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Congress, Lawmaking, and the Fair Labor Standards Act, 1971–2000

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Lawmaking studies and evaluations of competing accounts of policy change cannot easily assess the nature of policy change due to the difficulty of locating the status quo and proposals relative to the preferences of critical political actors. Focusing on activity involving the Fair Labor Standards Act, I investigate how the attempted and successful policy change between the 92nd Congress (1971–72) and the 106th Congress (1999–2000) compares to the predicted lawmaking activity according to dominant lawmaking models. Characterizing the incidence and magnitude of policy change over nearly 30 years reveals that policy change is rarer and smaller than current theories predict. Change occurs when the status quo is more extreme than the preferences of the pivot most supportive of the status quo according to supermajoritarian models, but there are many instances where similarly extreme status quos are left unchanged. Moreover, when change occurs, it exhibits a strong status quo bias and the outcome is often indistinguishable from the preferences of the pivot who most prefers the status quo.

How and why policy change occurs is a question at the heart of political science. Characterizing the ability of a government to change policy and the nature of the resulting change is fundamental to assessing the performance of any political system. Investigations of policy change and the conditions under which change occurs in the United States have used detailed case studies (e.g., Arnold 1990), counts of lawmaking activity (e.g., Mayhew 1991), and large-n statistical studies using a myriad of data sources (e.g., Baumgartner and Jones 1993) and many explanations exist. Some focus on the importance of parties (e.g., Cox and McCubbins 2005; Rohde 1991), aspects of the institutional environment (e.g., Brady and Volden 2006; Krehbiel 1998), or the consequences of divided party control of government (e.g., Binder 2003; Coleman 1999; Edwards, Barrett, and Peake 1997).

Despite an abundance of work analyzing lawmaking, a consensus has yet to emerge. Even among relatively similar accounts of the lawmaking process there are disagreements about the interpretation of the measures being employed and the validity of the conclusions being reached. One reason for the lack of consensus is that critical aspects of theoretical interest to lawmaking scholars

are unmeasurable. Most notably, the ability to locate the status quo and characterize policy proposals relative to the preferences of critical actors in the political system has proven extremely elusive (but see Richman 2011).

Empirical work into the nature of lawmaking typically focuses on the correlates of outputs (e.g., predicting the amount of significant legislation) or inputs (e.g., looking at roll rates, the distribution of cutpoints, etc.) of the legislative process. While informative, these analyses are unable to measure what we presumably care the most about—the magnitude of policy change. The analysis of significant legislation, for example, tries to assess the magnitude of policy change using measures that are binary (e.g., Mayhew 1991), ordinal (e.g., Howell et al. 2000), or continuous (Clinton and Lapinski 2006), but the measures do not actually measure the magnitude of change; significant policy change is instead assumed to be present when the law is prominently featured in secondary sources. Analyzing the inputs of lawmaking activity using measures derived from roll calls—e.g., cutpoints or gridlock intervals—provide only limited information about the content of the proposals being voted upon. Due to the difficulty of locating the status quo and policy proposals relative to the preferences of key political actors over

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time, few attempts have been made to directly estimate the extent of policy change.¹

I use assumptions about the agenda and legislator behavior involving the Fair Labor Standards Act to characterize how successful and unsuccessful proposals relate to the location of the status quo and the preferences of lawmaking participants between 1971 and 2000.² My focused inquiry cannot necessarily yield generalizable conclusions, but it can locate policy proposals in the policy space relative to the status quo and lawmakers' preferences and trace the path of policy change across time for this important policy. Not only is the FLSA an important statute—the 1938 act is the 28th most notable public statute among the 37,766 public statutes enacted between 1877 and 1994 according to Clinton and Lapinski (2006)—but subsequent amendments are also considered noteworthy by congressional chroniclers.³ Moreover, because of the centrality of the FLSA to the agenda of the Democratic party and organized interests, a robust record of legislative activity occurs on the FLSA—more than 140 votes are taken on the issue between 1971 and 2000. Finally, the policy is particularly analytically tractable: not only is the status quo subject to conservative drift because of inflation, but it is also possible to sometimes use proposed wage levels to evaluate the magnitude of estimated policy change (e.g., Dietz and Rothenberg 2003; Krehbiel and Rivers 1988; Volden 1998; Wilkerson 1991). For these reasons, many studies focus on the FLSA to study legislative behavior (e.g., Levin-Waldman 2001; Norlund 1997; Poole and Rosenthal 1991; Seltzer 1995; Silberman and Durden 1976; Sobel 1999; Uri and Mixon 1980; Waltman 2000). I focus instead on assessing the nature of lawmaking.

Estimating the location of proposals, preferences, and status quos associated with lawmaking on the FLSA between 1971 and 2000 and comparing the estimates to the predictions of the dominant lawmaking models reveals several findings. First, policy change occurs only when the status quo is extreme relative to the preferences of pivotal participants, but there are many congresses

¹But see Clinton and Meirowitz (2004), Jeong, Miller, and Sened (2009a, 2009b), and Pope and Treier (2009; 2011).

²I focus on this period for two reasons. First, prior to 1971, the last activity involved the 1966 FLSA amendments which involved issues related to race relations. Amending activity in 1966 therefore likely involved multiple dimensions and log rolls across different policy areas. Second, a series of institutional reforms in the early 1970s may complicate the comparisons of lawmaking between the pre-reform and post-reform congresses.

³According to Clinton and Lapinski (2006), the 1961 amendment is 170th, the 1949 amendment is 283rd, the 1977 amendment is 383rd, the 1989 amendment is 430th, and the associated Portal-to-Portal act is 562nd.

where similarly extreme status quos are left unchanged. Second, when change does occur, it does not match the equilibrium predictions of dominant theories. Enacted policies are biased toward the status quo and often indistinguishable from the policy that is most preferred by the pivotal lawmaker who most prefers the status quo—typically the Republican President for this policy and time period. Moreover, proposals that the conservative pivot of supermajoritarian lawmaking models prefer less than the existing status quo fail to become law. There is a very strong bias towards the status quo both in terms of the incidence and magnitude of policy change involving the Fair Labor Standards Act.

The argument of the article proceeds as follows. The first section summarizes extant lawmaking models to define when policy change on the Fair Labor Standards Act is theoretically possible and it derives the predicted policy change as a function of the status quo. Given the importance of the status quo for these predictions, I then describe how I estimate locations of policy proposals and status quos relative to lawmakers' preferences using roll calls. The third section establishes the reasonability of the resulting estimates, and the fourth analyzes lawmaking activity on the FLSA between 1971 and 2000 to identify the features that are consistent and inconsistent with the models of the first section. I then discuss what the results might suggest about the nature of congressional lawmaking, and I finally conclude. The online appendix contains an extensive discussion of the estimator, a robustness check, and the analysis of additional data and sources to validate the conclusions of the fourth section.

Models of Lawmaking

Policy histories provide detailed accounts of the circumstances surrounding legislative activity on the Fair Labor Standards Act (e.g., Levin-Waldman 2001; Nordlund 1997; Seltzer 1995; Waltman 2000), but it is difficult to disentangle the idiosyncratic and systematic lawmaking elements. In contrast, lawmaking theories employ simplifying assumptions to predict when a status quo policy can be changed and the magnitude of the possible change in the hopes of highlighting some systematic features of lawmaking. I analyze the predictions of the latter using a statistical estimator that incorporates information from the former.

My fundamental question is whether lawmaking models highlighting the importance of majoritarianism, supermajoritarianism, and agenda control provide a compelling account of lawmaking involving the FLSA and

whether the pivotal actors identified in each model are as constraining as predicted. All models are simplified representations of actual lawmaking proceedings, but they help focus our attention on different aspects of the lawmaking environment that may be consequential for lawmaking activity. The goal of my empirical analysis is to determine whether more or less emphasis on these aspects is required and whether further theorizing is needed. The models' predictions are well known, but it is useful to review them to motivate the empirical characterization of lawmaking I provide in subsequent sections.

Despite the preponderance of work focused on the following lawmaking models, two limitations are worth noting at the outset. First, the models are static in that everything is resolved in a single period. Real lawmaking, however, is inherently dynamic—the policy that is chosen today will become the status quo of the future, and this may affect lawmaking behavior (e.g., Baron 1996). Second, insofar as elections matter, they only matter for these models by possibly changing the identity of pivotal lawmakers. However, the presence of elections may also affect lawmakers' lawmaking incentives; if lawmaking outcomes affect electoral prospects, for example, compromise may be more difficult if some participants benefit more than others.

The models I consider all assume that the policy space is unidimensional and that participants prefer policy proposals that are closer to their most preferred policy (ideal point). The simplest model is a majoritarian model which allows any member of Congress to make a proposal under majority rule. If this captures the essentials of lawmaking, policy change is nearly always possible and the policy outcome is predicted to be the most preferred policy of the median voter x_M .⁴

The absence of the continual policy change predicted by the majoritarian model has focused attention on theories that identify potential impediments to policy change. Two models of lawmaking, in particular, share the assumptions of the majoritarian model and dominate the congressional politics literature. The models differ in whether the separation of powers or political parties are the largest impediment to policy change. Although characters, the following descriptions capture the essential aspects of each.

