divided Government in the US and France

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Abstract

Comparing rates of legislative productivity in periods of unified and divided control of the executive and legislative branches in the US and France, we show first that the concept of “divided government” is more complicated than scholars have allowed. In the US, truly unified government, where the president enjoys a filibuster-proof majority in the Senate as well as a majority in the House, is rare. Therefore the normal state of affairs is at least some degree of shared governance. In France, truly unified government has been more common (but only for parties of the right, as the Senate has never had a left majority in the 5th Republic), but divided government has also been common. Strongly unified government in the US appears to be statistically related with slightly greater legislative productivity. However the effect is modest and other levels of divided control have no statistical impact. Similarly in France, there is almost no impact on the number of laws, important laws, or laws in the field of domestic or foreign affairs. Of course, divided government may shape the content of laws as competing actors must compromise. But as regards productivity, there is little effect. Democratic governance requires that parties address important issues and they do so regardless of partisan majorities.

Keywords: divided government, legislative productivity, legislative-executive relations, France, United States

Paper prepared for presentation at the Council of European Studies, Barcelona,
June 20, 2011.

Divided Government and Legislative Productivity

We build on David Mayhew's (1991) pathbreaking work on the effect of divided and unified control of the Presidency and the US Congress by elaborating the definition of "divided government," showing that some form of divided government is generally the rule in the US and by expanding the analysis to one of the few other western system where divided government also occurs, France. In both cases, we find that the distinctions between "divided" and "unified" control are much more nuanced than is often assumed in the literature. And we confirm and expand on Mayhew's general insight that government is not substantially less efficient during times of divided control as compared to periods when a single political party or a single coalition controls all the levers of government.

Our null findings with regards to legislative productivity may surprise some readers so we begin with a discussion of why we might expect null results. From a problem-solving perspective (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 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 not like campaigning; a sitting government does not have the luxury of picking and choosing all the issues it will address. Of course, they may inflect activities one way or another to reflect their priorities, but as an empirical question few have thought squarely about the relative impact of those issues that can be manipulated, picked, or chosen, and those that are effectively mandatory. Governments cannot ignore certain things. Christoffer Green-Pedersen

and Peter Mortensen (2009) have shown that members of the parliamentary opposition may have the luxury of focusing 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 constantly 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 is the balance of power between parties in political systems, problems must be solved. Who is in power certainly affects the content of legislation. But the passage of legislation, as compared to obstruction, is less affected by partisan control. For example, if the European Union mandates new legislation so that France is in compliance with a new Brussels directive, it makes little difference whether the President is in a period of unified or shared control (*cohabitation*). In the US, if the Farm Bill is up for renewal because it has been sunsetted, divided control of government will not stop the President and the Congress from reaching a new agreement. These matters may affect the content of any agreements, and certainly they force those in power to negotiate more intensely and to reach a more difficult compromise than would be necessary if the executive could simply ignore the legislative opposition. But they do not necessarily affect the incentives that leaders face to address the nation's most pressing problems.

The most prominent study of divided government in the US, and the book that launched an entire literature on this topic (Mayhew 1991) demonstrated that there were surprisingly few differences in the US. The title of the book, *Divided We Govern*, underscores the routine, usual, common nature of divided government in the US. If the US government ran into gridlock each time there was divided government, precious little would get done. In fact, even during times of

unified control of the presidency, the House, and the Senate, it is rare that the president's party achieves a filibuster-proof majority. Some opposition legislators typically must support the president's position. From 1948 to 2006, the period of our study in the US, the conditions in order to enact cloture in 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. Since 1975, the threshold is lower: three fifths of the "duly chosen and sworn" senators. Taking into account this institutional change to define a filibuster-proof majority, six years have featured what we will call "strongly unified government" – four of the Kennedy-Johnson years (1963 to 1966 when Democrats had between 66 and 68 seats in the Senate), and Carter's first two years in office (when Democrats had 61 seats exactly). No Republican president has ever enjoyed such control. And while Carter was not able to take advantage of his large majorities, and he lost this control after only two years, the 1960s were indeed one of the greatest eras of legislative productivity with many landmark pieces of legislation dating from then.

