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Preface: An American Political Pattern?

The popular complaint about current American politics is everywhere. Politicians are polarized. Public opinion is volatile. Government is grid-locked. Journalists then add their usual bias to this contemporary complaint. What is happening in our time has never been seen before. And it is, of course, the shape of politics for all time to come. Yet no one feels compelled even to try to tell you where the modern world came from, what causes it to hang around, and, by extension, what might cause it to go. Those are the concerns that motivate this volume.

To get at them, we need a picture of the overarching structure of American politics at diverse points in time. We need a small set of key elements that repeatedly structure this politics. We need an extended period in which these key elements can interact, ideally in differing ways. And we need a process of policy-making that emerges from this interaction, a diagnostic process that can be compared—that itself evolves—across time. At any given point, the result contributes to the big picture in American politics. Across time, it tells a story of political stability and, especially, political change. Without these pictures, we cannot know where we are.

Any such picture relies heavily on previous research on American politics as it has itself evolved during the long period in question. This is the evidence that has to be organized in order to talk intelligently about where the contemporary world came from and what sustains it. So a set of concepts that organizes a search for the big picture must simultaneously organize this evidence, putting it into a relationship of greater and lesser generality and power. All political phenomena are not created equal, and even the most careful research cannot make it so. Some phenomena are epiphenomena of others. Too much political research proceeds in implicit ignorance of that fact.

To cut directly to the chase: a framework that can allow the ongoing structure of American politics to emerge, both at a given point and across time, depends on a small set of organizing concepts capable of
isolating this structure. These concepts need to lead directly to—they need effectively to constitute—the main intermediary influences on that politics. Organizing concepts do not have to be the ultimate explanation for its outcomes. Many other factors will contribute to that; we shall attend to some of these explicitly in the concluding chapter. Yet organizing concepts do need to be powerful influences on the policy-making process that characterizes an extended political period. In that sense, they really do need to serve as the major proximate influences on politics.

That is the initial justification for using three key concepts to organize the analysis that follows, even as their ultimate justification has to lie in the interpretive results that proceeding in this way can contribute. In any case, the three major aspects of politics that will organize the search here are party balance, the comparative standing of the two major parties in American society; ideological polarization, the programmatic distance between the main contending forces in that politics; and substantive conflict, the policy content of what is at stake in each successive period. Specifying these moving pieces is the first step in moving from familiar but unsystematic complaints about the contemporary world to a systematic analysis that leads up to and sustains this world in the fashion in which it actually works. In effect, the interaction of these pieces is the intermediary structure of American politics.

The payoff from this framework then derives from the relationship among its key moving pieces as they come together to create a policy-making process peculiar to an extended period. At bottom, it is this policy process—not election results—that must demarcate political eras, the periods when politics exhibits the stable operating pattern contributed by the interaction of our three key elements. The fact that many analyses of American politics proceed in ignorance of the interplay between political structure and policy-making does not make this separation any more sensible: an ostensible political structure needs to be reflected in actual policy-making, else how consequential can it be?

That said, the intermediary structure of politics that is producing a distinctive process of policy-making ought to be (and reliably is) reflected in a diagnostic pattern of election outcomes. Each political era has its associated electoral dynamic. Indeed, a change in the nature of election outcomes is what sets off the hunt for a different intermediary structure to politics. Electoral results and political structures thus work back and forth to produce a policy-making process in the real world of American politics. They must work back and forth in the analysis of that politics as well.
Three key concepts are already a modest form of generalization about the politics of their time, being summary devices for its specifics. Said the other way around, they provide a way to organize presentation of the specifics of politics and politicking at a point in time, while adding interpretive power to this historical presentation. Yet if the challenges inherent in applying these concepts to each successive period can be met—if each of the policy-making processes that define a political era and produce its diagnostic electoral outcome can be teased out through them—they also provide a way to see the larger context to politics within its period.

So the inescapable organizing question has to be: What has been the relationship among party balance, ideological polarization, and substantive conflict at any given point in time? These three grand concepts are related in one distinctive way at the current moment, and chapter 4 will deconstruct this arrangement forcefully. Yet those concepts have not always been related in this way, and that is the other essential virtue of proceeding by way of them. This is to say: there is hope that attention to the evolution of three big moving pieces will pay intellectual dividends by unmasking some major underlying dynamics, the effective dynamics of political change.