Given a conservative status quo q in a unidimensional policy space, the party gatekeeping model (e.g., Cox and McCubbins 2005) assumes the policy-motivated majority party median in the House with a most preferred policy (ideal point) of x_D if a Democrat and x_R if a Republican

⁴There are some complications associated with this prediction due to the bicameral structure of the Congress.

decides whether to allow the chamber median with ideal point x_M to make a proposal p or keep the existing status quo q . The majoritarian game is played if action is allowed, and the status quo persists if not. An alternative model assumes the majority party can also bring proposals p to the floor without amendment (or, equivalently, that parties can prevent their members from voting against the party's proposal p). In such a party agenda-setting model, the majority party median makes a proposal p that the chamber median must vote up or down against the status quo q .⁵ A complication for drawing implications about policy outcomes from these models is that they were designed to model legislative behavior in the U.S. House, and the predictions in Table 1 emerge if we ignore the implications introduced by the presence of the Senate and president.

The lawmaking models of Krehbiel (1998) and Brady and Volden (2006) focus on the importance of supermajoritarian aspects to lawmaking. For a conservative status quo q , the median of the more conservative chamber makes a proposal p that must be approved by the conservative pivot most responsible for constraining policy change—i.e., the senator pivotal for invoking cloture with ideal point x_{S60} (i.e., the 60th most liberal senator) or either the president with ideal point x_P or the pivotal members required to override a veto in the Senate (with the pivotal member having ideal point x_{S66}) and House (with the pivotal member having an ideal point of x_{H287}). Put differently, the conservative pivot relevant given the particular configuration of preferences with ideal point x_C chooses to pass the proposal of the chamber median p or retain the status quo q .⁶

As noted above, because the models of party involvement were designed to model interactions in the U.S. House, they ignore the complications introduced by bicameralism and the supermajoritarian aspects emphasized by Krehbiel (1998) and Brady and Volden (2006). Combining the models allows gatekeeping by the majority party while requiring that successful legislation must overcome a potential presidential veto and filibuster in the Senate. The Supermajoritarian Party Gatekeeping model results from combining the two games (e.g., Chiou and Rothenberg 2003).⁷

⁵Bicameralism again complicates this prediction, but we ignore this complication because we mostly observe activity when the Democrats control both the House and Senate.

⁶If positive values are more conservative and the status quo q is conservative, $x_C = \max(x_{S60}, \min(x_P, \max(x_{H287}, x_{S66})))$.

⁷The game form of the combined game is: (1) Nature randomly chooses a status quo policy q , (2) the policy-motivated majority party median in the House with ideal point x_D if a Democrat and

TABLE 1 PREDICTIONS OF POLICY CHANGE BY MAJORITY PARTY IDENTITY: Predictions assume $x_D < x_M < x_C < x_R < q$

Lawmaking Model	Dem. Majority	Rep. Majority
Majoritarian	x_M	x_M
Supermajoritarian	$\max(x_H, 2x_C - q)$	$\max(x_H, 2x_C - q)$
Party Gatekeeping	x_H	x_H if $ x_H - x_R < x_R - q $ else q
Supermajoritarian Party Gatekeeping	$\max(x_H, 2x_C - q)$	x_H if $ \max(x_H, 2x_C - q) - x_R < x_R - q $ else q
Party Agenda Setter	$\max(x_D, 2x_H - q)$	x_R

These models are typically interpreted as identifying the constraints to lawmaking and an extensive literature measures and analyzes the effects of gridlock intervals on lawmaking activities. However, the models also provide point predictions for the policy change that should be observed for every possible status quo policy. The predictions of Table 1 result if preferences are symmetric and the status quo and ideal points of the median Democrat, chamber median, conservative pivot, median Republican are ordered: $x_D < x_M < x_C < x_R < q$.

Two empirical implications emerge from Table 1. First, the prevalence of identical predictions suggests that observational equivalence may make it difficult to identify which model best predicts observed lawmaking. Second, an unknown status quo q creates severe difficulties for evaluating how well the models predict the nature of policy change because both the incidence and magnitude of the predicted policy change depends on the location of the status quo q . If q is unknown, it is difficult to adjudicate between the competing predictions.

Estimating Policy Change

To address the long-standing difficulty of locating the status quo, I analyze a specific policy using a quasi-structural statistical model. It is quasi-structural in the sense that while some theoretically implied constraints are imposed in the statistical estimator, the equilibrium predictions in Table 1 are not used as parameter constraints. The reason is that the goal of the empirical analysis is not simply to evaluate the performance of the predictions of Table 1, but

x_R if a Republican decides whether to allow the chamber median with ideal point x_M to make a proposal p or keep the existing status quo q and end the game, (3) if the chamber median is allowed to make a proposal p , the Filibuster Pivot decides whether to pass p or filibuster p to keep q , (4) if p is not filibustered, the president decides whether to veto p and keep q or sign p into law, (5) if p is vetoed q results unless 2/3rds of the House and Senate prefer p to q in which case p is realized.

to also assess whether the ability to estimate the location of the status quo and policy proposals reveals systematic differences between the observed and predicted policy outcomes. If so, this may suggest aspects that require additional theorizing.

The models described in section one are general in scope, but focusing on a specific policy and using information about the proposals being voted upon allows the estimation of the location of the status quo q and the magnitude of proposed policy change. I focus on lawmaking involving the FLSA, but the estimator is applicable to any policy receiving a series of roll calls.

Analyzing roll-call votes can prove difficult for some analyses of lawmaking because roll calls are not exogenous to the lawmaking activity (e.g., Clinton 2007). This is not a problem for the analysis I conduct because the predictions being tested are predictions about which roll calls are observed. Put differently, there is no endogeneity problem in the analysis that follows because the endogeneity of roll calls is exactly the question of interest—are the proposals and votes we observe the ones that are predicted?⁸ I rely on the fact that the observed roll calls are a consequence of lawmaking activity to identify which lawmaking model is most likely responsible for their creation. Because the lawmaking models predict which proposals, and therefore votes, should occur, I compare the proposals being put to a roll-call vote in Congress to the set of predicted proposals.⁹

⁸The lack of predicted cutpoints does not lead to the collapsing gridlock intervals noted by Clinton (2007) because the presence of probabilistic voting error is sufficient to induce some separation between the ideal points even if the agenda were perfectly determined by party gatekeeping (Hirsch 2011). Moreover, assuming that ideal points are fixed over time will also produce separation because votes from different agendas in different Congresses will provide variation in the observed roll calls (e.g., variation in the gridlocked policies will allow some ability to distinguish between preferences).

⁹In contrast, work trying to predict the distribution of cutpoints or making use of gridlock intervals in a second-stage analysis must assume that the first stage estimation of cutpoints and gridlock intervals are unaffected by the second-stage covariates of interest.

To identify the location of proposals and status quos of the FLSA it may appear that I could use the proposals' content—i.e., the real hourly minimum wage—to identify spatial locations as is done by Krehbiel and Rivers (1988), Willkerson (1991), Volden (1998), and Dietz and Rothenberg (2003). While informative, these studies consider a handful of votes involving the determination of wage level because the estimator they use requires the votes being analyzed to be ideologically ordered *ex ante*. Many FLSA amendments are not so easily ordered. For example, it is unclear how a proposal to adopt a youth wage compares to a small business exemption, or how a 50 cent increase in the nominal wage today compares to a \$1 increase phased in over two years. Fortunately, the statistical models used to analyze roll-call behavior can estimate the location of policy proposals even when the proposals cannot be ideologically ordered *ex ante*.

Following Clinton, Jackman, and Rivers (2004), assume the decision to vote *yea* or *nay*, y_{it} , for legislator i on roll call t depends on the utility received from the passage $\theta_{y(t)}$ and failure $\theta_{n(t)}$ of proposal t . Legislator i is assumed to have an ideal policy x_i which may reflect constituency preferences. Suppose further that the utility difference $U_i(\theta_{y(t)}) - U_i(\theta_{n(t)})$ is the difference of quadratic distances $-(x_i - \theta_{y(t)})^2 + (x_i - \theta_{n(t)})^2$ plus an idiosyncratic error component ϵ_{it} . If members evaluate alternatives based on the (potentially sophisticated) alternatives, and $\alpha_t = \theta_{y(t)}^2 - \theta_{n(t)}^2$ and $\beta_t = 2(\theta_{y(t)} - \theta_{n(t)})$ then the probability of observing legislator i vote *yea* on vote t is: $\Pr(y_{it} = 1 | x_i, \theta_{y(t)}, \theta_{n(t)}) = \Pr(\beta_t x_i - \alpha_t - \epsilon_{it} > 0) = \Lambda^{-1}(\beta_t x_i - \alpha_t)$ where Λ^{-1} denotes the logistic link function. Assuming independence across both indices yields the likelihood: $L(\boldsymbol{\alpha}, \boldsymbol{\beta}, \mathbf{x} | \mathbf{y}) = \prod_{i=1}^L \prod_{t=1}^T \Lambda^{-1}(\beta_t x_i - \alpha_t)^{y_{it}} (1 - \Lambda^{-1}(\beta_t x_i - \alpha_t))^{1-y_{it}}$.

