

Divided Parliaments and Lawmaking: Japan's Twisted Diet

Michael F. Thies, UCLA and Yuki Yanai, UCLA and Waseda University*

Abstract

David Mayhew (1991) famously argued that divided government does not grind U.S. policy making to a halt, or even reduce the flow of important legislation. Partisan rivals find ways to strike deals. In parliamentary systems, the stakes are thought to be higher, because government survival is partly a function of legislative effectiveness. A parliamentary system is strongly bicameral when a constitutionally powerful upper house is not controlled by the governing coalition. Even if the upper house cannot technically fire the government, it might have the means and motive to block the government's legislative agenda and cause it to resign. In this paper, we examine the case of the Japanese Diet, which has followed more than three decades of single-party bicameral majorities with 23 years of coalition governments and frequently divided parliaments. Japanese pundits and practitioners bemoan the advent of "Twisted Diets," as one house rejects what the other approves, leaving the government back where it started. Is this image correct? Has divided government paralyzed Japanese lawmaking? We show that governments facing Twisted Diets propose significantly fewer bills and see more of those they do propose amended or rejected, and that the mix of policy output changes as the opposition gets stronger.

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“The opposition forces should recognize that having control of the Upper House means they are half responsible for the government. They should have taken a broader view of the situation in making their decisions.” – LDP Secretary General Bunmei Ibuki, 2008. (www.japantimes.co.jp/text/nn20080320a1.html)

“The only solution would be to hold new elections...We do not agree on the fundamentals and thus we cannot discuss policy issues. To get to the end of debate, would be a deathmatch (desu-matchi)” – DPJ Secretary General Ichiro Ozawa (*Asahi shimbun* Nov 10, 2007).

“I’d like to change the constitution so that I can dissolve the House of Councillors too.” – LDP Prime Minister Yasuo Fukuda

1. Introduction

Divided government is a term usually reserved for presidential systems, since the independent origin and survival of the legislative and executive branches offers voters the chance to split their tickets. In parliamentary systems, by contrast, the executive is chosen by the parliament, and must maintain parliamentary support to survive in office, so a partisan divide between the executive and the legislature might seem impossible.¹ However, if a parliament is bicameral, a government might face an opposition majority in the upper house. Formally, a hostile upper house might not be able to fire the government,² but upper house intransigence might be sufficient to block a government’s legislative ambitions, even to the point that the government cannot accomplish anything and is obliged to resign. Indeed, since upper chambers are generally elected to fixed-length terms, a battle of wills between the chambers could disadvantage the nominally more powerful lower chamber, since only the lower house is subject to early dissolution. The supposedly stronger chamber could find itself in the weaker bargaining position. This possibility, then, could enhance the legislative power of the upper house beyond what constitutional designers intended.

Divided bicameralism, therefore, is an important and constitutionally precarious possibility

¹ Even minority governments count on a legislative majority for survival.

² Italy is an exception – the Senate can vote no-confidence in the government (see footnote 10 below).

in parliamentary systems, but it is rarely considered in the literature. This oversight is easy to understand; the doomsday scenario of a hostile upper house systematically killing government bills is rarely in evidence, for two reasons. First, with a few notable exceptions, divided parliamentary government is rare in the world's parliaments. Usually, if a parliament is bicameral, the government enjoys bicameral majorities. Second, upper chambers in parliamentary systems are typically very weak, so their partisan makeup may not matter very much. Even if the opposition controls the upper house, there may be little they can do to stop the government's agenda.

Recent work has demonstrated that governments that lack upper house majorities suffer shorter tenures in office (Druckman and Thies 2002) and are less likely to form in the first place (Druckman, Martin, and Thies 2005). Divided bicameral control would seem to be worrisome enough that coalition builders try to avoid it. Still, the question of how and why divided governments matter remains unanswered. What is the mechanism that leads to their earlier demise? Are divided governments fundamentally less capable of governing than unified governments? Do they get less done due to inherent inefficiency or unsolvable policy conflicts?

In this paper, we address these questions by examining the case of Japan. Since the promulgation of its postwar constitution, Japan has featured, on paper, one of the strongest upper houses in the parliamentary world. The House of Councillors (HC) has the same powers as the lower house (House of Representatives - HR) with the exceptions of budgets, treaties, and the formal choice of the prime minister, for which the HR's decisions prevail.³ The one caveat is

³ The supremacy of the House of Representatives is stipulated by Article 60 of the Constitution of Japan for budgets, Article 61 for treaties, and Article 67 for the selection of the prime minister. The House of Councillors may delay a budget or a treaty for 30 days, and a prime ministerial selection for 10 days, but after those deadlines, inaction is treated as rejection, and HR's decision becomes the decision of the Diet.

that an upper house veto may be overridden by a two-thirds majority in the lower house.⁴

From 1956 through 1989, the Liberal Democratic Party (LDP) held single-party majorities in both chambers, so HC majorities rarely disagreed with governments, and a potentially strong bicameral system operated as though it were effectively unicameral.⁵ Since 1989, however, no single party has controlled bicameral majorities in Japan, and governing coalitions have done so only 52% of the time.⁶ A new phrase has entered the lexicon to describe Japanese-style divided government: *Nejire Kokkai*, the “Twisted Diet,” invokes the metaphor of a system so tied up in knots as to be wholly ineffective. Is this image correct? Has the advent of divided government with a strong upper chamber paralyzed Japanese lawmaking? And if it has not, why not?

2. How should divided bicameralism affect lawmaking?

The idea that divided bicameralism should constrain lawmaking is intuitive. If both houses of parliament have to agree for a bill to become a law, and if the two houses are controlled by different groups that want different policies, it ought to be difficult to find consensus on how to change policy. In the jargon of spatial modeling, other things equal, more veto players with divergent preferences means a smaller win-set, and hence less policy change (Tsebelis 1999). But this is too general a statement.

If the policy environment is one-dimensional, and *if* each house enjoys the right to veto proposed policy changes, and *if* legislative majority-building within each house is not up for grabs, then it follows that policy change should only be possible if the group controlling the Upper House (the “opposition”) wants to move policy in the same direction as the group

⁴ Article 59 of the Constitution of Japan. For normal bills, the HC may postpone a decision for 60 days.

⁵ This description basically describes postwar Italy as well, where a constitutionally powerful Senate rarely disagrees with the Chamber of Deputies, because governing coalitions enjoy bicameral majorities.

⁶ Between the 116th Diet and the 180th Diet, 2,776 Diet session days were under unified government, and 2,517 under divided government. If special sessions with no lawmaking are excluded, the figures are 2,697 and 2,476.

controlling the Lower House (the “government”). But relaxation of any of those conditions can allow for more bills to become laws. Let us take them in turn.

First, consider dimensionality and Figure 1. Two groups whose preferred policies are on opposite sides of the reversion point (RP) might be unable to agree on policy change in one dimension; e.g., the government wants to move left, while the opposition wants to move right (left panel). If both must agree, RP will prevail and policy will stay put. But a bargain for policy change might be struck if two or more policy dimensions are packaged together. For example, the government (VP1) might go along with small rightward shift if it were packaged with a downward shift on the second policy dimension, and although the opposition (VP2) would prefer to move right and up, a deal is possible (right panel).⁷ One implication is that divided parliaments might pass fewer, but “bigger” bills, with multidimensional logrolls the best way to forge bicameral compromises. Another might be that although policies can change, they will not change by much (if the win set is small).

[Figure 1 Here]

Second, the upper chamber’s constitutional ability to veto policy change might be limited to certain types of legislation, or might be qualified by override provisions. The fewer policy areas over which the upper house enjoys an absolute veto, the less it can impede the government’s agenda. One way to think about this is to imagine that while the upper house may have the formal right to vote on all bills, the ability of the lower house to override an upper house veto varies by type of legislation. If the lower house cannot override an upper house veto under any circumstances, the two chambers really are co-equal. This is the case, for example, in the

⁷ Note that the two groups can strike a two-dimensional bargain even if they want opposite things on each dimension. Unless the reversion point is on the line that connects the two-dimensional ideal points of both groups, there will be a set of two-dimensional policies that both groups will prefer. Even if no two-dimensional bargain is possible, the addition of a third dimension in the logroll might do the trick. And so on.

Australian or Italian Parliaments. Sometimes, the lower house may override an upper house veto only if it can itself muster, say, a 2/3 supermajority, a formidable hurdle. This is the case in Japan for all normal legislation.⁸ Finally, the lower house may be able to re-pass with a simple majority a bill rejected by the upper house. In this case, the upper house veto is effectively only a delaying tactic.⁹ This is the case for budgetary legislation in nearly all parliamentary systems. The budget is arguably the most important policy that any government will produce, and it is one that must pass, usually every year, because the reversionary outcome of no budget implies government shutdown. The parliamentary failure of the government's budget is tantamount to a vote of no-confidence, leading to the resignation of the government and typically a general election. Accordingly, nearly all parliamentary constitutional designers have withheld budgetary power from the upper house, lest the upper house enjoy the right to deny confidence and fire the government.¹⁰

A third comfort against the dire veto-player logic of divided parliamentarism arises once we endogenize the identity of the veto players. In a pure two-party system, if the parties are internally united, then if the government party does not control the upper house, *the* opposition party must do so. But most parliaments feature more than two parties. As long as no single opposition party or cohesive opposition coalition controls an upper house majority, legislative coalitions in the upper house are up for grabs. A government might solve this problem by adding another member to its coalition, a party whose votes are surplus in the lower house, but pivotal in

⁸ See footnotes 3 and 4, above.

⁹ Indeed, sometimes, the lower house need not even re-vote; its initial determination simply prevails. Nonetheless, upper chambers with only suspensive vetoes are not irrelevant. The prospect of a delay might induce a government in a hurry to modify its bill to avoid wasting time. Alternatively, such an upper house might use its veto to “go public,” to appeal to citizens to pressure the government to rethink its bill. As long as the upper house doesn’t cry wolf too often, this can be an effective weapon of opposition.

¹⁰ We know of two exceptions. One is Australia, where in 1975, the Senate sparked a constitutional crisis by rejecting the government’s budget. The other exception is Italy, whose constitution does in fact require the government to maintain confidence in both houses. But there, the two houses are always congruent – that is, the governing coalition always enjoys bicameral majorities, so what one house wants, the other tends to want as well.

the upper house. Alternatively, such a government might behave as the bicameral version of a minority government. Rather than take on an additional partner on a permanent basis, it might choose to find the extra upper house votes it needs on an issue-by-issue or even bill-by-bill basis.