Weakly unified government, where the President controls two majorities in Congress but does not have a filibuster-proof level of support in the Senate, has been the situation for 18 years. Most common of all, of course, has been divided government, which in the US can be either weak or strong depending on if the party of the president holds a majority in one of the chambers, or in none. Strong or weak divided government has been the case for 35 of the 59 years we analyze in this paper, with most of those being strongly divided. The president, most of the time, is faced with a hostile majority in at least chamber, and usually both. 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.

The situation in France is not the same as the US, but not as different as is sometimes thought, nor as clear as a simple dichotomy would suggest. In France, both the executive and the legislature can be divided. The Prime Minister must command a majority in the National Assembly, and the traditional definition of divided government, or *cohabitation*, is when the President and the Prime Minister are partisan rivals. But France has a Senate as well, and even if the Senate has never been under control of the political left,¹ the Senate has been in the opposition several times in the Fifth Republic. At the beginning of the Fifth Republic (1958-1968), a majority coalition in the Senate led by his President G. Monnerville was opposed to President De Gaulle. More recently, a rightwing majority controlled the Senate when the President was one of the left (1981-1995) as well as when the National Assembly was controlled by a leftwing coalition (1981-1986 and 1988-1993). Given this we can distinguish between three types of situations in France, not just two based on law-making power: Strongly 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); weakly divided government (when only the President is in the opposition) and strongly divided government (when the President does not control the Assembly, but has a majority in the Senate). From 1978 through 2007, the period of our study, strongly unified governments have occurred in regular alternation 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 faced either a hostile Senate (1981 to 1986 and 1988 to 1993), or two opposing chambers (1986 to 1988 and 1993 to 1995). President Chirac had two periods of strongly unified government (1995 to 1997

¹ Senate elections in France are indirect, with local elected officials dominating the electoral college, and this over-representation of rural areas explains the consistent rightward tilt in political ideology.

and 2002 to 2007) and one period of strongly divided government, as his coalition retained control of the Senate (1997 to 2002).

Figure 1 illustrates the complications associated with the labels “unified” and “divided” in both countries.

(Insert Figure 1 about here)

Part A shows the US. For each President since Truman, the dark shadings indicate strongly divided government; lighter shadings show periods of weakly divided or what we have called weakly unified government, and the white areas are the ones with a president enjoying a filibuster-proof Senate majority. Lines show the level of the president’s party’s support in the House and Senate, and straight 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 describe above. The graphs make clear that there are several types of divided government and that some level of divided government is quite common in both countries.

Given that large blocks of time in both countries are characterized by some level of shared control, it would be surprising indeed if leaders were unable to produce legislation except in the periods of strongly unified government. And yet that is what one might be led to expect according to some of the literature. Before turning to the presentation of our data, we turn first to what other scholars have said about legislative productivity in divided government.

Theoretical Expectations

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 than explaining split votes, he proposed an original way to put to test a piece of accepted wisdom on US political life, i.e. the general assumption 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 methodology in constructing the list of post-hoc 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 is more visible if one takes into account major pieces of legislation that *failed*, rather than those that passed. They show that presidents are more likely to veto legislation under DG than under unified government. Binder (1999) also shows 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 to of *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. 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 (Alt and Lowry 1994). 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 increased 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 all things equal, DG favours protectionism or, at least, harms trade liberalization. Our focus here, of course, is levels of legislative productivity, not the substantive content of the bills produced. Therefore these findings do not necessarily imply a lower or

higher level of productivity. But if there are important differences between these types of governing situations, these authors might expect them to affect productivity as well.

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 DG for only nine out of 51 years, since the creation of the 5th Republic. It is true that all periods of DGs occurred within the past 23 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). While this may be a beneficial or an indifferent constitutional reform in France, 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 occurrence of divided government, as they considered France to be unfit for this. It was only in 1986, i.e. 28 years after the creation of the 5th Republic, that it eventually happened. 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, so remote did such an eventuality seem 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.