Instead of assuming that a common dimension underlies all congressional activity and every vote is informative for understanding activity involving the FLSA, I only analyze votes involving the FLSA.¹⁰ Poole and Rosenthal's

(1991) analysis of FLSA votes suggests that a single dimension structures the observed votes.

Two parameters for every vote are estimated in the standard statistical voting model: α_t (the probability of voting *yea* on vote t irrespective of \mathbf{x}) and β_t (the extent to which the probability of voting *yea* depends on \mathbf{x}). The content of the proposals being voted upon is typically characterized using the location of the legislator who is indifferent between voting *yea* and *nay* (i.e., the cutpoint α_t/β_t (or a parameterization that avoids the computational difficulties created by a Cauchy random variable (e.g., Bafumi et al. 2005))), but it is also possible to calculate the location of the implied proposal locations from these parameters because $\theta_{y(t)} = \alpha_t/\beta_t + \beta_t/4$ and $\theta_{n(t)} = \alpha_t/\beta_t - \beta_t/4$. Because the estimated proposal locations are so dependant on the assumed utility function, scholars are reluctant to use them (see, for example, Poole and Rosenthal 1997, Appendix A).

I use additional information to help locate the proposals being voted upon. Information from the *Congressional Record*, *THOMAS*, and accounts of legislative proceedings by journalists and the Congressional Research Service reveals how the alternatives being voted on are substantively related (e.g., substitute amendments, first- and second-degree amendments) and how the success or failure of each vote affects the meaning of the proposal under consideration. By identifying a series of votes where the same proposal is being voted upon, constraining the appropriate alternatives helps identify the location of the final proposal if legislators vote based on the policy proposal they expect to emerge from the process. Put differently, I assume that all roll-call outcomes that successfully amend the proposal under consideration are identically located at the location of the proposal that emerges at the end of the amending process.

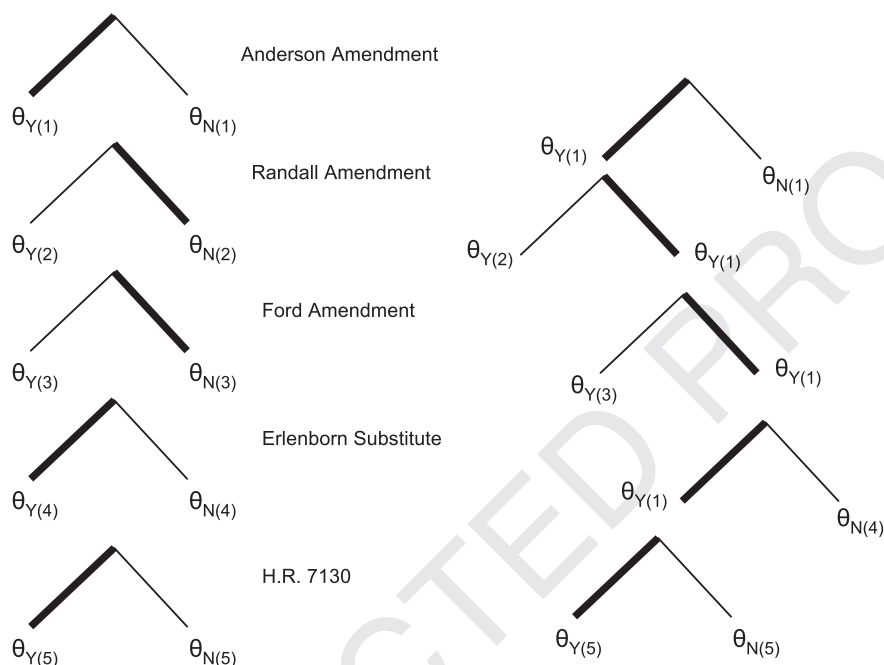
To illustrate the nature of the constraints, Figure 1 depicts the agenda tree for the floor activity for H.R. 7130 occurring on May 11, 1972 in the House of Representatives. The agenda tree on the left depicts the relationship between alternatives that is assumed by conventional roll-call estimators. The agenda tree on the right assumes that the meaning and location of all alternatives leading to the final policy proposal are identical.

As the agenda tree on the left in Figure 1 reveals, standard roll-call estimators impose no constraints on the alternatives being voted upon. The outcome of a vote implies nothing about the alternatives involved in subsequent votes. Moreover, when a vote occurs is irrelevant

¹⁰Excluding the votes on the House resolutions defining the rules for considering the various proposals, there are 147 roll calls on motions, amendments, and proposals between 1971 and 2000. I exclude 12 votes receiving near-unanimous support because they are politically uncontested and provide no information as to the nature of the politics underlying the vote. There are 20 other votes involving cloture motions, votes on motions to table nongermane amendments involving the FLSA that were attempted on other bills, and votes on bills related to aspects of the FLSA unrelated to the minimum wage (e.g., activity in the 104th and 105th trying to provide for compensatory time off instead of overtime pay) are excluded because it is unclear how they relate to the positions being voted on in the other votes. Some amendments to the FLSA were considered in tandem with other legislation (e.g., the 1996 amendment to the FLSA reportedly passed because of a log roll involving a small businesses' tax cut). It is impossible to identify

all of the potential log rolls involved with FLSA legislation, but if votes on the FLSA are partially determined by excluded votes, the recovered ideal points will reflect such log rolls.

FIGURE 1 AGENDA TREE FOR H.R. 7130 (92ND HOUSE, 1972)



Unconstrained (constrained) parameters on the left (right). Thick lines indicate the outcome of each vote in the House.

because the likelihood does not depend on whether a second-degree amendment is voted on before or after the vote on the associated first-degree amendment. In contrast, the right agenda tree uses information about the proposals being voted on and assumptions about how they were perceived by legislators to define a set of equality constraints. Not every alternative is constrained; votes against the proposal, for example, are unconstrained because it is unclear whether such votes are for the same outcome (e.g., the status quo) or an alternative proposal.

Considering the activity in Figure 1 reveals the nature of the imposed constraints. The House overwhelmingly approved the rule for H.R. 7130 and allowed a substitute amendment by the ranking minority member of the Education and Labor Committee Rep. Erlenborn (R, IL) containing Pres. Nixon's well-known counterproposal to amend the FLSA. On May 11, 1972, the 92nd House considered three second-degree amendments to the substitute amendment before considering whether to adopt the substitute amendment and then pass the possibly amended H.R. 7130. The first vote was to adopt Anderson's amendment to the substitute amendment and increase the proposed wage steps. The second vote was on Rep. Randall's (D, MO) amendment to amend the substitute amendment to provide overtime to transit workers,

and the third vote was on Rep. W.D. Ford's (D, MI) amendment to strike the youth wage provision from the substitute amendment. The fourth vote was to amend H.R. 7130 as reported by the House Committee on Education and Labor by substituting the possibly amended substitute amendment. The final vote was to pass the possibly amended H.R. 7130.

Assuming that legislators interpret the votes leading to the ultimate proposal as involving the same alternative means that a vote for the Anderson's substitute amendment was a vote for President Nixon's proposal but with a higher wage level. If so, $\theta_{Y(4)} = \theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$. The location of unsuccessful votes are unconstrained and presumably reflect the outcomes that would have occurred. $\theta_{N(1)}$, for example, represents the expected outcome for the sequence of events that would occur if the amendment to the substitute amendment failed.¹¹

¹¹A complication emerges when considering the implications of voting to pass H.R. 7130 containing the once-amended substitute amendment. It would seem that a vote for $\theta_{Y(5)}$ is a vote for the position associated with $\theta_{Y(4)} = \theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$ and a vote against is a vote to maintain the status quo $\theta_{N(5)}$. Consulting accounts of congressional activity reveal this to be an incorrect characterization in this instance. H.R. 7130 was passed by the lopsided vote of 330 to 78 because Northern Democrats vowed to fix the discrepancy in the conference committee where they could force an up or down

Examining the voting profiles for the agenda of Figure 1 reveals behavior consistent with the assumption that members evaluate the alternatives being voted upon according to the implications for the final proposal. Although only suggestive, if the legislators who supported the proposals responsible for creating the final proposal changed significantly over the course of the agenda, this would suggest that members were unable to forecast the consequences of their actions for the resulting policy proposal and cast doubt on the validity of the constraints I impose. Counting the number of members whose votes are consistent with the interpretation that they are intentionally voting to pass the substitute amendment with the increased wage levels proposed by Anderson reveals that, of the 377 House members who cast a vote on each of the four votes leading to the adoption of the once-amended substitute amendment, 45% voted in a manner consistent with this possibility (Yes, No, No, Yes). Thirty-six percent voted contrary to the proposal at each of the four votes, and only 19% cast some votes for and some votes against the final proposal.

