Things Aren't Going That Well Over There Either: Party Polarization and Election Law in Comparative Perspective

David Schleicher[†]

ABSTRACT

One of, if not the, most important changes in American political life over the last 30 or so years has been the rise of extreme party polarization. Our two major parties are increasingly ideologically distinct and distant from one another and increasingly willing to abandon long-standing institutional norms and short-term policy compromise in the name of achieving long-run party goals. Efforts to understand why the parties have changed have been largely parochial, looking for explanations exclusively in American politics, history, media, and institutional arrangements. This focus has logic to it. Politics in most other advanced democracies does not feature the same degree of polarization between parties; therefore, the answers for why American politics has gone in this direction seem to lie inward rather than abroad.

But this inward focus is still a mistake. This short essay argues that a common shift in voter preferences towards more radical and fundamentalist opinions, by even a small slice of the electorate, can explain polarization in the United States and changes in politics abroad. In many European countries with proportional representation (PR), we have seen the rise of parties so radical that established parties refuse to form coalitions with them. In "Westminster" systems, which, due to their use of first-past-the-post vote counting and single-member districts, are supposed to tend towards having two parties, we have seen a rise in third- and fourth-party voting. Notably, in most Westminster systems, there is little intraparty democracy.

[†] Associate Professor, George Mason University School of Law.

This leaves groups of voters with more radical opinions without the ability to influence mainstream parties, which makes those with radical opinions more willing to waste votes. A plausible story about American political development is that the same voters and interest groups who would form radical parties in PR systems and support spoilers in Westminster systems use intraparty democracy to influence our two-party system and create polarization. Election laws and institutional design shape the way radicalism influences politics.

If this is right, several lessons follow. Any effort to understand why American parties have changed must look at factors that are common across many western democracies. Further, the rise of radical parties in PR systems and spoilers in Westminster systems have created governance problems that are similar to the problems created by our extreme polarization. We should thus be skeptical that there are institutional design reforms that can make American governance work well in the face of polarization.

I. INTRODUCTION: POLARIZATION IN COMPARATIVE PERSPECTIVE

The major structural story in American politics over the last few decades has been party polarization. And it just seems so *American*. Trying to explain the reasons behind the gulf between our political parties and the chosen tools of partisan warfare to foreigners is nearly impossible. One throws up one's hands at the very prospect of providing some insight or context to questions from well-meaning Swedes or Germans about, say, why we have a debt limit and how it has become a political hot potato.[1] Or why prominent figures on right and left wing television are so angry that they do things like describe moderate academic-turned-regulator Cass Sunstein as "the most evil man, the most dangerous man in America,"[2] or tell a former Vice Presidential candidate that she should eat feces.[3] While the

---

[1] The impossibility of explaining the debt ceiling was one of the funnier episodes of *The West Wing*. "So this debt ceiling thing is routine or the end of the world?" asked one character. The reply: "Both." *The West Wing: In God We Trust* (NBC television broadcast Mar. 23, 2005).

[2] CASS R. SUNSTEIN, CONSPIRACY THEORIES AND OTHER DANGEROUS IDEAS back cover (2014) (quoting Glenn Beck).

[3] *See* Leslie Larson, *MSNBC host Martin Bashir apologizes for 'shameful'*

broad ideological differences of the parties are themselves very different from politics elsewhere, perhaps the most difficult thing to explain is the fundamentalism of American political party opinion. Instead of agreeing to middle-ground answers between the admittedly-distant ideological midpoints of party opinion, today's Congressional parties—although not symmetrically—seem happier to stay pure to their ideological commitments, even at the cost of risking defaulting on our debts, upending long-standing institutional arrangements, or even achieving small gains that move policy closer to their preferences than the status quo.

Unsurprisingly, a great deal has been written about party polarization by political scientists, legal scholars, and others.[4] But almost all of it has focused on the United States exclusively, taking for granted that the changes in our parties are rooted in American history, American election and constitutional law, American public policy changes, and American political moves. The variety of governance changes that have arisen from polarization—gridlock, regular government shutdowns and near-defaults, power flowing to the Executive and away from Congress—are understood as the result of the interaction between American politicians and social groups and the design of our institutions.

But a quick glance around the world, and particularly at western European democracies, suggests that lots of countries are having governance problems driven by changes in the amount and type of radical opinion.

Across the proportional representation systems of Europe, the last few decades have seen the rise of parties—from right-wing nationalists to former communists to hard-to-describe protest movements—that are so radical that mainstream parties cannot join with them in coalitions.[5] Their rise has made it very hard to form ideologically-coherent coalitions in many countries,

---

comments about Sarah Palin, N.Y. DAILY NEWS (Nov. 19, 2013, 9:21 AM), *available at* http://www.nydailynews.com/news/politics/martin-bashir-apologizes-sarah-palin-article-1.1521647, *archived at* http://perma.cc/8HQL-EEHE.

[4] *See generally* ALAN I. ABRAMOWITZ, THE DISAPPEARING CENTER: ENGAGED CITIZENS, POLARIZATION, AND AMERICAN DEMOCRACY (2010); SETH E. MASKET, NO MIDDLE GROUND: HOW INFORMAL PARTY ORGANIZATIONS CONTROL NOMINATIONS AND POLARIZE LEGISLATURES (2009); NOLAN MCCARTY, KEITH T. POOLE AND HOWARD ROSENTHAL, POLARIZED AMERICA: THE DANCE OF IDEOLOGY AND UNEQUAL RICHES (2006).

[5] *See* note 83.

leading to grand coalitions between ideologically-opposed major parties or minority governments unable to pass clear policy programs.

Political scientists have long thought that traditional Westminster systems,[6] like Britain and Canada, with parliaments elected from single-member districts using first-past-the-post vote counting, are likely to have one-party majority governments, a result of two-party systems with both parties catering to the median voter.[7] But, in 2011, there was no large country with a Westminster system with a single political party controlling a majority of seats.[8] The demise of "Duverger's Law," both at the national and district level, has removed a main virtue of Westminster constitutional arrangements—that they provide voters with simple choices between coalitions that, if they win, will run the government.[9] Further, wide ideological splits dominated the terms of debate in important Westminster system countries, if not necessarily between major parties. For

---

[6] Some Westminster countries—like Australia and Ireland—now use systems that allow for proportionality by using ranked-choice/instant run-off voting. For broad discussions of how this has worked, *see generally* SHAUN BOWLER & BERNARD GROFMAN, ELECTIONS IN AUSTRALIA, IRELAND AND MALTA UNDER THE SINGLE TRANSFERABLE VOTE (Springer eds., 2000). Clearly, the dynamics discussed in the paragraph below do not apply to such elections. Thanks to Mark Aronson for suggesting this clarification.

[7] This tendency is so much a part of election law that it is known as "Duverger's Law" after famous political scientist Maurice Duverger. *See* MAURICE DUVERGER, POLITICAL PARTIES: THEIR ORGANIZATION AND ACTIVITY IN THE MODERN STATE 217 (Barbara North & Robert North trans., Methuen & Co. 2d ed. 1959) (1951) ("[W]e must not . . . underestimate the importance of one general factor of a technical kind, the electoral system. Its effect can be expressed in the following formula: *the simple-majority single-ballot system favours the two-party system.*").

[8] *See* Patrick Dunleavy, *Every key 'Westminster model' country now has a hung Parliament, following Australia's 'dead heat' election*, LSE BRITISH POLITICS AND POLICY BLOG (Aug. 23, 2010), http://blogs.lse.ac.uk/politicsandpolicy/every-key-'westminster-model'-country-now-has-a-hung-parliament-following-australia's-'dead-heat', *archived at* http://perma.cc/6KFD-ZUDU. Following elections in 2011, however, Canada returned to having a government formed by one party. *See* Patrick Brethour, *With gains across Ontario, Tories find stability*, GLOBE AND MAIL, May 3, 2011 at A1. Duverger's Law is weak at the district level in most Westminster systems as well. *See* Patrick Dunleavy & Rekha Diwakar, *Analysing multiparty competition in plurality rule elections*, 19 PARTY POL. 855, 880–81 (2013); Patrick Dunleavy, *Duverger's Law is a dead parrot. Outside the USA, first-past-the-post voting has no tendency at all to produce two party politics*, LSE POLITICS AND POLICY BLOG (Aug. 23, 2010), *available at* http://blogs.lse.ac.uk/politicsandpolicy/duvergers-law-dead-parrot-dunleavy, *archived at* http://perma.cc/2MAU-DYDB.

[9] Or, as I have argued elsewhere, "Duverger's Law is normative." David Schleicher, *Why Britain Loves to Party Too Much*, BALKINIZATION BLOG (May 10, 2010, 11:53 AM), *available at* http://balkin.blogspot.com/2010/05/why-britain-loves-to-party-too-much.html, *archived at* http://perma.cc/9PR8-F2BS.

instance, the recent failed effort for Scottish independence was, in large part, a story about ideological difference—the centerpiece of the "Yes platform" was that left-wing Scotland was governed by a too-conservative England.[10] Similarly, fights have emerged between parties on the same side of spectrum, including Canada's center-right parties in the mid-2000s, which bear some strong similarities to debates inside American political parties.[11]

This essay will argue that these foreign political conflicts and governance problems are likely driven by similar forces as American party polarization. One could explain what has happened across a number of different political systems with a single story: There has been a common shock to political preferences that increased the likelihood of voters holding either more radical views (*i.e.* views distant from those of the median voter) or more fundamentalist preferences (*i.e.* preferences for pushing for unlikely major policy or political changes even at the cost of achieving short-term policy goals). Such a shock could produce radical parties with no ability to join coalitions in PR systems, third-party support in Westminster systems where election laws do not permit much intraparty democracy, and polarization in the United States where radical or fundamentalist groups can vie for control of major parties through participation in primaries and caucuses. That is, we can understand a number of seemingly different governance and electoral problems across western democracies as the way different systems of election laws have processed a common change in public and/or elite opinion.

This has at least two important implications. First, to understand polarization, we should look at forces that may impact politics across western democracies. That is not to say there are not American-specific factors that explain our political development, but at least part of the story of polarization is likely to be found in economic, social, or political changes that are common across western democracies.[12]

---

[10] Pan Pylas, *Scottish mistrust of Conservatives key in campaign*, AP THE BIG STORY (Sept. 16, 2014, 4:04 AM), *available at* http://bigstory.ap.org/article/scottish-mistrust-conservatives-key-campaign, *archived at* http://perma.cc/EV2V-GQMQ.

[11] *See* note 123 and accompanying text.

[12] Of course, such investigation could reveal that the causes of radicalism and fundamentalism in Europe and North America are independent, as the rise of polarization and the rise of radical third parties did not happen at exactly the same time.

Second, a number of the very best scholars studying polarization have found that changes in election law, from public financing to open primaries to districting reform, are unlikely to affect the extent of polarization.[13] This has led them to argue that instead of focusing on reducing polarization, scholars, activists, and reformers should focus on changing the institutional design of American democracy in ways to make it work given polarization. While I agree with a number of their proposals, if I am right about the connection between American polarization and European governance problems, we should be skeptical that clever tweaks to the legislative process can make governance work despite polarization. Just as it has proved difficult to use electoral engineering to reduce polarization, it will prove difficult to use the tools of institutional design to make democracy work well when a substantial part of the population would rather hold out for fundamental change than play at the game of incremental give-and-take that defines ordinary practices inside large democracies.

More likely, like the rest of the West, the downsides associated with polarization between American political parties will continue until people decide to hold different views. Like many civil wars, both actual and metaphorical, the "Party Wars" are not likely to end until one side gives up.[14]

This short essay is divided into two parts. The first reviews what we know about American party polarization. The second

---

On the other hand, it may just be that these trends apply across political communities with some lags. Thanks to Rick Pildes for making this point to me.

