1 THE SENATE'S STRUGGLE TO GOVERN ITSELF

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The effect of intense partisanship on the Senate, some shared with the House and some unique to the Senate, and why senators have not done much about their predicament, are the subjects of this chapter. In both houses, partisanship has reduced legislative productivity, altered the role of committees, and enhanced the policy-making role of central party leaders. The most obvious and debilitating development in the Senate has been the spread of minority obstructionism to most important legislative activity and the efforts of majority parties to adjust to minority tactics as best they can. The result, however, has changed the Senate in basic ways. Many bills simply are not brought to the floor and to a vote, opportunities for offering amendments on the floor have contracted, and Senate floor activity is put on pause for long periods of time as majority leaders seek to negotiate legislative paths around obstructionists. The expressions of dissatisfaction are widely, if not universally, felt among senators and run deeper than at any time in the last half-century. Numerous proposals to reduce partisanship and overcome obstructionism have been proposed, but senators have not engaged in a serious effort to consider reforms of their rules and practices.

The U.S. Senate is an enigma.

The Senate is a great place to work. More prestige is attached to being a senator than to all but a few other positions in American government. The institution wields a great deal of power. Beyond sharing legislative powers with the House of Representatives, the Senate has special responsibilities in confirming presidential nominations to high executive and judicial branch offices and ratifying international treaties—responsibilities that generate a steady flow of prominent visitors to senators' offices. It also is a place in which individual legislators can force days of delay in action on most legislation, no matter how important, to draw attention to a cause or themselves. Senators' six-year term is the longest term for a federal or state elected office; no state governor has a term so long. Along with the governor, senators usually are the most prominent elected officials in their home states. Their long terms give them great freedom to pursue issues and develop a national following. Indeed, many senators are national political figures and make at least a trial run at the presidency. And on Capitol Hill, senators are treated like royalty. Doors and elevators are held for them, they enjoy senators-only dining rooms and gyms, and they are assigned private hideaways in the Capitol building away from their sizable office suites in buildings across Constitution Avenue.

The Senate also is deeply frustrating, even for senators. Senate politics have become more intensely partisan in recent years. The Senate, only a few decades ago, was known

as a place that fostered "institutional kinship"—a comradery stemming from membership in an elite institution and rooted in civility, restraint, and mutual empathy and trust.[1] It appears that interpersonal relations across party lines now are often frayed. Cross-party friendships are still common, but the opportunities in committees, subcommittees, and the Senate floor for meaningful collaboration across parties have dwindled.[2]

It also is a place in which a majority of senators—even a majority of senators representing a majority of Americans—can lose and, thanks to strong partisanship, now often do. Modest reforms have been adopted, but efforts to change Senate rules and practices have been blocked by a minority of senators who, under the rules, can obstruct action on reform. And yet a few key reforms have been imposed by a majority in a manner entirely inconsistent with the plain meaning of the Senate's written rules.

In broad outlines, the Senate operates in the same political environment as the House of Representatives. It is not too surprising that changes in the political environment can generate similar changes in the kind of people elected to, and how they behave in, the two houses. Intense partisanship is evident in the recent legislative record of both houses and in their common effort to negotiate differences and enact legislation. Yet each house has spent two centuries developing parliamentary rules and practices of its own and conducts legislative business its own way. As a result, the House and Senate often respond to changes in American politics in different ways. In fact, the deeply partisan struggle over policy and elections of recent decades has been particularly troublesome for the Senate, where a minority and even individual senators can stall or block a majority. The effect of intense partisanship on the Senate, some shared with the House and some unique to the Senate, and why senators have not done much about their predicament, are my subjects.

FUNDAMENTALS

If we were to write down an equation for gridlock in American national policy making, it might look like this:

gridlock = separation of powers + bicameralism + polarized parties + small congressional majorities + divided party control + supermajority thresholds

The Constitution creates the system that requires the House, Senate, and president to agree before most legislation is made law, which produces the possibility of serious disagreement and inaction. In the last few decades, elections and other forces in American politics have generated polarized parties, small majority parties in the House and Senate, and, frequently, divided party control of the policy-making institutions. The variable unique to the Senate is the possibility of minority obstruction due to the presence of supermajority thresholds for overcoming obstruction and a variety of motions. Here is a quick review of the evidence.

Polarized Parties

Members of the two parties are taking opposing positions on roll-call votes in recent Congresses more than they did a half-century ago. Most political scientists point to trends in roll-call voting scales that resemble "ideology scores." The median scores for each party are arrayed in Figure 1-1, which gives the most liberal voting record a negative score and the most conservative record a positive score. As in the House (not shown), Republicans have trended further in the conservative direction than Democrats have trended in the liberal direction.

FIGURE 1-1 ■ Mean Liberal–Conservative Scores, by Senate Party, 1947–2024
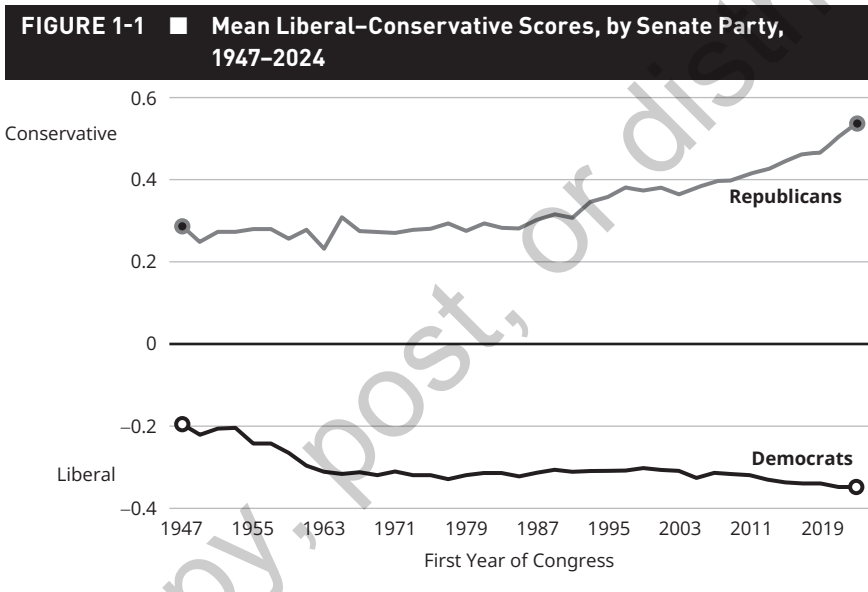
Source: DW-NOMINATE scores, https://voteview.com.

Figure 1-1, of course, reflects what comes to a vote, and what comes to a vote is a matter of choice—choices made by legislators and their leaders. We do not observe the membership's "real" distribution of preferences about public policy issues. Nevertheless, the pattern in floor voting reflects a reality. The parties are more frequently choosing to vote on proposals that divide the parties, looking for issues that will advantage their side and impose political costs on the other side, and acting more like teams in a zero-sum, win-or-lose contest.

A Polarized Electorate

The story of why congressional parties have become so polarized is a long one and beyond the scope of this chapter. It involves strategic choices by legislators and their leaders, as well as the realignment of partisan preferences in the electorate, the polarization in party activists, campaign donors, the media, and, in the recent Trump era,

the rise of conservative radicals. The polarization of the electorate is a product of those political forces too. Senate electorates are more consistently partisan; the statewide party balance, more than senators' personal attributes, determine election outcomes. It is not surprising that who gets elected to the Senate reflects these developments.

Several features of Senate elections are important:

- Democrats now represent far larger, urban, and ethnically diverse states than Republicans.[3] In fact, because Republicans represent small states on average, they have enjoyed a share of Senate seats greater than their national vote in Senate races and recent Republican Senate majorities have represented a minority of the U.S. population (see Chapter 9 in this volume).

- As voters in Senate elections have responded more to national partisan preferences and less to local issues and candidates' personal attributes, fewer states are represented by a Democrat and a Republican.[4] In fact, as Figure 1-2 shows, over the last five decades, the number of split delegations has drifted downward. Of the fifty states, split Senate delegations shrunk to just six in

FIGURE 1-2 ■ Percentage of States with Split-Party Senate Delegations, 1947–2024

Percentage Split Delegations

First Year of Congress
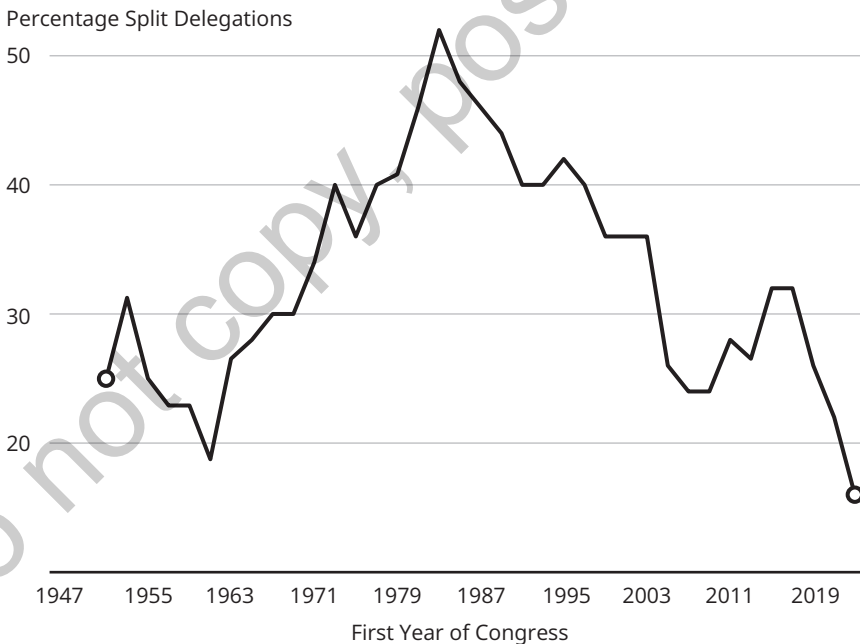
Source: Pew Research Center, "U.S. Senate Has Fewest Split Delegations Since Direct Elections Began," February 11, 2021 (https://www.pewresearch.org/short-reads/2021/02/11/u-s-senate-has-fewest-split-delegations-since-direct-elections-began/).

2021 and five in 2023. Today, very few senators must work across party lines to meet the needs of their home states.

- The number of senators who previously served in the House has risen from thirty in the late 1970s to at least forty since 2000, reaching forty-six in 2007. The House training ground for those senators has been at least as partisan as the Senate.

- Overall, with states showing more stable party divisions, it has become easier for senators to win reelection. The number of Senate elections producing a winner with less than a 10 percent margin of the two-party vote (closer than 55–45 percent) has fallen from about 40 percent in the 1960s to less than 25 percent recently. Moreover, less than half of today's senators, far fewer than in the last century, now face an opponent from the other party who has previous experience winning elected office.[5] Fewer senators have reason to worry that party loyalty will cost them their reelection.

Small Majority Parties

The deepening partisan polarization in the Senate was accompanied by small majority parties (Figure 1-3), with important effects. Between 1955 and 1980, the Democrats,

FIGURE 1-3 ■ Size of Senate Parties, 1961–2023

Source: https://www.senate.gov/history/partydiv.htm.
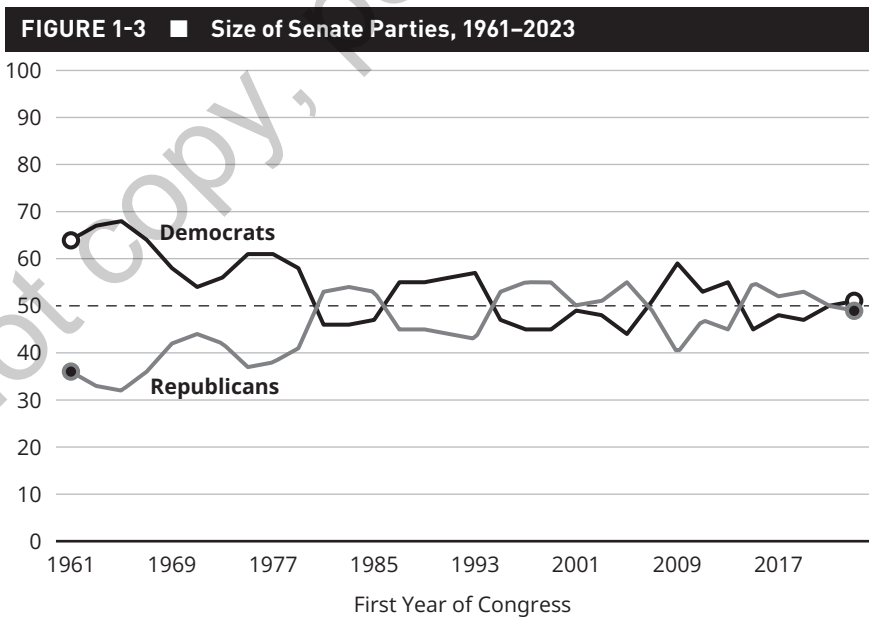
always in the majority, averaged 59.4 seats in the Senate and 262.5 (60.3 percent) in the House; since 1980, the average Senate majority has been 53.8 and the average House majority has been 242 (55.6 percent). The 118th Congress began with a 51–49 Democratic advantage in the Senate. Small parties made future majority control more uncertain, greatly increased the importance of a few hotly contested seats, and encouraged more partisan maneuvering in Congress.[6]

Divided Party Control

To complicate matters, today's legislators have experienced split party control of the Senate, House, and presidency more often than unified party control. As Figure 1-4 shows, of the last twenty-eight Congresses, divided party control of the House, Senate, and presidency existed in nineteen Congresses. When the parties are not polarized and negotiations can produce legislative compromises that can be approved by all three institutions, divided party control is not debilitating. When the parties are polarized, negotiations are less likely to produce legislative compromises that can be approved by all three institutions. Stalemate on legislative issues is a frequent outcome.[7]

FIGURE 1-4 ■ Party Control of the Senate, House, and Presidency, 1969–2024

Senate																											
House																											
President																											

| 1969 | 1971 | 1973 | 1975 | 1977 | 1979 | 1981 | 1983 | 1985 | 1987 | 1989 | 1991 | 1993 | 1995 | 1997 | 1999 | 2001 | 2003 | 2005 | 2007 | 2009 | 2011 | 2013 | 2015 | 2017 | 2019 | 2021 | 2023 |

First Year of Congress

Democratic control: Gray   Republican control: White

Source: https://www.senate.gov/history/partydiv.htm, https://history.house.gov/Institution/Party-Divisions/Party-Divisions/, and https://www.whitehouse.gov/about-the-white-house/presidents/.

The Senate's Supermajority Rule

Now let's bring in a factor that distinguishes the Senate from the House—Senate Rule XXII, the cloture rule. When a large Senate minority chooses to filibuster—not allow a debatable motion to come to a vote—the majority must produce a three-fifths majority of all senators, or sixty votes, to invoke cloture (close debate) and force a vote on the issue.[8] The sixty-vote threshold forces the creation of a "supermajority" to pass legislation and increases the difficulty of passing legislation.[9] The minority, of course, need not choose to obstruct a vote on the issue, but, with polarized parties and small majority parties, the minority party has been more frequently and successfully obstructing action on the majority party's agenda.

The long duration of polarized parties and small majority parties, operating under divided government more often than not, has produced a generation of senators who

know little else. At the time of this writing in 2024, 91 of 100 senators had arrived since the year 2000, well into an era of small, polarized parties. They have adopted personal and partisan strategies that reflect those everyday circumstances. Strategizing to make one's own party look good and the other party look bad is the norm. Partisanship can be overcome and even set aside from time to time, but on major issues it is difficult to do so. It usually requires exceptional circumstances—the threat of a government shut-down, an economic crisis, a national security emergency—to find broad, bipartisan support for major legislation. Partisan-based stalemate occurs more frequently than was the case a half-century ago.

