

Is Congress Broken?



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POL 105: The Legislative Process

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Outline

1. *“Toward a More Responsible Party System”*
2. Is Congress Dysfunctional?
3. Constitutional hardball

Toward a More Responsible Party System

Why Is This Happening?

- What were political scientists worrying about in 1950?

“Historical and other factors have caused the American two-party system to operate as two loose associations of state and local organizations, with very little national machinery and very little national cohesion. As a result, either major party, when in power, is ill-equipped to organize its members in the legislative and executive branches into a government held together and guided by a party program. Party responsibility at the polls thus tends to vanish. This is a very serious matter, for it affects the very heartbeat of American democracy.” – APSA, *Toward a More Responsible Two-Party System*

The Context for the Report

- Most countries had **responsible party government**
- The U.S. post-WW2 did not
- Relative to other advanced industrial democracies, U.S. parties are decentralized, loosely organized, and undisciplined
- Rather than socialism (as in Europe), early 20th century U.S. politics were defined by **progressivism**
 - Primary elections & secret ballot
 - Decline in patronage jobs, replaced by merit-based civil service
 - Gov. welfare replaced party machine payoffs to citizens
- Rise of mass media also undermined party machines

What Did The Report Recommend?

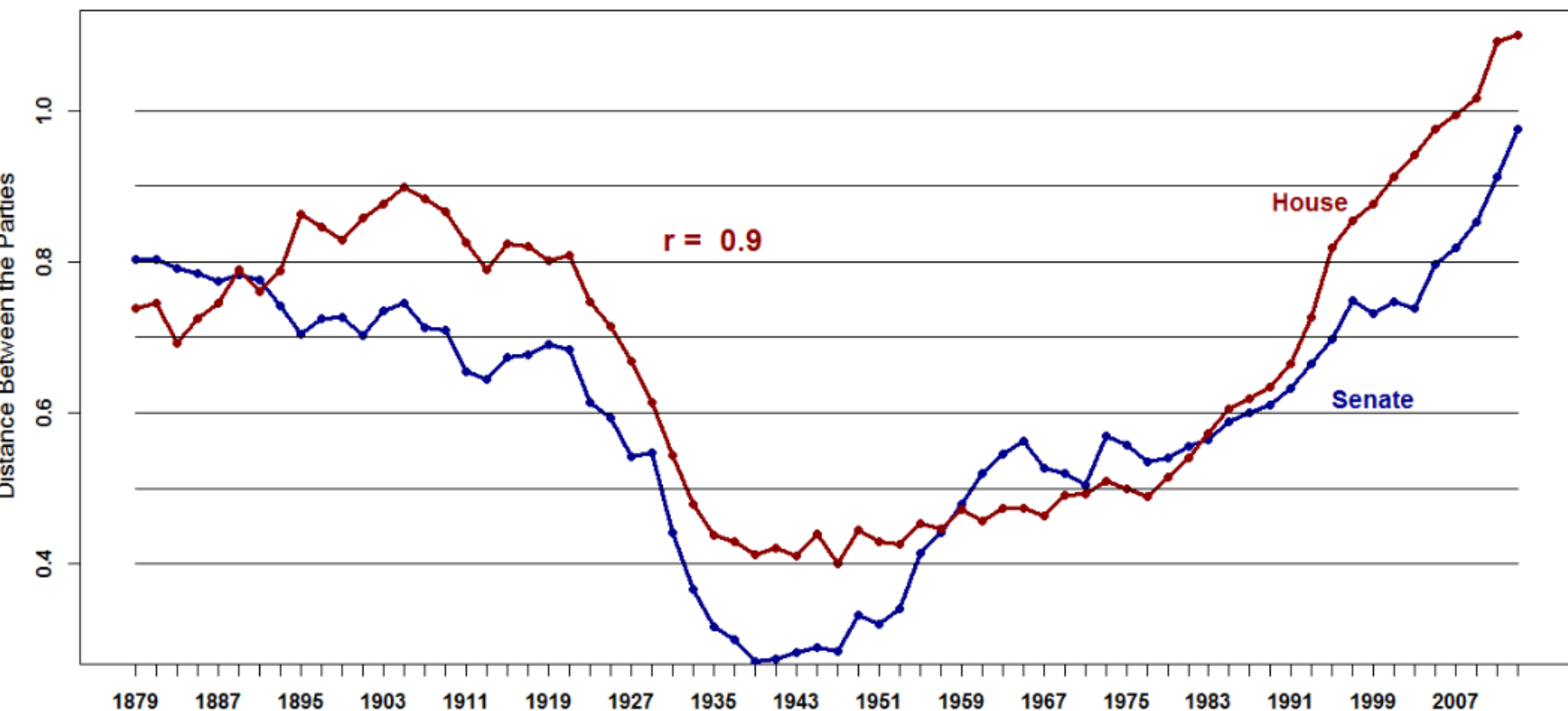
- E.E. Schattschneider is back!
- He and the committee wanted *stronger* national parties that would:
 - Coordinate state/local parties
 - Draft a platform/set party policy
 - Enforce discipline on their MCs
 - Encourage participation in primaries and create formal “party membership”
- Did the authors get what they wanted?
 - Not right away!
- By the 1970s, the two parties were at their least powerful