At least two assumptions about congressional behavior are consistent with the imposed constraints. One possibility is that legislators have an *ex ante* preferred policy proposal and they evaluate the alternatives being voted upon prior to the final vote according to their preference for the final proposal. This requires that legislators know the proposals and amendments that are required to reach the final preferred proposal and they vote accordingly. For example, when voting on Anderson's second-degree amendment in 1972, legislators consider how the adoption of the amendment would affect the final policy proposal that would emerge from the process. Put differently, legislators vote based on forward-looking behavior. Complete information about the agenda is not required for this interpretation—if legislators are uncertain of the consequences of adopting unanticipated amendments they may reject such alternatives rather than risk the consequences of passing unexpected proposals and upsetting expectations reached prior to the advent of voting.

vote on the Senate proposal. Rep. John Dent (D, PA), the sponsor of H.R. 7130 and chair of the Subcommittee on Labor Standards, publicly vowed: "In conference we will write that kind of legislation that will provide the greatest good for the greatest number" (Rosenbaum 1972a). Because a vote for H.R. 7130 in the House was therefore likely a vote to push the process forward to a conference committee, I do not constrain $\theta_{Y(5)}$. A benefit of focusing on a single policy is that it is possible to account for the nature of the congressional agenda and information revealed in the coverage of the legislative proceedings by congressional chroniclers to identify whether similar incidents occur and modify the set of constraints accordingly. There is no evidence that these peculiar circumstances repeat themselves.

A second, but stronger, assumption about legislators' behavior that is consistent with the constraints is that legislators evaluate alternatives according to their sophisticated equivalents (see, for example, Clinton and Meirowitz 2003, 2004; Jeong 2009; Pope and Treier 2009, 2011). The constraints are consistent with legislator beliefs if they know the agenda beforehand, and they evaluate alternatives according to the final proposal that would result. Working backwards from the final vote when all votes are sincere reveals the meaning of prior alternatives. Alternatives involving the final proposal are assumed to be equivalent (i.e., a vote for the Anderson amendment is a vote for the Erlenborn substitute amendment with a higher wage level), and the location of unsuccessful amendments presumably reflect legislators' expectations about the location of the proposals that would have resulted if the amendment passed (i.e., the sophisticated equivalents of the subgames not chosen).

Both assumptions require that legislators know at least some of the agenda in advance and be able to vote according to expectations about final outcomes. The first interpretation requires only that legislators be able to anticipate the portion of the agenda involving the final preferred outcome. (Unexpected votes may affect the sequence of votes required to produce the most preferred policy, but if legislators can identify the votes involving the preferred policy proposal legislators they can identify the voting behavior required to achieve the preferred proposal.) The second interpretation demands that legislators know the agenda beforehand and that they be able to evaluate the consequences of every vote in terms of the final proposal (i.e., use backwards induction).

Although these behavioral assumptions are perhaps reasonable, is there evidence that legislators vote in such a manner? In prior work, Volden (1998) finds evidence of sophisticated voting on the votes to amend the FLSA in the House 1989 (101st Congress) and while it may not be true for every instance of lawmaking, there are three reasons why parties, congressional study groups, and individual members were likely able to construct the expectations required by at least the weaker assumption of legislator behavior which would justify the constraints in the case of the FLSA.¹²

¹²Wilkerson (1991) argues that senators voting on the 95th Congress voted sincerely because the agenda was neither fixed nor known ahead of time due to the lack of a unanimous consent agreement limiting debate and the presence of a vote on an unprinted amendment by Sen. Dominici. Even so, members may anticipate the agenda even in the absence of a UCA limiting amendments and the actions of Sen. Dominici may have been predictable given Sen. Dominici's well-known positions on the issue.

First, the issue of the minimum wage was given prominent attention by the national media and interest groups over the 360 months I examine. The median number of stories in the *New York Times*, *Washington Post*, and *Wall Street Journal* discussing the minimum wage each month is 20, and the median number of stories increases to 47 in months when a roll call occurs.¹³ While it is difficult to conclude how attentive proponents and opponents of the proposed changes were based on this measure, the coverage provides suggestive evidence of the saliency of the issue.

Second, the Congressional Research Service and congressional committees routinely circulated detailed reports on the proposals to amend the FLSA. For example, one month before the votes involving H.R. 7130 in Figure 1, a report comparing the proposals involved in the policy debate entitled “Proposed Fair Labor Standards Amendments of 1971: Comparison of Principal Provisions of S. 1861 (As reported by the Subcommittee on Labor), S. 2259, H.R. 7130 (As Reported), and H.R. 14104” was published for legislators.

Third, the congressional calendar reveals that many of the votes occurred on the same day. (Table 2 in the online appendix lists the dates of every vote.) The fact that there were no great delays once legislation reached the floor suggests that there was not a large change in expectations that would cause the process to be interrupted and reevaluated by floor leaders in the House and Senate.

To illustrate the effect of the constraints, consider the likelihood for legislator i for the first two votes depicted in Figure 1. The likelihood function of the statistical model is identical to the estimator typically used to analyze legislator voting behavior, but with a set of (possible) equality constraints on the alternatives being voted upon (see Clinton and Meirowitz 2003, 2004 and Jeong 2008 for more details). The likelihood function for the unconstrained estimator is:

$$\begin{aligned} & \prod_{i=1}^N (\Lambda^{-1}(- (x_i - \theta_{y(1)})^2 + (x_i - \theta_{n(1)})^2))^{y_{i1}} \\ & \times (1 - \Lambda^{-1}(- (x_i - \theta_{y(1)})^2 + (x_i - \theta_{n(1)})^2))^{1-y_{i1}} \\ & \times (\Lambda^{-1}(- (x_i - \theta_{y(2)})^2 + (x_i - \theta_{n(2)})^2))^{y_{i2}} \\ & \times (1 - \Lambda^{-1}(- (x_i - \theta_{y(2)})^2 + (x_i - \theta_{n(2)})^2))^{1-y_{i2}}. \end{aligned}$$

¹³The pairwise correlations between the three individual series was in excess of .723. The precise search terms used in these queries was: ‘‘minimum wage’’ AND (‘‘house’’ OR ‘‘senate’’ OR ‘‘congress’’) in citation and document text, AND NOT (‘‘display ad’’ OR ‘‘classified ad’’ OR ‘‘table of contents’’) in citation and abstract.

Imposing the constraint $\theta_{y(1)} = \theta_{n(2)}$ yields:

$$\begin{aligned} & \prod_{i=1}^N (\Lambda^{-1}(- (x_i - \theta_{y(1)})^2 + (x_i - \theta_{n(1)})^2))^{y_{i1}} \\ & \times (1 - \Lambda^{-1}(- (x_i - \theta_{y(1)})^2 + (x_i - \theta_{n(1)})^2))^{1-y_{i1}} \\ & \times (\Lambda^{-1}(- (x_i - \theta_{y(2)})^2 + (x_i - \theta_{y(1)})^2))^{y_{i2}} \\ & \times (1 - \Lambda^{-1}(- (x_i - \theta_{y(2)})^2 + (x_i - \theta_{y(1)})^2))^{1-y_{i2}}. \end{aligned}$$

Because alternatives involving the final proposal are assumed to be perceived as reflecting the same proposal by legislators, imposing the constraints reduces the number of estimated parameters from $5 \times 2 = 10$ to 7 for the agenda in Figure 1. Over the time period I examine, whereas analyzing 114 votes typically results in the estimation of 228 vote parameters (two for each vote), the constraints listed in the appendix reduces the number of estimated alternatives to 112.

To compare the estimates across time, I assume ideal points are constant within a chamber but ideal points may change if the member changes party or is elected to another chamber. This assumption is consistent with Poole and Rosenthal’s (1997) finding that members are ideologically stable. The temporal overlap for the period I examine is considerable: nine representatives and seven senators vote in all seven congresses with a roll call on the FLSA, 365 representatives and 105 senators vote in at least three congresses, 455 representatives and 86 senators vote in two congresses, and 497 representatives and 73 senators vote in a single congress. This assumption aids in the recovery of ideal points because votes across time are used to estimate legislators’ ideal points. Bridging the estimates across time using ideal points also allows the status quo to change in unspecified ways over time to reflect the effects of inflation, the changing business environment, and other external events (e.g., Watergate). Interchamber and interbranch comparisons are possible because the president and the two chambers sometimes vote on identical proposals (e.g., conference reports) and the president sometimes take public positions on issues before Congress—for example, the Erlenborn substitute amendment discussed in Figure 1 was President Nixon’s public proposal.

I estimate the model using MCMC and Metropolis sampling. The estimates are based on thinning 500,000 iterations by 200 and using the first 200,000 as “burn-in;” statistical tests indicate the posterior is from a stationary distribution and that convergence was achieved.¹⁴ Estimates were post-processed to normalize \hat{x} to have mean

¹⁴Testing the posterior draws using the diagnostic tests of Heidelberg and Welch as well as the Geweke test reveal that all parameters converged to a stationary distribution.

0 and variance 1 to fix the scale of the policy space. The online appendix contains an extensive discussion of the model and the robustness of the results, including: the code and priors used to fit the model, an assessment of model fit, a simulation study showing that the constrained estimator can recover true parameter values, a comparison of the constrained and unconstrained proposal locations, an exploration of the relationship between the Common Space (Poole 1998) outcome locations and those resulting from the constrained estimator, and the results from a model that only imposes constraints on votes involving the final proposals and conference reports. The constrained model predicts nearly as well as the unconstrained model despite estimating fewer parameters which suggests that the equality constraints are not rejected by the data.