[13] *See, e.g.*, Richard H. Pildes, *The Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 CAL. L. REV. 273, 333 (2011) ("[W]hile many have suggested that polarization is caused by specific institutional features of how elections are currently run, the one institutional change that appears most relevant to polarization, a potential move away from closed primaries to more open ones, of various sorts, seems likely to have at best only a modest effect on whether more moderate candidates run and get elected."); Seth Masket, *Mitigating Extreme Partisanship in an Era of Networked Parties: An Examination of Various Reform Strategies* CENTER FOR EFFECTIVE PUBLIC MANAGEMENT AT THE BROOKINGS INSTITUTION (Mar. 2014), *available at* http://www.brookings.edu/~/media/research/files/papers/2014/03/20%20masket/masket_mitigating%20extreme%20partisanship%20in%20an%20era%20of%20networked%20parties.pdf, *archived at* http://perma.cc/5SLC-93Q4.

[14] *See* BARBARA SINCLAIR, PARTY WARS: POLARIZATION AND THE POLITICS OF NATIONAL POLICY MAKING (2006). For what it is worth, institutional design has proven quite useful at institutionalizing and normalizing countries in post-conflict countries, that is providing content to political settlements and incentives to resume normal politics through either "consociational" or "centripetal" electoral design. *See* David Schleicher, *What if Europe Held an Election and No One Cared?*, 52 HARV. INT'L L.J. 109, 148–52 (2011) (summarizing the literature). But that is after conflict, not during.

lays out the argument that changes in public and elite opinion, consistent with what we know about American party polarization, would explain both changes in America and in a number of western democracies.

II. THE WHOS AND THE WHATS OF POLARIZATION

While there is a great deal of talk about polarization, defining exactly *what* polarization is turns out to be quite difficult. Further, *who* is polarizing is very much in question. While it is clear that polarization is a phenomenon between political parties, we have known at least since V.O. Key's trailblazing work showing that a political party is not an "it" but is instead a "they," with the behaviors and beliefs of many different individuals, groups, and entities tied up in how we understand what the Democratic or Republican parties are doing.[15]

This section reviews recent work on polarization. In order to cast a relatively wide net and to bring some order to the analysis, I break down the phenomenon of polarization into three "whos," and three "whats." This allows me to capture and discuss common intuitions of who is polarizing and what that means.

In order to see who is polarizing, I use a slightly-modified version of Key's famous breakdown of political parties. Key argued that political parties consist of the party-in-government (office holders who are members of a party), the party organization, and the party-in-the-electorate (voters who identify with a party).[16] In order to capture the spirit of some recent work, however, I substitute "party activists" for the party organization. "Party activists" should cover people and groups who seek to influence the direction of the party, including members of the formal party organization but also interest groups and ideological movements that are trying to push the party in one direction or another.

Across these three parts of political parties, we can track three different ideas of what polarization might mean.[17] The

---

[15] V.O. KEY, JR., POLITICS, PARTIES, AND PRESSURE GROUPS 163–65 (5th ed. 1964) (1942).

[16] *See id.*

[17] Hans Noel notes that political scientists have used the word polarization to mean four separate things: (1) dispersion, or increased variance in political opinions, so that

first idea of what polarization might mean is *separation* between the parties or a process by which political parties become ideologically clear and distinct from one another. This type of polarization happens (1) by sorting, with all liberals becoming Democrats, and all conservatives becoming Republicans, and (2) by changes in preferences, where beliefs about issues become increasingly correlated with one another, or, more formally, where the dimensions of national politics fall to one. Complete separation, under this definition, would be a situation in which all Democrats are more liberal than all Republicans, and where the liberal/conservative divide determines the stances on all issues. Separation is normatively attractive in many ways for someone committed to majoritarianism, as it provides voters with clearer heuristics and makes holding office-holders accountable simpler, although it may make deal-making between parties more difficult.

The second idea is that polarization means *distance*, or that the ideological distance between the median Democrat and the median Republican has increased. This, as we'll see, is harder to assess empirically than separation, but conceptually it is simple. If Republicans become more conservative and/or Democrats become more liberal, we have increased distance between the parties. It is hard to understand distance as normatively attractive from the perspective of democratic theory, as it likely leads to non-median voter outcomes and increased variance in public policy, although it does provide clearer choices for most voters.[18]

The third idea of what polarization might mean is increased *expressivism* and/or *fundamentalism*. Rather than thinking of polarization in terms of how different party preferences on issues are from one another, this idea would capture how

---

there are some more radical opinions; (2) bimodality, or people more separated clearly in camps of left and right with fewer people in the middle; (3) constraint, or the degree to which preferences on the major axis of politics (left-right) determine issue stances on other issues; (4) between group differences, or reduced differences among Republican and Democrats. *See* HANS NOEL, POLITICAL IDEOLOGIES AND POLITICAL PARTIES IN AMERICA 165–69 (2013). These four definitions fall roughly into the first two definitions I offer—dispersion and difference as I use it are heavily related concepts, and 2–4 into a single category of separation. But the major difference between my approach here and the traditional ones is the inclusion of expressivism or fundamentalism as a category.

[18] However, it may lead to rotating power among social groups across time, which may hold some attraction, as it is inclusive of parts of the political spectrum with radical opinion and allows for greater experimentation.

intense their preferences are for being different. In this telling, expressivism stands for the idea that party members find establishing and staying true to ideological or party differences important as an expression of individual or group identity. Fundamentalism stands for the idea that party members view fundamentally changing the nature of political conversation as their most important goal and that small changes in the status quo are not worth sacrificing a chance at major change, even if this is unlikely. Under this understanding, polarization means that establishing expressive or fundamentalist goals is increasingly more important than achieving short-term legislative achievements, respecting long-established legal process norms, or even improving the short-term national interest. Under this understanding, polarization is a rejection of incrementalism, compromise, and established norms in favor of purity and long-run views about the nature of government and politics. A belief in majoritarianism does not imply that fundamentalism is good or bad; it simply depends on one's view of the status quo.

By following these three ideas of what polarization means across three different conceptions of political parties, we can get a sense of the dynamics of modern party polarization.

A. Polarization and the Party-in-Office: Congress and State Legislatures

Polarization in Congress did not always have such a bad rap. In the 1950s, scholars looking at American political parties saw parties as lacking in ideology and coherence. Parties were viewed more as membership organizations or cultural groups than coherent, programmatic entities. This led a group of scholars, most famously E. E. Schattschneider, to call for the development of "responsible parties," or ideologically coherent, competitive, and distinct parties.[19] These parties would give voters clear heuristics on how to vote, requiring them only to know facts about the party as a whole in order to vote rationally

---

[19] *See* AMERICAN POLITICAL SCIENCE ASSOCIATION, TOWARD A MORE RESPONSIBLE TWO-PARTY SYSTEM: A REPORT OF THE COMMITTEE ON POLITICAL PARTIES OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION viii (1950) (listing Schattschneider as a member of The Committee on Political Parties, the writers of the report); E. E. SCHATTSCHNEIDER, PARTY GOVERNMENT 206–10 (1942).

in Congressional elections.[20] And because the parties would be centralized and coherent, when in power they would be able to overcome the multiple veto gates for legislation in the Constitution and pass important laws without having to engage in excessive pork spending or regional compromise.

Fast-forward sixty years, and it appears the responsible governing parties scholars have had their dreams realized. [21] Today's Republican and Democrats are distinct and largely ideologically coherent.

The leading scholars on modern polarization, Nolan McCarty, Keith Poole, and Howard Rosenthal, have developed a method for capturing ideological commitments inherent in Congressional voting.[22] Although they have a number of tools to study polarization, their most sophisticated effort is "DW-NOMINATE." Like its "NOMINATE" predecessors, this statistic captures divides in a given Congress by looking at all roll call votes, but also captures changes over time by using legislators who serve in multiple Congresses (i.e. members who get reelected) as a standard for judging the ideology of new members.[23] DW-NOMINATE captures differences in multiple "dimensions," explaining how divides among Members explain voting patterns.[24] The first dimension is the dominant division in Congress—the divide among members that explains the greatest percentage of votes—and is interpreted by McCarty, Poole, and Rosenthal to cover a liberal/conservative divide.[25] The

---

[20] *See* E. E. SCHATTSCHNEIDER, THE SEMISOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA 141 (1960) ("Democracy is a competitive political system in which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision-making process.") (emphasis removed from original).

[21] Not surprisingly, the criticism of today's polarized Congress has been turned on the responsible party government scholars. *See* Nicol C. Rae, *Be Careful For What You Wish For: The Rise of Responsible Parties in American National Politics*, 10 ANN. REV. POL. SCI 169,169–71 (2007).

[22] For a discussion of the "NOMINATE" method generally and DW-NOMINATE specifically, *see* KEITH T. POOLE & HOWARD ROSENTHAL, IDEOLOGY & CONGRESS 12–70 (2007); McCarty et al., *supra* note 4, at 16–44.

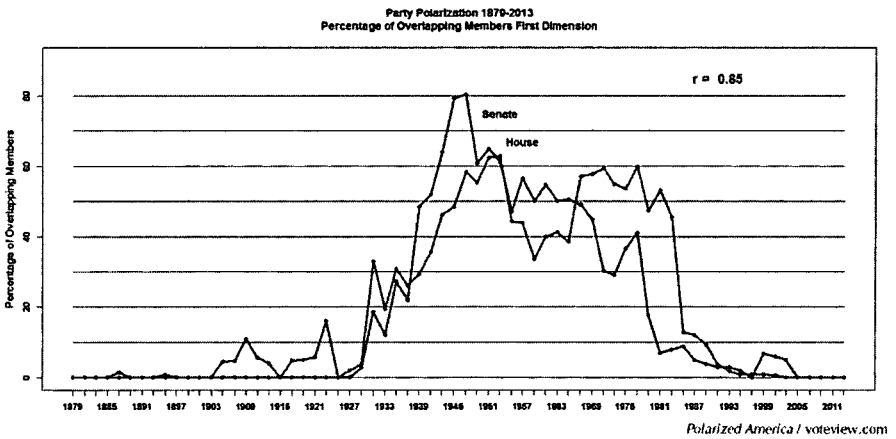
[23] *See* Poole & Rosenthal, *supra* note 22, at 28–29. For a nice summary of how DW-NOMINATE differs from the original W-NOMINATE methodology, *see* Christopher Hare, Nolan McCarty, Keith T. Poole & Howard Rosenthal, *Polarization is Real (and Asymmetric)*, THE MONKEY CAGE (May 15, 2012), *available at* http://themonkeycage.org/2012/05/15/polarization-is-real-and-asymmetric, *archived at* http://perma.cc/4ZRX-QFMC.

[24] *See* Poole & Rosenthal, *supra* note 22, at 32–35

[25] *See* McCarty et al., *supra* note 4, at 22 ("[A] simple liberal-conservative

second dimension is any other major issue that drove vote patterns in Congress in ways that were not strongly correlated with opinions on the first dimension, whether it was bimetallism in the 1880s or civil rights in the 1960s.[26]

DW-NOMINATE thus allows McCarty, Poole, and Rosenthal to capture how "liberal" or "conservative" given members are, or how members differ from one another along the dominant dimension, and how much issue stances other than those defined by the liberal-conservative divide matter to voting patterns. The first question about polarization is whether the parties are distinct from one another—that is, whether Democrats are more liberal than Republicans. To answer this question, McCarty and Poole have created a graph that shows the percentage of Democrats that are more conservative than the most liberal Republican (and vice versa):[27]



dimension does an excellent job of accounting for how members vote.").

[26] *See* Poole & Rosenthal, *supra* note 22, at 57–62.

[27] This graph is reproduced from Keith T. Poole, *The Polarization of the Congressional Parties*, VOTE VIEW BLOG (Jan. 19, 2014), *available at* http://www.voteview.com/political_polarization_2014.htm, *archived at* http://perma.cc/EZU3-C8W7.

Starting in the 1980s, the number of "overlapping members" collapsed, and today, the number is zero—the parties are completely separate. As the graph shows, this is a return to earlier periods in some respects. In the period before the Great Depression, the parties were quite distinct on economic issues. But, in earlier periods, the "second dimension" of politics often explained substantial parts of voting behavior.[28] Other beliefs held by members that were not correlated with their stances on the main economic issues in front of Congress—particularly their beliefs about race and civil rights—predicted a substantial portion of their voting patterns. Starting in 1980, the importance of a second issue dimension collapses to the point where it barely explains any voting behavior at all.[29] Knowing how conservative or liberal a member of Congress is will tell you virtually everything about their voting patterns—whether about taxes, civil rights, or abortion. And knowing whether someone is a Democrat/Republican will tell you that they are more liberal/conservative than all of the Republicans/Democrats.