For that to happen, we also need an extended period of time, a temporal stretch in which three major aspects of politics can be observed. This period must be sufficiently long to allow these basic building blocks of American politics to interact in differing ways. It must not be so long that the social and organizational backdrops to their operation are no longer conceivably comparable. The obvious candidate—long enough to allow substantial change, not so long as to take us back to an unrecognizable world—comes from the eighty-plus years since the New Deal.

The great challenge, then, is two-sided. It must isolate extended periods when politics can be said to have operated in a roughly stable fashion, a fashion allowing the further isolation of a small set of major factors contributing to this stability, while at the same time leaving room for the gradual cumulation of alternative influences that would eventually destroy this stability and bring on a new period, a period achieving a fresh stability built around a different mix of these major factors and a different set of influences on them. If the modern world of American politics begins in 1932, then a focus on its three main moving pieces cuts this modern world more or less insistently into four lesser periods, four distinguishable eras when our organizing concepts interacted in differing ways to produce distinctive processes of policy-making:
The High New Deal Era, 1932–1938
The Late New Deal Era, 1939–1968
The Era of Partisan Volatility, 1993–2016

The resulting analysis is further challenged, but also saved, by the obvious fact that all such periods eventually come to an end. Something causes one or more of the big-three moving pieces to change in ways that affect their collective relationship, leading the policy-making process as a whole to shift. In hindsight, this shift usually looks abrupt, and sometimes its driving cause is abrupt too. The clearest example arrives in the opening chapter, when the stock market crash of 1929 brings on the Great Depression, and economic catastrophe leads to a major change in party balance for the nation as a whole. More often, however, while the shift can be every bit as neatly demarcated, its main causal elements must be seen, again in hindsight, to have been building for some time. The clearest example is the process by which an older organizational form of American political parties, dominant when the Great Depression arrived, began to change in ways that achieved their full impact on ideological polarization only much later, in the contemporary period.

The four periods do generate their own peculiar challenges, each in turn, when the focus is isolating a collective relationship among three of the major moving parts to American politics and the policy-making process that follows from them. Such a relationship needs to be specific to its period and not characteristic of either its predecessor or its successor. On the other hand, by demanding a template for this enterprise that is comparative across eras, the search for this collective relationship does provide a way to proceed. Analyses of all four periods will thus unfold in precisely the same order in each historical chapter: party balance, ideological polarization, and substantive conflict, leading to a distinctive (and distinguishing) process of policy-making.

Those periods go a long way toward determining the organization of what follows. Chapter 1 opens with, and elaborates upon, the High New Deal. Chapter 2 considers the far longer but strikingly different Late New Deal. Chapter 3 moves to the Era of Divided Government, so familiar in its aftermath but so initially unsettling when viewed through the lens of previous periods. Chapter 4 addresses the current period, the Era of Partisan Volatility: this is the period that sparked the entire
venture. And a concluding chapter circles back to ask how the key elements of all these periods related across time, while attending to some further, major, missing pieces of the story.

The book itself was impelled by a number of critical events. It began life as one of six papers for the opening plenary panel at the Policy History Conference of 2014. The six of us who cut American history into periods and applied the three organizing concerns were Michael Holt of the University of Virginia and Daniel Walker Howe of UCLA for the early period, Gareth Davies of Oxford University and Richard John of Columbia University for the middle period, and Sidney Milkis of the University of Virginia plus me—Byron Shafer of the University of Wisconsin—for the modern period. Chuck Myers of the University Press of Kansas attended that session and afterward convinced his colleague Fred Woodward to read the extended paper that lay behind my personal presentation. Jointly, those gentlemen argued that a long essay should become a short book, and that was clearly the turning point in its development. One of the virtues of working with them has been that they have been willing—unafraid—to comment and advise along the way, in effect to serve as additional readers. In my experience, there are few such genuine editors left.

They might not have succeeded, even then, if their arguments had not meshed with two intellectual frustrations of my own. In one, Richard F. Fenno Jr. was the first person that I recall describing the current study of American politics as “more and more about less and less.” Translation: even good analysis still needs some larger framework that organizes major versus lesser influences on its political process. Without it, we cannot know that otherwise well-developed and richly supported explanations of how the world works are not a simple epiphenomenon of some larger context.