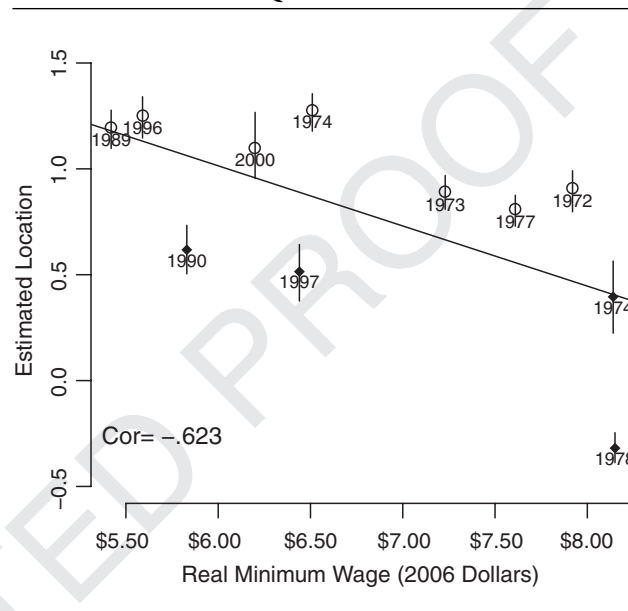
Analyzing Policy Change on the FLSA

Three questions guide the characterization of lawmaking in this section: (1) which, if any, of the various models in the first section best predict when change occurs?, (2) which, if any, of the models best predict the location of successful proposals, and (3) are there systematic differences between the predictions and observed activity which might suggest important aspects are currently absent from dominant lawmaking accounts? The goal is not just to identify how lawmaking on the FLSA compares to the predictions of the first section, but to also use the novel characterization to determine whether aspects require further attention as we attempt to better understand the nature of lawmaking.

Before characterizing lawmaking involving the FLSA, I first compare the estimated proposal and status quo locations to the real minimum wage to examine the plausibility of the estimates and determine if the variation in the estimated policy and status quo locations reflects differences in the real hourly minimum wage. Nothing ensures that a relationship between the estimated policy locations and the real minimum wage exists because information about the real wage is not used by the estimator and the proposal and status quo locations are unconstrained (temporal comparability of the estimates is achieved by constraining ideal points). The location estimates are based entirely on the implied perceptions of legislators given their voting behavior and the imposed constraints noted in Table 2 of the Appendix.

Figure 2 plots the real wage, in 2006 dollars, against the estimated status quos (open circles) and final policy

FIGURE 2 REAL WAGES AND ESTIMATED PROPOSAL & STATUS QUO LOCATIONS: 1971–2000



Enacted proposals are plotted in solid, and status quos during periods of floor activity are plotted using open circles.

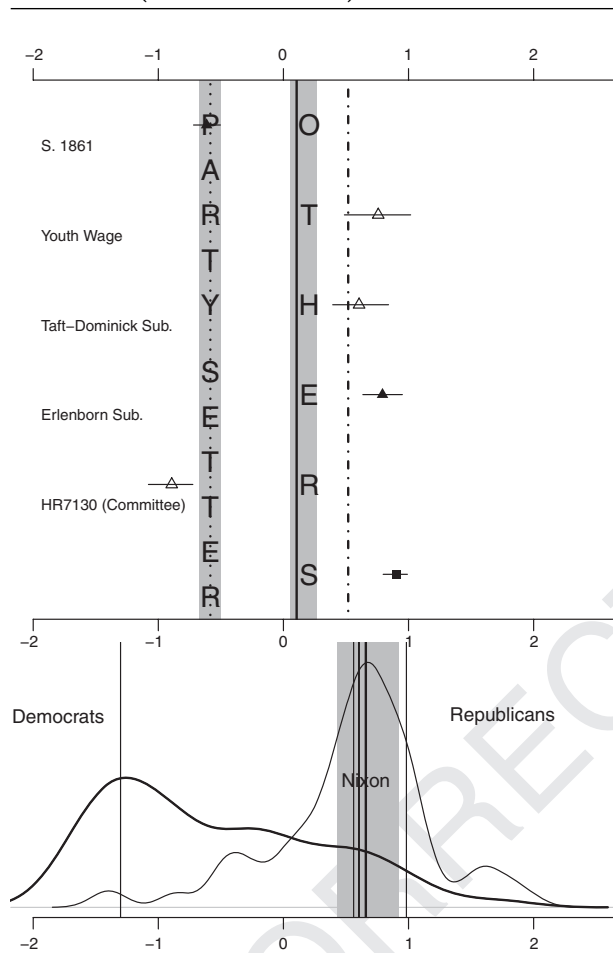
outcomes (solid triangles). Consistent with the fact that more conservative policy locations (i.e., positive estimates) correspond to lower real wages, there is a strong negative relationship between the two series (correlation of $-.62$). (In fact, if we look only at the relationship among the seven status quos during periods of floor activity and omit the final proposal locations the correlation is $-.85$.) Comparing the locations of successful proposals and status quos reassuringly reveals that amendments to the FLSA increase the real wage and move policy in a liberal direction. The fact that the proposals are almost always estimated to be relatively conservative (i.e., > 0) implies that aspects besides the wage rate are also important for determining the location of the policy (e.g., the extent of coverage, indexing).

Lawmaking in the 92nd Congress, 1971–72

To further explore the estimates' substantive reasonability and illustrate how the estimates provide a novel characterization of lawmaking, consider the estimates associated with lawmaking activity involving the FLSA depicted in Figure 1.

The bottom graph in Figure 3 presents the distribution of Republican (thin) and Democrat (thick) ideal points in the House and Senate based on votes involving the FLSA proposals. The vertical lines denote the ideal points of critical participants in journalistic accounts: the

**FIGURE 3 KEY LAWMAKING ACTIVITY IN 1972
(92ND CONGRESS)**



The top figure graphs the location of the status quo (solid square), key unsuccessful proposals (open triangles) and successful proposals (solid triangles) relative to the Democratic House median (dotted line), chamber median (solid line), and veto-override pivot (dashed line). The region where the outcome predicted by the party agenda-setter model should occur given the uncertainty in the estimation of the status quo and pivots is labelled accordingly. The majoritarian, supermajoritarian, party gatekeeping models, and supermajoritarian party gatekeeping all predict an outcome in the region labelled “Others.” The bottom graph presents the distribution of Democrat (thick) and Republican (thin) ideal points in the estimated space, the region where President Nixon’s ideal point is estimated to lie, and the estimated ideal point of key congressional actors according to journalistic narratives.

estimated ideal policy of John Dent—Chairman of the House Education and Labor committee and the sponsor of H.R. 7130—is given by the vertical line located in the liberal tail of the estimated distribution of Democratic preferences, and the vertical lines in the midst of the Republican distribution designate the location of Senators Taft (R, OH), Dominick (R, CO), Buckley (Conservative/R, NY), and Representative Erlenborn (R, IL). The

shaded region denotes the 95% credible interval for President Nixon’s ideal point.¹⁵

The top graph in Figure 3 contains the estimated alternatives being voted upon on the same scale as the lawmakers’ ideal points graphed in the bottom graph. The estimated location of the status quo—the FLSA as amended in 1966 after being affected by the effects of inflation and other influences in the period between 1966 and 1971—is graphed by the solid square (the line segment denotes the 95 % credible interval). The status quo is assumed to be the location associated with the votes in the House to oppose passage of HR 7130 as amended and the location associated with the House’s decision to twice reject to conference with the Senate to resolve differences in the bills passed by the House and Senate. The solid vertical line denotes the location of the House median, the dashed line denotes the location of the veto override pivot, and the dotted line indicates the ideal point of the median Democrat in the House.

Given the location of the estimated status quo, the predicted policy outcome according to the majoritarian, supermajoritarian, party gatekeeping, supermajoritarian party gatekeeping, and party agenda-setter models described in the first section are graphed and labeled in Figure 3. The predictions are ranges rather than points because of uncertainty in the estimated location of the status quo and pivotal actors. The majoritarian, supermajoritarian, party gatekeeping, and supermajoritarian party gatekeeping models all predict an outcome within the shaded area labelled “Others” given the uncertainty in the estimated locations of the status quo, chamber median, and veto override pivot. In contrast, the party agenda-setter model predicts that the median Democrat in the House can use the extremity of the status quo relative to the chamber median to enact their most preferred policy and achieve an outcome in the shaded area labelled “Party Setter.”

