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

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Abstract:

One of, if not the, most important change 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 largely have been parochial, largely looking for explanations in American politics, history, media and institutional arrangements. This focus has a logic to it. Politics in most other advanced democracies does not feature the same type of polarization between parties, and therefore the answers for why American politics has gone in this direction seem to lie inward rather than abroad.

But it is still a mistake. This short essay argues that a common shift in voter preferences towards more radical and fundamentalist opinion among 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 the rise in third-and fourth party voting. Notably, in most Westminster systems, there is little intra-party democracy, leading 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 of a type with the problems created by our extreme polarization. We should thus be skeptical that there are institutional design reforms that can make American governance work easily in the face of polarization.

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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.² Or why prominent figures on right and left wing television are so angry that they do things like describing moderate academic-turned-regulator Cass Sunstein as "the most evil man, the most dangerous man in America"³ or tell a former Vice Presidential candidate that she should eat feces.⁴ While the 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 policy results that are 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.⁵ 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 America-specific 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.

² The impossibility of explaining the debt ceiling was 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*, Season 6, Episode 20.

³ CASS R. SUNSTEIN, *CONSPIRACY THEORIES AND OTHER DANGEROUS IDEAS*, back cover (2014) (quoting Glenn Beck).

⁴ *MSNBC host Martin Bashir apologizes for 'shameful' comments about Sarah Palin*, N.Y. Daily News, Nov. 19, 2013.

⁵ Just some of my favorites include 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* (2008).

But a quick glance around the world, and particularly 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 representations 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. Their rise has made it very hard to form ideologically-coherent coalitions in many countries, leading to grand coalitions between ideologically-opposed major parties or minority governments unable to pass clear policy programs.

Political scientists have long thought that Westminster systems, like Britain and Canada, with parliaments elected from single-member districts using first-past-the-post vote counting, are likely to have two party systems with both parties catering the median voter, and majority governments.⁶ But in 2011, there was no large country with a Westminster system with a single political party controlling a majority of seats.⁷ 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.⁸ Further, wide ideological splits dominated the terms of debate in important Westminster system countries, if not necessarily between major parties. For 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-

⁶ 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* 216-28 (Barbara North & Robert North trans., Methuen & Co. 2d ed. 1961) (1951)

⁷ Patrick Dunleavy, Every key ‘Westminster model’ country now has a hung Parliament, following Australia’s ‘dead heat’ election, LSE Politics and Policy Blog, August 23, 2010, /<http://blogs.lse.ac.uk/politicsandpolicy/every-key-westminster-model-country-now-has-a-hung-parliament-following-australia-s-dead-heat-elec>. Following elections in , however, Canada returned to having a government formed by one party. Patrick Brethour, *Harper finally wins majority as NDP surges into Opposition*, Globe & Mail, May 2, 2011 at A1. Duverger’s Law is weak at the district level in most Westminster systems as well. Patrick Dunleavy and Rekha Diwakar, *Analysing multiparty competition in plurality rule elections*, 19 *Party Pol.*, 885 (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, August 23, 2010, <http://blogs.lse.ac.uk/politicsandpolicy/duvergers-law-dead-parrot-dunleavy/>

⁸ Or, as I have argued elsewhere, “Duverger’s Law is normative....” David Schleicher, *Why Britain Loves to Party Too Much*, Balkinization, May 10, 2010, <http://balkin.blogspot.com/2010/05/why-britain-loves-to-party-too-much.html>

wing Scotland was governed by a too-conservative England.⁹ Similarly, fights have emerged between parties on the same side of spectrum, as among Canada's center-right parties in the mid-2000s, which bear some strong similarities to debates inside American political parties.¹⁰

This essay will argue that these political conflicts and governance problems are likely driven by similar forces as American party polarization. A common shock to political preferences that increased the likelihood of voters holding either more radical views, i.e more distant from those of the median voter, views or more fundamentalist preferences – here described non-judgmentally as an intensity of preference for pushing for unlikely major policy or political changes even at the cost of achieving short-term policy goals – would explain at least with broad strokes what has happened across a number of different political systems. Such a shock could lead to radical parties with no ability to join coalitions in PR systems, third-party support in Westminster systems where election laws do not permit much intra-party democracy, and polarization in the United States where such 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 to at least a swath of public 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.

Second, a number of the very best scholars studying polarization have found that election law changes, from public financing to open primaries to districting reform, are unlikely to affect the extent of polarization.¹¹ 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

⁹ Pan Pylas, *Scottish Mistrust Of Conservatives Key In Campaign*, A.P., Sept. 16, 2014, <http://bigstory.ap.org/article/scottish-mistrust-conservatives-key-campaign>

¹⁰ See notes _ and accompanying text

¹¹ 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), Seth Masket, *Mitigating Extreme Partisanship in an Era of Networked Parties: An Examination of Various Reform Strategies*, Center for Effective Public Management at Brookings, March 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

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 governance problems across Europe, we should be skeptical that clever tweaks to the legislative process can make governance work easily 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 that are 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.¹²

As it is a short essay, I have divided into only two parts. The first reviews what we know about American party polarization. The second lays out the argument that changes to public and elite opinion, consistent with what 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 talking 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 that a political parties is not an “it” but is instead a they, with the behaviors and beliefs many different individuals, groups and entities tied up in how we understand what the Democratic or Republican Parties are doing.¹³

This section will review recent work on polarization. In order to cast a relatively wide net and to bring some order to the analysis, I am going to break down the phenomenon of polarization into 3 whos, and 3 whats. This should allow me to capture and discuss common intuitions of who is polarizing and what that means.

