



Congress

American National Government
Topic 11

Overview

- What is Congress' place in the federal government?
- How well does Congress represent the American people?
- How does Congress get things done?
- How is polarization changing Congress?

I – What is Congress' role in the federal government?

A large orange circle is positioned on the left side of the slide, partially cut off by the edge. The text 'Congress and Democracy' is written in white, sans-serif font across the middle of this circle.

Congress and Democracy

Representative democracy requires that those who wield power be accountable to the people subject to that power

Americans need to understand how Congress works to be able to figure out if their representatives are doing their jobs

Legislatures are good for representation compared to executives because they can represent the people in their diversity

Congress' Structure

- Basic structure of Congress determined in the Great Compromise
 - Symmetrical bicameralism
 - Houses had different bases of representation; now have different constituencies (districts vs states)
 - Houses have different terms of office (2 vs 6)

Congress' Place in the Federal Government

- Congress is the center of government
 - Article I, Section 1: All legislative powers vested in Congress
 - Article I, Section 8: Enumerated powers
 - “Power of the purse”
 - Regulate commerce
 - Authority in foreign affairs
 - Necessary and Proper Clause
 - Article II: Senate given advise and consent functions (approve executive and judicial nominees); remove presidents via impeachment
 - Article III: Authority to create courts; strip them of jurisdiction; remove judges via impeachment
- Given vast power by the Framers

Limits on Congressional Power

- But...Framers concerned about vast power of Congress
- How did framers limit this power?
 - ***Elections, elections, elections*** (voters can punish bad agents)
 - Checks & balances (Federalist No. 51)
 - Bicameralism
 - Executive veto
 - Different electoral constituencies (states vs districts)
 - Different term lengths (different time horizons)
 - Enumerated powers
 - Federalism (10th Amendment)

Congress in Comparative Perspective

- The US Congress has many structural features in common with other democracies
 - Bicameralism is fairly common
 - The Senate's six-year term is the median of other upper houses
 - Upper houses in other countries have special powers, especially in federal states
 - Some other upper houses are appointed by federal units (states), like the Senate before the 17th amendment

Congress in Comparative Perspective

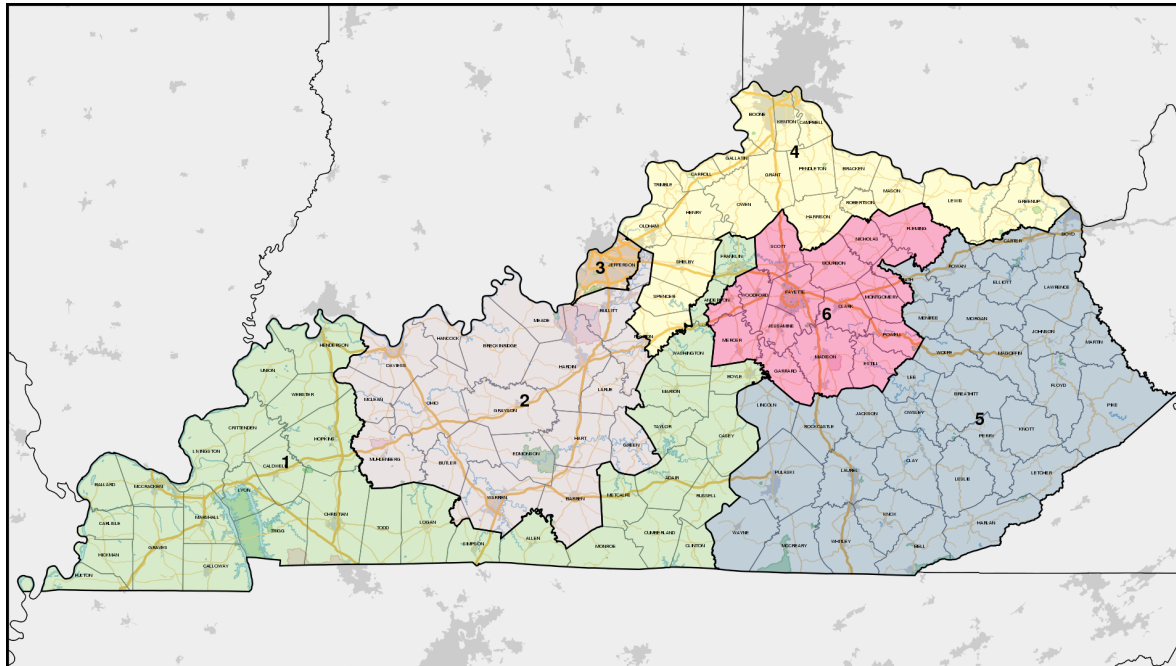
- But there are a few structural features that mark it out as unique
 - Symmetric bicameralism is pretty rare
 - Most important is the combination of symmetric bicameralism with a supermajority requirement in the Senate
 - This is unique to the US and makes it extremely difficult to pass ordinary legislation
 - Very uncommon for the upper house to be more powerful than the lower house, as Senate's powers over executive & judicial appointments and treaties arguably makes it
 - House's single member districts are almost perfectly equal in population, whereas other FPTP systems have more widely varying population sizes
 - The House's two-year term is the shortest of any house in a major democracy

II – How well does Congress represent the American people?

Congressional Representation: Apportionment

- Congresspeople are currently selected by single member districts in which the person who gets the most votes wins (plurality rule)
 - Remember this is called a **First-Past-The-Post (FPTP) electoral system**
- In the Senate, the districts are the states
- In the House, states are divided into districts by the state government

These are
Kentucky's
six House
districts



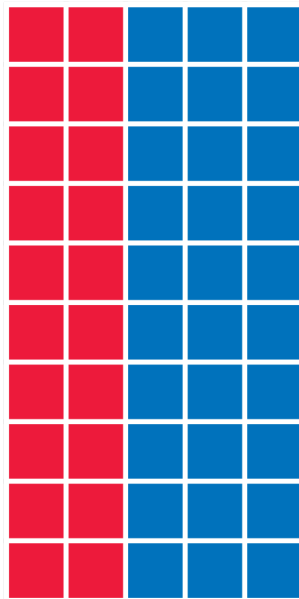
Congressional Representation: Apportionment

- After each census (every 10 years), states redraw the lines that divide its territory into the required number of districts
 - In 1964 the Supreme Court ruled in *Wesberry v. Sanders* that congressional districts must have equal populations
 - In *Thornburg v. Gingles* (1986) the Court ruled that district lines may not dilute minority representation, but neither may they be drawn with race as the predominant consideration
 - Issue was majority-minority districts
- Within these limits states can draw districts pretty much as they please

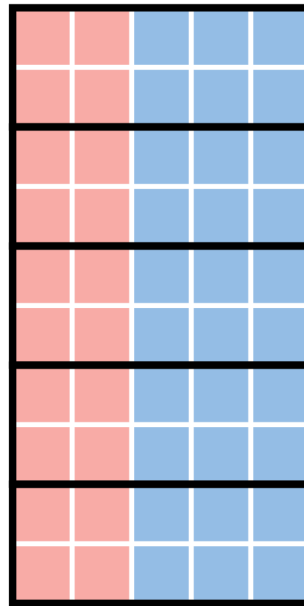
Congressional Representation: Apportionment

- If one party controls the legislature and the governorship, it may attempt to draw lines to favor its own candidates
 - This is called **gerrymandering**