The empirical characterization of lawmaking in Figure 3 is revealing and two tentative conclusions emerge. First, given the extremity of the status quo, every lawmaking model summarized in the first section predicts that policy change should occur in 1972. In reality, no change occurred. Both chambers were able to pass legislation—the House passed H.R. 7130 as amended by the once-amended Erlenborn substitute amendment and the Senate passed S. 1861—but the House and Senate refused to compromise and the status quo prevailed. Consistent with the dramatic differences in the proposals passed in the House (“Erlenborn Sub.”) and Senate (“S. 1861”)

¹⁵The increased uncertainty results from the fact that Nixon takes fewer positions than most members of Congress.

evident in Figure 3, and given public proclamations by Rep. John Dent about the need to fix the discrepancy in conference committee to favor the provisions of the Senate bill, the House refused to conference with the Senate.¹⁶

Second, the proposals that are predicted by the lawmaking models do not match the estimated activity. Two proposals are broadly consistent with the party setter model, but neither became law. The bill that was reported out of committee in the House (H.R. 7130) is estimated to lie between the ideal policy of the Committee Chair and bill sponsor Rep. John Dent and the ideal policy of the median Democrat. The bill reported out of the Senate Labor and Public Welfare Committee (S. 1861) lacked the youth wage provision critical to Nixon's proposal and it increased the hourly wage and the number of workers covered. That S. 1861 and H.R. 7130 are estimated to have similar locations is noteworthy because the content of the proposals was nearly equivalent (in fact, S. 1861 was partially prompted by the defeat of H.R. 7130 by the Erlenborn substitute amendment in the House).

The other major alternatives all represent incremental change over the status quo. The proposals are all also indistinguishable from the ideal policy preferred by President Nixon and more conservative than predicted by any of the considered models. In the House, the final proposal labelled "Erlenborn Sub." in Figure 3 was the once-amended substitute amendment proposed by Erlenborn that contained the proposals insisted upon by President Nixon (but with a higher wage step because of Anderson's successful amendment). In the Senate, Senators Taft (R, OH) and Dominick (R, CO) proposed a substitute amendment containing the essential provisions of the Erlenborn substitute amendment (i.e., H.R. 7130 as adopted in the House) to S. 1861, but Sen. George McGovern returned from vacationing in South Dakota to help defeat the substitute amendment by a vote of 46-47. The fact that the locations of the Taft-Dominick amendment in the Senate and the final House proposal are statistically indistinguishable even though the locations were unconstrained is reassuring for the ability of the estimates to capture the policy content of the proposals being voted upon. Relatedly, because the location of the unsuccessful alternative excluding youths from the minimum wage is also indistinguishable from the location of the Erlenborn

substitute amendment adopted in the House despite the higher minimum wage and more expansive coverage of S. 1861, the results suggest that the debate over whether youths should be paid the minimum wage appears to be a critical issue in the failure to amend the FLSA in 1972.

Estimates of Policy Change, 1971–2000

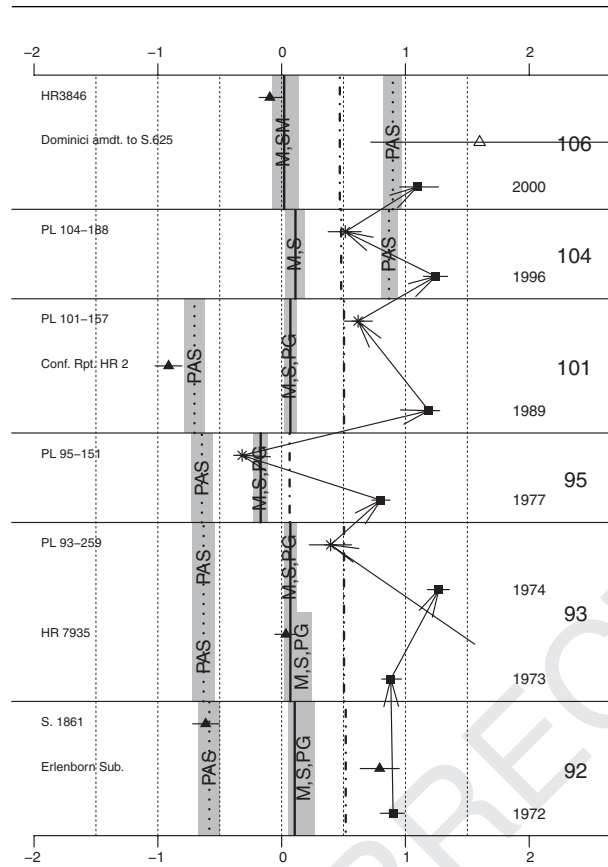
Having demonstrated the face validity of the estimates and characterized the lawmaking activity in 1972, I now examine the pattern of lawmaking evident between 1971 and 2000. I first assess the nature of policy outcomes from 1971 to 2000 for congresses in which floor activity occurs. The following section then examines whether change was possible in congresses for which no floor activity was observed. Ideally, the predictions listed in Table 1 would perfectly describe the estimated proposals we observe. Second best, the theories would correctly identify the constraints to lawmaking and predict when change occurs even if the nature of the change is difficult to predict. If systematic patterns emerge which are not accounted for by the dominant models in either of these analyses, the results help illuminate aspects that may help us improve our understanding of the dynamics of lawmaking

I begin by assessing the ability of the lawmaking models to predict policy outcomes by comparing the estimated location of enacted policy to the various predictions over time. Figure 4 compares the estimated status quo locations (solid squares with the horizontal line denoting the 95% credible regions) and the ideal points of the critical participants according to each lawmaking model. Asterisks denote the location of proposals that are enacted into law and the arrows track the policy change across time. A final proposal that fails to become law is denoted by a solid triangle if it passed at least one chamber, and an open triangle if not. The shaded regions denote the region where the policy change is predicted to lie according to the models in Table 1 given the estimated location of the status quo and the critical pivot(s) of each. The predictions are regions rather than points because of estimation uncertainty in the location of the status quo and the pivot(s).

Before considering the implications for lawmaking evident in Figure 4, it is first useful to compare the estimated locations to several prior investigations. Krehbiel and Rivers (1988) consider three votes on S. 1871 in the 95th Congress and conclude that the location of S. 1871 is indistinguishable from the Senate median. Wilkerson (1991) includes a fourth vote in the analysis (a vote on an

¹⁶As the *New York Times* reported, "Mr. Erlenborn noted that all the House Democratic conferees would be men who had voted against the Administration's proposal and for legislation closely resembling that approved by the Senate" (Rosenbaum 1972b), and it quoted Rep. Erlenborn as justifying the decision by saying "We can almost anticipate with certainty that the position of the House will not be adequately represented" (Rosenbaum 1972c). The decision was possibly affected by the publicized intention of President Nixon to veto S. 1861 should it reach his desk.

FIGURE 4 ESTIMATED FINAL PROPOSAL LOCATIONS, 1971-2001



The figure plots the location of successful (solid triangles) and unsuccessful (open triangles) final proposals as well as enacted public laws (asterisks) and status quos (solid squares). The years denote the date of the status quo and the lawmaking activity. The dashed line denotes the ideal policy of the relevant conservative pivot, the thick line denotes the location of the more conservative chamber median, and the dotted lines denote the median of the majority party in the House. The region where the policy outcome should be according to the majoritarian (M), supermajoritarian (S), party gatekeeping (PG) and party agenda-setter (PAS) models if change is possible are labelled accordingly. The predictions of the supermajoritarian party gatekeeping model is the more conservative prediction of the supermajoritarian and party gatekeeping models. The predictions are regions rather than points because of uncertainty in the estimation of the status quo and the key pivot.

amendment by Domenici that allowed for increases only through 1980) and finds the same relationship. The estimates of Figure 4 are reassuringly consistent with these conclusions—S. 1871 is indistinguishable from the chamber medians.¹⁷ While reassuring, an advantage of the

¹⁷S. 1871 became PL 95-151 when everything in H.R. 3744 but the enacting clause was stricken to insert S. 1871 in the Senate and the Senate version of H.R. 3744 was subsequently approved in both chambers.

method I employ is that I can provide a more extensive characterization of lawmaking activity because the estimator does not require the ability to order votes ex ante. Several conclusions are evident from Figure 4.

First, the policy predictions of the lawmaking models are nearly always observationally equivalent. Conditional on floor activity occurring, there is no ability to discriminate between the predictions of the majoritarian and supermajoritarian models given the relative extremity of the status quo. The predictions of the party gatekeeping model are indistinguishable from the majoritarian and supermajoritarian models for every Congress except the 104th and 106th when the party gatekeeping model predicts that policy change should not occur. Similarly, the supermajoritarian party gatekeeping model predicts the same outcome as the supermajoritarian model when the Democrats are the majority party (i.e., 1972–95) and the outcome of the party gatekeeping model when the Republicans are the majority party (i.e., 1996–2000). Only the proposals predicted by the party agenda-setter model—which is a model that few, if any, might subscribe to—can be regularly distinguished from the other predictions.

Second, successful activity occurs only when the status quo is extreme. Policy change is attempted on the floor only when the status quo is far more conservative than the most conservative pivot identified by the supermajoritarian model. Moreover, there are many instances where policy change is seemingly possible according to the models and change does not occur. The majoritarian, supermajoritarian, and party agenda-setter models predict that change should be possible in every Congress, but we observe failures in the 92nd, 93rd, 101st, and 106th Congresses. The party gatekeeping and supermajoritarian party gatekeeping models predict that policy change should occur in every Congress except the 104th and 106th Congresses, but we observe failures in the 92nd and 93rd and an unexpected policy change in the 104th.