Thus, the absence of bicameral majority control for a governing party or coalition need not imply unremitting policy gridlock. Still, piecing together a bicameral coalition, either by expanding the government or by building legislative majorities on the fly can be constraining. The veto player logic still applies – other things equal, the more parties needed to forge bicameral majorities to pass bills, the smaller the win set is likely to be. Broader coalitions might also mean greater transactions costs, and lawmaking might take longer and be more contentious and prone to opportunism.

In the remainder of this paper, we turn to an examination of the Japanese case. After a 33-year run of single-party bicameral majorities ended in 1989, no party has repeated the feat since. Sometimes coalitions have been bicameral-winning, but even this has proved impossible for most of the last decade. How has Japanese lawmaking been affected, if at all?

3. A Twist in the Tale: a brief history of Japanese coalitions

Table 1 lists all of the bicameral combinations since the LDP was founded in 1955, and Figure 2 illustrates the same data since 1989. The first “mild” twisting of the Japanese Diet occurred in 1989, when a series of scandals and unpopular policies caused the ruling LDP to come second in that year’s HC election to the Japan Socialist Party. It was the first time that the LDP had been bested in a national election, but because the poll was for only half the chamber (Councillors serve six-year terms, with half up for election every three years) the LDP remained the largest party in the HC. Immediately, the LDP realized that it would have to strike deals with at least one opposition party, and although its prospective partners made things interesting by

frequently negotiating in public, in the end, the government generally managed to piece together the HC majorities it needed.¹¹

[Table 1 and Figure 2 Here]

In 1993, the LDP split and found itself in opposition for the first time. The new government was a seven-party coalition that controlled bicameral majorities. This unwieldy collaboration was short-lived, however, and the LDP was back in government as the largest party in a different coalition in less than a year's time. By 1998, the LDP's coalition partners had departed, and with the repatriation of some of the 1993 defectors, the LDP had reassembled a single-party lower house majority. However, as in the 1989-1993 period, the LDP lacked an upper house majority, and found itself back in the business of building *ad hoc* partnerships. Finally, in October 1999, the LDP invited a longtime opposition party, *Kōmeitō*, into the government, explicitly to cement bicameral control. That is, the LDP formed what students of parliamentary government would call an oversized coalition in order to earn minimal winning status in the upper house.¹²

The LDP-Kōmeitō coalition governed, sometimes with a small third partner, from 1999 through 2009. But in 2007, the coalition lost the upper house when the Democratic Party of Japan (DPJ) won a HC plurality, and in combination with two small partners, an HC majority. This was the first time in over half a century that the two chambers of the Diet were led by

¹¹ A notorious example of this concerned the government's efforts to pass a peace-keeping operations law in 1992. Opposition parties were loathe to authorize the first overseas dispatch of Japanese troops since 1945, but Japan's failure to contribute troops to the U.N.-sponsored Gulf War the year before had made it an international pariah. In exchange for their votes, one party insisted publicly that the Japanese soldiers not be allowed to carry weapons or be anywhere near the front lines. When the government insisted that they would at least need to defend themselves, sidearms were OK'd, and public bargaining moved to the number of bullets they might be allowed.

¹² It is worth mentioning that this is extremely uncommon. In a study of 202 postwar governments in ten European democracies, Druckman and Thies (2002) found only two other instances of coalitions that were oversized with regard to the lower house in order to gain a bare upper house majority. Bicameral *minority* governments are actually much more common.

different parties.¹³ In 2009, the DPJ completed the takeover by routing the LDP in an HR election, and unified government was restored.¹⁴ Alas, the Diet was re-twisted only a year later, as the LDP won the 2010 HC election, and, with its partners, took back control of that chamber.

As this brief history suggests, the absence of bicameral majorities comes in two varieties in a multiparty setting. The first variety occurs when the government is technically outnumbered in the upper house, but remains the largest coherent group there. In such circumstances, the government should be able to manipulate the legislative agenda in such a way as to dominate any would-be opposition coalition in the competition for the small parties holding the casting vote. It might need only a few extra upper-house votes to pass bills, so it can choose the most willing partner on an issue-by-issue basis. By contrast, assembling an all-opposition legislative coalition might require that all non-governing parties band together, including any anti-system or niche parties, and the opposition lacks the agenda control or ability to make side payments that the government enjoys.¹⁵ Henceforth, we refer to this bicameral scenario as “Mixed.”

In the second, more severe variety, the government is not merely outnumbered in the upper house, but it is outflanked by the main opposition, or is at best even-pegging. In this scenario, opposition coalition building is the easier task and it is the government that would have to assemble a broad, incoherent menagerie in order to deny the opposition control over the chamber. Side payments are still possible, but would be much more expensive, especially if too many small parties had to be included in the distribution of posts and patronage. This is truly

¹³ Twisted Diets actually were the norm before the LDP’s advent, including all Diets between May 1947 and December 1956. For most of those years (through 1952) the Diet operated in the shadow of the U.S.-led Occupation Authority, so we do not include them here.

¹⁴ Interestingly, after its stomping victory in 2009, the DPJ had a very large single-party majority in the HR. But just like the LDP in 1999, it invited two small partners into coalition whose seats it needed to ensure bicameral control.

¹⁵ Most important among the latter are cabinet seats themselves – as discussed above, a government might “untwist” the Diet by inviting a party only needed in the upper house to join the governing coalition, and share in the distribution of cabinet and sub-cabinet posts.

divided bicameralism: the government must contend with a hostile upper chamber, and so the effect on policy making should be most profound. We will refer to these Diets as “Twisted.”

4. The Growing Legend of the Twisted Diet

Recently, the notion that the Twisted Diet has paralyzed policy making has gained currency. Journalists and their readers described the situation as “severe” and “confused” and “confrontational.” The vice chair of *Keidanren*, the country’s largest business federation, opined that “deliberations have slowed because of the Twisted Diet, but the loss of time is bigger than I expected” (*Asahi shimbun*, December 12, 2007, Evening edition).

Figure 3 displays a simple annual count of the number of mentions of the term per year in one national daily newspaper, *Asahi Shimbun*. Although the term was around in the 1989-1992 period that signaled the end of one-party dominance, it has become almost a mantra since 2007.¹⁶

[Figure 3 Here]

The general feeling of dissatisfaction with the Twisted Diet does not lack for specific referents. One example that drew worldwide attention came when Japan was left without a central bank governor for three weeks amid a building global financial crisis. The terms for the leadership of the Bank of Japan were set to expire on March 19, 2008. The LDP-led government was delayed in nominating new candidates by a long opposition boycott of Diet proceedings over the budget. When that ended, Prime Minister Yasuo Fukuda finally nominated deputy governor Toshirō Mutō for promotion, along with a pair of university economics professors, Takatoshi Itō and Masaaki Shirakawa, for the deputy posts. On March 12, the DPJ-controlled upper house vetoed Mutō and Itō, and approved Shirakawa. The *Japan Times* (Takahara 2008) noted the unfortunate timing of the political turmoil:

¹⁶ The dip in 2009 is undoubtedly because the DPJ untwisted the Diet with its HR election landslide in July of that year, only to see the LDP re-twist things with its own 2010 HC election win.

The looming vacancy at the top of the BOJ comes at a critical time for the global economy and just as the Federal Reserve and four other central banks Tuesday agreed to a massive capital injection into ailing financial markets. "It is as if all the fire engines in the world are set to be dispatched in this state of emergency but only Japan is not able to send one," said Hideo Kumano, chief economist at Dai-ichi Life Institute. "Confidence in the BOJ will decline." Kumano noted that the political turmoil stemming from two Diet chambers being dominated by different political blocs will continue to affect the fate of crucial bills... "The cost resulting from the opposition-controlled Upper House is beginning to be clear," Kumano said. "It's quite big."

With time running short, the DPJ next rejected a proposal to keep the outgoing governor in office until a successor could be chosen. The government then nominated the vice president of the Japan Bank for International Cooperation, Kōji Tanami, but the upper house vetoed him as well.¹⁷ Meanwhile, the wrangling over the BOJ appointments paralyzed all other Diet business. Finally, on April 9, desperate to fill the job before the G-7 meeting two days hence, the government gave in and proposed that Shirakawa, who had just been appointed deputy governor, be promoted to governor. The DPJ could not very well oppose a person it had just accepted, but just for good measure, it used its HC veto to reject the government's proposed replacement for Shirakawa as deputy.

By February 2011, it was the DPJ that led the government, and the LDP that wielded the upper house veto. Prime Minister Naoto Kan faced a dilemma. The LDP had pushed a censure vote through the upper house against two of Kan's ministers. To add teeth to this otherwise non-binding motion, the LDP was refusing to cooperate on a multilateral trade deal. Ultimately, Kan gave in, effectively granting the upper house an extra-constitutional power of no-confidence (*Japan Times*, February 15, 2011).

Speculation mounted that Kan would become the fifth prime minister in a row to survive a year or less in office, and pundits laid odds on when he would be defenestrated, and whether he would dissolve the Lower House in response. The devastating March 11, 2011 earthquake and

¹⁷ Curiously, the DPJ's reasoning for using its HC control to veto both Mutō and Tanami, was that their backgrounds as former Finance Ministry officials would threaten the BOJ's independence. But simultaneously, they suggested two other candidates they would approve, Haruhiko Kuroda and Hiroshi Watanabe, both of whom were former Finance vice-ministers (Itō and Kamiya, 2008).

tsunami seemed to buy Kan a temporary stay of execution, but within a few weeks, the LDP-led opposition was demanding Kan's resignation before it would consider draft legislation to compensate victims, rebuild the disaster area, or re-address power plant regulation. Ordinary Japanese were incredulous that politicians should be indulging in point-scoring while aftershocks continued, tens of thousands remained homeless, and power shortages threatened the economy. On June 2, Kan survived a formal (lower house) no-confidence motion only because he promised to step down soon. On September 2, Kan resigned.