AN ILLUSTRATION

These developments have bred intense partisanship, placed party leaders in the middle of most policy fights, reduced the role of committees, lengthened the time required to enact important legislation, and generated stalemate on many issues. I offer an illustration. It is a tragic story about mass shootings, gun control, and the Senate.

On a sunny but cool day in December 2012 in Connecticut, an eighteen-year-old man with an AR-15 assault rifle walked into Sandy Hook Elementary and fired 154 rounds. He killed twenty children and six adults. Mass shootings already had become too common, but the massacre of children in an elementary school shocked the nation—really, the world. A federal assault weapon ban had not been renewed when it expired in 2004, largely because of opposition from the gun industry, the National Rifle Association (NRA), other gun owners' groups, and most Republicans in Congress. Sandy Hook spurred action on Capitol Hill.

Everyone understood that the Senate was the primary obstacle to enacting a new ban on the sale of assault weapons and other regulations. Indeed, the Republican speaker of the House indicated that there was no point in the House acting on legislation until the Senate, with a 53–47 Democratic majority, proved it could pass something. The Senate's ability to act was in doubt because gun control opponents could be expected to block action by filibustering any meaningful legislation. At least a few Republicans would have to support a plan and help Democrats acquire sixty votes for cloture on the bill.

Surely motivated by the public reaction to Sandy Hook but also facing resistance to new legislation from the gun lobby, Senate Republicans engaged in discussions with Democrats about new legislation. After three months of negotiation, a compromise plan focusing on expanding background checks for weapon sales was endorsed by most senators. Many senators had additional proposals, including proposals to ban entrapment efforts by law enforcement, ban the purchase of guns for another person, require states to honor other states' concealed carry laws, ban production and import of certain assault weapons, and limit magazine sizes. With senators under pressure to allow debate on a bill, the Senate invoked cloture, 68–31, on the motion to proceed, allowing a debate on the bill to begin.

The problem for bill proponents was that they were still short of votes for invoking cloture on the bill itself and confronted a variety of amendments, some of which would weaken gun control regulations in the bill. Debating and voting on all of those amendments and finding sixty votes for the final version of the bill is a process that could take weeks, if not months, and may produce nothing. Majority Leader Harry Reid (D-Nev.) worked to devise an agreement that specified the amendments allowed and—this may seem surprising—required that each amendment receive sixty votes to adopt. Reid's proposal, negotiated with Democratic and Republican senators, received unanimous consent, which then guided Senate action. The sixty-vote threshold in the unanimous consent agreement (UCA), of course, is what would have been required if each amendment had been filibustered and then subject to a cloture vote. Amendment sponsors realized that sixty votes would be required either way, but under the UCA an up-or-down vote on their amendments would be guaranteed. Several of the amendments received more than fifty but fewer than sixty votes and so died. The underlying compromise proposal, considered as an amendment to a base bill, received fifty-four votes, a majority but not the required sixty. Reid then pulled the bill from the floor.

Several aspects of the 2013 episode are noteworthy.

1. A minority of senators blocked action by a Senate majority.

2. A "talking" filibuster—senators taking the floor and refusing to end debate and vote—never occurred. Rather, the threat of a filibuster, or even a succession of filibusters, was enough to stall floor action until the majority leader found a way to work around them.

3. The majority leader, confronted with a possible filibuster at every turn, proceeded only by gaining unanimous consent to structure the process and get a vote on the bill. The unanimous consent agreement (UCA) superseded the standing rules of the Senate in order to limit debate and amendments.

4. The UCA limited amendments to just a few and required that each amendment receive sixty votes to be approved. Amendment authors would get votes directly on their amendments, which otherwise might have been filibustered or set aside by successful motions to table them. Reid knew that most amendments would not acquire sixty votes.

5. Action in the House was politically connected to action in the Senate. With a Senate minority able to prevent passage, the House Republican majority party did not have to take up legislation and place its members in a position to cast votes on a highly controversial issue. The House never cast similar votes on gun control measures that year.

In the short run, the majority leader could have allowed the time of the Senate to be devoted to extended debate—a "talking" filibuster—in the hope of wearing down

the opposition and drawing more attention to the issue. The problem is that there was no evidence that the minority would eventually allow the majority to proceed. In the meantime, consideration of other legislation would be delayed and eventually the majority leader and his party would be blamed for holding out on a losing cause while other matters remained unaddressed.[10]

PARTISAN OBSTRUCTIONISM AND THE SIXTY-VOTE SENATE

The Senate's response to Sandy Hook reflected new habits in legislating that were firmly in place early in the twenty-first century. Minority obstructionism had been ratcheting up since the 1970s but became nearly universal for important legislation early in the new century. The final steps were taken under the guidance of Mitch McConnell (R-Ky.) after he became minority leader in 2007. While minority obstruction had become commonplace by the time McConnell became leader, he made obstruction the foundation of minority party strategy. McConnell adopted the view that the Senate ran with sixty votes, the number required for cloture, and he claimed that was the Senate's traditional standard. This is not true—historically, Senate minorities filibustered sparingly and few cloture votes were cast, as Figure 1-5 reflects—but McConnell was making it a standard strategy of his party.[11]

FIGURE 1-5 ■ Number of Measures Subject to at Least One Cloture Vote, 1961–2022

Source: https://www.senate.gov/legislative/cloture/clotureCounts.htm.
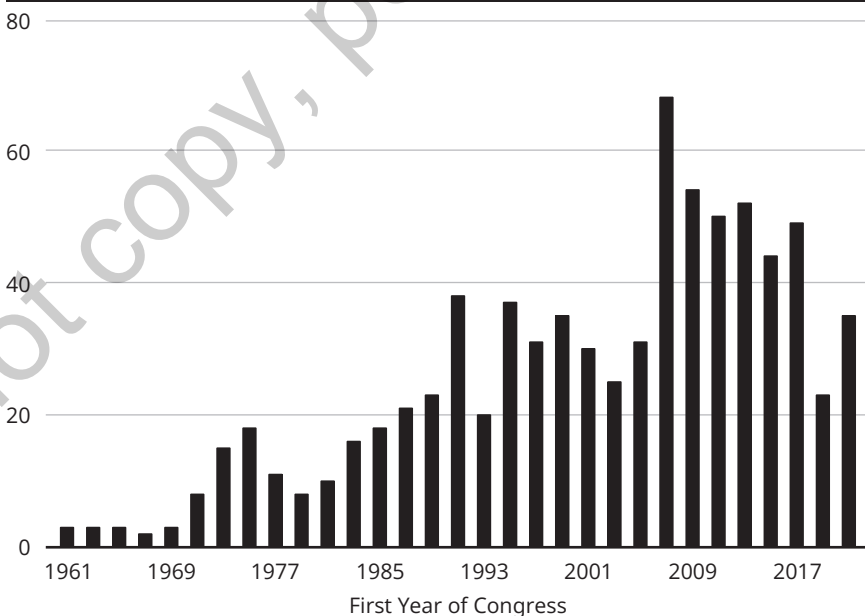
One immediate result is that the majority leader at the time, Harry Reid (D-Nev.), sought cloture about twice as often to get action on legislation than had been common in the previous two decades. On average, that involved about one cloture vote related to legislation (setting aside nominations) for every four days of Senate session in 2007–2008. As McConnell intended, refusal to allow the Senate to move forward on a measure without invoking cloture had a cumulative effect—the majority party Democrats struggled to set the floor agenda and accomplished less. Even when cloture is easily invoked, it is costly. The procedure takes more than two days to complete in addition to the thirty hours of debate that are started by invoking cloture. Other business can be conducted during that period, but the process delays action on some legislation and nominations that are time sensitive, and it cumulates to weeks of voting on cloture over the course of a two-year Congress.

Figure 1-5 illustrates the long-term story. The figure reports the number of legislative measures (that is, excluding nominations) that were subject to at least one cloture vote. Before the 1970s, filibusters and cloture votes were uncommon and had been focused on only the most important civil rights measures for some time. That changed in the 1970s when quite a range of issues—from the supersonic transport to voting registration to natural gas regulation—were subject to obstruction and cloture votes. Use of the filibuster had become "trivialized" and the high threshold for cloture in the early 1970s, two-thirds of senators voting, was viewed by many senators as unreasonably high. In 1975, the Senate reduced the threshold to three-fifths of all elected senators, or sixty votes when 100 or 99 seats were filled. The new rule did not reduce filibustering or cloture votes, although it made it somewhat easier to invoke cloture and bring a measure to a vote.

In the early 1990s, Republican minorities obstructed action more frequently and moved the number of measures subject to cloture votes to about three dozen in a two-year Congress, more than once a month on average, a level that seemed intolerable to majority parties at the time. Republican tactics also changed: From 1961 through 1990, 18 percent of all cloture petitions concerned motions to proceed, but in 1991–1992, the figure jumped to 55 percent. For long-time senators, such as former Majority Leader Robert Byrd (D-W.Va.), this represented a fundamental change. Obstructionists were now attempting to block the start of a debate on a bill in addition to blocking a vote on passage of the bill. In 1993–1994, with Democratic President Bill Clinton in the White House, Republicans also filibustered more than a dozen nominations, which had only rarely been filibustered previously. Subsequent Democratic minorities took the Republican tactics to heart. After losing their Senate majority in the 1994 elections, Democrats stepped up their obstructionist tactics.

The change in minority tactics also is reflected in the number of yea and nay votes on cloture related to legislation, as shown in Figure 1-6. In the late 1970s, filibusters and cloture votes typically occurred when there was close to a 60–40 split—that is, when a filibuster might affect the outcome. While filibusters still affect the outcome on many occasions, more obstruction occurs when the number of senators who support

FIGURE 1-6 ■	Cloture Votes on Legislation: Mean Number of Yea and Nay Votes, 1969–2024
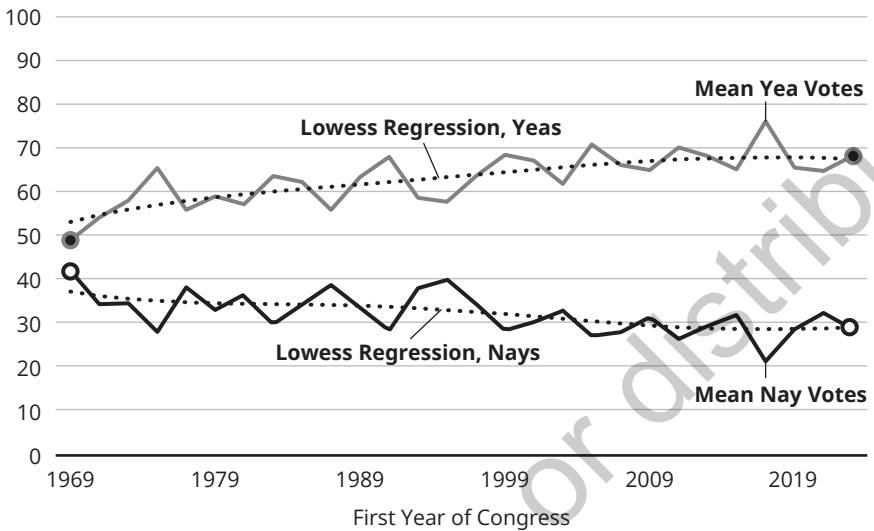
Source: Jason Roberts, David Rohde, and Michael H. Crespin. 2024. Political Institutions and Public Choice Senate Roll-Call Database (https://www.ou.edu/carlalbertcenter/research/pipc-votes).

cloture far exceeds the sixty-vote threshold. Knowing that cloture will be invoked and the bill or nomination will be approved, the minority still forces the time-consuming cloture process to slow action and, by doing so repeatedly, makes it more difficult for the majority to reserve time for its top priorities and buttresses its argument that the majority cannot govern.

It is true, of course, that a significant number of bills pass by a simple-majority vote without invoking cloture. Indeed, there are many issues that are passed by unanimous consent or on voice votes. At times, legislation is considered so important that even opponents do not want to be blamed for obstructing passage and allow them to pass on simple-majority votes without filibustering. And yet other issues are eventually negotiated so that sixty votes for cloture are obtained. Still, we should not be fooled into thinking that little has changed; the Senate has changed in basic ways. The list of major legislation that is passed without the support of at least sixty senators has become very short. In the last two decades, filibusters and threatened filibusters have stymied Senate action on cap-and-trade legislation to address carbon emissions, the DREAM Act to create a path to citizenship for children brought into the United States by undocumented immigrants, immigration reform, gender pay differences, voting rights and election reform, border security, and many other matters.

Figure 1-7 provides a count of cloture motions on presidential nominations for executive and judicial positions that require Senate confirmation. Cloture was used

FIGURE 1-7 ■	Number of Presidential Nominations Subject to at Least One Cloture Vote, 1961–1922

Source: https://www.senate.gov/legislative/cloture/clotureCounts.htm.
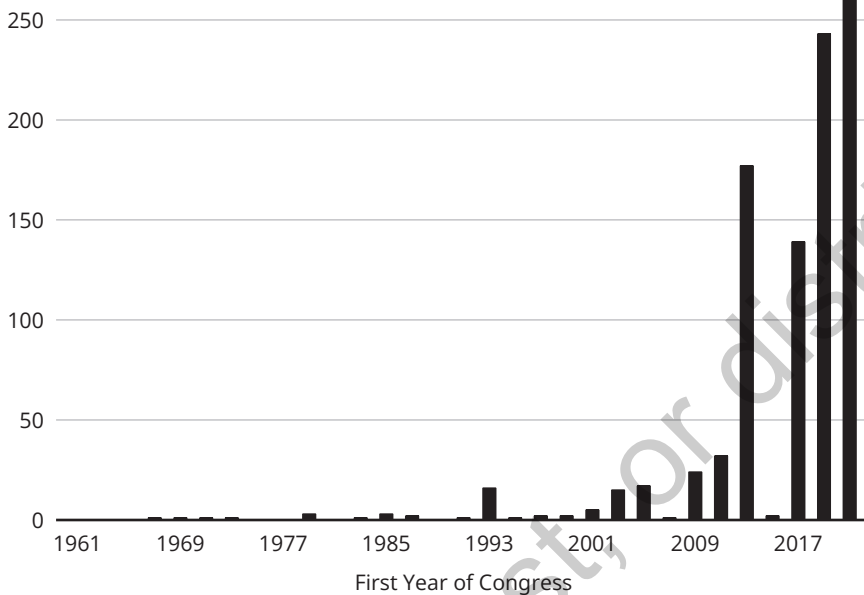
sparingly on nominations before 2013. Since late 2013, when the Senate accepted the majority leader's argument that a simple majority can invoke cloture on nominations (see below), the minority has regularly forced the majority to hold a separate cloture on hundreds of nominations. In 2011–2012, only 11 votes on cloture motions were conducted and only 82 votes were held on the nominations themselves. In 2021–2022, 243 roll-call votes on cloture motions were conducted, only 2 of which were not agreed to, and 289 roll-call votes were demanded on the nominations themselves. Almost all of the increase in the number of roll-call votes—from 486 to 949 between those two Congresses—was due to votes related to nominations. Many hours—adding up to more than a half dozen weeks—of floor time have been consumed by these votes in recent Congresses as minority parties opposite of the president's party (that is, minority "out-parties") deliberately sought to slow Senate proceedings.