In the other implicit stimulus, I grow increasingly frustrated by students, and now even colleagues, who have no idea where their own contemporary work should be located intellectually. Not knowing that, they too cannot know that the same otherwise solid arguments about how the world works are not a simple reflection of prior forces that brought them into being. In particular here, most generalizations about politics need to be specified with regard to points in time because these are the point(s) when the overall structure within which they reside—their larger context—allowed them to seem “general.”
In any case, the next iteration of the initial essay served as the basis for an Inaugural Lecture at Oxford University, where I had the opportunity to be John G. Winant Visiting Professor of American Government in Hilary and Trinity Terms of 2015. The lecture drew a large and ever so slightly rambunctious crowd. Especially influential were three questions asked afterward by Lawrence Jacobs of the Humphrey School of Public Policy at the University of Minnesota, John Muellbauer of Nuffield College at Oxford, and Carol Sanger of the School of Law at Columbia University. Unlike me, they will no longer remember their questions, so they must be absolved of what resulted.

The Winant Professorship was also what really allowed a long essay to become a short book. Nigel Bowles, Director of the Rothermere American Institute, surely had the largest single input to this evolving manuscript by way of a continued conversation—in private but also in public seminars and lectures—about the changing structure of American politics. Jane Rawson, Head Librarian of the Harmsworth Library, facilitated secondary research in a fashion little short of remarkable. And Gareth Davies, Professor of American History, joined Nigel in giving the manuscript a thorough and serious—aka “tough”—reading, prodding me to rethink numerous aspects.

Along the way, this manuscript was actively and reliably supported by my regular research assistant, Regina Wagner, who even made the transatlantic trek at one point to move the project forward. She was joined during the summer of 2015 by new members of the research team: graduate students Emma Frankham and Alexander Alduncin, plus undergraduate research apprentice Negassi Tesfamichael. These latter were responsible, respectively, for legislative histories, ideological ratings, and voting records, all of which remain integral to the final product. All managed to respond graciously to requests for further information, a different form of presentation, or an entirely new avenue of data collection. Elizabeth Sawyer, another graduate student, completed the index, after some initial work by Negassi.

While still in England, I benefited as I always do from a couple of extended conversations with Alan Ware, now retired from Oxford, about changing political structures generally. After my return to the United States, Paul Quirk at the University of British Columbia was willing to be poked, prodded, and queried about various generic concerns for policy-making. Two referees for the University Press of Kansas, David R. Mayhew of Yale University and Jeffrey M. Stonecash of Syracuse Uni-
versity, then did the kind of detailed dissection of a manuscript that will either kill or cure its author. They have allowed me to thank them by name, though I wager that anyone who read those comments could name them anyway.

And all along the way, in the beginning and at the end, Charles O. Jones of the University of Virginia constantly reinforced the original argument from my Kansas editors, about what I really ought to write and how I should write it. I do not know when he began doing this kind of thing for me, but it was well under way by the time we worked together on the national party conventions in the early 1980s.

Those late comments from Dave Mayhew do not begin to capture his contribution to my education. I do know that this began all the way back when I first read the book that had been his doctoral dissertation, well before the man himself came to serve as my model of what a knowledgeable student of American politics should know. You have to ask yourself how someone with those two remarkable advisers, Jones and Mayhew, could still manage to get things wrong.

Dick Fenno of the University of Rochester somehow escaped having to comment on this one, but he has provided so much advice for so many years that he ought to be thanked (or is that blamed?) anyway. The opportunity—nay, responsibility—to return to his book *The Power of the Purse* in order to pursue this project would almost have been enough, by itself, to sustain me in its pursuit.

Those three people know that there needs to be no tension between stiff intellectual standards, professional collegiality, and personal friendship. It gives me great pleasure to dedicate this one to them.
The American Political Pattern
1 | Birth Pangs of the Modern World

The Political Structure of the High New Deal Era, 1932–1938

**Party balance:** a tectonic shift from a large and established Republican majority to an even larger Democratic advantage; **ideological polarization:** minimally polarized electoral politics but a hugely polarizing institutional conflict between presidency and Court; **substantive conflict:** a world centered on issues of economic welfare, at every point and in every institution; **policy-making process:** essentially presidential, to an unprecedented degree.

