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What Has Congress Done?

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and Benjamin Schneer

INTRODUCTION

In the spring of 2013, we taught an undergraduate lecture course on Congress. It was our first time teaching such a course. The course needed to be covered, and departmental leaves created a significant teaching gap in an important subject. Approaching this course for the first time, the problem was how to teach a large lecture course on Congress. The political science of the United States Congress is a rich subject, at once highly analytical and deeply rooted in the institution's history. How can we balance those two strains of thinking as we approach this subject? Moreover, university instruction is changing. New technology is changing what students expect in the classroom and what they are capable of accomplishing outside the classroom. Students are seeking more active learning experiences, and the traditional lecture course seems to be under some strain. The Congress course offered an opportunity to experiment. We turned to David Mayhew for guidance and inspiration.

Any student of Congress, especially someone studying the institution for the first time, has much to learn about its history and its politics. David Mayhew is a superb analyst and an encyclopedic historian, and his writing seamlessly marries the two traditions of scholarship. Our idea was to model the course after one of Professor Mayhew's most acclaimed projects, *Divided We Govern*. This modern classic of congressional scholarship asks one of the most basic questions about the legislature: What has Congress done? What are the signature and significant acts of the U.S. Congress? And why did the legislature do what it did when it did it? *Divided We Govern* examines the history of legislation in the second half of the twentieth century and explores several

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competing arguments about when Congress takes significant actions. The most widely debated of these conjectures is whether unified party control of the Congress and presidency contributes to increased legislative productivity.

We decided to organize the class around a collective and collaborative research activity that would extend David Mayhew's database of significant legislation to cover the entire history of the United States. Professor Mayhew describes what Congress accomplished over a forty-five-year span of its recent history. What did Congress accomplish before Harry S. Truman ascended to the presidency? There have been numerous reanalyses of Mayhew's own data, but very little effort by political scientists to extend his project to the entire history of the U.S. Congress. Several important exceptions stand out. William Howell, Scott Adler, Charles Cameron, and Charles Reimann offer their own attempt to measure legislative productivity in the era studied by Professor Mayhew.[1] Josh Clinton and John Lapinski pushed the study back further in time, spanning the years 1877 to 1994. They also introduced a statistical method for identifying the significance of a law that relies on references to laws by other laws, rather than Mayhew's historical approach.[2] Still, there has been no comprehensive assessment of the entire history of Congress. What happened before 1876? What does the period 1877 to 1946 look like using the historical, rather than statistical, approach? And what happened after 1990? The time frame of the studies that have been done limits what one might infer, because there were few changes in control of the government between 1946 and 1990. Grant and Kelley attempt to fill this void in the literature by developing statistical methods for combining various data sources on significant legislation, including mentions of bills in the press, key votes, and experts' assessments.[3] We take a different approach from Grant and Kelley. We crowdsource the problem and return to the historical approach offered by David Mayhew in *Divided We Govern*.

Our class became "mini-Mayhews," digging into the historical records of Congress and assessments of Congress offered by historians. The classroom experience was simultaneously one of learning and research. Professor Mayhew's methodology and database of significant legislation provided a starting point, and our mission was to engage the students in the same exercise that Professor Mayhew had accomplished single-handedly. We divided the 220-year history of the United States Congress into twenty-two decades. Every student was assigned to a decade, and over the course of the semester they were

[1] William Howell, Scott Adler, Charles Cameron, and Charles Reimann, "Divided Government and the Legislative Productivity of Congress, 1945–1994," *Legislative Studies Quarterly* XXV (2) (2000): 285–312.

[2] Joshua Clinton and John Lapinski, "Measuring Legislative Accomplishment, 1874–1994," *American Journal of Political Science* 50 (2006): 232–249.

[3] J. Tobin Grant and Nathan J. Kelley, "Legislative Productivity of the United States Congress," *Political Analysis* 16 (2008): 303–323.

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to become experts in their decade. Drawing on their own reading of original materials available from Congress and drawing second-hand from historical research by others, the students were to develop a database of all significant legislation on which Congress took action in their decade. Each student also wrote a brief essay about Congress in his or her decade. We then pooled all of their databases, reviewed each act identified, and developed a single database of the history of significant legislation passed by the United States Congress.

The success of this project depended vitally on the students who enrolled in the course. Thanks to the efforts of Cheryl Welch, the undergraduate program officer in the Department of Government, we managed to recruit a class of thirty-one students. They represented many of the stars of our undergraduate program. They are: Samuel Berman-Cooper, Alexander Chen, Catherine Choi, Matthew Clarida, James Clarke, Mark Daley, Parker Davis, Erica Edwards Sims, Naji Filali, Alexandra Garcia, Spencer Gisser, Kevin Hornbeck, Brian Hughes, Brandon Jones, Omar Khoshafa, Logan Leslie, Rich Maopolski, Matthew Marotta, Luis Martinez, Kyle Matsuda, Devi Nair, Diana Nguyen, Jordan Rasmusson, Owen Rees, Laura Reston, Andrea Rickey, Jared Sawyer, Kent Toland, Shang Wang, Chanel Washington, and LuShuang Xu.

This paper describes the fruit of our collective labor, and offers an assessment of the effect of divided control of the presidency and Congress on the passage of legislation. Assembling the Data describes the data collection effort. Trends in Legislative Action discusses historical trends in significant legislation. Effects of Divided Government offers a reassessment of the question of whether and how much unified versus divided government affects what Congress does. What we present here is really a first pass at the subject. This approach to the analysis of Congress can easily be replicated in future classes, and the database presented here can be used as a base on which to build.

ASSEMBLING THE DATA

On the second day of class, every student was arbitrarily assigned a decade. Once students were settled in their seats, we passed out slips of paper, each with a decade printed on it. We anticipated some decades would be especially difficult, such as the 1930s or 1960s, so we distributed multiple slips of paper for those decades. We then allowed students to trade decades. If someone had the 1830s and wanted the 2000s, he or she would have to find someone with the 2000s and make a deal. This was their first lesson in the politics of Congress, or any organization. Letting the students trade also assured a fair way of distributing decades and of assigning students to decades in which they had a particularly strong interest. The professor for the course, Stephen Ansolabehere, took the least popular decade, the 1840s. Two students, Jordan Rasmusson and Devi Nair, were assigned to Rules. Their task was to assemble a database of all the changes in the rules of each chamber, from the First

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Congress to the present. The teaching fellows, Max Palmer and Ben Schneer, took on the tasks of quality control and assembling the combined databases into a common database.

