

Congress, Lawmaking, and the Fair Labor Standards Act, 1971-2000*

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Abstract

Lawmaking studies and evaluations of competing accounts of policy change cannot easily assess the nature of policy change. Focusing on activity involving the Fair Labor Standards Act, I investigate how the magnitude of attempted and successful policy change varies between the 92nd Congress (1971-1972) and the 106th Congress (1999-2000). Using a new method of characterizing lawmaking activity I examine whether the incidence and magnitude of policy change is consistent with policy-motivated lawmakers over nearly thirty years (1971-2000). None of the leading accounts of congressional lawmaking receive robust support, and I find suggestive evidence that the political system is unable, or unwilling, to achieve policy change even when change appears possible. In so doing, I illustrate a means of characterizing lawmaking behavior that should prove useful for future inquiries.

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How and why policy change occurs is a question at the heart of political science. The question directly relates to the ability of government to translate public preferences into policy change and identify the possible constraints to and determinants of lawmaking activity. Many have attempted to provide descriptions of policy change as well as accounts of the conditions under which change is possible using a variety of analytical tools. Assessments of lawmaking have relied on both careful investigations of particular cases (e.g., Arnold 1990), counts and characterizations of lawmaking activity (e.g., Mayhew 1991) and large-n statistical studies drawing on a myriad of data sources (e.g., Baumgartner and Jones 1993; Krehbiel 1998; Cox and McCubbins 2005).

Partially a consequence of the importance of the question and the subsequent number of investigations into the nature of lawmaking activity, there exist a plethora of explanations for why policy change occurs. Some focus on the importance of parties (e.g., Conditional Party Government (e.g., Rohde 1991) and the Party Cartel model (e.g., Cox and McCubbins 2005)), others identify critical aspects of the institutional environment that need to be overcome (e.g., Krehbiel 1998; Brady and Volden 2006), some focus on the party composition of different branches and the incidence of divided government (e.g., Edwards, Barrett, and Peake 1997; Coleman 1999; Binder 2003), and still others hint at the possibility of vote-buying and the influence of interest groups (e.g., Grossman and Helpman 2001).¹

Despite an abundance of work analyzing lawmaking activity, a consensus has yet to emerge. In fact, even considering relatively similar accounts of the lawmaking process – e.g., “rational choice” models which assume very similar primitives – there exist strong disagreements about the interpretation of the measures being employed and the validity of the conclusions being reached. In part, this difficulty arises because such accounts depend critically upon the configuration of the policy preferences of critical actors as well as the location of the status quo policy relative to the ideal policy outcomes of these critical actors.

I make progress on this important task by focusing on the lawmaking activity related to the Fair Labor Standards Act (hereafter FLSA) over a thirty year period and providing a novel characterization of policy change using a methodology that can be generalized for other issues.² I examine

¹In fact, if we expand the set of possible explanations beyond what some term “institutional rational choice” theories the number of explanations expands dramatically – e.g., one policymaking text (Sabatier 1991) identifies no fewer than ten other theories of the policy process.

²I focus on congressional activity between 1971 and 2000 (92nd to 106th Congresses) for two reasons. First, prior to 1971, the last activity involved the 1966 FLSA amendments which involved issues related to race relations. As a

the nature of enacting coalitions as well as the content of successful and unsuccessful policy proposals; I identify when the status quo changed and I trace out the path of policy change across time. I use these characterizations to assess whether the attempted and realized policy change is consistent with the predictions from some of the dominant accounts of congressional lawmaking. Put differently, I determine whether the predicted restrictions on the ability to change the status quo satisfied, and if the magnitude of estimated policy change occurring on the FLSA between 1971 and 2000 is consistent with theoretical predictions. I am also able to identify reasons why the theories may be inadequate. Rather than simply testing the models' comparative predictive validity, the characterization of lawmaking is also diagnostic in the sense that it reveals how the observed lawmaking differs from predictions and it suggests aspects of the lawmaking environment that may receive inadequate theoretical attention. In particular, change does not always occur when predicted, and when it does occur the resulting policy outcomes do not reflect the preferences of critical participants as predicted. In general, the outcomes better reflect the preferences of the constraint to lawmaking rather than the proposers.

I focus on a single policy because so doing directly confronts the dynamics of policy change described by extant lawmaking models – assessing when and how a particular law is amended – and it also facilitates connecting qualitative accounts to the quantitative insights. The Fair Labor Standards Act is an appropriate focus for several reasons. Not only is it an undeniably 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 the measure of Clinton and Lapinski (2006), but subsequent amendments have also been highly ranked: 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. Because of the centrality of the FLSA to the policy agenda of the Democratic party and its importance to organized interests on both sides of the issue, there is a robust record of legislative activity on the FLSA – more than 140 votes between 1971 and 2000. Finally, the policy is particularly analytically tractable; not only is the status quo subject to inevitable conservative drift because of inflation, but it is also possible to sometimes use the numeric quantities often associated with proposed amendments to evaluate the magnitude of change. For consequence, it is likely that the activity involved more than one dimension and may have involved log rolls across different policy areas. Second, a series of institutional reforms in the early 1970s may have created a slightly different institutional environment and complicate the comparisons between the pre-reform and post-reform congresses.

these reasons, it has been the subject of many prior studies (e.g., Silberman and Durden 1976, Uri and Mixon 1980, Seltzer 1995, Norlund 1997, Krehbiel and Rivers 1988, Volden 1988, Sobel 1999, Waltman 2000, Levin-Waldman 2001).

The argument of the paper proceeds as follows. Section one summarizes extant models of congressional lawmaking and defines the conditions under it should be possible to amend the Fair Labor Standards Act and the predicted policy outcomes. Section two presents a method for estimating the induced policy preferences of lawmakers and the perceived location of the status quo policy and its proposed alternatives using the set of observed roll calls. Analyzing lawmaking activity on the FLSA between 1971 and 2000 in section three reveals that the empirical characterization differs from theoretical predictions in several systematic ways. I conclude the argument by discussing caveats to the analysis and what the results suggest about the nature of congressional lawmaking and future inquiries.

1 Explanations of Policy Change

Existing policy histories of attempts to establish and amend the minimum wage law provide detailed accounts of the circumstances surrounding legislative activity and inactivity (e.g., Seltzer 1995; Nordlund 1997; Waltman 2000; Levin-Waldman 2001), but it is difficult to disentangle the idiosyncratic and systematic elements of lawmaking from the accounts. In contrast, lawmaking theories employ strong simplifying assumptions and generate predictions about the conditions under which a status quo policy can be changed and the magnitude of the possible change at a very high level of generality to try to identify the most critical aspects of lawmaking. While not denying the importance of the former, the analysis that follows focuses on the latter.

I focus on two prominent lawmaking theories which both dominate the congressional politics literature and which share similar underlying assumptions about the nature of the policy space and participants' preferences. The models differ in terms of whether the separation of powers or the interests and incentives of political parties represent the largest impediment to policy change. It would be somewhat surprising for the sparse models to generate predictions that are confirmed by the data, but assessing whether there are systematic differences between the observed and predicted policy changes may suggest aspects of the lawmaking environment which receive inadequate

attention in the dominant congressional lawmaking models.

It is of second-order interest to examine variants of the lawmaking models which assume both positive and negative agenda control (i.e., whether proposals can be treated as being made under closed or open amending rules); insofar as we also care about evaluating the models' predictive validity, there is also ambiguity about whether the right model should presuppose positive agenda control on the part of critical actors (see, for example, Krehbiel (1998, pp. 24-25) and Cox and McCubbins 2005). Reading the rules governing the legislative proceedings does not adequately answer this question because it cannot identify whether, in equilibrium, members defer to agenda setters even when they could potentially offer an amendment.

In the presence of positive agenda control, the Cartel model (Cox and McCubbins 2005), the Pivot model (Krehbiel 1998; Brady and Volden 2006) and a "Cartel-Pivot" model combining the essential elements of both can all be interpreted as variants of Romer-Rosenthal's (1978) spatial agenda-setting model, but with differences in how influential certain participants are for lawmaking outcomes. Given the location of a conservative status quo q in a unidimensional policy space, the positive agenda control Cartel theory assumes the majority party median in the House, who cares only about policy outcomes and whose most-preferred policy outcome (ideal point) is denoted x_D if Democratic and x_R if Republican, makes a proposal that must be approved by the chamber median with ideal point x_M . If negative agenda control is assumed instead, the game form changes in that the majority party median decides only whether or not to allow the chamber median to make a proposal. The Pivot model can be interpreted as assuming that the median of the more conservative chamber makes a proposal that must be approved by the conservative pivot most responsible for constraining policy change with ideal point x_C – i.e., the senator needed to invoke cloture or the participant required to prevent a presidential veto (i.e., $x_C = \max(x_{S60}, \min(x_P, \max(x_{H66}, x_{S66})))$). So interpreted, the assumption of positive or negative agenda control is irrelevant for the Pivot model because the chamber median makes the proposal under either. The positive agenda control Cartel-Pivot model assumes that the median majority party member in the House makes a proposal that must be approved by the conservative pivot. The negative agenda control Cartel-Pivot model differs in that the majority party median decides whether or not to permit a proposal by the chamber median, with the resulting proposal needing the approval of the appropriate pivot as identified by the Pivot theory.

INSERT TABLE 1 ABOUT HERE

If participants' preferences are symmetric, and if $x_D < x_M < x_C < x_R < q$ as section three reveals, it is possible to derive the predicted equilibrium policies for each model.³ If the chamber median and the majority party median exercise positive agenda control, the predictions in the top-half of Table 1 result. The predictions in the bottom-half of Table 1 emerge for lawmaking under negative agenda control (i.e., x_M makes the proposal if legislative activity is permitted by the majority party median in the Cartel and Cartel-Pivot models). Note that if the status quo is sufficiently conservative, the predictions of the three accounts are observationally equivalent.