¹² See BARBARA SINCLAIR, *PARTY WARS: POLARIZATION AND THE POLITICS OF NATIONAL POLICY MAKING* (2006). For what its 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.

¹³ V.O. KEY, JR., *POLITICS, PARTIES, AND PRESSURE GROUPS* 163-65 (4th ed. 1958).

In order to see who is polarizing, I will use a slightly-modified version of Key's famous breakdown of who is a political party. Key argued that political parties consisted 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).¹⁴ In order to capture the spirit of some recent work, however, I am going to substitute "party activists" for the party organization. The idea is that it 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 or another.

Across these three parts of political parties, we can track three different ideas of what polarization might mean.¹⁵ The 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 by sorting, with all liberals becoming Democrats, and all conservatives becomes Republicans, and 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 by this definition would be a situation under which all Democrats are more liberal than all Republicans, and where the liberal/conservative divide determined 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 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 pretty 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

¹⁴ *Id.*

¹⁵ 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 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. 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.

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.¹⁶

The third idea is that 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 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 are 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 1950s, scholars looking at American political parties saw them as lacking in ideology and coherence, more 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.¹⁷ These parties would give voters clear heuristics on how to vote, requiring them only to know facts about the party as a whole to vote rationally in Congressional elections.¹⁸ And because the parties

¹⁶ 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.

¹⁷ TOWARD A MORE RESPONSIBLE TWO-PARTY SYSTEM: A REPORT OF THE COMMITTEE ON POLITICAL PARTIES OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION vii (1950); E. E. SCHATTSCHNEIDER, PARTY GOVERNMENT (1942).

¹⁸ E. E. SCHATTSCHNEIDER, THE SEMISOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA 138 (1942) ("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.")

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 60 years and it appears the responsible governing parties scholars have their dream.¹⁹ Today's Republican and Democrats are distinct and largely ideologically coherent.

The leading scholars of today's polarization are Nolan McCarty, Keith Poole and Howard Rosenthal who a method for capturing ideological commitments inherent in Congressional voting.²⁰ 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.²¹ DW-Nominate allows them to capture differences in multiple "dimensions," or how divides among Members explain voting patterns. 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.²² The second dimension can be whatever other major issue 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.²³

DW-Nominate thus allows them to capture how "liberal" or "conservative" given members are, or how different members are 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, are Democrats more liberal than Republicans. On their Vote View Blog, McCarty and

¹⁹ 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 Annual Rev. Pol. Sci 169-191 (2007).

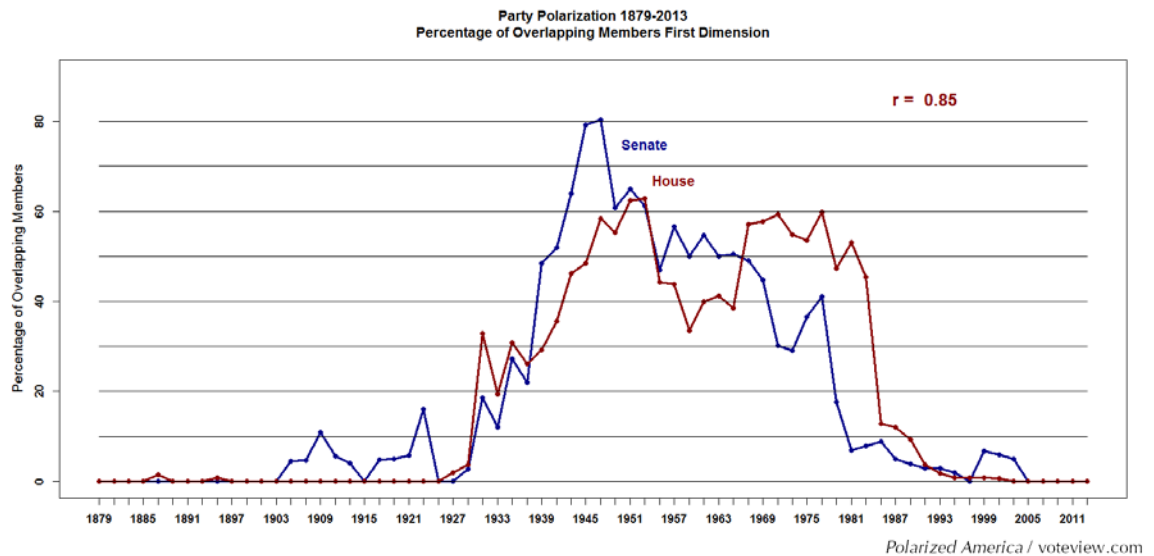
²⁰ For a discussion of the "Nominate" method generally and DW-Nominate specifically, see KEITH T. POOLE AND HOWARD ROSENTHAL, *IDEOLOGY AND CONGRESS*, 12-70 (2007); MCCARTY ET AL, *POLARIZED AMERICA*, *supra* note __, at 16-44.

²¹ See POOLE AND ROSENTHAL, *supra* note __, at 28-35. For a nice summary of how DW-Nominate differs from the original W-Nominate methodology, see Christopher Hare et al, *Polarization is Real (and Asymmetric)*, Vote View Blog, May 16, 2012, <http://voteview.com/blog/?p=494>

²² MCCARTY ET AL, *POLARIZED AMERICA*, *supra* note __, at 22.

²³ See POOLE AND ROSENTHAL, *supra* note __, at 57-62.