Creating a database in this way is a complex task, as students could approach their assignments differently. We worked with the students to standardize their coding methods and databases across decades. We developed a common template, agreed on a common definition of "significant legislation," and collected data from the same set of initial sources. The key variables in the database template are bill names, descriptions, categories, outcomes, and roll call votes and dates. We also asked students to collect information on committees and primary sponsors in each chamber when these data were available.

We utilized a simple definition of significant legislation based on meeting one of two criteria. First, is the bill important in historical context? When we look back on the legislation from our current perspective, did this bill accomplish something important, such as establishing a major governmental agency, introducing a major policy change, declaring war, or passing a constitutional amendment? Second, was the bill viewed as an important legislative accomplishment in its own time? This type of bill is harder to identify; the task requires the use of histories or the Congressional Record. For example, some slavery-related bills that preceded the Civil War did not have long-lasting significance due to the abolition of slavery, but they were major legislative accomplishments addressing a critical issue of their time. In making these assessments, students relied on historical treatments of the Congress and politics of their decade and time period, such as the antebellum period, the New Deal, and so forth.

The use of common sources across time periods simplified the process of determining significance, as the authors of these works had already decided what bills they thought were important based on their own criteria. While these criteria may not match ours perfectly, they at least provided consistency across time periods. In addition to collecting major legislation, we also asked students to record major legislative failures, Supreme Court nominations, and other notable legislative actions.

For legislation from 1789 through 1945, students began with the bills listed in *The Yeas and the Nays: Key Congressional Decisions, 1774–1945*, by Albert Castel and Scott L. Gibson. *The Yeas and the Nays* identified key legislation from each Congress and provided descriptions and vote totals for each. *The American Political Science Review* between 1910 and 1940 occasionally presented summaries of significant Congressional action during the term. For the 1950s through 2010s, students began with the *CQ Almanac* for each year, and recorded all of the bills listed in the key votes section of each almanac. The 1940s were a particular challenge, as our key sources either ended in the 1940s or began in the 1950s. As a result, the students working on the 1940s used a variety of sources, including *The Yeas and the Nays*, Mayhew's (2000) database on congressional actions, and Charles Cameron's database on major

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legislation.[4] The students supplemented these books with a variety of other sources that the librarians at Harvard University helped us to identify.

Additional sources included histories of Congress, online resources from the Library of Congress, and the *Congressional Record* (and its antecedents). Galloway's *History of the House of Representatives*, and Wise's *History of the House of Representatives,* and Josephy's *The American Heritage History of the Congress of the United States* were particularly useful for many students. Galloway also included many useful figures in appendices, including counts of total public and private legislation in each Congress. Students collecting data from the 101st Congress through the present used the Library of Congress's THOMAS site. The Library of Congress's site "A Century of Lawmaking For a New Nation" was also very helpful for collecting information on the first fifty Congresses. Students looking for more detail on particular bills used the *Congressional Record* to collect information and understand the debates surrounding major bills. We spent substantial time during both lecture and discussion sections working with the *Congressional Record* (as well as the *Annals of Congress*, *Register of Debates*, and *Congressional Globe*), in order to introduce our students to one of the most important primary sources for understanding the politics of Congress. The websites for the House, Senate, National Archives, and Govtrack.us were also useful.

We encouraged all of the students to make a pass through the Congressional Record for their given decade. They were asked to find the laws identified by *CQ Almanac* or *Yeas and Nays* or other sources as significant legislation in the Congressional Record. They were also asked to identify subjects on which there was much debate or activity in the index of the *Record*.

A note is in order about Wikipedia, a crowd-sourced encyclopedia available free online. Wikipedia features a list of important legislation by Congress, as determined by its community of writers and editors.[5] We found Wikipedia to be tremendously helpful. The Wikipedia list of significant legislation is cross-referenced to other Wikipedia pages, and most are well documented as to original source materials used. Students were encouraged to use Wikipedia, especially to supplement and cross-check information from *Yeas and Nays* and *CQ*, but they were cautioned to take care to determine the reason that something was considered significant by the Wikipedia contributors and to verify against other sources. The Wikipedia page was frequently helpful for identifying major legislation missing from the initial sources, but it also included several bills that did not appear to match our criteria for significance. Some bills seem to be included on the Wikipedia page based on the political motives of the writers and editors of the list, or their significance was not related to the reason for the bill. For example, one of the early homesteading acts was deemed

[4] www.princeton.edu/~ccameron/datareadme.html.

[5] http://en.wikipedia.org/wiki/List_of_United_States_federal_legislation.

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significant by a Wikipedia contributor because it was the first federal law that explicitly stated that women were allowed to own property on their own. When such cases were identified, we relied on other sources to make a judgment about their inclusion. In the case of the homesteading law, we felt the law was sufficiently important for many reasons to be included on the list.

The final step in assembling the database was to compile the individual databases from each student into one comprehensive database and review the students' work for consistency. Our students collected a total of 1,538 major legislative actions. We reviewed the database to remove duplicate entries (some decades were assigned to more than one student), along with any legislation that did not meet our significance criteria or was missing critical information. After this step, we were left with 1,040 significant bills that Congress enacted into law.[6] We then used keywords in the students' categories and descriptions to categorize the bills into forty-six categories (Table 10A.2 in the Appendix to this chapter). We also included counts of total public and private bills passed in each Congress. For the Congresses between 1789 and 1976 we used Appendix F of Galloway's and Wise's *History of the House of Representatives*; for the remaining years we used counts from the Library of Congress. The Appendix tables contain a list of the total number of significant acts passed by each Congress according to our project, and a count of the number of acts taken by the subject area of the legislation.

It should be noted that this approach differs from those offered by scholars who have worked on this problem in the years since Mayhew published *Divided We Govern*, such as Clinton and Lapinski and Green and Kelley. These scholars take a more statistical approach, attempting to combine multiple sources of information using statistical models. We take a more historical approach designed for the classroom. The value of our approach is to add to the growing research on what Congress has done and to propose a way that all of us as scholars can engage our students directly in the contribution to knowledge.

TRENDS IN LEGISLATIVE ACTION

The First Congress of the United States of America was called to order on March 4, 1789, in New York City. It met for two sessions of approximately 220 days in duration in New York, and held a third, 88-day session in Philadelphia from December 1790 through February 1791. By the end of the First Congress, a blueprint for the plan of government was in place, including the organization of the executive, judicial, and legislative branches, and a plan for public finance.

[6] This excludes major legislation that failed, legislation that was was vetoed and not overridden, and judicial nominations.