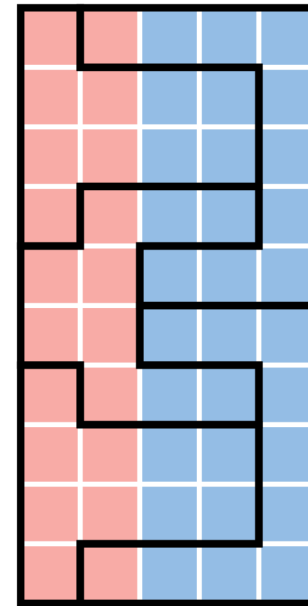
Gerrymandering Illustrated



50 PRECINCTS
60% BLUE
40% RED



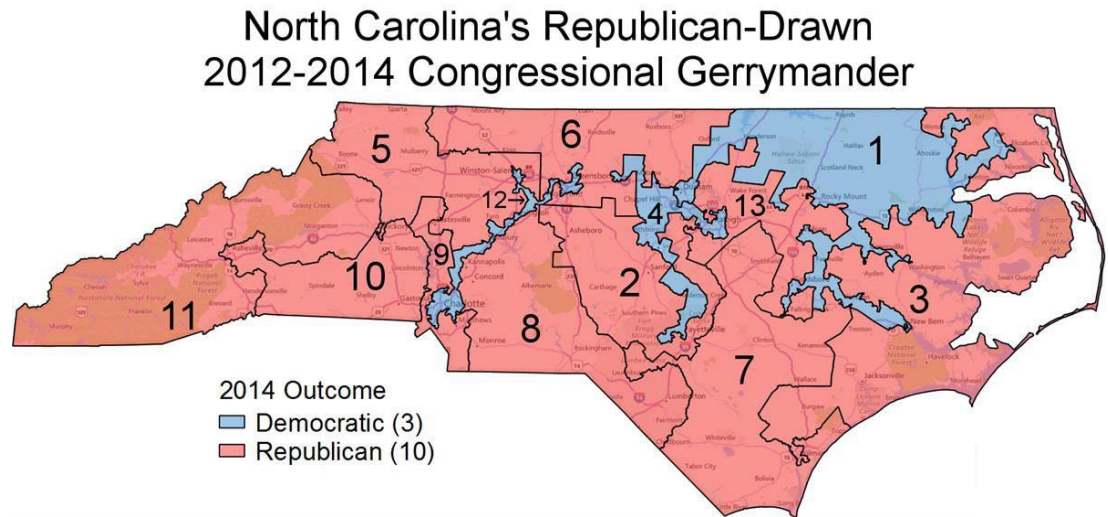
5 DISTRICTS
5 BLUE
0 RED
BLUE WINS



5 DISTRICTS
3 RED
2 BLUE
RED WINS

Congressional Representation: Apportionment

- Redistricting technology has improved so much that gerrymandering is now an exact science
- North Carolina:
 - In 2012, Ds won 50.6% of the vote, Rs won 48.75%
 - Rs won 9 seats; Ds 4
 - Change from 2010 under the old maps;
7-6 D → net 3 R seats
 - Gaining this advantage is why parties engage in gerrymandering.



This shows the real-life consequences of gerrymandering

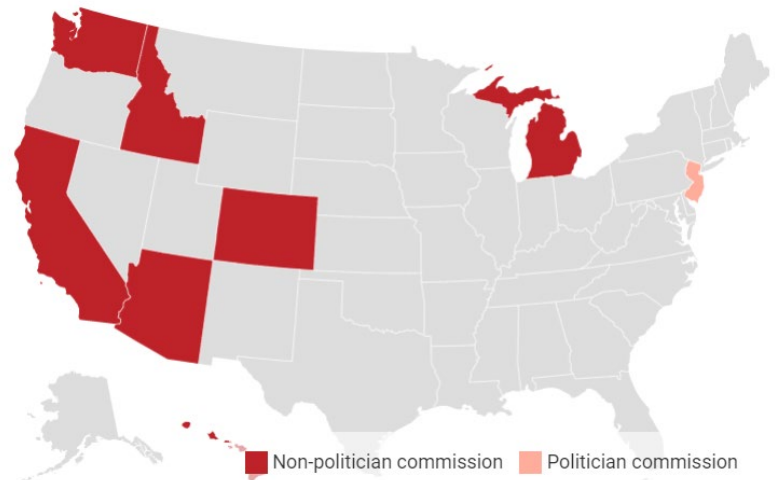
Congressional Representation: Apportionment

- The constitutionality of gerrymandering has been challenged in court, but without success
- In *Davis v. Bandemer* (1986), the Court held that a gerrymander would be unconstitutional if it were too unfair to one of the parties
 - Court has never found a districting scheme to violate this vague standard
- In *Rucho v. Common Cause* (2019), the Court ruled that partisan gerrymandering is a “political question” and beyond the ability of the federal courts to address
 - This case seems to foreclose the federal courts as a remedy for gerrymandering

Congressional Representation: Apportionment

- A few states use independent redistricting commissions composed of non-politicians to draw congressional maps
- 2020 redistricting commissions appear to be failing, breaking down along partisan lines
- State constitutions and supreme courts have been turned to for relief
 - Example: North Carolina
- In 2022-23 term, Supreme Court will decide whether state legislatures can gerrymander and regulate elections with no checks from state courts or governors
 - Independent State Legislature theory

