

1992

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David R. Mayhew.

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**Recommended Citation**

Smith, Steven S., "Book Review: Divided We Govern: Party Control, Lawmaking, and Investigations, 1946-1990. by David R. Mayhew." (1992). *Constitutional Commentary*. 1037.  
<https://scholarship.law.umn.edu/concomm/1037>

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## Book Reviews

**DIVIDED WE GOVERN: PARTY CONTROL, LAW-MAKING, AND INVESTIGATIONS, 1946-1990.** By David R. Mayhew.<sup>1</sup> New Haven, Conn.: Yale University Press. 1991. Pp. vii, 228. \$25.00

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The difficulty of enacting timely, coherent, and effective public policy is the most common complaint about American government. Sometimes congressional parochialism is blamed. Often, elected officials' hyper-sensitivity to public opinion is condemned. And constitutional arrangements figure in most critiques. Separation of powers and bicameralism contribute by requiring agreement among the House of Representatives, Senate, and president before new policy can be enacted and granting to each institutional player tools to obstruct the others. Differences in constituencies and terms of office make it likely that the institutional players are not likely to be in perfect agreement on major policy questions.

Reformers generally concentrate on constitutional revision. A line-item veto and other ways of strengthening the presidency, longer, congruent, and limited terms of office, the Westminster model, and unicameralism are the most widely discussed proposals. Extra-constitutional proposals include a biennial budget, fewer strings on appropriations measures, reduction of duplicative congressional committees, the adoption of an official congressional agenda, and the elimination of obstructionist congressional procedures.

Many political scientists, as well as most practicing reformers, believe that strengthening parties is the best way to domesticate elected officials and link the political interests of Congress and the president. If parties were cohesive and stood for something, the argument goes, accountability for government ineffectiveness would

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be improved, increasing the chance that the Congress and the White House will be dominated by like-minded politicians of the same party. This is the "party government" promoted in the 1942 book by E.E. Schattschneider of that name.

During the past decade, the party-government argument has been revived by reformers concerned about the inability of the federal government to address festering policy problems. Much of the blame, it is argued, lies with divided party control of the Congress and presidency. Divided government has two faults—if it produces any legislation at all it is highly compromised and untimely, and it makes it impossible for the electorate to assign blame and turn the offending party out of office. Consequently, party-government proponents contend, steps should be taken to encourage, if not guarantee, unified control of the House, Senate and White House.

## II

Enter David Mayhew. He contends that the frequency of high-publicity congressional investigations and the enactment of important legislation is unrelated to unified and divided government. The conclusion is based upon an examination of each two-year period from 1946 through 1990. Mayhew sees little reason for hope that schemes to create unified control of government will produce more major legislation or fewer high-publicity congressional investigations.

Mayhew suggests several explanations for the patterns he finds. One set of factors produces constancy in legislating and investigating. For example, members of Congress seeking reelection or higher office have reason and the ability to promote legislation regardless of which party controls Congress and the White House. The incohesiveness of congressional parties also undermines the relationship between party control and legislative activity. Another set of factors produces patterns of variation in legislative activity different than the pattern of unified and divided control. These include shifting economic and social conditions, public moods, cycles within presidential terms, and differences among presidents.

Finally, Mayhew anticipates objections to his thesis by considering other ways in which divided party control might make a significant difference. He argues that there is little evidence that divided government produces lower quality or less coherent legislation, sees no connection between congressional "micro-management" and divided government, concludes that divided government has little effect on the quality of foreign policy, and finds only a

weak case for the argument that divided government undermines government benefits for the lower-income strata.

### III

What do we make of Mayhew's argument and evidence? In the first place, his conclusion that the incidence of important laws is not connected to divided control seems sound. Is his selection of important laws reasonable? Yes. His choice of 267 laws is based upon the end-of-session reviews by contemporary journalists and historical analyses of policy specialists. Journalists' wrap-ups may be prone to listing some minimum number of important measures in their end-of-session reviews, but there seems to be little to challenge Mayhew on here. Indeed, Mayhew has performed a great service for scholars who need a list of important laws for their own theoretical purposes.

The major weaknesses of Mayhew's argument lie elsewhere. They concern the selection of investigations and the bases for judging differences in the legislative record under divided and unified government.