How Did The Parties Recover?

- Today's parties are:
 - Ideologically coherent
 - Have strong national organization
 - Are *relatively* disciplined in Congress
 - Have strong bases of support in the public
- What changed?
 - Party polarization (due to immigration, inequality, racial realignment, partisan media, etc.)
 - 1994 Republican revolution
 - Changing rules in Congress, giving leaders more power
- Legislative Cartels (Cox & McCubbins)

How Has This Worked Out?

Party Polarization 1879-2014
Distance Between the Parties on the First (Liberal-Conservative) Dimension



Polarized America / voteview.com

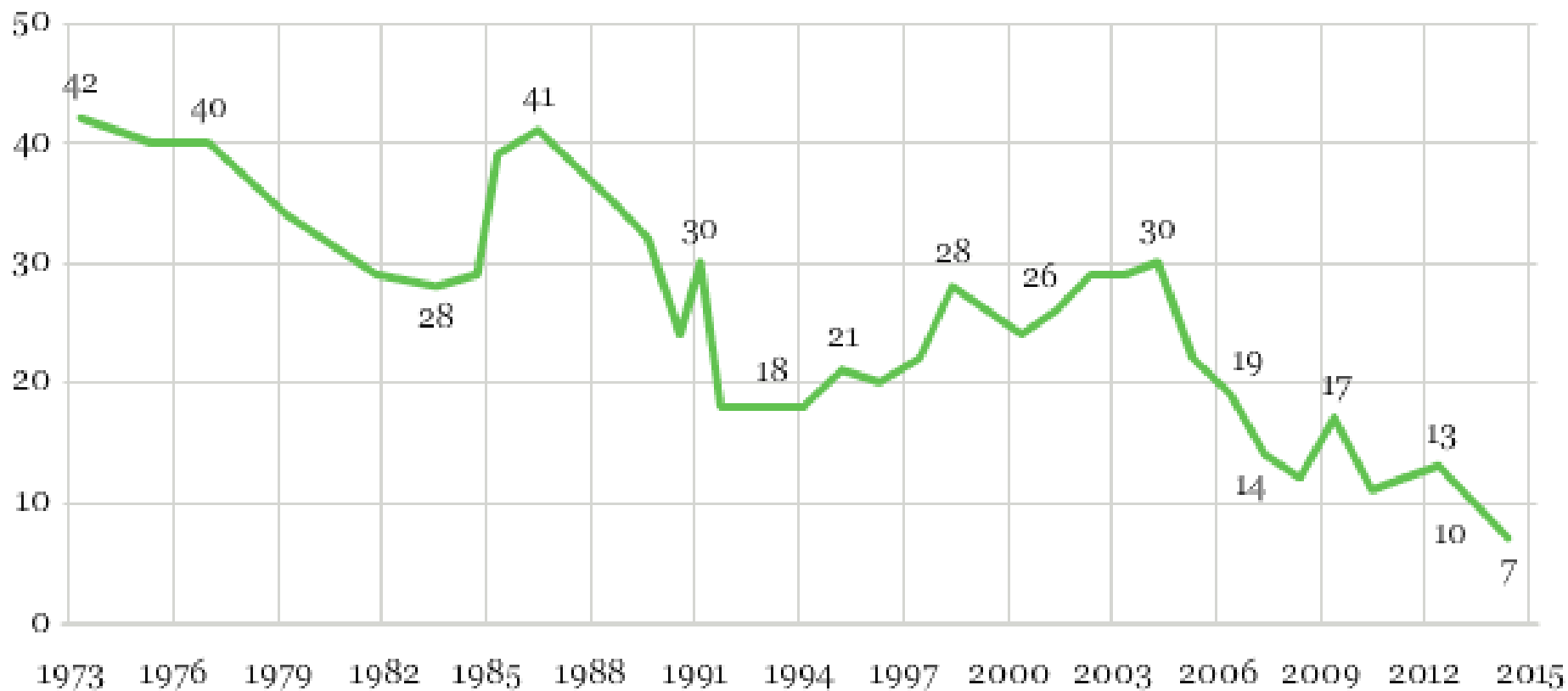
Is Congress Dysfunctional?