With the surge in overt obstructionism came more attention to troublesome "holds." A hold is a senator's notification to a floor leader, usually by letter, that he or she objects to the consideration of a measure or nomination. In many cases, the hold is considered notice that the senator intends to object to a unanimous consent request to consider a bill or nomination, thereby starting a filibuster on the motion to proceed. A

hold may be placed for a variety of reasons. In some cases, senators may simply object to the content of the legislation or to the nomination on policy grounds. But holds often state contingencies—the hold would be lifted if a hearing was held on an unrelated matter, time to speak or offer an amendment was protected in a UCA, or even to prevent scheduling debate when the senator was away from Washington. The minority leader would report the existence of a hold when asked by the majority leader if there were objections to proceeding with a bill; the majority leader, of course, would know of holds on his side. By one count, Republican leader Bob Dole (R-Kans.) received at least 400 holds in each Congress he served as leader—1985 to 1996.[12]

The majority leader's reliance on unanimous consent to schedule floor activity gives holds their bite. A majority leader is under no obligation to observe holds, but the leader cannot afford to be surprised by an unexpected objection to a unanimous consent request to bring up or schedule measures and so appreciates advance notice of a possible problem. The time and effort required for a majority leader to resolve a senator's objection to a bill or nomination of marginal importance usually was enough to have Senate action delayed or blocked. The obstruction caused by "secret" holds, even if temporary, gave them the feel of silent, no-effort, one-senator vetoes.[13]

THE MAJORITY RESPONSE

Step by step, holds, threatened filibusters, and filibusters became standard features of Senate policy making in the late twentieth and early twenty-first centuries. Between holds and more overt obstruction on motions to proceed, even the ability to start floor debate on a bill became more problematic for the majority. Minority obstruction came to be assumed from the outset. Normalized obstruction produced normalized efforts to quickly invoke cloture or otherwise circumvent the obstruction. Successful cloture not only limits debate, but it also imposes a germaneness requirement on amendments. The limited debate and germaneness requirement generates complaints from the minority party about "quick trigger" cloture, frustrates minority senators eager to offer alternatives, and intensifies partisan animus, which, in turn, seems to generate more minority obstruction. It is a spiraling partisanship that encourages party leaders and rank-and-file senators to fully exploit their procedural options—what I once called the "Senate syndrome."[14]

Over the course of the 1980s, 1990s, and early 2000s, majority leaders and other senators backed reforms to limit the inconvenient and often debilitating effects of minority obstruction, but, always facing minority opposition, nothing came of these efforts.[15] Failing to get even modest reforms of the standing rules, majority leaders developed a set of tactical responses, but these responses cannot overcome a concerted effort by a large minority to block action on most types of legislation. Nevertheless, the use of the procedural toolkit of majority leaders has contributed to senators' complaints

about what has happened to the Senate. A few of the significant responses by the major-ity will show how, cumulatively, these steps alter the character of Senate policy making.

Reduce Opportunities for Filibusters

The most obvious strategy is to avoid filibusters or at least minimize the number of times sixty votes must be found to invoke cloture. One way to do this was to exploit budget rules for reconciliation bills that set a debate limit, thereby prohibiting a filibus-ter. Reconciliation bills may combine the recommendations of multiple committees in each house to cut spending, cut taxes, or both, but for a time also were stuffed with nonbudget provisions that might not pass as free-standing measures, perhaps because of minority obstruction in the Senate. The Byrd rule, adopted in 1987 and named for its Senate author, blocked this strategy. However, subsequent parliamentary rul-ings allowed reconciliation bills to include tax cuts exclusively, which gave a simple majority in the Senate a path to enact tax measures without minority obstruction. The most important tax bills in this century have been reconciliation bills. Thus, while the Senate has not adopted a general practice of settling legislative issues by simple-majority vote, it has done so for budget and tax measures.

A second approach is to reduce to a bare minimum the number of motions required to pass legislation and might be filibustered. The Senate took a step in this direction ten years ago by consolidating three motions required to go to conference with the House into one, thus reducing the number of targets for filibusters. This also can be accomplished by avoiding a conference with the House altogether. When a party is in the majority in both houses, the leaders can arrange negotiations and then have the result introduced as a new bill or as a Senate amendment to a House-passed bill and then getting a vote in both houses on the new or revised bill. Another way is to pack-age items that might be filibustered as stand-alone bills into larger bills that are more popular or considered essential bills, such as appropriations and debt limit bills, that will be allowed to pass.[16]

Once minority obstruction came to be the norm for major bills in the new century, the majority leader began to file cloture petitions to close debate and avoid nonger-mane amendments before a filibuster materialized. This expedited action on measures for which cloture would eventually be required and, once cloture was invoked on a bill, set a time limit for debate and barred amendments not germane to the bill. The minor-ity, of course, insisted that the majority had a quick trigger on cloture, but the majority insisted that their tactics were justified by the minority's track record of routinely forc-ing cloture votes to move on legislation.

A Quick Trigger on Cloture

Mutually adjusted tactics by the minority and majority party leadership produces a "obstruct-and-restrict" pattern that everyone comes to expect and causes both sides

to fully exploit their procedural options without being prompted to do so. This is just the opposite of what many senators consider the Senate tradition of self-restraint in exploiting the Senate rules and precedents, a tradition that emphasizes every senator's ability to participate but allows the Senate to eventually cast votes on legislation or nominations.[17]

Sixty-Vote Requirements in UCAs

There is more to the majority response to filibusters than cloture motions. Structuring the debate and amending process requires unanimous consent and, of course, the majority leader would like to get agreement on a time to vote on the bill. This requires negotiations, which consume much of the working time of the two floor leaders, and, over the years, has produced a variety of procedural innovations.

One innovation—the sixty-vote requirement for amendments and final passage— was illustrated in the UCA governing action on the 2013 background check bill. Before 2007, the sixty-vote threshold for amendments was included in UCAs just a handful of times. In most Congresses since 2007, when McConnell became minority leader, many amendments that received majority support were killed under the sixty-vote thresholds placed in UCAs. This became fairly standard practice for Reid and McConnell. In the 114th Congress (2015–2016), with a fifty-four-seat Republican Senate majority, twenty-nine majority-approved amendments were defeated under a UCA providing for a sixty-vote threshold.[18] The sixty-vote threshold is used so frequently that it has materially changed the threshold for Senate approval from a simple majority of senators voting to sixty votes, no matter how many senators vote, for hundreds of policy choices in the last two decades.

Side-by-Side Amendments

Beginning in the 1990s, UCAs sometimes provided for "side-by-side amendments." This involves allowing two amendments taking different positions on the same issue to receive votes. Potentially, both amendments can be adopted and the bill passed. It is often assumed that just one or neither amendment will be adopted. If both are adopted, it is assumed that one or both will be dropped in later action on the bill—in the House, in conference, or in an exchange of amendments between the chambers. Provision for side-by-side amendments can be combined with a sixty-vote requirement for agreeing to the amendments. This seemingly nonsensical arrangement allows for direct votes on both amendments, which the sponsors may insist upon as a condition for supporting time and amendment limits in a unanimous consent request.

Filling the Amendment Tree

The majority leader often wants to deny the minority an opportunity to offer amendments until there is a path to voting on the underlying bill, a path that usually involves

negotiating a UCA. The leader's point is that senators who plan to kill the bill should be denied an opportunity to receive votes on their amendments, at least until they agree to a vote on the bill. Senate parliamentary precedents give the majority a way of blocking amendments. Precedents identify the types of amendments that may be pending simultaneously (an amendment tree). Because the majority leader is recognized to speak or offer a motion before other senators, the leader can offer a set of amendments in sequence to prevent any other amendments from being offered. This practice became more common in the 1990s but has become nearly standard practice for major bills on which minority obstruction has surfaced—one or two dozen times in a two-year Congress recently. Filling the tree pauses action, but it does not force significant concessions from the minority—in half or more of the cases of filling the tree, the majority leader had to pull the bill from the floor or eventually had to accept minority amendments.[19]

Going Nuclear

On two occasions in the last two decades, the Senate majority chose to override the plain meaning of its Rule XXII and impose a simple-majority threshold for cloture on presidential nominations. The move was known as the "nuclear option," to capture the idea that an extreme measure was used by the majority to change a rule. These events tell an important story about today's Senate.[20]

In 2003 and 2004, Republicans were frustrated that minority Democrats were slowing consideration of President George W. Bush's nominees to the courts. The 2004 elections increased the tiny Republican majority from fifty-one to fifty-five senators and gave Bush a second term in the White House, but Republicans anticipated continued obstruction from Senate Democrats. In a speech following the elections before the conservative Federalist Society, Majority Leader Bill Frist (D-Tenn.) warned that if Democrats' obstruction on nominations continued they

> will have effectively seized from the president the power to appoint judges. Never mind the Constitution. Never mind the separation of powers. Never mind the most recent election, in which the American people agreed that obstruction must end. The Senate cannot allow the filibuster of circuit court nominees to continue. Nor can we allow the filibuster to extend to potential Supreme Court nominees.[21]

Frist was sending a warning. He was threatening to make a point of order that Rule XXII, which explicitly requires a three-fifths majority of all senators to invoke cloture, be interpreted as requiring only a simple majority to invoke cloture. The presiding officer, following the advice of a parliamentarian, surely would rule against the point of order, but ruling could be appealed to the full Senate, which could vote by a simple majority to overturn the ruling and uphold the point of order. In effect, this would be "reform-by-ruling"—by upholding the point of order, the Senate would ignore the

plain meaning of a written rule without changing it and follow the precedent set by the vote backing the point of order.[22] This was the nuclear option.

The nuclear option had been discussed for several years. In fact, the term was first suggested by Majority Leader Trent Lott (R-Miss.) in the 1990s to reflect how radical that move would be and how the minority might respond. It was not pursued by Lott. Even in 2005, with Majority Leader Frist serious about making the move, a group of seven Republicans and seven Democrats, the Gang of 14, spoiled his plan. The group backed action on a few of the nominations at issue at the time. They also indicated that they would refuse to support Frist's point of order, if he made it. The seven Republicans in the group made it impossible for Frist to create a majority to support a point of order and undermined his plan to end minority obstructionism on judicial nominations.

In 2013, Democrats were in the majority and were confronted with Republican obstruction on a set of President Barack Obama's judicial nominees. After months of delay, Majority Leader Harry Reid (D-Nev.) pulled the trigger on the nuclear option. This represented a change of heart on the nuclear option by Reid, who did not like the idea of flouting the clear meaning of a written rule and overturning a ruling of the presiding officer on a point of order. His patience, however, ran out and Democrats backed his point of order to provide of simple-majority cloture on both executive and judicial nominations. He provided for an exception for Supreme Court nominations; some Democrats thought retaining a higher threshold for cloture on Supreme Court nominations was desirable. Republicans leveled severe criticism at the Democrats for "changing the rules by breaking the rules"—just as their own floor leader and most of them wanted to do eight years earlier.

In 2017, with a Republican majority responding to Republican President Donald Trump's first nomination to the Supreme Court, McConnell used the nuclear option to reduce the threshold for cloture on nominations to the high court to a simple majority. In 2019, they again used the nuclear option method to reduce post-cloture debate from thirty hours, as provided in Rule XXII, to two hours for nominations, leaving the thirty-hour rule for Supreme Court and appeals court nominations, executive Cabinet-level nominations, and some nominations to boards and commissions. This time, Democratic leader Chuck Schumer (D-N.Y.) condemned Republicans for "Senator McConnell's debasement of the Senate."[23]

While there were previous instances of a point of order changing the interpretation of Senate rules, the nuclear option cases of the last two decades are the first instances of the Senate majority setting a precedent that contradicts the plain meaning of an important standing rule. While some senators expressed dismay about changing rules in this way, nearly all members of the majority party, Frist's Republicans, Reid's Democrats, and then McConnell's Republicans, were willing to go along with their leader's plans. A small majority party, polarized views about the nominations, uncertainty about future majority control, and the need to act quickly combined to motivate senators to set aside decades of reasonably faithful observance of Rule XXII.

CONSEQUENCES FOR SENATE PARTIES

Like a few other observers, I was wrong in thinking that the Senate parties in the late 1990s, under leaders Lott and Tom Daschle (D-S.Dak.), were as centralized as they could ever be. Leaders somewhat modestly said that their only formal power stemmed from the "right of first recognition," a Senate precedent dating to the 1930s that allows the majority leader, followed by the minority leader, to be recognized by the presiding officer to speak or make a motion before other senators. In fact, with some special influence over senators' committee assignments, ready access to the national media, and other advantages, leaders have long had influence not enjoyed by the average senator. But they did not enjoy the power of the House speaker, who has the combined powers granted to him or her as presiding officer of the House and leader of the majority party.

In the twenty-first century, though, winning elections, coordinating public relations, and orchestrating legislative tactics became even more important, and the value of more assertive party leaders with larger staffs became more obvious. These developments have sharply reduced reliance on committee leaders to set the legislative priorities and represent the party to the media and public. Senate parties are now teams of partisans who empower their floor leaders to coordinate their legislative and electoral strategies. The Senate is a different place—a less committee-oriented and more party-oriented place.

The Senate's daily activities have changed so much that senators of the mid-twentieth century would be disoriented in today's Senate. Early in the 1970s, about $1 million was spent on staff in party offices; in the 2010s, adjusting for inflation, it approached $25 million in absolute dollars, or nearly quadrupled over four decades adjusting for inflation. In one move in 2007, McConnell added about twenty staff to a new communications center under his control. Moreover, more senators, backed with staff, hold positions in the party hierarchy. In the 1970s, the Democratic leader served as the party's caucus chair and chaired the steering committee (made committee assignments) and policy committee (housed a small public relations and research staff). Since then, Democratic leaders have added seven new leadership positions—partly as rewards for party activity, partly to fill new roles that the top leaders prefer to share. Republicans had more party posts all along, but they, too, added a couple posts.

Like their House counterparts, Senate parties and their leaders, which have always devoted some time and resources to elections, upped their games in recent decades. Public relations efforts are just part of the story. In recent years, the two campaign committees have raised far, far more money—from tens of millions per election cycle in the 1980s to about $200 million in recent election cycles. Once, the campaign committees and leaders provided only a little funding for the reelection efforts of incumbents. Now, in addition to aiding incumbents' campaigns, they provide significant funding to open-seat candidates and challengers to the other party's incumbents.[24] Behind these party efforts are enlarged staffs. The campaign committees, which fund their staff from money they raise, typically had about a dozen staffers in the 1980s and

now have well over fifty, even about seventy-five for the Republicans.[25] And they spend millions of dollars on outside consultants. Moreover, court decisions have allowed members of Congress to raise large sums for political activities for "leadership PACs" (political action committees) that they may use to contribute to other members and candidates and to support their own travel to fundraisers and other activities. Senate party leaders now raise tens of millions of dollars in each election cycle that they contribute to colleagues and party candidates in need.

CONSEQUENCES FOR LEGISLATING

These organizational and procedural developments have had pervasive effects on the legislative process. Some of these developments are obvious in both the House and Senate. Other developments are unique to the Senate because they are closely tied to minority obstruction and the majority response on the floor of the Senate.

Parallel Developments

In both houses, deep partisanship has increased the importance of party leaders in shaping the legislative strategies, including setting the agenda and the design of the policy content of major bills. For the majority party, leaders are responsive to the demands of party members, but, in chambers with polarized parties and anxiety about retaining majority party status, those members expect leaders to make the party's interests a priority on salient issues. The immediate consequence is to reduce the independence of legislative committees in setting the legislative agenda on major issues under their jurisdiction. The incentive for top leaders to be active in generating legislation also is reduced by the difficulty gaining action by the other chamber and, in the Senate, of the need to find sixty votes for passing bills of any significance.

It is difficult to demonstrate with systematic data the pervasive, informal, and behind-the-scenes activity of the top party leaders. However, the toll on committee activity is measurable and is obvious in Figure 1-8. Over the last half-century, the number of meetings and hearings of House and Senate committees has dropped precipitously. The number has reached very low numbers in the last two decades, just a fraction of the number common in the 1970s.