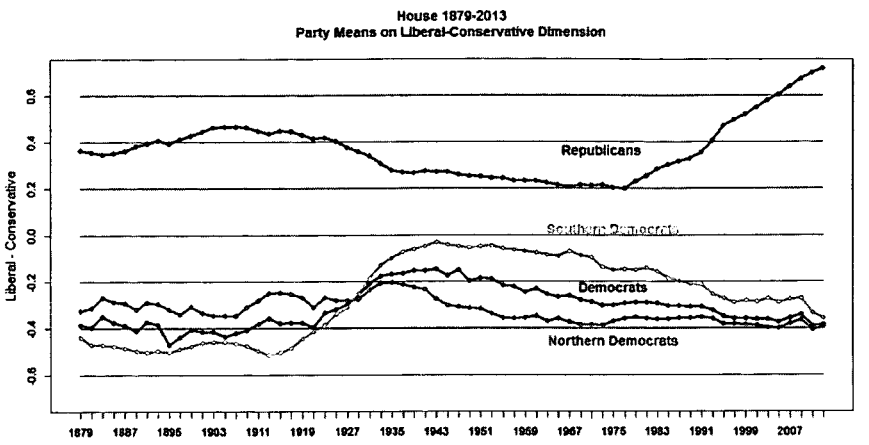
But what about *distance*, or how different the parties are from one another? The graph below created by McCarty and Poole captures party means in DW-NOMINATE scores over time in the House of Representatives (the Senate graph is similar but slightly less dramatic):[30]

---

[28] McCarty et al., *supra* note 4, at 23–25 ("Other Dimensions, such as a civil rights dimension, have largely vanished, as the coalitions on those issue have increasingly begun to match those of the liberal-conservative dimension."). However, there was a substantial period before 1912 in which the second dimension was as unimportant as it is today.

[29] *See id.* at 22. As Hans Noel notes, the "party dimension" or the degree to which members take votes for their party independent of their ideological commitments has also collapsed: "There may be some votes that define a small difference between the party and ideological divisions, but the organization of the parties is largely complementary to that of ideology today." Noel, *supra* note 17, at 136.

[30] This graph is taken from Christopher Hare et al., *supra* note 23.



Polarized America / voteview.com

As you can see, the difference in party means is increasing over time. As they note, the most recent Congress is the most polarized by this measure since Reconstruction.[31] DW-NOMINATE scores suggest that not only are the parties in Congress separate, but also that they are also distant ideologically.

Three things to note. First, while DW-NOMINATE is remarkably good at capturing differences among legislators, it is still subject to the restriction that it is based on actual votes. Because what is voted on in Congress is controlled by leadership, it might not capture distance perfectly well, as it does not include the views on what members would like to vote on.[32] And there are ways in which the extremity of opinion in today's Congress is far lower than in earlier ones. The differences of belief on questions of racial equality and civil rights, for instance, seem smaller in today's Congress than they were in the Congresses of the 1950s. Further, where sorting occurs we see increases in distance as the parties are move apart even if there are no increases in extreme opinion. While extremists have sorted between the parties, it is a bit hard to say if extremism has increased. Hans Noel argues, for instance, "Americans who are socialists or racists are more likely to

[31] *See* Poole, *supra* note 27.

[32] *See* Noel, Political Ideologies, *supra* note 17, at 168 ("In Congress, where the agenda may be manipulated, moderate members might be unable to distinguish themselves from their extreme (or moderate) colleagues.").

identify with the Democratic or Republican Parties, respectively. But there are fewer holding those extreme views."[33]

Second, as you can see in the graph above, the changes in the parties are not symmetrical. DW-NOMINATE scores show that Republicans in Congress have moved further to the right than Democrats have moved to the left.[34] This was the central thesis of one of the most discussed recent books on polarization, Thomas Mann and Norman Ornstein's *It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism*.[35] Their argument is that, while the fact that parties have become ideologically coherent fits uncomfortably with the American constitutional system, the biggest problems associated with polarization are caused by changes in one party: "[T]he Republican Party, has become an insurgent outlier—ideologically extreme; contemptuous of the inherited social and economic policy regime; scornful of compromise; unpersuaded by conventional understanding of facts, evidence, and science; and dismissive of the legitimacy of its political opposition."[36] The unpopularity of Congress is a product of Republican extremism, they argue: "When one party moves this far from the center of American politics, it is extremely difficult to enact policies responsive to the country's most pressing challenges."[37] While there is substantial disagreement over Mann and Ornstein's analysis, there is no reason to believe that the behavior of the parties is or should be symmetrical.[38] Matt Grossman and David Hopkins argue, for

---

[33] *Id.* at 167.

[34] *See* Hare, et al, *supra* note 23. *See also,* Nolan McCarty, *What we know and don't know about our polarized politics*, WASH. POST MONKEY CAGE BLOG (Jan. 8, 2014), *available at* http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/01/08/what-we-know-and-dont-know-about-our-polarized-politics/, *archived at* http://perma.cc/3N3B-JKB2 ("The evidence points to a major partisan asymmetry in polarization. Despite the widespread belief that both parties have moved to the extremes, the movement of the Republican Party to the right accounts for most of the divergence between the two parties.").

[35] THOMAS E. MANN & NORMAN J. ORNSTEIN, IT'S EVEN WORSE THAN IT LOOKS: HOW THE AMERICAN CONSTITUTIONAL SYSTEM COLLIDED WITH THE NEW POLITICS OF EXTREMISM (2012).

[36] *Id.* at xiv.

[37] *Id.*

[38] *See* L.J. Zigerell, *Are Republicans really driving congressional polarization? Maybe not*, WASH. POST, MONKEY CAGE BLOG (Sept. 11, 2014), *available at* http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/09/11/are-republicans-really-driving-congressional-polarization-maybe-not/#, *archived at* http://perma.cc/CC3J-CHVF (noting that methods other than DW-NOMINATE find that Democrats have

instance, that the major difference between the parties is that the Democrats are more responsive to multiple interest groups' demands, while Republicans are more responsive to a clear, consistent ideological commitment, leading Democrats to provide more clear policy prescriptions and Republicans to broad philosophical statements.[39]

Third, polarization is happening across politics generally, and not just in Congress. State legislatures are polarizing at the same time as Congress. Using common survey data from state legislators across states and combining this with roll call data from all legislators, McCarty and Boris Shor were able to develop data on the degree of polarization in state legislatures.[40] What they found is that, in general, polarization in most state legislatures has substantially increased over time, although it decreased in some.[41] According to recent data, more than half of the state legislatures are more polarized than Congress in the sense of having greater distance between the ideological preferences of party-affiliated legislators.[42] California is the most polarized legislature in America (and is far more polarized than Congress), and Colorado and Michigan are next. Further, just as with Congress, the polarization is asymmetric—Republicans are getting conservative faster than Democrats are getting liberal.[43]

---

moved further left than Republicans have moved right).

[39] *See* Matt Grossman & David Hopkins, *The Ideological Right v. The Group Benefits Left: Asymmetric Politics in America*, PERSPECTIVES ON POLITICS (forthcoming 2014) (manuscript at 5–9), *available at* http://matthewg.org/papers/ideologicalright.pdf, *archived at* http://perma.cc/ZNF5-PLKQ; Matt Grossman & David A. Hopkins, *Policymaking in Red and Blue: Asymmetric Partisan Politics and American Governance* APSA 2014 Annual Meeting Paper (manuscript at 8–9), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2452554, *archived at* http://perma.cc/3ELH-V7GT.

[40] Boris Shor & Nolan McCarty, *The Ideological Mapping of American Legislatures*, 105 AM. POL. SCI. REV. 530, 531–32 (2011).

[41] *See id.* at 546–49. *See also*, Boris Shor, *Polarization Trends in American State Legislatures by Chamber*, MEASURING AMERICAN LEGISLATURES BLOG (July 26, 2013), *available at* http://americanlegislatures.com/2013/07/26/polarization-trends-in-american-state-legislatures-by-chamber, *archived at* http://perma.cc/CN83-KPZY.

[42] *See* Boris Shor, *State Legislatures and Polarization*, MEASURING AMERICAN LEGISLATURES BLOG (May 21, 2013), *available at* http://americanlegislatures.com/2013/05/21/state-legislatures-and-polarization, *archived at* http://perma.cc/JH8E-9DQF.

[43] *See* Boris Shor, *How U.S. state legislatures are polarized and getting more polarized (in 2 graphs)*, WASH. POST MONKEY CAGE BLOG (January 14, 2014), *available at* http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/01/14/how-u-s-state-legislatures-are-polarized-and-getting-more-polarized-in-2-graphs, *archived at* http://perma.cc/TW6J-Y74K ("Republicans have been getting more extreme faster than Democrats in more state legislative chambers, but this is by no means universally true

The above shows how separate and distant Congressional parties have become (and many state parties as well). But as Jonathan Bernstein notes, much of what people are unhappy with in Congress is not about the distance between the parties, but their failure to compromise and their general scorched-earth attitude towards politics:

> Polarization alone doesn't make good government impossible. In theory, it's no more difficult to find a compromise midway between two numbers that are far apart than between two numbers that are relatively close. The key isn't the distance between the parties; it's the willingness to compromise. That isn't measured by partisan polarization scores. Put another way, government shutdowns don't happen because the policy gap between the parties is large; they happen when one party (or a decisive faction within a party) decides to shut down the government.[44]

Bernstein describes this as a different phenomenon than polarization, but it is better to think of it as a dimension of polarization, of the expressive or fundamentalist nature of party difference. Bernstein argues that the parties value difference and purity above compromise and support for long-standing institutional norms and that this, rather than separation or distance, is what people find problematic about modern Congresses.

Modern Congressional parties certainly seem more expressive and/or fundamentalist.[45] Norms that governed legislative procedure—from using committees to write and

---

across all states.").

[44] Jonathan Bernstein, *I'm Sick of Hearing About Political Polarization*, BLOOMBERG VIEW (July 29, 2014, 4:04 PM), *available at* http://www.bloombergview.com/articles/2014-07-29/i-m-sick-of-hearing-about-political-polarization, *archived at* http://perma.cc/6XD7-L6ZA.

[45] Mann and Ornstein argue that this too is asymmetric—that the Republicans are more fundamentalist and expressive than the Democrats: "The Democratic Party, while no paragon of civic virtue, is more ideologically centered and diverse, protective of the government's role as it developed over the course of the last century, open to incremental changes in policy fashioned through bargaining with the Republicans, and less disposed to or adept at take-no-prisoners conflict between the parties." Mann & Ornstein, *supra* note 35, at 103. Grossman and Hopkins agree, claiming that greater sway ideology, rather than group pressures, plays in the Republican Party makes them less willing to compromise. Grossman & Hopkins, *Policymaking in Red and Blue*, *supra* note 39.

organize legislation, open voting rules in the Senate, or the traditionally limited use of the filibuster—have fallen away as majority parties became stronger and less willing to rely on tools that previously forced them to compromise away their advantage.[46] The two Congresses prior to the current one featured divided control, with Republicans in control of the House and Democrats of the Senate.[47] These Congresses were long on symbolic votes, like repeals of the Affordable Care Act in the House, and short on compromises and legislative achievement, ranking as the least productive Congresses in history. Similarly, strategies that seemed somewhat unthinkable, like using the debt ceiling to try to force legislative compromise and thereby risking default, became an ordinary part of Congressional politics.

Across these three definitions, we see a wholly polarized Congress and a largely polarized party system among government officials. The parties in government are increasingly separate, distant and, in their legislative capacity, more concerned with expressive ends and fundamental change than legislative compromise.

B. Polarization and Party Activists

According to well-known theories of parties and voting like Anthony Downs's median voter theory, parties are formed by office seekers who band together to develop a brand that aids their efforts to appeal to voters.[48] According to legislative theorists of parties like Gary Cox and Mathew McCubbins, parties exist to overcome problems among legislators, like cycling or a lack of coordination.[49] John Aldrich's classic book

---

[46] For a powerful discussion of how partisanship has resulted in the end of many of these norms and procedures, *see generally* Sen. Olympia Snow, *The Effect of Modern Partisanship on Legislative Effectiveness in the 112th Congress*, 50 HARV. J. LEG. 21 (2013). None of this is to say these norms were good, but rather that they had survived for a long time but fell to modern partisanship.