Is Congress Dysfunctional?

- What does the American public think?
- Even when Congress and the president agree, Congress seems less able to address major policy debates, such as:
 - Immigration law
 - Taxes
 - The environment
 - Inequality
 - War & peace
 - Social spending

Confidence in Congress

■ % A "great deal" and "quite a lot" of confidence

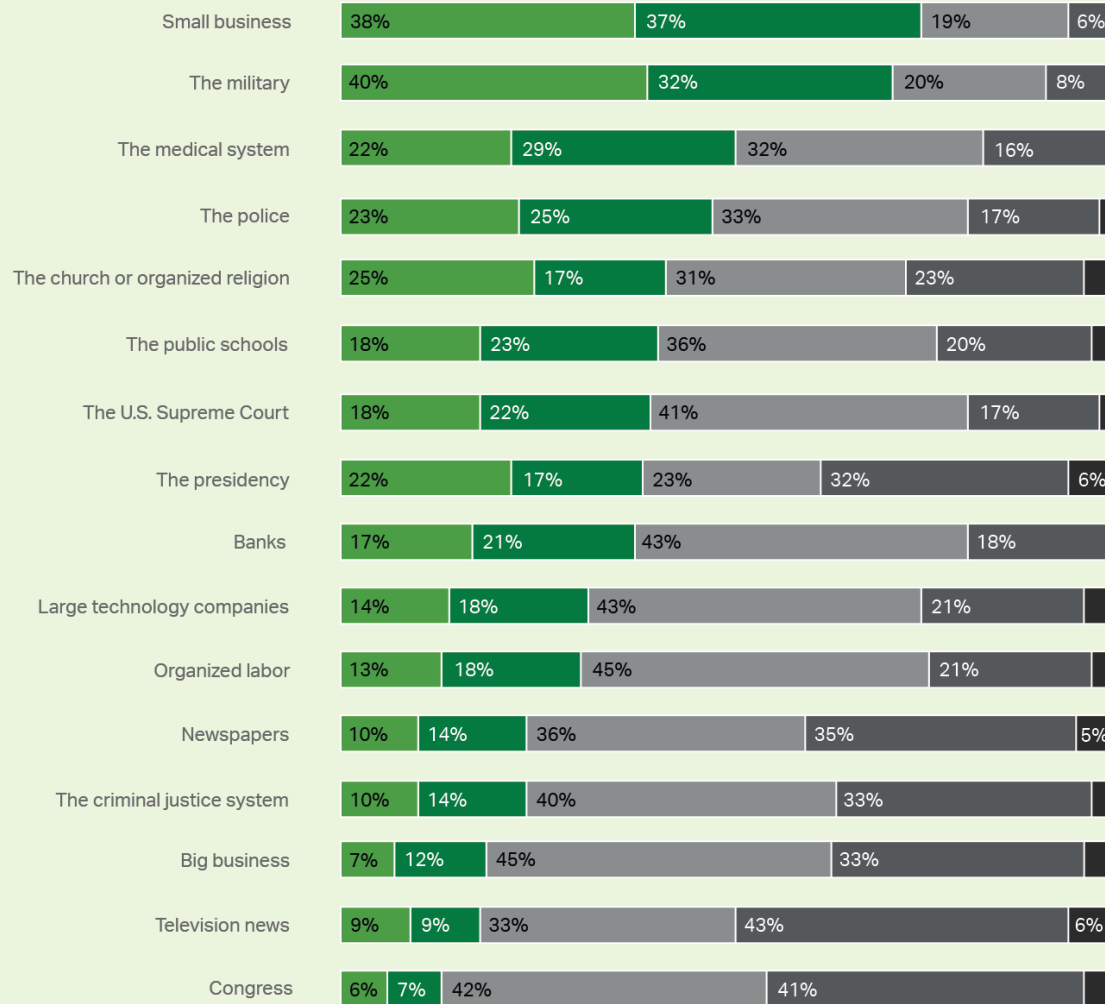


GALLUP®

Americans' Confidence in U.S. Institutions

Please tell me how much confidence you, yourself, have in each one -- a great deal, quite a lot, some or very little?

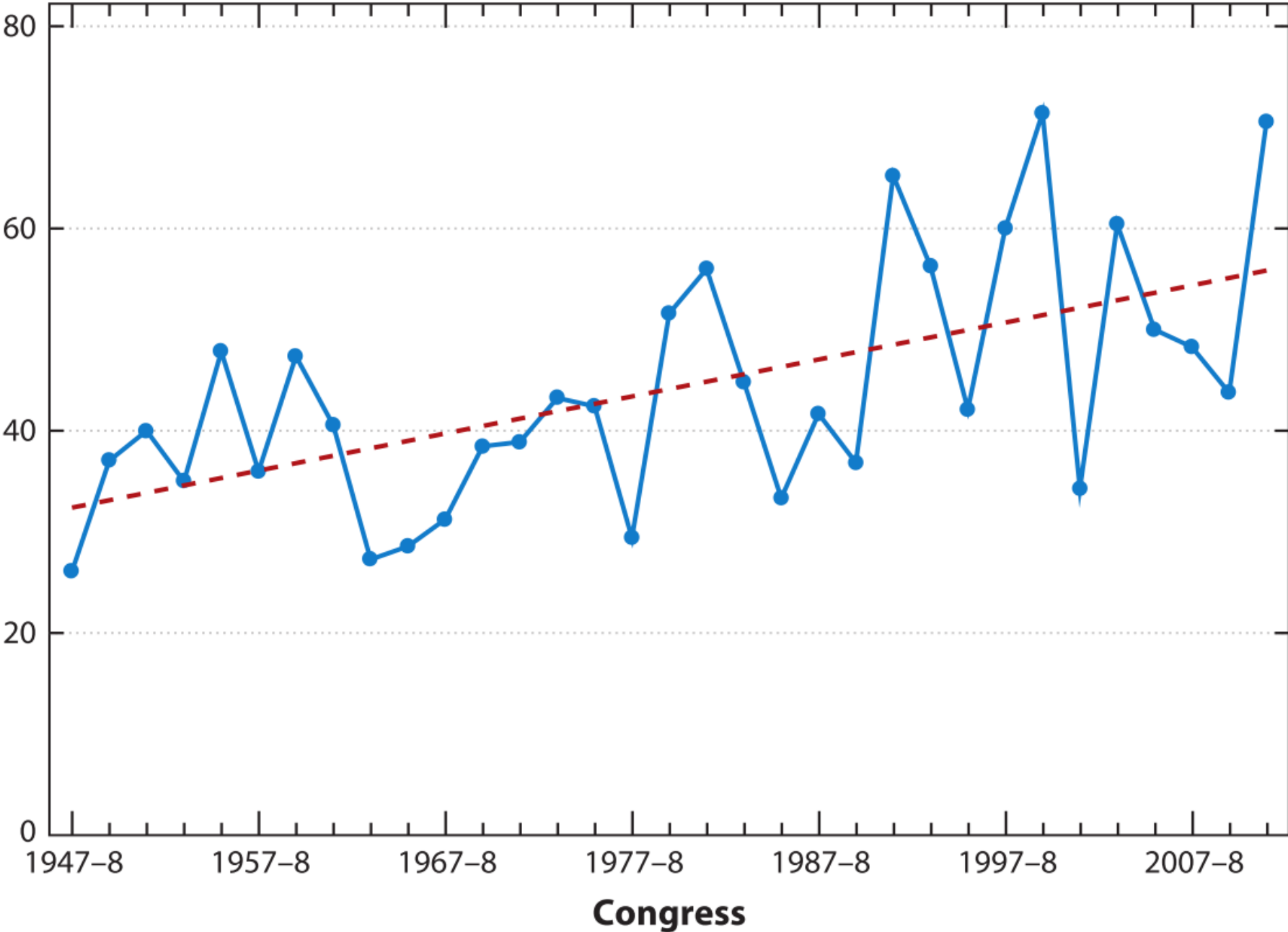
Great deal Quite a lot Some Very little None (vol.)/No opinion