The frequent observational equivalence evident in Table 1 for an unknown status quo q poses severe problems for attempts to compare the predictive successes of the various models as the predicted policy change depends critically on the location of the existing status quo as well as the policy preferences of other critical participants. Without making very strong assumptions on either the location or the distribution of status quo policies it is impossible to adjudicate between the competing predictions if the location of the status quo is unknown.

2 Estimating Policy Change

To characterize lawmaking activity vis-a-vis the predictions of Table 1 requires the ability to identify the locations of the proposals being voted on relative to the preferences of critical lawmaking participants across both time and institutions. Focusing on a specific policy and taking advantage of available information about the proposals being voted upon provides useful information for estimating the location of the status quo q and the magnitude of proposed policy change.

Given the need to identify the location of the status quo q it might seem that an analysis of the Fair Labor Standards Act could follow Krehbiel and Rivers (1988) and use the substantive content of the proposals – i.e., real hourly minimum wage – to identify their location relative to the status quo, but this is impossible because many amendments are not susceptible to a numeric interpretation. Determining the relative location of two proposals that differ only in the proposed

³These models clearly do not exhaust the set of models generating similar predictions of policy change. For example, a model focusing only on constitutionally endowed veto-players (e.g., the House and Senate medians and the President (or veto-override pivots)) generates predictions that are equivalent to the Pivot theory when $x_P < x_{S60}$, and the median voter model predicts that policy change is always possible unless the status quo lies in the interior of the space spanned by the chamber medians.

wage level is easy, but it is less clear how the location of a proposal to adopt a youth wage compares to a small business exemption, or how a 50 cent increase in the nominal wage compares to a \$1 increase that is phased in over time.⁴

Fortunately, models commonly used to analyze roll call behavior provide a way to estimate the location of policy proposals even when the proposals do not involve numeric quantities. Following the model presented in 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 comparison of the utility received from the positions of the proposal associated with the vote's passage $\theta_{y(t)}$ and the proposal associated with its failure $\theta_{n(t)}$.⁵ Assume legislator i has an ideal point x_i which may reflect constituency preferences induced over the policy space. If x_i represents the ideal policy outcome for the legislator's constituency, it can measure the demand for policy change.

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} . Assumes further that members receive utility based on the (potentially sophisticated) positions. Assuming $\epsilon_{it} \sim N(0, 1)$ and defining $\alpha_t = \theta_{y(t)}^2 - \theta_{n(t)}^2$ and $\beta_t = 2(\theta_{y(t)} - \theta_{n(t)})$ yields the expression: $\Pr(y_{it} = 1 | x_i, \theta_{y(t)}, \theta_{n(t)}) = \Pr(\beta_t x_i - \alpha_t - \epsilon_{it} > 0) = \Phi(\beta_t x_i - \alpha_t)$ where Φ denotes the standard normal CDF. Assuming independence across both indices yields the likelihood: $L(\boldsymbol{\alpha}, \boldsymbol{\beta}, \mathbf{x} | \mathbf{y}) = \prod_{i=1}^L \prod_{t=1}^T \Phi(\beta_t x_i - \alpha_t)^{y_{it}} (1 - \Phi(\beta_t x_i - \alpha_t))^{1-y_{it}}$. (Although I do not actually estimate this version of the likelihood, I use it to highlight the similarities to existing work.)

Rather than assuming a single dimension underlies all congressional activity and every observed vote is informative for understanding activity on the FLSA, I only analyze votes directly related to attempts to amend the FLSA. Because I only analyze votes dealing directly with the FLSA between 1971 and 2000 – Appendix A lists the specific votes – I follow the results of Poole and Rosenthal's (1991) investigation of the dimensionality of minimum wage policies and impose the weaker assumption that only votes directly involving the FLSA are structured by a common under-

⁴Previous analyses of minimum wage legislation focus either on a particular vote to test accounts of legislative voting behavior or a sequence of votes in a single chamber of Congress (e.g., Silberman 1976; Uri and Mixon 1980; Krehbiel and Rivers 1988; Wilkerson 1991; Volden 1998; Sobel 1999; Dietz and Rothenberg 2003). Moreover, the work focuses largely, but not exclusively, on understanding the motivations behind the voting behavior of individual legislators rather than on assessing what the activity implies about the possible causes of policy change in Congress.

⁵Note that there is no explicit model of proposal activity and proposals may be motivated by a desire to publicly consider infeasible proposals. The statistical model assumes legislators vote according to their position-taking preferences over the sophisticated equivalents defined below.

lying dimension.⁶ One complication with identifying the votes of interest is that some proposals to amend the FLSA were explicitly considered in tandem with other legislation (e.g., the 1996 amendment to the FLSA reportedly passed because of a log roll involving a tax cut for small businesses). I do not analyze potentially, but not directly, related issues because it is difficult, if not impossible, to identify all of the potential log rolls involved with FLSA legislation. Insofar as votes on the minimum wage are partially determined by preferences on excluded votes and other considerations affect voting behavior besides the relative proximity of the positions being voted upon, such effects will be accounted for by the idiosyncratic error term ϵ_{it} .

Two vote-specific parameters are estimated in the typical 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}). Vote parameters are typically characterized using the cutpoint α_t/β_t (or a similar function based on a reparameterization of the likelihood which avoids the computational difficulties created by a Cauchy random variable (e.g., Bafumi et. al. 2005)), but the quadratic utility assumption parametrically identifies the proposal locations $\theta_y = \alpha_t/\beta_t + \beta_t/4$ and $\theta_n = \alpha_t/\beta_t - \beta_t/4$. These estimates can be interpreted as the implied spatial location of the alternatives being voted on given the observed voting behavior and behavioral voting model. Given the nature of the identification, scholars have been reluctant to use these, and similarly identified, estimates of proposal locations (see, for example, Poole and Rosenthal 1997, Appendix A). Moreover, these estimates also ignore the relationship between the outcomes being voted on. (Figure X in Appendix B explores the relationship between the Common Space DW-NOMINATE outcome locations and those resulting from the constrained estimator described below.)

Following the arguments of Clinton and Meirowitz (2003; 2004), and using information derived from the *Congressional Record*, *THOMAS* and accounts of legislative proceedings written by journalists and the Congressional Research Service, I identify how the positions being voted on are substantively related (e.g., substitute amendments, first and second degree amendments). These

⁶Excluding 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 non-germane 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., the activity in the 104th and 105th trying to amend the FLSA to provide for compensatory time off instead of overtime pay) that are excluded because it is unclear how they relate to the positions being voted upon in the other votes.

relationships define a set of relationships over the proposals being voted upon, which, in turn, identify the implied policy locations because some alternatives are involved in multiple votes.⁷ In terms of the likelihood function being estimated, the effect of these constraints is to define a set of equality constraints on the location parameters being estimated.⁸ (Note that the model is not fully structural in the traditional sense because the parameter constraints suggested by the equilibrium predictions in Table 1 are not imposed.)

To illustrate the nature of the constraints, Figure 1 depicts the agenda tree for the floor activity in the 92nd House on May 11, 1972 for H.R. 7130. The left-most agenda tree depicts the assumed relationships if the votes are analyzed using conventional roll call estimators (e.g., Heckman and Snyder 1996, Poole and Rosenthal 1997, and Clinton, Jackman and Rivers 2004). The agenda tree on the right depicts the relationship that results from incorporating information about the positions being voted upon assuming that legislators anticipate the consequences of the agenda.

INSERT FIGURE 1 ABOUT HERE

As the left-most agenda tree in Figure 1 makes clear, the assumptions implicit in standard roll call estimators do not impose any constraints on the positions of roll call votes; the success or failure of a vote does not imply anything about the positions associated with subsequent votes. Moreover, the timing of the votes is irrelevant; the likelihood function is insensitive to whether a second-degree amendment is voted on before or after the vote on the associated first-degree amendment even though the policy consequences (and therefore the meaning of supporting or opposing a particular position) of the ordering is critical. In contrast, the right-most agenda tree uses information about the proposals being voted on and assumptions about how they were perceived by legislators to define a series of relationships between the alternatives.

Considering the legislative activity depicted by Figure 1 reveals the source of the constraints

⁷An alternative approach would be to use information about the proposers. If we assume that proposer j of the amendment involved in vote t proposes their ideal point then $\theta_{y(t)} = x_j$ (and $\theta_{n(t)}$ is unconstrained). This is a very strong assumption because nothing implies that members propose their ideal policy. So long as members do not propose “killer” amendments, we know only that members prefer the proposal to the status quo. Inspecting the identity of those making proposals reveals a small set of legislators with well-known expertise in the area – e.g., Rep. Dent (D,PA), Rep. Erlenborn (R,IL), Sen. Taft (R,OH), Sen. Dominick (R,CO), Sen. Kennedy (D,MA) – and the proposals likely reflect strategic legislative considerations rather than ideal policy preferences. There is ample evidence in the *Congressional Record* that members sometimes propose compromise policies (see, for example, the post-veto activity in 1989).