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The productivity of the First Congress surely owes to the need for legislation. When the members of the First Congress initially convened, there were no national laws governing the budget, economy, citizenship, federal crimes, or many other domains that today we take as given. The Constitution had left large portions of the federal government undefined, especially the president's cabinet and the organization of the judiciary. The First Congress could not help but pass significant legislation, as they started on a nearly blank slate.

The First Congress also lacked rules for passing legislation or organizing the chambers. The rules and procedures (or lack thereof) slowed the legislature. Daily calls of the roll from March 4, 1789, to April 6, 1789, show that, for its first month, Congress could not begin for want of a quorum. Sufficient numbers of House Members for a quorum had arrived in New York by April 1, 1789, and the Senate reached critical mass soon after, on April 6, 1789. Yet even as the Congress began to meet, it became obvious that the Constitution had left much unsaid about how the legislature was to proceed. It was unclear, for example, how the two chambers were to communicate with each other, how differences between the chambers were to be resolved, what would and would not be recorded, how committees might work, and what the role of those outside the chamber (especially the members of the administration, such as Alexander Hamilton) was to be. The lack of specificity in procedures resulted in an immediate confusion, which by the end of the First Congress had evolved into a set of practices, if not rules, for getting things done.

In its first two years, Congress created the Departments of Treasury, State, and War; passed the Judiciary Act; enacted the Bill of Rights; passed a Tariff Act, called the Hamilton Tariff, which was to define the fiscal basis of the federal government for the next 125 years; passed the Naturalization Act, the Crime Act, the Indian Intercourse Act, the Copyright Act, and the Patent Act; and established the First Bank of the United States. Finally, Congress decided to build a new seat of government in the District of Columbia. For a loosely organized legislature without a committee system, party organizations, or even a comprehensive set of rules, this was an auspicious beginning.

The First Congress was also subject to distraction. Its proceedings document lengthy debates over the manner of taking oaths and how members of Congress were to address the President of the United States: "Your Excellency?" "Your Exalted Highness?" Just a month into the new Congress, the Virginia legislature applied to the Congress to hold a new convention to address the flaws in the Constitution. The first petitioners (proto-lobbyists) appear in July of 1789. Throughout Congress' first years, its members came and went, many returning home to attend to business. There were constant attempts by Alexander Hamilton to meddle in the legislative process.[7] And, by the end of the First

[7] Alvin M. Josephy, Jr., *The American Heritage History of the Congress of the United States* (New York: American Heritage, 1975), chapter 1.

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Congress, the legislature had begun to sort into parties, aligned roughly with the factional split inside the executive between Hamilton and Jefferson.[8] Nonetheless, the First Congress forged ahead, in what was one of the most productive Congresses in the history of the nation.

In 1789, Congress felt the need to act. The Constitution was a crude architecture, not a complete plan of government. Without federal legislation to enable the functioning of the judiciary and executive, the new constitution would likely have failed. What was to happen over the next 200 years? As history marches forward, what explains when Congress does and does not act? The conjecture that David Mayhew laid out in *Divided We Govern* is that the partisan organization of Congress and the Presidency explains a substantial portion of the variation in when Congress acts and when it does not. Before assessing that conjecture, we first examine the overall patterns of legislation and significant legislation over time.

What legislation *is* has evolved substantially since the First Congress. Early bills and acts were often unnamed when they were introduced. In fact, the first bill introduced into the new Congress was an act to levy fees on the tonnage of ships introduced by Mr. Adams of Massachusetts. The resolution simply lists various types of vessels on which tonnage fees were to be charged, but actual fees are left as blanks to be filled in later.

Congress also often proceeded in an ad hoc manner. Appropriations, for example, were made on a need basis; there was no budget process. An act to fund a specific activity or project would ask for a certain amount to be spent on that activity. Internal improvements were not approved in omnibus bills but were taken up one by one – a lighthouse here, a harbor dredged there. Many of these idiosyncratic actions fall out of the scope of "significant legislation" because they do not rise to the level of singularly important actions taken by Congress. Cumulatively, though, they are important.

Over the decades, legislation became more rationalized and bureaucratic. Bills became longer and more specific. Congress eventually came up with a more comprehensive approach to budgeting. Perhaps the clearest example of the rationalization of legislation is the treatment of private bills. Throughout the nineteenth century, Congress used private legislation to pay for military pensions, benefits for military widows, compensation for property, and a variety of other particular transactions.[9] The number of such transactions grew exponentially over the decades following the Civil War, and Congress

[8] John H. Aldrich and Ruth W. Grant, "The Anti-Federalists, the First Congress, and the First Parties," *Journal of Politics* 55 (1993): 295–326.

[9] Theda Skocpol, "America's First Social Security System: The Expansion of Benefits for Civil War Veterans," *Political Science Quarterly* 108 (1993): 85–116. Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1995).

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eventually decided to create a pension law to remove the thousands of requests for relief from the legislature's agenda.

The changing nature of legislation is not as cleanly reflected in our measures of total and significant acts. But the evolution of the form of legislation and nature of statutory law is an important feature of the history of Congress. It is worth flagging how the changed nature of legislation might affect the picture of various trends. A law that creates a comprehensive approach to such private legislation becomes a significant act, but the many private bills leading up to it are not. The many ad hoc appropriation bills in the first half of the nineteenth century do not rise to the level of significance, but the budget acts that rationalize the process do.

The growing rationalization of legislation and government are worth keeping in mind when considering the historical trends in legislation. We gauge the amount of legislation and the number of significant laws passed in each Congress. There are also important changes in the content or nature of legislation that are not reflected in these trends. That awaits further investigation in future years of our courses on Congress. However, each time that Congress moves to rationalize a legislative arena, such as appropriations or pensions or committee systems, it frees up time for the entire legislature to address other matters. Hence, it may be the case that the growing rationalization of the legislative process itself creates the capacity – but not the need – to create more legislation in the future.

Congress passes two sorts of acts, public acts and private acts. Public acts take the form of statutes, judicial and executive appointments, approval of treaties, and other actions that have the standing of public laws. Private acts are actions taken by the legislature on behalf of individuals, such as a property transaction of the federal government with an individual or a grant of a special privilege, such as a pension, to an individual. Scholars usually refer to public acts when making claims about congressional action. In fact, most theoretical work really pertains just to statutes.

Figure 10.1 presents the number of public acts passed by each Congress from 1789 to 2012. Each Congress is noted by a marker and its number. The Congresses are further distinguished as occurring under unified government (president and both chambers of the same party) with a plus sign or divided government with a square. This is simply the total number of acts passed and does not depend on classifications of significance.