(vol.) = volunteered response

GALLUP, JUNE 8-JULY 24, 2020

Percent of salient issues deadlocked



What Policies Can Pass In a “Dysfunctional” Congress?

Story A

Senators reach rare bipartisan deal to ease banking rules

By ZACHARY WARMBRODT |

Story B

WASHINGTON – House Republicans and Democrats joined forces Tuesday to decisively approve a defense policy bill that authorizes \$700 billion to restock what lawmakers have described as a depleted U.S. military and counter North Korea's advancing nuclear weapons program.

- In a “dysfunctional” Congress, few policies can be made into law
- What theories from the course so far might help us understand why these two policies have succeeded in Congress?

Constitutional Hardball

The 2016 Election

- The Merrick Garland nomination is a great example of “constitutional hardball”
- Before election day, Senator John McCain (R-AZ) said Senate Republicans would “be united against any Supreme Court nominee that Hillary Clinton, if she were president, would put up.”
- Obama does NOT attempt to circumvent the Senate
- After the election, Democrats filibuster Neil Gorsuch, and McConnell uses the “nuclear option”

Defining “Constitutional Hardball”

- How do the authors define constitutional hardball?

“political claims and practices . . . that are without much question within the bounds of existing constitutional doctrine and practice but that are nonetheless in some tension with existing pre-constitutional understandings.” – Mark Tushnet (2004)

- Tushnet observed:
 - GOP impeachment of Bill Clinton
 - 2002-2003 Democratic filibusters of George W. Bush judicial nominees
 - Mid-decade gerrymandering attempts in Colorado and Texas

Defining “Constitutional Hardball”

- How is constitutional hardball different than normal politics?
- It violates unwritten norms of government practice for partisan ends...
- ... Or attempts to shift settled understanding of the Constitution in an unusually aggressive way
- Increasing polarization means MCs in BOTH parties are *less likely* to face intra-party opposition to constitutional hardball