Mayhew examines thirty-one high-visibility congressional investigations of the executive branch. These are defined by Mayhew as investigations involving "committee-based charges of misbehavior against the executive branch, or an executive response to such a charge," that appeared on the front page of the *New York Times* on at least twenty days. This is an important set of investigations, and we certainly need to know whether highly visible investigations vary in frequency with party control. But highly visible investigations concerning the sexiest executive behavior may be just the kind of investigations that Congress finds most irresistible, even in times of unified control. A broader range of congressional oversight activity must be examined to place the thirty-one high-publicity investigations in proper context.

Mayhew acknowledges the limitations of the thirty-one cases when he considers the evidence for a "micro-management regime" in his last chapter. This regime is defined by the surge in congressional oversight activity during the Nixon-Ford years and the maintenance of that level ever since. Disputing that divided control was essential to the start of the regime, Mayhew suggests that the regime is similar to the "loyalty regime" of 1938-1954 in which the House Un-American Activities Committee challenged officials under conditions of both divided and unified control. Both regimes, he says, might better be explained by "the extraordinary disruption caused to the system by Roosevelt and Nixon around the time they

were winning landslide re-elections and entering their second terms." A congressional backlash was motivated by Roosevelt's alliance with the CIO, his court-packing scheme, and other actions, and by Nixon's impoundments, conduct of war, his internal security measures, and other activities. The argument seems to be that presidential imperialism, not divided government, is the root cause of the micro-management regime.

Mayhew's argument is incomplete. He must show that divided government had little to do with the inter-branch conflicts that yielded an aggrandizing presidency and the congressional response. He does not and probably cannot in the case of the Nixon administration. Senate Democrats' tactics on the Vietnam War changed overnight upon the election of Nixon to the White House. Any reading of the Nixon presidency surely leads to the conclusion that Nixon's deep-seated, paranoid partisanship played an important role in his behavior. Thus, the case for little difference in investigating activity between unified and divided control remains limited to high-publicity investigations.

The more lasting impressions from Mayhew's analysis are likely to come from his treatment of major legislation, and it is there that Mayhew's book will stimulate the most controversy.

One limitation of the analysis of major legislation is the absence of a baseline. Mayhew's analysis is conducted in terms of the absolute number of major laws adopted. It is appropriate to ask, as Mayhew does, "What did *not* pass between 1946 and 1990?" That is, is divided government associated with a lower *rate* of success for legislation on the agenda, as might be drawn from the measures recommended by the president?

Mayhew dismisses presidential "quotient" measures for two reasons. First, he believes that weighting all presidential requests equally distorts reality too much. This is a peculiar reason in light of his preference not to make distinctions among the 267 laws he includes in his analysis. In any case, we could examine "important" or "major" presidential proposals. Second, Mayhew argues that presidential requests are not an appropriate standard. He's right. Non-presidential initiatives should count in an assessment of divided government.

But Mayhew is unconvincing in his dismissal of *all* possible baseline agendas. He can be faulted for giving up too easily on defining an agenda of live legislation of his own. Many of the end-of-session reviews upon which he relies for identifying enacted legislation also identify major legislation that died. *Congressional Quar-*

*terly Weekly Report* and other publications regularly discuss the status of major legislation, including legislation that eventually dies.

These are critical issues for assessing the effects of divided government, as Mayhew himself seems to recognize in addressing it unsystematically at the end of Chapter 4. If presidential requests or congressional initiatives fail proportionately more often under divided government, the case for important differences between divided and unified control is strengthened. But Mayhew provides no such analysis. He only demonstrates that all presidents have trouble with Congress. This is the type of weak empirical analysis Mayhew sought to correct.

Another puzzling limitation of Mayhew's analysis of legislation is that policy direction and scope, as well as the speed of enactment, are not examined systematically in the treatment of legislation. Mayhew treats all important legislation as equal for the purpose of examining the frequency of legislation. That's fine. But surely as important to critics of divided control of government is the extent to which it neutralizes the direction of policy change and limits the policy aggressiveness embodied in legislation, and how expeditiously new directions are adopted. After all, political credit and blame, driving forces behind inter-party conflict, arise from direction, scope, and timing as well as from enactment.

Mayhew, in fact, does occasionally note direction and make claims about the significance of policy change throughout his book. For example, he observes that the Nixon years continued the wave of major liberal legislation begun in the mid-1960s. Indeed, Mayhew uses the number as well as the direction and overall importance of domestic legislation adopted under Nixon to establish the importance of public mood for policymaking. Yet there is no systematic assessment of policy content.