The patterns in Figure 10.1 help us put David Mayhew's original study of divided government in context. Mayhew's study began with the 78th Congress, which passed approximately 600 acts. The succeeding twenty years saw a rapid increase in legislative action cresting with the 84th and 85th Congresses, which produced over 1,000 acts each. Since then, there has been a steady decline in total legislation passed, and the number of public acts passed today is less than half the number passed in the peak years of the late 1950s and early 1960s. Interestingly, the low numbers of bills passed in the 111th and 112th

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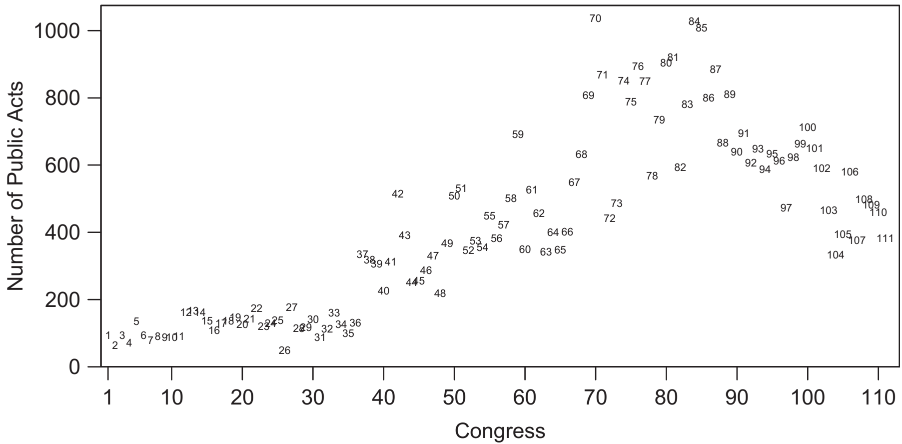

FIGURE 10.1 Acts of Congress.

Congresses appear predictable from the steady trend downward in the number of laws passed per Congress since the summit in 1959.

The figure also reveals that the post–World War II period differs markedly from what had come before. In terms of total legislative output, there appear to be four periods of congressional history. During the antebellum period (1789 to 1861), a typical Congress passed only 150 public acts. Despite their obvious importance, the first two Congresses were not particularly productive. And the true Do Nothing Congress was the 26th, which managed to pass only a few dozen public acts. From the Civil War through the end of World War I (1862 to 1925), there was a steady rise in the number of public acts from 200 to 500 acts per Congress. This was an era of rapid industrialization and, interestingly, corresponds almost exactly to the period that Steven Skowronek identifies as the era of the development of the American national executive.[10] Then, in 1927–29, comes a quantum leap in the number of public acts passed by Congress. Congress maintains this very high level of productivity from 1926 through 1966, an era described by some as the Modern Era in Congress, and also the era of modernism in many other aspects of public and private life. This era also coincides with the rise of the conservative coalition, the partisan realignment that leads to the ascendancy of the Democratic party nationally, and the beginning of the incumbency advantage. The postmodern Congress takes hold in 1967. Legislative activity drops substantially between 1965–66 and 1967–68 and has continued to trend downward since. By 1968, a new political alignment had begun to take hold, which John Aldrich and Richard Niemi (among others) characterize as a protracted period of partisan dealignment,

[10] Steven Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge: Cambridge University Press, 1982).

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rising incumbency advantages and campaign expenditures, and growing public dissatisfaction with Congress. The levels of legislative output in the 112th Congress, which have triggered a new round of criticism of the institution, are comparable to the levels associated with the period from 1870 through 1920, and the numbers of public acts in the most recent Congresses continue a downward trend begun in 1967.

This broad picture of law making exposes several puzzles. Why the jump in legislative activity in the 1920s? Why the downward trend in legislation since the 1960s? It surprised us that the most productive Congresses are the 70th (1927–29) and 84th (1959–61), not, as we might have guessed, the 73rd (1933–35) or 89th (1965–67). Moreover, the 97th Congress (1981–83) had much less legislative action than we expected. We are also struck by the tremendous differences between the nineteenth and twentieth centuries, made all the more striking by the fact that the First Congress appeared on our first reading to play such an important role in the development of the institution and the government.

The incidence of significant legislation tells a subtly different story about Congress. Figure 10.2 presents the history of significant acts passed by Congress. Each point in the plot is a Congress, with those occurring under unified party control of government noted with a plus and those under divided control with a square. This graph consists of all public acts determined by our project to be significant acts of Congress.

The same general patterns emerge in both total and significant legislation. The nineteenth century produced far fewer pieces of significant legislation than the twentieth century. The amount of significant legislation passed by a typical Congress rises from the end of the nineteenth century through the middle of the twentieth century, peaks in the 1960s, and then steadily declines. Today, the number of significant acts passed by a typical Congress is now back to the levels

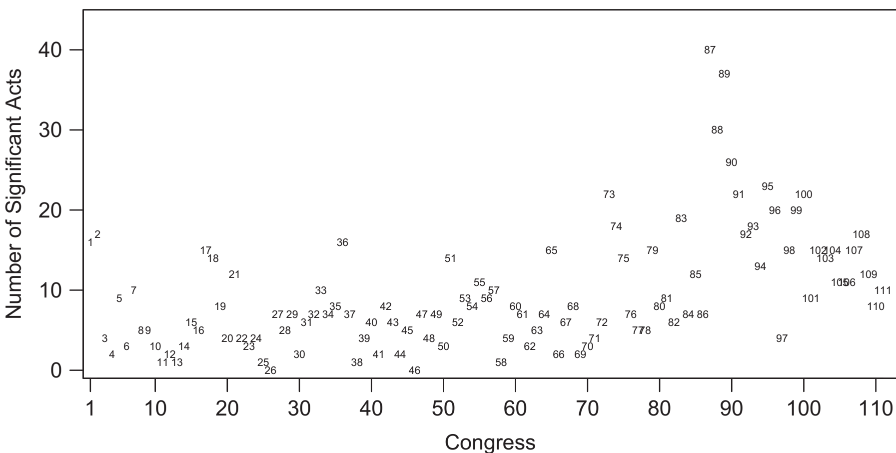

FIGURE 10.2 Significant acts of Congress.

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typical of the end of the nineteenth and beginning of the twentieth centuries (Congresses 55, 56, and 57), but remains above the historical average.