Kan's successor Yoshihiko Noda staked his cabinet's existence on controversial financial reform bills – headlined by a doubling of the national consumption tax, seen as necessary to reduce Japan's world-leading national debt and restore confidence in the financial markets. He managed to push the bills through the lower house in June 2012 by striking a bargain with the leaders of the two main opposition parties, and at the cost of a major split in his own party. The deal with the opposition was necessary because Noda's DPJ still did not control the upper house. The bills duly passed the upper house on August 10, and the main opposition parties made it clear that they expected to be compensated with a lower house dissolution and general election as soon as possible.¹⁸

More than once, a governing party has suggested that the best way to cope with the Twisted Diet would be via a grand coalition. In 2007, LDP Prime Minister Yasuo Fukuda extended this offer to the DPJ's leader, Ichirō Ozawa. Ozawa expressed his feelings thusly:

The only solution would be to hold new elections... We do not agree on the fundamentals and thus we cannot discuss policy issues. To get to the end of debate, would be a deathmatch (*desu-matchi*) (*Asahi shimbun*. Nov 10, 2007).

Understandably, Fukuda opined "I'd like to change the constitution so that I can dissolve the

¹⁸ Before the upper house vote, opposition LDP president Sadakazu Tanigaki proclaimed: "If the bills are enacted, (Noda) needs to go to the people and set things right." <http://in.reuters.com/article/2012/08/07/japan-politics-tax-idINL4E8J63F720120807>.

House of Councillors too.”

With the shoe on other foot in 2011, the DPJ’s Kan floated the same offer to the opposition LDP, but the LDP demanded that Kan should resign and call an election instead. Each time, the opposition, entrenched by the HC’s fixed election schedule, has demanded that the government quit and let the voters decide whether to un-twist the Diet (which could only happen in the opposition’s favor, since the house it controls cannot be dissolved).¹⁹ This scenario seems to flip the pecking order of the two houses upside down, so it is apt that another popular term for divided government in Japan is “*gyakuten*,” or “reversal.”

But are these infamous examples of intransigence and gridlock exceptional, or merely the tip of the iceberg? Is it true that Japanese governments have been hamstrung by Twisted Diets, especially in the 2007-2012 period? Scholarly assessments are few, and have varied in terms of approach. Fukumoto and Horiuchi (2012) argue that the Twisted Diets are no less productive than the Unified Diets by showing there is no statistically significant difference between the Twisted and Unified Diets in the proportion of bills killed by the HC (see also Fukumoto 2011). Matsuura (2009) concentrates instead on how the legislative process in the Twisted Diets differs from that in the Unified Diets. He shows that the opposition uses its control over HC proceedings to impose its own priorities over the order and schedule with which it will address the bills referred to it. Clearly, there is more work to be done, and we turn now to a more comprehensive analysis of the legislative record.

5. Data analysis

5.1 Budget and Treaties

¹⁹ An Australian government may dissolve both houses if the Senate rejects a bill three times. Double dissolutions have occurred in 1914, 1951, 1974, 1975, 1983, and 1987. No such option is available in Japan.

Because the Japanese House of Councillors cannot veto budgets or treaties, one might be tempted to ignore those and move on to “normal” legislation to look for the differences between Unified and Twisted Diets. But one thing that a glance at budgets and treaties can tell us is whether a government’s lack of upper house control does actually produce an upper house “preference” that diverges. If the government need not secure HC approval to pass budgets and ratify treaties, then it need not make concessions or engage in any coalition building there, so the mathematical superiority of the opposition should be decisive in determining how the HC votes.

First, consider budgets and Table 2. Between 1989 and 2011, the governing party or coalition controlled an upper house majority in 12 of 22 ordinary budget cycles.²⁰ All twelve times, the biggest opposition party voted against the government’s budget, but that was not enough to stop HC approval. In the ten years that the government lacked an HC majority, by contrast, the HC formally rejected the government’s budget, which of course became law anyway.²¹ It did not matter whether the Diet was Mixed or Twisted – the absence of a government majority was sufficient for a negative HC vote.

[Table 2 Here]

In addition to the ordinary budget, Japanese governments typically submit two or three supplementary budgets each year. These are usually targeted to urgent needs not anticipated by the ordinary budget, and so the political calculations surrounding them are somewhat different. Opposing a supplementary budget is not a general statement of disapproval of the government, but more a disagreement with a specific proposal. In the 1993-2011 period,²² 30 supplementary

²⁰ For this analysis, we exclude 1994 and 1997, when budgets were passed by minority governments. In fact, the HC approved those two budgets, because in both cases, the minority government had “shadow partners” who agreed to support budgets and oppose no-confidence measures, but did not join the cabinet. Since the coding of such governments as Unified or Twisted is somewhat subjective, we omit them from our analyses throughout the paper.

²¹ The HC formally voted down the budget 9 times, and simply ignored it for 30 days one time.

²² We are working to add the supplementary budget data for the 1989-1992 MT Diets.

budgets were submitted. Nineteen were submitted to Unified Diets, in which the governing coalition enjoyed bicameral majorities, and all 19 were approved by the HC. Four were submitted to Mixed Diets. The biggest opposition party opposed each supplementary budget, but the government secured HC approval for three of the four by bringing onside enough small parties to constitute a majority.

Finally, seven supplementary budgets were submitted to Twisted Diets. Four passed the HC and three were rejected.²³ While it might seem surprising that opposition-controlled HCs would support 4 of 7 supplementary budgets, this is a small universe of cases, and a strong argument can be made that all four approvals were exceptional. Because any HC action on a budget is mostly an exercise in position-taking, the question we must ask is how the opposition weighs the symbolic value of opposing versus supporting the government's budgets. In the four cases in which the opposition chose to support supplementary budgets, it is easy to understand why. The first case was an emergency stimulus package, passed one month after the collapse of Lehman Brothers to deal with the global financial crisis. That same HC had rejected a different supplementary budget earlier in the year (as well, as, recall, the government's BOJ governor nominees), but the sudden, widespread fears about global economic catastrophe caused the opposition to change its stance and express its support for rapid stimulus. The three other cases all occurred in 2011, in direct response to the March 11 "triple disaster" earthquake, tsunami, and nuclear plant meltdown in the Tohoku region.²⁴

We turn now to treaties, and Table 3. In the 1993-2011 period, 281 treaties were submitted to the Diet, and 278 (99%) were ratified. In Unified Diets, 191 of 192 passed both houses, with

²³ One passed unanimously, two received support from all major parties other than the Japan Communist Party, and one lacked support from the JCP and the Social Democratic Party.

²⁴ All four supplementary budgets were eventually supported by the largest opposition party, the LDP, but recall that the LDP-led upper house did delay the post 3/11 emergency budgets until Prime Minister Kan promised to resign.

one failing to reach the floor in either chamber. In Mixed Diets, the HC approved 26 of 27 treaties, and ignored one.²⁵ When the opposition controlled the HC, however, they behaved differently. The HC in Twisted Diets approved only 74% of treaties, ignored 22%, and formally rejected two.²⁶

[Table 3 Here]

5.2 Ordinary Laws

5.2.1 Passage and Amendment Rates

HC votes on budgets and treaties are interesting to investigate as position-taking exercises, but they are not dispositive.²⁷ Ordinary bills, by contrast, require the approval of both houses to become law. So it is here that a government's lack of upper house control should really matter.

Table 4 shows the passage rate of all ordinary bills submitted by the cabinet since 1989. At first blush, it appears that governments are not constrained very much by the lack of an upper house majority – passage rates still hover around 95 percent (Fukumoto and Horiuchi 2012). But Table 4 is too simplistic. First, it combines Mixed and Twisted Diets, confounding the mere absence of a government majority with the presence of a cohesive opposition majority. Second, it ignores agenda setting. The same share of actual government bills become law, but is the set of bills different in Twisted or Mixed Diets than in Unified Diets? And what about the size of the agenda– does the government only propose bills it thinks will pass?

²⁵ Two more were submitted to the HC first, and passed there, but the HR failed to vote on them before being dissolved due to a successful (and unrelated) no-confidence motion in 1993.

²⁶ Whether the Japanese upper house approves, disapproves, or ignores budgets or treaties, the outcome is the same – the version passed by the lower house becomes law. So it is interesting that oppositions tended to treat budgets and treaties differently from one another when they controlled the HC. Ordinary budgets were formally rejected all but once, and rejected through inaction that once. Supplementary budgets were always considered, and sometimes approved. Treaties, however, were considered only three-quarters of the time, and ignored otherwise. For treaties, the modal form of protest, it would seem, was simply to allow treaties to be ratified without any action at all. One possible explanation is that opposition parties feared appearing unpatriotic if they were to (fruitlessly) reject treaties, whereas fruitlessly rejecting non-emergency budgets is part and parcel of what it means to be in Opposition.

²⁷ An HC veto, then, can only delay the inevitable, and so is likely to affect the substance of budgets or treaties only if the government is in a big hurry and cannot afford to wait 30 days.

[Table 4 Here]

If a government pays a reputational cost when the legislature rejects its proposals or forces it to modify them, then theory tells us to expect governments to self-censor – to make no proposals that they expect will fail. When a veto player (in this case, the majority in control of the HC) wants the opposite of what the government prefers, then no compromise is possible, and, absent benefits derived from publicizing disagreements, no proposal should be made at all. When a compromise is possible – that is, when the win-set is non-empty – the government should be expected to adjust its proposal pre-emptively, enough that the veto player prefers the proposal to the reversion point. In equilibrium, all proposals should pass.

Sometimes, however, the government does not know what it can do until it tries. If we introduce uncertainty into the model, we allow for the possibility that government bills might fail or be amended by the legislature.²⁸ So the non-zero entries in the last column of Table 4 could be chalked up as governmental miscalculations, with the slight increase in non-Unified Diets merely an indication that uncertainty is a slightly bigger problem than for Unified Diets.

It is difficult to see substantive changes to a bill that are incorporated before it is actually submitted to the Diet, but we can observe amendment behavior that takes place after submission. This can take one of two forms. If the opposition has control over an institutional veto, i.e., an upper house majority, it may amend a government bill and oblige the government to acquiesce to the change, kill the bill, or, if possible, override the HC action. But the government might instead try to beat the opposition to the punch, and amend its own bill in the lower house.

²⁸ See Fortunato, König, and Proksch (n.d) for a fascinating study of the importance of uncertainty for legislative process in Germany. The German upper house is filled by representatives from state governments, so every state-level election has the potential to change the partisan balance in the upper house. Because those elections are dispersed over time, it is often the case that Federal Government bills face an upper house whose partisan composition has changed between submission and upper house consideration. With so much uncertainty about the future preferences of the upper house, the authors show, self-censoring is suboptimal and instead the government tends to propose its ideal policy and work things out in conciliation committees once the upper house has acted.