[47] Ezra Klein, *Is Congress Less Productive Than It Used to Be?*, VOX (Aug. 5, 2014), *available at* http://www.vox.com/cards/congressional-dysfunction/is-congress-less-productive-than-is-used-to-be, *archived at* http://perma.cc/X3V2-ZA9V.

[48] *See* ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 137 (1957) ("Given the traditional attachment to one party or another of large blocs of voters in all [ ] classes, about the only way in which a party can form a majority is to draw further support from voters of all classes and interests.").

[49] *See* GARY W. COX & MATHEW D. MCCUBBINS, LEGISLATIVE LEVIATHAN PARTY GOVERNMENT IN THE HOUSE (2d ed. 2007); GARY W. COX & MATHEW D. MCCUBBINS,

Why Parties?: The Origin and Transformation of Party Politics in America combined these lines of argument, claiming that parties exist to help politicians get elected and to organize post-election politics:

> [P]olitical leaders . . . *those who seek and those who hold elective office*—are the central actors in the party . . . . Why then do politicians create and recreate the party, exploit its features, or ignore its dictates? The simple answer is that it has been in their interests to do so . . . . [P]arties are designed as attempts to solve problems that current institutional arrangements do not solve and that politicians have come to believe they cannot solve . . . . In the language of politics, parties may help achieve the goal of attaining policy majorities in the first place, as well as the often more difficult goal of maintaining such majorities.[50]

Under these theories, parties are created by officials to serve their own ends, but also help voters. Parties provide voters with clear heuristics and a party label, allowing them to hold incumbent parties responsible for their actions and to express ideological preference without knowing much about individual politicians.[51]

A group of scholars—Kathleen Bawn, Martin Cohen, David Karol, Seth Masket, Hans Noel, and John Zaller—challenged this thinking root and branch in their influential recent paper, *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*.[52] Instead of assuming that parties serve officials and office seekers, these scholars argue that it is best to think of parties as "coalitions of interest groups and activists seeking to capture and use government for particular goals, which range from material self-interest to high-

---

SETTING THE AGENDA: RESPONSIBLE PARTY GOVERNMENT IN THE U.S. HOUSE OF REPRESENTATIVES (2005); D. RODERICK KIEWIET & MATHEW D. MCCUBBINS, THE LOGIC OF DELEGATION: CONGRESSIONAL PARTIES AND THE APPROPRIATIONS PROCESS (1991).

[50] JOHN H. ALDRICH, WHY PARTIES? THE ORIGIN AND TRANSFORMATION OF POLITICAL PARTIES IN AMERICA 19–24 (1995).

[51] *See* Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties and Election Law*, 2013 U. ILL. L. REV. 363, 373–76 (2013) (reviewing literature on heuristic value of party label).

[52] Kathleen Bawn et al., *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*, 10 PERSPECTIVES ON POL. 571 (2012).

minded idealism."[53] Interest groups form into coalitions, according to their theory, and maximize their combined interests. They cannot use government to serve their interests too nakedly, however, because they need to win office. Their maximization of their interests is subject to the constraint that voters must not be able to tell that the party is substantially different from the preferences of the median voter.

But because voters are not well informed, there is some space—an "electoral blind spot"—that allows parties to move substantially away from median voter preferences.[54] Voters who do not pay attention to the parties' issue stances or who vote purely based on the health of the economy reduce the constraint put on parties. Rather than assume parties seek to maximize votes, moving to the center except where they are forced away from the median voter by ideological primary voters or funders, these scholars suggest that parties are constantly seeking to maximize their interests, moving away from the center, subject to an electoral constraint.[55]

This work has become a major research program, the most notable part of which has been their work arguing that "The Party Decides" presidential nominations and that the negotiations between interest groups, funders, and political organizations in the "shadow primary" are far more central to presidential nominations than the preferences of primary voters.[56] For our purposes, the key point is that, under this theory, polarization is not a weird deviation from the norm, but the desired end of partisans.

But the theory that Bawn et al. offer doesn't on its own explain the changes in American politics over the last 30 years. In a terrific recent book, however, Hans Noel shows that parties have largely been following developments among ideological groups outside of formal politics.[57] The combinations of beliefs

---

[53] Bawn, *supra* note 52, at 571.

[54] *Id.* at 577–78.

[55] The strength of the electoral constraint varies, due to a whole variety of factors. For instance, "congruence" or fit between newspaper markets and congressional districts increase effort by Members of Congress, suggesting that increased media attention results in a greater electoral constraint. *See* Christopher S. Elmendorf & David Schleicher, *Districting for a Low-Information Electorate*, 121 YALE L.J. 1846, 1862–66 (2012) (reviewing literature on media-market/district congruence).

[56] MARTY COHEN, DAVID KAROL, HANS NOEL & JOHN ZALLER, THE PARTY DECIDES: PRESIDENTIAL NOMINATIONS BEFORE AND AFTER REFORM 6–7 (2008).

[57] Noel, *supra* note 17, at 119.

that form ideologies are not in any way necessary—*i.e.*, the combination of preferences we now think of as liberal (interventionist into markets, in favor of civil rights laws and policies like affirmative action, socially permissive) and conservative (roughly speaking, the opposite) are by no means the only way one could group together specific issue preferences.[58] Through an exhaustive study of the ideological position of pundits, editorial pages, and magazines, Noel was able to show that "liberal" and "conservative" groupings of issue preferences emerged among opinion writers in the 1950s.[59] The dimensionality of opinions—that is, the degree to which writers had opinions that did not fall into clear liberal or conservative camps—fell substantially in the years leading up to 1950, and have remained low.[60] Opinion writers were ideologically polarized into liberal and conservative camps in the 1950s.

Congress has followed this ideological development. Since then, other cross-cutting dimensions to Congressional voting—including other ideological commitments, preferences driven by geography or voting in line with party leadership where that conflicts with ideological voting—have become less important. That is, today's Congress votes almost exactly as the opinion writers of the 1950s would have, in liberal and conservative blocks.[61]

What does this tell us about modern polarization? It suggests that ideological movements define a great deal of party behavior. If Noel is right, the key players in modern party politics are ideologues and interest groups, not the party-in-government or the party-in-the-electorate.

Ideologically-aligned interest groups and thinkers are not alone in their efforts to influence the direction of parties. The traditional opponents of ideological groups (other than different ideological groupings) are the formal party organization and non-ideological, cross-party interest groups. Party leaders seek to influence votes in ways that differ from ideology—they seek to keep coalitions together, further the joint interests of legislators, or whatever else. But the "party dimension," or party voting that

---

[58] *See* Noel, *supra* note 17, at 38–66.

[59] *See id.* at 67–118.

[60] *See id.* at 79.

[61] *See id.* at 134–37.

is different from ideological preference, has diminished substantially in Congress.[62]

Groups seeking to influence the government may seek to influence both parties, thereby reducing the importance of ideology. And they speak in the language of campaign dollars, providing them with influence. But something interesting has happened to political money—it has polarized as well. People who donate lots of money in politics are highly polarized, usually either heavily conservative or very liberal.[63] Small donors are also quite polarized (in contrast, business groups are more moderate in their donations, although they favor Republicans, and party organizations favor moderates). But the main sources of campaign money are themselves polarized.

What lessons can be drawn? First, Noel's book shows how parties have followed ideological developments outside of electoral politics. Opinion writers polarized, and parties followed. It would thus be no surprise if the increased fundamentalism of the parties is the product of ideological movements and trends outside of electoral politics. And there is no particular reason to assume that these trends in the development of ideologies occur exclusively inside national borders.

The limit on polarization in *A Theory of Political Parties* comes from voters. Parties will seek to maximize their ideological or other ends subject to the constraint imposed upon them by voters. The strength of this constraint varies based on how closely voters are paying attention. But the extent to which party insiders care about the constraint may also vary. If there have been changes in the attitudes of activist groups inside the parties, or inside one of the parties, that have become less interested in incremental change and more fundamentalist or expressive in their beliefs, we might imagine that they simply

---

[62] *See* Noel, *supra* note 17, at 136.

[63] *See* Ezra Klein, *A stunning graph on how money polarizes politics*, VOX (July 29, 2014, 11:20 AM), *available at* http://www.vox.com/2014/7/29/5948037/a-stunning-graph-on-how-money-polarizes-politics, *archived at* http://perma.cc/84HH-DCCK ("[T]he small minority of people who fund American politics are much, much more politically polarized than the vast majority of people who don't contribute to campaigns."); Ray LaRaja & Brian Schaffner, Want to reduce polarization? Give parties more money, WASH. POST MONKEY CAGE BLOG (July 21, 2014), *available at* http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/21/want-to-reduce-polarization-give-parties-more-money, *archived at* http://perma.cc/JY34-SM9K ("Donors are highly ideological and they support candidates who share their views.").

care less about the electoral constraint. Instead, they may be willing to push their party to take unpopular views because they view a lower chance of winning their ultimate ends as more valuable than higher odds of achieving incremental gains.[64]

C. Polarization and the Party Electorate

While legislators have polarized, studies of the electorate long found something different. In his much-discussed 2006 book, *Culture War? The Myth of a Polarized America*, Morris Fiorina argues that surveys showed that few voters were coherently ideological or had strongly-held beliefs about political issues.[65] This echoed generations of work on mass public opinion, finding voters were largely uninformed and not particularly ideological. Polarization, in this telling, is a betrayal of the people. Scholars like Aldrich and Downs argue that while parties were created by office-seekers, parties serve the interests of the public by providing clear heuristics and competitive median-voter-seeking parties.[66] Fiorina argues that our polarized parties were not behaving as Aldrich and Downs suggest and therefore were not serving the interests of voters.

Alan Abramowitz challenges this understanding of mass public opinion. He argues that politically-engaged members of the public are increasingly polarized.[67] More engaged voters—those that know and care more about politics—have over time both sorted between parties and become more ideologically consistent in their preferences. Voters as a whole are more polarized than non-voters, who have largely normally distributed preferences.[68] As the parties have sorted, so have voters, having more predictable voting patterns and featuring reduced degrees of ticket splitting.

---

[64] Another possibility is that, due to changes in the media environment or something else, voters provide less of a constraint than they once did. The demise of newspapers and the rise of partisan media may lead to weaker constraints on polarization.

[65] *See* MORRIS E. FIORINA, CULTURE WAR? THE MYTH OF A POLARIZED AMERICA (2006).

[66] *See* notes 46 and 48 and accompanying text.

[67] *See* Alan I. Abramowitz, supra note 4, at 41–42. ("The implication of the findings [of his research] is that the most politically engaged citizens are also the most polarized in their political views.").

[68] *See id.* at 55.