The peaks, however, are notably different for significant legislation. The First and Second Congresses stand above the rest of the nineteenth century in terms of the number of pieces of significant legislation passed. From the Age of Jackson to the New Deal, the 36th (1859–61), 51st (1889–91), and 65th (1917–19) Congresses stand out as passing substantially more significant legislation than other years in the same era. There are tremendous jumps in the numbers of significant acts with the advent of the New Deal (the 73rd, 74th, and 75th Congresses) and the creation of the Great Society programs (the 87th, 88th, and 89th Congresses). In these two eras, Congress passed very large numbers of acts that had long-lasting significance to the nation. There are historical explanations as to why these bursts of activity occurred. The political science explanations are much less compelling and powerful.

One methodological aside is worth noting in reference to Figures 10.1 and 10.2. The patterns in these data provide us with some confidence in our coding of significant legislation. We do not see troubling or unusual changes in classifications from one decade to the next, that is, from one coder to the next. Had there been irregularities between the sources or the coders, we would have expected unusual jumps in the numbers of significant bills from one coder to the next. We do not observe those. The changes in the number of significant bills seem to track with broad historical trends and changes in the political context. Also, the number of significant bills in our coding is highly correlated with Mayhew's coding for the period 1945–1990. The most notable deviation is the Kennedy Congress (1961–62), when our reading of the history noted many more pieces of significant legislation than Mayhew's coding identified.

The patterns displayed in Figures 10.1 and 10.2 lay out the foundations for the second stage of our inquiry: Explaining why Congress does what it does when it does it. Professor Mayhew laid down an important conjecture – that divided government affects the ability of Congress to legislate, and especially the ability of Congress to pass significant legislation. That argument has its theoretical foundations in David Brady's and Craig Volden's *Revolving Gridlock* and Keith Krehbiel's *Pivotal Politics*. In the next section, we estimate how large an effect unified or divided control of government has on the rate at which Congress takes historically and politically significant actions.

The overall historical patterns reveal that unified partisan control cannot explain the broad contours of legislative productivity. In Figure 10.2, the 91st and 100th Congresses – both divided – passed as many significant laws as the 73rd. But there does seem to be a relationship. The First and Second (unified) are more productive than the Third and Fourth (divided), and so forth.

Before turning to the question of divided government, one final comment about the overall patterns here is in order. The rise in productivity in Congress in Figures 10.1 and 10.2 corresponds quite closely with the decline in polarization in the House and Senate, and especially with the percent of legislators from

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each party who are "overlapping" – that is, Democrats to the right of at least one Republican and Republicans to the left of at least one Democrat. In particular, Poole and Rosenthal identify the 70th Congress (1927–29) as the beginning of a substantial decline in polarization within the Congress, with a gradual increase in polarization beginning after the 90th Congress (1967–69). This era from 1927 to 1969 is often viewed as the standard for how Congress ought to behave by commentators such as Tom Mann and Norman Ornstein, and it does appear that broad historical fluctuations in polarization correspond with broad ebbs and flows in the tide of significant legislation. The correlation, at least from 1879 to 2012, appears obvious to us, but the causality is less clear as roll call votes and significant legislation are both outputs of the same legislative process.

EFFECTS OF DIVIDED GOVERNMENT

How does divided government influence legislative output? The data gathered by our team allow us to answer this question by looking across the entire history of Congress. Over the 220 years of Congress, the legislature produced an average of 8.7 pieces of significant legislation when the control of government was divided among the parties and 9.8 pieces of significant legislation, roughly one additional significant act, when there was unified party control of government.[11] While this comparison of means is in line with the idea that unified party control leads to greater legislative productivity, the difference is not large enough to support the conclusion that legislative output depends on party control in a systematic way: the 95 percent confidence interval on the difference in means includes zero. That difference also does not take into account the variation in the trends and levels of legislation over time. In addition, divided control of government yielded more total legislation (public laws) than unified control did. (See Table 10.1.)

Breaking out legislative output by era corrects for variation in overall legislative product across different periods of the history of Congress. We divide the data into four time eras: pre–Civil War (1st–36th Congress), post–Civil War but pre-1900 (37th–55th Congress), the turn of the century to the end of World War II (56th–79th Congress), and post–World War II (80th–111th Congress). (See Table 10.2.) Across all four eras, unified government is associated with an uptick in significant legislation; however, the magnitude of the increase varies substantially depending on the time period. In the pre–Civil War era, the difference between unified and divided party is about half a bill – slightly more than a 10 percent increase. In the second period, the gap between unified and divided

[11] In most cases, assessing whether Congress operated under a divided or unified government was straightforward. One exception was the 20th Congress, when John Quincy Adams held the Presidency as a Democratic-Republican and factions such as the Jacksonians were splitting off from the party. We coded this Congress as unified. That said, coding it the other way makes no material difference in our results.

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TABLE 10.1 *Mean Legislative Output per Congress*

Party Control	Total Leg.	Significant Leg.	Obs.
Divided	421.02	8.64	42
Unified	407.74	9.80	69

TABLE 10.2 *Mean Legislative Output per Congress, by Era*

Era of Congress	Party Control	Total Leg.	Significant Leg.	Obs.
1st–36th	Divided	115.00	6.00	10
1st–36th	Unified	120.92	6.62	26
37th–55th	Divided	312.30	4.50	10
37th–55th	Unified	395.22	7.44	9
56th–79th	Divided	412.25	6.50	4
56th–79th	Unified	634.20	7.95	20
80th–111th	Divided	653.39	12.89	18
80th–111th	Unified	624.93	19.86	14

control is almost three bills, which represents an increase in output of over 60 percent. In the third period, the gap narrowed slightly, but by the post–World War II period it widened to a difference of five bills – again an increase in productivity of over 60 percent. Examining significant legislation, we observe that unified government resulted in roughly one additional piece of significant legislation both before and after 1900. The data follow a similar pattern when we turn to *total* legislation, with one key exception. In the post–World War II era, unified governments have actually produced less *total* legislation when compared with divided control. The other noticeable trend for total legislation is the existence of a general upward trend over time.