Poole have an updated graph that shows the percentage of Democrats that are more conservative than the most liberal Republican (and vice versa):²⁴



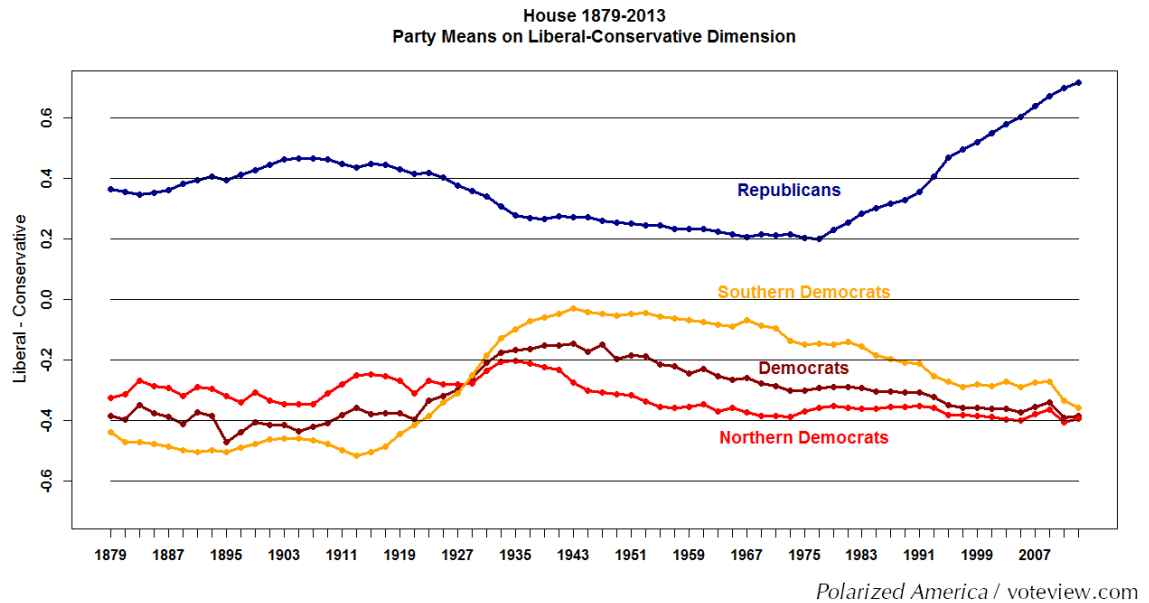
Starting in the 1980s, the number of “overlapping Members” collapses and today the number is now zero – the parties are completely separate. As the graph shows, this is a return to earlier periods in some respects. In the period before the Great Depression, the parties were quite distinct on economic issues. But in earlier periods, the second dimension of politics often explained substantial parts of voting behavior.²⁵ Other things about 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 part 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.²⁶ 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.

²⁴ This graph is reproduced from Keith T. Poole, *The Polarization of the Congressional Parties*, Vote View, January 19, 2014, http://voteview.com/political_polarization.asp

²⁵ MCCARTY ET AL, *POLARIZED AMERICA*, *supra* note __, at 23-25. However, there were substantial periods before 1912 in which the second dimension was as unimportant as it is today.

²⁶ *Id.* 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 vote 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 __, at 136.

But what about *distance*, or how different the parties are from one another. The graph below from the Vote View blog captures party means in DW-Nominate scores over time in the House of Representatives (the Senate graph is similar but slightly less dramatic):²⁷



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.²⁸ DW-Nominate scores suggest that not only are the parties in Congress separate, but they are also distant ideologically.

Three things to note. First, while DW-Nominate is remarkable 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, there are reasons to believe it might not capture distance perfectly well, as it does not include the views of Members on what they would like to vote on.²⁹ 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 moving 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

²⁷ This graph is taken from Christopher Hare et al., *supra* note _.

²⁸ Poole, *The Polarization of the Congressional Parties*, VoteView, January 19, 2014, http://voteview.com/political_polarization.asp

²⁹ NOEL, *POLITICAL IDEOLOGIES*, *supra* note _, at 165.

socialists or racists are more likely to identify with the Democrats or Republican Parties, respectively. But there are fewer holding those extreme views.”³⁰

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.³¹ 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*.³² 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.”³³ 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.”³⁴ While there is substantial dispute about Mann and Ornstein’s analysis, there is no reason to believe that the behavior of the parties is or should be symmetrical.³⁵ Matt Grossman and David Hopkins argue, for 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.³⁶

³⁰ *Id.* at 167

³¹ See Hare, et al, *supra* note 1. See also Nolan McCarty, *What we know and don’t know about our polarized politics*, Washington Post Monkey Cage, January 8, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/01/08/what-we-know-and-dont-know-about-our-polarized-politics/>

³² 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)

³³ *Id.* at xiv.

³⁴ *Id.*

³⁵ See L.J. Zigerell, *Are Republicans really driving congressional polarization? Maybe not*, Wash. Post, Monkey Cage Blog, Sept. 11, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/09/11/are-republicans-really-driving-congressional-polarization-maybe-not/#> (noting that methods other than DW-Nominate find that Democrats have moved further left than Republicans have moved right).

³⁶ Matt Grossman and David Hopkins, *The Ideological Right v. The Group Benefits Left: Asymmetric Politics in America*, Perspectives on Politics, forthcoming (2014), <http://matthewg.org/papers/ideologicalright.pdf>; Matt Grossman and David A.