Parties, Abramowitz argues, are reasonably more responsive to the interests of the engaged parts of the electorate, who are sure to vote and more likely to lobby. The existence of polarization among the electorate should not nullify the median voter theorem unless turnout among ideologues falls when parties take median voter stance. But Abramowitz argues that engaged voters exercise power inside the party, punishing those who deviate from the party median through primary campaigns and other tools. The parties follow the cues of their engaged voters, he argues, and this explains polarization.[69]

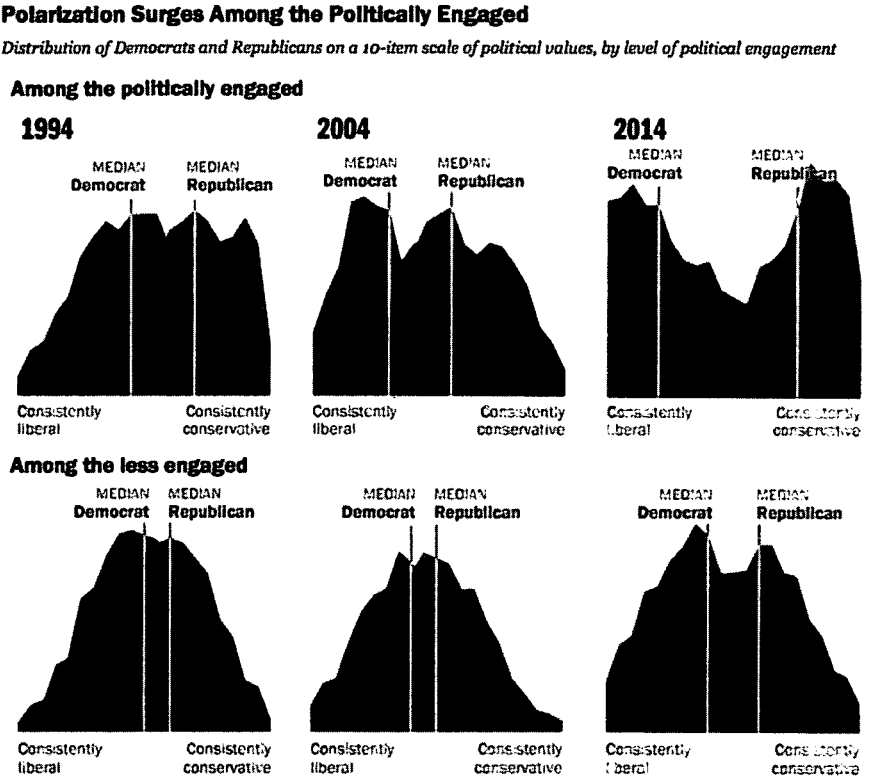
The recent 10,000-person survey of popular opinion conducted by the Pew Foundation shows how engaged-voter opinion has driven polarization.[70] Opinion among engaged voters is bimodal; these voters are far more consistently liberal/conservative than less engaged voters, and are growing more consistently liberal/conservative over time. Opinions engaged parts of the electorate and, as late as 2004, were basically normally distributed. By 2014, however, even less engaged citizens among less engaged parts of the electorate are

---

[69] Further, while there are surely some gains to be had from moderating positions, survey data may overstate the number of moderate voters. *See* David E. Broockman, *Approaches to Studying Representation*, LEG. STUD. Q. (forthcoming 2015) (manuscript at 6) ("A individual who appears 'moderate' on an ideological scale may simply have views that are ideologically mixed, with views on many issues that are not moderate but also do not consistently fall on one side of the ideological spectrum."), *available at* http://www.ocf.berkeley.edu/~broockma/broockman_approaches_to_studying_representation.pdf, *archived at* http://perma.cc/Y2CW-JSGT. Many moderate voters may be nothing of the sort. Many voters classified as moderates in their opinion stances are actually quite radical, but are poor fits for the ideological coalitions of the parties. For instance, thoroughgoing libertarians often show up in survey data as moderate, as they are neither liberal nor conservative, but their positions on specific issues are outside of the mainstream. Thus, parties that become more moderate may not garner the votes of moderates.

[70] Michael Dimock, Jocelyn Kelly, Scott Keeter & Carol Doherty, *Political Polarization and the American Public: How Increasing Ideological Uniformity and Partisan Antipathy Affect Politics, Compromise and Everyday Life*, PEW RESEARCH CENTER, 6 (June 12, 2014), *available at* http://www.people-press.org/files/2014/06/6-12-2014-Political-Polarization-Release1.pdf, *archived at* http://perma.cc/L8FW-BZ8Z ("The overall share of Americans who express consistently conservative or consistently liberal opinions has doubled over the past two decades from 10% to 21%. And ideological thinking is now much more closely aligned with partisanship than in the past."). For a discussion of the Pew Report, *see* Ezra Klein, *The single most important fact about American politics*, VOX (June 13, 2014, 8:00 AM), *available at* http://www.vox.com/2014/6/13/5803768/pew-most-important-fact-american-politics, *archived at* http://perma.cc/5Q54-AVBD ("And a new survey of 10,000 adults nationwide finds that these divisions are greatest among those who are the most engaged and active in the political process.").

far less polarized than they have become somewhat bimodal in their preferences, as you can see in the graph below.



It should be noted however, that the Pew study does not show increased ideological distance; it shows increased consistency. That is, it shows liberals are liberal on more issues; conservatives are conservative on more issues. But it does not show that liberals are more liberal, or that conservatives are more conservative.

The Pew Study also found something else: increased distaste for opponents. An increasingly large portion of each party—now 38% of Democrats and 43% of Republicans—have a "very unfavorable" view of the other party.[71] And 27% of Democrats and 36% of Republicans view the other party as a threat to the nation's well-being.[72] This goes beyond politics—

[71] *See* Dimock et al., *supra*, at 11.

[72] *Id.* at 11.

Shanto Iyengar, Gaurav Sood and Yphtach Lelkes found that, in 2010, 49% of Republicans and 33% of Democrats would be at least somewhat unhappy if their children married someone from the opposite party.[73]

D. Conclusion: So, Who Is Polarizing Again? And What Does That Mean?

In this section, I tracked three different types of polarization (sorting, distance, and fundamentalism/ expressivism) across three types of actors (elected officials, activists and interest groups, and the electorate). We can see that all three groups contain elements of all three types of polarization and share many potential lines of causation.

While there are many stories one can tell from the existing data on polarization, one that falls out of this discussion is that at the core of modern polarization is the rise of and change in ideologically-engaged groups of party activists and groups. Noel's work shows that the parties have largely adopted ideologies worked out among thinkers and writers. Although potentially small in number, citizens who are ideologically-minded and active can exercise substantial influence on elected officials and on opinions in the engaged part of the electorate, who, after all, have to get their opinions from somewhere.

Putting ideologues at the center of the story of modern polarization allows us to see a possible explanation for why the parties have seemingly become so unconcerned with long-standing norms of political life, like the filibuster, or even with risky policies like failing to raise debt limit. If the parties' issue stances now follow a group of ideas worked out by ideologues, it stands to reason that changes in the opinions of ideologues may affect the parties' attitudes towards incremental change, respect for tradition, and willingness to risk short-term harm to the country to achieve ideological ends or to stay to true to party beliefs.

Such a change—towards fundamentalism and/or expressivism—need not have been from a large or even

---

[73] *See* Shanto Iyengar, Gaurav Sood & Yphtach Lelkes, *Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 PUB. OPINION Q. 405, 419 (2012) ("Respondents were asked whether they felt somewhat or very unhappy at the prospect of inter-party marriage. Nearly half of the republicans in the sample (0.49) selected one of these options. The corresponding level of unhappiness was 0.33 among democrats.").

dominant group of ideologues. After all, the parties haven't exactly entirely abandoned their commitments to political tradition or incremental change. But changes in party behavior may be the result of changes in the beliefs of a small but important set of ideological thinkers and activists. To the extent that polarization has been asymmetric, one might focus on right-of-center ideologues. But the rise of strains of fundamentalist opinion among conservatives or liberals—not just more right or left, but negative towards compromise and in favor of clarity—on this understanding, could be a major driver of the rest of the apparatus of polarization.

III. CAN THE CONSTITUTION WORK IF THERE IS POLARIZATION? CAN ANY CONSTITUTION?

The most common response in stories about polarization is to suggest ways to reduce polarization. Reformers have proposed changing the laws governing primaries,[74] ending partisan gerrymandering,[75] regulating campaign finance more strictly, and any number of other political process solutions.[76] Whatever

---

[74] *See* Eric McGhee, Seth Masket, Boris Shor, Steven Rogers and Nolan McCarty, *A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology*, 60 AM. J. POL SCI. 337, 337 (2014) (noting ubiquity of claims that closed primaries cause polarization but finding that "the openness of a primary election has little effect, if any, on the partisanship of the politicians it produces").

[75] *See, e.g.*, Thomas L. Brunell & Bernard Grofman, *Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and PoliticalExtremism in the U.S. House of Representatives, 1962 to 2006*, *in* DESIGNING DEMOCRATIC GOVERNMENT: MAKING INSTITUTIONS WORK 117, 119 (Margaret Levi et al. eds., 2008) (addressing arguments that polarization is caused by gerrymandering and finding that there is at best a weak relationship between how safe a district is and how extreme the voting pattern of the Member representing it is); Nolan M. McCarty, *The Limits of Electoral and Legislative Reform in Addressing Polarization*, 99 CALIF. L. REV. 359, 366–67 (2011) (reporting that the undistricted U.S. Senate is polarized nearly to the same degree as the districted U.S. House); Nolan McCarty, Keith T. Poole & Howard Rosenthal, *Does Gerrymandering Cause Polarization?*, 53 AM. J. POL. SCI. 666, 678–79 (2009) (finding that conventional redistricting reforms would not do much to reduce polarization in Congress). *But see* Brandice Cane-Wrone, David Brady & John Coogan, *Out of Step, Out of Office: Electoral Accountability and House Members' Voting*, 96 AM. POL. SCI. REV. 127, 137–38 (2002) (finding that voting out of step with district ideology has negative electoral effect); Christopher S. Elmendorf & David Schleicher, *supra* note 55, at 1881 (arguing that gerrymandering can effect polarization not by creating more radical members in any given district but by reducing the incentive of party leaders to care about median voter).

[76] *See generally* Andrew B. Hall, *How the Public Funding of Elections Increases Candidate Polarization* (under review), *available at* https://dl.dropboxusercontent.com/u/11481940/Hall_publicfunding.pdf, *archived at* https://perma.cc/Z4PR-R4RK (responding to claims that public financing creates pressure towards median voter by

the merits of these ideas, the leading research suggests that they do nothing or little to reduce polarization and, in some cases like public financing, may generate more polarization.

The sophisticated response to these failures is to argue that we should not seek to reduce polarization, but rather to make the political process work given polarization. For instance, Seth Masket notes: "[W]e might seek to adjust our political system to work with strong parties, rather than adjust our parties to work with our political system."[77] Rick Pildes has advanced this argument among legal scholars: "If we cannot effectively address the causes of polarization, we need to reflect more on addressing the consequences. Those consequences—unified government without meaningful checks and balances, and divided government that is paralyzed—fare quite differently from those the Constitution's designers anticipated."[78]

Scholars and activists who make this line of argument want to embrace (or simply understand they have to live with) separation and distance. Further, they understand the benefits of polarization; distinct parties give voters clear heuristics, allowing them to use their votes to make politicians accountable to their preferences.[79] But, they want to reform the design of American institutions to reduce the harm polarization can create. That is, reformers want to ensure that separation and distance do not mean legislative inaction in the face of problems, an absence of deal-making between the parties, or other types of crises. They argue that the hard-wired rules of the Constitution (and soft norms of the unwritten constitution like the filibuster that are being erased in party conflict) are not well-suited to ensure good government given polarization.

I essentially agree with this line of thinking. But there is a bit of irony here. The great proponents of political polarization,

---

showing introduction of public financing in Arizona has led to increased legislative polarization and candidate divergence). *But see* Seth D. Masket & Michael E. Miller, *Does Public Funding Create More Extreme Legislators? Evidence From Arizona and Maine*, STATE POLITICS AND POLICY QUARTERLY (forthcoming 2015), *available at* http://mysite.du.edu/~smasket/Masket_Miller_SPPQ.pdf, *archived at* http://perma.cc/L93A-WP27.

[77] Masket, *supra* note 13, at 16.

[78] Pildes, *supra* note 13, at 333.

[79] "Given this, perhaps American democracy involves an unfortunate tradeoff between accountability and governability. The qualities of partisan politics that enable voters to best hold political leaders responsible are qualities that, perversely, make it more difficult for those leaders to govern effectively." *Id.* at 331.

responsible party governance school scholars like E. E. Schatschneider, thought that the Constitution, by including separation of powers and federalism, made it difficult to form strong parties.[80] But they also thought that strong parties were necessary to make "a governmental apparatus that looks for all the world like a Rube Goldberg cartoon" function, as strong parties could pass policy programs and stand up to interest groups who otherwise would benefit from the multiple veto and entry points in the constitutional system.[81] The Constitution, it seems, both needs strong parties and needs to be changed to accommodate them.

But a more fundamental question is whether in fact our political system does not function well given polarization. This question is necessarily comparative. That is, does our political system function worse than others faced with similar challenges? What I will argue is that *no* constitutional or electoral system functions particularly well when we see the rise of social groups who care little about achieving incremental legislative success or abiding by the norms of political process. Democracy under any electoral and constitutional system is hard if more than a small percentage of people who participate do not want to play with others.