⁸Figure 2 in the Appendix demonstrates the consequence of the imposed equality constraints in terms of the final policy outcomes.

imposed in the right-most agenda tree. After overwhelmingly approving the rule for H.R. 7130 which allowed for the consideration of Ranking Member of the House Education and Labor Committee Rep. Erlenborn's (R,IL) substitute amendment containing Pres. Nixon's proposed amendment to the FLSA, the 92nd House considered three second-degree amendments to the substitute amendment on May 11, 1972. The first vote was to adopt Anderson's amendment to Erlenborn's substitute amendment and define new wage levels. A yea vote was a vote for Erlenborn's amended amendment, $\theta_{Y(1)}$, and a vote against the secondary amendment was a vote for the unamended substitute amendment $\theta_{N(1)}$. Because the amendment succeeded 216 to 187, when voting on Rep. Randall's (D,MO) amendment to amend the substitute amendment and provide overtime to transit workers, a yea vote was a vote for the position denoted $\theta_{Y(2)}$ and a vote against was a vote for the substitute amendment as amended by Anderson ($\theta_{N(2)} = \theta_{Y(1)}$). The vote failed 186 to 206, as did the amendment by Rep. W.D. Ford (D,MI) to strike the youth wage provision from the once-amended substitute amendment. The latter vote involved positions associated with the once-amended substitute amendment excluding a youth wage $\theta_{Y(3)}$ and the once amended substitute amendment including a youth wage provision $\theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$. The House then voted to amend H.R. 7130 as reported by the House Committee on Education and Labor by substituting the once-amended substitute amendment 217-191. A yea vote on the adoption of the substitute amendments was a vote for $\theta_{Y(4)} = \theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$ and a nay vote implies a preference for the original committee proposal $\theta_{N(4)}$.

Complications emerge, however, 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 $\theta_{N(5)}$. Although normally true, accounts of congressional activity reveal this to be an incorrect characterization due to unique circumstances. In part, H.R. 7130 was passed by the lopsided vote of 330 to 78 because Northern Democrats vowed to fix the problem in conference committee where they could adjust the bill and force an up or down vote on the conference committee version. 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 likely a vote to simply push the process forward, I

do not constrain $\theta_{Y(5)}$. There is no evidence that these peculiar circumstances repeat themselves.

Imposing these parameter constraints requires assuming that members identically perceive the consequences of voting for and against various proposals. That is, when voting on Anderson's second-degree amendment, members anticipate the consequences of approving the policy – i.e., the subsequent rejections of the second-degree amendments by Randall and Ford and the ultimate adoption of the substitute amendment. While conventional estimators of the left-most agenda tree assume that members identically perceive the consequences of voting yea and nay, the constraints implied by the right-most agenda tree result from also assuming that members evaluate the consequences of voting yea and nay according to their sophisticated equivalents. For the agenda tree depicted in Figure 1, this second assumption reduces the number of estimated parameters from $5 \times 2 = 10$ to 7. Over the time period I examine, 1971-2000, whereas analyzing 114 votes typically results in the estimation of 228 vote parameters (two for each vote), imposing the agenda constraints listed in Appendix A reduces the number of estimated vote parameters to 112.⁹

The assumption that legislators anticipate the future consequences of their voting behavior on proposals related to the FLSA is reasonable for two reasons.¹⁰ First, given the prominent attention to the issue by the national media and interest groups, legislators were likely especially aware of the stakes involved and the consequences of the roll call agenda. As suggestive evidence of the heightened media environment, Figure 2 graphs the total number of *New York Times*, *Washington Post*, and *Wall Street Journal Articles* stories discussing the minimum wage each month.¹¹ The vertical grey lines denote months in which roll call activity occurs. For the 360 months I examine,

⁹I focus primarily on congressional activity between 1971 and 2000 (92nd to 106th Congresses) because prior to 1971, the last activity – the 1966 FLSA Amendment – involved issues closely related to race relations. As a consequence, it is likely that the activity involved multiple policy dimensions and may have involved log rolls across different policy areas (see Poole and Rosenthal 1991). Moreover, a series of institutional reforms in the early 1970s may have created a slightly different institutional environment and complicate the comparisons between the pre-reform and post-reform congresses. Because 112 vote parameters are estimated from 114 votes, it is possible to relax the assumption that members identically perceive the consequences of voting yea and nay on some votes. It is also possible to permit a change in the status quo when it is likely that the stakes of policy changed (e.g., the location of voting yea likely changed between the adoption of Erlenborn's substitute amendment and the adoption of H.R. 7130). Similarly the location of the status quo policy likely changed in the midst of the debates during the 93rd Congress given the rampant inflation at the time. I use this substantive information to relax the relevant parameter constraints in both instances.

¹⁰This is slightly stronger than the typical assumption that vote parameters are identical for all members. Imposing the relationship constraints across votes assumes not only that members identically perceive the yea and nay locations (i.e., each vote generates a unique cutpoint), but also that members identically perceive the consequences of success and failure for the positions associated with subsequent votes.

¹¹The 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.

the median number of stories per month in these three papers is 20, and the median number of stories increases to 47 when a roll call occurs. It is difficult to reach conclusions regarding how supportive (or opposed) the various coalitions involved in the legislative process are, but this information graphed in Figure 2 provides suggestive evidence of the saliency of the issue to, at a minimum, the readership of three prominent national papers.

INSERT FIGURE 2 ABOUT HERE

Second, as Table 2 shows, many of the votes occur on the same day and the concentrated legislative activity in tandem with the salience of the issue likely focused legislators' attention.

INSERT TABLE 2 ABOUT HERE

In terms of the estimated likelihood function, the likelihood function is identical to the estimator typically used to analyze legislator voting behavior, with the only difference being that the legislative agenda is used to define a set of equality constraints on the estimated proposal parameters across votes (see Clinton and Meirowitz (2003; 2004) and Jeong (2008) for more details on the estimator). To illustrate, consider the likelihood function for the first two votes discussed in Figure 1. The likelihood function for the unconstrained estimator is as follows:

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

In contrast, the likelihood function for member voting behavior on the first two votes after imposing the equality constraint $\theta_{y(1)} = \theta_{n(2)}$ discussed above becomes:

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

To compare estimates across time and institutions requires two additional parameter constraints. To ensure that the estimates are temporally comparable, I assume members policy preferences' are constant within a chamber, but preferences may change if the member is elected to the other chamber or changes party. The temporal overlap is considerable for the period I examine: 9

representatives and 7 senators vote in all seven Congresses with roll call activity, 365 representatives and 105 senators vote in at least three congresses, 455 representatives and 86 senators vote in exactly two congresses, and only 497 representatives and 73 senators vote in a single congress. Because I constrain the preferences of legislators serving within a single chamber across time to achieve temporal comparability, I allow the location of the status quo in the policy space to change over time to account for the effects of inflation, the changing business environment, or other external events (e.g., Watergate). I do not, for example, constrain the status quo for the 95th Congress to be the location associated with the passage of PL 93-259 in the 93rd Congress.

Cross-chamber comparability is achieved using the fact that the House and Senate sometimes vote on identical proposals. That is, I assume that the yea location associated with the adoption of the conference report on S. 1871 in the 93rd Congress (1974) is identical in the House and Senate.¹² Imposing two such constraints per Congress establishes cross-chamber comparability (Rivers 2003). (As Appendix A makes clear, many votes involve at least one inter-chamber equality constraint.)

I estimate the model using MCMC and Metropolis sampling (Appendix B contains the code and diffuse priors used to generate the estimates). The estimates are based on thinning 500,000 iterations by 200 and using the first 200,000 as “burn-in;” estimates were post-processed to impose the normalization that $\hat{x} \sim N(0, 1)$ to identify the scale of the recovered policy space.¹³

3 A Statistical Analysis of Policy Change

I establish the substantive reasonability of the resulting estimates by comparing the estimated status quo locations to the real minimum hourly wage. Because the estimated status quo locations are unconstrained – temporal comparability of the estimates is achieved by constraining legislator ideal points — nothing ensures a relationship between the estimated status quo locations and the

¹²This is weaker than assuming that the vote parameters α_t and β_t (and the cutpoint for vote t) are equivalent. Assuming that the cutpoints of bills voted on in both the House and the Senate are equivalent assumes that *both* the yea and nay positions are identical even though the chamber moving first may affect the reversion point for the chamber moving second. For example, the outcome associated with defeating H.R. 7130 in the 92nd House was arguably the status quo, but a vote in in the 92nd Senate against the Taft-Dominick substitute amendment was effectively a vote for the more liberal policy being considered on the Senate floor (S. 1871).

¹³To assess model fit, I compare the model classification to the naive classification using the modal vote for every vote. Even though a single model is estimated, Appendix C reports the percent correctly classified for each Congress separately. Of some interest is the ratio of estimated parameters to roll call votes. Recall that the standard model estimates two parameters for every vote. Because of agenda constraints, the number of estimated parameters is considerably less (except for the 106th Congress, which, because of the additional parameters, has the best classification).

real minimum wage. The status quo locations are based entirely on the implied perceptions of legislators. Finding that more conservative status quo estimates are associated with lower real minimum wages therefore provides some evidence of the estimates' reasonability.

INSERT FIGURE 3 ABOUT HERE

Figure 3 plots the real wage, in 2006 dollars, against the estimated location of the status quo using the model described in section two. A very strong relationship, correlation of $-.844$, between the set of estimated status quo locations and the real wage level is clearly evident; more conservative status quo locations (i.e., positive estimates) occur when the real wage level is low. (Figure 1 in the Appendix replicates the analysis for additional outcome locations.) This provides some support for the plausibility of the resulting estimates.

3.1 Lawmaking in the 92nd Congress

To illustrate not only the possible characterizations of lawmaking activity that are possible using the estimator suggested in section two, but also to further establish the substantive reasonability of the resulting estimates, consider the estimated perceived locations associated with an amendment to the FLSA in 1972 during the 92nd Congress and discussed previously in section two.

The bottom graph in Figure 4 presents the distribution of Republican and Democratic induced preferences in the House (thin line) and Senate (thick line) based on observed voting on FLSA proposals. The vertical lines denote the estimated location of critical participants in journalistic accounts of the lawmaking activity: the 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, vertical lines located in the midst of the distribution of Republican preferences designate the location of Senators Taft (R, OH), Dominick (R, CO), Buckley (Conservative-R, NY), and Representative Erlenborn. The shaded region represents the 95% region estimated to contain President Nixon's ideal point.

