The Effect of the Midterms 2022 on Lawmaking in the United States

By Massimo Morelli and Christoph Pfeufer

Observers around the world are watching the U.S. midterm elections 2022 with bated breath. That is because sustainable solutions to major political issues, whether it is fighting climate change or maintaining support for Ukraine, require congressional approval and cannot rely on executive action alone.

The results of the midterm elections now declare a change of power in the chambers and thus a switch from unified to divided government. In the first part of Bidens' presidency the majority control over the two chambers was in Democratic hands, a situation political scientists call unified government. At the time of writing this article, the Republican Party has gained the majority of seats in the House of Representatives, while the Senate is heading for a tied outcome.[1] In any case, we now enter a phase of divided government, that is a constellation in which one or both chambers of the legislative branch are controlled by a different party than the executive branch.

Thereby, the presidential influence on the passage of legislation or the appointment of judges is largely diminished. To become a law, a proposed bill requires first the approval of both chambers and second the signature of president. If the two chambers are incapable of agreeing upon a common version of a bill or the president vetoes the bill, the proposed policy change is not enacted and the status quo prevails. Irrespective of whether there will be a situation of a weakly divided (House: R, Senate: D, President: D) or a strongly divided (House: R, Senate: R, President: D) government, the production of laws now necessitates a higher level bi-partisan approval and compromise.

Two factors make next two years particularly difficult. The first stems from accumulated and further accelerating levels of polarization among legislators. The second is grounded in the combination of presidential re-election concerns and divided government.

Lawmaking in a polarized and divided government

Polarization has reduced Congress's capacity to legislate and, as a result, public policy does not adjust to changing economic and demographic circumstances (McCarty, 2019). As the distance between ideal points of the pivotal legislative actors grows, we will observe even less legislation created and eventually passed through Congress, as acts of legislative deliberation are replaced with acts of obstructionism and acts of grandstanding, where politicians simply signal their policy position to their constituents (see for example Binder, 1999; Mann and Ornstein 2012). McCarty (2007) finds that Congress produces up to 166 percent less legislation in the most-polarized term than in the least-polarized congressional term.

Also divided government inhibits congress to solve the major issues faced in the United States. Political scientists have established that divided party control over the executive and legislative branch increases the chances of political gridlock and reduces the likelihood that presidential proposals will become law (Binder, 2004); raises the chance of a government shutdown (Kirkland and Philips, 2018); and corresponds to four fewer acts of significant legislation per Congress (Ansolabehere, Palmer and Schneer, 2018).

---

[1] The final majority is going to be determined by a run-off election in Georgia on Dec. 6.

Situations that combine the elements of polarization, divided government and re-election motives of presidents tend to reinforce the aforementioned tendencies. Consider, the 112th or 116th Congress: Like Joe Biden now, Barack Obama and Donald Trump were entering the second part of their first term, facing a weakly divided government with unprecedented conflict between the parties after the midterms and were up for re-election. Figure 1 shows that this setup resulted in particular strong drops in lawmaking (25\% for Obama, 22\% for Trump). Media outlets noted that for example the 112th congress passed fewer laws than any other since the late 1800s, when polarization was at almost the same levels as today (see sources cited in McCarty, 2019, p.39).

Figure 1: Number of Laws by Congress (2009 – 2021)
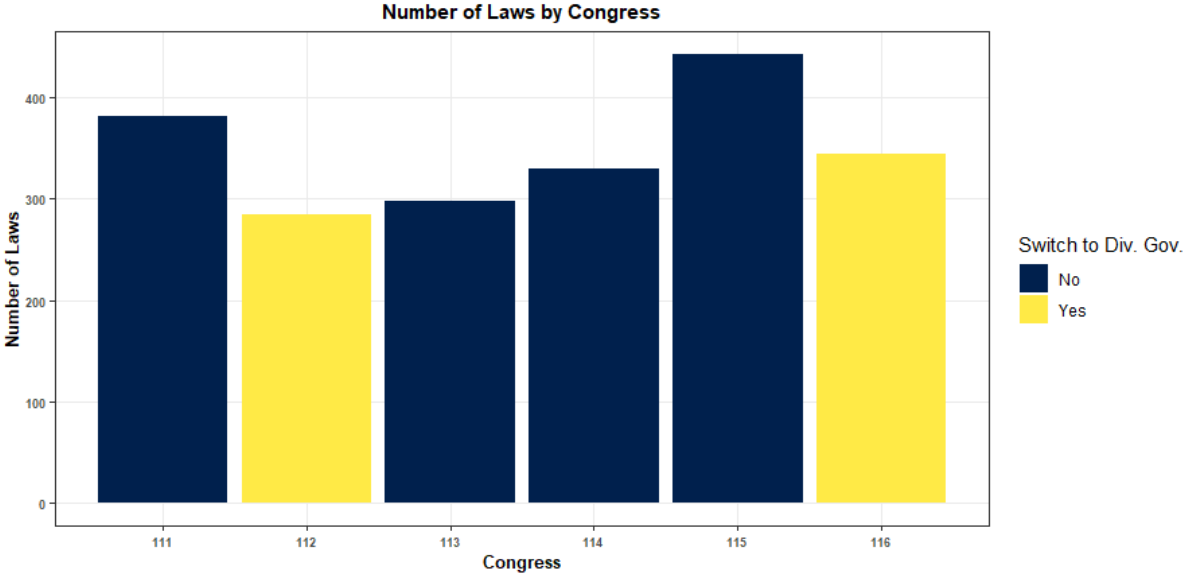
Beyond the quantity of legislation, the shift from unified to divided government during the Obama era also influenced the type of legislation enacted.[2] The laws that passed after the midterms in 2010 were more often related to public goods, such as defense or infrastructure, rather than private legislation (24 percent vs. 30 percent). Moreover, those laws gained more bi-partisan support. For example, the share of bi-partisan co-sponsors on passed laws grew from 38 percent to 47 percent, while minority party support in voting climbed from below 40 percent to about 60 percent.