Few empirical studies have been done of the policy outputs associated with French DG, as studies have been mainly restricted to legal scholars, several of whom have undertaken important in-depth analyses (Cohendet 1993). Only few political scientists have openly addressed the issue, focussing on the origins and institutional tensions, rather than on policy

outputs (Parodi 1997, 2002). Fundamentally, legal scholars assume that cohabitation has little or no effect on legislative productivity. In fact, most scholars assume that cohabitation is all about changing political systems (Duhamel 2003). According to this line of argument, France regularly switches between parliamentary and presidential government. The effects of cohabitation on political life have hardly been studied. The few studies that exist have mainly been realised by non-French scholars and rely on case-studies (Conley 2007).

Finally veto players theory (Tsebelis 1999) applied to divided government predicts a decrease in law production when compared to unified government. The logic is straightforward when applied to the US. During unified government, there is only one veto player whereas during divided government there are at least two veto players. And as the number and/or the distance between veto players increases the likelihood of policy change decreases. More precisely the prediction is that divided government should be associated with a decline in the number of important laws, and not only the absolute number of laws. The theory was tested comparatively but only on a short span of time and on only in the domain of labor legislation in parliamentary systems (including France).

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 process 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. But as our data will show, Mayhew's original insights seem to be strongly confirmed in spite of these doubts in some subsequent literature.

Comparing France and the US

Looking at France and the US, comparisons are not straightforward – unsurprisingly. Both have a bicameral legislature and a directly elected President, of course, but this is probably as far as commonalities go. The fundamental difference concerns the separation of powers in the two countries. Both are of course known to have strong presidents, but the latter have very different institutional positions (Siaroff 2003).

The features of the French semi-presidential regime imply some peculiar patterns of government control. Thus, whether government is unified or divided in the French semi-presidential system depends on the patterns of the partisan control of the executive and of the parliament. The unified or divided control, on the one hand, of the executive and on the other hand, of the legislature interact to shape the nature of the government control in France.

The Semi-presidential system departs from the Presidential system regarding divided government by the fact that the head of the State and the Head of Government represent two different positions. Moreover the President and the Prime Minister may be from different parties or coalitions. Divided and unified executive are defined according to whether or not there is a shared control of the Presidency and the Prime Ministership by the leftwing and rightwing parties.

France has an asymmetric and 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 of the *députés* and various local elected representatives. Thus both chambers may be controlled by the same parties or

coalition or not. Divided and unified legislature is defined by whether or not there is shared control of the National Assembly and the Senate by the left and rightwing parties.

The parliamentary character of the semi-presidential system implies that the Prime Minister (and the cabinet) and the lower chamber are at worst weakly congruent. In the French National Assembly, there is no majority coalition opposed to the cabinet. In fact, the rationalized parliamentarism in rule at least until 2009 has allowed a tight control of the parliamentary agenda by the cabinet (Brouard 2011; Huber 1992). Given the various agenda setting powers of the French government, the National Assembly and minority cabinets, particularly formal ones, may be considered congruent. So we will assume that in the French semi-presidential system, the control of the cabinet and of the lower chamber is always unified. We will name opposition a party or a coalition of parties that are not part of the coalition supporting the cabinet.

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

(Insert Table 1 about here)

The four theoretical possibilities in Table 1 match real-world cases. Unified government occurred mostly at the beginning and 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 unified legislature characterized the two cohabitation periods 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 and the Senate were standing in the opposition to a leftwing cabinet and National Assembly.