Third, polarization is happening across politics generally, and not just in Congress. State legislatures are polarizing at the same time Congress is. 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.³⁷ What they found is that, in general, polarization in most state legislatures has substantially increased over time, although it decreased in some.³⁸ 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.³⁹ California is the most polarized legislature in American (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.⁴⁰

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.”⁴¹

Hopkins, *Policymaking in Red and Blue: Asymmetric Partisan Politics and American Governance*, working paper 2014, <http://matthewg.org/papers/policyredblue3.pdf>

³⁷ Boris Shor and Nolan McCarty, *The Ideological mapping of American Legislatures*, 105 Am. Pol. Sci. Rev. 530 (2011).

³⁸ Id. See also Boris Shor, Polarization Trends in American State Legislatures by Chamber, <http://americanlegislatures.com/2013/07/26/polarization-trends-in-american-state-legislatures-by-chamber/>

³⁹ See Boris Shor, *State Legislatures and Polarization*, <http://americanlegislatures.com/2013/05/21/state-legislatures-and-polarization/>

⁴⁰ Boris Shor, *How U.S. state legislatures are polarized and getting more polarized (in 2 graphs)*, Washington Post Monkey Cage, January 14, 2014, <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/>

⁴¹ Jonathan Bernstein, I’m Sick of Hearing About Political Polarization, Bloomberg View, July 29, 2014, <http://www.bloombergview.com/articles/2014-07-29/i-m-sick-of-hearing-about-political-polarization>

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.⁴² Norms that governed legislative procedure – from using committees to write and organize legislation to open voting rules in the Senate to the traditionally limited use of the filibuster – have fallen away as majority parties became stronger and less willing to rely on tools that forced them to compromise away their advantage.⁴³ The two Congresses prior to this one featured divided control, with Republicans in control of the House and Democrats of the Senate. 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.⁴⁴ 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.

⁴² 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 and Ornstein, *supra* note 1, at 103. Grossman and Hopkins agree, claiming that the greater sway ideology rather than group pressures plays in the Republican Party makes them less willing to compromise. Grossman and Hopkins, *Policymaking in Red and Blue*, *supra* note 1.

⁴³ For a powerful discussion of how partisanship has resulted in the end of many of these norms and procedures, see 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.

⁴⁴ Ezra Klein, *Is Congress Less Productive Than It Used to Be?*, Vox, Aug. 5, 2014, <http://www.vox.com/cards/congressional-dysfunction/is-congress-less-productive-than-is-used-to-be>

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.⁴⁵ 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.⁴⁶ John Aldrich's classic book *Why Parties?: The Origin and Transformation of Party Politics in America* combined these lines of argument, claiming that parties exist because politicians help them get elected and to organize politics once elected.

[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.⁴⁷

Under these theories, parties are created by officials to serve their own ends, but also help voters. Parties provide voters with clear heuristics, a party label, allowing them to hold incumbent parties responsible for their actions and to express ideological preference without knowing much about individual politicians.⁴⁸

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*.⁴⁹ Instead of assuming that parties serve

⁴⁵ Anthony Downs, *An Economic Theory of Democracy* 137 (1957)

⁴⁶ See Gary W. Cox & Mathew D. McCubbins, *Legislative Leviathan: Party Government in the House* (2d ed. 2007); Gary W. Cox & Mathew D. McCubbins, *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 Parities and the Appropriations Process* (1991)

⁴⁷ JOHN H. ALDRICH, *WHY PARTIES? THE ORIGIN AND TRANSFORMATION OF PARTY POLITICS IN AMERICA* (1995) 19-24

⁴⁸ See Christopher Elmendorf and David Schleicher, *Informing Consent: Voter Ignorance, Political Parties and Election Law*, 2013 U. Ill. L. Rev. 363, 37-85 (2013) (reviewing literature on heuristic value of party label).

⁴⁹ Kathleen Bawn, Martin Cohen, David Karol, Seth Masket, Hans Noel and John Zaller, *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*, 10 *Perspectives on Pol.* 571 (2012).

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-minded idealism.”⁵⁰ 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 interest 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. Voters who either do not pay attention or vote retrospectively with respect to how the economy has done with no notice paid to the issue stances of parties reduce the constraint put on parties by voters. Rather than assume parties seek to maximize votes, moving to the center except where there 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.⁵¹

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, or 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.⁵² For our purposes, the key point is that, under this theory, polarization becomes 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.⁵³ The combinations of beliefs that form ideologies are highly contingent – e.g. 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

⁵⁰ *Id.* at 574.

⁵¹ 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 and David Schleicher, *Districting for a Low-Information Electorate*, 121 Yale L.J. 1846, 1864-66 (2012) (reviewing literature on media-market/district congruence).

⁵² MARTY COHEN, DAVID KAROL, HANS NOEL & JOHN ZALLER, *THE PARTY DECIDES: PRESIDENTIAL NOMINATIONS BEFORE AND AFTER REFORM* 7 (2008)

⁵³ NOEL, *POLITICAL IDEOLOGIES*, *supra* note __, at 119.

specific issue preferences.⁵⁴ 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.⁵⁵ 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.⁵⁶ Opinion writers were ideologically polarized into liberal and conservative camps in 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.⁵⁷

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 is different from ideological preference, has diminished substantially in Congress.⁵⁸

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.⁵⁹ Small donors are also quite polarized. (In contrast, business groups are more moderate in their donations, although favoring

⁵⁴ Id. at 38-66.

⁵⁵ Id. at 67-118.

⁵⁶ Id. at 79.

