Reclaiming Power: An Analysis of Congressional Reassertion in the Modern Era, 1947-2002

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Abstract: This paper provides an empirical analysis of an important but frequently neglected form of inter-branch contestation: legislative reassertion. Herein, reassertion is defined as any formal legislative attempt by Congress to capture or recapture powers exercised by the executive or to reform itself internally in order to better rival executive branch authority. To systematically analyze the conditions under which Congress pursues reassertion, I construct an original data set of all reassertion legislation introduced and voted on in the House of Representatives and/or the Senate during each chamber year between 1947-2002. I then present a "reassertion logic" which identifies presidential weakness as the central factor driving this type of lawmaking. To support this logic, I test the presidential weakness hypothesis against two rival explanations which stress partisan conflict and collective member concerns with Congress' standing in the constitutional order. In so doing, I find evidence to suggest that the presidential weakness hypothesis best explains congressional reassertion.

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On December 7, 2011, the House of Representatives passed H.R. 10, the Regulations in Need of Scrutiny Act of 2011 (REINS Act). As written, REINS mandates a vote in both houses of Congress before any "major rule" promulgated by an executive branch agency goes into effect.[1] In an editorial opposing REINS, the *New York Times* identifies the intent of this bill: to "radically re-position Congress to make final decisions that involve detailed technical matters."[2] It is unsurprising that President Obama immediately made known his intent to veto REINS should it also pass the Senate.[3] For in passing REINS, the House of Representatives moved to reinsert itself into the everyday functioning of the executive bureaucracy; and to protect his freedom of action, the president responded by threatening a veto. The legislative-executive conflict generated by REINS is therefore illustrative of an important and recurring political phenomenon: inter-*branch* contestation that grows out of battles for governing authority in our system of "separate institutions sharing powers."

Inter-branch conflict of this type is both the intent and consequence of our constitutional structure. As *Federalist* 48 makes clear, the Founders set out to blend governing power between branches in order to ensure that one branch is not "directly or completely administered" by either of the others and to protect against one branch wielding an "overwhelming influence" over the others (Rossiter 1961[1999]). In recent years, scholars have paid particularly close attention to delegation – one consequence of this blending – and in so doing, they have made clear not only why Congress transfers governing authority to the executive branch but also have illustrated the policy consequences of such transfers. These analyses suggest that delegation allows executive

[1] A "major" rule is defined as any regulation determined to have annual economic impacts of $100 million or more.

[2] "Undermining the Executive Branch," *New York Times*, December 4, 2011.

[3] "GOP Bill Attempts to Rein in Legislators," *Washington Times*, December 7, 2011.

branch agents to develop technical policy expertise needed to correctly and effectively implement the policies set by Congress and they have demonstrated the best strategies for ensuring that such learning occurs. At the same time, by focusing on how and why delegation occurs, the consequences of delegation, and the strategies for ensuring that delegation ensures optimal policy outcomes, scholars have built theory on the premise of inter-branch *cooperation* and have neglected the conflicts generated by power-blending (Volden 2002; Bendor and Meirowitz 2004; Huber and Shipan 2002; Gailmard and Patty 2007). Consequently, we know comparatively little about the conditions that generate conflicts similar to the one spawned by REINS.

This study aims to make up for such neglect by identifying those bills that instigate similar periods of conflict and by examining the conditions that give rise to such conflicts. In doing so, I present the first systematic analysis of legislative reassertion efforts. Herein, I define reassertion as any formal legislative attempt by Congress to capture or recapture powers exercised by the executive or to reform itself internally in order to better rival executive branch authority. Following James Sundquist's (1981) examination of Congressional "resurgence" in the 1970s, I argue that legislative reassertion can be pursued in two ways. Congress can "delimit" the executive branch by stripping it of formal policymaking powers that it once held or used, thereby establishing new boundaries of acceptable behavior for the president or agents of the executive branch. Through delimiting actions Congress can also establish or impose new reporting requirements on executive branch agents, thus giving expanding Congressional involvement in executive branch policymaking. Internal reforms that suggest reassertion include the creation of new oversight committees or new information production mechanisms and the intentional effort to enhance legislative efficiency so as to better rival the president's first-mover advantages.

To illustrate and explain this form of legislative behavior, I construct an original data set of individually introduced reassertion bills. I then hypothesize about the conditions that give rise to legislation of this type and perform a series of empirical tests to determine the validity of these hypotheses. Accordingly, the appendix includes details about 92 individual reassertion bills introduced and voted upon in the House of Representatives and/or the Senate during each legislative session from the 80th Congress (1947-1948) to the 107th Congress (2001-2002).

My central finding is that the decision to reassert is contingent upon the *president's political status*. Reassertion legislation does not arise as a consequence of partisan contestation or trans-partisan concern among legislators about Congress' status in the constitutional order. Instead, members engage in this form of inter-branch contestation under conditions that make public conflict with the president electorally beneficial and when the president's political status allows members the best opportunity for success. This analysis, therefore, demonstrates how conflict plays out in our system of separated powers by emphasizing not just how conditions internal to Congress lend themselves to reassertion but also how member perceptions of the executive branch influence Congress' decision to pursue reassertion.

Before positing the relationship between reassertion and the president's political standing, I elucidate two extant theories which should help to explain reassertion. From these theories I derive and test hypotheses to determine if they adequately explain reassertion. I then present and test my own reassertion logic before testing the implications of each theory in one complete model.

Existing Theory

To date, scholars have generally addressed the issue of reassertion in two ways. Those who analyze and explain periods of congressional reform provide detailed case histories of individual reassertion efforts but do not offer generalizeable hypotheses to identify when we should expect to see reassertion. Alternatively, reassertion acts as an implied but unexamined piece of the "canonical" delegation model (Epstein and O'Halloran 1999). Below I provide brief explanations for how each type of analysis treats reassertion and I identify hypotheses from each which should be true if reassertion is adequately explained by these theories.

Reassertion and "Institutional Maintenance"

The first set of studies identify reassertion in the context of detailed case histories describing periods when Congress reasserted in response to the behavior of an aggrandizing executive. These studies attempt to link members' collective concern for Congress' standing in the constitutional order to particular periods of institutional reform. For example, Sundquist (1981), Schickler (2001), Shepsle (1988), and Rieselbach (1994) all argue that periods of intra-institutional reform often reflect a concern among members that the informational advantages held by the executive, combined with his first-mover advantages, serve as obstacles to proper legislative control over policy. When these concerns become salient, so the argument goes, Congress reasserts in order to ensure that its governing prerogatives are not overrun by the executive branch.

More specifically, Schickler (2001) demonstrates that fears about an aggrandizing executive led Congress to recentralize spending decisions in the House Appropriations Committee in 1920 and to consolidate committees and bolster committee staffs with the

Legislative Reorganization Act of 1946 (Schickler 2001, 85-188). Similarly, Sundquist (1981), Shepsle (1988), and Rieselbach (1994), each argue that in the 1970s – amid concerns with presidential aggrandizement, stemming from the Vietnam War and the Watergate scandal – Congress pursued a reform effort designed specifically to counteract executive branch aggrandizement. Through the 1970s, members of Congress successfully centralized internal operations, created new budgetary institutions, processes, and reporting requirements, and expanded informational capacity by creating the Congressional Budget Office and the Congressional Research Service. These examples demonstrate both that Congress' oversight capability should not be assumed, and that members can be stirred to act collectively against an overreaching executive.