INSERT FIGURE 4 ABOUT HERE

The top graph in Figure 4 compares the estimated proposal locations to lawmakers' estimated induced preferences. The estimated location of the status quo – the FLSA as amended in 1966 and

following the consequences of subsequent inflation – is graphed by the solid square, with the line segment designating the 95 % region of highest posterior density. The solid vertical line denotes the location of the more conservative chamber median (i.e., $\max\{\text{House median}, \text{Senate median}\}$), the dashed line denotes the location of the relevant conservative pivot, and the dotted line indicates the median of the Democrats in the House. The shaded region labeled “Pivot” characterizes the most liberal policy possible given the estimated location of the status quo and the conservative pivot accounting for the estimation uncertainty in each, while the shaded region labeled “cartel” reveals the most liberal policy possible given the status quo and the location of the chamber median. Because the “Pivot” and “cartel” regions are more liberal than the chamber median and the party median respectively, the predicted equilibrium policy outcome should be located at these medians in the presence of positive agenda setting, and at the the chamber median under negative agenda setting.

The characterization of lawmaking activity using the estimator of section two is quite revealing. Even though nothing constrains this to be true, the proposed amendment to the FLSA emerging out of the Democratically controlled committee is estimated to be nearly identical to the ideal policy of the Committee Chair, and sponsor of the amendment, Rep. John Dent. Moreover, the successful substitute amendment proposed by Erlenborn labelled “Erlenborn Sub.” in Figure 4 which included the amendments insisted to by President Nixon is not only slightly more liberal than the existing status quo, but it also appears to be more conservative than Nixon and Erlenborn apparently prefer. This suggests that Nixon’s proposal might have been strategically chosen with the expectation that ensuing compromises would adjust the initial bargaining position to the left.

After observing what transpired on the House floor, on May 24th the Senate Labor and Public Welfare Committee reported out a bill (S. 1861) which did not contain the youth wage critical to Nixon’s proposal and which increased both the nominal wage and the number of workers covered. As is evident from the top graph in Figure 4, the proposed policy was nearly identical to the proposal initially reported out of committee in the House and far more liberal than the final House proposal.

After rejecting a compromise proposal 81 to 4 on July 19th, the Senate considered S. 1861 the next day. Senators Taft (R, OH) and Dominick (R, CO) proposed a substitute amendment

that would effectively adopt HR 7130, but Sen. George McGovern returned from vacationing in South Dakota to help defeat the substitute amendment 46-47. It is reassuring that the estimated location of the Taft-Dominick amendment in the Senate and the final House version are statistically indistinguishable even though nothing ensured that these locations were equivalent. Moreover, an amendment to amend S. 1861 to include a youth wage provision was similarly defeated. By comparing the estimated location of the youth wage amendment, the Taft-Dominick amendment and the Erlenborn substitute amendment approved in the House, it is possible to conclude that the provision of a youth wage was the critical provision at issue – the location of S.1861 amended to include a youth wage is indistinguishable from the Erlenborn substitute amendment adopted in the House even though S.1861 also included a higher minimum wage and more expansive coverage. This characterization is very much supported by journalistic accounts of the lawmaking activity.

Given the proposals emerging from the House (“Erlenborn Sub.”) and Senate (“S. 1861”), and given public proclamations by Rep. John Dent about fixing the discrepancy in conference committee, the House refused to conference with the Senate. (Attempts to do so were defeated on August 1st and on October 3rd).¹⁴ The relative locations of the House and Senate proposals in Figure 4 clearly reveal why a majority in the House refused to conference with the Senate and face an up or down vote on a conference version which would assuredly favor the provisions of S. 1861 over the House proposal.

Abstracting away from the particulars discussed above reveals two conclusions. First, policy change was possible in the 92nd Congress – both chambers were able to pass legislation and the location of the status quo is relatively extreme – but the required compromises were never undertaken because of the apparent political posturing of both sides. Second, the observed lawmaking activity is inconsistent with any of the predictions listed in Table 1.

3.2 Characterizing Lawmaking Between 1971 and 2000

Having demonstrated the face-validity of the estimates and providing a detailed characterization of the activity occurring in 1972, I now turn to evaluate the general patterns of lawmaking across

¹⁴As 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 considered period. Assessing the predictions listed in Table 1 is straightforward: given the implied locations of the status quo and member preferences based on the observed voting behavior, do successful and unsuccessful proposals occur as predicted?

The results are most easily evident by examining how policy changes over time relative to the location of the status quo and the preferences of the critical participants in each Congress. Figure 5 graphs the estimated status quo locations (solid squares with the horizontal line denoting the 95% region of highest posterior density) as well as the preference estimates for the critical participants in each lawmaking theory.

The policy change predicted by the Pivot theory depends on the ideal points of the conservative pivot (dashed vertical line) and the more conservative chamber median (solid vertical line). The predicted path of policy change for the Cartel theory depends on the estimated location of the House median (not graphed because of its similarity to the more conservative chamber median), and the location of the median member of the Democratic party (left-most dotted vertical line) for all Congresses except the 104th and 106th Congresses. The right-most dotted vertical line graphs the the location of the Republican party median in the House which is potentially relevant for understanding activity in the 104th and 106th. Note that the expanding distance between the Democratic and Republican party medians over time reassuringly replicates the patten of increasingly polarized voting behavior noted by McCarty, Poole, and Rosenthal (2006) using only FLSA votes. The shaded regions labelled “P” and “C” denote the predicted location of the most liberal possible policy change under the Pivot and Cartel theory respectively accounting for the estimated uncertainty in the location of the status quo and the ideal point of the conservative pivot relevant for lawmaking. This is the location of the predicted policy outcome only if the relevant proposer assumed by each model (i.e., the chamber median or the majority party median) is more liberal than the graphed region – an event that does not occur in the data – or if the proposer is the constraint (as in the case of the 104th and 106th according to the Cartel model with positive agenda control). The plotted asterisks in Figure 5 denote the location of successful policy change and the arrow tracks the evolution of the status quo across time. The location of the final proposal in a chamber or congress is denoted by a solid triangle if it passed at least one chamber, and an open triangle if it did not.¹⁵

¹⁵Figure 2 in the appendix provides a more comprehensive characterization and graphs 34 salient proposals based

INSERT FIGURE 5 ABOUT HERE

Several conclusions are immediately evident from Figure 5.

First, change occurs when policy is relatively extreme – suggesting that legislative activity occurs when policy becomes sufficiently extreme. It is difficult to fully assess this claim because we can only characterize the location of the status quo conditional on observing roll call activity. As such, without using relationship in Figure 3 (along with the relationship between the real wage of successful proposals and the estimated locations of such) to extrapolate the location of the status quo for periods in which the status quo is not changed, it is impossible to estimate the status quo over the entire time period because information on legislators’ perceptions are available only when the issue is considered on the floor. Nonetheless, in every instance the status quo is estimated to be considerably more conservative than the relevant conservative pivot under any of the models.

Second, despite status quos that are estimated to be more conservative than the most conservative pivot according to any of the lawmaking models summarized in section one, policy change often does not occur. It did not occur in the 92nd (1971-1972), 106th (1999-2000) or the first session of the 93rd (1973). So long as the lawmaking models summarized in section one successfully identify the primary constraints to lawmaking, Figure 5 reveals that there is often no impediment to policy change in those congressional sessions in which roll call votes are observed according to the considered lawmaking theories because the status quo is estimated to be more conservative than the most conservative key participant.¹⁶ There are many times between 1971 and 2000 when constituency preferences appear to prefer an amendment to the FLSA to the status quo and change is either unrealized, or else more limited than is apparently preferred.¹⁷ Table 3 reveals that if we

on journalistic accounts of the time.

¹⁶This conclusion is clearly contingent on the observed activity; it is unclear whether the opportunity to change policy would exist in the 93rd Congress had policy been successfully changed in the 92nd Congress.

¹⁷In 2000 an increase in the minimum wage was immediately linked with the passage of additional tax breaks for employers. In fact, it received a relatively uncontentious reception in the 106th Congress because it was characterized in the press as “a monument to legislative logrolling” (Borrus, 1999). The referenced logroll was never consummated, but each chamber subsequently sought to combine the increase with other legislation: the Senate included an increase in minimum wage in the Bankruptcy Reform Act of 1999 (S. 625), and the House included an increase in the Small Business Tax Fairness Act of 2000 (H.R. 3081) – both of which Clinton threatened to veto. Neither became law because the other chamber failed to act before Congress adjourned. On August 28, 2000 and with a only a five-vote Republican majority in the House, Speaker of the House J. Dennis Hastert (R, IL) sent a letter proposing to work with President Clinton and increase the minimum wage. The resulting negotiations produced a series of suggested compromises on bills involving tax-deferred retirement accounts and tax breaks to help small business and encourage investment in poor urban areas in exchange for increasing the minimum wage by \$1. Rep. Traficant (D, OH) introduced a bill to increase the minimum wage (H.R. 5538) on October 25th and it was immediately incorporated into the House’s conference report on H.R. 2614 – the Certified Development Company Program Improvements Act

look only at whether each theory correctly predicts the incidence of change or not that each model correctly predicts only four out of the eight instances of observed activity.

INSERT TABLE 3 ABOUT HERE

Third, when policy change does occur, the resulting policy outcome is not correctly predicted. The 93rd (1974) and 101st (1989-1990) Congresses produced more conservative policy than any of the models predict under either positive or negative agenda control, and the change in the 104th Congress (1995-6) is more liberal than the Cartel model with positive agenda control predicts but more liberal than the Pivot model predicts. (In fact, with negative agenda control, policy change should be impossible in the 104th (1995-1996) and 106th (1999-2000) Congresses according to the Cartel and Cartel-Pivot models because the Republican median prefers the status quo to the policy that would be chosen by the chamber median.)