A second indicator of the slipping reliance on committees is the precipitous decline in the use of conference committees. Traditionally, conference committees were the most common way to resolve differences between the House and Senate on major, complex legislation. As a general rule, the presiding officers of each house appointed members of the House and Senate committees in which a bill originated to serve as conferees and negotiate a resolution to the differences between the House and Senate bills. Members of conference committees, usually the senior members of the relevant committees, enjoy considerable influence on the final versions of bills by virtue of their place on the conference committees. Their handiwork takes the form of conference reports
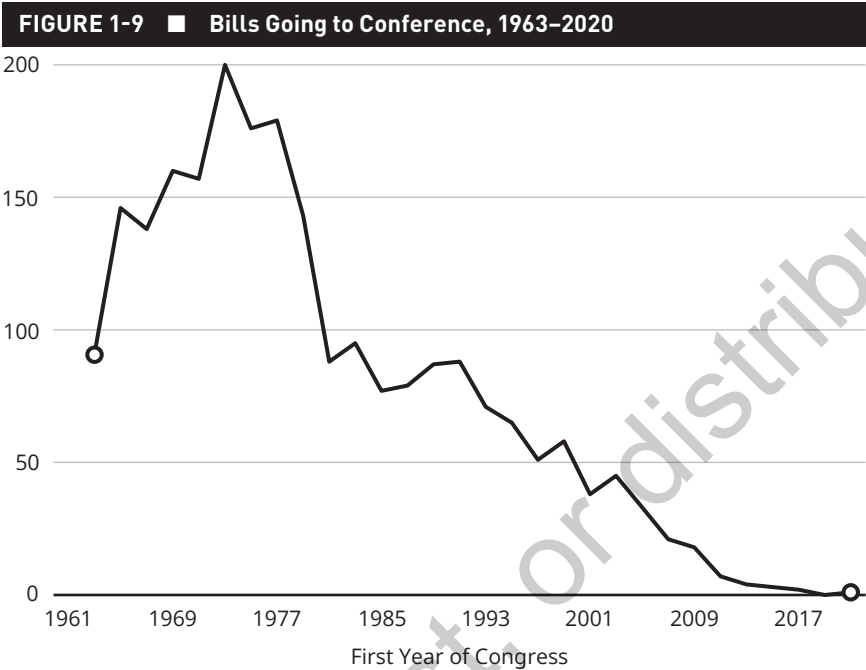
FIGURE 1-8 ■ Total Committee Meetings and Hearings, House and Senate, 1955–2018
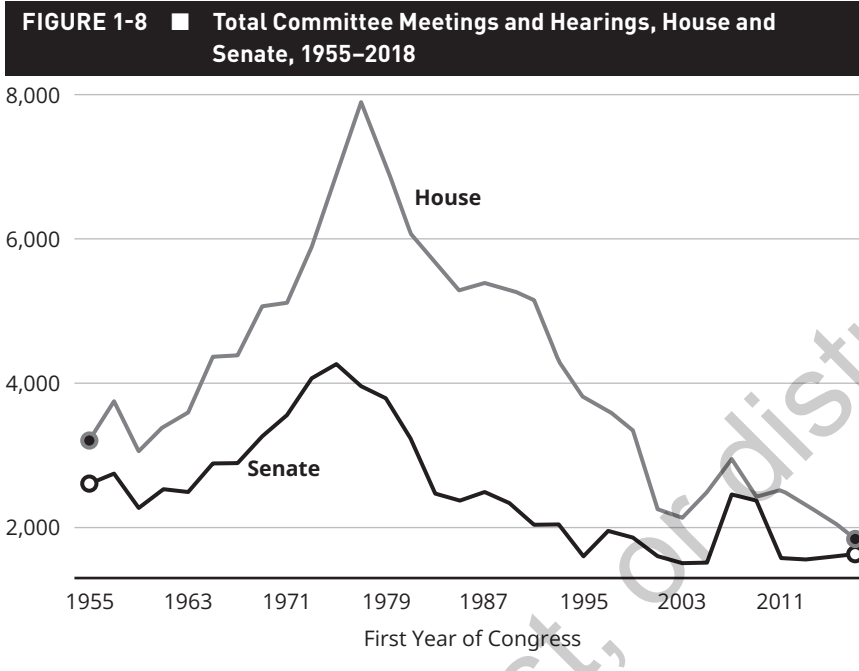
that must be approved by both houses. However, conference reports cannot be amended so the conferees usually have the last opportunity to modify the details of a bill. This was an important source of influence for members of standing committees. It still could be.

As Figure 1-9 shows, the number of conference committees has slipped to near zero in recent Congresses—actually zero in 2021–2022. In the Senate, the desire to exclude the minority and avoid filibusters has motivated efforts by the majority to avoid conference committees altogether. House leaders, too, often prefer avoiding conference and managing negotiations themselves to protect party interests. In the place of conference committees have come more frequent use of informal negotiations and alternative paths to the floor. To be sure, committee members and staffs are often called upon to lead the negotiations and write legislative details, but the process is usually conducted with the approval of, and even direct supervision from, majority party leadership.

We must distinguish level and trends in committee activity. Opportunities for individual legislators to contribute to policy making have not completely dried up. Creativity by legislators has not evaporated. And bipartisan activity can be found in many committees and among many groups of legislators. Furthermore, it is true that bipartisan support for major legislation has been generated to address issues of wide concern. Nevertheless, the trends are real. In comparison to life in Congress a generation ago, bipartisanship in Congress is squeezed into a shrinking space of committee activity. And there are fewer

FIGURE 1-9 ■ Bills Going to Conference, 1963–2020

times and places in which an average member, even in the majority party, participates in a meaningful way in policy making on major issues. This is true of both houses.

Unparallelled Developments

In other ways, trends in the Senate's legislative record are distinctive. As you might expect, any important change in the Senate's ability to act on legislation affects the House, too, but there are a set of developments that have been more significant in the Senate.

Bills Passed

Figure 1-10 shows the obvious long-term pattern of a close match for the House and Senate in the number of bills passed. While one house of Congress passes bills that die in the other house, the overall number of bills passed has been remarkably similar—until recent Congresses. The minority-imposed requirement of getting sixty votes to pass legislation of even modest importance and controversy has cut the number of bills the Senate is able to pass. The Senate continues to be in sessions for more hours than the House, reflecting the greater efficiency of House floor action, but in recent years the Senate has become much less productive.

FIGURE 1-10 ■ Number of Bills Passed, 1947–2022
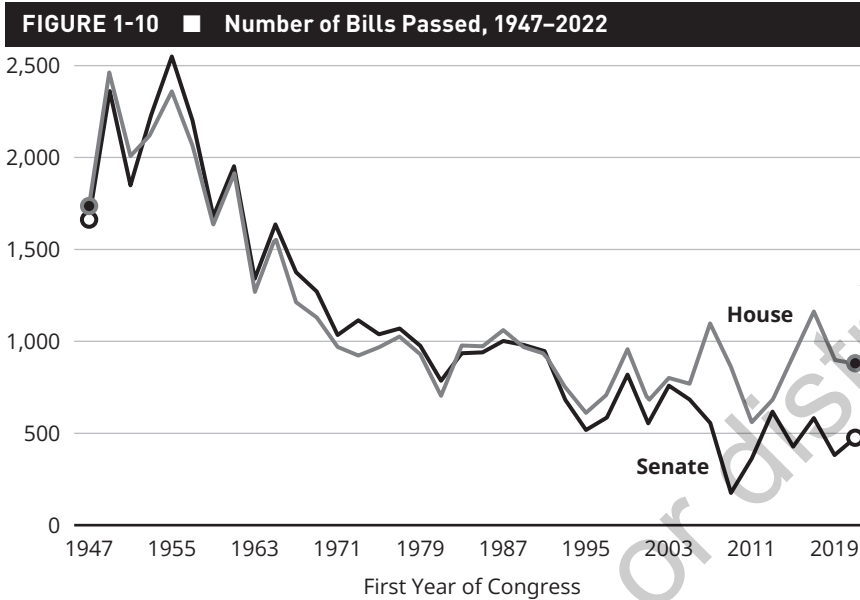
Source: Vital Statistics on Congress (https://www.brookings.edu/articles/vital-statistics-on-congres s/); *Résumé of Congressional Activity*, 2019–2022.

Floor Amendments

In contrast to the obvious increase in the number of roll-call votes on cloture is the less transparent demise of floor amendments. Traditionally, senators have had many opportunities to offer amendments to legislation on the floor. Unlike the House, the Senate lacks a general rule that amendments must be germane to the bill under consideration, which gives senators an opportunity to offer amendments on a wide range of issues. And the Senate does not use special rules, as does the House, to limit amendments; for most legislation, that can be done in the Senate only by unanimous consent. Consequently, through the 1970s and 1980s, senators were more freely able to raise issues by offering amendments on the floor than members of the House.

During the 1990s and into the 2000s, the Senate and House were quite similar in the number of amendments receiving roll-call votes. There is no systematic study to give us confidence in what transpired, although we know a couple factors were at work: the size of the majority party's legislative agenda and treatment of floor amendments varies. The Republican Senate majorities of 1981–1986 had a small agenda and were committed to more limited floor sessions. The spike in 1995–1996 represented a large Republican floor agenda and an expressed commitment to a more open amending process. It did not last in either house. In 2011–2012, a new House majority also pushed a large agenda and a more open amending process, but the Democratic Senate majority, continuing to deal with minority obstructionism, changed floor practices little.

Things have changed again. Due to filibusters, threatened filibusters, filling the amendment tree, and the difficulty of negotiating unanimous consent agreements, Senate floor activity is more often paused, usually in a quorum call to kill time while off-the-floor strategizing and negotiating takes place. When bills are moved forward, as we have seen, it is after an agreement has been reached to limit debate and amendments. To be sure, the agreements sometimes reflect serious deliberations and compromise on policy, but there is no doubt that the ability of senators to propose and debate amendments is limited. This is reflected in the falling number of amendments receiving votes in the Senate, illustrated in Figure 1-11. Senators once authored an average of about four amendments coming to a vote in every two-year Congress; that has dropped to well under one amendment per senator. House amending activity, in contrast, has not shown a secular change in recent decades, although it dipped considerably in 2021–2022 as the House has employed more closed rules (barring amendments) and motions to suspend the rules and pass legislation (also barring amendments).

FIGURE 1-11 ■ Number of Amendments Receiving Floor Votes, House and Senate, 1971–2022
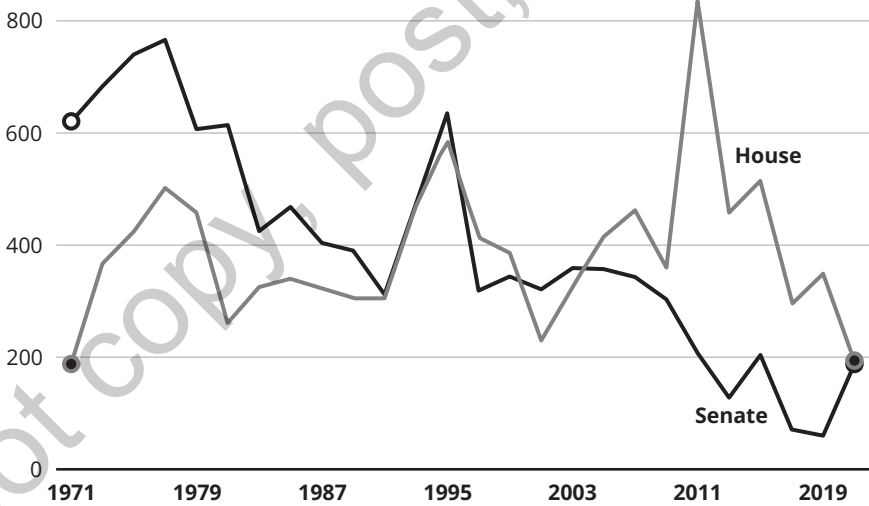
Source: Jason Roberts, David Rohde, and Michael H. Crespin, *Political Institutions and Public Choice Senate Roll-Call Database*. Retrieved from https://ou.edu/carlalbertcenter/research/pipc-votes/.

Appropriations

The Constitution requires spending by the federal government to be approved by Congress. For some programs, such as Medicare and Social Security, Congress gives long-term authorization to spend money to some programs. The funding comes from

government accounts generated by special taxes or fees or is provided annually by Congress to meet expected costs. This "mandatory spending" constitutes most federal spending. "Discretionary spending" makes up about $2 trillion per year, more than half for defense spending and the remainder for a wide range of domestic programs, including education, transportation, income security, veterans' health care, medical research, homeland security, national parks, space programs, the courts, the White House, and diplomatic agencies. Discretionary spending is divided into twelve groups of agencies and programs, each with its own annual appropriations bill. When one or more appropriations bills fail to be enacted by October 1, the start of the federal government's fiscal year, Congress must pass temporary spending bills (CRs, or "continuing resolutions") and often eventually packages unpassed appropriations bills into large "omnibus" or "consolidated" bills (see Chapter 8).

The opportunity for senators to debate and amend spending bills on the Senate floor has been radically reduced in recent Congresses. Indeed, the Senate fails to consider and pass regular appropriations bills far more often than the House. In Figure 1-12, I report

FIGURE 1-12 ■ Number of Regular Appropriations Bills Folded Into Nonregular Appropriations Bills, With Number House-Passed and Senate-Passed Bills Covered by the Nonregular Bills, 1986–2023

Legend:
- Number of Regular Bills Folded into Nonregular Appropriations Bills
- Number of Senate-Passed Bills Covered in Nonregular Appropriations Bills
- Number of House-Passed Bills Covered in Nonregular Appropriations Bills

Source: "Omnibus Appropriations Acts: Overview of Recent Practices," Congressional Research Service, RL32473, January 14, 2016; Congressional Research Service, "Appropriations Status Table" (https://crsreports.congress.gov/AppropriationsStatusTable).

the number of regular appropriations bills that are packaged in a CR or an omnibus or consolidated bill to provide spending authority for the remainder of each fiscal year (height of each black bar, labeled "nonregular"). Each of those nonregular spending bills may include the text of regular appropriations bills that already passed the House (dark gray bars) or Senate (light gray bars). In recent years, Congress has almost uniformly included most appropriations in a final nonregular spending bill. For example, for fiscal year 2023, all twelve regular appropriations bills were incorporated in nonregular bills, with neither the House nor the Senate having previously passed any regular bill. For the last two decades, the Senate has failed to pass fewer of the regular spending bills than has the House.

The overall pattern is clear: The occasions for senators to debate and amend spending bills on the Senate floor have been radically limited in recent Congresses. These failures to pass a regular bill usually represent a minority filibuster or threatened filibuster on the motion to proceed, thus obstructing even debate on a bill. At times, the Senate Appropriations Committee has not bothered to report a bill because of expected obstruction on the floor. While a nonregular spending bill is eventually passed to cover the unpassed regular bills, the opportunities for senators to debate the specifics of spending bills have been minimized.

Reconciliation

With the challenges of gaining Senate action on major bills, it is not surprising that members of both houses look for ways to avoid Senate filibusters. I have noted that Congress has created a type of legislation called "reconciliation bills," which are considered in the Senate under a twenty-hour limit on debate.[26] These bills are large measures—often including provisions under the jurisdiction of a dozen or more committees, and may be used to make significant changes in federal programs and tax policy—but they are limited to provisions that have a significant effect on spending, taxes, or the federal debt. They are a very attractive vehicles for a party that has House and Senate majorities and the White House and would otherwise have to muster sixty Senate votes to overcome a filibuster on regular legislation. In fact, many Senate final passage votes on reconciliation bills have been supported by fewer than the sixty senators than would be required for cloture. In fact, many of the votes on reconciliation yielded passage by very narrow margins. Unless something in the bill or politics changed, these votes concern important measures that almost certainly would be blocked by a filibuster.