The element common to these case studies is the claim that Congress reasserts as a response to executive aggrandizement. Members act to repel or counteract an over-reaching executive branch which has put at risk Congress' status in the constitutional order. Accordingly, this argument suggests that Congress will act collectively to reassert as the executive branch grows in size and thus strength. With more resources at its disposal, the executive can "do" more and as it's range of action grows, so does the potential for overreach. As a consequence, we should find that growth itself motivates this form of legislative behavior.

> *Institutional Maintenance Hypothesis (1): There is a significant and positive relationship between the growth of the executive branch and reassertion activity*

<u>Reassertion and the "Canonical" Delegation Model</u>

Reassertion also emerges as an implied but unexamined component of the canonical delegation model developed by Epstein and O'Halloran (1999). They utilize the theory of transaction costs that grows out of Coase's (1937) discussion of the firm to identify the logic that underlies delegation. On their argument, Congress faces a "political hold-up" problem wherein potentially necessary policies are not made because on the one hand, members both lack the requisite time and knowledge needed to craft effective policy and, on the other, they worry about the outcomes generated by agencies which cannot "commit to a future course of action" (Epstein and O'Halloran 1999, 48). To get around this problem Congress delegates. It writes policies that stipulate the terms of a separation of powers contract, each of which falls along a continuum that runs from no delegation (policy made entirely within Congress) to complete delegation (policy made entirely within executive branch agencies) (Epstein and O'Halloran, 58). As they write these contracts, members weigh the transaction costs associated with making policy internally against those incurred by delegation.[4] The policy outcome they produce is assumed to allow for the maximization political efficiency: an individual members' reelection chances.

In this way, the canonical model suggests that these "policies as contracts" are negotiated by two free and equal partners (Congress and the president), that they are mutually beneficial and that they are always re-negotiable. For when Congress decides to delegate, members benefit because they are freed up to engage in reelection-oriented activities. The president benefits because, according to the model, he "always prefers more discretion" (Epstein and O'Halloran 1999, 150). If, however, members determine that the "agency losses" resulting from delegation are no longer electorally beneficial, members can simply renegotiate the standing contract through reassertion and thereby ensure that policy better reflects the legislative intent.

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[4] When members choose to make policy internally, the costs incurred come from "the inefficiencies of the committee system." Members weigh these costs against the "principal-agent problems of oversight and control," incurred through delegation (Epstein and O'Halloran 1999, 49).

The canonical model, therefore, suggests a direct link between delegation, oversight, and reassertion. Congress delegates power to the executive through a formal contract that it can renegotiate if policy is implemented in ways that depart from the goals of members; and it is through oversight and investigations that members learn about such departures. Accordingly, this argument assumes that Congress *can* reassert when it learns of such departures or when political conditions shift in a way that makes reassertion desirable. As Epstein and O'Halloran argue, as external political conditions change "so, too, should the boundaries of the administrative state" (Epstein and O'Halloran 1999, 51).

While the potential for reassertion is important to our understanding of the canonical delegation model, delegation scholars have not made it the subject of systematic analysis. Instead, in a number of important studies, it emerges as an implied constraint on executive branch policymaking. As Ferejohn and Shipan (1990), Howell and Pevehouse (2007), and Kriner (2010) each demonstrate, the potential for reassertion acts as a constraining force on policy carried out by agents within executive branch. Executive branch agents, recognizing that Congress can reassert itself and thereby override their decisions, implement policy in ways that hew close enough to the preferences of the median member of Congress (or the relevant oversight committee) so as to avoid catalyzing corrective legislative action (Ferejohn and Shipan, 1990; Shipan 2004). In these studies, therefore, it is the implied threat that allows Congress to retain influence on policy outcomes even when such outcomes are the direct result of executive branch decision-making.

Here again, however, Congress' willingness and capacity to review policy implemented by the executive branch is taken as a given. These studies suggest that congressional constraints often take the form of "*ex post* efforts at political control using tools that were embedded in legislation *ex ante*" (Wood 2011, 793). *Ex ante* controls include a combination of oversight hearings, reporting requirements, administrative procedures, and mandated budget reauthorizations. Through them, Congress makes known that it is watching and thereby reinforces the threat of potential reassertion (Kiewiet and McCubbins 1991; McCubbins and Schwartz 1984; McCubbins, Noll and Weingast 1987; Gailmard 2009). Yet, because this literature does not demonstrate a clear link between oversight and policy change, we cannot be sure that Congress uses investigations and oversight as a tool to bring policy back in line with its preferences. Only recently have scholars begun to examine the formal legislative tools for doing so as well as the conditions that give rise to the use of these tools (MacDonald 2010).

In the context of the delegation model, variation in political conditions is driven by party conflict (Epstein and O'Halloran 1999, 77). More specifically, the canonical model demonstrates that under divided government – split party control of Congress and the White House – we see less delegation because the divergent policy goals of Congress and the president raise the transaction costs incurred through delegation. By extending this logic to reassertion, the canonical model suggests that divided government should also generate reassertion efforts as members act to clip the wings of a president who is also a political opponent. Stated explicitly, the canonical model suggests that the following hypothesis is true:

> *Delegation Model Hypothesis (2): There is a significant and positive relationship between legislative reassertion and divided government*

Correspondingly, the canonical model suggests a link between delegation and the size of the "gridlock interval." As identified by Keith Krehbiel (1998), gridlock is a situation in which policy supported by a majority of one or both houses of Congress does not pass because it falls victim to one of two "veto pivots" created by supermajoritarian procedures: the executive veto and/or the Senate's filibuster (Krehbiel 1998, 22-23). As the interval between these two pivot points widens, it becomes harder for Congress to muster the majorities necessary to overcome these veto points and thereby alter the policy status quo. Employing Krehbiel's insights, Epstein and O'Halloran argue that with a wider "gridlock interval," the likelihood of delegation decreases (Epstein and O'Halloran 1999, 131). If the delegation model correctly explains reassertion, the following hypothesis should also be true:

> *Delegation Model Hypothesis (2a): There is a significant and negative relationship between the size of the gridlock interval and legislative reassertion*

The Logic of Reassertion

As described here, reassertion bills are designed to narrow the range of action available to the president or agents of the executive branch. Contrary to logic underlying the "transaction cost" approach to the study of delegation, therefore, we should assume that bills of this type do *not* reflect the pursuit of mutual benefit by Congress and the president. Instead, reassertion represents a decision by Congress to initiate inter-branch conflict by taking up legislation that comes in direct conflict with the president's preference to be left unchecked. Through reassertion legislation, therefore, the interests of members of Congress and the interests of the president diverge. In this way, reassertion reflects one category of what Mayhew (2000) calls an "opposition activity," or "any effort by a member of Congress to thwart the aims or impair the standing of a presidential administration" (Mayhew 2000, 107).

If we move away from the presumption of inter-branch cooperation that is built into the delegation model, we must consider the conditions under which members undertake direct, legislative conflict with the president. In other words, we should ask when opposition activities become attractive to the average reelection-seeking member of Congress (Mayhew 1974). Both the canonical delegation model and those who study investigatory activity provide some initial direction here. As described above, the delegation model relies upon the availability of investigations and oversight. Also, legislative investigations and oversight represent one frequently employed and easily noticeable form of opposition behavior, so the conditions that generate increased investigatory behavior may also provide some insights into the conditions that generate reassertion (Aberbach 1990; Aberbach 2002; Ginsberg and Shefter 2003). Recent work suggests that the partisan conflict catalyzed by divided government generates increased investigatory activity (Schickler 2007; Kriner and Schwartz 2008). Combined with the delegation model's claim that divided government minimizes discretion, we have some reason to believe that divided government may also generate reassertion efforts.