The comparison of means obscures some crucial factors related to legislative output that we must account for when assessing legislative productivity. First, as detailed in the previous section, we observe some sharp differences across time in legislative output driven by factors unrelated to party control; as a result, any comparison of productivity between divided and unified government must account carefully for the time trends in legislative output. We attempt to address this issue with two different approaches: by including indicator variables for the era of Congress and by taking first differences and looking at *changes* in legislative productivity after *changes* in party control. A second concern is that comparing across presidential terms may overlook the fact that historical circumstances, the effectiveness of a president's administration, or both play a role in legislative output. For example, Congress's legislative productivity during FDR's first 100 days is perhaps not directly comparable to the first 100 days of Jimmy Carter's administration. If the effectiveness of a president's administration happens to be correlated with

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TABLE 10.3 *Party Control and Legislative Output*

	Total Legislation			Significant Legislation		
	(1)	(2)	(3)	(4)	(5)	(6)
Unified Government	−13.28 (51.70)	41.06 (27.49)	20.22 (31.00)	1.15 (1.33)	3.37** (1.30)	3.27** (1.34)
37th–55th Congress		242.51*** (21.61)	148.50*** (7.85)		0.29 (1.15)	−2.50 (3.23)
56th–79th Congress		473.37*** (41.88)	82.50*** (7.85)		0.89 (1.39)	−3.50 (3.23)
80th–111th Congress		533.35*** (33.77)	161.91 (119.51)		10.45*** (1.82)	−9.74*** (3.64)
Constant	421.02*** (39.63)	89.62*** (20.71)	157.78*** (31.00)	8.64*** (0.89)	4.01*** (1.21)	3.73*** (1.34)
President FEs	No	No	Yes	No	No	Yes
Observations	111	111	111	111	111	111
R-squared	0.001	0.723	0.912	0.006	0.378	0.773

Robust standard errors in parentheses
* $p < 0.10$.
** $p < 0.05$.
*** $p < 0.01$.

party control, then we might wrongly attribute an increase in legislative productivity to unified or divided government. By including president fixed effects, we can estimate the effect of variation in party control on legislative output within a president's term, which rules out differences due to different administrations.

We use ordinary least squares (OLS) to estimate the effect of unified government on legislative output. The estimates are provided in Table 10.3. The main result, illustrated in Models 4–6, is that unified government is associated with roughly 3.3 additional pieces of significant legislation as compared with divided government when we include era dummy variables. This effect is substantively large. Considering that Congress has averaged slightly fewer than nine significant pieces of legislation during divided control, the observed effect of unified control represents an increase of more than one third.[12] Conversely, we do not find consistent evidence that unified government affects *total* legislation (see Models 1–3).

[12] In fact, if we log-transform legislative output and reestimate the model, unified government is associated with an even larger percentage increase in significant legislation.

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Including the period dummy variables plays an important role in the estimation of unified government's effect on significant legislation, especially with regard to legislative output since the end of World War II. Before the 80th Congress, there were twenty-four cases of divided government and fifty-five cases of unified government. After the 80th Congress, the numbers were more equal, with eighteen cases of divided government and fourteen cases of unified government. The fact that there have been proportionally more cases of divided government since 1945, combined with Congress's tendency to produce more legislation over time, means that not accounting for the systematic differences in eras could lead us to underestimate the effect of unified government for the full time period. Interestingly, incorporating president fixed effects does not substantively alter the estimated effect.

Estimating the effect of a change from unified (divided) control to divided (unified) control provides additional evidence that party control of government influences the output of significant legislation. Taking first differences essentially eliminates time trends from the data. As Figure 10.3 illustrates, changes in legislation from Congress to Congress appear to follow a stationary process with a mean centered at zero and close to constant variance over time. The graph also provides a nice visualization of the estimated effect: changes to unified party control are consistently associated with increases in the amount of significant legislation (i.e., above zero) and changes away from unified party control to divided government are consistently associated with decreases.

Using OLS to estimate the effect of a change in unified government yields an estimate of an increase in significant legislation of more than three. This finding is robust to including a lagged term for significant legislation as well, under the

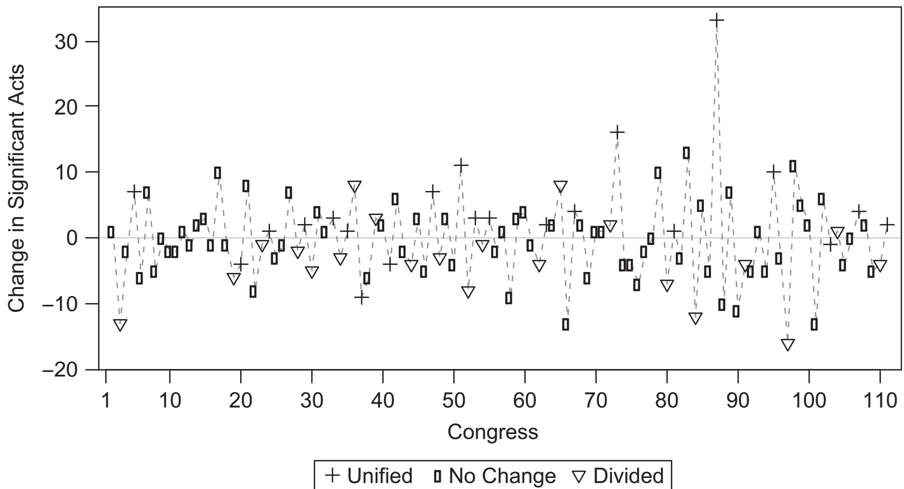

FIGURE 10.3 Change in number of significant acts.

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theory that Congress's momentum from previous years might play some role in legislative output. Again, the estimated effect is substantively quite large – one way of conceptualizing the effect is to consider that Congress has changed from divided to unified control or vice versa forty-two times (twenty-one times from divided to unified and twenty-one times from unified to divided) and that each change is associated with a gain or loss of between three and four pieces of significant legislation. (See Table 10.4.) All told, the estimates suggest that Congress's legislative record might be markedly different were there substantially more years of either divided or unified control. Finally, in contrast to the findings for significant legislation, the results suggest that a change in party control has no meaningful effect on changes in *total* legislation.

One potential objection is that variation in student effort when assembling the data might bias our estimates. To check this concern, we also estimated the model using student fixed effects, which control for varying levels of dedication in assembling the data. Under this specification, the results remain unchanged.