Redistricting commissions in the United States: congressional redistricting

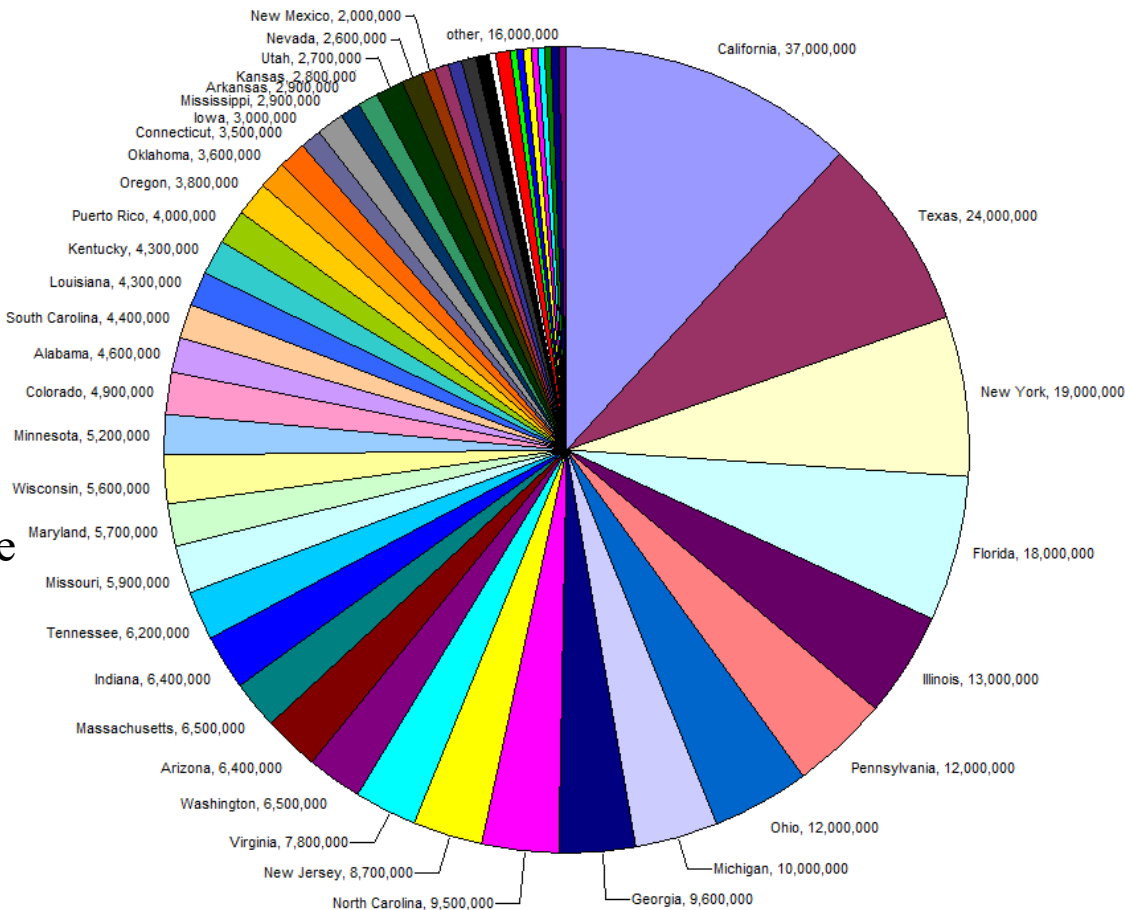


BALLOT PEDIA

Congressional Representation: Apportionment

- No gerrymandering in the Senate, but unequal representation is a massive problem there too

This shows the share of the population that lives in each state. Each sliver here has equal representation in the Senate, meaning that nine states have 51% of the pop but only 20% of the votes in the Senate



By contrast, the bottom 26 states by population have a majority in the Senate but only 17.5% of the population

Congressional Representation: Apportionment

- That's the theory, but what does this look like?

- This table shows that the Senate GOP has only once represented more Americans than Dems between 1990-2020, but has controlled the Senate for 18 out of those 30 years

Election Year	Seats Won by Party Caucus on Election Day		Proportion of 50-State Population Represented		3-Election Cycle Aggregate	Three-Cycle Aggregate National Vote	
	Democratic	Republican	Democratic	Republican	Years	Democratic	Republican
2020	50+VP	50	56.5%	43.5%	2016-2020	50.3%	43.4%
2018	47	53	52.0%	48.0%	2014-2018	50.2%	42.8%
2016	48	52	55.3%	44.7%	2012-2016	50.5%	44.2%
2014	46	54	53.3%	46.7%	2010-2014	50.4%	46.5%
2012	55	45	58.2%	41.8%	2008-2012	51.8%	45.1%
2010	53	47	56.3%	43.7%	2006-2010	50.8%	46.1%
2008	59	41	62.1%	37.9%	2004-2008	52.5%	44.6%
2006	51	49	56.8%	43.2%	2002-2006	51.3%	45.9%
2004	45	55	50.5%	49.5%	2000-2004	49.0%	47.6%
2002	49	51	55.2%	44.8%	1998-2002	48.4%	48.3%
2000	50	50+VP	58.0%	42.0%	1996-2000	48.8%	48.2%
1998	45	55	50.5%	49.5%	1994-1998	47.8%	49.8%
1996	45	55	49.7%	50.3%	1992-1996	48.7%	47.8%
1994	48	52	52.3%	47.7%	1990-1994	49.1%	47.6%
1992	57	43	66.0%	34.0%	--	--	--
1990	56	44	59.4%	40.6%	--	--	--

Congressional Representation: Apportionment

- The problem with gerrymandering and Senate malapportionment ***is not*** that it benefits one particular party over the other

- It is anti-democratic even if more people want it
 - It violates the principle that all people are equal
 - It violates the principle that the majority (or a supermajority) should govern
 - It violates the principle that the government they elect should be accountable to them

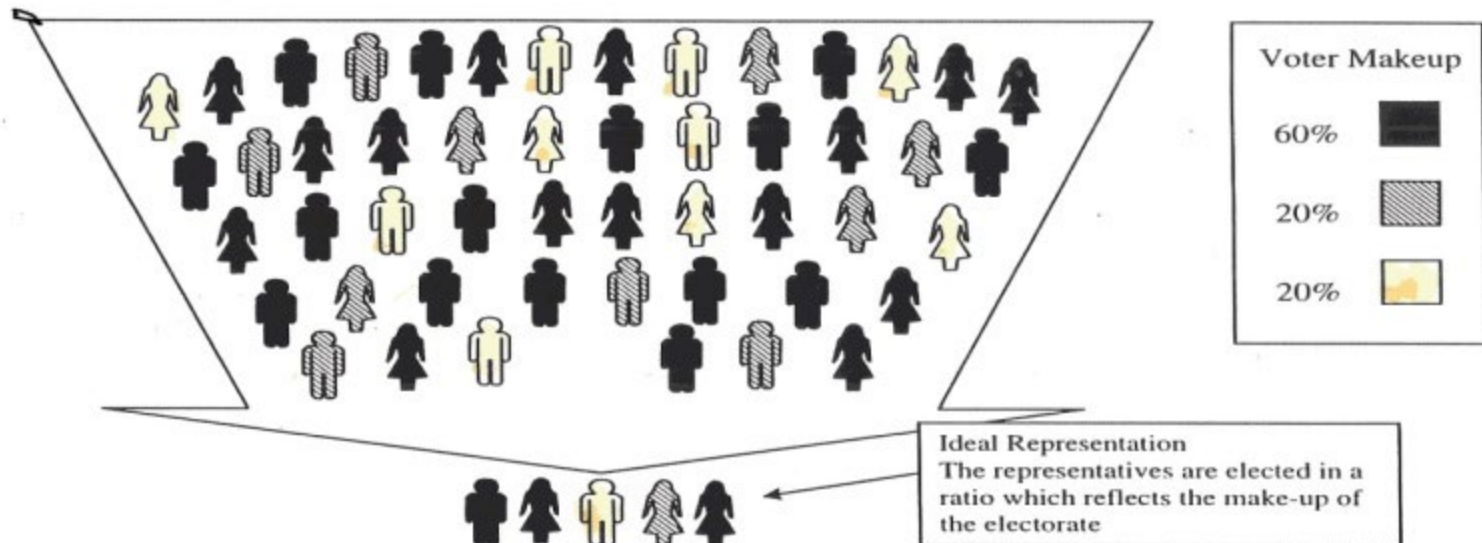
- It is also bad for the country that party stops trying to win fairly

- This cripples the political system
- If the party in power is not accountable to the people, the rules of the electoral game to lock in the minority's advantages in elections
 - This is arguably what the GOP has begun doing over the past decade
- When big parties give up on winning elections fairly, democracy is in serious danger