Tables 5 and 6 offer a more detailed summary of Japanese legislative activity since 1989. Table 5 shows that the move from unified bicameral control to a Mixed Diet does not seem to affect the rate at which cabinet bills fail or are amended. There are slight changes in the expected direction, but they are not statistically significant ($p=0.9$). A Twisted Diet, however, affects things a great deal. In these circumstances, the failure rate of government bills more than doubles, to 9%, as does the share of bills that are amended substantively, to 18.5%.²⁹ These differences are significant at the $p=0.00$ level.

Note that both the failure rate and the amendment rate are attenuated by 17 bills (6.2% of the Twisted total) that were rejected by the HC, but then became laws via a 2/3 HR override. Coincidentally, the first Twisted Diets in postwar Japanese history happened to feature the first-ever governments with two-thirds majorities in the Lower House.³⁰ Had the LDP-led governments in 2007-2009 not enjoyed lower house supermajorities, either the 17 bills in question would have failed, raising the failure rate to 15%, or the LDP would have had to amend them to garner HC support, or, finally, the bills might never have been proposed in the first place. In any case, the governments' success at legislating their policy agendas would have suffered further.³¹

[Tables 5 and 6 Here]

²⁹ The legislative record indicates whether a bill was amended. We read the bill summaries to determine whether the amendment was substantive or purely procedural. To simplify Table 5, we group bills with only procedural amendments together with those that passed unamended.

³⁰ In the 2005 general election, the LDP won 296 of 480 seats, and its coalition partner Kōmeitō won 31 more. That cushion came in handy when the coalition lost control of the HC only two years later.

³¹ This combination of a dominating HR majority but an HC minority may not be completely coincidental, owing to the prevalence of single-member districts and staggered elections. The PR tiers in each system mitigate this somewhat, but SMDs can translate small changes in vote shares into large swings in legislative seat shares, to say nothing of what they can do with larger vote volatility (technically, the district tier in the HC uses the single-nontransferable vote, but nearly all of the rural districts elect only one member per electoral cycle, so SNTV=SMD). Because HR and HC elections are not concurrent, the electorate's first chance to react to government performance is typically not for the house most recently elected. When voters wanted to punish the post-Koizumi LDP two years after handing it its HR landslide, the first opportunity was in the next regularly scheduled HC election. The same was true for the DPJ in 2009-10 (Reed, Scheiner, and Thies 2012).

Table 6 examines the subset of 194 bills that were amended during the formal legislative process (the 8.3% of 2,333 bills in the middle column of Table 5). We find that, consistent with the hypothesis that governments prefer to adjust bills tactically rather than invite an HC veto, fully 89 percent of substantive amendments originate in the lower house (and another 2 percent were amended in both houses), with nearly all of those HR changes occurring before the first reading in the HC. So most amendments occurred not because the opposition actually exercised an HC veto to block government initiatives, but because the government learned enough post-submission to adjust its bills in order to avoid an HC veto. Further confirmation of this interpretation appears in the penultimate column of Table 6, which shows the share of bills ultimately supported by the main opposition party. In Twisted Diets, all 51 amended bills, 49 of them amended by the government-controlled lower house, earned “bipartisan” approval.

To sum up this section, then, it appears clear that governments facing hostile upper chambers are obliged to amend many more bills to secure passage, or if they are big enough in the HR, succeed by overriding vetoes. Even so, they see their success rates fall. The next question is whether the overall volume of legislation is affected. Are governments facing Twisted Diets less ambitious to begin with?

5.2.2 The Size of the Agenda

Measuring the size of a government’s agenda by looking at the quantity of legislation is not unproblematic. Earlier, we suggested that one way that a government might deal with a hostile upper house would be to negotiate logrolls with the opposition – omnibus bills that are fewer in number, but larger in scope. This suggests three hypotheses. First, other things equal, the number of bills and laws should be greatest in a Unified Diet, and smallest in a Twisted Diet.

Second, the average law passed in Twisted Diet should cover more issues and thus be longer than the average bill in a Unified Diet. The inference for Mixed Diets is a little trickier. A government might still negotiate with the main opposition party, operating as in a divided government. But it might instead operate more like a minority government, finding a small partner on one issue, and a different small partner on a different issue. Since governments facing Mixed Diets can choose between approaches, on average, bills in Mixed Diets should be smaller in scope and greater in number than in Twisted Diets, but larger and fewer than in Unified Diets, other things equal.

Third, bills that become laws should be supported by both the largest government party and the largest opposition party most often in Twisted Diets and least often in Unified Diets. We do not expect Unified Diets to pit government versus opposition on every bill, because many, indeed most, bills before any parliament in a given session will be utterly uncontroversial. For every headline-grabbing battle royal over high policy, a parliament will push through dozens of mundane laws on such matters as bureaucrats' salaries, minor regulatory matters, or other bits of housekeeping. Except when the opposition is determined to gum up all the works to make a larger point, it will usually cooperate on the little stuff – and there is a massive amount of little stuff – in order to keep its powder dry for the battles that are worth fighting. For this reason, most bills in all sessions should be supported by both ideological camps. Our hypothesis, however, is that in Twisted Diets, it is almost impossible to pass anything without reaching across the aisle, so purely “partisan” laws should be most scarce in Twisted Diets and most prevalent in Unified Diets.

Take first the number of bills and laws. Table 7 shows that cabinets facing Mixed Diets since 1989 have submitted, on average, 0.11 fewer bills per day than those facing Unified Diets,

or about one bill every 9 days.³² The dropoff in a Twisted Diet is, on average, one bill every 3.5 days. It would seem that governments that lack bicameral majorities see their policy agendas constrained not only because their bills are more frequently amended or rejected, but also because they self-censor, and submit fewer bills in the first place.

[Table 7 Here]

But all laws are not equal. Do Twisted Diets simply pack more policy changes into each law, or is the decline in volume actually understated by an analysis that is bloated by huge and relatively unvarying numbers of short, unimportant laws? Or both?

Table 8 orders all laws passed between 1989 and 2011 according to the number of words (actually, characters) and shows the law lengths at each 5-percentile interval. Most laws are perfunctory. The median law was only 6,322 characters long, less than four pages. More than a fifth of all laws were one page or shorter. We leave a systematic content analysis of laws to future work, but a perusal of a random sample of these short laws does seem to confirm that most are minor management matters. Such bills are not contentious, certainly not in a partisan way, but they bloat the legislative agenda.

[Table 8 Here]

Because most laws are extremely short and banal, average numbers of could hide big, interesting differences for the small number of laws that are actually important and contentious. The first thing to check is whether the distribution of short and long laws differs by Diet type and ask whether that is more than one would expect if long laws were randomly distributed. Table 9 shows the share of laws at various thresholds of length in each Diet context for the 116th through 179th Diets (each row sums to 100%). During this period, Unified Diets proposed 60% of all bills and 61% of those that eventually became laws. The table shows that, at every step on the

³² Our measure of time is calendar days.

“law-length” ladder, the share contributed by both Unified and Twisted Diets increases, and the share produced by Mixed Diets declines, at least up to the 100,000 character range.³³ Figure 4 shows how each Diet type’s share of laws at successive thresholds changes relative to its overall share. This is rather stark: Twisted Diets and Mixed Diets move rapidly in opposite directions. At increasing law-length thresholds, the Twisted share increases rapidly, to the point that its share of 100,000-character laws is nearly double its overall share. Mixed Diets, by contrast, contribute an ever smaller share as law lengths increase.

[Table 9 and Figure 4 Here]

How can we interpret the data on law lengths? The most interesting case here is the Mixed Diets, which would seem to produce, relatively speaking, shorter laws. Remember that these data are on laws, not bills – they show the results only for those proposals that survived. We expected to see more short laws in Mixed than in Twisted Diets, because governments facing Mixed Diets have the option of building piecemeal, one-dimensional coalitions on bills of smaller scope. These sorts of laws are not nearly as likely in Twisted Diets, so the middle of the law-length distribution (with the really short “housekeeping” laws comprising the bottom end) is smaller in Twisted Diets. What is more common in Twisted Diets, we surmise, is laws that are larger because they constitute cross-issue logrolls between the government and opposition. Those bills are unnecessary in Unified Diets, and though they are possible in Mixed Diets, they are not as often necessary. This inflates the relative share of long laws in the Twisted Diet record, while also reducing the number of laws, both because of consolidation and also because of failure (or self-censoring) of bills that could not overcome opposition objections.³⁴

³³ Only 50 laws, or 2.2%, exceeded 100,000 characters in the 1989-2011 period.

³⁴ Clearly, the next step is to determine through content analysis whether the reason for more longer laws in Twisted Diets really is multidimensionality.

5.2.3 The “partisanship” of legislative coalitions

When a government controls both legislative chambers, it need not bargain at all with its main opponent. It might choose to do so anyway, perhaps to give itself political cover for an unpopular policy that it deems vital. And it might not have to do much at all, if a bill is of high valence (e.g., disaster recovery) or too trivial for anyone to object. But when a government lacks upper house control, it must find extra partners, and when the Diet is truly Twisted, it might find that assembling an upper house majority that excludes its main rival is a practical impossibility. For this reason, we expect to see the frequency of big-party opposition to successful legislation to be lowest in Twisted Diets and highest in Unified Diets.

Figure 5 shows how frequently the main opposition party voted for government-sponsored legislation.³⁵ The first takeaway is that in Twisted Diets, law length does not affect the probability of support by the major opposition party. Supermajority overrides aside, nearly all laws of all lengths are bipartisan – bills that cannot get opposition support fail. By contrast, big-party accommodation is least likely in Unified Diets, when the opposition’s weakness relieves the government of any need to make concessions that would buy their support. Instead, the opposition parties must endure a much more partisan policy agenda, and can only express their displeasure by fruitlessly voting no.

Second, notice that for Unified and Mixed Diets, the numbers decline as we move from all laws (left panel) to the longest 10% of laws (middle) to the longest 5% (right). This supports our conjecture that a high proportion of very short laws are politically trivial. Big-party disagreement is most likely for the “big” laws, except in Twisted Diets, when big-party disagreement would mean “no law.”

³⁵ Note that this figure omits the 17 laws that were passed via the 2/3 lower house override. Including those would drop the bipartisan shares of Twisted Diet laws to 89%, 83%, and 76%.