Specific features of the French Fifth Republic must be taken into account regarding both presidential and senatorial institutional powers. Concerning presidential powers, the constitutional text does not set the foundations for presidential supremacy in policy-making. In fact the Constitution reserves important powers to 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 (Irons 2008). One of the most important legacies of the first President of the Fifth Republic, Charles De Gaulle, is that defense and foreign affairs are the ‘reserved domain’ of the President. Even if the “reserved domain” has become more a “shared domain” (Irons 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. So, the President has an effective – if informal - veto power in two specific policy-areas, defense and foreign affairs (Leuffen 2009), whereas the government does not have to take into account the presidential preferences in other policy areas. Interestingly, the French concept of reserved domain mirrors the two presidencies thesis developed by Wildavsky (1969) in the American context. This thesis, according to which the American president would have more influence over policymaking in the domain of foreign policy than domestic policy under divided government, has been tested empirically by several studies (Edwards 1989; Shull 1997). Given similar theoretical foundations, the impact of policy types (defense and foreign policy versus other policies) on legislative production in France therefore deserves the same empirical interest as it has received in the American literature.

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 law-making process. The Sénat 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 dealing with the Senate.

Datasets and Measures

The French and American policy agendas projects provide the data for our tests. We explain here each of the variables included. 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 on rate of production of laws.² 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.

² 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 pre-legislative elections period of 1993 and 1993-2 the post-legislative election periods. 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 that follows, we measure productivity per month.

Key Laws: Second, we use a measure of key laws. 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 Politique et Parlementaire* (RPP) offers a list of significant legislation, but the parliamentary publication does not do so for the period running from 1990 to 1996. In consequence, we chose a separate measure of importance. We specifically consider as key laws those laws that have intrinsic institutional consequences as well as laws that are considered as 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); these are laws that must be ratified by referendum.

We also include laws that have been enacted by applying the “guillotine” (Article 49.3 of the Constitution) or the urgency (Article 45.2) procedures. The guillotine allows the government to make any law a matter of confidence. The law is thereby 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 laws³ and ordinary laws that have been adopted by public vote or ordinary laws that have been referred for a constitutional review before

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

their promulgation.⁴ 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 as 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 Presidents⁵ 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.”⁶ 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.

(Insert Table 2 about here)

The “Reserved Domain” and the Two Presidencies Thesis: As discussed above, the existing literature points to a higher level of influence of the head of state in both countries on

⁴ Organic laws are automatically referred for constitutional review. This is why we only kept organic laws that have been adopted by a public vote.

⁵ 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.

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

foreign affairs and defense policy than on domestic policy under divided government. If this is correct, the impact of divided government on law production should be positive on foreign and defense policy or at least less important than on domestic policies. In order to test for this possibility, we disaggregated the number of laws and key laws produced by topic. We specifically used the coding of the Policy Agendas and Comparative Agendas Projects to isolate the laws corresponding to defense topics (code 16) and foreign policy topics (codes 18 and 19). This allows us easily to test the two presidencies thesis by looking separately at domestic and foreign policies.

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 formally conceptualized (that is, a situation, in the United States, where the presidency and at least one chamber of Congress are held by different parties and in France when the presidency and the prime ministership are held by opposing parties) but also to test, as we have discussed earlier, a more complete operationalization of patterns of government control. For France, we examine three possible configurations of government control: a strongly unified government (that is a unified executive supported by both chambers in the legislature), weakly divided government (a president opposed by the prime minister, Assembly, and Senate), and strongly divided government (a divided executive and a divided legislature). For the United States, we test the effect of four configurations: a strongly unified government (president with a filibuster-proof Senate and a majority in the House), weakly 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 without veto over-ride majority).

We also include in our analysis other potential determinants of law production.

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.

Ideological space for change: Several studies (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) 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 the coalition are concentrated around the ideological mean of the coalition or if there is wide 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. 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 Lazard'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.

Thus our paper will test five main hypotheses:

H₁. The problem solving (or null) hypothesis: Patterns of government control do not affect law production

H₂. The institutional hypothesis: When decision-making is more complex because of the patterns of government control, law production decreases.

H₃. The two presidency hypothesis: Divided government depresses law production in domestic policy areas but has no effect on defense and foreign affairs.

H₄. The internal cohesiveness hypothesis: When ideological cohesiveness of a governing party (or coalition) decreases, law production decreases.

H₅. The polarization hypothesis: When ideological distance between majority and opposition increases, law production decreases.