The modern world of American politics—the long period from 1932 to the present—began with one of the biggest shifts of party balance in all of American history. In what became recognized as the High New Deal Era, a substantial, reliable, and recurrent Republican majority that had been in place for thirty-plus years gave way to a huge Democratic majority, one that would be in place for thirty-plus years thereafter. No one in its time could have been sure that this was a lasting change in public attachments, rather than a simple vote of no confidence in the party that had been in power when the Great Depression hit—though Democrats did hope and Republicans did fear. Eighty years later, while there are still interpretive issues that demand attention, the ultimate scope of this particular shift in party balance seems inescapable.¹

The presidential election of 1928 had appeared to confirm an ongoing, reliable, and substantial Republican majority for the nation as a whole. First registered in its continuing form at the presidential election of 1896, this majority had been rattled by internal divisions in the years immediately before the First World War, before settling back in a dominating—indeed, a blanketing—fashion as the war drew to a close. The presidential election of 1932 then represented the greatest shift in partisan outcomes at the national level since the modern party system,
Democrats versus Republicans, had been stabilized in the aftermath of the Civil War. What could not have been known in its time was whether this shift should be regarded as deep-seated and potentially lasting or as idiosyncratic to particular personalities, to a single contest, or, especially, to dramatic events of the day.

Republicans would continue to make some version of the idiosyncrasy argument for a very long time. With hindsight, however, analysts have overwhelmingly agreed on a huge change of partisan balance, Republican to Democratic. Scholars did continue to argue about its dynamics, pitting those who emphasized actual shifts in party attachment against those who favored differential mobilization of those previously disengaged from the major parties. Of late, scholars have also argued about when this new and sharply different party balance should be proclaimed, pitting those who regarded the 1932 election as pivotal against those who argued for an extended period in which the products of this election—new partisan incumbents but especially new policy programs—were gradually institutionalized.

Abstractly, it is not hard to think of policy responses to the partisan outcome of the 1932 election that might not have led to a new party balance for the nation as a whole. Because these remain conditions contrary to fact, it is not obvious that an ambitious incoming administration would not have self-corrected in response to programs that were failing to institutionalize its new partisan potential. Nevertheless, in campaigning to become the initial vehicle for this change, Franklin Roosevelt had sometimes sounded as if he might try to “out-Hoover” incumbent president Herbert Hoover by raising taxes, cutting spending, and balancing the budget. Had Roosevelt actually hewed to that line—he did take some early actions consistent with it—the 1932 vote might have stood as a simple vote of no confidence, to be followed by another such vote in response to essentially the same Hooverite program.

Alternatively, Roosevelt might in principle have settled on an aggressive program whose policies proved more or less clearly and in short order not to work. To accomplish this, the president would presumably have had to dilute those aspects of the New Deal that are most often saluted by economists after the fact: rescuing the banking system, inflating the currency, and, in a development actively opposed by Franklin Roosevelt, settling substantial cash bonuses on millions of veterans. In their place, he would have had to elaborate those aspects of the program that have always drawn a more skeptical professional judgment, perhaps by
further augmenting the National Recovery Administration and its
aspiringly comprehensive regulatory codes, as some critics within his own
party certainly preferred.4

Once more, even under these alternatively extreme conditions, am-
bition coupled with duty might well have caused the Roosevelt admin-
istration to self-correct, so that the electoral upheaval of 1932 still be-
came a new and lasting party balance. Either way, the remainder of the
High New Deal Era was to confirm, less grandly but more explicitly and
directly, that the general public was fully capable of adjusting its voting
behavior to take account of policy outcomes and to pass judgment on
them. Thus the presidential election of 1936 would confirm that the
general public could pass a solid positive judgment on the policy prod-
ucts of the overall New Deal, just as the midterm election of 1938 would
confirm that this public could pass equally negative judgments when it
felt that the program was not producing.

