

Does Divided Government Matter?

The Clean Air Act and the Keystone XL Pipeline

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Introduction

In recent years, political scientists have argued that legislative gridlock is at levels never before seen in our Country's history [1]. The 113th Congress has been called the "least productive session" on record [2]. Such an extreme environment is conducive for examining the party control and lawmaking theories of David Mayhew. In Mayhew's seminal work, *Divided We Govern*, he proposes that partisan control of the United States (U.S.) government does not have a hindering effect on the ability to pass legislation. In this analysis, two environmental policies under divided government but with different approval outcomes are examined, the Clean Air Act of 1970 (CAA), and the more recent Keystone XL Pipeline (KXL) Approval Act, which held a vote in early 2015 during the 114th Congress. Using Mayhew's theories as a lens, this analysis will address the question, why did the CAA pass under divided control while the KXL did not?

Clean Air Act of 1970

The CAA was one of three assertive environmental measures passed in the late 1960s and early 1970s, the other two being the National Environmental Policy Act (1969) and the Clean Water Act (1972). The CAA set the precedent for federal and state regulation of air pollution emissions from stationary and mobile sources and also established the first national ambient air quality standards¹ [3]. Riding a wave of intense public support during the “activist era” of the 1960s and 1970s, the CAA passed almost unanimously (only one member voting against in the Democratic Congress) and was signed into law by Republican President Richard Nixon early in his first term.

Keystone Pipeline Approval Act

The proposed fourth-phase of the Keystone pipeline (also known as ‘Keystone XL’) is expected to buttress national energy security by increasing daily oil throughput between Canadian and U.S. refineries by roughly 86% using a wider diameter pipe (thus, the ‘XL’) and a more direct route [4]. However, construction of the KXL has been met with strong criticism from environmentalists and some members of Congress due to the associated environmental related risks, including those related to climate change [5]. In early 2015, under a divided government (Republican controlled Congress and Democratic executive leadership) both the U.S. House and Senate voted in favor of pipeline construction (266-153 and 62-36, respectively) [6, 7], but congressional support was met with a veto from President Barack Obama, citing potential threats to national security, safety, and the environment [8]. The senate was subsequently unable to override the veto with a two-thirds majority vote (62-37) [9].

Mayhew’s theories suggest that the CAA was passed under divided government because of

¹The CAA only considered short-lived pollutants and did not address man-made, long-lived climate change inducing greenhouse gasses (GHGs), such as carbon dioxide.

1) outspoken public support and 2) the accompaniment of a wave of associated environmental lawmaking, while the KXL was not passed under divided government due to 1) a lack of unified public interest and opinion and 2) a countering executive leadership agenda.

Timing and Public Mood

Influences from the outside world can be an important factor in lawmaking. Mayhew uses his aggregated policy data to argue that public mood has the largest and most statistically significant effect on congressional lawmaking [Ch. 7]. As such, public mood may certainly help influence the enactment of environmental policy, including the CAA and the KXL. Starting in the 1960s, liberal activism and literary works began to shift public views on the environment, including Rachel Carson's *Silent Spring*, an account of the deleterious effects of industrialization. The era's environmental movement perhaps climaxed in April, 1970 when nearly one million people observed the first Earth Day. A few months later, the ambitious CAA was passed by Congress and signed into law by President Nixon – an event juxtaposition that was unlikely to have occurred without overwhelming public demand for government activism to solve a widely visible increasing air quality problem.

While some direct air quality concerns are associated with the KXL, environmentalists have primarily been focused on the threat of increased greenhouse gas emissions the KXL would bring that would exacerbate global warming. Although it has been debated whether this claim has merit [e.g. 5], environmentalists and some Democratic minority members of Congress have adopted the KXL as a pivotal issue that stands as deterministic of the outcome of the Planet's future climate.

As in the case of the CAA, Mayhew notes that many bills that Congress passes generally have widespread appeal [Ch. 5, *Explaining the Patterns, I*]. A 2012 Stanford poll suggests that the majority of Americans (~ 80%) support legislation to reduce greenhouse gas emissions [10], however,

a 2013 Gallup poll paradoxically showed majority support for KXL construction, a project that is purported to increase greenhouse gas (GHG) emissions [11]. The same Gallup poll revealed only 29% were in opposition. Other polls showed additional support for construction [e.g. 12]. In this case, the conflicting moods about distant climate change risks may be due to the more near-term benefits to the public from the KXL, such as increase domestic energy security and lower consumer fuel prices [13]. While roughly 6 in 10 Americans believe climate change is beginning to occur, their concerns sit primarily with those related to present day water and air quality [14], both of which are more directly observable.

