



INTRODUCTION

In the United States, the presidency, the House, and the Senate have their own independent electoral bases. A separation-of-powers system thus rooted in voters can generate patterns of both *dissonance* and *skew* in the conduct of government. Dissonance can occur when different sectors of society enjoy special favor in different institutions. Skew can occur when the summary favor of the government tilts to one side. In modern times, the sectors or sides of chief relevance are the political parties. Politics tends to sort into an us versus them contest between two parties (or, in some countries, coalitions of parties) associated with ideologies. This being the case, a constitutional system that is not perceived to accommodate its party sides fairly may run into legitimacy trouble. A government needs to be poised appropriately on an electoral base.

How does the United States stack up in these considerations? In this book, I weave a complicated argument. Perhaps it is best characterized as an exploration. At least during recent times, I argue, using a particular diagnostic lever, both the dissonance and skew at the core of the American government as regards the parties have been very small, perhaps surprisingly small. Beneath everything else that we see, the governmental system has bent toward both *convergence* and *symmetry*. Notwithstanding its separation-of-powers arrangements, the United States has bent toward being a typical democratic country.

That is the skeleton of my argument. But there are complexities and qualifications. I dwell on the parties in this account, but at times I reach beyond contestation between the parties to discuss



other coalitional frictions. I probe into congressional processes that are not found in the Constitution. Most important, I advance the idea of *corrigibility* to go along with those of convergence and symmetry. In the realm of policymaking, significant impediments can arise to the working out of these latter two logics. But, given time, many such impediments are tackled and overcome. This process of overcoming is an additional key aspect of the American regime.

What are the implications? One is the following. If the U.S. Constitution and the country's party system are more or less in sync, we might expect to see a scarcity of discontent with the Constitution. A century ago, that old institutional blueprint of 1787 came under considerable fire. One of the sides of that time, the Progressive left, targeted it. Thanks to Charles Beard and others, its class origins came to be suspect.¹ The Senate and federal courts were said to be fundamentally biased. At the least, they needed to be overhauled. We have forgotten the force of this old Progressive-era case. In our own time, nothing like this oppositional drive exists. Thoughtful critiques of the Constitution are being written, but they do not seem to resonate.² For the general American public, constitutional reform as a pressing concern seems to rank somewhere near vanishing polar bears and rising cable TV prices. Now in its third century, the U.S. Constitution is riding high. I cannot prove it, but I would guess that one reason is its congruence with the party system. A seriously disgruntled party—or, as in the case of a century ago, an ideological side—can raise a major ruckus.

That is my conceptual rubric. My time span in this work is the decades since World War II. Dwelling on relations among the presidency, the House, and the Senate, I address in sections of

¹ See Richard Hofstadter, *The Progressive Historians—Turner, Beard, Parrington* (New York: Knopf, 1968), chs. 5–8; John Patrick Diggins, "Class, Classical, and Consensus Views of the Constitution," *University of Chicago Law Review* 55 (1988), 555–70.

² Robert A. Dahl, *How Democratic Is the American Constitution?* (New Haven: Yale University Press, 2002); Sanford Levinson, *Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It)* (New York: Oxford University Press, 2006).



the analysis a particular topic: the fortunes of domestic legislative proposals that the various American presidents during those decades have championed and cared about. This is a somewhat narrow focus. A great deal of governmental activity is left out. Congress and the presidency can clash otherwise: consider Watergate.³ Governments pursue foreign as well as domestic policies. The courts can have their own policy agendas. Presidents often make policy by themselves: Truman installed a strict antiespionage program and desegregated the armed services; Eisenhower desegregated the District of Columbia and sent troops to Little Rock; Obama has reorganized the auto industry.

Yet the realm I address is large and important. Domestic legislating at the behest of government leaders is probably as close to the heart of politics as one can get, and a system that does not get it right in this sphere, that does not win substantial legitimacy for what it does, is probably a system in trouble. The specifics in my treatment range from Truman's Fair Deal in 1949 through the Great Society of the 1960s, the Reagan revolution of the early 1980s, and George W. Bush's drives to cut taxes and partly privatize Social Security in the 2000s. Note that lawmaking is not just a domain of Democrats or welfare-state builders. From Alexander Hamilton's bank, Calvin Coolidge's tax cuts, and Eisenhower's spur to a private atomic energy industry through the Bush–Paulson bailout of Wall Street in 2008, the leaders of a capitalist economy have seen need to keep making laws. My analysis does not reach systematically into 2009, yet the centrality of the Obama administration's drives for an economic stimulus package, cap-and-trade regulation, and health insurance reform will be obvious.