In the presence of negative agenda control all three models predict that the enacted policy should be indistinguishable from the preferences of the chamber median under Democratic majorities because the reflection point of the estimated status quos (denoted by the shaded region labelled “C”) are more conservative than the chamber median in every instance. In the presence of positive agenda control, because the reflection of the status quo about the chamber median is more liberal than the majority party median in every congress, the Cartel account predicts that successful proposals should always occur at the majority party median. Similarly, because the most liberal policy possible under the Pivot theory is either indistinguishable (in the case of the 92nd and 93rd Congress) or more liberal than the more conservative chamber median, the chamber median ought to be able to implement their preferences in every Congress. The composite Cartel-Pivot model predicts that policy should be as close to the Democratic party median as possible given the constraints of the Pivot theory when the Democrats are the majority party, and at the Republican party median when they are not. Because the shaded region designating the most liberal policy

of 1999. On a 207-200 vote, the House agreed to consider the conference report which was subsequently approved 237-174 on a largely party line vote. The Senate also considered the resulting bill contained proposed \$240 billion in tax cuts, a \$1 increase in the minimum wage rate over a two-year period, and \$28 billion for hospitals, HMOs and health care providers. The Senate took up the conference report on October 26th and discussions continued though October 31st. Perhaps because of Clinton’s threatened veto over the lack of tax breaks to finance new school construction and the amount of money being made available to HMOs, the Senate recessed for the November elections before approving the report, and it failed to consider the report after returning from recess and the minimum wage remained unchanged (until the Democrats held a majority in both the House and the Senate in the 110th Congress (2007-2008)).

possible under the Pivot theory is more liberal than the chamber median in every instance, successful policy should always be more liberal than the chamber median under Democratic majorities (only following Carter’s election in 1976 is it possible for the Democrats to enact the policy preferences of the median Democrat in the 95th Congress).

Instead, the resulting policy is almost always closer to the conservative constraint than the proposer. Put differently, there is no evidence that proposers are able to move policy substantially more liberal than the most conservative constraint identified by the Pivot model (i.e., the veto-override pivot). This pattern occurs in the second session of the 93rd Congress (1974), during the 101st Congress (1989-1990) and during the 104th Congress (1995-1996). Only in the 95th Congress when the Democrats controlled both branches of Congress and the Presidency is the resulting policy outcome closer to the proposer than the constraints predicted by the lawmaking theories. Relatedly, proposals that are approved in at least one chamber and which nonetheless fail to become law have the opposite characteristic – they are always closer to the proposer than the relevant conservative pivot. This occurs in: 1972 (“S. 1861”), 1973 (“HR 7935”), 1989 (“Cong. Rpt. 2”), and 2000 (“HR 3846”).

Although the circumstances do not match exactly, this pattern also seems to be present in experimental investigations of majoritarian bargaining (see, for example, Diermeier and Morton 2005) – suggesting that this may be indicative of a larger phenomena. Based on a single investigation, however, it is clearly impossible to identify the precise reasons for why the observed change is typically smaller than any of the models predict. It could be that the proponents of the policy change – many of whom are from states with minimum wage laws that exceed the national standard – are less committed to change than are the opponents to the change (i.e., the utility functions of supporters and opponents differ in ways not captured by existing models). It may also be that other considerations such as inter-branch bargaining or bargaining before an audience of potential voters and organized interests affect the realized outcome. Despite this limitation, it is nonetheless instructive to briefly consider the episodes of lawmaking graphed in Figure 5.

Consider the politics of the 93rd Congress. In the first session (1973), Congress approved an amendment to the FLSA in HR 7935 that was slightly more liberal than the median House member.¹⁸ The proposal is within the range as predicted by the Pivot theory and, contrary to

¹⁸Republicans, again led by Senators Taft and Dominick, tried unsuccessfully to amend the bill to align it with

actual events, the theory predicts that the veto-override pivot in Congress ought to have voted to override Nixon's veto given their indifference between the status quo policy and the status quo as amended by HR 7935.

Inflation continued its dramatic rise during these political maneuverings and the Consumer Price Index rose 8.8 % in 1973 alone. The resulting deterioration of the real wage is reflected in the conservative drift of the status quo between the first and second sessions of the 93rd Congress – indicated by the change in the location of the black squares plotted in Figure 5. Early in the second session, Nixon informed Congressional leaders that he was dropping his insistence on a youth wage provision. Legislative activity quickly followed: the Senate passed S. 2747, which did not include a provision for a youth wage, on March 3rd, the House passed S. 2747 in lieu of H.R. 12435 on March 20th, conferees agreed to a compromise bill on March 27th, both the House and the Senate agreed to the conference report the next day (by 345-50 and 71-19 respectively), and Nixon signed the bill into law on April 8th (PL 93-259). Even so, the estimated location of PL 93-259 is statistically indistinguishable from the estimated ideal policy of the veto-override pivot and it is nowhere near as liberal as either the Cartel or Pivot theories predict. Instead, the veto-override pivot appears binding and there is no evidence of the proposer according to either model (i.e., the chamber median in the Pivot model and the majority party median in the Cartel model) being able to benefit as a consequence of being afforded proposal rights.

A similar pattern occurs in 1989. Before then, the last successful amendment to the FLSA with roll call activity occurred in 1977 during the 95th Congress.¹⁹ On March 23, 1989 the House passed an amendment 248-171 on the 23rd despite President Bush's clear suggestions that the bill was unacceptable. In arguing for an (unsuccessful) substitute amendment, Rep. Penny (R, MN) remarked: "...the President has been very clear that he will veto any measure providing for more

President Nixon's expressed policy preferences. After the substitute amendment containing the administration's proposal failed on July 18th, Taft remarked "that the committee bill 'is about as certain to be vetoed as any I've seen here'" (*NYT*, 1973). As Taft predicted, Nixon vetoed the bill on September 6th, and the House fell 23 votes short of overriding the veto on September 19th.

¹⁹The FLSA was successfully amended in 1984 without a single recorded vote following the Supreme Court's decision to reverse its 1976 decision in *National League of Cities v. Usery* and allow Congress to regulate the working conditions of state and local government employees in February of 1984. Despite the existence of divided support on the issue – local government leaders and the related interests such as the United States Conference of Mayors and the National League of Cities were in favor and prominent labor unions such as the American Federation of State, County and Municipal Employees were strongly opposed – the FLSA was successfully amended by PL 99-150 without a single roll call in either chamber to allow non-volunteer state and local government employees to receive compensatory time off instead of overtime pay.

than \$4.25...I urge a vote for the Goodling substitue, the only substitute that will become law” (135 Cong Rec H 849, March 23, 1989).²⁰

Despite repeated claims about the inevitability of a veto, the Senate voted 62-37 to pass the proposal labelled “Conf. Rpt. HR 2” in Figure 5 and President Bush vetoed the bill within an hour of it reaching his desk on June 13th. An unsuccessful veto override was immediately attempted in the House, but it fell short 247 to 178.²¹ A series of negotiations throughout the summer and fall of 1989 between the Democratic leadership and President Bush resulted in new bills being quickly proposed and passed in each chamber. Bush signed the resulting legislation – denoted “PL 101-157” in Figure 5 – into law on November 17, 1989. Figure 5 reveals that the unsuccessful proposal (“Conf. Rpt. on HR 2”) represented a dramatic change relative to the existing policy, but the successful proposal (“PL 101-157”) represented a far more incremental change. Moreover, similar to the 1974 amendment, the change is nearly identical to the most-preferred policy of the veto-override pivot.

The minimum wage returned to the agenda in the 104th Congress after President Clinton proposed to increase the minimum wage in the 1995 State of the Union address. The proposal was initially characterized in the press as “largely symbolic since some leaders of the new Republican Congress are opposed to the very concept” (Purdum, 1995), but, by mid-April of 1996, twenty House Republicans, largely from the Northeast, joined with Democrats in publicly supporting an increase and pressure was building in the Republican House caucus to schedule a vote (Shogren, 1996). An increase was initially tied to a decrease in the gasoline tax in the House, but the implied logroll fell apart on the floor. The House voted overwhelmingly (414-10) to instead pass a bill relaxing tax requirements and government regulations for small businesses worth \$7 billion on May 23rd. Moderate Republicans voted with Democrats to pass the proposed minimum wage increase 354-72 and defeat Rep. Goodling’s (R, PA) amendment exempting small businesses with gross revenues of less than \$500,000 the following day (Goodling’s amendment was characterized as a “poison pill” by President Clinton).

²⁰Democrats acknowledged the symbolic nature of the vote. Rep. Ridge (D,PA), cosponsor of a successful amendment intermediate between the committee version of H.R. 2 and a just-defeated Republican substitute acknowledged “In this vote we will determine how many truly want to restore the minimum wage. This is not a final vote. This is the first step in a process” (135 Cong Rec H 861, March 22, 1989).

²¹After the failed override, the *Los Angeles Times* reported “it was not clear whether Democrats would seek to scale back the size of the increase...or simple allow the measure to languish and use the veto as a political issue” (Pine, 1989).

Partially a function of the leadership transition from Sen. Bob Dole to Sen. Trent Lott (R, MS), a vote on the proposed rate increase was delayed in the Senate. Despite threats by deputy Republican leader Sen. Don Nickles (R,OK) to keep the approved minimum wage increase from going to conference until concessions were extracted on a health insurance bill (Clymer 1996), the approved increase in the minimum wage was reported to conference without incidence and a compromise on the tax cuts negotiated by House Ways and Means Chairman Bill Archer (R, TX) and Senate Finance Chairman William V. Roth Jr (R, DE) in late July secured its passage (Hook, 1996). Following a pre-recess and pre-election flurry of activity, Clinton signed the increase into law in August of 1996 (PL 104-188). In terms of the estimates graphed in Figure 5, the passage of PL 101-157 in 1996 returned the spatial location of the FLSA to its 1989 location.