Executive Leadership

In Ch. 5, Mayhew claims that presidential leadership is a source of *alternative variation*; in other words, something that can contribute powerfully to lawmaking in both expected ways, such as a president disagreeing with Congress under divided control, and unexpected ways, such as a president disagreeing with Congress under unified control (e.g. during the John F. Kennedy and Harry Truman presidencies). The concept of *alternative variation* can explain the opposition to the KXL.

One could argue that Obama began his second term in office with the chance to become the first U.S. president to openly pursue reductions to man-made GHGs that intensify climate change. In his 2013 State of the Union Address, Obama made it clear that if Congress did not respond to the overwhelming evidence that greenhouse gases are warming the planet, he would use his executive authority to do so, saying “If Congress won’t act soon to protect future generations, I will” [15]. Clearly, these words were reflected two years later in Obama’s veto to oppose the KXL, at the time just his third veto since taking office in 2009.

Discussion

Despite being nearly half a century apart, the fate of both the CAA and the KXL Approval Act under divided governments can be elucidated using Mayhew's theories related to the public moods and executive leadership.

Mayhew describes government as something that "floats in public opinion", rising and falling when faced with issues from the outside world. In the 1970's, alarming deterioration of the environment and the emergence of activist public moods fueled a surge in liberal law making that continued into the early years of Nixon's first term. As a result of the public call for change, a wave of environmental laws were passed that included the CAA. Furthermore, in Ch. 5, Mayhew claims Congress and presidents can fall into the role of "problem-solvers", especially as a response to outside events. In this framework, if a particular treatable "problem" exists, government comes together to solve the issue, regardless of party control. Eventually, agreement emerges and a resolution is produced. Mayhew admits these particular "problems" are difficult to identify, but suggests that worsening air quality falls into this category. Given the majority congressional support for the KXL, including multiple Democrats who are often associated with protecting the environment, it is doubtful that concerns over increased GHG emissions due to the KXL were universally viewed as a "problem" to be remedied.

Obama's recent approval for arctic oil drilling [16] may call the executive leadership theory into question as this seems counter to his second term goals that involve addressing climate change. Additionally, Obama actually approved of a Gulf Coast extension of the Keystone pipeline at the end of his first term as president [17]. Obama's apparent indecisiveness on environmental issues is noteworthy because of his power to veto and approve legislation, as seen with the outcome of the KXL Approval Act. Having the 'final say' on legislation and the unpredictable nature of the 'final say' is chiefly what Mayhew's *alternative variation* concept highlights. In the case of the KXL,

it may be worthwhile to consider the outcome had the president in office been a Republican and government was subsequently unified. Would the KXL Approval Act been passed? Unless the hypothetical Republican president had a specific environmental agenda, the KXL would almost certainly have been signed into law. In this sense, the dividedness of government would matter.

Conclusion

In summary, Mayhew's theories suggest that the CAA was passed under divided government because of 1) outspoken public support and 2) a surge in liberal lawmaking, while the KXL was not passed under divided government due to 1) a lack of unified public interest and opinion and 2) a countering executive leadership agenda. The liberal activist era of the 1960s and 1970s and the problem-solving nature of government easily led to the passing of the CAA under a Democratic Congress and Republican president. In the case of the KXL, conflicting public, congressional, and executive opinions led to the failure of its approval, but highlights the importance of the presidential veto and its unpredictability.

President Obama may not be alone in his indecisiveness to weigh the importance of legislation that could be harmful to the environment, yet publicly popular due to economic and other benefits. Despite majority public approval for climate change mitigation legislation, polling reveals that the American public supports construction of the KXL, an outcome that would almost certainly increase the GHG emissions that cause global warming. This paradox more broadly brings attention to the thorniness related to climate change and political decision making. Specifically, should we sacrifice almost certain benefits today (e.g. domestic energy security, lower gas prices) for potential better prosperity in the distant future (i.e. one not threatened by the effects of catastrophic climate change)? As seen with the KXL, executive leadership may play a decisive role in the outcome of climate change related legislation.

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