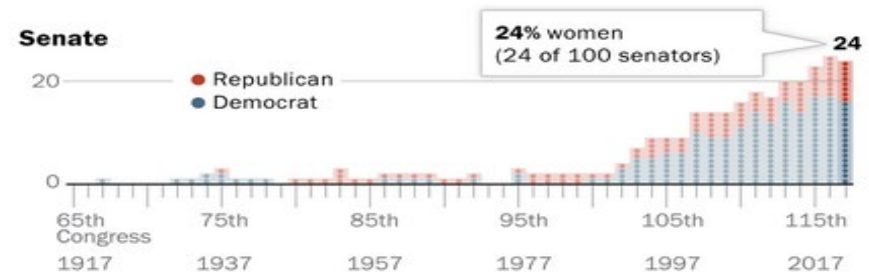
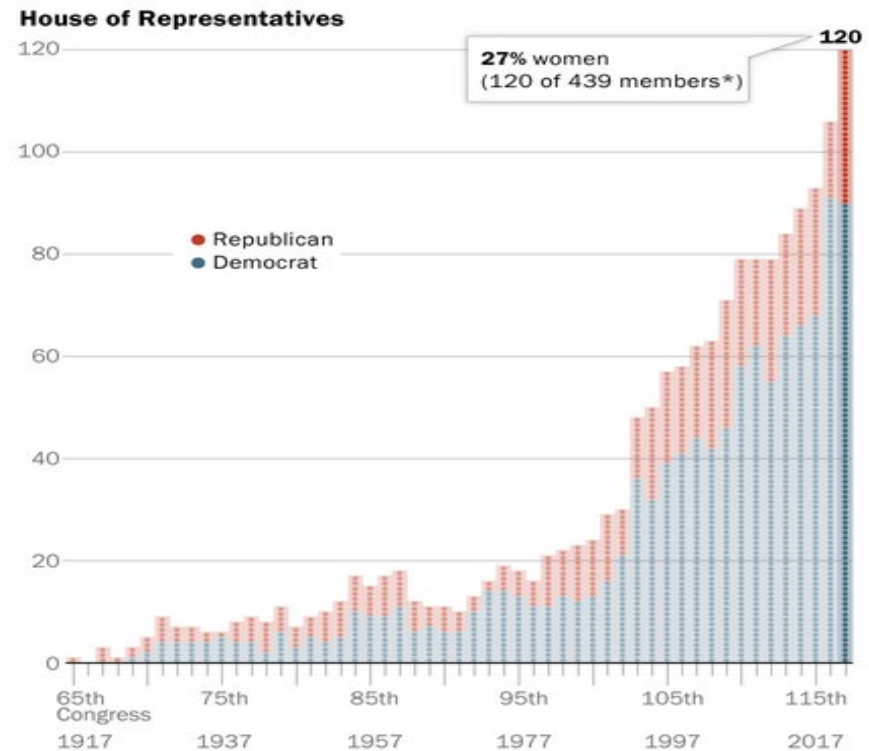
Congressional Representation: Descriptive Representation

- Surprisingly recent growth of representation of women and ethnic minorities
 - Bringing Congress closer to (Anti-Federalist) ideal of **descriptive representation**
 - Also known as mirror representation, descriptive representation means those elected resemble the electorate



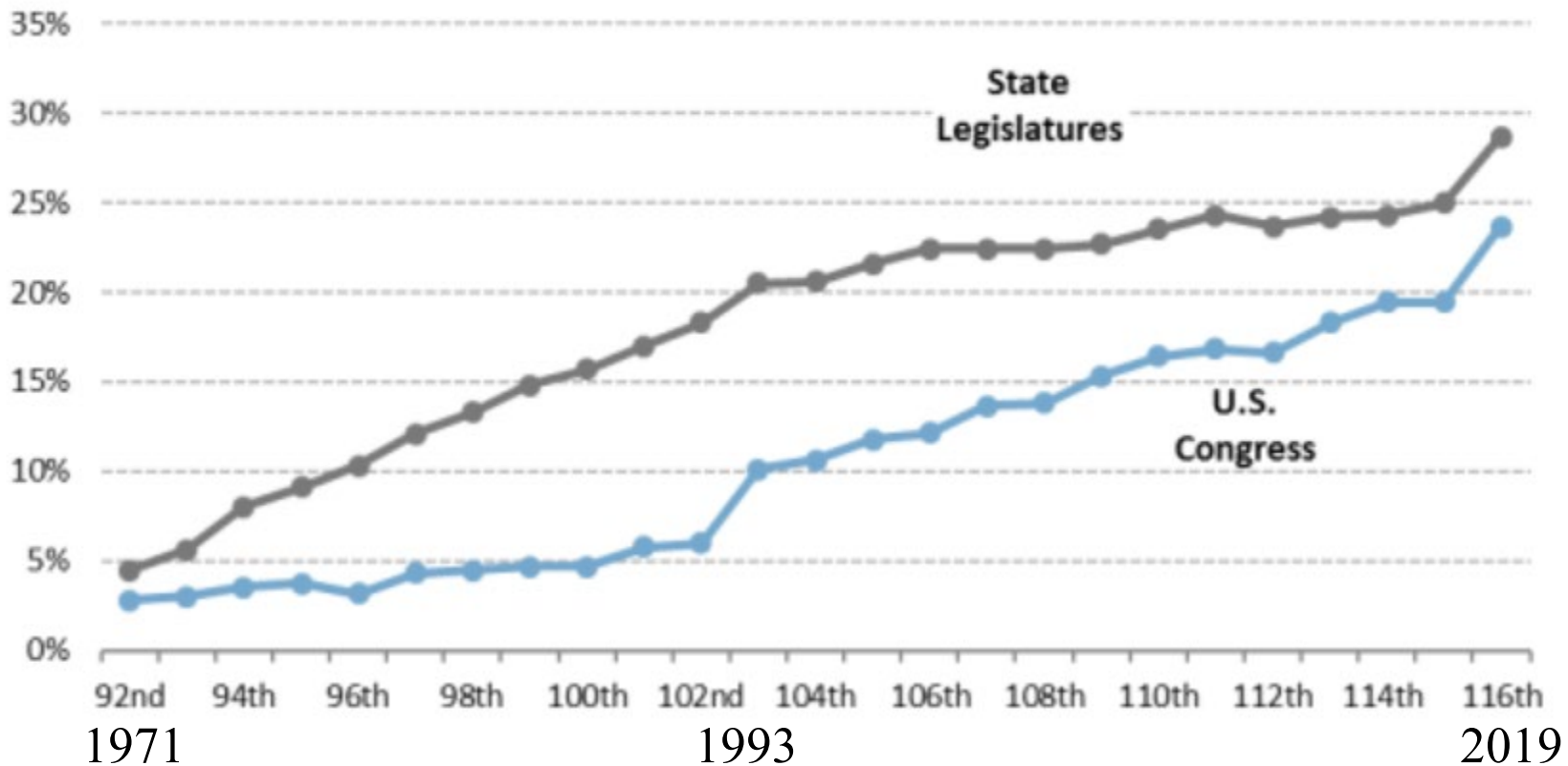
Congressional Representation: Descriptive Representation

This shows the number of women in Congress has increased steadily starting in the early 1990s, but it still falls well short of descriptive representation (which would be 50%).