Third, the policy change that is enacted does not consistently match the predictions of any of the canonical lawmaking models sketched in the first section. Only in one instance—in the 95th Congress (1977–78) following the election of President Carter—is the outcome estimated to be consistent with either the majoritarian or supermajoritarian models. At most, two outcomes are consistent with the predictions of the party gatekeeping and supermajoritarian party gatekeeping models—the lack of change in the 106th Congress and the change observed in the 95th Congress. Support for the party agenda-setter model is similarly anemic. While two proposals are possibly consistent with parties using power to propose large, nonmedian outcomes (S. 1861 in the 92nd

Congress and H.R. 2 in the 101st Congress), both were defeated by supermajoritarian considerations (bicameralism and a presidential veto, respectively). The lack of change in the 106th Congress is also possibly consistent with party agenda setting given the proximity of the status quo to the majority party median, but the change observed in the 104th Congress is more moderate than the party agenda-setter model predicts.

A benefit of estimating the location of successful and unsuccessful proposals is that it is possible to identify whether there is a pattern in the mistakes made by the predictions noted in Table 1 which might suggest aspects of lawmaking worthy of further exploration. One such finding is that successful policies are almost always closer to the conservative pivot than the median (e.g., PL 93-259 and PL 104-188). Proponents of policy change are frequently unable to move policy any more liberal than the most conservative pivot in the supermajoritarian model (i.e., the veto override pivot when facing a Republican president or the Senator required to invoke cloture). Policy outcomes are closer to the policies preferred by proponents of policy change than those most preferred by the conservative pivot only in the 95th Congress (PL 95-151), and even then the difference is small. Moreover, when the proponents for change do manage to pass a policy closer to their ideal point than the conservative pivot on the floor, the proposals ultimately fail to become law. This occurs in: 1972 (“S. 1861”), 1973 (“H.R. 7935”), 1989 (“Cong. Rpt. 2”), and 2000 (“H.R. 3846”). These patterns suggest that the pivotal legislator who is most favorably disposed towards the status quo may be more influential than existing models appreciate—not only is successful change frequently indistinguishable from the most preferred outcome of the conservative pivot, but when proposals are further from the conservative pivot than the status quo they fail to become law.¹⁸

Despite the difficulty of predicting the nature of policy change vis-à-vis lawmakers’ preferences evident in Figure 4, the models may do a better job predicting when change occurs. For the models of the first section, this involves determining whether policy change occurs when

¹⁸Given the nature and novelty of these results, the appendix examines aspects of the lawmaking activity and outcomes to validate these results. For example, the conservative outcomes in Figure 4 are consistent with the fact that the ratio of the federal minimum wage to the annual manufacturing wage never greatly increased over this time period; in 1968 the real federal minimum wage was more than half of the average real manufacturing wage (57%), but the enacted increases did almost nothing to prevent the deterioration of this ratio over time. For example, the last wage step from the amendment passed in 1974 was only 47% of the average manufacturing wage in 1976, and when the minimum wage step passed in the 95th Congress went into effect in January 1978 the new federal minimum wage was only 45% of the average manufacturing wage.

the status quo is sufficiently extreme so as to permit successful activity according to the models. Figure 4 reveals some failures to act on extreme status quos, but the examination is incomplete because it only considers congresses with roll-call activity. A complete examination requires characterizing the extremity of status quos across the entire period of 1971–2000.

The Timing of Successful Policy Change, 1971–2000

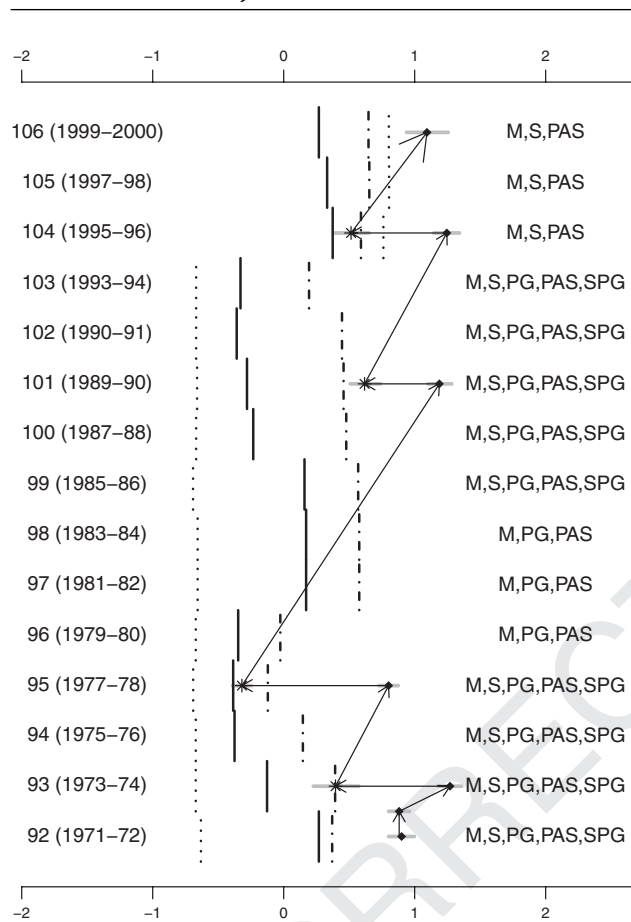
To assess the theories’ ability to predict policy change when proposals were not actively pursued requires estimating the location of the relevant pivots and the status quo in the absence of roll calls involving the FLSA (i.e., in the 94th, 96th–100th, 102nd, 103rd, and 105th Congresses). To do so, I estimate the relationship between the ideal points estimated using the estimator of the second section and the Common Space scores of Poole (1998). The latter span the entire time period, while the former exist only if a Congress takes a vote on the FLSA.

Regressing the Common Space scores on the FLSA ideal points from above reveals an intercept of $-.015$ (with a standard error of $.018$) and a slope of 2.07 (with a standard error of $.044$). These estimates reveal that the mean of the two ideal point distributions are identically zero, but whereas the Common Space scores span $[-1, 1]$, FLSA ideal points essentially span $[-2.07, 2.07]$. Not surprisingly, the relationship between the estimates is very strong (the R^2 is $.805$). I use this relationship to project the Common Space scores into the FLSA space analyzed in the second section to identify the location of the critical lawmaking pivots in the absence of any votes on the FLSA.

Figure 5 graphs the relationship between the status quos (diamonds) and public laws (asterisks) of Figure 4 alongside projections of: the conservative pivot in the supermajoritarian model (dashed line), the more conservative chamber median (solid line), and the median member of the majority party in the House (dotted). The arrows in Figure 5 connect the estimated status quos and successful policies across time assuming a linear drift.¹⁹ The text labels indicate whether policy change is possible in each Congress given the projected location of the status quo according to the majoritarian (M), supermajoritarian (S), party gatekeeping (PG) and party agenda-setter (PAS) models. Because the supermajoritarian party gatekeeping model is a combination of the supermajoritarian and party gatekeeping models, it predicts change only

¹⁹Consistent with this assumption, the appendix reveals how the real minimum wage decreases monotonically between periods of change in this period.

FIGURE 5 THE TIMING AND LOCATION OF POLICY CHANGE, 1971-2001



Trajectory (and 95% credible intervals) of FLSA policy across time based on estimated status quos (diamonds), enacted public laws (asterisks), and linear trends between amendments. Dashed lines denote the ideal policy of the relevant conservative pivot according to the supermajoritarian model, the thick lines denote the location of the House chamber median, and dotted line indicates the ideal point point of the median majority member in the House. The text labels indicate that policy change is possible given the projected location of the status quo according to the majoritarian (M), supermajoritarian (S), party gatekeeping (PG), party agenda-setter (PAS), and supermajoritarian party gatekeeping (SPG) models.

when both the supermajoritarian (S) and party gatekeeping (PG) models predict change.

Several conclusions about the timing of policy change emerge from Figure 5. First, policy change is predicted in almost every Congress by nearly every lawmaking model. Also, as was the case for the analysis in the second section, the lawmaking models are often observationally equivalent in terms of predicting the presence or absence of policy change. The majoritarian and party agenda-setter models predict change in every period because the status quo always differs from the ideal policy of the chamber median and majority party median. The party gatekeep-

ing model predicts change in every Congress but for those controlled by the Republicans (i.e., the 104th, 105th, and 106th) because the median Republican prefers the status quo to the policy most preferred by the chamber median. The supermajoritarian model predicts that change is only impossible for the two congresses following the change observed in the 95th Congress, and the supermajoritarian party gatekeeping predicts that change is impossible whenever change is impossible according to either the party gatekeeping or the supermajoritarian models (i.e., in the 96th, 97th 104th, 105th, and 106th Congresses).

Second, the change that does occur only happens when the status quo is considerably more conservative than the conservative pivot in the supermajoritarian models. More generally, the location of the status quo and enacted policies are always more conservative than the more conservative chamber median, and almost always more conservative than the more conservative pivot according to the supermajoritarian model (this is true for every Congress except the 96th and 97th Congresses (i.e., 1980-83).

Third, successful change occurs when status quos are extreme, but extreme status quos are not a sufficient condition for change because policy change is often never attempted despite a status quo being more conservative than the most conservative pivot in the supermajoritarian models. In fact, for 7 of the 15 congresses, the status quo is more conservative that the conservative pivot and change does not occur. Policy change clearly does not happen at the first opportunity for change and important omitted factors must explain why similarly extreme status quos do not receive similar legislative attention.