⁵⁷ Id. at 134-37

⁵⁸ Id. at 136.

⁵⁹ See Ezra Klein, *A stunning graph on how money polarizes politics*, Vox, July 29, 2014 <http://www.vox.com/2014/7/29/5948037/a-stunning-graph-on-how-money-polarizes-politics>; <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/21/want-to-reduce-polarization-give-parties-more-money/>

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 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.⁶⁰

c. Polarization and the Party Electorate

While legislators have polarized, possibly pushed by activist groups, studies of the electorate long found something different. In his much discussed 2006 book, *Culture War? The Myth of a Polarized America*, Morris Fiorina argued that surveys showed that few voters were coherently ideological or had strongly-held beliefs about political issues.⁶¹ This echoed generations of work on mass public opinion, finding voters were largely uninformed and not particularly ideological. Polarization, on this telling, is a betrayal of the people. While scholars like Aldrich and Downs argued that while parties were created by office-seekers, they served the interests of the public by providing clear heuristics and competitive median-voter seeking parties. Fiorina argued that our polarized parties are not serving the interests of voters.

⁶⁰ 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.

⁶¹ MORRIS E. FIORINA, *CULTURE WAR? THE MYTH OF A POLARIZED AMERICA* (2006)

Alan Abramowitz challenged this understanding of mass public opinion. He argued that politically-engaged members of the public are increasingly polarized.⁶² 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.⁶³ As the parties have sorted, so have voters, becoming more predictable voting patterns and featuring reduced degrees of ticket splitting.

Parties, Abramowitz argues, are reasonably more responsive to the interests of the engaged parts of the electorate. That is where voters sure to turn out can be found. 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 electorates, he argues, and this explains polarization.⁶⁴

The recent 10,000 person survey of popular opinion conducted by the Pew Foundation shows how engaged voter opinion has driven polarization.⁶⁵ 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 among less engaged parts of the electorate

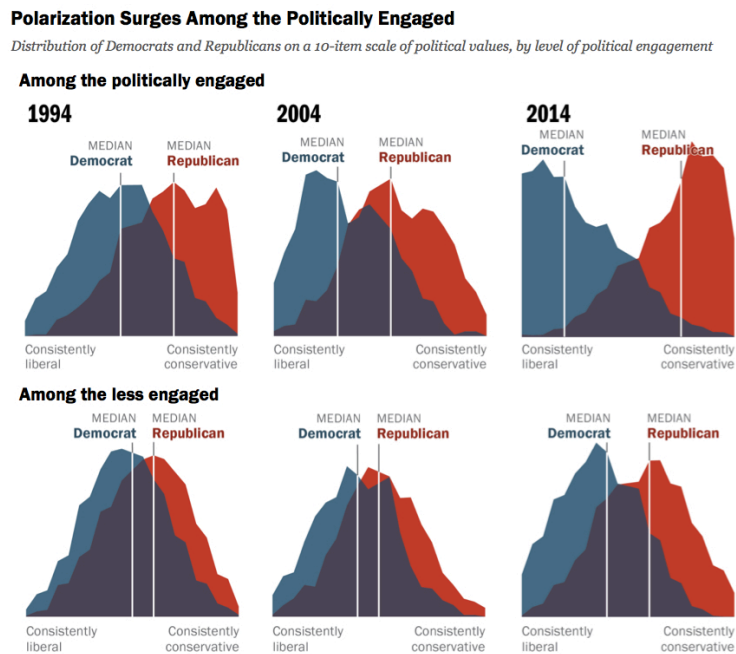
⁶² ALAN I. ABRAMOWITZ, *THE DISAPPEARING CENTER: ENGAGED CITIZENS, POLARIZATION & AMERICAN DEMOCRACY* 37-61 (2010)

⁶³*Id.* at 55.

⁶⁴ 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. Brockman, *Approaches to Studying Representation* (Draft Paper, September 22, 2014) http://www.ocf.berkeley.edu/~broockma/broockman_approaches_to_studying_representation.pdf. 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.

⁶⁵ 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, June 12, 2014, <http://www.people-press.org/files/2014/06/6-12-2014-Political-Polarization-Release1.pdf>. For a discussion of the Pew Report, see Ezra Klein, *The single most important fact about American politics*, Vox, June 13, 2014, <http://www.vox.com/2014/6/13/5803768/pew-most-important-fact-american-politics>

are far less polarized than the engaged parts and, as late as 2004, were basically normally distributed. By 2014, however, even less engaged citizens 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 part of each part – now 38% of Democrats and 43% of Republicans – have a “very unfavorable” view of the other party.⁶⁶ And 27% of Democrats and 36% of Republicans view the other party as a threat to the nation’s well-being. This goes beyond politics – 49% of Republicans and 33% of Democrats would be disappointed if their children married someone from the opposite party.⁶⁷

⁶⁶ Id.

⁶⁷ Shanto Iyengar and Sean J. Westwood, *Fear and Loathing Across Party Lines: New Evidence on Group Polarization*, draft paper June 2014, <http://pcl.stanford.edu/research/2014/iyengar-ajps-group-polarization.pdf>

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. What we can see is that there are elements of all three types of polarization in all three groups and there are many potential lines of causation between them.

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 things like the debt limit, which if not extended would substantially harm the economy. 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 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 try to figure out ways to reduce polarization. People suggest changing the laws governing

primaries,⁶⁸ ending partisan gerrymandering,⁶⁹ campaign finance reform and any number of other political process solutions.⁷⁰ Whatever the merits of these ideas, the leading research suggests that they do either do nothing or little reduce polarization, and in some cases like public financing, may generate more polarization.