Congressional Representation: Descriptive Representation

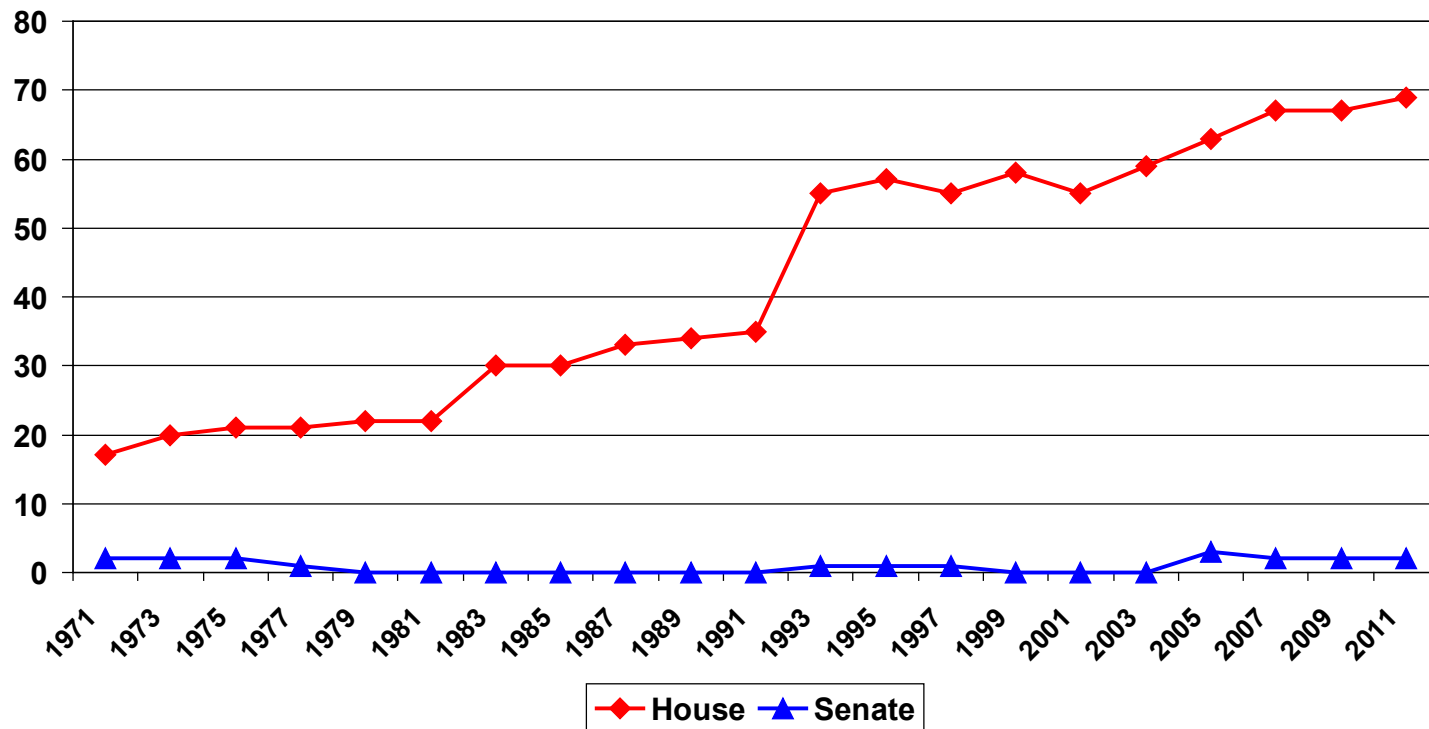
Figure 4. Women in Congress and State Legislatures



This shows the share of representatives in Congress (blue) and in state legislatures (light grey) that are women. State legislatures train women candidates. Rising rates there came before 1990s surge in Congress. Recent upsurge, continued in 2022.

Congressional Representation: Descriptive Representation

- Number of Blacks & Hispanics in U.S. Congress

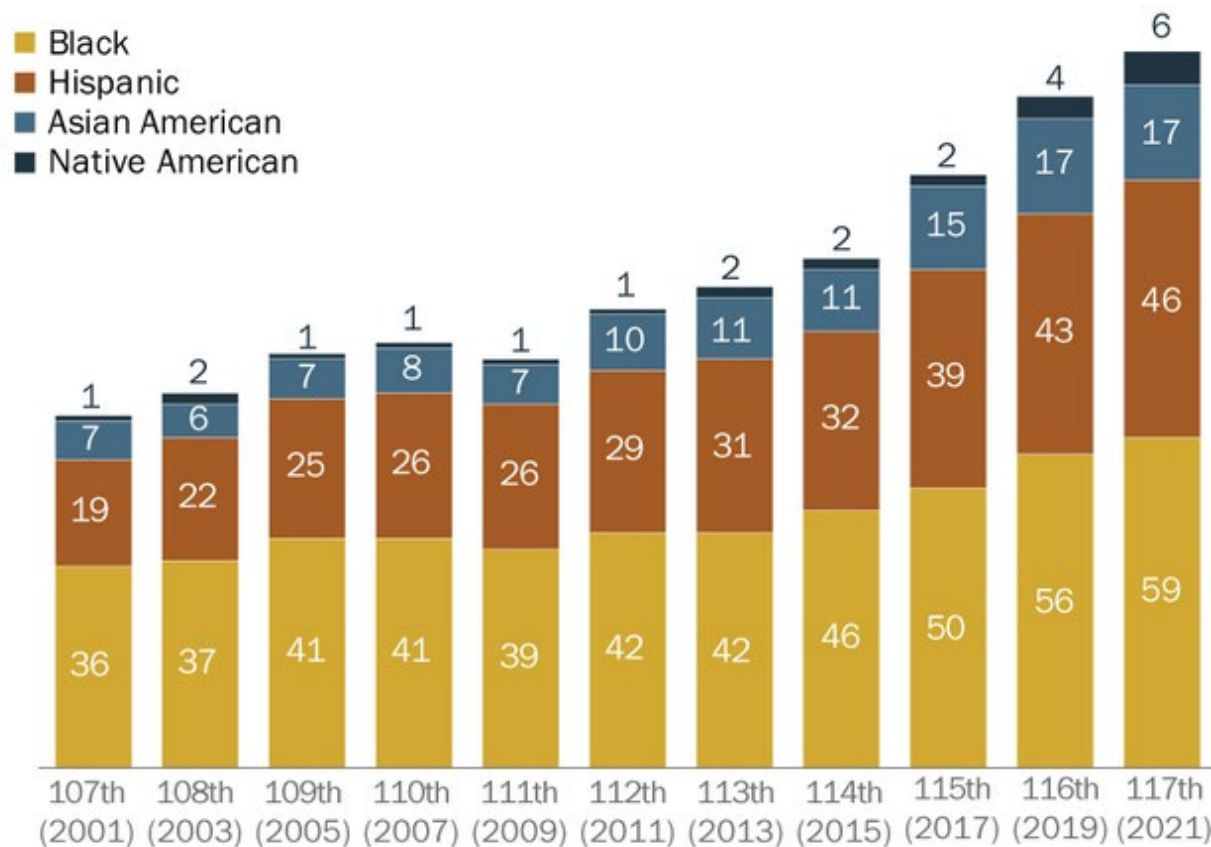


This shows the share of representatives in House (red) and Senate (blue) that are black or Hispanic. There are still almost no black or Hispanic members in the Senate, while the House has seen significant rise in numbers.

Congressional Representation: Descriptive Representation

Growing racial and ethnic diversity in Congress

Number of non-White House and Senate members by race/ethnicity



This shows the share of Congress that is racial and ethnic minorities. Again, we see a gradual rise in numbers.

Note: Nonvoting delegates and commissioners are excluded. Figures for the 117th Congress are as of Jan. 26, 2021. Asian Americans include Pacific Islanders, and

Congressional Representation: Descriptive Representation

- Factors and institutions supporting greater ethnic & gender diversity
 - Civil rights-era voting laws
 - Minorities and women gained more political experience serving in state & local government
 - Majority-minority voting districts
 - Minority caucuses as support networks
 - Yet still short of descriptive representation
 - Congress remains largely white and male
 - Women 51% of population but 24% of Congress
 - Blacks 13% of population but 9% of Congress
 - Hispanics 13% of population but 7% of Congress

III – How does Congress get things done (or fail to)?