The departure from the pattern whereby successful change reflects the preferences of the conservative pivot identified by the Pivot and Cartel-Pivot theories occurred following the election of President Carter in 1976 during the 95th Congress. The initial proposal by Chair of the House Labor Standards Subcommittee John Dent (D, PA) was to increase the minimum wage to \$3 and index the wage at 60% of the manufacturing wage. After internal debate within his administration, Carter stunned labor on March 24th with his competing proposal to raise the wage to \$2.50, and to index subsequent increases at 50% of the manufacturing wage. A compromise to raise the minimum wage to \$2.65 and index the wage to 53% of the average manufacturing wage was announced on July 12th.

On July 19th, the House Education and Labor Committee approved a bill that was similar to the announced compromise (H.R. 3744), but the compromise could not be enacted on the House floor. Although the minimum wage increase was approved on a 309-96 vote on September 15, 1977, so too was Erlenborn's successful amendment eliminating indexing and the dramatic defeat of a youth wage amendment.²² Expressing his disapproval with the eventual House policy, George Meany, president of the A.F.L.-C.I.O. proclaimed: "we will be working just as hard in the Senate where we will seek to improve on the House version" (Shabecoff, 1977).

Following this activity in the House, Carter dropped his support for indexing to push for the

²²Originally receiving enough votes to pass in the House, the youth wage amendment was brought to a tie vote when Representatives Robert Giaimo (D, CT) and Tom Harkin (D, IA) switched their votes from "yea" to "nay." Speaker of the House Thomas O'Neill Jr. (D, MA) was then able to cast the deciding vote against the amendment. (The reason for the switch was reported in the *New York Times* thusly: " 'They told us we could have their votes if we really needed them,' one elated labor lobbyist said" (Shabecoff, 1977).)

higher wage level of the Senate bill. On October 6th, the Senate approved the bill after defeating attempts by Senators Bartlett (R, TX) and Tower (R, TX) to lower the hourly wage. After defeating four more attempts to provide for a youth wage, the Senate passed the proposal the next day. Conferees approved a compromise version largely in the Senate’s favor on October 14th. The Senate approved the compromise by voice vote on October 19th, and the House approved the proposal 236 to 187 the next day. On November 1st, Carter signed the bill into law (PL 95-151). As Figure 5 makes clear, the policy labelled “PL 95-151” is the only successful policy that is more liberal than the median policy preference of the more conservative chamber and the only successful proposal that is closer to the proposer than the relevant pivot. Even so, the actual events reveal that the outcome was far different from what was proposed.

4 Caveats

Before discussing the possible consequences of the findings, it is useful to identify some limitations of the analysis. So doing places the conclusions in their proper context and highlights how future work might contribute to the task of better understanding lawmaking.

First, due to both the novel nature of the analysis and the need to incorporate qualitative information in the quantitative analysis, a clear trade-off between scope and depth exists and I consequently focus on lawmaking involving the FLSA between 1971 and 2000. The persistence of the conclusions across the time period I examine is reassuring, but it is unclear whether the evident patterns evident extend either across time in terms of activity on the FLSA or to other issues.

Second, focusing on a single policy makes it impossible to investigate whether lawmakers care about a bundle of policies rather than a single policy (i.e., the results represent a partial equilibrium). Perhaps the realized FLSA outcomes reflect the fact that the proponents of an increase devoted political capital to other issues and were willing to accept more conservative amendments to the FLSA in return.²³ Alternatively, supporters of an increased minimum wage may have chosen 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 in the 103rd Congress).

²³For example, in the 95th Congress (1977-78), organized labor was dealt a strong defeat 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 consequently unclear how the allocation of labor’s resources and the defeat affected the outcome of the 1977 FLSA amendment (e.g., would indexing have been retained?).

Although these two possible circumstances are plausibly true, it is well-beyond the scope of the current paper given the difficulty in defining the set of relevant policies and replicating the above analysis for potentially linked policies. That said, even though these difficulties impose severe constraints on empirically-minded scholars, but they do not mitigate the plausibility of this possibility.

Finally, integrating qualitative information about the relationship between policy proposals into the statistical model requires “hard-wiring” constraints into the estimator described in section two. That some information is treated as being known with certainty is neither new or problematic – structural equation estimation involves many similar trade-offs – but it is a point that should be acknowledged. Although I think there are defensible reasons to do so, to be clear, some information is being privileged in the estimation. (Testing the equality constraints using the fact that the constrained estimator is nested within the unconstrained estimator reveals support for the imposed constraints (see also Figures 3 and 4 in the appendix).)

5 Conclusion

Understanding not only why governments decide pursue certain policy changes but also why the particular set of realized policy outcomes result are questions that are central to political science. The empirical characterizations of this paper reveals that outstanding questions remain in each.

I present a method by which it is possible to use information about the legislative agenda and the proposals being voted upon to evade the pervasive difficulty facing lawmaking studies of characterizing policy change relative to the preferences of critical actors and the status quo. Analyzing lawmaking activity on the Fair Labor Standards Act across thirty years and measuring the location of the status quo relative to the resulting policy outcomes reveals not only the inadequacy of existing models, but also exactly how enacted and predicted change differ. As a consequence, the empirical characterization charts several areas for future investigation.

First, the fact that the enacted policies are often closer to the estimated presidential preferences than expected is perhaps evidence of presidential influence beyond just the ability to veto legislation (see, for example, Canes-Wrone (2006) and Kernell (2006)). Inter-branch bargaining, and the potential difficulties of maintaining a coalition may introduce important aspects of lawmaking

that are beyond the scope of the three models that dominate the political science lawmaking literature. Accounting for congressional-presidential bargaining (e.g., Cameron 2000) and the fact that bargaining activity is often occurring in front of the electorate and observant interest groups may affect the nature of possible policy change in ways contrary to the complete information, one-shot agenda setting models currently employed by most of the literature (see, for example, Groseclose and McCarty 2001).

Second, lawmaking theories are also typically silent on the potential incentives for not enacting change when change is possible (but see Besley (2006), and Maskin and Tirole (2004)). Given the lack of change I document when change is apparently feasible, this silence is troubling. At present, it is unclear whether policy change does not occur when it is feasible because of uncertainty regarding the true policy preferences on the issue, because both sides wish to use the lack of progress as a campaign issue, or because the uncertainty associated with how the composition of the legislative environment may change in the upcoming election makes the compromise policy undesirable in light of the change that could be possible following the election – “locking in” an incremental policy change now may be undesirable if so doing precludes the ability to make larger changes in the next congress. Even so, the empirical characterization of lawmaking activity suggests that further attention should be devoted to these possibilities. More speculatively, the results may even indicate that constant anticipation of elections actually undermines the ability of institutions such as the U.S. Congress to legislate change.

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 the theories prove inadequate. By providing a method for characterizing lawmaking and analyzing the activity related to the Fair Labor Standards Act, I both provide a basis for additional empirical work to ensure that the evident conclusions are robust, and I highlight areas where additional theoretical guidance is required.

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Theory (Agenda Setting)	Dem. Majority	Rep. Majority
Pivot (+)	$\max(x_H, 2x_C - q)$	$\max(x_H, 2x_C - q)$
Cartel (+)	$\max(x_D, 2x_H - q)$	x_R
Cartel-Pivot (+)	$\max(x_D, 2x_C - q)$	x_R
Pivot (-)	$\max(x_H, 2x_C - q)$	$\max(x_H, 2x_C - q)$
Cartel (-)	x_H	x_H if $ x_H - x_R < x_R - q $ else q
Cartel-Pivot (-)	$\max(x_H, 2x_C - q)$	x_H if $ \max(x_H, 2x_C - q) - x_R < x_R - q $ else q

Table 1: PREDICTED LOCATIONS OF POLICY CHANGE IF $x_D < x_M < x_C < x_R < q$ by majority party control of the House of Representatives.