Accordingly, despite alternative abstract possibilities and despite ac-
tual concrete disputes among professional experts about the precise dy-
namics that made the election of 1932 pivotal in terms of party balance
in the United States, most of the disputants, both active partisans and
professional analysts, appear prepared to accept three overall summary
judgments about the arrival of a new balance in American society after
1932:

• While scholars might continue to debate the precise point at
which a new majority could be said to have been institutionalized,
that is, converted into a majority of Americans who would reliably
call themselves Democrats rather than Republicans, it would be
hard to find any voices ready to argue that the Republicans were
as strong in the thirty years after 1932 as they had been in the
thirty years before, and/or that the Democrats remained as weak.
A serious party rebalancing did follow in the wake of the 1932
presidential election.

• At the same time, it was events of the day rather than previously
established party programs that propelled this huge partisan
change. John W. Davis had offered a Democratic policy program
in the presidential campaign of 1924, Alfred E. Smith had offered
another in the campaign of 1928, and Franklin D. Roosevelt of-
ered a third, however ambiguous, in the presidential campaign of
1932. Yet it would be hard to find a serious voice wanting to argue
that the promised programs of Davis, of Smith, of Roosevelt, or of all three together, were what propelled this underlying partisan change, rather than public demands for a policy response to the Great Depression.

• Finally, most analysts, opponents as well as supporters of the resulting programmatic response, are prepared to accept that it was indeed the collection of policies gathered as Franklin Roosevelt’s “New Deal for the American people” that ultimately confirmed a new partisan majority in the nation as a whole. That program reached broadly across American society and deeply within it. Many of its key planks—unemployment insurance, a public retirement system—remain core elements of American public policy eighty years later.

On the other hand, the overall composition of that program and the specifics of its individual pieces were still powerfully shaped by the structure of American politics in the High New Deal Era, especially by its degree of ideological polarization, by the substantive content of its legislative conflicts, and by the nature of the policy-making process that resulted. Initially, then, it is necessary to ask: How was this new party balance related to ideological polarization? Or, said the other way around: What level of ideological polarization infused this new party balance, and just how did it do so? Yet more than in any successor period, it is necessary to go on and ask whether during the High New Deal Era these partisan attachments captured the operative ideological polarization of its time. And there, uniquely to the High New Deal, the answer was no.

Why were the appropriate answers not as straightforward as they might abstractly seem in this opening era of modern American politics? Partly, this was because the separation of powers as a grand institutional framework always provides several different places where ideological polarization can be registered. Thus the presidency, Congress, and, in this case especially, the Supreme Court are all potentially available to reflect the operative scale of polarization. Crucially, then, answers became additionally complicated during the High New Deal because these available theaters for generating and registering polarization were to produce such different results. With the presidency, polarization was potential but nascent. With Congress, polarization was effectively absent. Yet with the Court, thanks to the separation of powers, it was intense.
The choice embodied in the presidential contest between incumbent Republican Herbert Hoover, the president seeking reelection, and challenging Democrat Franklin Roosevelt, the governor of New York, was clear enough on one level: staying the course with Hoover or opting for change with Roosevelt. Yet the ideological implications of that choice were less obvious than they would come to seem after the fact. Hoover, after all, rose to national prominence for his leadership in international humanitarian relief; he was from the Progressive rather than the Old Guard wing of the Republican Party; and he had not shied away from major actions to address the Great Depression governmentally. Roosevelt too was out of the Progressive wing of his party, the Democrats, and while he had taken some actions in New York that could with hindsight be argued to prefigure parts of what became the New Deal, he was not the candidate of those who dreamed of extensive and systematic governmental intervention in the market economy.

Moreover, Roosevelt spoke forcefully and repeatedly about the need to restore fiscal responsibility and reduce the national deficit. While he would jettison that goal as the New Deal evolved, it was still noticeable within his first collective set of policy moves. The programmatic uncertainty inherent in these candidate differences in their time was marvelously captured by Marriner S. Eccles, who would become Roosevelt’s chairman of the Federal Reserve Board, when he cracked, “Given later developments, the campaign speeches often read like a giant misprint, in which Roosevelt and Hoover speak each other’s lines.” Yet at bottom, what was at issue here was very different but equally simple. Roosevelt was running a classic referendum-type campaign: if you like the current state of the nation, vote for them; if you do not, vote for us.