Herding Cats in Congress

- Two institutions inside Congress help it to get things done
 - Parties (and party leaders)
 - Committee system

Parties in the Legislature

- Each party has a **caucus** (the members of that party) and leadership
- Party caucus delegates authority to party leaders to act on behalf of party's interests
 - Caucus gives leaders power to control chamber business and punish members who don't help the team
 - Members sacrifice some of their freedom to cooperate on achieving the party's goals
 - Power mostly takes the form of favors leaders can grant or withhold
 - Ex: committee assignments, space on or direction of the legislative agenda, help with election campaign particularly fundraising
- But! This is delegation, so party leaders are the **agents** of members
 - Members as principals can discipline leaders

**Liz Cheney removed from House
GOP leadership**

Leadership Positions: House vs Senate

- Party leadership is different in each house of Congress
 - Leadership is much stronger in House of Representatives than in Senate
 - Why?
 - Rules Committee (House) vs. Unanimous consent decrees (Senate)
 - Rule for limiting debate very weak in Senate (the **filibuster**)
 - House leadership determines who chairs committees; seniority determines it in Senate
 - Means House leaders can more easily and severely punish members who step out of line, and have better control over the chamber

Leadership Positions: House vs Senate

- House: The majority party is led by the **Speaker of the House**, whose chief assistants are the **majority leader** and the **majority whip**
 - The minority party has a **minority leader** and party whips to lead them
- Senate: Majority party leader is the **majority leader**
 - Position didn't emerge until late 1800s
 - Why did it take so long?
 - Senators initially saw themselves as ambassadors of sovereign states and so demanded equal status; refused to delegate
 - Smaller body—didn't reach 100 till 1959; House had 100 MCs in 1793—so Senate could get by without formal leadership
 - Even now, party leadership in the Senate is more collegial and less formal than in the House

Leadership Positions: Senate

- Power and influence exerted by Senate leaders depends largely on their political skills and the extent of intraparty divisions
 - This is because of a lack of resources & delegation from members
 - Ex: Manchin/Sinema sink voting rights bills, leadership can't discipline them
- The minority party has greater influence in the Senate
 - This is partly because so much of Senate's business is conducted under **unanimous consent agreements** negotiated by party leaders
 - These agreements, which can be killed by a single objection, govern the order in which bills are considered and the length of debate allotted to them
 - Biggest reason for the minority party's greater power in the Senate is the **filibuster**
 - The filibuster operates as a supermajority requirement to pass ordinary legislation

Committees also Help Congress Get Things Done

- The other institution that helps Congress get things done is the committee system
 - A committee is just a small group of legislators who take on a small, special set of tasks, or “jurisdiction”
 - They have a chairperson who has special powers to assemble it, control its agenda and rules, invite witnesses for hearings, etc.
 - Allows chamber to divide up its tasks, division of labor like an assembly line

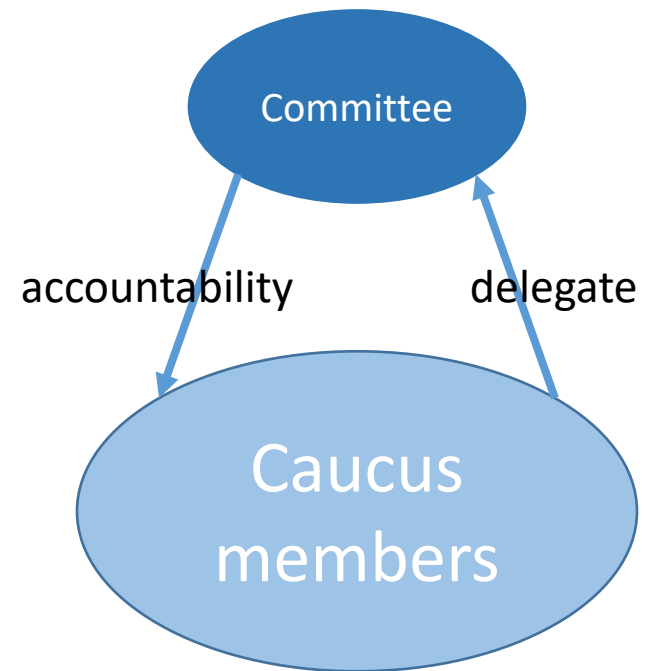
Committees also Help Congress Get Things Done

- By delegating power to committees, congresspeople get things done
 - Committees set up a trade: give members special influence over small pieces of legislative turf in exchange for doing the hard work
 - Gather and share information;
 - Write laws;
 - Build coalitions
 - Costly and thankless jobs!



Principal-Agent Problem of Congress to Committees

- Committees have a lot of power, so how do members of Congress make sure they don't abuse it when delegating to them?
 - Select good agents
 - Appoint representative committees (i.e., similar ideological composition to party)
 - Stack important committees with loyal partisans
 - Choose chairs who are loyal to leadership
 - Rewards/punishments
 - Reward good service and loyalty with bigger budgets for committee, better committee appointments for committee members, possibility of becoming chair
 - Alter committee jurisdictions



Committees also Help Congress Get Things Done

- What are the committees' specialized jurisdictions?:
 - **Substantive (Judiciary Committee, Armed Services)**

House Standing Committees	Senate Standing Committees
Agriculture	Agriculture, Nutrition, Forestry
Appropriations	Appropriations
Armed Services	Armed Services
Budget	Banking, Housing, and Urban Affairs
Education and Labor	Budget
Energy and Commerce	Commerce, Science & Transportation
Ethics	Energy and Natural Resources
Financial Services	Environment and Public Works
Foreign Services	Finance
Homeland Security	Foreign Relations
House Administration	Health, Education, Labor, & Pensions
Judiciary	Homeland Security and Gov't Affairs
Natural Resources	Judiciary
Oversight and Reform	Rules and Administration
Rules	Small Business and Entrepreneurship
Science, Space, and Technology	Veterans' Affairs
Small Business	
Transportation and Infrastructure	
Veterans' Affairs	
Ways and Means	

Committees also Help Congress Get Things Done

- What are the committees' specialized jurisdictions?:
 - Substantive (Judiciary Committee, Armed Services)
 - **Money (House: Ways and Means, Appropriations; Senate: Finance and Appropriations)**

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 - **Housekeeping (Ethics, Printing, Library of Congress)**

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Homeland Security	Foreign Relations
House Administration	Health, Education, Labor, & Pensions
Judiciary	Homeland Security and Gov't Affairs
Natural Resources	Judiciary
Oversight and Reform	Rules and Administration
Rules	Small Business and Entrepreneurship
Science, Space, and Technology	Veterans' Affairs
Small Business	(Joint Committee on Printing)
Transportation and Infrastructure	(Joint Committee on the Library)
Veterans' Affairs	
Ways and Means	

Committees also Help Congress Get Things Done

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 - Housekeeping (Ethics, Printing, Library of Congress)
 - **House Rules Committee**

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Judiciary	Homeland Security and Gov't Affairs
Natural Resources	Judiciary
Oversight and Reform	Rules and Administration
RULES	Small Business and Entrepreneurship
Science, Space, and Technology	Veterans' Affairs
Small Business	
Transportation and Infrastructure	
Veterans' Affairs	
Ways and Means	

Committees also Help Congress Get Things Done

- What are the committees' specialized jurisdictions?:
 - Substantive (Judiciary Committee, Armed Services)
 - Money (House: Ways and Means, Appropriations; Senate: Finance and Appropriations)
 - Housekeeping (Ethics, Printing, Library of Congress)
 - House Rules Committee
- Some are better than others; members work their way up

House Standing Committees	Senate Standing Committees
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Ways and Means	

What Do Committees Do?

- Three (or four, in the Senate) functions of committees:
 - Investigate problems/hold hearings
 - Draft legislation
 - Oversight
 - In Senate: **advise and consent** on executive nominees
- Committees also help the parties advance their interests
 - 'Bottle up' bills that hurt party; 'report out' ones that help it
 - Avoid embarrassing hearings
 - Example: There were no serious oversight hearings into Trump admin malfeasance and corruption while GOP controlled Congress 2017-19

IV – How is polarization changing Congress?