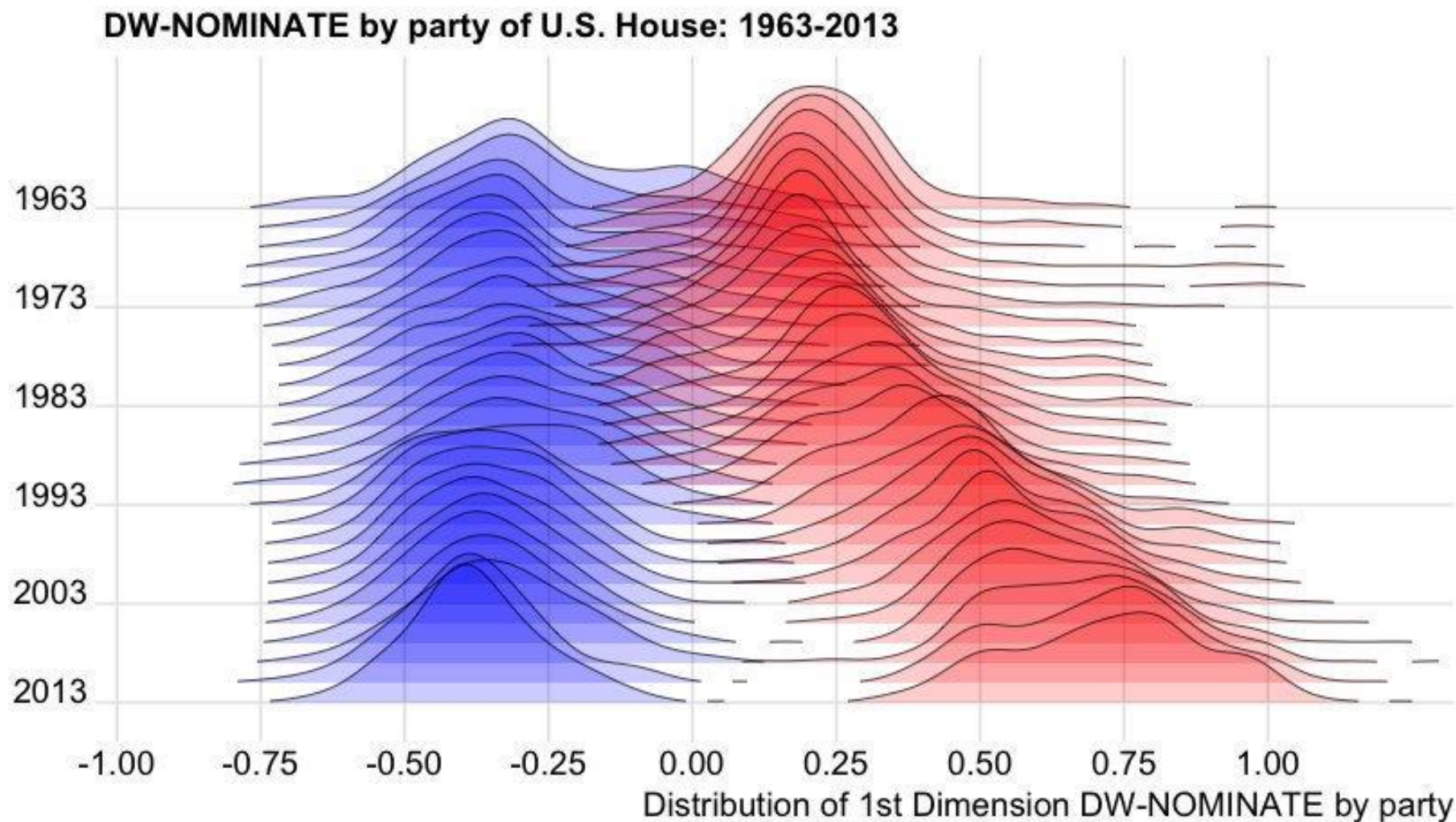
Modern Examples

- *Bush v. Gore* (2000)
- Republicans suing the Obama administration over the ACA
 - Litigants made a very novel economic activity vs. inactivity argument about the Commerce Clause
- DACA
- Is hardball bad?
- Your opinion usually varies with whether you agree with the action!

Asymmetry

- The authors say constitutional hardball has been *reciprocal* but not *symmetrical*
- What do the authors mean by this?
- This phenomenon is related to *asymmetric polarization*

The Congressional Parties Are Polarizing Asymmetrically



Asymmetry Pre-Obama

Pre-Obama, the GOP engaged in a significant amount of constitutional hardball:

- 1995/1996 gov. shutdowns
- Over 1,000 subpoenas of the Clinton administration
- Voting restrictions in the 2000 and 2004 elections
- Exclusion of Democrats from conference committees
- The turn towards “closed” rule voting on the House floor
- Expansions of executive power under Reagan and W. Bush