The reassertion logic posited here, however, calls for some skepticism about the proposed link between divided government and reassertion. First, as Moe (1987) points out, little evidence exists to link investigations and oversight with *policy* change. We cannot be sure that investigations lead to formal reassertion legislation or that they serve more than the public, position-taking interests of members. In an important critique of Coase's framework, Farrell (1987) also provides theoretical reasons for this skepticism about Congress' ability to leverage oversight into policy change. As Farrell argues, when negotiating partners – in this case Congress controlled by one party and the White House controlled by the other – do not share the same goals, one or both parties has an incentive to lie (Farrell 1987, 117). In the case of oversight, executive branch agents with policy knowledge have information not readily available to members of Congress. Fully aware that revealing what they know may catalyze legislative reassertion – an outcome both they and the president seek to avoid – these agents may attempt to prevent legislative intervention by lying or purposefully leaving out relevant information.

Also, since reassertion motivated by investigations or oversight requires legislative action, it implicates the formal legislative process and thus requires that the entire chamber – rather than specific committees only – devote time to consideration of reassertion bills. As we know, however, Congress is a "fragmented institution" without a "strong central coordinating mechanism" so the policy making process is plagued by collective action problems that may stymie any reassertion effort (Wood 2011, 800; Mayer and Canon 1999; Krehbiel 1998). This inertia is further exacerbated by the fact that members will anticipate reassertion efforts to draw the ire of the president, thereby raising the specter of a potential veto. For these reasons, reassertion becomes a potentially costly exercise since the time spent pursuing difficult-to-pass reassertion laws could be better spent on activities that are more electorally valuable and that have a higher likelihood of success. We should not assume, therefore, that members would choose to pursue reassertion even if oversight demonstrates that policy has departed from their preferences.

Indeed, by introducing the president's veto power into the delegation model, Volden (2002) provides a formal illustration of the inertia that plagues reassertion efforts. Since reassertion legislation is likely to draw presidential opposition, Volden finds that reassertion bills are more likely to fall within the gridlock interval (Volden 2002, 122-126). As a consequence, he shows that legislative-executive contestation instigated by reassertion raises the opportunity costs of spending time on reassertion bills. For as the likelihood of failure increases, so also do the opportunity costs of the time spent on reassertion bills. By undertaking reassertion, members must be willing to set aside time to consider legislation that garners enough support to overcome determined executive branch opposition; or they must anticipate that the conflict generated by debate over reassertion itself will provide electoral benefits (Groseclose and McCarty 2001).

Taken together, the uncertainty about the potential for oversight to catalyze policy change, the inertia that plagues reassertion bills, and the claim that reassertion is motivated by members who seek the benefits that come from direct confrontation with the president, we are lead to my hypothesis that the political status of the *president* has an important impact on Congress' decision to reassert. More specifically, the reassertion logic posited here suggests that legislation of this type is more likely to receive floor time and successfully pass when the *president is weakened.*

For the purposes of this paper, weakness manifests in two ways. First, I argue that the president is politically weakened when he is unpopular. As a president's public support wanes, "opposition activities" increase in electoral value for members of Congress. Accordingly, if the logic posited here is borne out we should find that declining approval ratings motivate reassertion. The president is also at his weakest institutionally when his preference for executive-led governance is minimized. As Moe (1993, 364) argues, because presidents are "more concerned with governance" than their counterparts in Congress, they seek to control the bureaucracy. Also, as I argue above, this quest for control undergirds presidential opposition to reassertion and makes the veto pivot central to any reassertion effort. Institutional weakness, therefore, reflects a situation in which the president's motivation for executive branch governance is at its lowest. As a consequence, the inertia-inducing effect of the veto pivot is mitigated as the president is less likely to directly oppose congressional reassertion efforts. This condition obtains during a president's 2nd term because the reelection imperative is removed as is the motivation to directly contest congressional encroachments on executive branch governing power.

In summary then, the chances of successful reassertion increase during the tenure of an institutionally weakened president because the likelihood of executive branch opposition declines. It is also during periods of political weakness that "opposition activities" carry the most electoral benefit thereby making them more attractive to the average member. Accordingly, we should see that reassertion is both more frequent and more successful during these two periods of presidential weakness. Contrary to the implications of the canonical delegation model, therefore, I argue that partisan conflict alone is not enough to motivate reassertion. Also, contrary to the implications of the "institutional maintenance" theory, I argue that presidential aggrandizement does not generate reassertion bills. Instead, from the logic posited here, I derive the following hypothesis:

> *Presidential Weakness Hypothesis (3): There is a significant and positive relationship between the president's political weakness and legislative reassertion*

Accordingly, the results presented below illustrate that reassertion occurs under conditions more constrained than those implied by the canonical model delegation or the institutional maintenance hypothesis. Reassertion is not motivated by simple party contestation or by an "aggrandizing" executive. It reflects a strategic decision by members who act only when they stand to benefit from direct opposition to the president and when the president's institutional weakness increases the likelihood of a successfully achieved reassertion effort.

Coding Procedure, Description of Data and Analysis

To test the hypotheses outlined above, I utilize an index of all reassertion bills introduced and voted on during each chamber year from 1947-2002 in either the House of Representatives and/or the Senate. To construct this index I adopt a two-stage strategy. First, I undertake a keyword search of the *History of Bills and Joint Resolutions* published at the end of each of each legislative session and digitized in the *Hein Online* database using an exhaustive set of terms related to reassertion.[5] When this search turns up a potential reassertion bill, I refer to the debate over the law itself recorded in the *Congressional Record* in order to confirm that members believed themselves to be undertaking a reassertion effort by passing the bill in question. In stage two, I return to the *History of Bills and Joint Resolutions*, reading the summaries for *all* legislation that received a final passage vote during a given chamber year. This second stage corrects for inaccuracies in the keyword search function and helps to ensure that no reassertion laws were neglected due to limitations with the dictionary of terms that guided the search. The appendix provides all relevant descriptive information for each of the 92 bills.

Before moving on, it is worth noting the substantive importance of many of the bills included in this data set. For example, it includes the 22nd Amendment which introduced presidential term limits, the proposed Bricker Amendment to the constitution which would have empowered Congress to make final decisions on all proposed treaties and executive agreements, and the War Powers Act. Many of the bills here are well know because they ignited fierce battles both within Congress and between Congress and the president. While the goal pursued here is to provide a general analysis of reassertion in the modern era, it is important to keep in mind the importance of the individual laws themselves.