Congressional Trends: Polarization

- The biggest change in Congress in recent years has been the increase in polarization
 - We're talking about polarization in Congress, which is not the same thing as polarization in the public or in public opinion
- How do we know there's been polarization in Congress?
 - Evidence: Percentage of party unity votes has grown
 - Evidence: Ideological gap has grown
- This has fundamentally changed the way Congress works (or doesn't work)

Congressional Trends: Polarization

Average Party Unity Scores, House

Percentage of House party unity votes on which a member voted in agreement with a majority of his or her own party



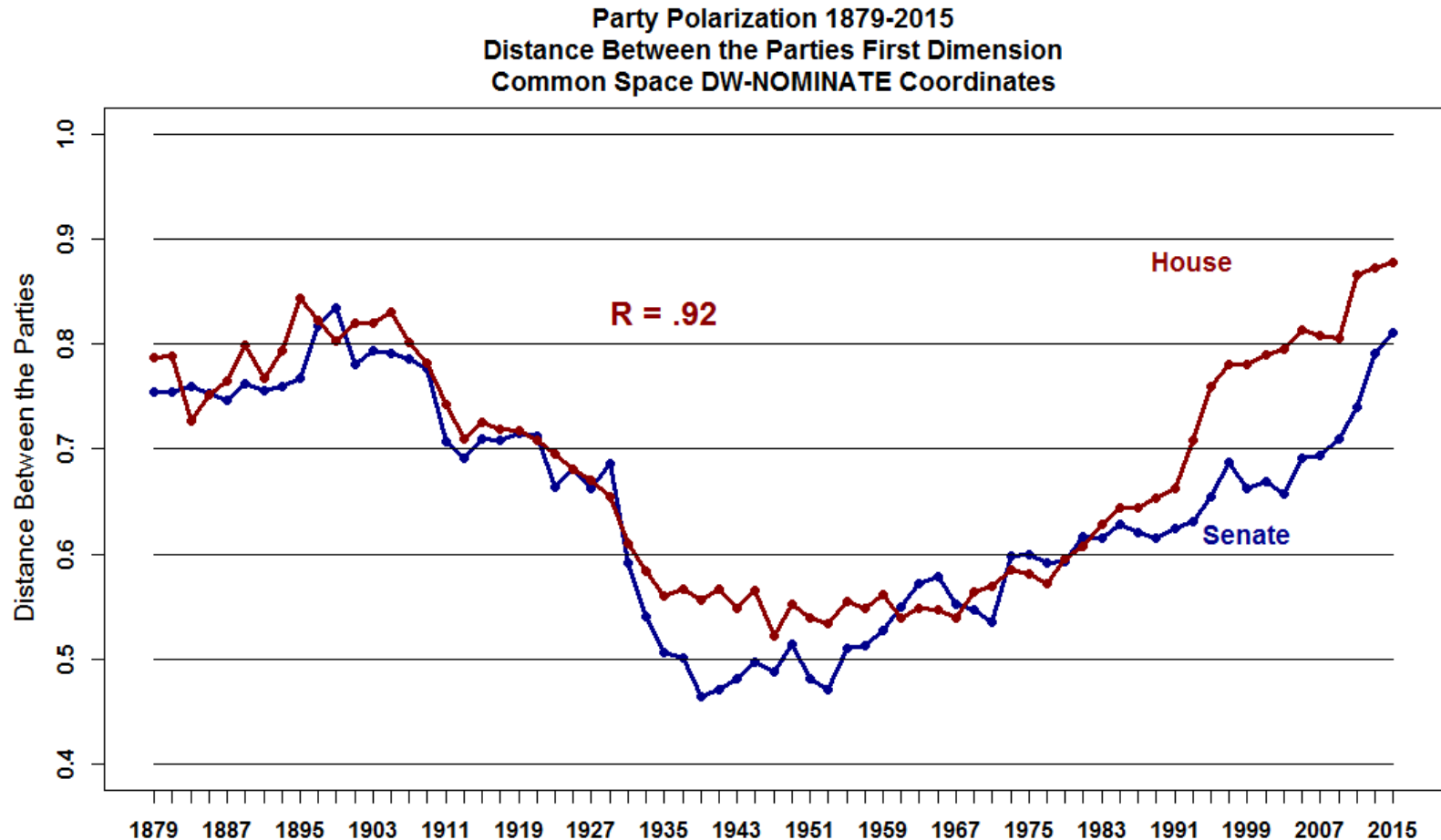
Average Party Unity Scores, Senate

Percentage of Senate party unity votes on which a member voted in agreement with a majority of his or her own party



This shows the share of votes taken in each house of Congress where all the members of the parties vote together against each other, or what are called “**party line votes**.” The rise in party line voting is a clear sign of polarization, as there are fewer bipartisan voters and laws passed.

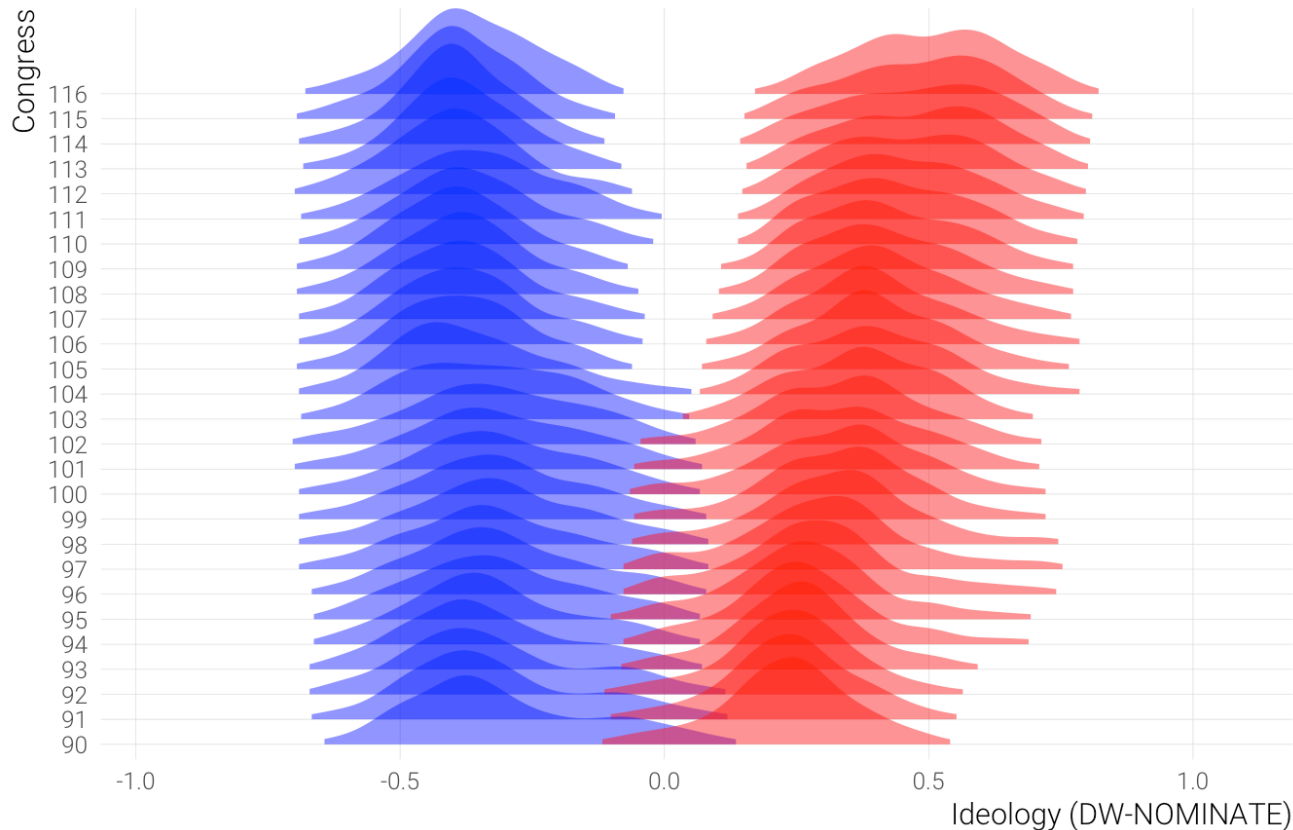
Congressional Trends: Polarization




This shows the distance between the parties based on how they vote on bills in Congress over time. The growth in distance since the 1960s realignment is a sign of polarization. Also, polarization is common in US history. Mid-20th century was weird because southern conservatives were in the Democratic party; created appearance of bipartisanship.