Results

Table 3 and Figure 2 present the rate of legislative productivity during periods of shared and divided control.

(Insert Table 3 and Figure 2 about here)

Table 3A shows few substantial effects on rates of legislative productivity for the US. The number of laws per year is highest during weakly divided government, lowest during strongly divided government, but not at its highest point during either type of unified government. Important laws are more likely to be passed during strongly unified government, but we suspect this may be an historical artifact of the Johnson Great Society period and not a systematic difference; for example it was not repeated during the Carter years when for two years he did have a filibuster-proof majority in the Senate. Further, the second highest category for the passage of important legislation in the US is the case of strongly divided government: when the president controls neither the House nor the Senate. Looking at foreign and domestic policy similarly shows a see-saw pattern with little systematic evidence of a link between control and productivity.

For France, Table 3B shows roughly similar results. The number of important laws is actually at its highest in strongly divided circumstances and there are few differences overall. The fact that laws related to foreign affairs are higher during weakly divided government (i.e. politically isolated President) is congruent with the two presidencies thesis. Figure 2 reinforces these ideas for France, and generally shows slightly greater rates of productivity in the US for

cases of strongly unified government, but no differences across the other categories. Divided government appears to have little to no impact on legislative productivity.

In Tables 4 and 5 we move beyond the simple averages and look at the predictors of this number. The tables present negative binomial models for rates of legislative productivity (e.g., the dependent variable in these tables are the same as the variables described in Table 3A and B). The various independent variables explained in the earlier section are included as tests for the hypotheses laid out earlier.

(Insert Tables 4 and 5 about here)

Looking first at Table 4 we include a time variable because levels of productivity have been on a downward trend in the US over the period of our study; the significance of this coefficient confirms that it is an important control. Presidential elections seem to increase production of domestic legislation but have no other systematic effects. The coefficient associated to the distance variable is also systematically negative and significant indicating that political polarization by itself is detrimental to law production, and in a context of usual divided government, it appears more detrimental than divided government itself. In fact, the coefficients for the three DG variables do not array in any sensible order. If DG were an important determinant of legislative productivity, then one might expect that, compared to the baseline of strongly unified government, periods of weakly unified, weakly divided, and strongly divided would each show progressively larger negative values. Instead, we see some significant values, particularly for the most important laws, but no clear patterns. We mentioned above our suspicions about the most important laws series as relates to the Johnson Great Society programs, which were enacted during a period of strongly unified government. These cases seem to be driving much of the action in the model. Beyond that, there is little pattern.

Table 5 shows the results for France. We specify the model without the time variable as there is no trend to the French data. Legislative elections do indeed suppress productivity. Beyond the only DG effect is an increase of monthly productivity of most important laws during the pinnacle of divided government. This is a result that is at odds from the traditional theoretical expectations associated to divided government. Otherwise there are not any clear patterns in these data.

Discussion

Analysts have discussed French cohabitation and US divided government as if they are anomalies, distractions, and obstacles to the functioning of the law-making process. In this paper we have explored these possibilities. Far from anomalies, some degree of shared control of the apparatus of government is the norm in the US, and not uncommon in France. The need to compromise seems to have no overall effect on the ability of political leaders to do so. The one strong statistical finding that we do have, that strongly unified government in the US leads to greater levels of legislative productivity is both unsurprising and also likely due to a few years when President Johnson enacted a great number of important laws during one of the few periods in American history when government was truly united. By far the majority of important laws in the US have been enacted during some form of shared control of the legislature and the executive.

The situation is not much different for France. While commentators have suggested cohabitation would have various deleterious effects on the functioning of the executive, we see few differences in levels of productivity. Presidents, working with legislative leaders, must address problems. If they can do so in a time when negotiations are simple, they may well prefer that and the level of drama associated with legislative bargaining may be lower. But when

negotiations must be wider and compromises must be made, governments in both countries show the ability to do so. Divided or unified, the show must go on.