Figure 1 provides a look at patterns in both the number of reassertion bills introduced and successfully passed between 1947 and 2002. Table 1 in the Supporting Information includes

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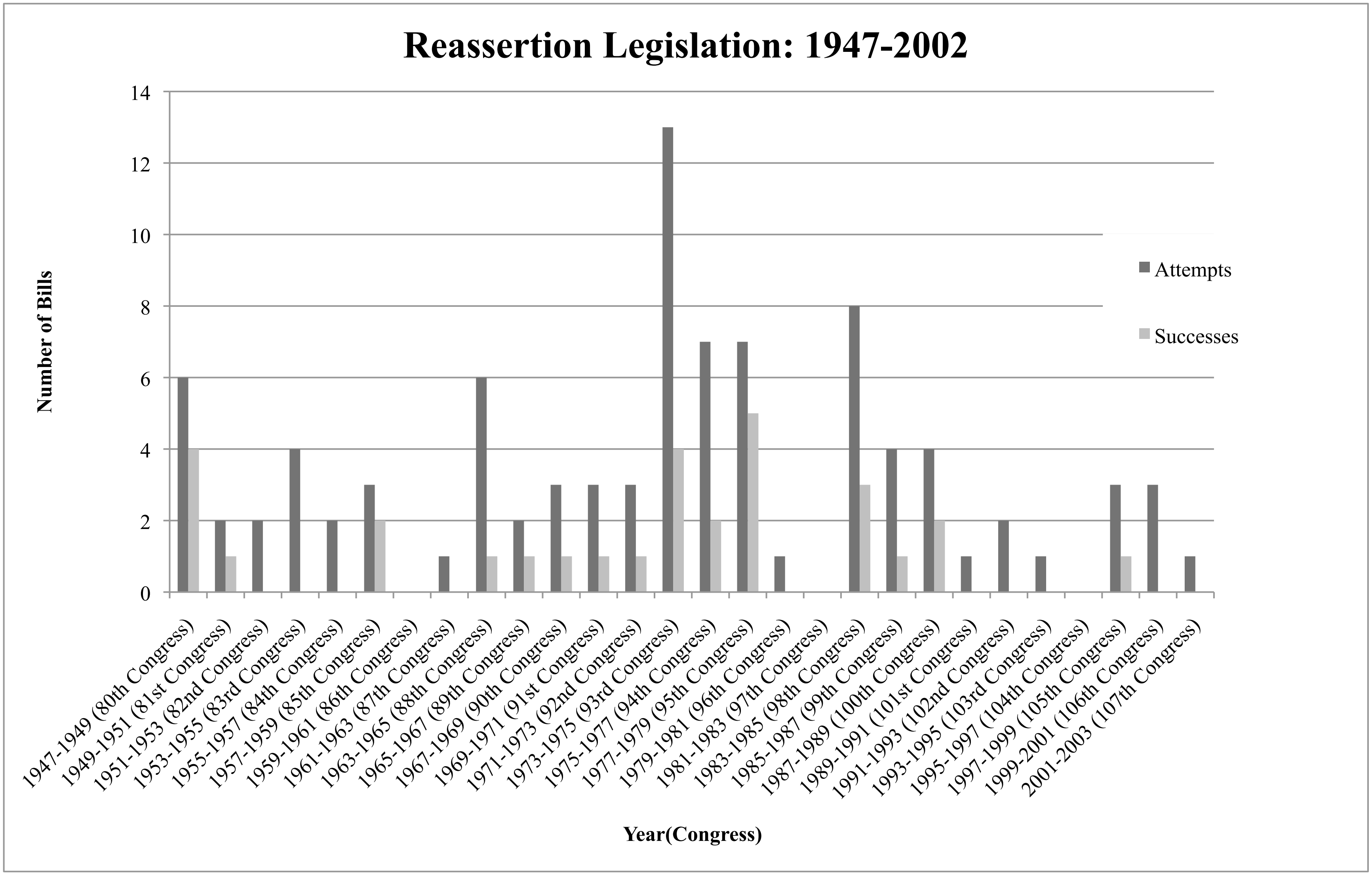
[5] Each edition of the *History of Bills and Joint Resolutions* includes a brief summary of every law introduced during a given chamber year as well as information identifying when it received a debate and when/if it received a vote. The terms that guide my keyword search are as follows: amendment, approve, authorize, congress, control, constitution, execute, inform, legislative, limit, oversight, prohibit, president, require, report, repeal. Editions of the *History of Bills and Joint Resolutions* are not available in digital form after 2002.

summary statistics for both the dependent and independent variables. Here a word of caution is in order. These data capture only reassertion efforts that take the form of individually introduced bills that receive an up or down vote on the floor of either the House of Representatives or the Senate (or both). As a consequence, this analysis misses reassertion-related amendments to non-reassertion laws as well as language written into laws that might indicate a reassertion. In other words, this is not intended to be the final word on reassertion. Instead, the findings presented here provide a first attempt at systematically analyzing reassertion by focusing on its most obvious manifestation: when Congress pursues it through individually distinguishable pieces of legislation.

Figure 1. Reassertion in the Modern Era



Dependent Variable

As noted above, the outcome analyzed here is legislative reassertion pursued through individually introduced legislation. I measure this outcome in two different ways. First, I measure "reassertion activity" by making a count of the total number of reassertion bills voted upon during each chamber year from 1947-2002. For these tests I use negative binomial regression.[6] I then test the likelihood of *successful* reassertion by treating those chamber years when one or more reassertion laws pass both houses of Congress as a "success." In this case, the outcome variable is simply 1 for those chamber years when one or more reassertion law passes both houses of Congress and 0 for those chamber years when no reassertion laws pass both houses. For this estimation I use logistic regression.[7]

Independent Variables

To test the "institutional maintenance" hypothesis (Hypothesis 1), the models include variables that capture the secular, over-time growth of the executive branch. The first is a general time-trend variable that increases by one unit for every chamber year in the data. It therefore assumes linear growth in the president's institutional power between 1947-2002. The second is a more fine-grained measure of executive branch strength: executive branch specific

[6] A Poisson model is rejected because the conditional variance of the dependent variable is two times larger the mean. Poisson regressions do, however, produce very similar results.

[7] In order to guard against endogeneity problems, each of the logistic regressions run below includes a variable controlling for the total number of reassertion bills introduced in a given chamber year of Congress. This variable is not included in the tables themselves but is highly significant in all versions of the model indicating that the probability of successful reassertion increases as the number of reassertion bills voted on also increases.

budget outlays as a percentage of GDP for each year between 1947-2002.[8] If collective concern with Congress' standing motivates reassertion, we should find that reassertion is *more frequent* and *more likely* over time in response to an increasingly powerful executive branch.

Next, to test the canonical delegation model (Hypotheses 2/2a), I include a series of variables utilized by Epstein and O'Halloran (1999, 122-164). First, I determine if the partisan conflict resulting from divided government motivates reassertion. Accordingly, I include a dummy variable coded as one for divided government and zero for unified government in order to determine if reassertion is *more likely* and *more frequent* under divided government.[9]

Also, as an alternative and more fine-grained indicator of divided government, Epstein and O'Halloran include a presidential seat share measure capturing the percentage of seats in Congress controlled by a president's co-partisans. With more support in Congress, a president is less likely to face opposition from the legislative branch so reassertion should be *less likely* and *less frequent* when members of the president's party hold a larger share of Congress (Epstein and O'Halloran 1999, 129).[10]

The delegation model also predicts that as the gridlock interval increases, delegation decreases. From Volden (2002) however, we learn that a widening gridlock interval also makes

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[8] This data is also compiled at posted by the UCSB "American Presidency Project" and can be found here: http://www.presidency.ucsb.edu/data/budget.php

[9] The relationship between divided government and lawmaking is also developed in a large and important literature that also provides insights into the conflicts that might also drive reassertion. For example, see: Mayhew (2001); Edwards, III, Barrett, and Peake (1997); Coleman (1999); Binder (1999); Howell, Adler, Cameron, and Riemann, (2000); Clinton and Lapinski, (2006).