The sophisticate's response to this is to suggest that the right question is not how to reduce polarization, but rather how 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

⁶⁸ 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 (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.").

⁶⁹ See e.g., Thomas L. Brunell & Bernard Grofman, *Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and Political Extremism 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) (undistricted U.S. Senate is polarized nearly to the same degree as 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 and John Coogan, *Out of Step, Out of Office: Electoral Accountability and House Members' Voting*, 96 Am. Pol. Sci. Rev. 127 (2002) (voting out of step with district ideology has negative electoral effect); Christopher S. Elmendorf and David Schleicher, *Districting for a Low-Information Electorate*, 121 Yale L.J. 1846 (2013) (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).

⁷⁰ See Andrew B. Hall, *How the Public Funding of Elections Increases Candidate Polarization* (responding to claims that public financing creates pressure towards median voter by showing introduction of public financing in Arizona has led to increased legislative polarization and candidate divergence). *But see* Seth D. Masket and Michael E. Miller, *Does Public Funding Create More Extreme Legislators? Evidence From Arizona and Maine* (draft paper 2014), https://dl.dropboxusercontent.com/u/11481940/Hall_publicfunding.pdf (finding accepting public financing has no effect on radicalism of candidates).

with our political system.”⁷¹ 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.”⁷²

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, clearly distinct parties that give voters clear heuristics allowing them to use their votes to make politicians accountable to their preferences.⁷³ But they want to reform the design of American institutions to reduce the harm polarization can create. That is, they 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 financial or other types of crises. And 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 ensuring good government functioning given polarization.

I basically agree with this line of thinking. But there is a bit of irony here. The great proponents of political polarization, responsible party governance school scholars like E.E. Schattschneider, thought that the Constitution, by including separation of powers and federalism, made it difficult to form strong parties.⁷⁴ 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 they 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.⁷⁵ The Constitution, it seems, both needs strong parties and needs to be changed to accommodate them.

⁷¹Seth Masket, *Mitigating Extreme Partisanship in an Era of Networked Parties: An Examination of Variation Reform Strategies*, Center for Effective Public Management, Brookings Institution, March 2014, http://www.brookings.edu/~media/research/files/papers/2014/03/20%20masket/masket_mitigating%20extreme%20partisanship%20in%20an%20era%20of%20networked%20parties.pdf

⁷² Richard H. Pildes, *The Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 Cal. L. Rev. 273, 333 (2011)

⁷³ “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.

⁷⁴ SCHATTSCHNEIDER, PARTY GOVERNMENT, *supra* note __, at 124-26, AUSTIN E. RANNEY, THE DOCTRINE OF RESPONSIBLE PARTY GOVERNMENT: ITS ORIGIN AND PRESENT STATE 21-22 (discussing views of Responsible Party Government scholars).

⁷⁵ SCHATTSCHNEIDER, SEMI-SOVEREIGN, *supra* note __, at 115, 113-38

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 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 will 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.⁷⁶

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 amount 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. Importantly for our purposes here, Westminster system countries usually feature methods of candidate selection and internal decision-making that are relatively closed.⁷⁷ 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 intra-party democracy, and are not easily influenced by outside groups.

Imagine across these systems, a common change happens in which some groups of politically active citizens and groups become less interested in achieving electoral gains, short-run legislative goals and care less about 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

⁷⁶ 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 (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 (2004) (describing Westminster system and contrasting it with proportional representation systems)

⁷⁷ See notes _ and accompanying text

some degree of public power in service of their expressive and fundamentalist ends, but do 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/right.⁷⁸ This means elections will frequently be non-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 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.⁷⁹ 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 get win any seats in parliament with only a small percentage of the vote. But over time we would expect to see the rise of similar radical or weird parties.

In our system, parties are more open to outside capture due to the existence 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 achieve influence inside the parties. To the extent they are successful, this will result in parties that are more fundamentalist and expressive.

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

⁷⁸Steven 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, 63 (2001) (discussing how radical parties can force grand coalitions to form).

⁷⁹ See note _ and accompanying text.

a. European PR Systems and the Rise of Radical Parties

In the first decade and half, there has been a rise across Europe of parties so radical that mainstream parties refuse to form coalition with them. The most frequent type of party of this type is right-wing nationalist, taking 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 realistically seeks to achieve majoritarian status, nor does it 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.⁸⁰ Eight parties received more than 1% of the vote.⁸¹ Four of them were relatively mainstream and had participated in governments before – the center-right Christian Democratic Union/Christian Social Union, the center-left Social Democrats, the business-friendly Free Democrats, and the Green Party. The other four were radical in form.⁸² Die Linke was formed by former East German Communists, but also have incorporated

⁸⁰ 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, 652-54, 654 n.48 (2000) (discussing the German threshold and exceptions)

⁸¹ German election results: Who's in the Haus?, Charlemagne, *The Economist*, Sept. 23rd, 2013, <http://www.economist.com/blogs/charlemagne/2013/09/german-election-results>

⁸² Alison Smale, As German Vote Nears, No Guarantees for Merkel's Coalition, N.Y. Times, Sept. 19, 2013 (Major parties rule out coalition with AfD); Philip Oltermann, Germany's grand coalition could undermine democracy, says leftwinger, *Guardian*, Sept. 27, 2013 ("any 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, *Der Spiegel Online International*, Sept., 19, 2013, <http://www.spiegel.de/international/germany/german-left-party-strong-but-shunned-by-mainstream-a-922870.html>; (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 Center*, April 2013, <http://fpc.org.uk/articles/606> (neither centrist party willing to "do business with" Pirate Party); Andrew Bowen, 'You Can't Outlaw Stupidity' of the Far-Right, March 19, 2013, *Spiegel International*, <http://www.spiegel.de/international/germany/press-review-german-cabinet-backs-off-attempt-to-ban-far-right-npd-a-889671.html> (government declined to submit application to ban NDP).