Asymmetry Under Obama

Under Obama, the asymmetry in constitutional hardball accelerated:

- Unprecedented use of filibusters and Senate “holds” to block legislation and appointees
- Multiple debt ceiling crises
- Government shutdown to defund the ACA
- Blocked appointments to CFPB and NLRB
- Garland nomination

Examples of Democratic Constitutional Hardball

The Democrats have done it too – just not as rapidly or effectively:

- Bill Clinton made unprecedented assertions of executive privilege
- Blocked George W. Bush's recess appointments
- Democrats amended the ACA using reconciliation (circumventing the filibuster)
- The Obama administration used a lot of discretion in implementing the ACA, pushing the limits of exec. Authority
- Recess appointments to the CFPB and NLRB
- Nuclear option for non-SCOTUS nominees
- DACA

Is It Really Asymmetry?

- Republicans seem willing to go further
 - E.g. debt ceiling showdown, voter suppression
- We know party polarization is asymmetric
- We also know the Republican Party is more ideological, whereas the Democratic Party acts more like a combination of interest groups

Why Is This Happening?

- Most MCs are in safe seats, so their main reelection threat is in *primaries*
 - Republicans appear more vulnerable to primary challenges
- Republican outside groups (tea party organizations, Koch brothers network, etc.) exert more influence than Democratic ones (labor unions, Sierra Club, etc.)
 - Also, Democratic mega-donors are more moderate
- Liberals continue to trust legacy media outlets (e.g. NYT, NPR, CNN) whereas conservatives do not

Why Is This Happening?

- Conservatives tend to be less trusting of the federal government, more OK with tactics like shutdowns

“Which of the two of us do you think worries more about the government not showing up?” – Newt Gingrich, on the possibility of Bill Clinton vetoing the 1995 Republican congress’ budget bill, which would cause a shutdown

“The upside? No laws passed. No gov’t spending. Can’t wait for the shutdown.” Erick Erickson, *RedState* (2010)

Why Is This Happening?

- Fishkin & Pozen argue that the GOP's embrace of *constitutional originalism* and *existential politics* makes them more willing to play hardball
- Both stances contribute to a narrative of a country deviating from its path and that fundamental parts of American identity are in danger
- They argue that this existential threat makes Republicans more willing to eschew bipartisanship and flout norms
- Democratic politicians have largely avoided existential narratives – even on policies their voters think are existential threats

What's Next?

- Will Democrats start engaging in more constitutional hardball?
 - YES: Democrats are moving to the left, the left is getting more powerful in the party, partisan media is getting more popular
 - NO: There have yet to be major ideological changes in:
 - Democratic candidate funding, or
 - Democratic voters' media consumption
 - The ideology of Democratic presidential nominees
- It is possible that the Trump presidency will radicalize Democrats – but other factors suggest they will still use less hardball than Republicans
- Republicans will probably continue to be more willing to shut down the government – it's less ideologically objectionable

What Happens Next?

- What happens if Democrats start playing hardball?
- Two possibilities:
 1. Republicans are doing more hardball because Democrats haven't responded proportionally
 - If so, Democrats escalating might cause GOP to decrease their use of hardball
 2. Any use of hardball by one side causes the other side to use more hardball
 - If so, Democrats responding in kind could be a dangerous game with no obvious endpoint
- Neither model looks very good for a healthy democracy



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Following



The big lesson of blowing up judicial nomination rules is that nobody except DC columnists care when you do it. The base sees you delivering for them. Had Leahy torn up blue slips in 2014, there'd be more liberals on the court and you wouldn't remember it.



Yahoo News ✓ @YahooNews

Trump, ignoring Democratic senators, set to name 2 judges in California yhoo.it/2XONID8

Can We Get Out?

- One possibility: realignment of the political system that removes incentives for constitutional hardball
- Another: institute anti-hardball rules
 - Independent redistricting
 - Nationalized elections and voting rules
 - Campaign finance reform
- It's not clear that all the institutions being destroyed were good...
- ... But there *is* a real long-term danger to the ability of Congress to govern for the good of the country

Q&A