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Tables and Figures

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)

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

Type of Law	“Most Important” Laws	Not Included
Constitutional laws	18	0
<i>Lois référendaires</i> ⁷	3	0
Organic laws	19	51
Ordinary laws	779	766
Treaties and Conventions	77	1101
Total	846	1918

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.

⁷ Laws that were adopted by referendum are classified as *Lois référendaires* even if they are *de jure* constitutional laws, organic laws, etc.

Table 3. Legislative Productivity under Divided and Unified Government.

A. United States

Government Status	Years	Laws	Imp. Laws	Domestic	Foreign
Strongly Unified	6	244	17	184	60
Unified but Subject to Filibuster	18	210	11	168	41
Weakly Divided	8	276	6	209	67
Strongly Divided	27	173	12	138	35

Note: Values reported are averages per year. Values are rounded to the nearest whole number. Weakly Divided: President's party fails to control one legislative chamber. Strongly divided: President's party is in the minority in both legislative chambers.

B. France

Government Status	Laws	Important Laws	Domestic	Foreign
Unified	76	19	50	22
Weakly Divided	85	17	48	32
Strongly Divided	75	29	54	16

Note: Values reported are averages per year. Values are rounded to the nearest whole number. Weakly Divided: President's party is in the minority in both legislative chambers. Strongly divided: President's party fails to control one legislative chamber. Data for France show the rate of laws per year at Parliament was in session.

Table 4. Predicting Legislative Productivity in the US, 1948 to 2006.

	Total Laws		Most important laws		Domestic policy		Foreign policy	
(Intercept)	6.06***	(0.32)	2.3***	(0.45)	5.77***	(0.34)	4.53***	(0.3)
Time	-0.03***	(0)	0.01**	(0)	-0.02***	(0)	-0.04***	(0)
Presidential election	0.28**	(0.1)	-0.16	(0.13)	0.32**	(0.11)	0.11	(0.1)
Unified but subject to filibuster	-0.29*	(0.15)	-0.7***	(0.19)	-0.33*	(0.16)	-0.15	(0.14)
Weakly divided	-0.01	(0.18)	-0.98***	(0.24)	0.03	(0.19)	-0.25	(0.18)
Strongly divided	-0.11	(0.12)	-0.41**	(0.15)	-0.13	(0.13)	-0.03	(0.11)
Cohesiveness	-0.07	(0.26)	0.14	(0.38)	-0.1	(0.29)	0.18	(0.25)
Distance	-0.14*	(0.06)	-0.15*	(0.08)	-0.13*	(0.07)	-0.19**	(0.07)
Null deviance	53.12		49.78		53.14		52.99	
AIC	589		307		571		424	
	N=50		N=50		N=51		N=51	

Note: Entries represent negative binomial coefficients (standard errors in parentheses). In order to make the data comparable to France, the dependent variable is the number of laws of each type per month of congressional session (though all sessions are of the same length in the US). The omitted (baseline) category for the US is strongly unified government (where the President has not only a majority in both chambers, but over 60 percent in the Senate).