My argument in these pages is coherent, I hope, even if it is complicated. It draws on two original datasets. In chapter 1, I present a dataset comparing in a particular way the electoral bases of the presidency, the House, and the Senate as evidenced in the sixteen presidential elections since World War II. I use as an

³ For a treatment of clashes between Congress and the presidency in general, see David R. Mayhew, *America's Congress: Actions in the Public Sphere, James Madison through Newt Gingrich* (New Haven: Yale University Press, 2000), chs. 3, 6.



indicator the split of the major-party popular vote cast for president. Four values come into play for any election—the split of that presidential vote share in the nation at large, the split of it in the pivotal Electoral College unit once those units (there are now 51) are laid end to end according to their presidential vote share, and, analogously, the split of it in the median House district and the median Senate district (that is, state). Thus measured, how have the vote splits in the three districted universes deviated from the national popular vote split for president taken straight? Do partisan tilts appear? In the case of the Electoral College, the partisan bias has been, on average, zero. On the congressional side, using the same yardstick, partisan tilts in a Republican direction have existed—on average a 1.1 percent tilt in the case of the House, 1.3 percent in the case of the Senate. These chamber tilts have been chronic and detectable but they have been small. Perhaps surprisingly, the House and Senate tilts have differed from each other only trivially. Also, the Senate, notwithstanding its common image as Wyoming, Utah, and Idaho writ large, has not loomed as much of a Republican outlier when measured in these terms against the House or the system in general.

Given this data demonstration, the account proceeds, what might we expect in the way of policymaking relations among the three elective institutions? In chapter 2, a second dataset affords one line of insight into this question. I present a list of 184 high-priority domestic legislative proposals that the presidents from Truman through George W. Bush sent to Congress during their first two years after winning election or reelection. Analysis ensues in the chapter. What can be said about the achievements of the presidents as requesters? At issue is the performance of Congress taken as a whole. In the cases of these requests, did the presidents finally get what they wanted or not? In particular, given the small, to be sure, Republican tilts on Capitol Hill, is there any sign of partisan bias in the final legislative results? On balance, have Democratic presidents had a harder time on Capitol Hill than Republican presidents? This is a question fraught with all kinds of analytic perils, but one facet of it seems to be theoretically



plain and, at least in principle, empirically tractable. The answer seems to be: possibly yes. It is indeed possible that the Democrats have carried an additional burden. Yet the pattern I come up with is clouded in a statistical sense, it is probably not widely perceived, and it may be otherwise accounted for. The result is something of a Rorschach. It is ambiguous. It may match the pattern of small but nonzero values in the representational tilts—the 1.1 and 1.3 percent. It may bring episodic puzzlement and frustration without being seriously delegitimizing.

In chapters 3 and 4 I examine presidential success in the House as opposed to the Senate. Here I take up the success records of Democratic presidents as opposed to Republican presidents, but also the success records of all presidents, period, regardless of party. The former and latter concerns are very similar in their empirics although not identical. When White House initiatives have ended up blocked on Capitol Hill, has either of the two chambers stood out as chief blocker? If everything else averages out, the small 1.1 versus 1.3 percent partisan tilts of the House and Senate would predict small or no chamber-specific biases toward Democratic as opposed to Republican presidents, as well as small or no chamber-specific biases toward presidents, period. Of course, everything else does not average out—consider the Senate filibuster—and a wealth of analytic perils arises here, too. Yet a pattern of near-parity seems to shine through. Surprisingly, across the full sixty years through George W. Bush, when White House requests—of Democratic or Republican presidents, or alternatively of all presidents—have ended up buried on Capitol Hill, the House and Senate have served as nearly equal-opportunity buriers.

In analyzing this dataset of White House requests, I consider a range of theories—or perhaps more broadly, causal accounts—that political scientists and others have offered regarding Congress, the presidency, or relations between them. The theoretical line extends from Woodrow Wilson in the 1880s through James MacGregor Burns in the 1940s through Keith Krehbiel and Gary Cox and Mathew McCubbins in recent times. Journalists have



chimed in. In chapters 3 and 4, I juxtapose these various bents of theorizing to the legislative experience of the recent sixty years. Why is it that analysts once asked the question: “Why is the Senate more liberal than the House?” In lawmaking terms, did the districting revolution of the 1960s make any difference? Is it really true that southern committee barons—Judge Howard Smith of Virginia and the rest—once kept House majorities from getting their way? In the sphere of White House requests, what has been the role of “party cartels” in the House? As a theoretical matter, what can be said about the classic civil rights filibuster? Have assertive presidents been thwarted by a House Agriculture Committee flexing its jurisdictional sovereignty? It may take sixty votes for a measure to clear the Senate today, but how important was the Senate cloture pivot in thwarting White House aims before the 1990s? Has the Senate, as some critics allege, played a long-term role as a hidebound enemy of progress?