Evidence that policy content is affected by divided government can be found in the record of presidential vetoes. During the 1947-1988 period, 31.5 vetoes per Congress (two-year period) occurred under divided government and 26.1 vetoes per Congress occurred under unified government.<sup>3</sup> The numbers for the 1953-1988 period (that is, excluding the Truman administration) are 27.9 to 19.1, respectively. And for the 1961-1988 period (excluding Truman and Eisenhower), the numbers are 22.9 and 13.7, respectively. The pattern of vetoes shows that differences between Congress and the president exist even under unified party control. They also show that

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3. Norman J. Ornstein, Thomas E. Mann and Michael J. Malbin, *Vital Statistics on Congress, 1989-1990* 162 (Congressional Quarterly, 1990).

legislation more frequently dies or is modified in the president's favor at a late stage under divided control.

The pattern of vetoes is similar to other patterns. For example, party control patterns presidential success of roll-call votes on which the president took a clear-cut position, as determined by *Congressional Quarterly*. Ornstein, Mann, and Malbin observe that “[w]hen one party controls both branches, success never drops below 75 percent; with divided government, presidents average well below that level of success (Ronald Reagan, 61.8 percent; Gerald Ford, 58.3 percent; Richard Nixon, 64.3 percent; Dwight D. Eisenhower after 1954, 66.5 percent).”<sup>4</sup> Both final passage and amendment votes are included in these counts, so they reflect differences over the content of legislation as well as attitudes about whether some legislation should be adopted.

To be sure, vetoes and presidential success scores include unimportant matters that Mayhew's analysis excludes. But the circumstantial evidence seems overwhelming—divided government affects the content of legislation. In fact, unless one assumes that there are no basic differences in policy preferences between the presidents and those who would otherwise have been president, it is hard to imagine that divided government makes no difference. Would Jimmy Carter have allowed domestic spending and tax cuts and defense spending increases to have been enacted into law similar to those adopted by Ronald Reagan? Would Hubert Humphrey have stimulated the congressional spasms or impeachment proceeding that Richard Nixon did? Would Barry Goldwater have tolerated the avalanche of social programs adopted in 1965 and 1966? In the three-way legislative game involving the House, Senate and president, divided control usually means wider differences in policy preferences than unified control. Divided control matters because congressional and presidential policy preferences matter.

#### IV

Even if we found Mayhew's case convincing, we must ask whether it undermines the logic of the party-government school. Mayhew certainly thinks so. He concludes his book by noting that “party government plays a role in political science somewhere between a Platonic form and a grail” and suggests that “real American experience” indicates that party government is an unreasonable

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4. Ornstein, Mann and Malbin, *Vital Statistics on Congress, 1989-1990* at 187-88 (cited in note 3).

standard. He claims that American parties are little more than "policy factions" that cannot serve as "governing instruments."

Mayhew's interpretation of the party-government model is excessively narrow. In fact, he never fully explains the party-government argument or the proposals advocated by party-government reformers. I know of no exposition of the party-government model that claims that unified party control alone will substantially improve policymaking. The argument is that *cohesive* parties, along with unified control, will make a difference. Party-government reformers propose to align presidential and congressional election cycles, give parties control over nominations, route campaign funds through parties, and other actions. They assert that such steps will increase the frequency of unified control *and* bolster party cohesiveness, as well as enhance electoral accountability. To be sure, various scholars and reformers have made assertions about the importance of divided control *per se*, and their claims deserve to be tested. But Mayhew's book proves very little about the likely effects of the institutional and electoral changes recommended by party-government proponents.

#### V

Mayhew has forced clarification and elaboration of reformers' arguments. This is no small contribution. The wave of reform proposals of recent years deserves to be challenged and tested. Most of them have received no rigorous empirical examination. Mayhew begins this task by demonstrating conclusively that there is no one-to-one correspondence between party control and good government. The American system not only facilitates divided government, it creates conditions that generate stop-and-go policy making even in long periods of unified control. Differences in constituencies and terms of office, as James Madison explained, make a system of checks-and-balances work. Mayhew makes Madison's case as strongly as anyone has.

Yet I am led to a different response to his page-one question, "Should we care whether party control is unified or divided?" Mayhew seems to answer, "Not much." The appropriate answer probably is, "Yes, in combination with other features of our governmental structures."