[10] In terms of coding, the models below follow conventional accounts in considering government to be unified in a given Congress if the same party controls the House, the Senate, and the presidency.

reassertion more difficult. Accordingly, the analysis here suggests that as the gridlock interval widens, reassertion will also be *less likely* and *less frequent*. To measure the gridlock interval, I follow McCarty (2007). After explaining the conceptual distinction between gridlock and polarization, McCarty demonstrates that they move together over time and that "empirically, they go hand-in-hand" (McCarty 2007, 235).[11] Accordingly, the model below utilizes measures of polarization to account for the effect that gridlock has on reassertion. I measure polarization by including a variable that represents the difference in the DW-NOMINATE scores of the median members of the two parties in the House of Representatives.[12]

To complete my test of the delegation model, I include a start term variable that takes on a value of 1 for the first two years after a presidential election and a value of 0 otherwise. According to the canonical model, delegation is more likely during the president's "honeymoon period" so if the model explains reassertion, we should find that reassertion is *less likely* and *less frequent* at the beginning of a presidential term (Epstein and O'Halloran 1999, 131). I also include an "activist government" measure that increases at increments of 0.5 between 1961-1968 and then declines by 0.5 for the years 1969-1976.[13] The canonical model predicts that discretion increases during periods of "activism" so we should find that reassertion is *less frequent* and *less*

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[11] As used here, polarization refers to the increasing ideological distance between the parties.

[12] McCarty (2007) reports various measures of polarization including Senate-based measures and an average of House and Senate, but he finds that the results were substantively similar.

[13] According to Epstein and O'Halloran (1999, 131), discretion increases as the public "demands" policy. To account for this period of public demand, they construct a measure that increases by one unit for every Congress between 1961 and 1968 and then decreases by one unit from 1969 to 1976. Since the dependent variable analyzed here is measured by chamber year instead of Congress, I include a 0.5 unit increase for every year between 1961-1968 and then a 0.5 unit decrease between 1969-1976.

likely during these activist years. Finally, I calculate a budget surplus measure for the years 1947-2002.[14] If the canonical model's prediction that discretion is less likely during periods of budget deficit is correct, we should also find that reassertion is *more likely and more frequent* as the deficit grows.

To test Hypothesis 3, I present various measures of presidential weakness in order to determine if it explains reassertion. As I argue above, presidential weakness encourages reassertion because it increases the electoral benefits of opposition activity and because it raises the chances of successful reassertion. To measure weakness, I make use of data from David Lewis and James Strine's (1996) discussion of the relationship between presidential weakness and veto propensity.[15] The models below adopt some of their indices to determine if they help to predict reassertion.

First, I include a dummy variable to capture whether Congress attempts reassertion more frequently during a president's 2nd term. This variable supports the reassertion logic posited here in two distinct but related ways. First, because 2nd term presidents are "lame ducks," their political standing is weakened, thereby inviting reassertion (Lewis and Strine 1996, 685). Also, because 2nd term presidents will not be holding office again, they are less likely to oppose bills that constrain the potential for executive branch governance in the future (Moe 1993, 363). If

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[14] Using data captured in the 2003 *Economic Report of the President*, I follow Epstein and O'Halloran by calculating the budget surplus as a share of total federal outlays (Epstein and O'Halloran 1999, 131).

[15] Lewis and Strine (1996) judge about the validity of four, commonly used conceptions of time by identifying how accurately each can measure presidential weakness. For them, a "weak" president vetoes more frequently because he is unable to wield the political strength needed to bring legislation in line with his political preferences. The conceptions of time discussed here are secular, regime, early/modern, and political (Lewis and Strine 1996, 682).

hypothesis 3 is supported, we should see that reassertion is *more frequent* and *more likely* during a president's 2nd term.

Next, I include a dummy variable for those chamber years presided over by a "succession" president – one who takes office without being independently elected. In the words of Lewis and Strine, succession presidents have no electoral mandate and thus cannot "believably claim to have the keys to reelection in the next year" (Lewis and Strine, 684).[16] I therefore expect that reassertion will be *more frequent* and *more likely* during their tenure. I also include a measure that captures the annual average unemployment rate because presidents are often blamed for a poorly performing economy so it is during such periods that legislative conflict with the president will carry the most electoral benefits for members of Congress (Lewis and Strine 1996, 684; Moe 1993, 363-364). In this case, I expect that reassertion will be *more frequent* and *more likely* as the unemployment rate increases.

Finally, the models also include a presidential approval variable.[17] The expectation here is that reassertion is *more frequent* and *more likely* as the presidential popularity declines. To test this claim I calculate the annual average approval rating for a sitting president during each chamber year from 1947-2002 and include this average in each model.[18] To control for varying

[16] If a succession president is elected outright the terms of congress that he presides over *after* his election are no longer considered succession terms. For the years under analysis here, succession presidents include Harry Truman, Lyndon Johnson, and Gerald Ford.

[17] To measure approval I use poll data compiled by the UCSB "American Presidency Project to construct a measure of annual average approval rating. This average rating acts as the popularity measure for each chamber year. This data can be found at The data can be accessed here: http://www.presidency.ucsb.edu/data/popularity.php

[18] The results are nearly identical when Annual averages were calculated using the data compiled at posted by the UCSB "American Presidency Project."

influence that approval may play over the course of a president's term in office, I also include a year in term variable.

The first set of models – reported in Tables 1 and 2 – illustrate the extent to which each hypothesis can explain reassertion activity and reassertion success on its own. The models presented in Tables 3 and 4 illustrate the explanatory power of the "presidential weakness" hypothesis after controlling for intra-congressional factors identified by the delegation model and the over-time growth in executive branch strength.

Results

The results presented in Tables 1 and 2 illustrate the explanatory effects of each hypothesis when tested on its own. From the count model's measurement of reassertion activity (Table 1), we see that the linear time trend variable is significant but in the direction *opposite* that predicted by the institutional maintenance hypothesis.[19] This finding suggests that the number of reassertion bills receiving a final passage vote has declined as the executive branch has grown in size and strength. In accordance with Volden's discussion of gridlock, Table 1 also shows that reassertion activity increases as polarization declines. Also, whereas partisan conflict influences Congress' decision to delegate, it does not motivate explain reassertion activity. Finally, we see that reassertion activity increases during the tenure of succession presidents thereby supporting the presidential weakness hypothesis.

Moving to Table 2 which measures how well each hypothesis explains the probability of successful reassertion, we see that the prediction about the relationship between budget surplus and reassertion drawn from the delegation model is significant in the correct direction. As a consequence, we have reason to believe that the likelihood of successful reassertion increases as

[19] When this model is run testing each of these predictions individually neither is significant.

budget surplus declines. Here again, however, we see that partisan conflict driven by divided government does not help to explain successful reassertion. At the same time, predictions from the presidential weakness hypothesis are significant in the correct direction. More specifically, this table shows us that the probability of successful reassertion increases as the unemployment rate increases and as presidential approval rating declines.