In sum, we find very substantial effects of changes in party control on the passage of significant legislation, but no effect of such changes on the passage of total legislation. These contrasting results underscore the value of studying significant legislation, as opposed to all legislation. Congress passes many symbolic acts, such as naming a post office, declaring a "day" in order to recognize a particular cause or industry, or passing a resolution that lacks the force of law but expresses the legislature's concern about an issue. Members of Congress have no trouble voting for such inconsequential bills. It is when Congress grapples with a substantial change in the nation's laws that we see the effects of partisan politics in clearer relief. When government changes from

TABLE 10.4 *Change in Uni ed Government and Change in Legislative Output*

	Change in Total Legislation		Change in Significant Legislation	
	(1)	(2)	(3)	(4)
Change in Unified Government	29.95	26.88	3.83***	3.23***
	(19.04)	(19.09)	(0.98)	(0.92)
Constant	2.63	3.44	−0.05	−0.09
	(11.77)	(11.79)	(0.60)	(0.57)
Lagged DV	No	Yes	No	Yes
Observations	110	109	110	109
R-squared	0.022	0.045	0.125	0.254

Standard errors in parentheses
* $p < 0.10$,
** $p < 0.05$,
*** $p < 0.01$.

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divided to unified partisan control, there is a 30 to 40 percent increase in the number of significant laws passed.

CONCLUSION

The history of Congress is the history of America. Open page one of the Congressional Record and one cannot help but get hooked. Here is the history of a great nation unfolding one step at a time. Usually the steps are slow, even tedious, but then come moments of exhilaration, when Congress takes a grand action – organizing the entire judiciary, invading the Florida territories, granting women the right to vote, passing the Social Security Act, or revamping the nation's tax code. The characters in this tale are epic, sometimes tragic, and often humorous.

There lies one of the great lessons of David Mayhew's works, such as *Divided We Govern* and *America's Congress*. Reading the *Annals*, *Digests*, and *Records of Congress* provides a rich and rewarding way to understand the institution as it operates, its context, and what it has accomplished. *Divided We Govern* tells the story of *what* Congress has done. Elsewhere, David Mayhew has pointed us toward a different path: *America's Congress* is the story of *who* and the *Electoral Connection* of *why*. Following in David Mayhew's footsteps was hugely instructive for each of us and for our students. Reading these books provided an exciting way to teach our students about Congress and to engage them from the very outset of our course in conducting original research.

When our class concluded on May 1, 2013, the three of us met to consider what we had learned. One of us tossed a question into the conversation. We had spent the past four months distinguishing significant Congressional actions from the myriad seemingly unimportant resolutions, appointments, and bills considered by the House and Senate over a span of 220 years. Was there one that stood out as the most significant act of Congress?

After a couple of minutes of reflection each of us had an answer, but a different one: the Bill of Rights, the Judiciary Act of 1789, and the Louisiana Purchase. All of us also felt that the Social Security Act and the 13th Amendment might also be included in that list. Interestingly, all five of these laws were enacted before the period originally studied by David Mayhew, and four of the five predate the Clinton–Lapinski project. The Bill of Rights, the Judiciary Act, and the Louisiana Purchase were all in some sense institutional, rather than what political science would normally designate as "policy." Each affected a different aspect of the form of American government – the Constitution, the organization of one of the branches of the national government, and the size of the territory. There was not a singular answer to this question (though the Bill of Rights might ultimately win the day), but we would never have even asked the question or felt comfortable venturing an answer without first undertaking a quest inspired by *Divided We Govern*.

Our effort to document what Congress has done provides a first glimpse at the entire history of significant legislation passed by the United States House

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and Senate. It is likely not the definitive database on the subject, but rather a foundation. It can and, we hope, will be improved upon.

With that in mind, we have several next steps in this project. First, document the appropriations and budget process. Appropriations are made regularly by every – or almost every – Congress. The appropriation bills in the early Congresses, though, are entirely ad hoc. Few appropriations bills in the modern era rise to the level of significant legislation, because they are often incremental and must be renewed the following year. Yet they are vitally important to the operation of the national, state, and local governments in the United States. One may treat the entire appropriations and budget process as a significant action taken by each Congress, but consisting of many smaller bills. The next time we teach this course, we plan to structure the research project around the appropriations process.

Second, consider specific policy domains. Congress itself divides its labor and responsibility among its many committees, each of which has distinct jurisdictions. It may be easier to determine significant legislation within specific policy domains than for all legislation. With that in mind, we were struck by the lack of "significant" legislation in some specific policy areas, such as crime and communications. Also, we have inquired with our colleagues in specific subfields and are struck by the fact that there are no standard databases of legislation and statutes within these areas of research. There is not, for example, a standard database of tariffs and tax laws. (This is currently underway in our project.)

Third, introduce multiple criteria for significance. Josh Clinton and John Lapinski consider cross-references among laws. One might also imagine other quantitative indicators, such as duration of laws, or qualitative indicators, such as expert assessments.

Finally, the significance of a law might be measured in terms of its immediate importance in a given Congress. How much time or attention of a Congress did a given topic or act consume? By most accounts, the National Energy Act of 1977 was, when it finally passed, a watered down and ineffective piece of legislation, and the Health Security Act of 1993 fell to an ignominious death. But these two laws preoccupied their legislatures, and would have amounted to major changes in the nation's energy and health policy had they passed in their original form. Failing to pass these important laws was also an important act of Congress, reflected in the massive amount of time spent debating these bills.[13] Looking at Congressional time might also reveal the import of other activities, especially investigations and ethics proceedings.

There are many ways to tell the narrative of Congress, many ways to express what Congress has accomplished. Just as there is probably not one act that

[13] This approach might also produce some odd results. For example, by far the most extensively debated act in the First Congress was the Tonnage Act and it received the most pages of attention in the first session of the First Congress – more than the Judiciary Act or Hamilton's Tariff.

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should be singled out as most important, there is not one way to read the history of Congress. Rather, there are many variations on how we research and teach Congress, and how we marry these two activities. And every variation in reading the history of Congress reveals new lessons about American politics.

APPENDIX

TABLE 10A.1 *Party Control, Signi cant Legislation, and Total Legislation by Congress*