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 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 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. 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 (AfD) 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 a highest percentage of the vote went to parties outside of parliament in German history.⁸³

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, with one of the issue parties – the AfD or the Pirate Party – that received a substantial amount of support ended up above the threshold, they 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 a CDU/CSU and the Social Democrats forming a grand coalition, the second time in the last three elections.⁸⁴ 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 result of

⁸³ Ernst Hillebrand, *What Went Wrong? The German Elections 2013 and the Score of the SPD*, Freidrich Ebert Stiftung International Policy Analysis 18, December 2013, <http://library.fes.de/pdf-files/id/ipa/10462.pdf> (a record 15.7% vote “wasted”)

⁸⁴ Derek Scally, *Merkel pledges stability ahead of swearing-in; Most of Merkel's appointments shuffle around familiar faces*, Irish Times, December 17, 2013 (Chancellor Merkel's second “grand coalition” among her three terms).

elections going forward.⁸⁵ The existence of parties like Die Linke, AfD and the Pirate Party make forming ideologically consistent majorities extremely difficult. And 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%.⁸⁶ 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 tenants include requiring elected officials to vote according to the preferences expressed in online polls, and supporting recalls of officials (and expelling members for violating the party's rules).⁸⁷ The Five Star Movement calls itself a "non-party" and openly declares itself that it will never form a coalition government, as the concessions required would be a betrayal of the citizens for whom representatives are spokesmen.⁸⁸ Given the way proportional 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,

⁸⁵Stephan Wagstyl, *Merkel's right wingers suffer jitters over eurosceptic threat*, Fin. Times, September 17, 2014 (AfD wins seats in European Parliament and in regional elections); Hawley, supra note _ (support for Die Linke steady across elections)

⁸⁶ Aldo Di Virgilio and Daniela Giannetti, *The Italian General Election of February 2013: Deadlock after Technocracy*, Monkey Cage, Feb. 28, 2013, <http://themonkeycage.org/2013/02/28/the-italian-general-election-of-february-2013-deadlock-after-technocracy/>

⁸⁷ See Lorenzo Del Savio and Matteo Mameli, *Anti-representative democracy: how to understand the Five Star Movement*, Open Democracy, July 4 2014

<https://www.opendemocracy.net/can-europe-make-it/lorenzo-del-savio-matteo-mameli/antirepresentative-democracy-how-to-understand-fi>

⁸⁸ Id.

forcing the creation of a minority government following a close election.⁸⁹ 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.⁹⁰ 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 sufficiently outside of the mainstream that other parties will refuse to form coalitions with them. This is broadly consistent with the thought experiment above, 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 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.⁹¹ This, per Duverger’s Law, is supposed to generate a robust two-party politics.⁹² 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.⁹³

One major difference between traditional Westminster system parties and American ones are their degree of openness to outside groups and internal

⁸⁹ *Lofven’s coalition problem*, Economist, September 20, 2014 (major parties will not form coalition with Sweden Democrats); Charles Duxbury, *New Swedish Premier Names Ministers And Sets Out Policy*, Wall St. J., October 3, 2014 (minority government formed).

⁹⁰ 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* 141-65 (2005). Norris herself 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.

⁹¹ See note _.

⁹² See note _.

⁹³ See note _.

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.⁹⁴ 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.⁹⁵ There have been some recent efforts at introducing American-style primaries, most notably by the Conservatives in some ridings and for Mayor of London.⁹⁶ But groups fundamentally dissatisfied with the direction of a party have had little ability to use democracy internal to a party 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.⁹⁷ However, despite this local control, Members of Parliament are famously loyal to the party line. This

⁹⁴ 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* 114 (Richard S. Katz and Peter Mair, Eds.)

⁹⁵ Gideon Rahat, *Candidate Selection: The Choice Before the Choice*, 18 J. Democ. 157, 161, 164 (2007). This is for the two major parties; the Liberal Democrats have a very different internal structure. Webb, *supra* note 1, at 116.

⁹⁶ See Daniel Hannan, *Open primaries are spreading unremarked across local Conservative Associations*, Daily Telegraph, Oct. 19, 2013 (Conservative Party trying out primaries in several districts); *Scots Tories to trial US 'primary' election system*, Scotsman, Nov. 1, 2013 (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. Sebastian Mann, *Ed Miliband reveals London Mayor primary election plan*, London 24, July 9, 2013

http://www.london24.com/news/politics/ed_miliband_reveals_london_mayor_primary_election_plan_1_2270859; (Labour plans to use primaries in London Mayor race); *Johnson is Tory mayor candidate*, BBC, Sept. 27, 2007, http://news.bbc.co.uk/2/hi/uk_news/politics/7014739.stm (Conservatives used primary to choose candidate in 2007).