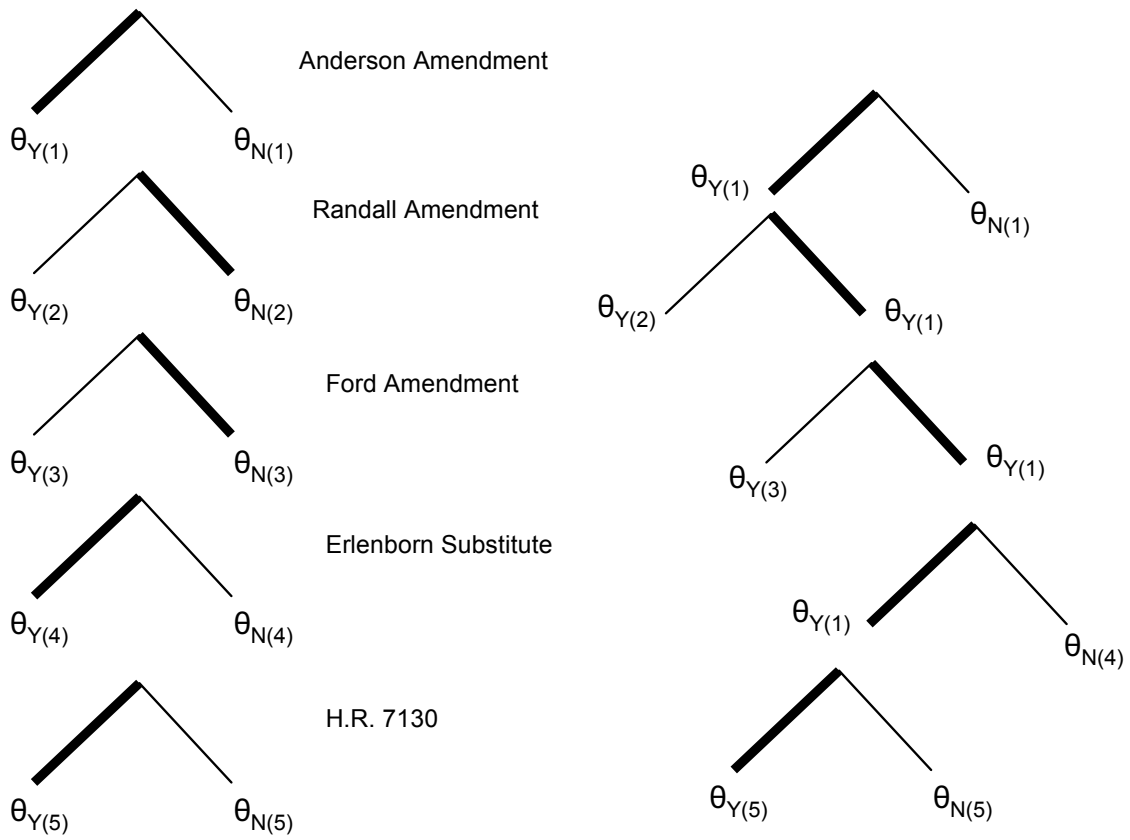


Figure 1: PARTIAL AGENDA TREE FOR H.R. 7130 (92ND HOUSE): Unconstrained (Constrained) parameters on the left (right); the outcome of the vote indicated by the thicker line.

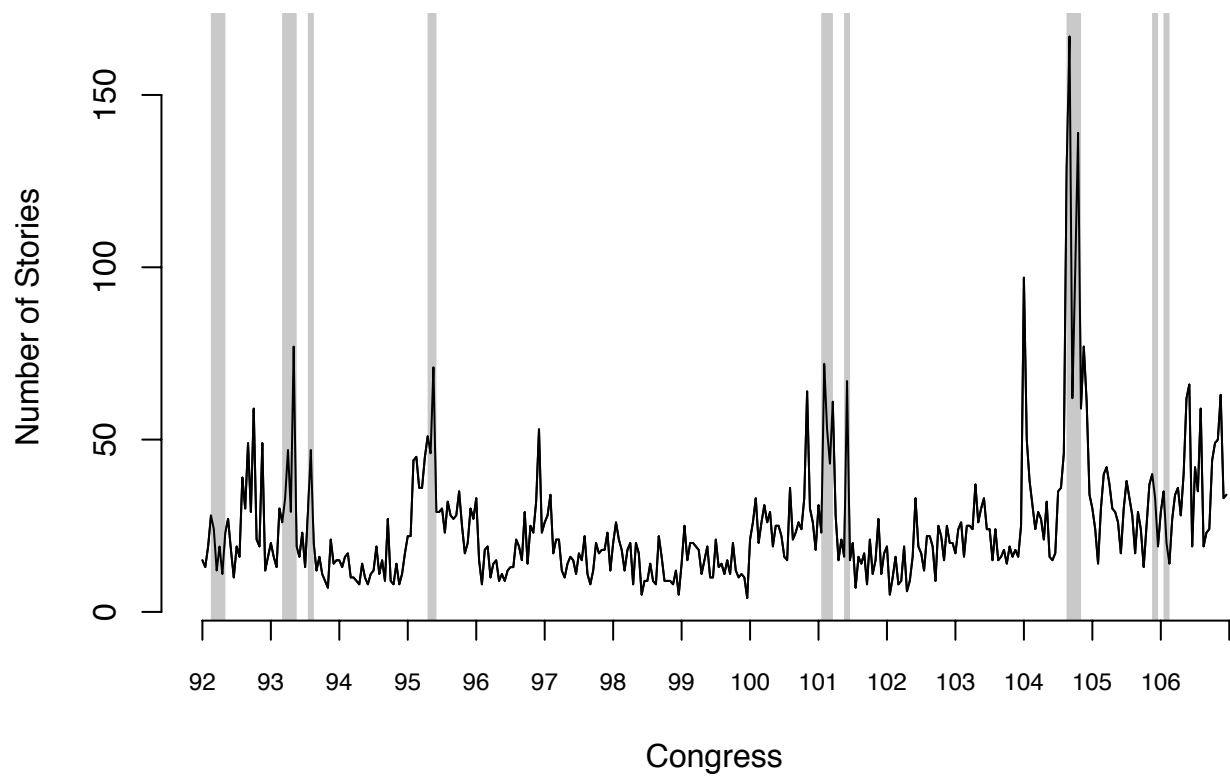


Figure 2: NUMBER OF MINIMUM WAGE STORIES BY MONTH, 1971-2000: *New York Times*, *Wall Street Journal*, and *Washington Post*: Grey bars indicate months in which a recorded vote occurs.

Congress	Chamber	Date	# Votes	Descr. of Activity
92	House	5/11/1972	5	Amend & Pass H.R. 7130
92	Senate	7/19/1972	4	Amend S. 1861
92	Senate	7/20/1972	8	Amend & Pass S. 1861
92	House	8/1/1972	2	Disagree to Conference
93	House	6/6/1973	12	Amend & Pass H.R. 7935
93	Senate	7/17/1973	1	Amend H.R. 7935
93	Senate	7/18/1973	1	Amend H.R. 7935
93	Senate	7/19/1973	5	Amend & Pass H.R. 7935
93	Senate	8/2/1973	1	Conf. Rpt. on H.R. 7935
93	House	8/2/1973	1	Conf. Rpt. on H.R. 7935
93	House	9/19/1973	1	Failed Veto Override
93	Senate	3/5/1974	3	Amend S. 2747
93	Senate	3/7/1974	5	Amend & Pass S. 2747
93	House	3/20/1974	2	Amend & Pass S. 2747
93	House	3/28/1974	1	Conf. Rpt. on S. 2747
93	Senate	3/28/1974	1	Conf. Rpt. on S. 2747
95	House	9/15/1977	10	Amend & Pass H.R. 3744
95	Senate	10/6/1977	6	Amend H.R. 3744
95	Senate	10/7/1977	9	Amend & Pass H.R. 3744
95	House	10/12/1977	1	Disagree to Sen. amend.
95	House	10/20/1977	1	Conf. Rpt. on H.R. 3744
101	House	3/23/1989	4	Amend & Pass H.R. 2
101	Senate	4/11/1989	1	Pass Graham Substitute to H.R. 2
101	Senate	4/12/1989	7	Amend & Pass H.R. 2
101	Senate	5/17/1989	1	Conf. Rpt. on H.R. 2
101	House	6/11/1989	1	Conf. Rpt. on H.R. 2
101	House	6/14/1989	1	Failed Veto Override
101	House	11/1/1989	1	Pass H.R. 2710
101	Senate	11/8/1989	3	Amend & Pass H.R. 2710
104	House	5/23/1996	4	Amend & Pass H.R. 1227
104	Senate	7/9/1996	3	Amend & Pass H.R. 3448
104	House	8/2/1996	1	Conf. Rpt. on H.R. 1227
104	Senate	7/30/1996	1	Amend S. 1429 (NG)
104	Senate	8/2/1996	1	Conf. Rpt. on H.R. 3448
106	Senate	11/9/1999	2	Amend S. 625 (NG)
106	House	3/9/2000	3	Amend & Pass H.R. 3846

Table 2: OBSERVED ROLL CALL ACTIVITY: Excludes unanimous and procedural votes.

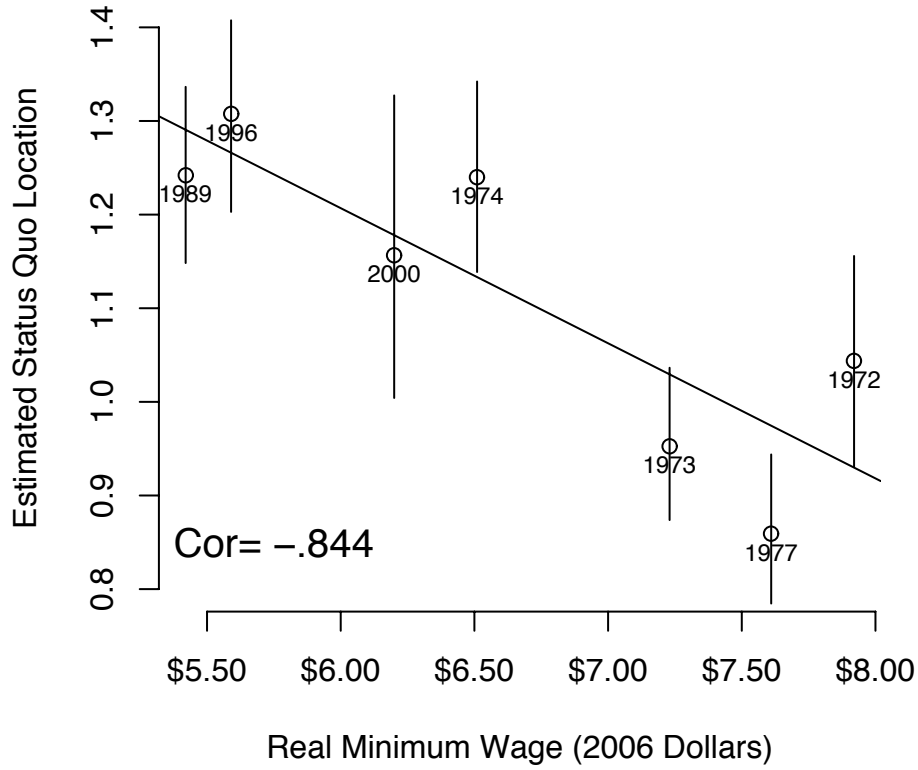


Figure 3: REAL WAGES AND ESTIMATED STATUS QUO LOCATIONS: 1971-2000.