SENATORS' REACTIONS

It is not surprising that many senators have serious concerns about the state of the Senate. This has been the case for decades, but more senators of both parties have been expressing their unhappiness in recent years. Drawing the attention of many observers

when he returned to the Senate just after a brain cancer diagnosis in 2017, Sen. John McCain (R-Ariz.) indicated his frustration:

Our deliberations today—not just our debates, but the exercise of all our responsibilities—authorizing government policies, appropriating the funds to implement them, exercising our advice and consent role—are often lively and interesting. They can be sincere and principled. But they are more partisan, more tribal more of the time than any other time I remember. Our deliberations can still be important and useful, but I think we'd all agree they haven't been overburdened by greatness lately. And right now they aren't producing much for the American people.

McCain continued:

Let's trust each other. Let's return to regular order. We've been spinning our wheels on too many important issues because we keep trying to find a way to win without help from across the aisle. That's an approach that's been employed by both sides, mandating legislation from the top down, without any support from the other side, with all the parliamentary maneuvers that requires.[27]

A few years later in early 2020, fifty Democrats and twenty mostly moderate Republicans signed an "open letter" saying the abuse of the filibuster has led to "the Senate's abdication of its legislative and oversight responsibilities":

Rules allowing extended debate, a feature of the Senate that is essential to protecting the rights of minorities, have been abused as the filibuster and cloture have shut down action on the Senate floor. It is now commonly said that it takes 60 votes to pass anything in the Senate. This is new and obstructionist; it takes 60 votes to invoke cloture in the once relatively exceptional event of a filibuster. Filibusters are now threatened as a matter of course, and are too readily acceded to. Neither in committee nor on the floor do rank-and-file members have reasonable opportunities to advance their positions by voting on legislation.[28]

They were not quite right about the newness of obstructionism, but they were earnest when they reported being told by sitting senators "that the diminished state of the Senate left them doubting whether there is any point in continuing to serve, and it has caused potential candidates to question whether the reality of Senate membership is worth the considerable effort and expense of running for office."[29]

Concerns intensified in 2020 among Democrats who were then in the Senate minority but expected to win a majority and beat Donald Trump for the presidency in the fall elections. They expected that the Senate would be the place that their legislation would die in the new administration. Over the months of the primaries and into the summer of 2020, more Senate Democrats joined the chorus of voices for filibuster

reform, even eventually getting Joe Biden and Kamala Harris, the eventual presidential and vice presidential nominees, to voice some support for the idea.

Since 2020, the drumbeat for reform has continued. Following several popular books condemning minority rule in the Senate, Sen. Jeff Merkley, a leading advocated for filibuster reform, published a book in 2024 of his own that he subtitled "How to Fix the Broken Senate and Save America" to dramatize the state of the Senate.[30] Merkley, like many former and current senators, articulated the view that the Senate has the potential of being a special legislative institution. Its small size and six-year terms enable deliberative processes that are difficult to match in the much larger House. The ability of a large minority of senators to slow or block action, if used sparingly, creates further incentive for negotiation, even across party lines. Merkley argued that traditionally most senators observed a "Senate code" of self-restraint in the exploitation of Senate parliamentary procedures to facilitate action on legislation and civility among senators.

While the sentiment expressed by Merkley is shared by most Senate Democrats, Republicans are far less sympathetic. Many Republicans, maybe most, and certainly their recent leaders, have adopted the view that they operate, and should operate, in a "sixty-vote Senate"—that is, on a matter of any importance, sixty votes *ought* to be required to move legislation through the Senate. To be sure, when Republicans are in the majority and face obstruction from minority Democrats, as in 2017, they were willing to move to simple-majority cloture for Supreme Court nominations and readily used a reconciliation bill to pass tax cuts, but as a general rule they believe that a high threshold for cloture on legislation serves as a needed obstacle to the adoption of new programs that expand the role of government.

Also noteworthy is that Senate Democrats have not endorsed a reform package. I do not know how many senators favor simple-majority cloture; it may be a majority of Senate Democrats but that's far from certain. Many are concerned about being in the minority in the future without the ability to obstruct. Most senators probably are concerned about how a future majority might limit their personal ability to draw attention to themselves and their causes by offering amendments and gaining time to speak. There are modest steps that could be taken, some of which are probably favored by a sizable majority of senators (see below).

How to reform Senate practice remains a sore point and an unsettled issue for many senators. The standing rules of the Senate anticipate that a change in the rules will be accomplished by the adoption of a resolution or other measure. However, Rule XXII provides that cloture "on a measure or motion to amend the Senate rules" requires a two-thirds majority of senators voting (in contrast to three-fifths of elected senators on other matters). That is a high standard—no Senate majority party has held two-thirds of Senate seats since 1966. The impossibility of finding two-thirds support led to the use of the nuclear option—reform-by-ruling by a simple majority—in a manner that is plainly inconsistent with Rule XXII. A majority of senators accepted the nuclear option for president nominations, but many of them remain opposed, or at least uneasy, about doing so for regular legislation. That's where things stand in 2024.

REFORM

The first thing to recognize about filibusters and supermajority cloture is that they are an invention of the Senate. They are not mentioned in the Constitution. If anything, the Constitution implies that each house decides questions by simple-majority vote, which was standard parliamentary practice when the Constitution was written. However, Article I, Section 5, of the Constitution leaves to each house of Congress the power to determine its own rules. In the case of the Senate, it has adopted rules that do not include a general limit on debate or a means for a majority to close debate, enabling filibusters, but, since 1917, it has had the supermajority cloture rule.

While reform of the Senate's internal rules is difficult, reform proposals provide clues about how various reformers view the Senate and the roots of its current problems. Proposals come in three categories: (1) election reforms to reduce partisan polarization, (2) proposals to dampen partisanship among sitting members of Congress, and (3) reform of Senate rules to limit procedural obstructionism.

The first, election reforms to reduce partisan polarization, involves proposals that usually apply to the House of Representatives, too, and are intended to have more moderate candidates elected to Congress. These involve virtually every aspect of the electoral process, including processes for nominating people for candidacy, the way primaries are conducted, campaign finance law, and how votes are cast and counted. Many of these proposals would have potentially profound effects, but most are addressed to state law that governs most of the electoral system. Congressional action on some of the proposals have been blocked by Senate filibusters or threatened filibusters. Some advocates of election reform observe that Senate obstructionism would be far less of a problem if more middle-of-the-road senators committed to negotiation and compromise across party lines were elected.

In the second category, dampening partisanship among sitting members of Congress, are ways to improve personal relationships across party lines. These, too, also apply to the House. Typically, these recommendations involve creating more opportunities for Democrats and Republicans, and their staff, to spend time together. The argument is that partisan conflict and senators' personal schedules get in the way so the Senate must work to bring people together. Bipartisan gathering places near the Senate chamber and in office buildings, bipartisan retreats away from the public and the media, more bipartisan CODELs (congressional delegation trips abroad), and more in-depth orientation programs for new senators are frequently mentioned. The hope is that the syndrome of incivility and distrust can be broken, interpersonal bonds can be improved, and opportunities for bipartisan legislative activity created.[31]

A variation on the theme of getting "better" senators and representatives is getting better leadership. If leaders would insist on breaking down partisan barriers to legislating, the argument goes, more productive legislating could take place. Most observers, and legislators themselves, realize that the members of each party in each house elects

the leaders they want. Expecting leaders to regularly defect from consensus opinion among those who elect them is a false hope.

The third category of reforms more directly addresses the Senate's unique parliamentary procedures. Most reformers, like Merkley, recommend some combination of the proposals.

A nonreform alteration in practice must first be mentioned. Traditionalists quickly point to the fact that the Senate majority rarely forces the minority to take the floor and conduct lengthy debate. Instead, once it is clear that the minority is going to block a motion or measure, the majority often sets aside the matter and moves to something else. This "silent filibuster" makes obstruction easy. It is argued that forcing senators in the minority to stand on the floor and conduct debate could, over hours, days, or weeks, bring attention to their obstructionism and wear them down. The minority, it is said, would learn its lesson and stop its routine obstructionism.

The majority party leadership realizes that approach is unlikely to work. They are reminded of the failed 1987 Byrd experiment. In 1987, Majority Leader Byrd was willing to try the "real filibuster" approach to get action on a high-priority measure—and probably regretted that he did. The bill, a campaign finance reform measure, faced minority obstruction. Over ten days, Byrd forced five cloture votes, gaining a majority of senators voting each time but never receiving more than fifty-two votes. Byrd moved to other business and returned to the issue months later when he arranged for two more cloture votes, one of which attracted fifty-three votes, still far short of the sixty required. He gave up. No majority leader has used the endurance test since then.

Proposals to reform the standing rules of the Senate fit into several categories.

Reduce the Number of Motions Subject to Filibusters

Some of the proposals merely promise some relief from the burden of invoking cloture repeatedly on legislation and nominations. For example, allowing a simple majority to invoke cloture on the motion to proceed does not prevent filibusters at later stages in the legislative process. Similarly, allowing the majority leader to call for a cloture vote at any time after cloture is invoked would trim the time required for the cloture process by over twenty-four hours. With so many cloture motions to juggle, these changes would have modest effects—depending entirely on the willingness of the minority to force and win cloture votes on remaining debatable motions. A determined minority, or least minority leader, could, and probably would in today's Senate, minimize the benefit of such reforms.

Reduce the Number of Measures Subject to Filibusters

Budget measures—budget resolutions and reconciliation bills—have been subject to limits on debate, thereby preventing filibusters, since 1974. The number of measures subject to debate limits could be expanded. Appropriations bills and debt limit measures are often mentioned as possibilities.

Make Filibustering More Difficult for the Minority

For example, one popular proposal is to require a minority of two-fifths plus one (forty-one) of elected senators to vote against cloture to prevent cloture from being invoked. This would compel the minority to be present and voting to continue a filibuster, but it would have a marginal effect. Only about one-fifth of defeated cloture motions since 1989 involved fewer than forty-one senators voting nay.[32] A stronger version would require a minority of that size to be present and vote every day to continue a filibuster for that day. And yet another proposal would require one member of the minority to be present to continue debate: The presiding officer would be required to call for a vote on a measure or motion if no senator is present and seeking recognition to address the Senate, forcing a "talking filibuster." This places a modest burden on the minority to have a senator in attendance and requires the presiding officer, who could be a vice president who favors the minority side, to enforce the rule.[33]

Change the Threshold for Cloture

Changing the threshold for cloture to a simple majority is only the most obvious approach. Another approach that is often discussed is to ratchet down the cloture threshold from sixty to fifty-seven to fifty-four and to fifty-one over several days or weeks, allowing for lengthy debate but eventually allowing a simple majority to get a vote on a measure or motion.

What can we expect? The track record of the Senate leads us to predict that any proposal that would materially ease the ability of a simple majority to gain passage of legislation will be opposed by minority senators. As things stand, such a reform—a reduction in the cloture threshold or even a strict talking filibuster rule—will require use of the reform-by-ruling, or nuclear, option. At the same time, some reformers will see anything less the simple-majority cloture as a half-way measure. They allow a minority to block or at least greatly slow action on matters that have majority support. For them, there is no substitute for allowing a simple majority to act on legislation. The evidence, they say, is that a Senate with a minority party committed to undermining the majority party's agenda and tarnishing its reputation, as we find it today, will exploit any parliamentary tool for doing so. This is the current state of the Senate—unsure about how to govern itself.

CONCLUSION

For years now, the Senate has been both a coveted office and frustrating experience for most senators. Four decades of intensifying partisanship have changed the institution. For individual senators, it has sharply reduced their opportunities to shape public policy. Meaningful participation in negotiations over legislative details, long considered

something that is promoted by the need to get sixty votes, now is viewed as the source of stalemate and a powerful disincentive to invest in legislating. The expressions of dissatisfaction are widely, if not universally, felt and run deeper than at any time in the last half-century.

The internal governance of the Senate has been my focus, but I cannot conclude without observing that the Senate's problems are compounded by percolating concerns about its very legitimacy. Minority obstructionism within the Senate is one part of the story. Senate representation is the other part. The 2020 U.S. Census reports that California was 68.5 times as large as Wyoming and yet Wyoming has the same number of senators. The United States always has lived with equal state suffrage in Senate representation with unequal state populations, but the malapportionment, as it is called, is growing year by year as urban states grow faster than rural states. This issue is now raised for partisan purposes—voters in the larger states are disproportionately Democratic and voters in the smaller states are disproportionately Republican so the malapportionment has created a significant pro-Republican bias in party representation.

In the eyes of some observers, the combination of lawmaking practices and a system of representation in the Senate that empower minorities creates a crisis in governance. At times in recent Congresses, a Senate Republican *majority* party has represented about 41 million fewer Americans than the Democratic minority—a straightforward representation issue. But at other times, because of the cloture rule, a Senate Republican *minority* party, representing a minority of Americans, has been able to kill legislation favored by a Senate Democratic majority, the House, and the president (see Chapter 9 in this volume). That, the critics insist, is fundamentally undemocratic. For others, equal suffrage of the states may have been vital to the approval of the Constitution and a necessary price for democracy.

Reformers, of course, would like Congress to propose a constitutional amendment to address Senate malapportionment, but there are two obstacles that are insurmountable for now. First, the probability of acquiring the required two-thirds majority in the Senate for a constitutional amendment is very low. A two-thirds majority is unimaginable with small majority parties and polarized parties, particularly on an issue with such immediate and obvious partisan implications. Second, Article V of the Constitution ends by providing that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." We can safely assume that Wyoming and other small states will not consent. The possibility of amending Article V, which, of course, would require a two-thirds majority in both houses, is a subject of disagreement among constitutional scholars.[34] This issue will only be addressed by the courts after there is congressional approval of such an amendment and that is not likely to happen.

In contrast, the Senate can change its parliamentary rules and practices. There may be some agreement on modest changes in practice, but senators, not even ardent

reformers, are unsure about how to proceed. If changes are made to the wording of Rule XXII by resolution, as anticipated by that rule, minority opposition will filibuster any change that reduces their ability to obstruct. The rule is self-reinforcing. Reforms are blocked.

More significant changes might be made by a majority party using the nuclear option. Three issues limit the use of that option. The first obstacle is discomfort among senators with the nuclear option. The argument that the nuclear option is "changing the rules by breaking the rules" holds sway with a large number of senators. A second issue is the power of individual senators. Senators worry that going as far as adopting simple-majority cloture will lead to the adoption of additional rules that limit the ability of individual senators to slow legislative action, offer amendments, and conduct debate. It is often asserted, disparagingly, that this will make the Senate "just another" House of Representatives. A third issue is that senators, including more than just a few Democrats, are more concerned about the ability to preserve current federal programs, particularly social welfare programs for low-income and senior Americans, than they are about putting new programs in place. They are, therefore, concerned about being in the minority in the near future without the filibuster to protect their programs from majority-backed legislation.

The chances of significant Senate procedural reform with the nuclear option are most likely when the value of doing so is clear and substantial in the eyes of a Senate majority. That value may be high enough when several conditions are present, including

- the Senate minority is obstructing on legislation deemed to be of the greatest importance;
- public demand exists for the enactment of that legislation;
- the Senate majority falls short of sixty votes for cloture on that legislation;
- the House and president support the legislation;
- there is a small probability of a switch in party control of the Senate in the near future; and
- the minority is unwilling to agree to meaningful changes in rules and practice.

These conditions are seldom all met, as they were in 2013 and 2017 when the issue was the Senate's ability to vote on presidential nominations to high judicial and executive branch offices. So far, using the nuclear option to address "legislative filibusters" has not been attempted.

One suggestion is that senators adopt a set of rules changes that take effect two or three Congresses in the future so that senators can consider desirable change for their institution and themselves while not knowing the long-term partisan implications.