My general assessment on this front is that a number of theories have turned out to be partly, or, in a time sense, locally, valid. But that is all. Perhaps that is the best that can be expected of theories in this complicated and evolving subject area.

Four themes infuse the ensuing chapters. The idea of a *public sphere* pertains throughout. This is the idea that political activity takes place before the eyes of an appraising public—not in a Washington, D.C., realm that can be theoretically or empirically isolated. In its elective bodies, the American regime is relentlessly transparent. We keep a pretty good bead on what the politicians would like to achieve (although they may be vague even in their own minds), what they aim to achieve, what they take steps to achieve, and what they succeed in achieving. Strategies as well as behavior can be documented. Strategizing *is* a kind of behavior. This transparency is theoretically important. Whether the opposing sides in politics are being fairly treated is a matter of perception. The public can watch and judge. It is probably no accident that sports and party competition grew up together in the English-speaking world. In the sports realm, we know what the teams are up to, and if one side in a football game enjoys twelve



players on the field and five downs, those bonuses and their likely consequences will be noticed. So it is in politics. Consider the play-out of the election of 2000.

In chapter 1, a theme of *microcosm*—the idea that the median constituencies of the House and Senate have approximated the presidential constituency as well as each other—seems to provide illumination. At a limit, this theme blends the connotations of convergence and symmetry that were introduced earlier. Yet approximation is not the same thing as identity, and the persistent, if small, space between the presidential vote-share taken by itself and its manifestation in the congressional medians may have policy significance. Also, as will be seen in chapter 3, leverage may derive from calculating the medians for the congressional constituencies according to an alternative principle.

A theme of *majoritarianism* emerges in chapters 3 and 4.⁴ That is, at the level of policy interaction considered here embracing the full sixty years, all three of the elective institutions seem to have behaved at least usually in majoritarian fashion—even the Senate. That is the anchoring default. The qualifier “usually” emerges from, and I hope survives, a range of analysis I undertake in these chapters. Yet deviations from majoritarianism have played a role too, as is suggested by the cascade of theories in that vein offered by the political scientists named above and many others. I explore several antimajoritarian intricacies in chapters 3 and 4.

Finally, the theme of *corrigibility*, or, to put it another way, *reform*, makes its appearance in chapter 5. That is, failing all else, institutional or procedural reform is endogenous to the American system. All else can certainly fail, at least for awhile. Chapters 3 and 4 offer summary data regarding White House victories and losses, but they also supply generous evidence of wrinkles, distortions, or peculiarities that can invest the policy process during particular times or in particular policy areas. The civil rights filibuster and a rural skew in the House, to cite two examples, were once

⁴See the idea of the “majoritarian postulate” in Keith Krehbiel, *Information and Legislative Organization* (Ann Arbor: University of Michigan Press, 1991), p. 16.



real. But reform is out there as an option. Any of the elective institutions that deviates from the others in its policy stances as a result of alleged defects of representation runs the risk of getting cuffed into place by elements of the other institutions or the public. Ample history backs up this idea. Cuffing happens. Yet reform has its limits. It can be sluggish, it can itself fail, and the processes embedded in the Constitution are an especially difficult target.

Notwithstanding the qualifications, these organizing themes seem to do useful work. In a nutshell, an interlock of companion elective institutions whose representative bases are similar, whose processes in possibly the most salient range of policy action are basically, or at least ordinarily, majoritarian (thus cutting down on obstreperous outlier behavior), and where corrective reform is a real option, is not likely to run into serious legitimacy problems—at least for the reasons of relevance here. Whatever else may be said about it, and of course much can be, the American system of recent generations has enjoyed these characteristics and has probably been bolstered by them. Yet this is not an unasterisked case. The deviations of a correctable sort have been real and consequential, and the possible penalty to Democratic presidents adumbrated in chapter 2 hangs out there as a question mark.