Table 1. Reassertion Activity

Explanatory Variable	Model 1	Model 2	Model 2(a)	Model 3
Linear Time Trend	−0.01* (0.008)			
Executive Branch Outlays (% of GDP)	0.07 (0.06)			
Divided Government		0.43 (0.29)	--	
Percent President's Party in Congress		--	−0.18 (0.017)	
Polarization		−3.31** (1.39)	−2.74** (1.27)	
Start Term		0.06 (0.25)	0.05 (0.25)	
Surplus		−1.25 (0.95)	−1.11 (1.0)	
Activist		0.104 (0.093)	0.11 (0.097)	
Annual Unemployment Rate				0.06 (0.08)
Succession President				1.02*** (0.27)
Presidential Approval				−0.01 (0.01)
Second Term				0.38 (0.28)
Year in Term				−0.01 (0.13)
Constant	−0.52 (1.09)	2.03** (0.82)	2.85** (0.82)	0.53 (1.07)
Wald χ^2 stat (No. obs.)	3.19 (56)	7.46 (56)	7.14 (56)	27.61*** (56)

Note: Each column is a separate model of reassertion-based major laws estimated using negative binomial regression; robust standard errors in parentheses.

P < .10, ** *p* < .05, *** *p* < .01 (two-tailed tests)

Table 2. Reassertion Success

Explanatory Variable	Model 1	Model 2	Model 2(a)	Model 3
Linear Time Trend	−0.01			
	(0.04)			
Executive Branch Outlays (% of GDP)	0.09			
	(0.15)			
Divided Government		0.54	--	
		(1.06)		
Percent President's Party in Congress		--	−0.02	
			(0.06)	
Polarization		−0.50	1.26	
		(5.75)	(5.68)	
Start Term		−0.10	−0.20	
		(0.99)	(1.02)	
Surplus		−8.69**	−9.43**	
		(3.96)	(4.50)	
Activist		0.38	0.38	
		(0.37)	(0.39)	
Annual Unemployment Rate				0.64**
				(0.29)
Succession President				−0.66
				(1.02)
Presidential Approval				−0.15**
				(0.06)
Second Term				0.53
				(1.04)
Year in Term				−1.28**
				(0.56)
Constant	−5.95	2.70	−7.18	−1.77
	(3.97)	(3.72)	(5.16)	(2.15)
χ^2 stat (No. obs.)	18.75*** (56)	17.71*** (56)	17.83*** (56)	12.11* (56)
Pseudo R^2	0.51	0.57	0.56	0.64

Note: Each column is a separate model of reassertion-based major laws estimated using logistic regression; robust standard errors in parentheses.

$p < .10$, ** $p < .05$, *** $p < .01$ (two-tailed tests)

Since the models in Tables 1 and 2 test each hypothesis on its own, we cannot see how each stands up when controlling for the predictions of rival explanations. Moreover, since the goal of this analysis is to demonstrate that the president's political status motivates reassertion, it is important to control for the intra-congressional and time-related factors identified by Hypotheses 1 and 2. Accordingly, Tables 3 and 4 present the results of a larger model that tests each prediction simultaneously.[20]

In terms of reassertion activity, we see that the linear time trend variable and the polarization variable are both significant in the direction predicted by each hypothesis. As a consequence, we have reason to believe that Congress has voted on an increasing number of reassertion over time and we have further reason to believe that reassertion activity increases as polarization declines.

Most importantly for the purposes of this analysis, however, we see that the succession president and 2nd term variables are strongly significant in the correct direction across all iterations of the model. Substantively speaking, these results suggest a meaningful increase in reassertion activity during the tenure of politically weakened presidents. Indeed, between 1947-2002 Congress voted on an average of 1.64 reassertion bills per chamber year. These findings suggest that during a chamber year presided over a succession president Congress will vote on

[20] To ensure that the variables tapping over-time growth in the executive branch do not steal explanatory power from one another I do not include them in the regressions run in Tables 4 and 5. If included together, however, the results are substantively similar. I also remove the year in term variable because this model includes *both* a start term and 2nd term variable, which, together, account for much of the explanatory power of the year in term variable. Finally, I included a continuous variable that accounts for the total number of vetoes issued during a given chamber year in order to determine if vetoes help to predict reassertion. This variable was not significant and including it did not alter the results.

more than 3 reassertion bills. During those chamber years presided over by a 2nd term president, these results suggest that Congress votes on *nearly 3* reassertion bills.[21] Members of Congress more frequently introduce and bring to the floor reassertion bills during the tenure of 2nd term and succession presidents.[22]

Now moving to Table 4 which once again measures the probability of successful reassertion, we find additional support for the presidential weakness hypothesis even as the predictions from Hypotheses 1 and 2 fail to explain reassertion. Indeed, contrary to the prediction of the delegation model we see that successful reassertion is more likely in the activist than the non-activist period.

Once again, the 2nd term variable is significant in the correct direction across all iterations of the model. Substantively speaking, these results indicate that the probability of *successful* reassertion during a president's first-term president ranges from slightly less than 2 percent under divided government and slightly more than 5 percent under unified government when all other variables are held at mean values. When tested across different versions of the model, the probability of successful reassertion during a president's 2nd term increases to a range that runs from 67 percent to 86 percent (when all other variables are held at their means). Reassertion bills

[21] In order to ensure that the explanatory power of the institutional maintenance hypothesis is not artificially diminished, I do not include the linear trend variable and the executive branch outlays variable in the same equation here. There is no change in the substantive effect of the 2nd term and succession president variables if both are run simultaneously.

[22] The post-estimation results for the succession president variable across different iterations of the model range from an additional 2.16 bills per chamber year to an additional 2.60 bills per chamber year. The post-estimation result for the 2nd term variable ranges from an additional 1.08 bills per chamber year to an additional 1.43 bills per chamber year

are more significantly more likely to be successfully passed by both houses of Congress when members believe that the president's 2^{nd} term status will keep him from opposing them.

Table 3. Reassertion Activity (II)

Explanatory Variable	Model 1	Model 2	Model 3	Model 4
Linear Time Trend	0.05* (0.028)	--	0.06* (0.03)	--
Executive Branch Outlays (% of GDP)	--	0.09 (0.09)	--	0.11 (0.10)
Divided Government	−0.01 (0.26)	0.12 (0.28)	--	--
Percent President's Party in Congress	--	--	0.01 (0.01)	0.01 (0.02)
Polarization	−10.48** (5.09)	−2.67** (1.35)	−10.68** (4.83)	−2.57* (1.33)
Start Term	−0.04 (0.21)	0.03 (0.24)	−0.04 (0.21)	0.02 (0.24)
Surplus	−0.30 (1.39)	−0.59 (2.21)	−0.29 (1.28)	−0.13 (2.03)
Activist	0.20* (0.11)	0.18 (0.12)	0.20 (0.12)	0.18 (0.13)
Annual Unemployment Rate	−0.04 (0.14)	0.01 (0.11)	−0.03 (0.15)	0.03 (0.12)
Succession President	1.02*** (0.29)	1.04*** (0.25)	1.10*** (0.29)	1.14*** (0.25)
Presidential Approval	−0.01 (0.01)	−0.002 (0.01)	0.004 (0.01)	−0.002 (0.01)
Second Term	0.89** (0.38)	0.67** (0.30)	0.94** (0.38)	0.76** (0.31)
Constant	4.62* (2.61)	−0.14 (1.85)	4.27* (2.37)	−0.93 (2.14)
Wald χ^2 stat (No. obs.)	59.78*** (56)	62.57*** (56)	62.90*** (56)	67.77*** (56)

Note: Each column is a separate model of reassertion-based major laws estimated using negative binomial regression; robust standard errors in parentheses.