The continuity of Senate rules would allow for the specification of an implementation date at some time in the future. It is not obvious, however, that senators want to set up a situation in which a future Senate majority has reason to again use the nuclear option to erase the implementation date.

We may be approaching a time when the kind of "upper chamber" in Congress we want is subject to serious debate. We are not there now.

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LEGACIES OF LEADERSHIP IN THE CONTEMPORARY HOUSE OF REPRESENTATIVES

Ruth Bloch Rubin

Over the past decade and a half, Republican speakers have struggled to govern, while Democratic majorities have experienced remarkably stable and effective leadership. This chapter explains why. Moving beyond legislative scholars' focus on ideological divisions as the primary source of leadership woes, it offers readers a new way to think about divided parties and leader power. Divisions, at least as leaders experience them, reflect more than just differences in what members want. They also reflect differences in whether and how likeminded members—who together constitute an intraparty faction—choose to join forces or alternatively go it alone. The key takeaway is that leaders are more likely to get what they *want when their party's competing factions are evenly matched, as is true of House Democrats today. Leaders of parties where one faction has out-collaborated its competition, as has been true of House Republicans in recent decades, are more likely to run aground. I demonstrate the virtues of thinking about leader power in this way by revisiting some of the most salient legislative battles in John Boehner's, Paul Ryan's, and Kevin McCarthy's speakerships and contrasting these episodes with the record of their Democratic counterpart, Nancy Pelosi, who has been recognized even by her rivals as one of the most powerful speakers in modern congressional history.*

Nearly two hundred and fifty years after the First Congress met in Philadelphia, it is rare for a modern legislator to make history. Yet California's Kevin McCarthy did so twice in his short tenure as Speaker of the House. It took McCarthy more than a dozen ballots to win the lower chamber's highest office, substantially more than any successful candidate for the speakership in over a century. Less than nine months later, he earned an even more dubious honor, becoming the first speaker to be formally booted from the post. While many accounts of McCarthy's downfall focus on his personal failings—perhaps most prominently, his colleagues' perception that he maintained only a loose relationship with the truth—this chapter takes a longer view. McCarthy's rocky ascent to the speakership and swift departure, it contends, are part of a broader pattern of factional politics in the contemporary House.[1]

Over the past decade and a half, Republican speakers have struggled to govern. After assuming the speakership in 2011, Ohio's John Boehner found it nearly impossible to hold his conference together. Initially trying, albeit unsuccessfully, to reason

with the party's combative right flank, he gave in to their demands for a government shutdown, hopeful that the ensuing fight would mollify his conservative detractors. It did not. Tired of taking their punches, Boehner chose to retire. His reluctant successor, Wisconsin's Paul Ryan, found governing no easier. Forced to contend with the same cadre of conservative hardliners, Ryan first struggled to legislate and then, like Boehner, opted to resign rather than fend off challengers from the right. And Louisiana's Mike Johnson, McCarthy's replacement, has not fared any better. In his first hundred days in office, the new speaker suffered a slew of setbacks that prompted members to dismiss him as "Speaker in Name Only."[2] Within months, conservative hardliners were already vowing to oust him as they had McCarthy, leaving more moderate and mainstream Republicans to worry that, even with Democratic support, Johnson would find it difficult to keep his footing. As one member observed, with each successive battle, "the Republican conference . . . move[s] away from the speaker."[3]

House Republicans' apparent inability to find a leader with staying power is all the more extraordinary when we look across the aisle. While the Republican conference has experienced near continuous leadership churn, House Democrats have not. Indeed, prior to electing New York's Hakeem Jeffries as minority leader by acclamation, the Democratic Caucus was helmed by California's Nancy Pelosi for more than two decades. In that time, Pelosi muscled through landmark legislation to reform health care, address climate change, and limit the economic fallout of the COVID-19 pandemic. The results speak for themselves. As Boehner observed at a ceremony honoring Pelosi: "The fact of the matter is that no other speaker in the modern era, Republican or Democrat, [has] wielded the gavel with such authority or such consistent results."[4]

When it comes to explaining this disparity in leadership performance, scholars typically credit ideological divisions for House Republicans' dismal record. Over the past decade, they rightly note, the most conservative members of the House have moved sharply to the right, while the party's remaining moderates have drifted more slowly away from the center.[5] With the conference so divided, the thinking goes, building winning coalitions has become more difficult and agenda setting more controversial, particularly as congressional majorities have narrowed. Notably, this story isn't personal, the result of one or two leaders being uniquely ill-suited to hold their party's top post. As one observer put it: "*no one* can herd this version of the Republican Party."[6]

The problem with blaming congressional Republicans' leadership woes on their ideological divisions is that Democrats have them too. Indeed, in recent years the party's progressive and moderate flanks have clashed with regularity. And still, House Democrats have boasted stable and productive leadership. What, then, are we getting wrong about party divisions and how they shape leader power? And what does this tell us about why House Republicans have found it so much more difficult than their Democratic counterparts to identify and retain a stable and productive leadership team?

In this chapter, I explain how legislative scholars have traditionally understood the unique set of challenges that leaders of divided parties face and why that understanding does not adequately describe the position that Republican leaders are in today. Drawing on my forthcoming book, *Divided Parties, Strong Leaders* (University of Chicago Press), I next offer an alternative way to think about the trials and tribulations of Republican speakers in the contemporary House—and why Democratic leaders continue to come out ahead. I then illustrate the virtues of my approach by revisiting some of the most salient legislative battles in John Boehner's, Paul Ryan's, and Kevin McCarthy's speakerships, contrasting them with Pelosi's substantially different experience.

THINKING ABOUT LEADER POWER

To appreciate why contemporary Republican speakers appear weak and their Democratic counterparts strong, we must first think critically about leader power. What does it mean when we say a leader is powerful or powerless? One common way political scientists have thought about this question is to suggest that power is the ability to get another person to do something they would not otherwise do.[7] But when it comes to evaluating congressional leaders, this formulation is unlikely to be particularly helpful. In nearly any legislative context, lawmakers will possess a variety of policy preferences and will hold them with varying levels of intensity. As a result, whenever a leader acts, she is likely to be pushing some of her rank and file to alter their behavior while leaving that of others unchanged, leaving us to infer that she is simultaneously powerful and powerless. Alternatively, we might estimate leaders' power by cataloguing and comparing the formal procedural tools they have at their disposal. The intuition here is that the extent of a leader's capacity to intervene is a strong indication of their power, regardless of whether or how frequently that capacity is deployed. But if we are interested in assessing how much power leaders actually exercise, knowing how much legal or customary authority a leader might wield in theory is less helpful.[8]

In this chapter, I adopt a simpler approach. Exercising power, I suggest, means getting more of what you want relative to other legislative actors—be it committee chairs, for instance, or members of the majority party at or near their chamber's floor median. One virtue of this approach is that we need not make assumptions about the outcomes that any individual hopes to achieve. In fact, we might imagine that different leaders will have different ultimate aims in mind, and that their wants might vary depending on political circumstance. Among other things, we may find that leaders want to shape the content of chamber procedure; the identity of those appointed to important offices, including party leadership and committee posts; their party's electoral strategy; and the legislature's relationship with rival branches.

To account for variation in what leaders (and members) might want, we need a way to systematically evaluate what leaders and members hoped to achieve ex ante with an evaluation of who came closest to getting it ex post. Rather than make inferences about

what contemporary members and leaders may have wanted based on how they behaved (which itself may be subject to leader influence), I rely on interviews with leaders, members, and their staff, as well as concurrent news coverage. And with a reasonable sense of what leaders and members sought to achieve, I then look to how events unfolded to see who got the most of what they wanted.[9]

THE PERCEIVED PERILS OF LEADING DIVIDED PARTIES

Much like congressional party leaders, legislative scholars have long viewed party divisions as a critical constraint on leadership. Across a range of theoretical perspectives, the conventional wisdom is that leaders' authority and agency is *contingent* (or *conditional*) on the ideological composition of the party's rank and file. When a party is divided—that is, when the distribution of member preferences is heterogenous—the prediction is that leaders will possess fewer procedural powers and exhibit considerable reluctance to exercise those they retain in pursuit of their aims. As member preferences become more homogenous, however, leaders' procedural powers will grow, along with their willingness to vigorously deploy the tools of influence their office makes available to get what they want.

Consider Rohde and Aldrich's conditional party government thesis (CPG). Drawing on a principal-agent model of delegated power, the authors originally theorized that, as members' preferences diverged from those of their copartisans, they would seek commensurate reductions in their leaders' formal prerogatives. They argued that, with fewer shared policy priorities, rank-and-file members would prefer to retain maximum autonomy to pursue their own wants independently.[10] So, too, the authors argued that leaders of divided parties would be "disinclined to make strong use" of whatever powers they managed to retain.[11] The thinking was that, as divisions deepened, leaders would be increasingly wary of exerting their will, for fear that members might scrutinize their authority or seek to reduce it further.[12]

In more recent years, Rohde and Aldrich have adjusted their original formulation to accommodate the effects of partisan polarization. In addition to considering members' relative ideological homogeneity, they now theorize that the degree of ideological difference between the two parties will also inform members' willingness to delegate power. Holding intraparty dynamics constant, they posit that, as the two parties polarize—that is, as the ideological gap widens between the parties—members will be more willing to cede authority to leadership to do battle with the opposition and leaders will be more comfortable exercising that authority on behalf of their membership. The logic is straightforward: however much members may disagree or agree with one another, polarization ensures that they will disagree more with lawmakers on the other side of aisle.[13] The argument works in reverse too. The less polarization we observe—that is, the smaller the ideological distance between the two parties—the less willing members will be to endow their leaders with significant authority. And leaders, in turn, will be less aggressive in asserting their dominance over the rank and file.

Cox and McCubbins' party cartel theory is similarly pessimistic about the fate of those who lead divided parties. Emphasizing the importance of a party's standing with voters, the authors explain that prudent leaders will use their procedural powers to keep issues they know to be divisive within the party from being considered by the chamber body in the hopes of avoiding public bouts of party infighting.[14] In their telling, leaders of divided parties are also unlikely to raise issues for consideration unless it is clear that their "membership agrees on . . . what should be done."[15] As cartel theory implies, a do-nothing strategy has considerable appeal in an uncertain world. When there is little that members find themselves able to agree upon, an assertive leader who puts bills to a vote that some in her party might deem objectionable risks exposing internal conflicts and jeopardizing the party's reputation as a well-oiled machine. The upshot is that leaders of divided parties, in contrast to those who helm more unified ones, are likely to make more frequent use of their powers to restrict the agenda and more limited use of their powers to facilitate the consideration and passage of new legislation.

For our purposes, the bottom line is the same. What leaders can do—or what they think they can get away with—is thought to be highly responsive to changes in member ideology. Thus, parties whose members largely agree with one another should be governed by energetic leaders who use their powers with gusto, while those whose members are at odds will suffer at the hands of anemic ones.

EVALUATING THE CONVENTIONAL WISDOM

And yet, the claim that party leaders will see their power expand or contract with shifts in the ideological composition of their membership is at odds with how we understand other processes of institutional change. Institutions and practices, scholars have shown, often resist reform, even when individual-level preferences militate in favor of change.[16] For instance, studies of legislative politics have found that past allocations of authority shape how it is subsequently distributed.[17] "Preexisting institutions," Schickler explains, "often create constituencies dedicated to the preservation of established power bases."[18] For this reason, strong leaders ought to remain strong, as efforts to diminish their authority encounter resistance from beneficiaries of the status quo. Likewise, weak leaders ought to remain weak, as those who stand to lose from a reshuffling of legislative authority push back against reform. This (and related dynamics) means that, notwithstanding shifts in member preferences, we should expect leadership authority to remain relatively sticky.

The fact that party members must work collectively to rein in their leaders or otherwise alter the balance of power makes the task even harder. Even members who share the same aims often struggle to work cooperatively. As one member described life in Congress: "This ain't no damn army. We don't all move forward or back at the same time or in the same way."[19] And the difficulties of sustaining collective action are only magnified when members don't agree.[20] In order to curtail a leader's power, members

must find mutually acceptable answers to a host of difficult questions. Should the leader be replaced and if so, by whom? Should some of her procedural powers instead be revoked? If yes, then which ones and how? If members must first agree on what to do before making their move, it is easy to see why divergent preferences could scuttle potential mutinies long before they pose a threat to leadership.

Not only is leadership authority likely to be resilient to shifts in member preferences, but legislative scholarship, both old and new, suggests that leaders are unlikely to just give up control. Consider that those members who aspire to leadership positions are often understood to have a real taste for power.[21] These are individuals who consistently express their desire to move beyond constituent service and committee work to have a say in shaping their party's future and the work that Congress does. To have this kind of imprint on legislative life, leaders must use whatever tools of influence they can. But, as "creative, resourceful, and opportunistic" entrepreneurs, they will often find ways to wield them that minimize controversy while nevertheless maximizing their own say.[22] Leaders can also use the considerable resources at their disposal to grease the skids, offering members targeted rewards to cooperate when they disagree, or threatening punishment when they refuse.[23] The fact that, as Curry observes, "information [in Congress] is not evenly distributed" makes this work all the easier. Leaders possess better knowledge of pending legislation, member preferences, and parliamentary procedure than their rank and file and can use the resulting informational asymmetries to press their advantage in negotiations with individual lawmakers.[24]

This isn't just how we might imagine leaders exercise power *in theory*. As I show in *Divided Parties, Strong Leaders*, throughout Congress's long history, House and Senate leaders have found ways to leverage their party's divisions in pursuit of what they want, durably reshaping national politics and legislative procedure in the process.

DIVIDED PARTIES, STRONG LEADERS

What, then, are we missing about the challenges and opportunities leaders of divided parties face? To start, we often overlook the fact that party divisions reflect more than ideological differences. Regardless of how members' preferences are distributed, every lawmaker has a choice about whether to join forces with likeminded colleagues or go it alone.[25] This is not an idle choice. Political scientists have long appreciated that choosing to work with others can alter what participants want and how they behave.[26] Congressional parties are no exception. When likeminded copartisans choose to collaborate with each other—be it through ad hoc consultation, more routinized cooperative arrangements, or formally constituted voting blocs—they can alter the substance and tenor of their party's divisions and, by extension, the fate of their leaders.

Given that divided parties can vary in the degree to which members disagree with each other *and* the extent to which likeminded members collaborate, we need

to describe intraparty dynamics in ways that acknowledge both sources of variation. To this end, I use the term "faction" to indicate members' ideological similarity, but nothing else. A faction refers to those party members whose wants or beliefs overlap with each other but diverge in some measure from those of their copartisans. Members of a faction may, but need not, regularly interact or coordinate their activities. Nor is there just one way for likeminded members to join forces, assuming they choose to do so. Every faction gets to make a range of collaborative decisions, including when to meet and how frequently, whether to correspond and how frequently, and whether to delegate power to a designated leader or adopt internal voting rules.

Because a congressional party is typically made up of multiple factions, and the choices just described are made on a faction-by-faction basis, we can describe congressional parties as either *symmetrically* or *asymmetrically* divided. Symmetrically divided parties are those where the collaborative efforts of competing factions are evenly matched. Asymmetric parties are those where one faction has out-collaborated its competition. For party leaders, I argue, the key takeaway is that they have more opportunities to exercise power when leading a symmetrically divided party. In contrast, leaders who helm asymmetrically divided parties are substantially more constrained.

Why might symmetry aid leaders in accruing and wielding power? Imagine a party where each faction has eschewed collaboration. In this scenario, a leader is unlikely to encounter much (if any) organized resistance should she prioritize *her* wants over those of her members. Crucially, for our purposes, her freedom to do so flows from the challenges of sustaining collective action. As party backbenchers are quick to acknowledge, absent some coordinative scaffolding, "it is very difficult for . . . factions to be internally cohesive. Individual members are easily picked off or silenced by leaders . . . [unless] you can form a group."[27] Thus, when every faction has chosen not to collaborate, we would expect—all else equal—that leaders will have better luck assembling a winning coalition in support of their preferred outcome.