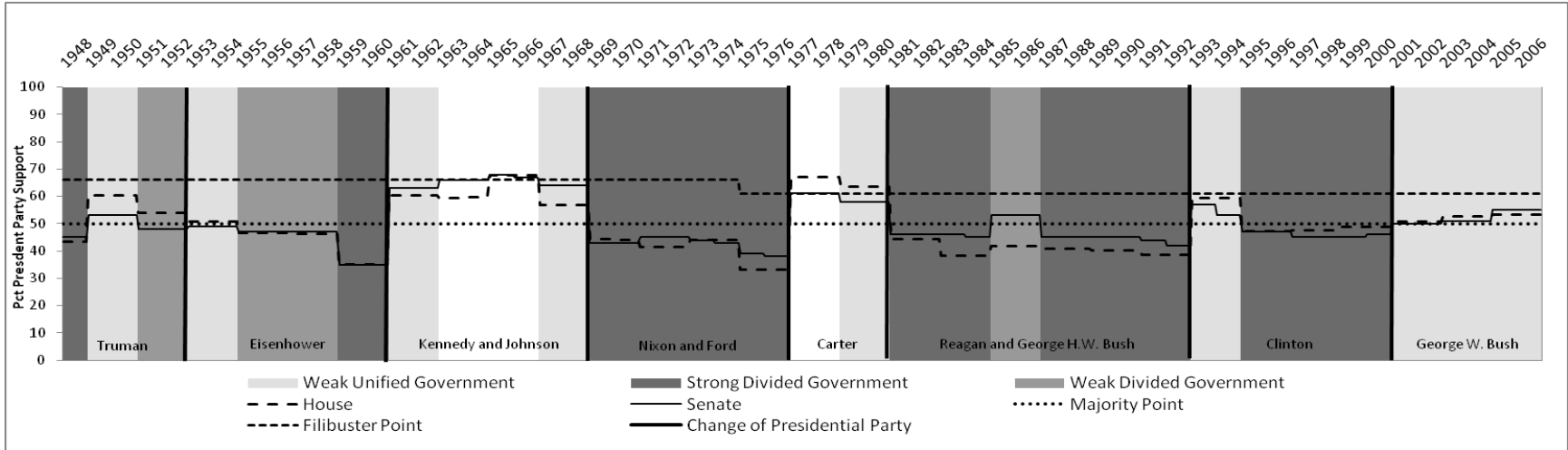
Table 5. Predicting Legislative Productivity in France, 1974 to 2008.

	Total Laws		Most important laws		Domestic policy		Foreign policy	
(Intercept)	4.89***	(0.3)	3.25***	(0.28)	4.29***	(0.29)	4.06***	(0.36)
Legislative elections	-0.72***	(0.16)	-0.66***	(0.14)	-0.73***	(0.15)	-0.72***	(0.19)
Strongly divided	0.01	(0.17)	0.41**	(0.15)	0.07	(0.16)	-0.18	(0.2)
Weakly divided	0.1	(0.26)	-0.09	(0.24)	0.04	(0.25)	0.16	(0.3)
Distance	-0.01	(0.01)	0	(0.01)	0	(0.01)	-0.03**	(0.01)
Cohesiveness	0	(0.02)	0	(0.02)	-0.01	(0.02)	0.02	(0.02)
Null deviance	35.85		36.4		36.1		40.1	
AIC	342		255		313		262	
	N=48		N=48		N=48		N=48	

Note: Entries represent negative binomial coefficients (standard errors in parentheses). The dependent variable is the number of laws of each type per month of parliamentary session. The omitted (baseline) category for France is unified government.

Figure 1. Periods of Divided and Unified Government.