Roosevelt would move a long way, both programmatically and rhetorically, by the time of his reelection campaign in 1936. By then, major pieces of what would come to be recognized as the New Deal had been passed by Congress and signed by the president, while Roosevelt was sharpening new class-based themes, attempting to draw a line between the general public and his “malefactors of great wealth.” Yet his opponent, Alfred M. “Alf” Landon, Republican governor of Kansas, would again be from the Progressive rather than the Old Guard side of the Republican Party, and Landon was willing to go so far as to state his support publicly for some major aspects of the New Deal program. Moreover, Roosevelt, like many other presidents seeking reelection, was centrally concerned with framing the choice as between the situation when he
came into office and the situation that obtained as he was running for reelection—another (a second) variant of the referendum argument.

So the difference between the two parties as embodied in their presidential campaigns was in the process of clarifying. But that was probably all that should be said about ideological polarization when observed through this presidential lens: clarifying but not yet indisputable. At the same time, the level of ideological polarization when observed through the other nationally elective institution of American government, through Congress, was clear. At the level of individual partisan candidacies for Congress, each of the parties retained a great deal of factional diversity, the elements of which did not align the two parties neatly against each other. Thus the Republicans still featured a long-standing tension between Progressives and the Old Guard, while Democrats featured an even more complex tension among Progressives, Southern Democrats, and a growing body of urban, working-class, labor-oriented constituencies that would come to be defined as liberals by the very process of framing the New Deal.7

Yet the critical point here was that legislative politics in an operative sense was only minimally polarized. Or rather, to put the same point more succinctly, legislative politics was effectively unipolar. To begin with, the overall Democratic margin in Congress was overwhelming. A party that had held only 37 percent of the seats in the House and 41 percent of the seats in the Senate in 1928, held 72 percent of seats in the House and 60 percent of seats in the Senate by 1932—and those numbers were to go up again in each of the next two elections, to a remarkable 77 percent in the House and 79 percent in the Senate by 1936 (figures 1.1 and 1.2).8 The Republicans might well be, as they were, split between Progressive and Old Guard factions, but the bedrock fact was that neither was of a size to matter. And just to make matters worse from the perspective of an organized opposition, Progressive Republicans were actually attracted to major aspects of the New Deal.

Even more to the practical point, the two succeeding elections of 1934 and 1936 were to be the only ones in American history in which Northern Democrats constituted a majority of the House of Representatives all by themselves (figure 1.1). Northern Democrats in the Senate would require one further election to get to the same exalted status, arriving there only in 1936. But when they did, they were worth a full 54 percent of the Senate, again all by themselves (figure 1.2). In turn, Southern Democrats, the leading dissident faction within the Demo-
Democratic Party as the High New Deal Era began, rivaled the whole Republican Party on the numbers in 1934, before actually surpassing it in 1936. Yet Northern Democrats did not in some sense need these Southern Democrats either.

Those numbers go a long way toward explaining why the policy-making process that came to characterize the High New Deal Era was preponderantly presidential. To wit: Roosevelt was the leader of the Northern Democrats; Northern Democrats were an effective majority of Congress; party unity was never easier than when an established
Factional bloc could in principle act alone. For a time, then, there was not only little reason to pay attention to what the other party was doing. There was minimal reason to worry about the rest of your own party if you were President Franklin Roosevelt. Moreover, the 1934 election was the first one since the Civil War in which the party in power (that is, the party of the president) actually managed to gain seats at the midterm. That feat would not be repeated until the midterm of 1962 in
the Senate and the midterm of 1998 in the House, in two succeeding electoral eras, each structured very differently.

On the other hand—and this is the key point here—the real operative polarization of the time was neither between nor within the political parties, whether observed through the presidency or by way of Congress. Instead, major operative polarization was between institutions, between a president attempting to introduce policies consistent with a new partisan era and a Supreme Court attempting to sustain policies consistent with an old one:

- From one side, Roosevelt as president was bringing forth that huge array of far-reaching programs that collectively constituted his New Deal. In the process, he was doing nothing less than introducing a governmental role in managing the economy and in providing social welfare that was different in kind from what went before it.
- From the other side, the Supreme Court was doing nothing more than what it had long done. It was checking to be sure that presidential programs were congruent with the Constitution of the United States. Yet it was finding that major elements within them were not, and it was perforce ruling these to be nugatory, that is, null and void.