Congressional Trends: Asymmetric Polarization

Polarization Between House Members, 1960-2018



 @gelliottmorris | TheCrosstab.com

This shows left-right movement of parties in the House. It shows the Republican party has moved decidedly to the right since the 1980s, while Democrats moved slightly to the left. The greater movement to the extreme of the GOP is known as **asymmetric polarization**.

Congressional Trends: Polarization

- Causes of increased polarization:
 - Southern re-alignment
 - South goes from solidly Democratic to solidly Republican
 - Perhaps *the* most important development in American politics since 1960
 - Stronger links between partisan identification and social identity
 - Major social cleavages now map onto partisan divide, where both parties used to have more people from all walks of life
 - This is known as social sorting

Congressional Trends: Polarization

- Effects of Increased Polarization on Congress:
 - Greatly increased pressure to vote with party on every issue
 - MCs can't be mavericks on some issues; can't vote conscience
 - Less bipartisanship, compromise, and across-the-aisle deal making
 - This is a HUGE problem because symmetric bicameralism + POTUS veto forces compromise
 - Pressure to eradicate procedural hurdles to the majority's will and press power to the utmost: “constitutional hardball”
 - Example: elimination of the filibuster for judicial nominees; Merrick Garland and Amy Coney Barrett nominations
 - More priority, time, and energy devoted to partisan conflict rather than to legislating, oversight, etc.

Congressional Trends: Polarization

- Effects of Increased Polarization cont'd:
 - Big, transformative policies are made with less deliberation, minimal input and support from other party
 - More legislation is written behind closed doors by party leaders with unknown amounts of special interest influence
 - Reduced pork barrel spending
 - Yay?

Congressional Trends: Polarization

- A polarized House of Representatives
 - A cohesive house majority can pass its agenda while limiting opportunities for the minority party to have any say
 - Closed rules
 - Remove decision making from committees

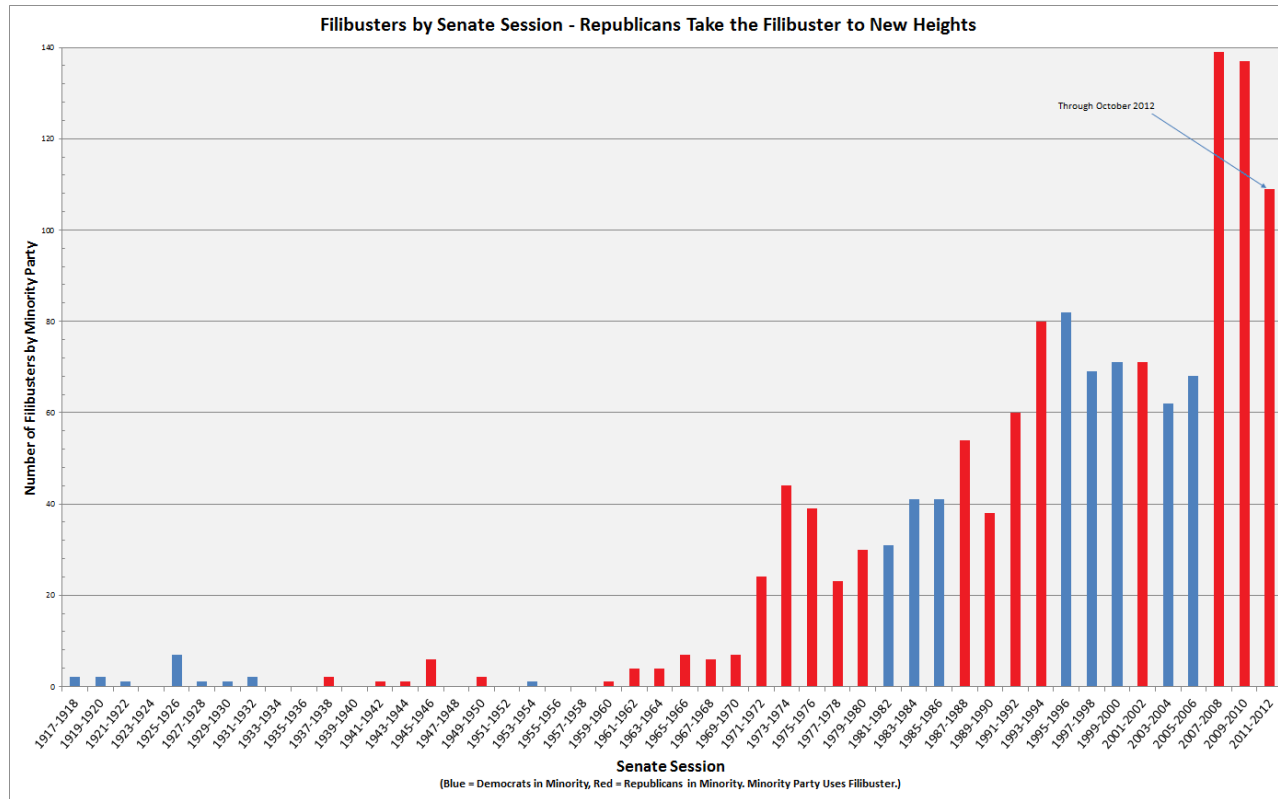


Nancy Pelosi has been one of the most effective House leaders in US history

Congressional Trends: Polarization

- A polarized Senate
 - The minority can kill legislation through the use of the **filibuster**
 - The filibuster began in the 19th century as the Senate practice of talking a bill to death. Today, it means killing bills by simply threatening to do so
 - Defeating a filibuster requires a **cloture vote**, which requires a supermajority vote of 60 senators
 - Winning a cloture vote allows the bill to go to a final, majority-rule vote
 - Use of the filibuster is now routine
 - Filibuster used to be an exceptional weapon used only rarely
 - This has made the Senate a burial ground for legislation and the primary center for **gridlock** in the federal government

Congressional Trends: Polarization



This shows the growth in use of the filibuster over time. The filibuster was used very rarely before the 1960s. There were three big spikes in its use; in the early 1970s, in the early 1990s, and in the early 2010s. All these were periods when Republicans were in the minority in the Senate, making them primarily responsible for normalizing its use and so for much congressional gridlock.

Wrapping Up

- Congress is the center of the federal government
 - It is unique in the world for combining symmetric bicameralism with a supermajority requirement in the upper house
- The way it represents the American people has changed in recent years
 - Descriptive representation has improved (it looks more like America)
 - But gerrymandering and Senate malapportionment continues to harm democracy
- Congress gets things done via party leadership and committees
- Polarization has changed how Congress works, straining the American constitutional order