[Figure 5 Here]

Of course, the data in Figure 5 should be interpreted in conjunction with the earlier findings. Recall that more than twice as many submitted bills fail in Twisted Diets compared with Mixed Diets, and 40% fewer bills are even submitted. So 97% of laws and 94% of the longest laws win the support of the main opposition party in Twisted Diets, but that is of the smaller share of bills that pass, which is itself drawn from a smaller agenda. Put it all together, and it is clear that a government's ability to turn its agenda into policy is constrained when it lacks an upper house majority, and is most constrained when the main opposition group controls the upper house. Divided bicameralism leads to fewer laws.

6. The need to assess content

As discussed above, the difference in the total volume of words legislated (number of laws times length) is a crude proxy for the difference in the scale of policy change produced.³⁶ If a straightforward quantitative assessment had revealed that very few laws pass during divided government, that would have been pretty definitive – the absence of laws would have implied gridlock – the absence of policy change.³⁷ But since that is not what we found, we must admit that counting laws and words alone is not enough to estimate the extent of policy changes contained within. We cannot avoid an assessment of the content of laws.

As a first step toward determining whether there are differences in the types of laws passed among Diet types, we implemented the Wordfish scaling algorithm to look for variation in the

³⁶ It probably understates the difference. It is probably also the case that even if important laws do tend to be longer, there are diminishing marginal returns to length, at least in terms of substantive policy change. In other words, maybe a law has to be longer than, say, 4-5 pages (the average) to do anything remotely important, but at some point, length is likely to mean more precision rather than greater change (Huber and Shipan 2002).

³⁷ We investigated whether the number of cabinet orders increases under divided government, with the notion that a government unable to legislate might instead resort to changing the details of policies by decree, but we found no significant differences between unified and divided governments on this measure.

content of laws passed in different contexts (Slapin and Proksch 2008). Wordfish scales the frequencies of words within documents to uncover latent differences across documents, by generating word discrimination parameters that weigh the relative importance of each word in differentiating one document from another.³⁸ It has been used to infer ideological differences in legislative speeches in several countries (Proksch and Slapin 2010), interest group statements (Klüver 2009), and party manifestos (Proksch, Slapin, and Thies 2011). Importantly, the results offer no insight as to the *substantive* meaning of distance between documents, ideological or otherwise.³⁹ They simply scale the *extent* to which documents are *linguistically* (dis)similar.

Analyzing laws with Wordfish differs from analyzing party manifestos or legislative speeches. First, we cannot clearly tell which political party a law belongs to. Though all of the bills considered in this study were submitted by the cabinet, their texts at submission time, to say nothing of the final content of laws, cannot be considered the unalloyed expression of the government's ideology. Indeed, this is inappropriate precisely because of the legislative coalition building that is our focus here.

Second, while party manifestos are composed for public consumption, purposely to stake out ideological positions, laws are not. Although at the behest of politicians, laws are typically drafted by bureaucrats, so their wordings conform to the technical requirements of the subject matter, and to the legal customs and jargon appropriate to each ministry's bailiwick. As a result, systematic wording differences across laws are mostly a function of subject matter, or possibly, the stylistic norms of different ministries, and we assume that bureaucrats are not partisans.

Taking these differences into account, Wordfish results for laws might be interpreted as

³⁸ Word fixed effects control for very frequently used but ideologically uninteresting words such as articles, prepositions, or linking verbs. Law fixed effects control for length, which might otherwise improperly weight differentiating words by the length of the documents in which they are embedded.

³⁹ Such interpretations require additional assumptions by the user, and are beyond the scope of this paper.

capturing differences across policy areas, so a comparison of scores aggregated to the level of, say, government, might suggest differences across governments in terms of the relative emphases on various policy areas in the overall mix of policy making. One government may pass a lot of laws on commerce, while another might legislate more on security issues, and so the weight of commerce-specific jargon will be heavy in their overall legislative record of the former, while security-related words will be prominent for the latter.

Our hypothesis is that the “Diet type” that a government faces systematically affects the variety of legislative coalitions that it can build. When the odds are stacked in favor of one specific type of legislative coalition, as for example in a Twisted Diet when striking deals with the main opposition is almost unavoidable, the legislative output will be skewed toward policy realms in which the members of that coalition can find common ground. In other words, the legislative record will be filled with more of the words that distinguish those policy areas, and will be less populated by words that are more common to policy areas for which the two big parties are unable to make deals and pass laws. By contrast, when a government dominates both houses, it is not constrained by the absence of willing partners to avoid any policy areas, and any special emphasis on one or another will be driven by its own priorities, not by the need to find partners. An intermediate case is the Mixed Diet, in which a government has a choice among legislative partners, and can legislate in most areas because it can find some partner with whom it can deal on each one. Therefore, we expect to find the variety of policy areas comprising a Mixed legislative record to be broader than one in a Twisted context.

Table 10 presents the mean of Wordfish-estimated positions by policy area (HR committee). Thus, the average law that passed through the Committee on Security had a discrimination parameter of -0.752, whereas the average Environmental Committee product had a +0.762. We

cannot say what negative means or what positive means, or if there is any inherent ideological difference between security laws and environmental laws. But we can say that the language used in these two committees' products are very different from one another. By contrast, the language used in Agriculture, Forestry & Fisheries laws is most similar to the language used in Commerce laws and Land, Infrastructure, and Transport Laws (+0.516 vs. +0.518 vs. +0.519).

[Table 10 Here]

A rough comparison of the legislative output of whole Diet sessions or sets of Diet sessions, then, can compare the distributions of all laws within one set to the corresponding distributions within another set. Twisted Diets can be compared with Unified Diets. Any difference in the distributions across sets would be the result of a different combination of the various types of laws. If, for example, Twisted Diets struggled to pass Security and Local Administration laws, but had a much easier time legislating on Environmental or Scientific issues, relative to Unified Diets, then the distribution of discrimination parameters in the legislative record of the former should be quite different from the distribution in the latter.

Figure 6a displays the Wordfish output, across the three Diet types (Unified, Mixed, and Twisted) and separating laws passed without the support of the main opposition party ("partisan laws" - top row) from laws passed with the support of the main opposition party ("bipartisan" - middle row), and overlaying the kernel densities (bottom row). The Unified Diets histograms (left column) reveal no obvious differences between partisan and bipartisan modes. The mix of laws apparently does not change enough to alter the histogram. Our interpretation is that because the government does not need the main opposition party to get things done, then whether a bill ends up garnering that party's support does not affect the content of the policy. The main opposition party may choose to jump on the bandwagon or not; whether it does is of no

consequence to the government or its agenda.

[Figure 6a Here]

The middle column shows the distributions for “partisan” and “bipartisan” laws in Mixed Diets. In contrast to the Unified Diets set, here we do see a difference between the top and bottom distributions. We interpret this as reflecting a legislative-coalition-induced shift in the areas of policy making that produce laws. That the top panel is more uniform and the bottom more skewed is more difficult to interpret. We speculate that insofar as the bottom panel is for the laws that both big parties supported, it makes sense that those areas of agreement would be a subset of all possible policy areas, and if the distribution of Wordfish scores reflects the distribution of issue areas within the legislative output, then it makes sense that bipartisan records should have spikes around the parameters representing the areas of fruitful collaboration and valleys in the areas where the two big parties could not pass laws.

When a government faces a Twisted Diet, unless it can override an upper house veto, its choices boil down to bargaining with the big rival or, if the rival is also short of a majority, striking a deal with everyone else.⁴⁰ These are mutually exclusive legislative coalitions, so they are likely to produce very different mixes of laws. The histograms indeed show very different distributions of laws, most likely because different coalitions prioritize different policy areas.

Figure 6b overlays the three Diet types by partisan mode. This is particularly interesting. The bottom panel shows that bipartisan laws, no matter what the Diet Type, draw from the same distribution of words, which we interpret as policy areas. Since 1998, the two largest parties have been the LDP and DPJ. So all bipartisan laws were supported by those two parties, regardless of which was in government and which in opposition. Therefore, it is not surprising

⁴⁰ If the main opposition party alone holds an upper house majority, then the government’s can only avoid dealing with it if it can induce defectors.

that the mix of policy areas for which those two parties agree to a new law is very consistent.⁴¹ By contrast, the mix of policies that pass without the support of the major opposition party varies by Diet type because the coalitions that support such laws vary. In Unified Diets, partisan laws need only please the parties of the governing coalition. In Mixed Diets, the government can pass laws with a variety of partners while still avoiding the main opposition. And in Twisted Diets, the only way to build a legislative coalition without the main opposition is to include every other party – there is only one viable option, so the distribution of issue areas handled that way is necessarily narrow.

Rather than merely eyeball the differences in histograms, top to bottom, for each Diet type, we conclude by showing Q-Q plots of Wordfish scores, with a single panel each for Unified, Mixed, and Twisted Diets, respectively. If the distribution of Wordfish scores were unchanged by a government’s choice to make deals with the major opposition party, all points would lie along the 45° line. They do not, but instead bow toward the upper-left corner of each plot.⁴² But the plots do show that “bipartisan” policy making in any Diet type results in more laws in the issue areas on the right side of Table 10, relative to the amount of lawmaking in the areas listed on the left side of the table.⁴³ And the difference is most pronounced in Twisted Diets.

[Figure 5 Here]

This is only a start down the road of proper content analysis, but it is a provocative one. In addition to a richer understanding of how laws differ qualitatively across Diet types and partisan legislative coalition choices, an assessment of content is necessary to improve on proxies such as

⁴¹ Between 1989 and 1998, the LDP was always one of the two large parties, but the identity of the other big party changed. Between 1989 and 1995, it was the Socialist Party. From 1995 through 1998, it was the New Frontier Party. However, the NFP was formed from a merger of LDP defectors and other centrist parties. The DPJ then combined much of the NFP with moderate Socialists. So it is not clear just how much the “other big party” changed over time, despite the name changes.

⁴² The direction of the bowing is purely an artifact of the (arbitrary) assignment of positive vs. negative signs as reflected in Table 10.

⁴³ We reiterate that “left” and “right” and “positive” and “negative” carry no ideological connotation here.

length to assess the importance of laws. It would allow us to compare the gist of laws with the manifestos that parties championed at election time. And perhaps most importantly, it would afford us the opportunity to figure out what is missing in the legislative record. We know that the more twisted the legislature, the less ambitious the government's agenda. What we would like to try to do is describe the dogs that did not bark – that is, figure out which potential bills were withheld by governments wary of failure when facing Twisted Diets.