Congress	Pres. Party	Sen. Majority	House Majority	Sig. Acts	Tot. Public Acts
1	Pro-Admin	Pro-Admin	Pro-Admin	16	94
2	Pro-Admin	Pro-Admin	Pro-Admin	17	64
3	Pro-Admin	Pro-Admin	Anti-Admin	4	94
4	Federalist	Federalist	Dem. Rep.	2	72
5	Federalist	Federalist	Federalist	9	135
6	Federalist	Federalist	Federalist	3	94
7	Dem. Rep.	Dem. Rep.	Dem. Rep.	10	78
8	Dem. Rep.	Dem. Rep.	Dem. Rep.	5	90
9	Dem. Rep.	Dem. Rep.	Dem. Rep.	5	88
10	Dem. Rep.	Dem. Rep.	Dem. Rep.	3	87
11	Dem. Rep.	Dem. Rep.	Dem. Rep.	1	91
12	Dem. Rep.	Dem. Rep.	Dem. Rep.	2	163
13	Dem. Rep.	Dem. Rep.	Dem. Rep.	1	167
14	Dem. Rep.	Dem. Rep.	Dem. Rep.	3	163
15	Dem. Rep.	Dem. Rep.	Dem. Rep.	6	136
16	Dem. Rep.	Dem. Rep.	Dem. Rep.	5	109
17	Dem. Rep.	Dem. Rep.	Dem. Rep.	15	130
18	Dem. Rep.	Dem. Rep.	Dem. Rep.	14	137
19	Dem. Rep.	Democrat	Nat. Rep.	8	147
20	Dem. Rep.	Democrat	Democrat	4	126
21	Democrat	Democrat	Democrat	12	143
22	Democrat	Democrat	Democrat	4	175
23	Democrat	Nat. Rep.	Democrat	3	121
24	Democrat	Democrat	Democrat	4	130
25	Democrat	Democrat	Democrat	1	138
26	Democrat	Democrat	Democrat	0	50
27	Whig	Whig	Whig	7	178
28	Whig	Whig	Democrat	5	115
29	Democrat	Democrat	Democrat	7	117
30	Democrat	Democrat	Whig	2	142
31	Whig	Democrat	Democrat	6	88
32	Whig	Democrat	Democrat	7	113
33	Democrat	Democrat	Democrat	10	161
34	Democrat	Democrat	Republican	7	127

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TABLE 10A.1 **cont.**

Congress	Pres. Party	Sen. Majority	House Majority	Sig. Acts	Tot. Public Acts
35	Democrat	Democrat	Democrat	8	100
36	Democrat	Democrat	Republican	16	131
37	Republican	Republican	Republican	8	335
38	Republican	Republican	Republican	1	318
39	Democrat	Republican	Republican	4	306
40	Democrat	Republican	Republican	6	226
41	Republican	Republican	Republican	2	313
42	Republican	Republican	Republican	10	515
43	Republican	Republican	Republican	6	392
44	Republican	Republican	Democrat	2	251
45	Republican	Republican	Democrat	5	255
46	Republican	Democrat	Democrat	0	288
47	Republican	Republican	Republican	7	330
48	Republican	Republican	Democrat	4	219
49	Democrat	Republican	Democrat	7	367
50	Democrat	Republican	Democrat	3	508
51	Republican	Republican	Republican	14	531
52	Republican	Republican	Democrat	6	347
53	Democrat	Democrat	Democrat	9	374
54	Democrat	Republican	Republican	8	356
55	Republican	Republican	Republican	10	449
56	Republican	Republican	Republican	9	383
57	Republican	Republican	Republican	10	423
58	Republican	Republican	Republican	1	502
59	Republican	Republican	Republican	4	692
60	Republican	Republican	Republican	8	350
61	Republican	Republican	Republican	7	526
62	Republican	Republican	Democrat	3	457
63	Democrat	Democrat	Democrat	5	342
64	Democrat	Democrat	Democrat	7	400
65	Democrat	Democrat	Republican	15	349
66	Democrat	Republican	Republican	2	401
67	Republican	Republican	Republican	6	549
68	Republican	Republican	Republican	8	632
69	Republican	Republican	Republican	2	808
70	Republican	Republican	Republican	3	1037
71	Republican	Republican	Republican	3	869
72	Republican	Republican	Democrat	6	442
73	Democrat	Democrat	Democrat	22	486
74	Democrat	Democrat	Democrat	18	851
75	Democrat	Democrat	Democrat	14	788
76	Democrat	Democrat	Democrat	7	894
77	Democrat	Democrat	Democrat	5	850

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TABLE 10A.1 (*cont.*)

Congress	Pres. Party	Sen. Majority	House Majority	Sig. Acts	Tot. Public Acts
78	Democrat	Democrat	Democrat	5	568
79	Democrat	Democrat	Democrat	15	734
80	Democrat	Republican	Republican	8	905
81	Democrat	Democrat	Democrat	9	921
82	Democrat	Democrat	Democrat	6	594
83	Republican	Republican	Republican	19	781
84	Republican	Democrat	Democrat	7	1028
85	Republican	Democrat	Democrat	12	1009
86	Republican	Democrat	Democrat	7	800
87	Democrat	Democrat	Democrat	40	885
88	Democrat	Democrat	Democrat	30	666
89	Democrat	Democrat	Democrat	38	810
90	Democrat	Democrat	Democrat	26	640
91	Republican	Democrat	Democrat	23	695
92	Republican	Democrat	Democrat	16	607
93	Republican	Democrat	Democrat	18	649
94	Republican	Democrat	Democrat	13	588
95	Democrat	Democrat	Democrat	23	634
96	Democrat	Democrat	Democrat	20	613
97	Republican	Republican	Democrat	4	473
98	Republican	Republican	Democrat	15	623
99	Republican	Republican	Democrat	18	664
100	Republican	Democrat	Democrat	22	713
101	Republican	Democrat	Democrat	9	650
102	Republican	Democrat	Democrat	15	590
103	Democrat	Democrat	Democrat	14	465
104	Democrat	Republican	Republican	15	333
105	Democrat	Republican	Republican	11	394
106	Democrat	Republican	Republican	11	580
107	Republican	Republican	Republican	15	377
108	Republican	Republican	Republican	16	498
109	Republican	Republican	Republican	12	482
110	Republican	Democrat	Democrat	8	460
111	Democrat	Democrat	Democrat	10	383

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TABLE 10A.2 *Categories of Signi cant Legislation*

(Totals exceed 1,040 as many bills are assigned to multiple categories.)

Category	Sig. Acts	Category	Sig. Acts
Administration	32	Housing	12
Agriculture	43	Immigration	23
Appointment	5	Impeachment	2
Appropriation	4	Indian	12
Aviation	5	Infrastructure	37
Banking	12	Judiciary	27
Budget	7	Labor	34
Civil Rights	26	Land	37
Commerce	67	Military	89
Communication	4	Private Law	1
Constitutional Amendment	29	Public Law	12
Crime	3	Regulation	25
Currency	11	Rules	29
Economy	74	Security	24
Education	28	Slavery	19
Election	19	State Territory	58
Energy	17	Tariff	27
Environment	13	Tax Revenue	38
Executive	11	Trade	41
Finance	29	Transportation	24
Firearms	6	Treaties	77
Foreign Relations	78	Veterans	7
Health	32	Welfare	37

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