Tallying whether the presence or absence of policy change in a Congress is consistent with the lawmaking models reveals anemic support for the models. Because they predict change in every Congress, and change occurs only in the 93rd, 95th, 101st, and 104th Congresses, there is little support for the majoritarian and party agenda-setter models (i.e., 4 out of 15 instances correctly predicted). Because three out of four changes are also consistent with the party gatekeeping model (the change in the 104th is unexpected), as is the lack of change in the 105th and 106th Congresses the model correctly predicts five out of 15 outcomes. Because the four policy changes are consistent with the supermajoritarian model, as is the absence of change in the 96th, 97th, and 98th Congresses, the supermajoritarian model predicts seven out of the 15 outcomes. The supermajoritarian party gatekeeping model combining the two models predicts three out of nine policy changes and five out of six absences of policy change (8/15). Altogether, every considered lawmaking model overpredicts the incidence of policy change and

none of the models are able to significantly distinguish themselves from the others in terms of predicting the presence and absence of policy change—the best predicts the activity in eight of the 15 congresses (53%) and the worst correctly predicts the activity in four of the 15 congresses (27%).

Caveats, Interpretations, and Speculations

Analyzing lawmaking involving the Fair Labor Standards reveals a strong status quo bias. Policy change routinely fails to occur even though it appears possible according to dominant lawmaking models, and the observed policy change is often far more conservative than is predicted. The persistence of this finding across the time period I examine is reassuring, but the need to focus on the FLSA due to the novel nature of the analysis and the need to incorporate qualitative information in the estimation of proposal locations means I cannot evaluate how generalizable these findings might be. Moreover, the ability to replicate the investigation may face important limitations because the assumptions about strategic behavior involving the FLSA may not apply to other policies or periods. Even so, the results are important and constructive because of the ability to identify how observed proposals differ from the predictions of dominant lawmaking models.

While the estimated outcomes are at odds with predictions noted in Table 1, they are consistent with how individuals play related games in experimental laboratories. Laboratory examinations of how individuals play bargaining and agenda-setter games consistently reveal that the observed outcomes rarely match the predicted power of the proposers; observed outcomes often reflect the preferences of the nonproposers more than theory predicts (e.g., Diermeier and Morton 2005; Eavey and Miller 1984; Wilson 2008). Qualitatively similar results emerge from other related bargaining games—if responders can veto the proposal proposers do not benefit as much as predicted and there is often delayed agreement because of the unpredictability of the responders behavior (Palfrey 2009). The conservative outcomes I document are therefore consistent with experimental results and the status quo bias evident in each may suggest that although the lawmaking models may highlight some of the incentives and constraints relevant for understanding lawmaking, it may be useful to also consider other behavioral assumptions.

Even without considering alternative behavioral assumptions, the findings of the second and third sections prompt the question: why might there be a frequent unwillingness (or inability) to change an extreme status quo and why do enacted proposals produce only modest policy change? Despite the impossibility of providing a definitive explanation on the basis of examining a single lawmaking sequence, it is possible to speculate as to what the discrepancy between predicted and estimated outcomes might mean about the nature of lawmaking more generally.

One possibility is that the results I document represent a partial equilibrium. If lawmakers have preferences over a bundle of policies rather than individual policies and they allocate their efforts across a bundle of policies, the conservative changes to the FLSA may be due to proponents of change spending substantial resources on other issues on the agenda. For example, in the 95th Congress (1977–78), organized labor was defeated on a bill which would permit common situs picketing—an issue on which they deployed most of their legislative resources—immediately before the amendment to the FLSA was considered. It is unclear how the allocation of labor's resources and the defeat of this bill affected the outcome of the 1977 FLSA amendment (e.g., would indexing have been retained had labor spent more effort on legislative activity involving the FLSA?). Similarly, supporters may chose to deploy their resources in other issue areas with similar policy consequences such as the Earned Income Tax Credit or health care reform (as happened in 1992 during the 103rd Congress). If legislators care about a bundle of policies, the status quo bias I document may reflect the effort allocations of legislators and a similar status quo bias may not exist in other policy areas.

A second possibility is that while the lawmaking models described in the first section are static games, actual lawmaking is a dynamic process with inherited status quos and, in the case of the FLSA, status quos that are subject to a conservative drift and which become more conservative if no action is taken. Accounting for policy dynamics is likely consequential for several reasons (e.g., Volden's (2001) examination of a variant of the Romer-Rosenthal (1978) with an inflation-decayed status quo). First, the cost of failing to pass a policy outcome may differ for the proponents and opponents of policy change. For example, because an increasing number of advocates for increasing the FLSA were from states with minimum wage laws that exceeded the national standard over time, proponents may be less committed to change than opponents.

Second, important considerations that are currently ignored by dominant models be relevant for the type

of predicted policy change if lawmaking activity affects reelection prospects (and therefore the likelihood of retaining or acquiring majority party status in the next Congress); minority party members may be less likely to support a policy change if the change will greatly strengthen the electoral position of majority party members (or weaken their own). That electoral incentives may affect lawmaking is not a novel suggestion (see, for example, Ornstein and Mann 2000), but elections are commonly treated as influencing who is selected to participate in lawmaking rather than affecting the incentives that lawmakers have for agreeing to policy change in most lawmaking analyses. Although purely speculative, the persistent status quo bias I document may reflect a general unwillingness on the part of the minority to partake in actions that may strengthen the majority party. In terms of the models of the first section, electoral expectations may mean that the conservative pivot is not actually indifferent between a policy that is as far to the left from the conservative pivot as the status quo is to the right as the examined lawmaking models assume. (The lack of policy change despite the presence of an extreme status quo is also consistent with models of legislators bargaining before an electorate that will reward or punish them; e.g., Groseclose and McCarty 2001; Dellis 2007).²⁰

A final possibility is that the discrepancy is due to errors in the estimation rather than errors in the theory. However, the proposal estimates are consistent with the estimates of prior attempts to estimate minimum wage proposals using a subset of the votes in the 95th Congress (e.g., Krehbiel and Rivers 1986; Volden 1998; Wilkerson 1991). Moreover, the appendix contains an extensive series of examinations to validate the estimator and the substantive conclusions—comparing the real minimum wage to the average manufacturing wage and the impact of the enacted changes on the relationship; exploring the wage steps proposed in Congress over the period; and reviewing journalists' descriptions and accounts of lawmaking. While the results are not definitive, the results are consistent with the substantive findings I report in the article—proponents of policy change face repeated difficulties in enacting change and the magnitude of the enacted change is persistently modest compared to other wages and the relationship in earlier periods.

²⁰The bargaining breakdowns are consistent with the blame-game model of Groseclose and McCarty (2001), but my findings that the estimated outcomes are more conservative than the chamber median is not.

Conclusion

Exploring the nature of policy change is fundamental to political science. I use information about the legislative agenda and the proposals being voted upon to evade the pervasive difficulty of characterizing policy change relative to the preferences of critical actors and the status quo. This is important because while measures of “gridlock intervals” may identify potential constraints to change, they cannot easily characterize the nature of successful policy change or determine whether policy outcomes are consistent with theoretical predictions.

Analyzing lawmaking activity on the Fair Labor Standards Act across 30 years and measuring the location of the status quo relative to the resulting policy outcomes reveals that while supermajoritarian considerations are clearly important for lawmaking, several aspects of lawmaking involving the FLSA are inconsistent with the predictions of dominant lawmaking models. In general, lawmaking involving the Fair Labor Standards Act is far more resistant to change than current lawmaking models suggest. Not only are extreme status quos often left untouched by the legislative process, but when change occurs it is far smaller than predicted.

Existing models of congressional lawmaking may correctly highlight some lawmaking considerations, but the mismatch between predictions and estimated activity suggests that additional theoretical and empirical attention is required. A more extreme status quo policy than the pivots identified by supermajoritarian models may be a necessary condition for policy change, but it is not sufficient, and there are many instances where extreme status quos are left unchanged even after floor activity is initiated. Moreover, when policy change does occur, the outcome often reflects the policy preferences of the conservative pivot more than the chamber median. The modest policy change I document is contrary to the predictions of the canonical lawmaking models which all predict that proponents of change are able to achieve far more frequent and substantial policy changes.

Scientific progress requires a constant dialogue between theory and empirics. Theories generate predictions based on analytic simplifications to guide empirical research, and empirical investigations point uncover areas where current theories prove inadequate. I refine our understanding of congressional lawmaking by characterizing and analyzing activity related to the Fair Labor Standards Act using an estimator that recovers the perceived location of the status quo and policy proposals relative to member preferences. The disparity I find between the predictions of dominant lawmaking models and the

activity that is observed involving the Fair Labor standards act suggests that important aspects are absent from our models and that it may be difficult to explain either the timing or the nature of policy change without seeking possible aspects and incentives that might explain the apparent status quo bias that appears in both the timing and magnitude of policy change.

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Supporting Information

The following supporting information is available for this article:

Appendix: Congress, Lawmaking, and the Case of the Fair Labor Standards Act, 1971-2000

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