A. United States



B. France

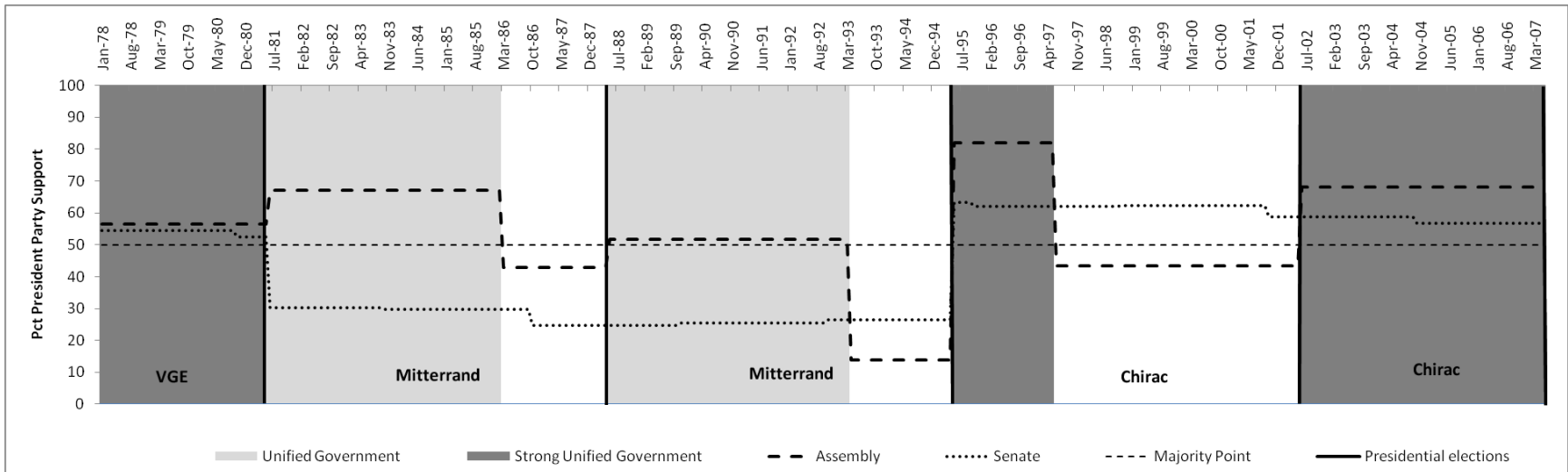
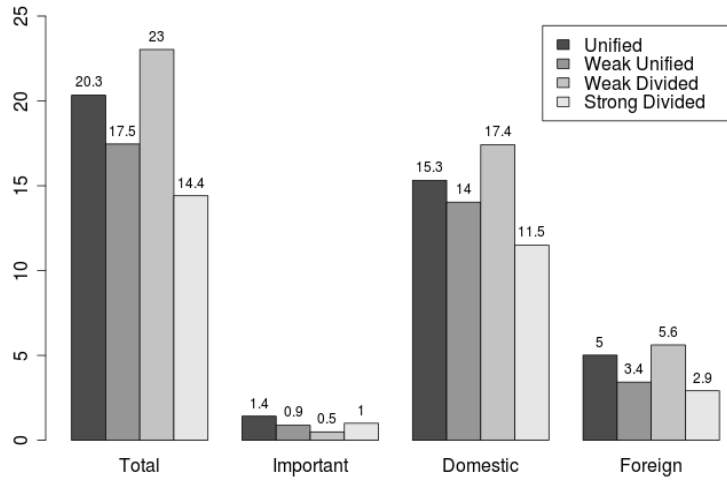
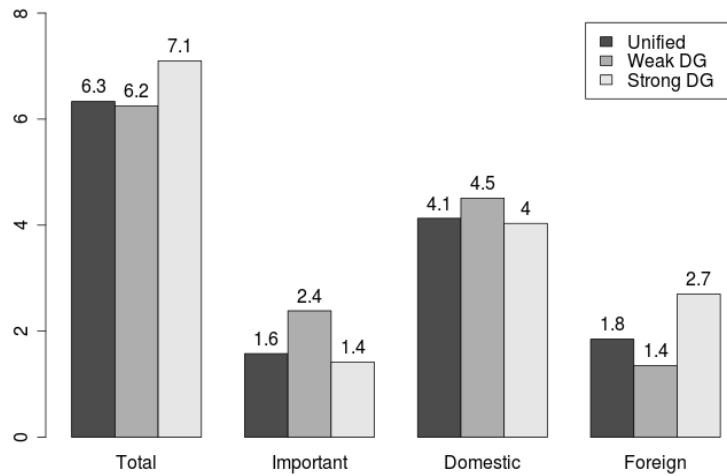


Figure 2. Divided Government Status and Legislative Productivity.
 A. United States



B. France



Note: The figure shows the number of laws per month of the legislative session. For the US the darkest figure corresponds to Unified Government where the President’s party enjoys a filibuster-proof majority in the Senate. Progressively light shadings refer to “weakly unified” government (e.g., the loss of the filibuster advantage in the Senate, but retaining a majority in both chambers); weakly divided government (e.g., the president’s party is in the minority in one chamber); and strongly divided government (president’s party is in the minority in both House and Senate. For France, the shadings are Unified government, weakly divided government (e.g., both chambers against the president); and strongly divided (the President is in the minority in one chamber).