Polarization has surely made the American legislative process difficult. But I claim that the same forces that generate polarization have made governance very difficult in other legislatures elected under different rules.

To show this, it may help to begin with a thought experiment. Consider legislatures elected under three widely used electoral systems: proportional representation (PR), the "Westminster System," and our own.[82]

---

[80] *See* Schattschneider, *Party Government*, *supra* note 19, at 124–26 ("No one looking at an American major party can fail to see *these* parties were made to work through *this Constitution.*"); AUSTIN RANNEY, THE DOCTRINE OF RESPONSIBLE PARTY GOVERNMENT: ITS ORIGIN AND PRESENT STATE 21–22 (1954) (discussing views of Responsible Party Government scholars).

[81] Schattschneider, *The Semisovereign*, *supra* note 20, at 117, 114–42.

[82] *See generally* Paul S. McKaskle, *Of Wasted Votes and No Influence: An Essay on Voting Systems in the United States*, 35 HOUS. L. REV. 1119, 1121–27 (1998) (describing proportional representation and single-member district systems); Yen-Tu Su, *Beyond Nightmare and Hope: Engineering Electoral Proportionality in Presidential Democracies*, 30 J. LEGIS. 205, 209–11 (2004) (describing Westminster systems and contrasting them with proportional representation systems).

PR is relatively familiar, an electoral system in which parties get the same percentage of seats as they get of the vote, often conditioned on the party crossing a minimum threshold percentage of the vote to receive seats. The Westminster system uses single-member, first-past-the-post districts to elect a Parliament, which then governs the country.[83] Importantly for our purposes here, Westminster system countries usually feature methods of candidate selection and internal decision-making that are relatively closed.[84] By "closed," I do not mean that they use "closed primaries" in the sense we understand them in America but rather that the parties are run by long-lasting institutional organizations and/or elected officials, do not have much in the way of intraparty democracy, and are not easily influenced by outside groups.

Imagine that a common change happens across these systems, in which some groups of politically active citizens and groups become less interested in achieving electoral gains, short-run legislative goals, and preserving non-constitutional political norms. Instead, these groups (small but influential parts of the population) would rather achieve some expressive end, like letting the world know their opinions, or are sufficiently alienated from the mainstream of politics that they care more about fundamentally changing the nature of political conversation than they do about short-run gains. These groups seek to achieve some degree of public power in service of their expressive and fundamentalist ends, but eschew compromises to achieve legislative or public policy ends.

What would we see across these three political systems? In PR systems, we might expect to see these groups attempt to create new parties that are too radical, or just too weird, for mainstream parties to form coalitions with. If they are successful, this will force the mainstream parties to increasingly rely on "grand coalitions" where the large parties of the left and right combine to form governments, as centrist left/right parties cannot form coalition with the radical parties to their left or right.[85] This means elections will frequently be non-

---

[83] *See* Yen-Tu, *supra* note 82, at 211.

[84] *See* notes 102, 103, 104 and accompanying text.

[85] Steven G. Calabresi, *The Virtues of Presidential Government: Why Professor Ackerman is Wrong to Prefer the German to the U.S Constitution*, 18 CONST. COMMENTARY 51, 62–63 (2001) (discussing how radical parties historically have forced

majoritarian, in that the side of the political spectrum that gets the most votes will not be able to form a government. It also means there is reduced accountability for those in office, as the mainstream parties will stay in power even if things go badly.

In Westminster systems, we would expect to see increased support for third-parties and independent candidates that cannot influence the outcomes of elections. Westminster systems are supposed to be governed by "Duverger's Law" or a tendency to have only two parties per district, which is driven by a desire not to waste votes on candidates who cannot influence the outcome.[86] But fundamentalist or expressive groups, by my definition, do not care about wasting their votes, and will be happy to support third-parties or independent candidates. So we would expect an increase in "wasted" votes. Further, forming parties is harder in these systems than it is in PR systems, as a group cannot win any seats in parliament with only a small percentage of the vote. But over time we would expect to see the rise of radical or weird parties.

In our system, parties are more open to outside capture due to the use of primaries or caucuses to choose candidates and the lack of public financing of parties. Under the terms of the thought experiment, we might expect these groups to attempt to use primaries to gain influence inside the parties. To the extent they are successful, this will result in parties that are more fundamentalist and expressive.

What I show in the rest of this section is that this is essentially exactly what has occurred across Europe and North America.

A. European PR Systems and the Rise of Radical Parties

In the past fifteen years or so, there has been a rise across Europe of parties so radical that mainstream parties refuse to form coalitions with them. The most frequent type of radical party is right-wing nationalist, which takes anti-immigration and, usually, anti-European Union integration stances. But, there have also been radical left-wing parties and some just plain strange parties, like the Pirate Party or the Italian Five Star Movement. With a few exceptions, none of these parties

---

grand coalitions to form).

[86] *See* note 7 and accompanying text.

realistically seeks to achieve majoritarian status, nor do they seek to influence politics directly by forming coalitions. Instead, they are methods for groups of voters and activists to register objections to the status quo. In the terminology used above, their goals are largely expressive or fundamental, rather than incremental. Their existence, however, can make it difficult for democracy to function well.

Take the German elections of 2013. Under German election law, a party must receive more than 5% of the vote to receive any seats at all.[87] Eight parties received more than 1% of the vote.[88] Four of them were relatively mainstream and had participated in governments before—the center-right Christian Democratic Union/Christian Social Union (CDU/CSU), the center-left Social Democrats, the business-friendly Free Democrats, and the Green Party. The other four were radical in form.[89] Die Linke was formed by former East German Communists but also incorporated some left-wing former members of the Social Democrats. Alternative for Germany (AfD) formed based on its opposition to the Euro. The Pirate Party is the German version of the Swedish movement in favor of reduced copyright protection, net neutrality, and information privacy. And the National Democratic Party is neo-Nazi, or

---

[87] There are some odd exceptions to this rule based on how parties do in individual districts. *See* Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633, 655 n. 48 (2000) (discussing the German threshold and exceptions).

[88] *German election results: Who's in the Haus?*, CHARLEMAGNE (Sept. 23, 2013, 4:52 PM), *available at* http://www.economist.com/blogs/charlemagne/2013/09/german-election-results, *archived* at http://perma.cc/GW49-32JJ.

[89] Alison Smale, *As German Vote Nears, No Guarantees for Merkel's Coalition*, N.Y. TIMES, Sept. 19, 2013 (reporting that major parties ruled out a coalition with AfD); Philip Oltermann, *Germany's grand coalition could undermine democracy, says leftwinger*, GUARDIAN, Sept. 27, 2013 ("[A]ny coalition with Die Linke is still considered a taboo because of some of its politicians' links to the old communist GDR regime."); Charles Hawley, *German Left Party a Would-Be Kingmaker*, SPIEGEL ONLINE INT'L (Sept., 19, 2013, 11:27 AM), *available at* http://www.spiegel.de/international/germany/german-left-party-strong-but-shunned-by-mainstream-a-922870.html, *archived at* http://perma.cc/Q2C5-RMDX (concluding Die Linke could be central to coalition if center-left parties would form coalition with it); Ed Turner, *Looking forward to the German elections—a tale of three paradoxes*, FOREIGN POLICY CTR. (April 2013), *available at* http://fpc.org.uk/articles/606, *archived at* http://perma.cc/D4NW-SZW9 (reporting neither centrist party willing to "do business with" Pirate Party); Andrew Bowen, *'You Can't Outlaw Stupidity' of the Far-Right*, SPIEGEL ONLINE INT'L (Mar. 19, 2013, 2:14 PM), *available at* http://www.spiegel.de/international/germany/press-review-german-cabinet-backs-off-attempt-to-ban-far-right-npd-a-889671.html, *archived at* http://perma.cc/ZK9N-3QFH (explaining the government declined to submit application to ban the NDP, who "vehemently oppose[ ] immigration and reject[ ] the German constitution").

something like it. The major parties all agreed that they would not form coalitions with these four parties.

In 2013, the incumbent was the very popular Angela Merkel, backed by a coalition between the CDU/CSU and the Free Democrats.[90] The CDU/CSU won 42% of the vote and nearly a pure majority of the seats, but the Free Democrats only won 2.4%, meaning they did not receive any seats (for the first time). The Social Democrats were routed, receiving only 26% of the vote. The Greens won another 8%, and Die Linke won slightly more. Alternative for Germany fell just short of the 5% threshold, and the Pirate Party and National Democrats were way short. The result is that there were only four parties in the parliament for the first time, and the highest percentage of the vote went to parties outside of parliament in German history.[91]

Put together, we have a situation where a popular incumbent at the head of a center-right coalition won a huge victory but was not able to form a center-right government. Parties on the left—the Social Democrats, the Greens, and Die Linke— ended up receiving a majority of seats, but could not form a coalition because of Die Linke's radicalism. Had the results turned out slightly differently and one of the issue parties that received substantial support—the AfD or the Pirate Party—ended up above the threshold, it could not have entered the government either.

It is not hard to see this as a failure of democracy. Neither the side of the political spectrum that received the overwhelming majority of non-protest votes nor the side that won a majority of the seats could form a coalition to govern the country. The election resulted in the CDU/CSU and the Social Democrats forming a grand coalition, the second time in the last three elections.[92] Given the persistence of support for Die Linke, and the rise of AfD, which has been successful in European Parliament elections, grand coalitions seem to be the likely

---

[90] *See* CHARLEMAGNE, *supra* note 88.

[91] *See* Ernst Hillebrand, *What Went Wrong? The German Elections 2013 and the Score of the SPD*, FREIDRICH EBERT STIFTUNG INTERNATIONAL POLICY ANALYSIS 18 (December 2013), *available at* http://library.fes.de/pdf-files/id/ipa/10462.pdf, *archived at* http://perma.cc/X2WU-L5U6 (identifying a record 15.7% vote "gone to waste").

[92] *See* Derek Scally, *Merkel pledges stability ahead of swearing-in; Most of Merkel's appointments shuffle around familiar faces*, IRISH TIMES, Dec. 17, 2013, at 10 (noting this was Chancellor Merkel's second "grand coalition" in her three terms).

result of elections going forward.[93] The existence of parties like Die Linke, AfD, and the Pirate Party make forming ideologically-consistent majorities extremely difficult. Given that the major parties announced before the election that they would not agree to any coalition with these parties, support must be coming from those who would rather use their votes for expressive or other means than to influence government policy. Such pressure towards grand coalitions makes elections less meaningful—the two centrist parties are very likely going to be in the government regardless—and makes dramatic policy advances difficult. That is, radicalism makes gridlock far more likely, an echo of American problems.

In the last election in Italy, we saw this trend reach somewhat of an apex. The center-left and center-right coalitions of parties each took just under 30% of the vote, while a centrist coalition, backing the incumbent Prime Minister appointed following the resignation of Silvio Berlusconi, took 10%.[94] Just over 26% went to the Five Star Movement, led by comedian Beppe Grillo. Although it has a sparse platform, the Five Star Movement's major commitment is to democratic reform and particularly to ensuring as little space between the preferences of the mass electorate and politicians. Central tenets include requiring elected officials to vote according to the preferences expressed in online polls, to support recalls of officials, and to expel members for violating the party's rules.[95] The Five Star Movement calls itself a "non-party" and openly declares that it will never form a coalition government, as the concessions required would be a betrayal of the citizens for whom representatives are spokesmen.[96] Given the way proportional

---

[93] *See* Stephan Wagstyl, *Merkel's right wingers suffer jitters over eurosceptic threat*, FIN. TIMES, Sept. 17, 2014, at Global Insight 3 (reporting AfD wins seats in European Parliament and in regional elections); Hawley, *supra* note 89 (support for Die Linke steady across elections).

[94] *See* Aldo Di Virgilio & Daniela Giannetti, *The Italian General Election of February 2013: Deadlock after Technocracy*, WASH. POST MONKEY CAGE BLOG (Feb. 28, 2013), *available at* http://themonkeycage.org/2013/02/28/the-italian-general-election-of-february-2013-deadlock-after-technocracy, *archived at* http://perma.cc/W87U-KEKN.