Now imagine a scenario where rival factions are all collaborating with equal vigor. Here, rather than rely on members' disorganization to work their will, leaders leverage the reputation and resources of one faction to intimidate competing factions and offset dissident members' organizational might. In this scenario, leaders can play one faction off another by convincing each that their opponents are sufficiently capable to scuttle any unilateral effort to force or forestall change. Because the kinds of assets that might be most relevant in this setting—think of a faction's reputation for voting collectively in committee or on the floor—may be constructed only through sustained collaboration, a leader can be reasonably certain that the faction most amenable to her preferred action plan will have the resources to equal the faction most likely to oppose her.

Asymmetric parties, by contrast, offer leaders far less latitude. Imagine a scenario where a leader is facing off against a faction that has out-collaborated its rivals. In competition with a well-organized foe, she is unlikely to be able to pick off or silence those who oppose her, as collaborating members are harder to divide and conquer. So, too, dissenting members are more likely to have had the opportunity to work

through their differences and agree on a plan of collective resistance—again, no boon to leadership.

But what about a situation where a leader's preferred intervention has the support of her party's better-organized faction? Surely, critics might argue, leading in these circumstances is preferable to any case of symmetry. Not so. A faction that has out-collaborated its peers may lack meaningful incentive to work cooperatively with leadership if they can plausibly get what they want on their own. Perhaps more worrisome, such a faction may be unwilling to compromise, even when a leader counsels that concessions are likely necessary to reach their shared goal. Nor is the support of an ascendant faction likely to endure. Over time, the faction may demand greater and greater control over policy or procedure, particularly if members come to believe they are contributing disproportionately to the partnership or could do better with a more pliable individual holding the party's top post. The desire among factions of all stripes to craft recognizable brands creates additional headaches, as one easy way to accomplish this goal is for members to attack leadership directly, the better to signal their independence from the "establishment's" control.

None of this is to say that the presence of balanced factional collaboration can suspend the ordinary laws of politics. Leaders of symmetrically divided parties must still negotiate with important coalitional stakeholders. They cannot ignore the preferences of pivotal members of the other chamber, the executive, or the courts. And they, like leaders of more unified parties, must work to mold public perceptions, whether through the media or direct communication with voters. My core claim is a more modest one: that symmetric divisions ought to increase the odds of a leader's success in transcending her party's internal differences to pursue her own aims.

If that sounds too abstract, let's make it more concrete by revisiting the disparity in leadership performance that opened this chapter. In the pages that follow, we will see that the collaborative imbalance between conservative and moderate Republicans in the House has become ever more pronounced. Over the past decade, members of the party's right wing have adopted an array of organizational practices to unite their ranks—including internal voting rules, disciplinary tools, and norms of confidentiality—at the same time that their moderate colleagues have struggled to coordinate in kind. The result of this factional asymmetry has been persistent leadership weakness. From Boehner to Johnson, those at the top of the party hierarchy have lacked the ballast of a comparably organized factional rival to match Republicans' highly mobilized conservative faction.

Things look quite different across the party aisle. While moderate Democrats once out-collaborated their progressive rivals—pooling electoral and staff resources and meeting regularly to share information and strategize about policy and procedure—the imbalance no longer exists.[28] Following their party's substantial losses in the 2010 midterms, progressive Democrats sought to emulate the tactics that had made their rivals so successful. Progressives dedicated themselves to revitalizing their nascent

organizational apparatus, the Congressional Progressive Caucus, tightening its governing rules and strengthening the hand of its leadership. By the time House Democrats regained their majority in 2018, progressives' organizational capacity had come to rival that of moderates. These changes redounded as much to Speaker Pelosi's benefit as they did progressives. With her party's left newly capable of articulating a consistent bargaining position and holding to it, Pelosi was able to resist calls for incrementalism and instead pursue the progressive policy goals—including sweeping climate change legislation—that she had struggled to achieve when moderates were the only collaborative game in town.

ASSESSING AND COMPARING COLLABORATIVE CAPACITY

Before digging more deeply into the recent past, though, let me be clear about how we can systematically characterize the collaborative choices factions make and subsequently categorize the parties they constitute as symmetrically or asymmetrically divided. Here, I start with the intuition that more extensive collaboration is likely to involve both frequent interactions over a long duration and the regular exchange of closely held information. More limited collaboration, by contrast, is likely to reflect sporadic (or minimal) interactions over a shorter duration, with the content of the exchanges remaining superficial or reflecting professional formality.

Thus, when seeking out evidence about a faction's collaborative efforts, I pay particular attention to the frequency of members' interactions. How often do they or their staffers report communicating with each other, whether in person or by phone, email, or text? I also evaluate their regularity. Do members report interacting at fixed intervals or are they doing so only intermittently or not at all? I also attend to the duration of their collaboration. Over what time span do members appear to work with others? Whenever possible, I consider the content of their exchanges. Do members or their staff report circulating already-public information (like a "Dear Colleague" letter) or are they sharing truly private information? Do their communications suggest that they are intended to elicit meaningful feedback or are they designed merely to notify recipients of a planned course of action or preferred outcome?

I also assess the degree to which a faction's collaborative activities are institutionalized. The logic here is that intensive collective action invariably requires organization to structure, and often regularize, members' interactions. To track patterns of institutionalization, I consider whether a faction has taken steps to establish a formal organization, which might include adopting membership rules, creating a leadership structure, or imposing procedures to govern or enforce group decision-making. I also look to whether members have worked to cultivate a recognizable brand or public image, as evidenced by their individual communications strategies and group marketing materials.

Armed with observations about how a party's rival factions are individually collaborating, we can then begin to make comparisons. Given the available evidence, does it appear that one faction is collaborating more extensively than its rival, or are both collaborating on roughly equal terms? If the former, I categorize the party as asymmetrically divided. If the latter, I categorize it as symmetrically divided. While these determinations are not always easily made, in the case of contemporary House Republicans and Democrats there is little ambiguity.

AN EVOLVING FACTIONAL LANDSCAPE

It may be hard to believe today, but moderate Republicans were once a vital force in Congress. Throughout the 1960s and 1970s, they championed a range of centrist causes, including efforts to ratify the Equal Rights Amendment, expand access to higher education, strengthen clean air standards, and provide medical care for the uninsured.[29] In the House, their advocacy was facilitated by an intraparty organization—the Wednesday Group (later renamed the Tuesday Group, to reflect a different regular meeting day)—that brought moderate Republicans together to "discuss pending legislation, committee activities, and long-range policy interests" and to coordinate their efforts to secure shared goals.[30]

By the 1980s and 1990s, however, successive grassroots movements were propelling Republican voters rightward.[31] Reflecting these changes, the party's course in Congress was "increasingly . . . determined by the right, not the center."[32] Energized and organized, conservative members of the House Republican Study Committee (RSC) served as the legislative vanguard for President Ronald Reagan's domestic agenda and, a decade later, Speaker Newt Gingrich's Republican Revolution. Under sustained pressure from the right, moderates responded by shrinking their organizational activities and curtailing their pursuit of bipartisan legislative priorities. By keeping their heads down and reducing their collaborative footprint, the Tuesday Group's leadership hoped to insulate members from further attack. Their new, more limited mission would be to "provide some balance and perspective" for the Republican conference.[33]

In reality, they had effectively conceded collaborative dominance to their opponents. Following Obama's election in 2008, the RSC launched an aggressive campaign to recruit a new cohort of members committed to jointly resisting "many of the horrendous policies coming out of the administration."[34] The success of the Tea Party movement only increased the group's determination "to move the [Republican] Conference to the most conservative position."[35] It was then, Boehner later recalled, that conservatives' intent to "build up their own power base" to rival party leadership first became apparent.[36] On the House floor, at podiums on the Capitol's steps, and in primetime spots on cable news channels, members of the RSC relentlessly hammered moderates for "going squishy" and blasted Republican leaders for not doing more to thwart Obama's legislative initiatives.[37]

FROM SHOWDOWN TO SHUTDOWN: HOW BOEHNER LOST THE REPUBLICAN CONFERENCE

In the early days of his speakership, Boehner expressed confidence that he could surmount his party's rifts and transform the Republican Conference into a team of "happy warriors."[38] An experienced dealmaker, the Speaker believed he could give both factions some of what they wanted.[39] Conservatives would get the high-profile messaging votes they craved on culture-war issues like abortion, while he, alongside moderates and more mainstream Republicans, would advance lower-salience substantive policy initiatives. It soon became clear, however, that conservatives would not be satisfied with this approach. Within months, the RSC rolled the Speaker twice, refusing to reauthorize the Patriot Act and then defeating a short-term government funding bill. "It was the lowest I've ever seen Boehner," one member recalled.[40] The situation did not improve with time. After the 2012 election, the Speaker tried to cut a spending deal with Obama, hopeful that the president, now in his second term, would be open to a so-called grand bargain. When that effort failed, conservatives joined forces to tank the alternative Boehner proposed, leaving Republicans with nothing. His frustration palpable, the Speaker pressed the faction to propose a new path forward. "Now what?" he asked.[41]

The answer, it seemed, was further collaborative development on the right. Although delighted by the RSC's ability to embarrass Boehner and push the party's mainstream to the right, Ohio's Jim Jordan, the group's combative chairman, was increasingly disenchanted with the organization itself. The problem, as Jordan saw it, was that only *some* of his members were truly committed to pursuing conservative policy priorities; for many, he complained, the group's positions were too "strong."[42] Unable to formally expel those members from the RSC's ranks, Jordan and a cadre of his most conservative supporters began to collaborate "off site." "It created a different dynamic," one member recalled. They still used the RSC's considerable operating budget and sizable membership when it suited them, but they no longer felt captive to their more mainstream colleagues' priorities when they diverged from their own.[43]

While Jordan's circle of the party's most conservative members tightened their bonds of collaboration by insisting on greater secrecy—cultivating a "do or die . . . fight club" mentality and meeting weekly—moderates in the Tuesday Group continued to lay low.[44] They had learned that the Speaker could offer them little protection. "The big lesson was that Boehner did not come to the table with any particular strength" and so could not cut meaningful deals with the conservatives.[45]

But, leaders of the Tuesday Group reflected, Boehner was not entirely to blame for the party's pronounced asymmetry. Their own refusal to collectively challenge the RSC limited the Speaker's ability to tack to the middle. As one Tuesday Group member observed: "They'd like to use us as a foil with the right-wing guys, so they'd be able to say 'Oh, we can't do what you want to do because of them.'"[46] Another noted that "[on occasions] when we did go public, saying 'this is a stupid idea' in the Republican

conference or [in] the media, frankly . . . Boehner . . . . appreciated that."[47] Nor were moderates alone in thinking that their party's collaborative imbalance made the Speaker's job more difficult. "I wish the Tuesday Group were more active," one leadership aide admitted. "It would help fight the caricature that we are all a bunch of right-wing nutjobs."[48] Boehner was even more direct. With moderates in hiding, he alone was stuck dealing with the "legislative terrorists" on the right. And "it's hard to negotiate when you're standing there naked."[49]

But the Speaker continued to try. Determined to avoid a lengthy battle over government funding that might result in an unpopular shutdown, Boehner sought to win Jordan and his conservative clique over at the party's annual retreat in January 2013. In a private conference with the RSC's leadership team, he urged them to accept a short-term debt limit extension on the ground that it would give House Republicans a stronger hand to play in negotiations over government spending.[50] Grudgingly, Jordan and his colleagues agreed to follow Boehner's lead. With the conservatives in tow, the Speaker was able to deliver: by early spring, the House passed a temporary extension of the debt and, as Boehner predicted, a continuing resolution to lock in lower spending levels.

As summer approached, however, support for the Speaker's plan was softening. Moderates said little publicly, but privately groused that Boehner had negotiated with conservatives and not them.[51] Conservatives, too, were talking—with each other and with sympathetic outside groups like the Heritage Foundation and Americans for Prosperity—about whether Boehner might be wrong. Perhaps they could do better than a continuing resolution. The problem, conservatives conceded, was that "in any negotiation, it's very difficult to get very far if you're not willing to live with the consequences of not having a deal."[52] If they were to use government spending to force Democrats to make painful cuts beyond what could be accomplished in a continuing resolution, they would need to collectively commit to a shutdown.

By August, members of the RSC's conservative core were increasingly convinced that they could use the threat of a shutdown to go even bigger—now aiming to repeal the Affordable Care Act (ACA) and, in so doing, both rob Democrats of their primary legislative accomplishment *and* shrink federal spending. Mark Meadows, a new member of the RSC's conservative clique, drafted a letter urging Boehner to "affirmatively de-fund the implementation and enforcement of Obamacare in any relevant appropriations bill brought to the House floor."[53] Seventy-nine of his colleagues, including Meadows's thirty-odd allies in the RSC, lent their signatures to the letter. Boehner was nonplussed. "[The ACA] is the law of the land," he reminded members. Any effort to impede its implementation by cutting off government funding was bound to fail.[54] The Speaker was also skeptical that the letter's signatories were truly willing to use the appropriation process as a vehicle to kill the ACA. Even Meadows's own tone, Boehner's deputies observed, was "very soft"—there were no red lines drawn or threats made to block legislation that did not include the defund language.[55]

Still, it was clear that Boehner's détente with the RSC was in peril. As the Speaker's team acknowledged, it didn't help that so many members were spending the summer back in their districts. "Somehow out on the campaign trail, the representation was made that you could beat President Obama into submission to sign a repeal of the law with his name on it," Majority Leader Eric Cantor observed. "That's where things got . . . disconnected from reality."[56] It would be up to Boehner to bring members back to earth before the federal government ran out of money on October 1, the same day that the ACA's health care exchanges would open for enrollment.

In late August, the Speaker reiterated his belief that another funding fight would distract from what all expected to be a rocky rollout of the health care exchanges. Republicans would be better off passing a short-term spending bill and ceding the spotlight to Democrats. Let Americans see what the ACA looked like in practice, he advised his members. But conservatives, including Texas senator Ted Cruz and Utah senator Mike Lee, were adamant that Boehner was wrong. Bring a continuing resolution to the floor that included language eliminating funding for the ACA's implementation, they urged.[57] Boehner tried again to head members off in early September. Herding four to five lawmakers into his office at a time, the Speaker warned: "Don't do this. It's crazy." Offering up a new alternative, Boehner suggested that they hold two votes, one to defund the ACA and the other to fund the rest of government.[58] That plan, too, was shouted down.

At this point, the Speaker weighed his options. He could give in to mobilized, collaborating conservatives by including the defunding language, suffer through the inevitable shutdown, and squander the opportunity to make Democrats squirm when their health care exchanges stalled out. Or he could bring a so-called clean resolution to the floor, rely on disorganized moderate Republicans and some Democratic votes to offset what would surely be at least two dozen conservative defections, and spend the next six months reminding Americans how badly Democrats had fumbled the ACA's implementation. It was clear to Boehner what *he* wanted to do, but also clear that he would have to pay dearly to get it. Seeing no great way out of the situation, Boehner capitulated to the reality of party asymmetry. As he told his conference: "If you want to go fight this fight, I'll go fight the fight with you."[59]

With a shutdown only weeks away, moderate Republicans began making noise of their own. If conservatives were really intent on following Cruz over the edge, prominent members of the Tuesday Group declared their intention to head them off. In an interview on Fox News, New York's Peter King told viewers that he and twenty-four of his moderate colleagues were prepared to vote against the rule that would bring the defunding resolution to the floor—enough to prevent its consideration.[60] But with the Tuesday Group lacking the collaborative mechanisms to ensure those members defected, Boehner wasn't worried. The general feeling in the Speaker's office was that "moderates always cave."[61] Sure enough, ten days before the government reached its borrowing limit, King and Charlie Dent, leader of the Tuesday Group, were the sole

Republicans to vote against the rule. The problem, as King saw it, was the absence of a commitment among moderates to collaboration. Moderates, said King, "will talk, they will complain," but they "never . . . do what they say they're going to do."[62] This meant, as one of King's colleagues later reflected, "we went into negotiations with less leverage than we should have."[63]

In late September, the House approved legislation to defund the ACA while keeping the government up and running through the end of the year. As expected, Senate Democrats stripped the House bill of its defunding language and sent a clean resolution back to the House. The House then passed another stop-gap spending bill, this time with language delaying the implementation of the ACA for a year. Again, the Senate removed the dilatory language from the bill and sent it back, at which point House Republicans passed another resolution that proposed to delay the ACA's individual mandate for a year, which the Senate promptly rejected. With no compromise in place, the government shut down.

