Does the Constitution Still Work?
American Institutions meet Hyper-Polarization

Paul Pierson
John Gross Professor of Political Science; Director, Berkeley Center for the Study of American Democracy
“The science of politics... like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were not known at all, or imperfectly known to the ancients.”
SOME KEY FEATURES

• Separation of Powers; MANY VETO POINTS

• Winner-Take-All Elections from Single Member Districts (no proportional representation)
  • Yields a Two-Party System
  • [Today] Intensifies Urban/Rural Cleavage

• Robust Representation for Small States
Fear of “Majority Factions”

John Adams: “... A division of the republic into two great parties.. Is to be dreaded as the great political evil.”

Madison: “Should a state of parties arise founded on geographical boundaries and other physical and permanent distinctions which happen to coincide with them... what is to control these great repulsive Masses from awful shocks against each other?”
Did We Have a Two-Party System? Not Really

• Nelson Polsby: “100-Party System”

• American Political Institutions Encourage Weak, Heterogeneous Parties.

  • Will Rogers: “I’m a Democrat”
What Happened?

- Two Big Changes beginning in the 1960s
  - “Racial Realignment”
  - Emergence of “Big Government” (e.g. Roe v. Wade)
- Political Elites and Voters “Sort”
- “Meso-Institutions” Change
  - Nationalized and Partisan Media
  - Nationalized and Increasingly Partisan Interest Groups
  - State Parties Lose Autonomy
- Politics “Nationalizes” and Becomes More Tribal
Interest Groups Pick Teams

Percentage of House candidates NRA Donated to

- Republican candidates
- Democratic candidates

In 2016, 98.4% of all House candidates donated to by the NRA were Republican.

Note: No data from the year 2000; The NRA themselves did not donate, rather the money came from the NRA’s PACs, their individual members or employees or owners, and those individuals’ immediate families.
<table>
<thead>
<tr>
<th>Territorial representation</th>
<th>Representational biases ≠ partisan biases</th>
<th>Representational biases = partisan biases</th>
</tr>
</thead>
<tbody>
<tr>
<td>High barriers to policy change</td>
<td>Shifting coalitions; outsized majorities</td>
<td>Gridlock/narrow partisan majorities</td>
</tr>
<tr>
<td>Separation of Powers</td>
<td>Defending parties <em>and</em> institutions</td>
<td>Defending parties <em>over</em> institutions</td>
</tr>
</tbody>
</table>
GRIDLOCK

- System designed to require compromise
- System also facilitated compromise (highly fragmented)
- Still requires compromise but no longer facilitates it
- Power gravitates away from Congress (to President, Courts, States, Private actors)
  - Parties are Far Apart
  - Party Base Doesn’t Want You to Compromise
  - Helps Your Party if the Other Side Can’t Govern
Use of cloture in the U.S. Senate
How frequently senators have filed cloture motions, voted on them, and invoked cloture, 1959–2018

Unconstrained presidents

- Madison on Checks and balances: “ambition checks ambition”
- But two risks when polarization is high
  - Aligned party may not check president
    - Cedes congressional power
    - At extreme, “democratic backsliding”
  - Attempt to “hardwire” partisan goals
    - Stacking the federal courts
    - Abuse of executive powers
## A Tale of Two Votes

### Nixon’s impoundment
- Refused to spend appropriated funds on programs he opposed
- Congress responded to challenge to its Article I “power of the purse”
- Senate vote = 80-0
- Signed by Nixon

### Trump’s emergency
- Declared national emergency to redirect funds to program he supported
- Congress responded to challenge to its Article I “power of the purse”
- Senate vote = 54-41 (11 Rs)
- Vetoed by Trump (2/3 in each chamber needed for override)
Unrepresentative government

• Polarization has taken place along an urban/rural divide

• Hugely consequential because American institutions systematically favor rural voters

• Raises the prospect of “counter-majoritarian” or “minorititarian” governance
Minimum share of U.S. population able to elect Senate majority

American political system rewards parties for holding territory as well as winning votes

<table>
<thead>
<tr>
<th>U.S. OVERALL</th>
<th>MEDIAN HOUSE SEAT</th>
<th>MEDIAN SENATE SEAT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2016 Trump vote share</strong></td>
<td>46%</td>
<td>49%</td>
</tr>
<tr>
<td>Percentage point difference from U.S.:</td>
<td>+3</td>
<td>+10</td>
</tr>
<tr>
<td><strong>Trump vote margin vs. Clinton</strong></td>
<td>-2%</td>
<td>+4%</td>
</tr>
<tr>
<td></td>
<td>+6</td>
<td>+21</td>
</tr>
<tr>
<td><strong>White share (non-hispanic)</strong></td>
<td>62%</td>
<td>74%</td>
</tr>
<tr>
<td></td>
<td>+12</td>
<td>+18</td>
</tr>
<tr>
<td><strong>Percent with bachelor's degree (age 25+)</strong></td>
<td>30%</td>
<td>32%</td>
</tr>
<tr>
<td></td>
<td>+2</td>
<td>-2</td>
</tr>
<tr>
<td><strong>Population density (people per square mile)</strong></td>
<td>90</td>
<td>407</td>
</tr>
<tr>
<td><strong>Median household income</strong></td>
<td>$55,322</td>
<td>$60,003</td>
</tr>
</tbody>
</table>

The Senate Distorts Preferences on Gun Control Toward the Opinions of Rural Areas

- National Support
- National Support Weighted to Give Equal Representation to Each State

<table>
<thead>
<tr>
<th>Location</th>
<th>Percent Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural</td>
<td>39% (17.7% of voting eligible population)</td>
</tr>
<tr>
<td>Suburban</td>
<td>47% (69.5% of voting eligible population)</td>
</tr>
<tr>
<td>Urban</td>
<td>65% (12.8% of voting eligible population)</td>
</tr>
</tbody>
</table>

Source: US Census, parentheses indicate the group’s percentage of the voting eligible population.

DATA FOR PROGRESS
The difference between the Republican presidential margin at the national level and in the median congressional district or state.
Minority Rule on the Court?

Republicans have lost the popular vote in six of the last seven presidential elections (and will likely lose it again this time) but may now have appointed six of nine justices

All six were either (1) nominated by a President who lost the popular vote; (2) confirmed by Senators representing a minority of the population; (3) or both

Raises Prospect of not just a “counter-majoritarian” veto on majority rule, but durable rule of a coherent minority.

Could overturn Roe, strike down ACA, and many other popular policies
Related Representational Issues

- Gerrymandering: state election administration + D voters concentrated in cities = R-favored maps
- Ds & Rs both try
- Easier for Rs
- More “trifectas” = more opportunities for Rs

North Carolina Election Results 2018

Republicans got 50% of U.S. House votes statewide ... but won 10 of 13 seats.
Figure 5-1 Percent of Ideological Primary Challenges to Congressional Incumbents

Percentage of primary challenges to congressional incumbents that were mounted on the basis of ideology (with the challenger avowedly more extreme than the legislator) in each party from 1970–2014. Data from Boatright (2013, 2014).
Share of Campaign Contributions in Federal Elections from top 0.1 Percent, 1980-2012