[95] *See* Lorenzo Del Savio and Matteo Mameli, *Anti-representative democracy: how to understand the Five Star Movement*, OPEN DEMOCRACY (July 4, 2014), *available at* https://www.opendemocracy.net/can-europe-make-it/lorenzo-del-savio-matteo-mameli/antirepresentative-democracy-how-to-understand-fi, *archived at* https://perma.cc/6HRF-E37C.

[96] *See id.*

representation systems work, the existence of a mass of voters supporting a party that refuses to work in coalition with other parties virtually ensures grand coalition governments.

The rise of radical nationalist parties across Northern Europe has also complicated the formation of governments. For instance, in recent Swedish elections, the major parties publically stated they would not form a coalition with the Sweden Democrats, an anti-immigration party that won over 10% of the vote, forcing the creation of a minority government following a close election.[97] While the empirical literature on these parties is quite rich and varied (as are the parties themselves), one prominent strand suggests that support for these parties is driven by protest voting against existing democratic institutions and dissatisfaction with ordinary democratic politics.[98] That is, the rise of these parties is understood as containing not only an ideological component but also an attitudinal one, about the relative merits of fundamental versus incremental change, or towards the value of using voting for expressive rather than consequentialist purposes.

Put together, we can see that the last decade or so across Europe has featured a rise in support for parties far enough outside of the mainstream that other parties will refuse to form coalitions with them. This is broadly consistent with the thought experiment above, in that something may have changed not only in ideological attitudes but also in the preferences of a swath of voters to use elections to achieve fundamental or expressive ends, rather than incremental or policy ones.

B. The Westminster System and the Effect of Closed Parties

The "Westminster System" describes constitutional and electoral arrangements used in Britain and many former British

---

[97] *Lofven's coalition problem*, THE ECONOMIST, Sept. 20, 2014, at 50 (major parties will not form coalition with Sweden Democrats); Charles Duxbury, *New Swedish Premier Names Ministers And Sets Out Policy*, WALL ST. J. ONLINE (Oct. 3, 2014, 5:32 AM), *available at* http://www.wsj.com/articles/new-swedish-premier-names-ministers-and-sets-out-policy-1412328612, *archived at* http://perma.cc/QWE8-SPRT (noting minority government formed).

[98] For a skeptical summary of the literature on the rise of radical right parties as protest votes, *see* PIPPA NORRIS, RADICAL RIGHT: VOTERS AND PARTIES IN THE ELECTORAL MARKET 149–65 (2005). Norris views their rise as the result of the combination of low electoral thresholds, which make appeals to narrow swaths of electorate attractive, and the rise of preferences for cultural protectionism in the face of globalization. *See id.* at 4.

colonies. It combines the use of single-member districts and first-past-the-post vote counting with a Parliamentary system, where executive power resides in the Prime Minister and not a separately elected official.[99] This, per Duverger's Law, is supposed to generate robust two-party politics.[100] But in recent years, it has done anything but. In 2010, there was a moment when there was not one single majority party government in a Westminster system anywhere in the world.[101]

One major difference between traditional Westminster system parties and American ones is their degree of openness to outside groups and internal challengers in candidate selection and party organizational strategy. Classic Westminster systems countries like the United Kingdom and Canada feature some degree of party member participation in choosing candidates and setting party strategy, but as will be discussed in a moment, the methods used give the dominant role to permanent aspects of the party organization or existing party-in-office officials.

Historically, British parties have not been membership parties—the lay membership is not an important part of their organization or campaign finance structure.[102] Labor unions play a central role in the internal organization of the Labour Party, for instance, and the parliamentary party sets most of the policy agenda for both parties. Historically, the party organization did much of the work of candidate selection, but reforms allowed local party members some degree of choice, although the parties maintained control through party screening committees exercising veto rights over potential candidates.[103] There have been some recent efforts at introducing American-style primaries, most notably by the Conservatives in some

---

[99] *See* note 82.

[100] *See* note 7.

[101] *See* note 8.

[102] *See* Paul D. Webb, *Party Organizational Change in Britain: The Iron Law of Centralization?, in* HOW PARTIES ORGANIZE: CHANGE AND ADAPTATION IN PARTY ORGANIZATIONS IN WESTERN DEMOCRACIES 109, 114 (Richard S. Katz & Peter Mair, eds. 1994).

[103] *See* Gideon Rahat, *Candidate Selection: The Choice Before the Choice*, 18 J. DEMOC. 157, 161, 164 (2007) ("In the British Conservative and Labour parties, for example, selection committees and certain party agencies screen prospective nominees, but the members often have the last word in selecting among several short-listed candidates."). This is for the two major parties: the Liberal Democrats have a very different internal structure. *See* Webb, *supra* note 102, at 116–17.

Parliamentary ridings and for Mayor of London.[104] But groups fundamentally dissatisfied with the direction of a party have had little ability to use internal democratic mechanisms to bend it to their wishes.

Canada has, on paper, a far more open system of candidate selection. Candidates are selected by dues-paying party members, and the system is widely acknowledged to be dominated by the local branches of parties.[105] However, despite this local control, members of Parliament are famously loyal to the party line. This seeming contradiction—locally-determined candidate selection leading to a heavily centralized parliament—may partially be the result of a feature of Canada's election law.[106] The Canada Elections Act requires local candidates to have the signature of the party leader on their filing papers in order for their name to appear under the party line.[107] This gives the national party leader an effective veto over local party selections. There have been prominent efforts to repeal this veto, but thus far they have not passed.[108] Again, this

---

[104] *See* Daniel Hannan, *Open primaries are spreading unremarked across local Conservative Associations*, DAILY TEL. POLITICS BLOG (Oct. 19, 2013), *available at* http://blogs.telegraph.co.uk/news/danielhannan/100242136/unremarked-primaries-are-spreading-across-local-conservative-associations, *archived at* http://perma.cc/R4J5-T3BS (noting the Conservative Party is trying out primaries in several districts); *Frank Urquhart, Scots Tories to trial US 'primary' election system*, SCOTSMAN, Nov. 1, 2013 (reporting Scottish Conservatives will use an open primary to choose a candidate for Parliament). Both major parties will use primaries in the election for the London Mayor. *See* Sebastian Mann, *Ed Miliband reveals London Mayor primary election plan*, LONDON 24 (July 9, 2013, 1:05 PM), *available at* http://www.london24.com/news/politics/ed_miliband_reveals_london_mayor_primary_election_plan_1_2270859, *archived at* http://perma.cc/B9FA-WMGX (explaining Labour plans to use primaries in London Mayor race); *Johnson is Tory mayor candidate*, BBC (Sept. 27, 2007, 4:40 PM), *available at* http://news.bbc.co.uk/2/hi/uk_news/politics/7014739.stm, *archived at* http://perma.cc/677D-SBGB (noting that Conservatives used primary to choose candidate in 2007).

[105] *See* Rahat, *supra* note 103, at 163 ("In Canada, it is not all party supporters but only dues-paying party *members* who select nominees for parliamentary seats.").

[106] *See generally* William Cross, *Candidate Nomination in Canada's Political Parties*, *in* THE CANADIAN GENERAL ELECTION OF 2006 171 (Jon Pammet & Christian Dornan, eds. 2006).

[107] *See* Canada Elections Act, S.C. 2000, c. 9, s. 67. (" . . . if applicable, an instrument in writing, signed by the leader of the political party or by a person referred to in subsection 406(2), that states that the prospective candidate is endorsed by the party in accordance with section 68.").

[108] Aaron Wehry, *Is section 67(4)(c) of the Elections Act the only thing protecting parties from Holocaust deniers?*, MACLEANS (Dec. 13, 2013), *available at* http://www.macleans.ca/politics/is-section-674c-of-the-elections-act-the-only-thing-protecting-us-from-holocaust-deniers-getting-on-the-ballot, *archived at* http://perma.cc/48VA-SZ33 (discussing efforts to reform the Canada Elections Act to allow candidates to stand

leaves outsiders with little ability to use party democracy to fundamentally shift the course of the parties.

What has this meant? If there has been a common shock across political systems such that some percentage of voters increasingly viewed politics through a fundamentalist or expressive lens, what we would expect to see with the combination of first-past-the-post elections and closed parties is an increase in support for third parties. Such voters will not have candidates of their choosing on the ballot, nor will they have much ability to influence the direction of the major parties through internal party democracy. But among the parties they do have choices, Duverger's Law should work somewhat less well.

And this is exactly what we have seen. Britain has not had a true two-party system for most of the twentieth century, as the rump of the Liberal Party (once one of the two major parties) survived and continued to receive as much as 19% of the vote.[109] Following a schism in the Labor Party in the 1980s, the Social Democrats, a moderate group, broke off from main Labor and, some years later, joined together with the Liberals to form first "the Alliance" and then the Liberal Democrats, earning a high of 27% of the vote.[110] Regional parties in Scotland, Wales, and Northern Ireland also win seats in Parliament.[111] But the early 1990s were a nadir in the proportion of the vote going to losing candidates.[112] Since then, however, the amount of the vote going to losing candidates has increased, and in 2010, 52.8% of the vote went to losing candidates.[113]

The numbers on "wasted votes" are not extreme, but we can see some of the dynamics discussed above in the rise of the United Kingdom Independence Party (UKIP). While both

---

for office based on their endorsement by local party officials not national ones).

[109] *See Where We Come From*, LIBERAL DEMOCRATS, *available at* http://www.libdems.org.uk/history, *archived at* http://perma.cc/UB97-3ZHM.

[110] *See id.*

[111] In the current Parliament, the Scottish Nationalist Party, the Democratic Unionists and Sinn Féin from Northern Ireland and Plaid Cymru from Wales account for 22 seats. See CURRENT STATE OF THE PARTIES, *available at* http://www.parliament.uk/mps-lords-and-offices/mps/current-state-of-the-parties, *archived at* http://perma.cc/35BD-M3US.

[112] *See The UK Election In Depth 2010,* ELECTORAL REFORM SOCIETY 27 (May 2010), *available at* http://www.electoral-reform.org.uk/sites/default/files/publication/file/file4e3ff1393b87a.pdf, *archived at* http://perma.cc/R5SC-H9QQ.

[113] *See id.* at 35.

parties, particularly the Conservatives, have elements of Euroscepticism, none of the three major parties supports the idea that the UK should leave the EU entirely.[114] UKIP arose to champion this position and drew support away from both the Conservatives and the far-right British National Party.[115] UKIP struggled to get any representation throughout the 1990s and 2000s due to the use of first-past-the-post in Parliamentary elections (it won its first seat in a by-election this year).[116] However, it continued to do well in European Parliament (EP) elections, which feature proportional representation, culminating in UKIP's first-place finish in the 2014 EP election in Britain, the first time since 1906 that a party other than Labour or the Conservatives finished first.[117] Rather than focusing on choosing between the large parties, Eurosceptic voters opted for a third party in the name of radical change.

In Canada, we can see how these preferences for systematic political change can be vindicated. Canada has long had a multi-party system, including the center-left Liberals, the left-wing New Democratic Party, and the separatist Bloc Québécois.[118] But most interesting for our purposes is the rise of the Reform Party.[119] At roughly the same time as Newt Gingrich led the rise of conservative Republicans to a takeover of both the House Republican Party and the House itself, the Reform Party of

---

[114] *See* Pawel Swidlicki, *The main parties agree on the EU far more than they suggest,* NEW STATESMAN STAGGERS BLOG (Mar. 7, 2014, 2:47 PM), *available at* http://www.newstatesman.com/politics/2014/03/main-parties-agree-eu-far-more-they-suggest, *archived at* http://perma.cc/B4R4-NJ5X.

[115] *See* Mathew Goodwin, *Ukip shares more with the far right than it admits*, THE GUARDIAN, COMMENT IS FREE BLOG (Mar. 12, 2012, 9:30 AM), *available at* http://www.theguardian.com/commentisfree/2012/mar/12/ukip-far-right-bnp, *archived at* http://perma.cc/56VP-Q6ZS.

[116] *See How UKIP became a British political force*, BBC (May 3, 2014), *available at* http://www.bbc.com/news/uk-politics-22396689, *archived at* http://perma.cc/2VV9-DNGH (describing history of UKIP in British elections); *Revenge of the fruitcakes*, THE ECONOMIST (Oct. 10, 2014, 8:02 AM), *available at* http://www.economist.com/blogs/blighty/2014/10/ukips-first-mp, *archived at* http://perma.cc/SP7Z-GU85 (reporting UKIP won a by-election and elected its first MP).