Almost immediately, moderate Republicans urged Boehner to make a deal. They were not alone. About a third of the conference lobbied the Speaker to put a clean continuing resolution on the floor before lasting damage was done. But, as one member recalled, Boehner felt he had no room to maneuver, given the party's asymmetric configuration. "He explained, 'There are about 85 of you guys I can count on to do the right thing. But . . . I got these 40 guys who just want to . . . blow this place up. Then there's like 110 other guys in between who can be pulled in either direction. Those are the guys I have to worry about." By giving conservatives the opportunity to wage a losing battle *they* had wanted to fight, Boehner hoped "to break"—or at least diminish—the right's hold on the conference.[64]

While the Speaker engaged in a contest of wills with his right flank, moderate Republicans hatched their own plans to get their conference back to the bargaining table. But rather than coordinate these efforts, members floated rival proposals to reopen government and refused to exchange their whip counts, which made it impossible to determine which proposal was most popular.[65] The result was that no single measure gained sufficient traction to restart negotiations between Democrats and House Republicans.

Sixteen days into the shutdown, the Senate offered the House a deal to end the budget impasse. Congress would fund the government for another four months and extend federal borrowing power to avoid a financial default. In return, the income verification rules for Americans using the ACA's insurance exchanges would be tightened. With every Democratic member voting to end the shutdown, the House passed the measure. It was, as one conservative put it, a "goose egg . . . we got nothing." Nor did Boehner try to deny it: "We fought the good fight," he told his conference. "We just didn't win." The only upside, as he saw it, was that those on the right "had to have learned something from all of this."[66] Perhaps now, they would trust him to do his job.

But the Republicans' factional asymmetry continued to confound the Speaker. In early 2014, the chamber's most strident conservatives, including Jordan and Meadows,

cut ties with the RSC and formed a new organization that would pursue conservative policies without apology or accommodation. Unlike the RSC, the group would impose an invitation-only membership policy and strict rules to govern how participants would vote. The new outfit was dubbed the "House Freedom Caucus" on the belief that "it was so generic and so universally awful that . . . [there was] no reason to be against it."[67] Although these collaborative mechanisms were new, the conservatives' aims remained the same. They wanted to champion right-wing reforms on issues like taxation, welfare, and health care, and they wanted Boehner gone.

In the summer of 2015, the Freedom Caucus made good on that second goal. Filing a motion to vacate the chair with the House clerk, they planned to force Boehner to secure 218 votes to keep his post. But the Speaker refused to take the bait. Unwilling to divide his party further, and hopeful that whoever replaced him would have an easier time governing, he announced his plans to retire.

THE ENDURING COSTS OF FACTIONAL ASYMMETRY

By stepping down as speaker, Boehner thought he was "protect[ing] the institution" and saving his party from "prolonged leadership turmoil."[68] But House Republicans' continuing asymmetry meant his successor would face similar constraints. Indeed, as speaker, Ryan was convinced he could forge a more productive relationship with conservatives than Boehner had and worked hard to placate the Freedom Caucus, all the while largely ignoring disorganized moderates and their demands. "The last thing we should do," he assured his right flank, "is [be] pointing our guns at each other."[69]

Eager to prove that he could be a good ally, Ryan tacked hard to the right, announcing that his first priority as speaker would be to repeal and replace the ACA. But as details of the replacement plan emerged, the Freedom Caucus loudly panned the proposal as "Obamacare lite" and vowed to oppose it.[70] Unable to muster a floor majority without the faction's support, Ryan went back to the drawing board. Edging out the committee chairmen who had helped him draft the original proposal, the Speaker invited the Freedom Caucus to revise the measure as they saw fit. Their bill, which was far more sweeping than the one Ryan had initially envisioned, drew swift criticism from moderate Republicans, who worried their constituents were unlikely to appreciate the rollback in coverage the new proposal imagined. But lacking their rivals' reputation for collective action, their complaints were not enough to soften the legislative language. As one former Tuesday Group member observed: "When they [leadership] know what you're willing to do and not do, it makes it difficult to negotiate."[71] Faced with the choice of accepting the conservatives' measure or voting to maintain the status quo, they gave in—just as Republican leaders and the Freedom Caucus predicted they would.

When the conference began to debate tax reform, a similar dynamic played itself out. Intent on avoiding a confrontation with the right, Ryan took pains to confirm at

the outset that his tax plan would not cross any of the Freedom Caucus's "red lines." Satisfied, the group announced that most of its members were "lean[ing] yes . . . with the caveat that there is still much work that needs to be done."[72] Moderates, however, were unwilling to take a position either in support of or opposition to the plan, prompting House leaders to exclude them from further negotiations. Said the chairman of the Tuesday Group: "We haven't really gotten into [it] to the degree that I'm willing to stake out a position."[73] With moderates scattered and conservatives joining forces to support a tax plan that catered to their wants, it was hardly surprising that Ryan preferred to partner with his right flank to notch a much-needed win.

As his speakership wore on, however, Ryan found it increasingly difficult to keep the Freedom Caucus satisfied. Whenever they believed the Speaker had strayed too far from their own position, the group—often backed by the Trump administration—threatened to withhold their support and vowed that Ryan would suffer "consequences."[74] Tired of pursuing a strategy of conciliation, Ryan followed Boehner into retirement rather than work to rebalance the party's factional configuration. Given the growing friction between the Speaker and Freedom Caucus, few House Republicans were particularly surprised, least of all the Tuesday Group. "We can all read between the lines . . . you don't have a lot of speakers surrendering power and walking away."[75]

Of course, not every speaker gets the chance to walk away. McCarthy, Ryan's replacement, found it even harder than his predecessors to navigate House Republicans' asymmetry. Burdened by a razor-thin majority, McCarthy had little choice but to accept nearly all of the Freedom Caucus's procedural and policy demands to secure the votes he needed to win the office in the first place.[76] Having gotten the job, his task did not become any easier—though not for lack of trying. Like Ryan, the new speaker was optimistic that skillful "member management" could prevent a mutiny on the right.[77] But yet another fight to secure a government funding deal would test his faith in that strategy.

Committed to keeping his right flank happy, McCarthy worked hand-in-hand with the Freedom Caucus to draft a funding bill he knew would have little chance of becoming law. As one member involved in the process recalled: "Essentially, the leadership just picked up the House Freedom Caucus plan and helped us convert it into the legislative text."[78] By catering to conservatives on the front end, the Speaker hoped they would be willing to accept whatever he was able to extract on the back end during negotiations with the White House and congressional Democrats.

He was wrong. When word got out that a deal with the Biden administration was in the offing, members of the Freedom Caucus immediately called for the Speaker's removal, even as some acknowledged that the bargain he had struck represented "a directional shift" rightward. "It is inescapable," they told reporters. "It has to be done."[79] In a final bid to forestall the mutiny, McCarthy sought to defend his actions. In a conference-wide meeting he told members: "I do not regret negotiating; our government is designed to find compromise."[80] But a majority of Freedom Caucus

members disagreed. "McCarthy . . . is somebody who we cannot trust," they warned. "We need a speaker who will fight for something, anything besides just staying or becoming speaker."[81]

Without an obvious way to appease his right flank, McCarthy turned to Republican moderates. Perhaps they could help buy him enough time to renegotiate a truce. But lacking their rival's collaborative capacity, moderate efforts to persuade sympathetic Democrats to help them save McCarthy fizzled. Their would-be allies expressed skepticism that moderate Republicans could actually deliver anything, be it opportunities to move bipartisan bills to the floor or more favorable committee ratios, in return for their support.[82] Hemmed in by an ascendant conservative faction on his right, and lacking the ballast of an equally capable moderate faction on his left, McCarthy found himself unceremoniously dumped—the first speaker to be formally removed in the history of the House.

SYMMETRY ACROSS THE AISLE

Just as asymmetries in factional collaboration can help to explain why Republican leaders from Boehner to Johnson have uniformly struggled, attending to patterns of collaboration across the aisle can help us to understand why Pelosi's power increased over the course of her speakership, even as her party's factional divisions became more pronounced. Throughout her career as Democratic leader, Pelosi consistently worked to advance progressive priorities, believing that "power is perishable . . . [and] when you get it, you must use it."[83] But in her first two terms as speaker, including during the fight to pass the Affordable Care Act, moderate Democrats forced Pelosi to ratchet back her ambitions and embrace "politics at the middle."[84] While broadly supportive of enacting health care reform, the party's centrists were collectively troubled by core elements of President Obama's proposed health care plan and, after launching a coordinated campaign to change them, threatened to withhold their votes unless they were accommodated. Progressives, by contrast, failed to identify a common set of negotiating red lines and were unable to defend those features of the bill that moderates opposed.

As is true of contemporary conservative Republicans in the House, moderate Democrats in the 1990s and 2000s derived their considerable influence from collaboration. Though smaller in number and more junior than their progressive colleagues, moderates had, over the preceding two decades, invested in an organizational apparatus to support their pursuit of centrist policy goals. Their progressive rivals, meanwhile, had kept their organizing to a minimum, believing that superior numbers would be sufficient to pull the party leftward. As one member described the bargaining dynamic: "Pelosi's problem was that centrists in the party knew what they wanted and were willing to fight for it. Progressives just talked."[85] Or, as the

Speaker herself put it, in recognition of her party's asymmetry: "the liberals are not operational."[86]

As House Democrats' factional configuration evolved, however, the Speaker would find greater freedom to push back against moderates' "namby-pamby approach."[87] With the party relegated to the minority after the 2010 midterms, progressives began to work together with greater consistency. By the time they regained the majority in 2018, both moderates and progressives were collaborating on equal terms.

While many on Capitol Hill worried that House Democrats' newfound collaborative symmetry would prevent Pelosi from passing meaningful climate legislation, the Speaker saw an opportunity. For decades, progressives had folded when pushed by their moderate colleagues. Now, Pelosi observed, was an opportunity for those on the left to demonstrate that they were in fact operational. For their part, moderate Democrats saw little reason to capitulate to left-of-center proposals, confident that "a small faction on the far left" would not have the fortitude to employ "Freedom Caucus tactics . . . to destroy the president's agenda."[88] But if the Speaker was to muscle through her hoped-for climate change bill, moderate Democrats would need to learn that they could not overpower their more liberal colleagues as they once had.

The leaders of the revitalized Congressional Progressive Caucus (CPC) appreciated this dynamic too. As they reminded their colleagues, Pelosi's ability to force moderates to accept something other than a modest climate change bill "was only as dependable as the CPC's whip count."[89] As long as progressives could be counted on to withhold their votes from a more incremental proposal, the Speaker had real leverage to compel moderates to "go big."[90] Both sides nevertheless recognized that there were limits to progressives' newfound might. With the moderates retaining their decades'-long commitment to collective action, Pelosi could also insist that progressives revise their climate-change wish list in ways that suited her own vision.

Leveraging this symmetry in factional collaboration, the Speaker managed to persuade both moderates and progressives to back what became known as the Inflation Reduction Act of 2022. The climate bill was not as ambitious as many progressives had hoped it would be, and for some moderates it was still too pricy. But, insofar as it contained many of the Speaker's core priorities—hundreds of billions of dollars to address climate change and programs to make health care more affordable for more Americans—it reflected many of the policy goals Pelosi had worked so hard to achieve during her years in Congress. As she emphasized to her caucus, "this legislation is historic, it's transformative," a true capstone to her speakership.[91]

CONCLUSION

Republican Speakers today just can't seem to win. As I have argued in this chapter, this is not just because the party is ideologically divided or because its leaders are inept. The more proximate problem is that the party's rival factions are

not collaborating on an equal basis. The end result is that, to borrow from E. E. Schattschneider, conservative representatives' preferences are consistently "organized into [the party's] politics" and their moderate colleagues' preferences are "organized out."[92]

But House Republicans' leadership woes need not continue in perpetuity. Indeed, while it is clear that moderates have chosen to eschew the kinds of collaborative mechanisms that position their conservative rivals to dictate terms to leadership, this is a choice they may be able to reverse. As has been true of House conservatives for nearly two decades, it is within the power of moderate Republicans to commit themselves to collective action and, in so doing, cultivate the reputation and resources to aid party leaders in resisting pressure from the right. Admittedly, this may be easier said than done. In today's Republican party, moderates may find it in their best interest to lay low. Sticking out one's neck is rarely rewarded. But absent a renewed commitment to organization among the party's moderates, it is likely that Republican leaders will continue to struggle and fail, with the party's most conservative members reaping the rewards.

If Republicans lose their majority, the House is likely to have a very different leadership experience. With House Democrats' progressive and moderate factions collaborating on equal terms, Hakeem Jeffries should find conditions ripe to work his will, much as Pelosi did. Whether or not he will be able to match her record of success will depend on his own savvy and willingness to constructively pit the party's rival wings against each other to achieve what he believes best.

Taking a longer view of legislative politics, better understanding the roots of House Republicans' recent leadership struggles is not the only upside to thinking about Congress in collaborative terms. For one, in recognizing the importance of collaboration among members, we can better appreciate that legislative politics is not necessarily reducible to a numbers game. Yes, at some level, lawmakers are right to say that "the only thing that counts [in the House] is 218 votes."[93] But, as we have seen, collaborating effectively can make a small faction more powerful than its numbers alone would suggest. The reverse is also true. Minimal or ineffective collaboration can weaken a large faction and undercut its numerical advantage. Indeed, despite their small numbers, conservative hardliners have consistently exercised greater influence over Republican leaders than their moderate colleagues in the contemporary Congress. Because conservatives have figured out how to effectively collaborate and moderates have not, they have been able to push the Republican conference ever more sharply to the right.

For another, attending to patterns of collaboration might also lead us to think differently about Congress's representational capacity. Lawmakers, we are taught, represent their constituents best when they hold the same opinions. And the greater the degree of overlap, the stronger the representational connection. But it is also worth thinking

about representation in collaborative terms. Holding constant the degree of overlap in constituent and member opinion, we might say that constituents are best served when their member works with similarly situated colleagues to pursue their respective constituents' shared aims. Consider conservative voters in districts represented by members of the House Freedom Caucus. They receive higher-quality representation today than similarly conservative voters received in periods when conservative lawmakers struggled to collectively advocate for right-of-center policy goals.

As Shepsle observed more than three decades ago, "Congress is a 'they,' not an 'it.' "[94] The consequence of this deliberate design choice is that nothing can get done—from electing leaders to passing legislation—unless lawmakers are able to work together. For legislative scholars, the upshot is this: for all that we may worry that there is something fundamentally and uniquely wrong with Congress today, there remain important continuities. Members' choices about when and how to collaborate with each other shape legislative behavior and congressional power dynamics in much the same way today as they did in the past, suggesting perhaps that the more things change, the more they stay the same.