7. Conclusions

Because parliamentary executives depend on legislative majorities to survive, the phrase “divided parliamentary government” might seem a contradiction. But when a parliament is bicameral, when the upper house is constitutionally powerful, and when the two houses are controlled by different parties or coalitions, then contradiction becomes reality. Indeed, precisely because of the executive's dependence on parliamentary confidence, the stakes for divided government may be even higher than in presidential systems.

Fortunately, divided parliamentarism with strong bicameralism is rare. Most bicameral parliaments feature an upper house that is either constitutionally very weak or else is politically congruent with the lower house, or both. Australia has long been an exception – its Senate is powerful, and Australian governments have a great deal of experience with divided parliamentarism. For the most part, they muddle through, although as is well-known, a constitutional crisis did occur in 1975, after the Senate rejected the government's budget.⁴⁴

⁴⁴ In a parliamentary system, rejecting the budget is tantamount to a vote of no-confidence, but because the Senate's lack of a formal right of censure, the government refused to accept the Senate's decision. In the end, the Constitutional Court sided with the Senate, and the government was obliged to resign, dissolve both chambers, and call a new election. Students of Australian politics disagree on the extent to which opposition-controlled Senates manage to hinder the government agenda. Most effort has focused on the origin and disposition of amendments. See, e.g., Mulgan 1996; Uhr 2002; Bach 2008; and Russell and Benton 2010. We hope to turn to the Australian case in the near future.

For the first four decades under Japan's postwar constitution, nobody considered its bicameral structure to be a second exception.⁴⁵ The LDP enjoyed congruent majorities, so legislative scholars generally classified the Diet as only weakly bicameral. In 1989, that changed, and since that time, no single party has held bicameral majorities, and only about half of the governing coalitions have done so. Since 2007, the Diet has been truly Twisted for all but one year, with governments not only lacking majorities, but facing cohesive opposition majorities.

In this paper, we have shown that the replacement of weak bicameralism with strong bicameralism has affected policy making a great deal. Government facing Twisted Diets propose fewer laws, they suffer more amendments to, and failures of, the legislative proposals they do submit, and they must adapt the scope and (we think) content of their programs to the exigencies of extra-governmental legislative coalition building.

Japan has so far avoided a constitutional crisis, but one reported casualty of Twisted Diets has been continuity at the top (*Asahi Shimbun*, July 29, 2009). Japan has run through 15 prime ministers in the 23 years since the LDP first lost its bicameral majority in 1989, and six in the five years since the 2007 election first handed outright control of the upper house to the opposition. Remarkably for a country whose politics are notorious for corruption scandals, only one of the 15 could be said to have resigned under a cloud of suspicion (Hosokawa in 1994). One other (Obuchi in 2000) was felled by a stroke and replaced shortly before his death, and one (Koizumi in 2006) retired at the height of his popularity due to a party term-limit rule. When the others were replaced, the usual explanation was ineffectiveness, and one wonders how much of that was due to the absence of bicameral majorities.

⁴⁵ Germany is a partial exception. What we call Mixed and Twisted parliaments are common (see footnote 27), but the German upper house may only participate on a subset of bills – those that affect governance in the states.

Are Twisted Diets here to stay? The most important determinant of divided government is the similarity (or dissimilarity) of the bases of representation for the two chambers. This, in turn, is a function of electoral rules, districting, and timing. In terms of electoral outcomes, the Japanese Diet looked congruent from 1956 through 1989, and the LDP's loss in 1989 seems even in retrospect to have been anomalous. But the electoral rules and districting for the two chambers have never been identical. The main commonality across both systems was a profound malapportionment in favor of rural areas. By law, no electoral constituency may cross a prefectural border, and the massive postwar urbanization of the Japanese population has left many prefectures permanently over-represented. Not surprisingly, it was the LDP that dominated rural Japan (Scheiner 2006; George Mulgan 2000), and this built-in and *bicameral* advantage is a big reason that the party managed to make an otherwise incongruent bicameral system produce congruent results.

In 1993, however, the coalition that threw the LDP temporarily into opposition changed the HR electoral system. At first glance, the new system looks even more like the HC system – both combine single-seat constituencies with a PR tier.⁴⁶ But the SMDs are 300 in number, one result of which has been a dramatic reduction of pro-rural malapportionment.⁴⁷ Thus, while the HC remains badly malapportioned, the HR has become much more urban in its orientation. Unless the HC is similarly reformed, incongruent bicameralism would now seem to be a permanent feature of Japanese democracy. Finally, the staggering of electoral cycles, with half the HC elected every three years, and endogenous HR election timing (maximum term of 4 years), there is a real possibility of frequent, almost annual shifts in bicameral makeup.

⁴⁶ The PR district in the HC is the whole country. In the HR, there are 11 PR districts of various sizes.

⁴⁷ Some prefectures are still overrepresented despite electing only a single MP (down from a minimum of 3 under SNTV). Unless the rule prohibiting the traverse of prefectural lines is eliminated, this will persist. Interestingly, the prefectural layer of government is not enshrined in the Japanese constitution, and many voices are now calling for its elimination altogether, via the consolidation of the 47 prefectures into a smaller number of larger regions.

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Figure 1: Policy change impossible one dimension at a time, but possible if the two dimensions are packaged together.

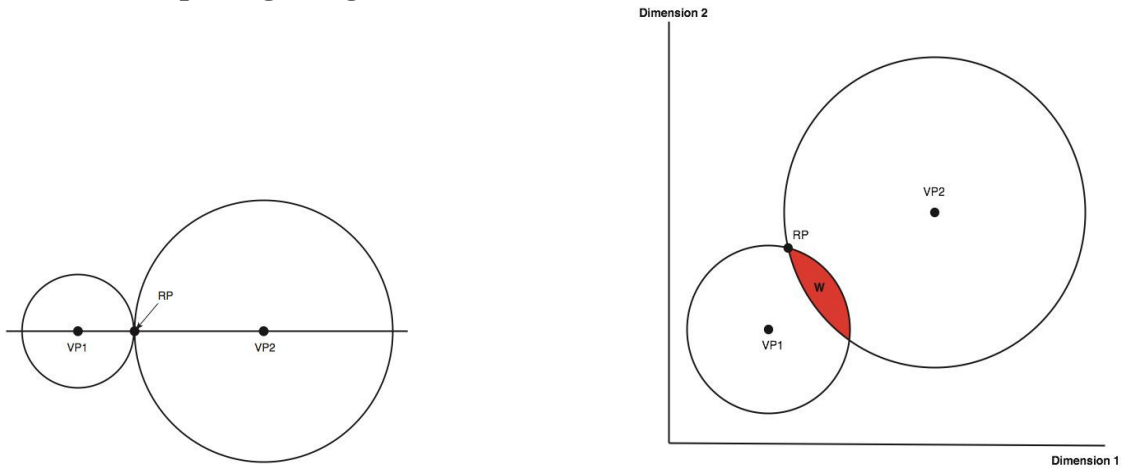


Figure 2: Seat Shares in Japan's Upper House, 1989-2012

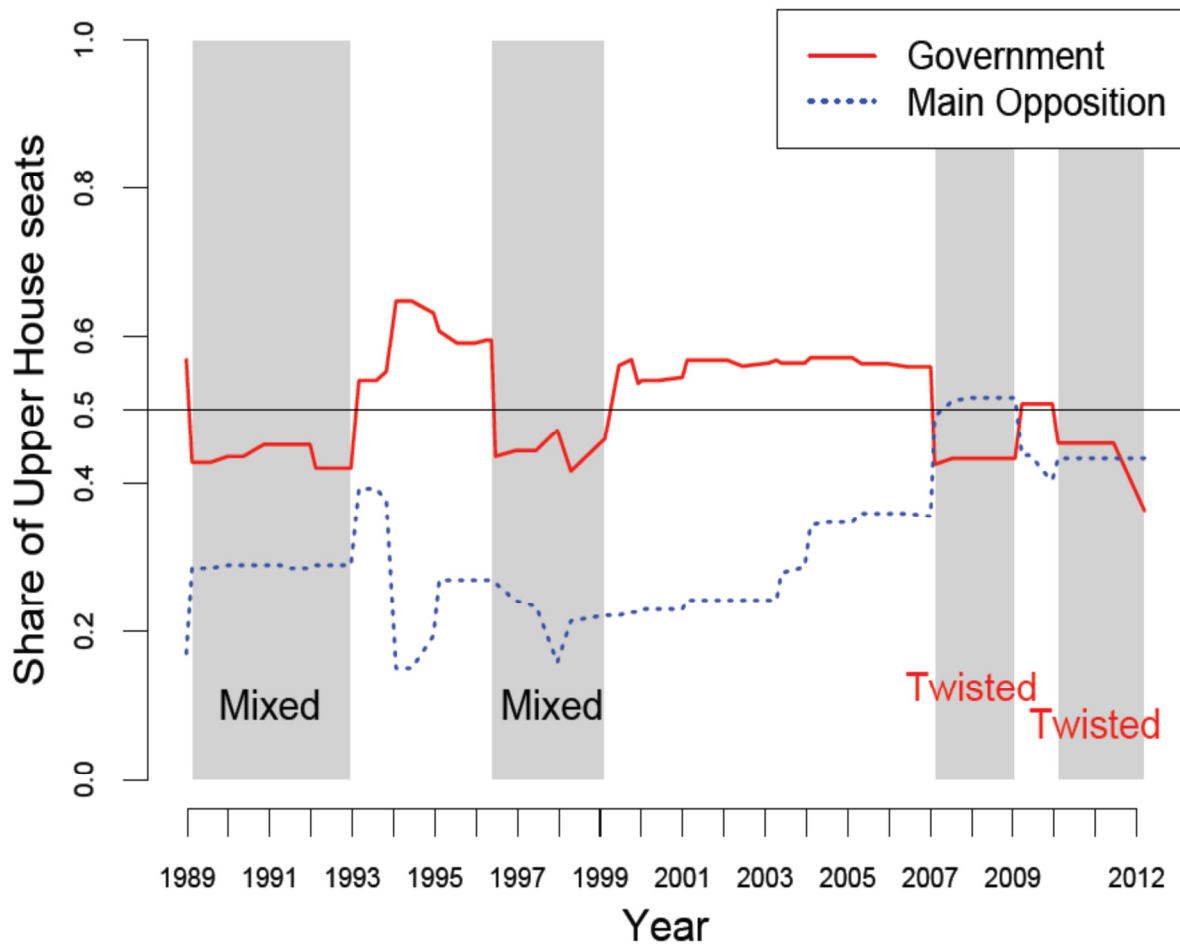


Figure 3: Annual Mentions of *Nejire Kokkai* [Twisted Diet] or *Gyakuten Kokkai* [“Reversed Diet”] *Asahi Shimbun*, 1989-2011