[117] Claire Phipps, Andrew Sparrow & Ben Quinn, *European election results 2014: Ukip sweeps to victory in the UK*, GUARDIAN POLITICS BLOG (May 26, 2014, 5:16 PM), *available at* http://www.theguardian.com/politics/blog/2014/may/26/european-election-results-ukip-victory-uk-live, *archived at* http://perma.cc/88W9-S425.

[118] There have been many others over the years. *See* Peter Regenstreif, *Fragmentation in the Canadian Political Party System*, Public Perspective 22, 23 (May 1991) ("Canadian partisan orientations are volatile.").

[119] *See generally* Henry F. Srebrnik, *Is the Past Prologue?: The Old-New Discourse of the Reform Party of Canada*, 72 INT'L SOC. SCI. REV. 5 (1997).

Canada rose as a movement of conservative opposition to the center-right incumbent Progressive Conservative Party. In 1993, it won a substantial number of seats in Parliament, becoming the leading conservative party in Canada.[120] The Reform Party dominated western Canada for much of the 1990s under a few different names,[121] but was unable to make much penetration into the rest of Canada. Eventually, in 2003, the party, by then named the Canadian Alliance, merged with the Progressive Conservatives to form the Conservative Party of Canada, which in 2006 took power under former Reform member Stephen Harper.[122]

What we see is regular efforts in both countries to support third parties among groups that could not use internal democracy to shift political parties to their will. It is not hard to see parallels between the rise, say, of the Reform Party outside of the Conservative Party and the rise of either Newt Gingrich or today's Tea Party inside the Republican Party.[123] The form may differ, but the impulse—for radical, rather than incremental change—is similar.

C. The United States in Comparative Perspective

What this section has tried to establish is that something strange has been going on not only in the structure of American party competition, but also in party competition in most Western democracies. Parties too radical for coalition formation in PR systems, third-parties in systems supposedly governed by Duverger's Law, and extreme polarization in our two-party

---

[120] *See id.* at 7.

[121] Harold D. Clarke, Allan Kornberg, John MacLeod & Thomas Scotto, *Too Close to Call: Political Choice in Canada, 2004*, 38 PS: POL. SCI. & POL. 247, 247 (2005) ("[I]n its efforts to 'unite the right,' Reform had rebranded itself as the Canadian Alliance before the 2000 election."). This included a failed rebranding as the "Canadian Conservative Reform Alliance" Party, or "C-CRAP." *See New party changes embarrassing acronym*, CBC (Feb. 2, 2000, 8:52 PM), *available at* http://www.cbc.ca/news/canada/new-party-changes-embarrassing-acronym-1.240933, *archived at* http://perma.cc/SC4U-GBGL.

[122] *See* CANADA'S FOUNDING PARTY, *available at* http://www.conservative.ca/?page_id=923, *archived at* http://perma.cc/M6R2-4BV4.

[123] *See* Tom Cohen, *Is Canada's Reform Party of the 1990s a Tea Party model?*, CNN (Aug. 26, 2010, 2:27 PM), *available at* http://www.cnn.com/2010/POLITICS/08/25/tea.party.canada.reformers, *archived at* http://perma.cc/A2QD-4Y53; Gloria Galloway, *Does Tea Party have Canadian roots?*, GLOBE AND MAIL OTTAWA NOTEBOOK (Aug. 26 2010, 12:58 PM), *available at* http://www.theglobeandmail.com/news/politics/ottawa-notebook/does-tea-party-have-canadian-roots/article4081705, *archived at* http://perma.cc/A53C-3VGQ.

system are all instances where reality has moved away from our models of how an electoral and constitutional systems are supposed to work.

The essay has also tried to establish that it is possible—although the evidence is far from conclusive—that each of these trends can be understood as the result of small bands of elite and engaged popular opinion taking both radical (in the sense of being far from the center of popular opinion) and fundamentalist or expressive form. Rather than grinning and bearing it in order to achieve incrementally better outcomes, holders of far-left, far-right, and unconventional opinions throughout the West have adopted a stance of eschewing compromise in favor of expressing pure opinion or advocating for more fundamental changes.

Polarization is simply how election laws and the institutional design of the federal government of the United States have internalized this shift in opinion. The reason we see polarization is because of the openness of our party system. When some part of the population or some elites develop opinions that are either radical or fundamentalist/expressive, they have no need to scurry into sure-to-fail third parties in order to receive representation in politics. Instead, they can fight for control of one of the major parties. Primaries reward organization and ideological intensity, not because voters in primaries are more radical, but because potential primary voters are neither numerous nor well-informed, and groups that can get people to the polls become powerful.[124] Thus, groups that might consider third party efforts under other systems can instead fight it out with party regulars inside primaries and caucuses.

A number of the forces behind modern polarization have considered third parties before instead deciding to fight out primaries and other internal party battles. David Koch ran for Vice President as a Libertarian before deciding to fund Republican politicians.[125] Ron Paul ran for President as a Libertarian between efforts to convince the Republicans of his

---

[124] *See* Masket, *supra* note 4, at 9 (explaining how interest groups, incumbents, and organized groups take advantage of low-information, low turnout primaries and push for candidates far from mainstream).

[125] *See* Nicholas Confessore, *Quixotic '80 Campaign Gave Birth to Kochs' Powerful Network*, N.Y. TIMES, May 17, 2014, at A1.

views on monetary policy and other issues.[126] The Tea Party largely consists of the most economically conservative Republicans, but these voters and activists felt no need to go the route of the Reform Party in Canada, instead fighting for control of Republican Party in primaries and caucuses.[127]

All sorts of movements have decided to get involved in intraparty democracy that would in other places consider party formation. Labor unions in New York fund a third party—the Working Families Party—because of New York's embrace of fusion party endorsement rules, but generally try to push the Democrats to the left at the national level (instead of backing a left-wing alternative, as they do with the National Democratic Party in Canada).[128] Rich environmentalists like Tom Steyer do not fund the Green Party, as environmentalists might elsewhere, but instead back specific Democratic candidates.[129] Anti-immigration activists are heavily involved in Republican primaries rather than backing their own parties, and so on.[130]

The openness of our parties leads to groups with radical, fundamentalist, or expressive ends seeking to win primaries

---

[126] Ryan Lizza, *The Revenge of Rand Paul: The Senator has fought to go mainstream with the ideology that he shares with his father. How far can that strategy take him?*, THE NEW YORKER, Oct. 6, 2014, at 44 (discussing Ron Paul's political trajectory).

[127] Patrick Fisher, *The Tea Party Gap within the Republican Party* 21–24 (draft paper 2014), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2453334, *archived at* http://perma.cc/6LH6-BQGR.

[128] *See* Jarrett Murphy, *Inside the Working Families Party's Deal With Governor Cuomo*, THE NATION (June 2, 2014), *available at* http://www.thenation.com/article/180084/working-families-party-plays-it-safe-endorsing-andrew-cuomo-governor, *archived at* http://perma.cc/W6VG-MFWW (describing union support for Working Families Party and the effect of fusion laws on its success); Chad Skelton & Lori Culbert, *Unions dominate list of NDP's biggest donors*, VAN. SUN. ONLINE (Mar. 21, 2014), *available at* http://www.vancouversun.com/business/Unions+dominate+list+biggest+donors/8285416/story.html, *archived at* http://perma.cc/ZZ9F-W4PF (explaining that unions are the biggest donors to NDP); Julian Zelizer, *Why Democrats Need Labor Unions*, CNN (July 17, 2012, 9:15 PM), *available at* http://www.cnn.com/2012/07/17/opinion/zelizer-labor-democrats/index.html, *archived at* http://perma.cc/EW6W-63TK (describing long-term support of labor unions for the Democratic Party),

[129] *See* Andrew Restuccia & Kenneth P. Vogel, *Anti-Keystone billionaire rattles Democrats*, POLITICO (Apr. 3, 2013, 11:27 AM), *available at* http://www.politico.com/story/2013/04/tom-steyer-anti-keystone-billionaire-rattles-democrats-89591.html#ixzz3GG8CpHBU, *archived at* http://perma.cc/4GWP-PS9A (describing Steyer's support for environmental causes and Democratic candidates who support them).

[130] *See* W. James Antle III, *How Immigration Topples GOP Incumbents*, AMER. CONSERV. ONLINE (June 16, 2014), *available at* http://www.theamericanconservative.com/articles/how-immigration-topples-gop-incumbents, *archived at* http://perma.cc/EWX6-BGXQ (crowing about how support for immigration reform costs Republican candidates in primaries).

rather than forming new parties or supporting existing third-party options. This creates polarization, rather than other forms of democratic dysfunction.

Leading scholars like Rick Pildes and Seth Masket are right to argue that electoral engineering is unlikely to fundamentally change American polarization.[131] But we should be equally skeptical that their call to arms to find ways to reform the institutional design of American governance to make it work well in the presence of modern polarization will yield great results. As long as American polarization takes its current form, where separation and distance between the parties are paired with fundamentalism and expressivism inside them, it is unlikely that there are neat and easy institutional design solutions to make Washington function. If polarization is simply how our system deals with the same changes that have made governance difficult in other countries, institutional design changes to our system may just swap out our problems for theirs.

IV. CONCLUSION: WHY HAS POLITICS EVERYWHERE BECOME SO WEIRD?

This essay claims that polarization and the forms of democratic dysfunction that have arisen in European democracies can be understood as having a common cause—the rise of swaths of fundamentalist or expressivist opinion in parts of the electorate.

Why opinion has changed in ways that create polarization is beyond the scope of this short essay. But what I can say is that to understand polarization, we need to look at why political systems around the world are also behaving in a wonky manner. Rather than pushing us towards America-specific stories, this would force us to examine how changes that are common to both the United States and Europe might affect the rise of radical, fundamentalist, expressive, or otherwise unordinary political opinion. One might approach this question through the lens of how economic changes, like stagnating median incomes and declining productivity growth, or social ones, like changing gender roles, affect political opinion. One might examine how changes in media, like the development of cable television and

---

[131] *See* note 13.

the Internet, affect preferences in politics. Or one might look at common political changes across Europe and the United States, like the end of the Cold War. Or one might look to something else entirely. But these stories should be central to the study of polarization and should inform (and chasten) any reformer who seeks to change institutions in order to reduce the costs of polarization.

Further, the implication of the essay is that there simply is not much to be done about our extreme polarization, at least by scholars wielding proposals for election law reforms and institutional design changes. Anthony Downs noted half a century ago that democracy does not work well in countries with substantially bifurcated public opinion.[132] All this essay has done is suggest that the variety of problems faced by governments across Europe and North America likely have similar causes: groups of voters and elites who have fundamental problems with the status quo and/or a desire to express cultural and political difference at the polls. Faced with such a problem, different electoral systems and institutional designs produce different results, but none provides a solution. Lawyers and constitutional drafter can overrate the power of the tools they have as methods of solving problems.[133] If I am right, the rise of such blocks of opinion will make it difficult for democracies to function smoothly until extreme differences in popular and elite opinion are resolved or mitigated. Polarization is a product of real disagreement, and its costs are the costs of maintaining a democracy in the face of such disagreement. As H.L. Mencken quipped, "Democracy is the theory that the common people know what they want, and deserve to get it good and hard."[134]

---

[132] Downs, *supra* note 48, at 120 ("[U]nless voters can somehow be moved to the center of the scale to eliminate their polar split, democratic government is not going to function at all well.").

[133] Here's a great example: Duverger's Law suggests that two-party systems result from the use of first-past-the-post vote counting and single-member districts, and multi-party systems from the use of proportional representation. There is substantial evidence that the opposite is true as well—the number of parties directly influences what election laws (e.g. first-past-the-post v. PR) a country adopts. *See* Joseph M. Colmer, *It's the Parties That Choose the Electoral System (or Duverger's Law Upside Down)*, 53 POL. STUD. 1, 1 (2005).

[134] H.L. MENCKEN, A LITTLE BOOK IN C MAJOR 19 (1916).