P < .10, ** *p* < .05, *** *p* < .01 (two-tailed tests)

Table 4. Reassertion Success (II)

Explanatory Variable	Model 1	Model 2	Model 3	Model 4
Linear Time Trend	−0.08 (0.15)	--	−0.07 (0.14)	--
Executive Branch Outlays (% of GDP)	--	−0.68 (0.47)	--	−0.60 (0.44)
Divided Government	−0.96 (1.46)	−0.47 (1.62)	--	--
Percent President's Party in Congress	--	--	0.08 (0.08)	0.06 (0.09)
Polarization	16.33 (27.10)	11.13 (11.47)	15.47 (27.04)	12.18 (11.47)
Start Term	0.96 (1.51)	0.65 (1.48)	1.04 (1.62)	0.81 (1.54)
Surplus	−14.64 (15.63)	−21.71 (13.37)	−15.69 (16.80)	−21.88 (14.04)
Activist	2.22*** (0.91)	2.38** (1.20)	2.36*** (0.98)	2.63** (1.17)
Annual Unemployment Rate	1.50** (0.69)	1.57 (1.03)	1.52** (0.69)	1.70* (0.92)
Succession President	8.79 (6.85)	8.14 (6.89)	9.81 (7.66)	9.84 (7.48)
Presidential Approval	−0.01 (0.04)	−0.01 (0.05)	−0.01 (0.05)	−0.01 (0.05)
Second Term	4.97** (2.55)	4.56* (2.63)	5.47** (2.72)	5.23* (2.82)
Constant	−25.50 (17.34)	−12.73 (14.59)	−30.08 (21.17)	−19.55 (17.26)
χ^2 stat (No. obs.)	40.34*** (56)	44.89*** (56)	32.46*** (56)	40.42*** (56)
Pseudo R^2	0.71	0.72	0.71	0.72

Note: Each column is a separate model of reassertion-based major laws estimated using logistic regression; robust standard errors in parentheses.

* $p < .10$, ** $p < .05$, *** $p < .01$ (two-tailed tests)

Summary

The results presented above aim to substantiate two basic claims. First, they demonstrate that the hypotheses growing out of case-based work on reassertion and the canonical delegation model do not adequately identify the conditions that generate Congressional reassertion. By illustrating that neither over-time growth in the strength of the executive branch nor partisan conflict significantly increases reassertion activity, the models bear out this claim. Next, I argue that the "presidential weakness" hypothesis allows for insights into the dynamic of inter-branch conflict generated by reassertion and thereby illustrates how the expectation of conflict influences Congress' decision to take up reassertion legislation. The models presented in Tables 1-4 demonstrate the explanatory power of this claim by providing evidence to illustrate that reassertion activity increases in chamber years presided over by weakened presidents and that reassertion bills successfully pass both chambers when the president is least likely to mount opposition to them. In sum, therefore, we have reason to believe that in the modern era, "congressional resurgence" is contingent upon the political status of the executive branch.

Conclusion

It has long been understood that a properly functioning system of separated powers is vital to the health of our political system. While the boundaries dividing the executive and legislative branches of government are always in flux, scholars have generally taken as a given Congress' capacity to help provide for this form of "system health" by effectively fending off or counteracting encroachments from the executive branch. As I argue, this assumption generally takes one of two forms. Similar to James Sundquist's (1981) analysis in *The Decline and Resurgence of Congress*, one form suggests that the executive will reassert when members come to realize that the executive has put at risk Congress' standing in the constitutional order. The other form, taking its cue from the canonical delegation model, suggests that partisan conflict will generate reassertion. In this case, members reassert in order to minimize the transaction costs incurred when an opposition party president has too much influence over policy set by executive branch agents. The results presented here cast doubt on both claims and, in so doing, raise new questions about Congress' standing vis-à-vis the president. They also cast doubt on the Founders hope that a properly constructed system of divided powers would lead those within the legislature to defend it from outside encroachment.[23]

By compiling an original data set of 92 pieces of reassertion legislation and then examining the conditions that lead Congress to take up these bills, the analysis here suggests that presidential weakness motivates reassertion. The results presented here, therefore, contribute to two important literatures. First, like those who demonstrate that members of Congress frequently run against the institution itself, as well as those who argue that partisan conflict has undermined the protection of institutional prerogatives, the results presented here suggest that those in Congress do not believe their political fate to be linked to Congress' standing in the constitutional order (Mayer and Canon, 1999; Mann and Ornstein 2006; Maltzman and Binder 2009; Levinson and Pildes 2006; Katyal 2006). Since reassertion is motivated by the pursuit of electoral gain and the presumption that an out-going president will not act as an opposing force, we have little reason to believe that members will act collectively to oppose executive aggrandizement.

[23] In *Federalist 51*, for example, Madison argues that "the interest of the man must be connected with the constitutional rights of the place."

The presidential weakness hypothesis also bolsters the work of those who have illustrated the president's rise to the pinnacle of our political system. According to Richard Neustadt, the modern president cannot be "as small as he might like," and those who illustrate his roles as party head, manager of a sprawling administrate state, and wielder of unilateral powers have helped to substantiate Neustadt's argument (Neustadt 1960[1990], 5).[24] As the president has risen, members of Congress have come to accept that their electoral fortunes are increasingly tied to his performance (Campbell 1986; Campbell and Summers 1990). As a consequence, they prove willing to reassert only when these electoral benefits are not present. An aggrandizing but politically popular president presiding over a Congress controlled by his political opponents, therefore, faces little risk of reassertion. In the modern era, reassertion is not motivated by the impulse to protect and maintain a proper balance of power between the branches but is instead a form of political opportunism. The consequences of this are as yet unknown but are in need of further exploration.

[24] For a discussion of the president's various roles see: Milkis (1993); Milkis and Rhodes (2007): Galvin (2010); Lewis (2008); Hess and Pfiffner, (2002); Arnold, (1996[1998]).