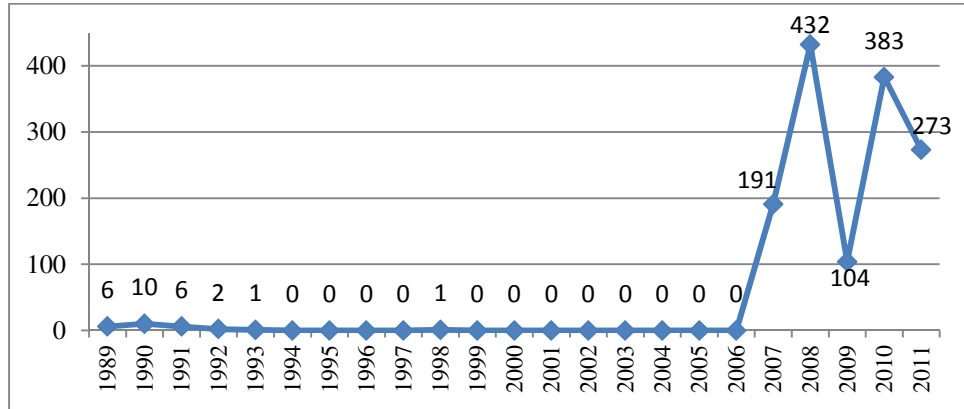


Figure 4: Share of laws of various lengths, as multiple of share of all laws, by Diet Type, 1989-2011

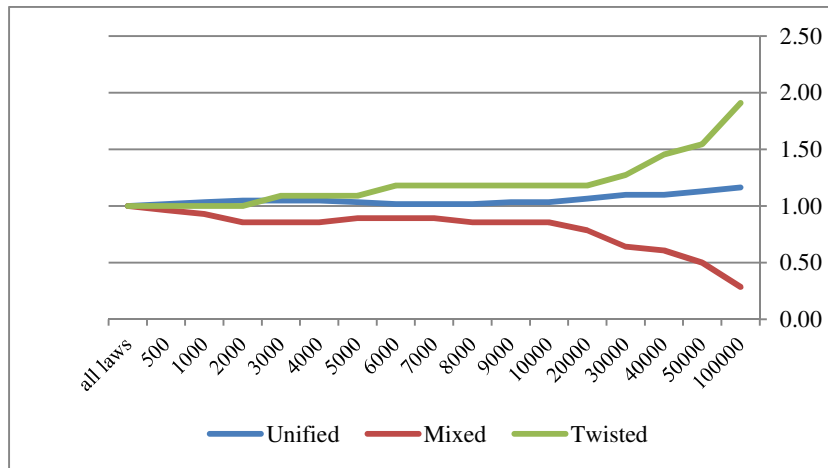


Figure 5: Government-Main Opposition Cooperation, 1989-2011

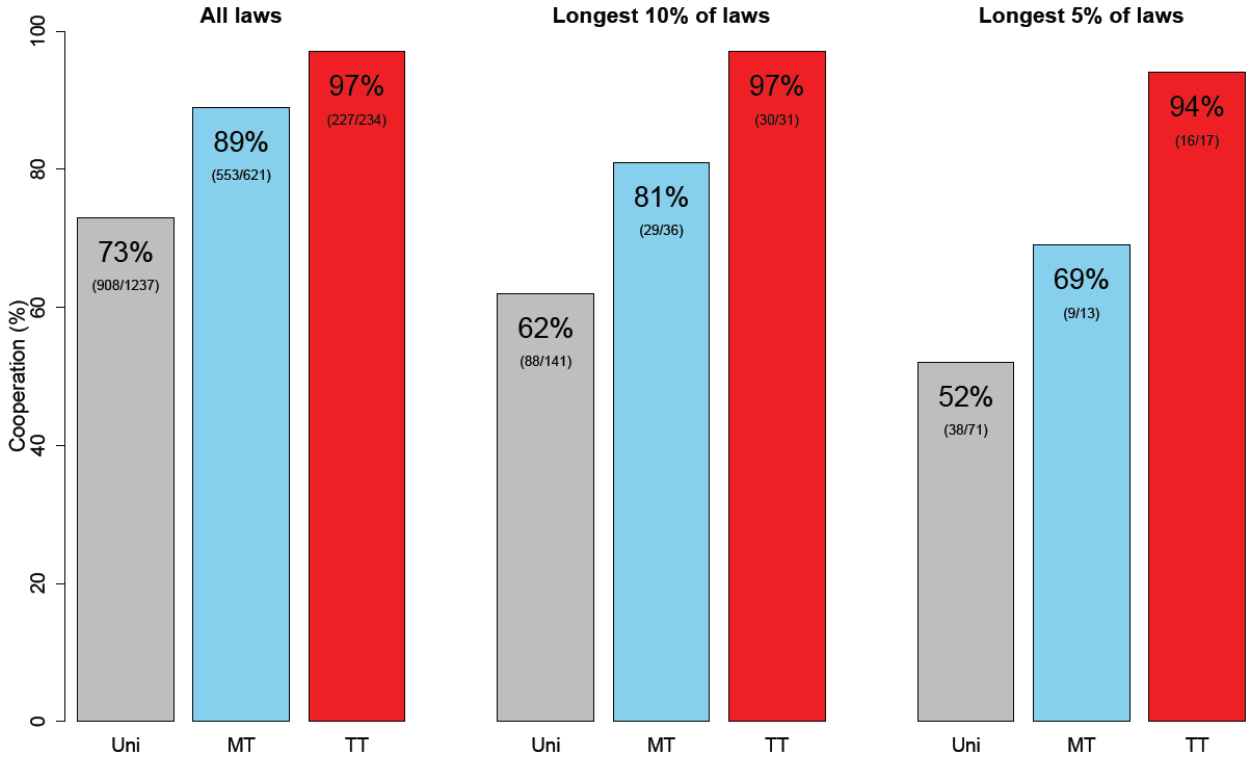


Figure 6a: Wordfish Estimates of Japanese Laws, by Diet Type & Partisanship, 1989-2011