Year	Pivot	Cartel (+)	Cartel (-)	Cartel-Pivot (+)	Cartel-Pivot (-)	Actual Change?
1972	Y	Y	Y	Y	Y	N
1973	Y	Y	Y	Y	Y	N
1974	Y	Y	Y	Y	Y	Y
1977	Y	Y	Y	Y	Y	Y
1989	Y	Y	Y	Y	Y	N
1989	Y	Y	Y	Y	Y	Y
1996	Y	Y	N	Y	N	Y
2000	Y	Y	N	Y	N	N

Table 3: PREDICTED AND REALIZED POLICY CHANGE: Do the positive (+) and negative (-) agenda control variants of the Pivot, Cartel, and Cartel-Pivot theories predict that policy change is possible given the location of the status quo and critical participants? Bold-faced predictions indicate incorrect predictions.

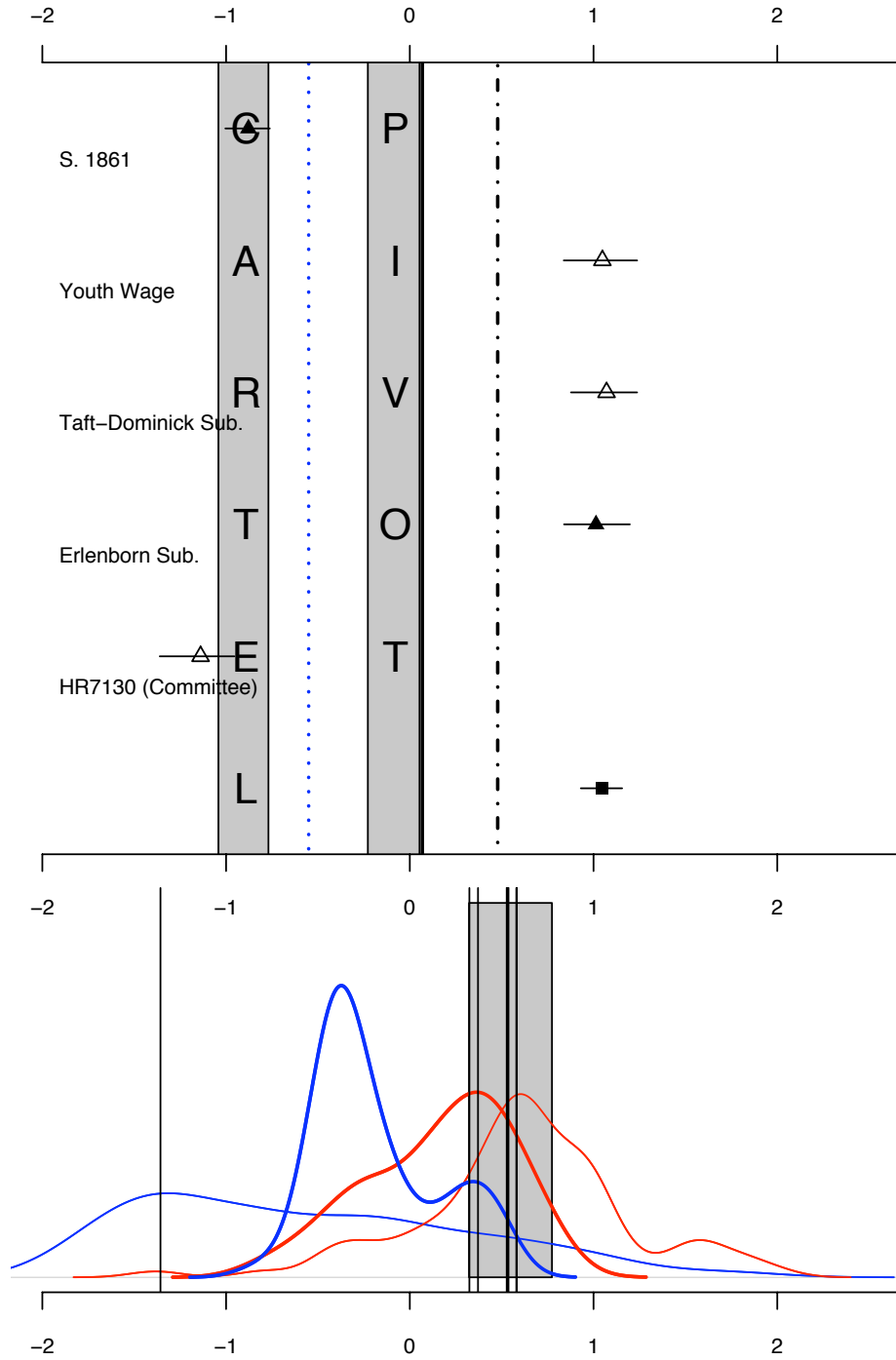


Figure 4: CRITICAL LAWMAKING ACTIVITY IN 1972 (92ND CONGRESS): Top figure graphs location of the status quo (solid square), unsuccessful proposals (open triangles) and successful proposals (solid triangles) relative to the Democratic House median (dotted line), chamber median (solid line), and veto-override pivot (dashed line). The predicted regions containing the most liberal change possible according to the Cartel and Pivot theories of lawmaking are label accordingly. The bottom graph presents the distribution of Senate (thick) and House (thin) ideal points in the estimated space, the region where President Nixon's ideal point is estimated to lie, as well as the estimated ideal point of several key congressional actors.

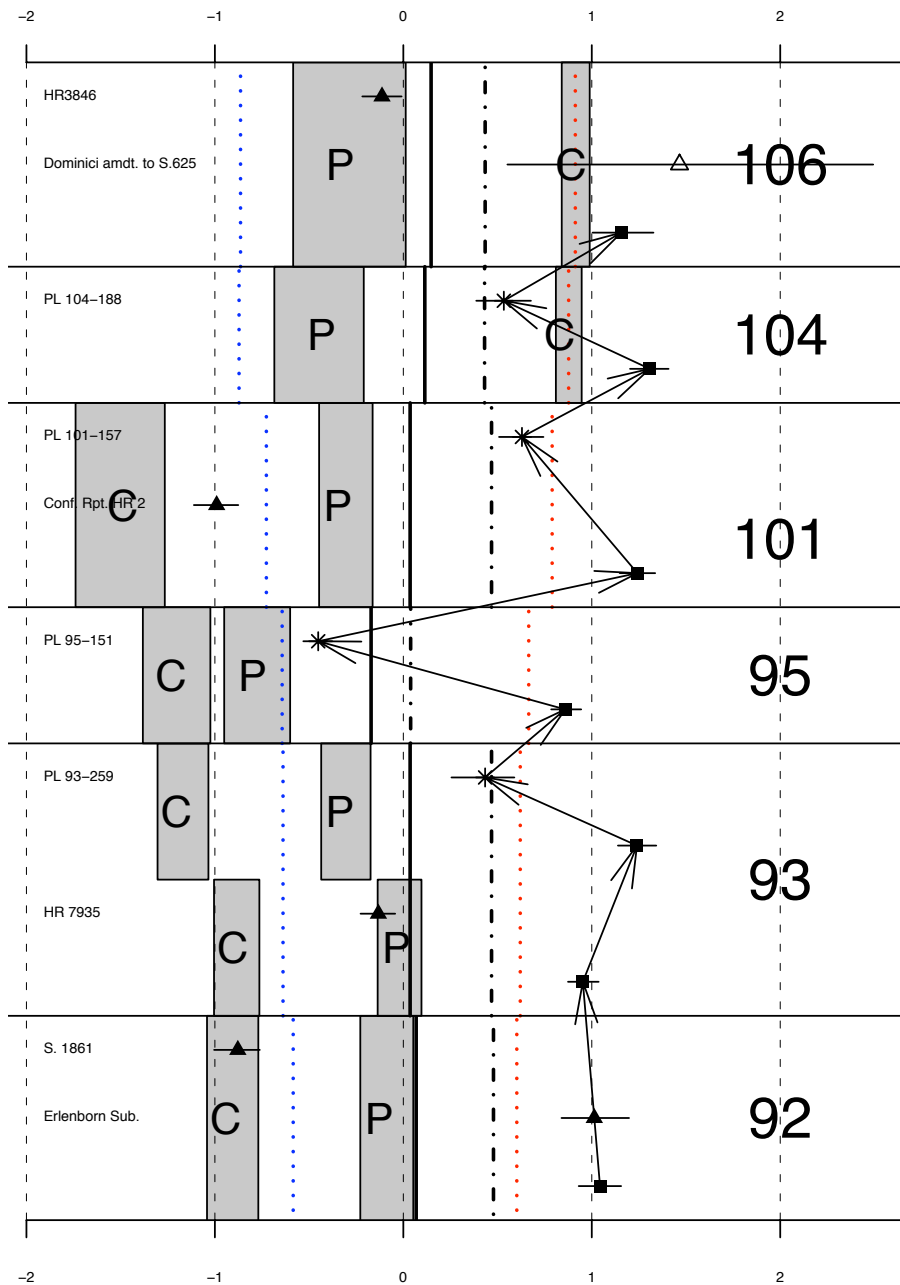


Figure 5: ESTIMATED POLICY CHANGE & FINAL PROPOSAL LOCATIONS, 1971-2001: Trajectory of successful (solid) and unsuccessful (open) policy proposals as well as enacted public laws (asterisks) in the estimated policy across time relative to the status quo (solid square) and most liberal outcomes under the Cartel (C) and Pivot (P) theories. The dashed line denotes the ideal policy of the relevant conservative pivot, the think line denotes the location of the more conservative chamber median, and the dotted lines denote the ideal point point of the median members of the Democratic and Republican members.