References

Aberbach, Joel. 1990. *Keeping a Watchful Eye: The Politics of Congressional Oversight*. Washington, D.C.: Brookings Institution Press.
Aberbach, Joel. 2002. "What's Happened to the Watchful Eye?" *Congress and the Presidency* 29: 3-23.
Arnold, Peri E. 1996[1998]. *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905-1996.* Lawrence, KS: University of Kansas Press.
Bendor, Jonathan and Adam Meirowitz. 2004. "Spatial Models of Delegation." *American Political Science Review* 98: 293-310.
Binder, Sarah A. 1999. "The Dynamics of Legislative Gridlock, 1947-96." *American Political Science Review* 93: 519–533.
Campbell, James E. 1986. "Predicting Seat Gains From Presidential Coattails." *American Journal of Political Science* 30: 165-183.
Campbell, James E. and Joe A. Summers. 1990. "Presidential Coattails in Senate Elections." *American Political Science Review* 84: 513-524.
Clinton, Joshua D. and Lapinski, John S. 2006. "Measuring Legislative Accomplishment, 1877-1994." *American Journal of Political Science* 50: 232–49.
Coase, R.H. 1937. "The Nature of the Firm." *Economica* 4: 386-405.
Coleman, John J. 1999. "Unified Government, Divided Government, and Party Responsiveness." *American Political Science Review* 93: 821–835.
Edwards III, George C., Andrew Barrett, and Peake, Jeffrey. 1997. "The Legislative Impact of Divided Government." *American Journal of Political Science* 41: 545–563.
Epstein, David and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers.* New York: Cambridge University Press.
Farrell, Joseph. 1987. "Information and the Coase Theorem." *Journal of Economic Perspectives* 1: 113-129.
Ferejohn, John and Charles Shipan. 1990. "Congressional Influence on Bureaucracy." *Journal of Law, Economics, and Organization* 6: 1-20.
Gailmard, Sean. 2009. "Discretion Rather than Rules: Choice of Instruments to Control Bureaucratic Policymaking." *Political Analysis* 17: 25-44.
Gailmard, Sean and John Patty. 2007. "Slackers and Zealots: Civil Service, Policy Discretion, and Bureaucratic Expertise." *American Journal of Political Science* 51: 873-889.
Galvin, Daniel J. 2010. *Presidential Party Building: Dwight D. Eisenhower to George W. Bush* Princeton, NJ: Princeton University Press.
Ginsberg, Benjamin and Martin Shefter. 1995. "Ethics Probes as Political Weapons," *Journal of Law and Politics* 11: 497-511.
Groseclose, Tim and Nolan McCarty. 2001. "The Politics of Blame: Bargaining Before an Audience." *American Journal of Political Science* 45: 100-119.
Hess, Stephen and James P. Pfiffner. 2002. *Organizing the Presidency.* Washington, D.C.: Brookings Institution Press.
Howell, William G. and Jon C. Pevehouse. 2007. *While Dangers Gather: Congressional Checks on Presidential War Powers*. Princeton, NJ: Princeton University Press.
Howell, William G., Adler, Scott, Cameron, Charles and Riemann, Charles. 2000. "Divided

Government and the Legislative Productivity of Congress, 1945-94." *Legislative Studies Quarterly* 25: 285–312.

Huber, John D. and Charles R. Shipan. 2002. *Deliberate Discretion: The Institutional Foundations of Bureaucratic Autonomy*. New York: Cambridge University Press.

Katyal, Neal Kumar. 2006. "Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within." *Yale Law Journal* 115: 2314-2349.

Kiewiet, D. Roderick and McCubbins, Mathew D. 1991. *The Logic of Delegation: Congressional Parties and the Appropriations Process*. Chicago, IL: University of Chicago Press.

Krehbiel, Keith. 1998. *Pivotal Politics: A Theory of U.S. Lawmaking.* Chicago, IL: The University of Chicago Press.

Kriner, Douglas L. 2010. *After the Rubicon: Congress, Presidents, and the Politics of Waging War*. Chicago, IL: University of Chicago Press.

Kriner Douglas L. and Schwartz, Liam. 2008. "Divided Government and Congressional Investigations." *Legislative Studies Quarterly* 33: 295-321.

Levinson, Daryl J. and Pildes Richard H. 2006. "Separation of Parties, Not Powers." *Harvard Law Review* 119: 2311-2386.

Lewis, David E. and Strine, James Michael. 1997. "What Time Is It? The Use of Power in Four Different Types of Presidential Time." *Journal of Politics* 58: 682-706.

Lewis, David E. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance.* Princeton, NJ: Princeton University Press.

MacDonald, Jason A. 2010. "Limitation Riders and Congressional Influence Over Bureaucratic Policy Decisions." *American Political Science Review* 104: 766-82.

Maltzman, Forrest A. and Binder, Sarah A. 2009. *Advice and Dissent: The Struggle to Shape the Federal Judiciary*. Washington, D.C.: Brookings Institution Press.

Mann, Thomas E. and Ornstein, Norman J. 2006. *The Broken Branch: How Congress Is Failing America and How To Get It Back On Track*. New York: Oxford University Press.

Mayer, Kenneth R. and Canon David T. 1999. *The Dysfunctional Congress: The Individual Roots of an Institutional Dilemma*. Boulder, CO: Westview.

Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.

Mayhew, David R. 1991. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946-1990*. New Haven, CT: Yale University Press.

Mayhew, David R. 2000. *America's Congress: Actions in the Public Sphere, James Madison Through Newt Gingrich*. New Haven, CT: Yale University Press.

McCarty, Nolan. 2007. "The Policy Effects of Political Polarization," in *The Transformation of American Politics: Activist Government and the Rise of Conservatism*, ed. Paul Pierson and Theda Skocpol. Princeton, NJ: Princeton University Press.

McCubbins, Mathew D. and Schwartz, Thomas. 1984. "Congressional Oversight Overlooked: Police Patrols vs. Fire Alarms." *American Journal of Political Science* 28: 165-79.

McCubbins, Mathew D., Noll, Roger G., and Weingast, Barry R. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics & Organization* 3: 243-77.

Milkis, Sidney M. 1993. *The President and the Parties: The Transformation of the American Party System Since the New Deal.* New York: Oxford University Press.

Milkis, Sidney M. and Rhodes, Jesse H. 2007. "George W. Bush, the Republican Party, and the

'New' American Party System." *Perspectives on Politics* 5: 461-488.
Moe, Terry M. 1987. "An Assessment of the Positive Theory of 'Congressional Dominance.'" *Legislative Studies Quarterly* 12: 475-520.
Moe, Terry M. 1993. "Presidents, Institutions, and Theory," in George C. Edwards III, John H. Kessel and Bert A. Rockman, ed. *Researching the Presidency: Vital Questions, New Approaches*. Pittsburgh, PA: University of Pittsburgh Press
Neustadt, Richard E. 1960[1990]. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York: The Free Press.
Rieselbach, Leroy N. 1994. *Congressional Reform: The Changing Modern Congress.* Washington, D.C.: CQ Press.
Rossiter, Clinton, ed. 1961[1999]. *The Federalist Papers*. New York: Penguin Putnam, Inc.
Shepsle, Kenneth A. 1988. "Representation and Governance: The Great Legislative Trade-off." *Political Science Quarterly* 103: 461-84.
Shickler, Eric. 2001. *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*. Princeton, NJ: Princeton University Press.
Schickler, Eric. 2007. "Entrepreneurial Defenses of Congressional Power," in *Formative Acts: American Politics in the Making*, ed. Stephen Skowronek and Matthew Glassman. Philadelphia, PA: University of Pennsylvania Press.
Shipan, Charles R. 2004. "Regulatory Regimes, Agency Actions, and the Conditional Nature of Congressional Influence," *American Political Science Review* 98: 467-480.
Sundquist, James, L. 1981. *The Decline and Resurgence of Congress*. Washington, D.C.: Brookings Institution Press.
Volden, Craig. 2002. "A Formal Model of the Politics of Delegation in a Separation of Powers System." *American Journal of Political Science* 46: 111-133.
Volden, Craig. 2002. "Delegating Power to Bureaucracies: Evidence from the States." *Journal of Law, Economics, and Organization* 18: 187-220.
Wood, B. Dan. 2011. "Congress and the Executive Branch: Delegation and Presidential Dominance," in *The Oxford Handbook of the American Congress,* ed. Eric Schickler and Frances E. Lee New York: Oxford University Press.