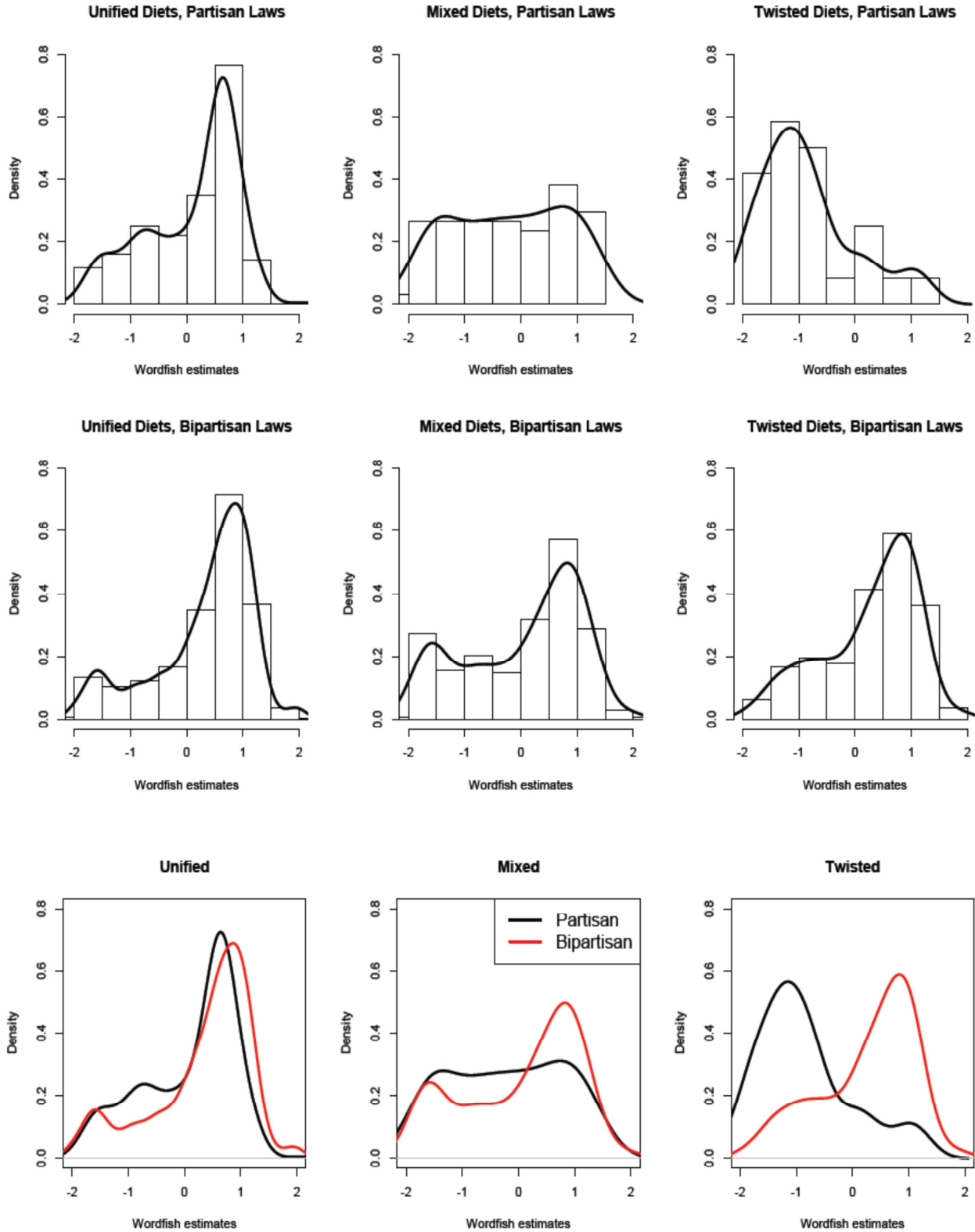


Figure 6b: Wordfish Estimates of Laws, 1989-2011, by Legislative Coalition Type

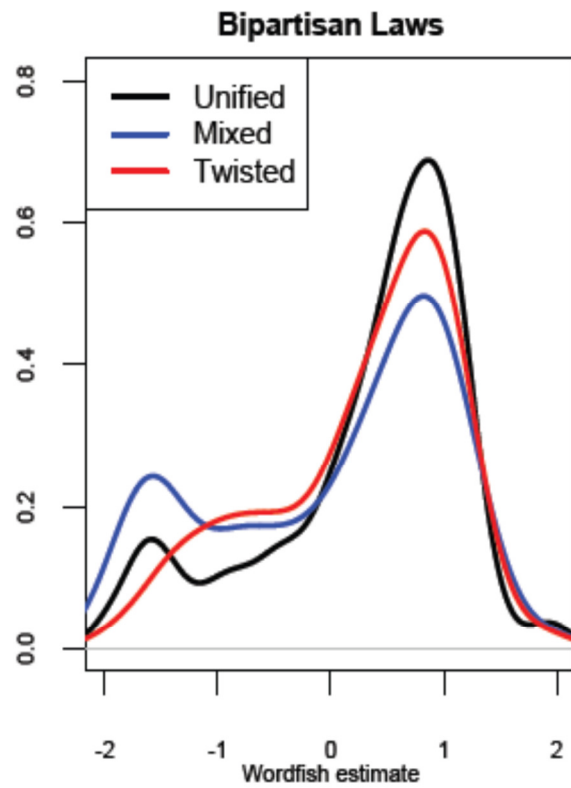
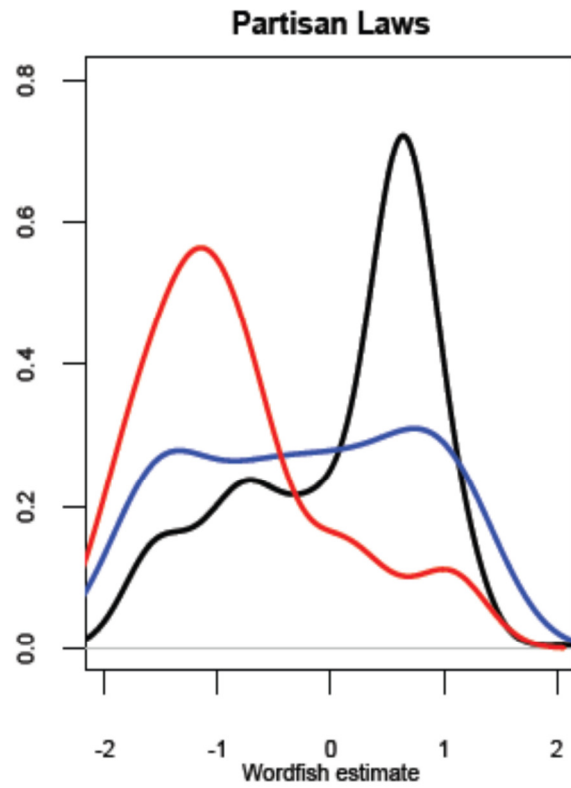


Figure 7: Q-Q Plots of Wordfish Scores, by Diet Type 1989-2011

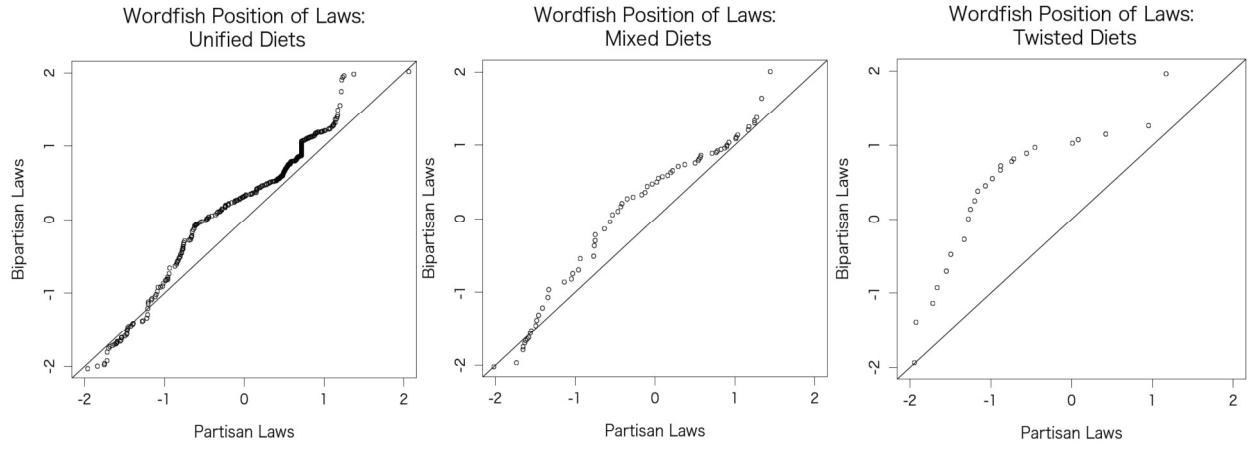


Table 1: Unified and Twisted Diets, 1956-2011

Diets	Years	Lower House	Upper House	Diet Status
26-115	1956-1989	LDP majority	LDP majority	Unified
116-126	1989-1993	LDP majority	LDP plurality	Mixed
127-129	1993-1994	non-LDP coalition	Same as LH	Unified
130-138	1994-1998	LDP-led coalition	Same as LH	Unified
139-144	1998-1999	LDP Minority	LDP Minority	Mixed
145	1999	LDP-led coalition	LDP-led plurality	Mixed
146-166	1999-2007	LDP-led coalition	Same as LH	Unified
167-171	2007-2009	LDP-led coalition	DPJ-led coalition	Divided
172-174	2009-2010	DPJ-led coalition	DPJ-led coalition	Unified
175-180	2010-2012	DPJ-led coalition	LDP-led coalition	Divided

Table 2: Bicameral Disposition of Budget, 1989-2011*

Diet Type	HC Approval	HC Rejection
Unified	12	0
Twisted	0	10

* Excludes 1994 and 1997

Table 3: Treaties, 1993-2011

Diet type	Passed both Houses	HR approved HC no action	HR approved HC disapproved	No vote in either House	HC approved HR no action	Total
Unified	195 (99.5%)	0	0	1 (0.5%)	0	196 (100%)
Mildly Twisted	24 (88.9%)	1 (3.7%)	0	0	2 (7.4%)	27 (100%)
Truly Twisted	43 (74.1%)	13 (22.4%)	2 (3.45%)	0	0	58 (100%)
Total	262 (93.2%)	14 (4.9%)	2 (0.4%)	1 (0.4%)	2 (0.7%)	281 (100%)

Table 4: Passage Rate of Cabinet Bills, 1989-2011

Diet Type	Passed	Failed
Unified	96.5%	3.5%
Not Unified	94.7%	5.3%
Total	95.8%	4.2%

Table 5: Passage and Amendment Rate of Cabinet Bills, 1989-2011^Ψ

Diet Type	Passed, no amendments*	Passed in amended form	Passed via 2/3 HR override of HC veto	Failed
Unified (n=1,412)	89.7%	6.8%	0	3.5%
Mixed (n=645)	89.0%	7.3%	0	3.7%
Twisted (n=276)	66.3%	18.5%	6.2%	9.0%
Total	86.7%	8.3%	0.7%	4.2%

* See footnote 28. ^Ψ Total number of bills is 2,333. Two minority governments are excluded.

Table 6: Amended Bills, 1989-2011

Diet Type	Substantively amended in			Supported by main opposition	Total substantively amended
	HR	HC	Both		
Unified	88 (91.7%)	8 (8.3%)	0	74 (77.1%)	96 (100.0%)
Mixed	35 (74.5%)	8 (17.0%)	4 (8.5%)	37 (78.7%)	47 (100.0%)
Twisted	49 (96.1%)	2 (3.9%)	0	51 (100.0%)	51 (100.0%)
Total	172 (88.7%)	18 (9.3%)	4 (2.1%)	162 (83.5%)	194 (8.3%)

Table 7: The Size of the Government Agenda, 1989-2011^Ψ

Diet Type	Bills per day [†]	Bills per day that eventually became laws [‡]
Unified	0.673	0.663
Mixed	0.563	0.527
Twisted	0.386	0.319

^Ψ Unit of observation is a legislative session. Sessions in which no laws were passed are excluded. N=45.

[†] ANOVA F value=6.2699, Pr(>F) = 0.016

[‡] Kruskal-Wallis rank sum test: chi-squared = 7.9897, df = 2, p-value = 0.01841

Table 8 : Distributions of law lengths, 1989-2011

Percentile	Number of Characters	Percentile	Number of Characters
5%	309	55%	7,833
10%	655	60%	9,315
15%	1,126	65%	11,341
20%	1,520	70%	13,820
25%	2,120	75%	17,601
30%	2,967	80%	22,870
35%	3,892	85%	30,120
40%	4,666	90%	43,749
45%	5,322	95%	76,896
50%	6,322	100%	1,729,637

Table 9: Distribution of Laws by Length, by Diet Type 1989-2011

Laws Longer than	Unified	Mixed	Twisted
1,500,000	100%	0%	0%
1,000,000	100%	0%	0%
500,000	80%	20%	0%
400,000	75%	25%	0%
300,000	86%	14%	0%
200,000	80%	8%	12%
100,000	71%	8%	21%
50,000	69%	14%	17%
40,000	67%	17%	16%
30,000	67%	18%	14%
20,000	65%	22%	13%
10,000	63%	24%	13%
9,000	63%	24%	13%
8,000	62%	24%	13%
7,000	62%	25%	13%
6,000	62%	25%	13%
5,000	63%	25%	12%
4,000	64%	24%	12%
3,000	64%	24%	12%
2,000	64%	24%	11%
1,000	63%	26%	11%
500	62%	27%	11%
all laws	61%	28%	11%

Table 10: Estimated Wordfish Positions of Laws by Committee

Committee	Position	Committee	Position
Security	-0.752	Legal Affairs	0.041
Local Administration	-0.614	Education & Culture	0.270
Internal Affairs & Communication	-0.404	Special Committees*	0.472
Health, Welfare, and Labor	-0.270	Agriculture, Forestry & Fisheries	0.516
Cabinet Office	-0.161	Commerce	0.518
Finance	-0.124	Land, Infrastructure, & Transport	0.519
		Environment	0.762
		Science & Technology	0.834
		Foreign Affairs	1.215

* Special committees span various policy areas.