The Future of Lawmaking

The effect of the midterms on the lawmaking for the second part of Bidens' first term is likely going to be exacerbated compared to the historical counterparts.

First, the fact that polarization keeps increasing makes us believe that the drop in lawmaking will be even sharper than in the previous circumstances. Growing polarization will reduce the policy space on which legislators are willing to compromise and thus lead to more gridlock. This naturally translates into a high chance of a government shutdown as strongly partisan legislators are more determined to undermine the opponents' policy agenda regardless of the costs. For example, the upcoming negotiations over raising the debt limit between Biden and

---

[2] We omit the Trump-comparison here as his third and fourth year also coincided with Covid-epidemic and thus warranted strongly different legislation than usually.

House Republicans will be a particularly thorny issue, as the current House Minority Leader Kevin McCarthy announced to block any further increase.[3]

Second, our team predicts that the new laws that will manage to pass this highly conflictual environment will mostly address public urgencies and have high-levels of bi-partisan endorsement. Whether or not Republicans will eventually gain control over both, Senate and House, a filibuster-prove majority in the Senate (60 votes) and the possibility of President in veto-mode, make the passage of strongly partisan bills virtually impossible. Therefore, the odds are high that passed legislation will not include some progressive social policy issues on Bidens' agenda, such as provisions for abortion projections from Roe v. Wade and the restoration of a ban on assault weapons sales.

Third, we have reason believe that overall the quality of the legislation could deteriorate. Recent research has found that excessive legislative activism causes the production of significantly lower quality laws (Giommoni, Morelli and Paserman, 2022). Given that the study at hand investigates a period when congress was substantially less polarized, the currently much higher level and incessant rise in polarization creates powerful incentives for legislators to signal to their constituents activism via bill proposal and therefore limit congress's ability to carefully improve submitted legislation.

In the past divided government phases with forced reduction of legislative activity were also associated with positive institutional reform incentives. For example, Ash, Morelli and Vanoni (2022) argue that those phases at the federal and state level were connected by important civil service reforms. Therefore, reduced legislative activity is not necessarily bad. However, in the current environment with high levels on distrust in institutions and politics and democratic backsliding associated with populism, we expect that this specific phase of divided government could have mostly negative consequences and further depress public opinion towards the governments' ability to tackle the pressing issues of today.

Bibliography:

Ansolabehere, Stephen, Maxwell Palmer, and Benjamin Schneer. "Divided government and significant legislation: A History of Congress from 1789 to 2010." *Social Science History* 42, no. 1 (2018): 81-108.

Ash, Elliott, Massimo Morelli, and Matia Vannoni. "Divided government, delegation, and civil service reform." *Political Science Research and Methods* 10, no. 1 (2022): 82-96.

Binder, Sarah A. *Stalemate: Causes and consequences of legislative gridlock*. Brookings Institution Press, 2004.

Binder, Sarah A. "The dynamics of legislative gridlock, 1947–96." *American Political Science Review* 93, no. 3 (1999): 519-533.

Giommoni, Tommaso, Massimo Morelli, and M. Daniele Paserman. "Signalling Incentives and the Quality of Legislation: A Text and Network Analysis of the US Congress." (2022).

Kirkland, Patricia A., and Justin H. Phillips. "Is divided government a cause of legislative delay?." *Quarterly Journal of Political Science* 13, no. 2 (2018): 173-206.

---

[3] See https://punchbowl.news/archive/101822-punchbowl-news-am/.

Mann, Thomas E., and Norman J. Ornstein. 2012. It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism. New York: Basic Books.

McCarty, Nolan. *Polarization: What everyone needs to know*. Oxford University Press, 2019.

McCarty, Nolan 2007. "The Policy Effects of Political Polarization." In The Transformation of American Politics: Activist Government and the Rise of Conservatism, eds. Paul Pierson and Theda Skocpol, 223-55.