Judged narrowly, this institutional polarization, dramatic as it was, was not strictly a reflection of partisanship. Roosevelt’s displeasure with the Court as an institution would be augmented by the fact that he acquired no Court nominations during his entire first term as president, where Warren Harding had gotten four and Herbert Hoover had gotten three. Yet the associated partisanship of the nine justices sitting when Roosevelt took office revealed nearly nothing about their response to his New Deal. Thus the two justices still on the Court who had been appointed by a Democratic president split reliably on New Deal cases. So did the two partisan Democrats on the Court who had been appointed by Republican presidents. Indeed, it was two of the three justices appointed by Herbert Hoover who were to be responsible for saving the New Deal when the ultimate showdown arrived.

All of that was, however, largely beside the point when the question was the relationship between party balance, ideological polarization, and substantive conflict. For the evolving partisan implications of a gathering
conflict between the presidency and the Court were huge, as was the eventual policy impact of any ultimate resolution to this conflict. And it was these implications that embodied the real ideological polarization of their era. In effect, an institution embodying the ideological preferences of a new party majority was being stopped by an institution embodying the ideological preferences of an old party majority instead. Which is to say: quite apart from the explicit partisanship of the presidents appointing them or the nominal partisanship of the justices being appointed, an institution reflecting the policy preferences of the long predecessor era, when there had been a large Republican advantage in party balance, was stymieing what would become the policy preferences of the long successor era, when there was an even larger Democratic advantage.

What were they fighting about? That is, what was the substance of policy conflict during the High New Deal Era? The answer was overwhelmingly confined to one central policy realm, namely, domestic issues of economics and social welfare. These were close to the complete substance of the New Deal programs brought forward by President Roosevelt, with the lead exception being his contributions to repealing Prohibition. They were likewise close to all of the policy substance for the programs causing concern to the Supreme Court. (The repeal of Prohibition was not worth so much as a nod from the Court.) No subsequent political era would be anywhere near as uncomplicated, in the sense of being so unidimensional in its substantive focus.

There was a tiny hint at the very beginning of the Roosevelt administration that some international concerns—issues of foreign policy—might be added to this mix, though even these were economic welfare concerns in their essence. Thus Roosevelt did allow Cordell Hull, his secretary of state, to attend the World Economic Conference in London in June 1933, convened to consider coordination of a response to the Great Depression by the major developed nations. Yet he followed up by torpedoing that conference explicitly, and thereafter both his and the Court’s agenda consisted reliably and overwhelmingly of domestic welfare matters.10

Moreover, the policy-making process associated with this unidimensional agenda was equally uncomplicated—effectively monolithic but for a small set of recognizable exceptions. In essence, the framing of public policy on economics and social welfare was an overwhelmingly presidential matter from start to finish. It was principally the president who dictated the items on which this policy-making process would fo-
cus. It was principally the president who determined the specifics of the policy that would bring these items to legislative life. It was principally the president who, with occasional exceptions, determined even the order in which Congress would address these specifics. No successor period would come close to being as presidentially dominated as that of the High New Deal.

The opening legislative product of the entire New Deal program, the Emergency Banking Act of 1933, would telegraph this presidential dominance in a symbolically remarkable fashion. On the day after his inauguration, Roosevelt called Congress into special session. While it was assembling, his first official act as president was to declare a nationwide “bank holiday” in the face of cascading bank failures across the country. The curious basis for his authority to do so was the Trading with the Enemy Act of 1917, yet none of the other potentially major players objected. When Congress assembled, it found that its first item of business to be emergency banking legislation, intended to reopen the solvent banks, close the insolvent, and give the federal government authority to manage the transition of potentially salvageable others.

The bill for doing this went directly to the House floor under a closed rule, that is, without permission to amend. The House began consideration at 2:55 p.m., even though there were no copies available to the members, so that the bill as adopted had to be “represented” by a folded newspaper. Nevertheless, it passed by 4:05 p.m. on a shouted voice vote. The bill was taken up simultaneously by the Banking and Commerce Committee in the Senate at 1:40 p.m. By 4:10 p.m., it had been sent to the floor. At 7:23 p.m., it passed the Senate by a vote of 73–7, unamended despite an intense effort by Huey Long (D-LA). And at 8:36 p.m., six hours and fifty-six minutes after its introduction, it was signed into law. The lament by Congressman Bernard Snell of New York, minority leader of the House, was diagnostic: “The house was burning down, and the President of the United States says this is the way to put the fire out. And to me at this time, there is only one answer to that question, and that is to give the President what he demands and says is necessary to meet the situation.”

No other single piece of legislation would command this much deference by Congress to the president. In that sense, the symbolism of the folded newspaper is overstated. But in fact, the entire opening surge of legislation to begin creating what became the New Deal has been memorialized in a metaphor that is simultaneously a tribute to the funda-
mentally presidential nature of this policy-making process, namely, the “Hundred Days.” In truth, Roosevelt followed passage of the Emergency Banking Act with a request for discretionary authority to slash spending, and he followed that with the Beer and Wine Revenue Act, to begin the process of dismantling Prohibition.

But then came the unprecedented parade of New Deal measures that would complete this hundred days—and remain a benchmark for presidential dominance ever since. The full “grocery list” is crushing:

March 31: Civilian Conservation Corps Act
April 5: Executive order requiring the exchange of all gold for currency
April 19: Prohibition of gold shipments abroad
May 12: Agricultural Adjustment Act
May 12: Federal Emergency Relief Act
May 18: Tennessee Valley Authority Act
May 27: Federal Securities Act
June 5: Congressional resolution repealing the gold clause
June 6: National Employment System Act
June 13: Home Owners Refinancing Act
June 16: Emergency Railroad Transportation Act
June 16: Glass-Steagall Act of 1933, regulating the banks and creating the Federal Deposit Insurance Corporation (FDIC)
June 16: National Industrial Recovery Act, including creation of the Public Works Administration

On the one hand, this was a powerfully comprehensive product, involving inflation of the currency, provision of direct economic relief, commencement of economic regulation, institutionalization of public employment, rescue of home ownership, and regulation of transportation. Its individual pieces were groundbreaking, their collective impact only more so. On the other hand, a focus on the hundred days, while rightfully symbolic of the overall process of policy-making in its era, risks implying that Congress was inert in the face of these presidential initiatives, thereby ignoring a smaller set of intermittent, individualized, but still substantial initiatives that originated within Congress and not at the White House.

Most striking among these were a few major legislative acts that became part of the New Deal as a collective project but were actively op-
posed by the president, to the point of having to be passed over his veto. Yet there were also autonomously congressional pieces that grew out of an earlier Democratic Party program, where this president was not opposed but would not have invested time and energy on his own. And there were, bringing the analysis full circle, major legislative initiatives that came to life in Congress, were strongly opposed by the president in private, but were then successfully co-opted by way of substitutes originating in the White House.

The most substantial of the congressional initiatives that were both important to the overall program of the High New Deal and actively opposed by the president involved cash bonuses for veterans of World War I. In the process of passing the Economy Act, the first major piece of New Deal legislation with lasting programmatic content, Roosevelt had actually cut augmented benefits for veterans, passed in the late days of the Hoover administration with an eye on the 1932 election. Concerned to offer economies in the face of his emergent and comprehensive program, Roosevelt viewed these bonuses, accurately, as going indiscriminately to those who had and had not been harmed by the Depression. At the same time, he did not believe—most economists would now say inaccurately—that such payments could provide an effective economic stimulus.

Congress was diverted in the initial flush of legislative action by the Roosevelt administration, but veterans were not, so Congress returned to the issue in 1934. Its Independent Offices Act repealed major parts of the Economy Act; Roosevelt vetoed the repeal, but Congress overrode him, 310–72 in the House and 63–27 in the Senate. Congress then returned to the issue in late 1935, producing an expanded bonus bill. Roosevelt took the unprecedented step of reading his veto message to a joint session of Congress, and in the short run the Senate sustained him. But Congress returned to the issue yet again as soon as it reassembled in 1936. A new bonus bill passed the House 346–59 and the Senate 74–16, suggesting a veto-proof outcome. Roosevelt vetoed it anyway, but only in a handwritten 200-word note sent directly to the Capitol without external publicity. Three days later, his veto was massively overridden in both houses.

A different strand of essentially congressional initiatives, less consequential in their impact but more regular in their appearance, grew out of the inherited programmatic orthodoxy of the Democratic Party. The New Deal would ultimately shift this orthodoxy in the direction of