⁹⁷ Rahat, *supra* note 1, at 163

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.⁹⁸ 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.⁹⁹ This gives the national party leader an effective veto over local party selections. There have been prominent efforts to repeal this veto, but thusfar they have not passed.¹⁰⁰ Again, this 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 that some percentage of voters increasingly viewed politics through a fundamentalist or expressive lens, what would we 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 on the ballot candidates of their choosing, or much ability to influence the direction of the major parties through internal party democracy. But among the parties they do have choices among, 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.¹⁰¹ 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 Liberal Democrats, earning a high of 27% of the vote.¹⁰² Regional parties in Scotland, Wales and Northern Ireland also win seats in Parliament.¹⁰³ But the early 1990s were a nadir in the amount of vote going to losing candidates.¹⁰⁴ Since then, however, the amount of the vote

⁹⁸William Cross, Candidate Nomination in Canada’s Political Parties, in *The Canadian General Election of 2006* (Jon Pammet and Christain Dornan, eds. 2006)

⁹⁹ See Canada Elections Act 67(4)(c).

¹⁰⁰ Aaron Wehry, *Is section 67(4)(c) of the Elections Act the only thing protecting parties from Holocaust deniers?*, Macleans, December 13, 2013 (discussing efforts to reform the Canada Elections Act to allow candidates to stand for office based on their endorsement by local party officials not national ones)

¹⁰¹ Liberal Democrat History Group, *Where We Come From*, Liberal Democrats, <http://www.libdems.org.uk/history>.

¹⁰² Id.

¹⁰³ In the current Parliament, the Scottish Nationalist Party, the Democratic Unionists and Sein Fein from Northern Ireland and Plaid Cymru from Wales account for 22 seats. Current State of the Parties, Parliament Home Page, <http://www.parliament.uk/mps-lords-and-offices/mps/current-state-of-the-parties/>

¹⁰⁴ *The UK Election In Depth 2010*, Electoral Reform Society 35 (May 2010)

<http://www.electoral-reform.org.uk/images/dynamicImages/file4e3ff1393b87a.pdf>

going to losing candidates has increased, and in 2010, 53% of the vote went to losing candidates.¹⁰⁵

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 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.¹⁰⁶ UKIP arose to champion this position, and drew support away from both the Conservatives and the far-right British National Party.¹⁰⁷ 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).¹⁰⁸ However, it continued to do well in European Parliament elections, which feature proportional representation, culminating in their first-place finish in the 2014 EP election in Britain, the first time since 1906 that a party other than Labor or the Conservatives finished first.¹⁰⁹ Rather than focusing on choosing between the large parties, Eurosceptic voters opted for a strategy of voting for third parties in the name of radical change.

In Canada, we can see some similar stories. Canada has long had a multi-party system, including left-wing opposition to the center-left Liberals in the National Democratic Party, along with the Quebecois Separatist party the Bloc Quebecois.¹¹⁰ But most interesting for our purposes is the rise of Reform Party.¹¹¹ At roughly the same time as Newt Gingrich led the rise of conservative Republicans to a take over of both the House Republican Party and the House itself, the Reform Party of Canada rose as a movement of conservative opposition to the center-right incumbent Progressive Conservative Party. In 1993, it won a substantial number of

¹⁰⁵ Id.

¹⁰⁶ See Pawel Swidlicki, *The main parties agree on the EU far more than they suggest*, New Statesman, March 7, 2014.

¹⁰⁷ <http://www.theguardian.com/commentisfree/2012/mar/12/ukip-far-right-bnp>

¹⁰⁸ How UKIP became a British political force, BBC, May 3, 2014, <http://www.bbc.com/news/uk-politics-22396689> (describing history of UKIP in British elections); *Revenge of the fruitcakes*, Economist, Oct. 10, 2104, <http://www.economist.com/blogs/blighty/2014/10/ukips-first-mp> (UKIP wins by-election)

¹⁰⁹ Claire Phipps, Andrew Sparrow and Ben Quinn, *European election results 2014: Ukip sweeps to victory in the UK*, Guardian, May 26, 2014, <http://www.theguardian.com/politics/blog/2014/may/26/european-election-results-ukip-victory-uk-live>

¹¹⁰ There have been many others over the years. See Peter Regenstreif, *Fragmentation in the Canadian Political Party System*, Public Perspective 23, May 1991

¹¹¹ See 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).

seats in Parliament, becoming the leading conservative party in Canada.¹¹² The Reform Party dominated western Canada for much of the 1990s under a few different names,¹¹³ 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.¹¹⁴

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.¹¹⁵ 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 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 a 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

¹¹² Id. at 7.

¹¹³ Harold D. Clarke, Allan Kornberg, John MacLeod and Thomas Scotto, *Too Close to Call: Political Choice in Canada*, 2004, 38 PS: Pol. Sci. & Pol. 247 (2005).

This included a failed rebranding as the "Canadian Conservative Reform Alliance" Party, or "C-CRAP." *New party changes embarrassing acronym*, CBC, Feb. 2, 2000, <http://www.cbc.ca/news/canada/new-party-changes-embarrassing-acronym-1.240933>

¹¹⁴ Conservative Party of Canada, *Canada's Founding Party*, http://www.conservative.ca/?page_id=923

¹¹⁵ Tom Cohen, *Is Canada's Reform Party of the 1990s a Tea Party model?*, CNN, August 26, 2010,

<http://www.cnn.com/2010/POLITICS/08/25/tea.party.canada.reformers/>; Gloria Galloway, *Does Tea Party have Canadian roots?*, Globe and Mail, Aug. 26 2010,

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 in and the institutional design of the federal government of the United States has 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.¹¹⁶ 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.¹¹⁷ Ron Paul ran for President as a Libertarian between efforts to convince the Republicans of his views on monetary policy and other issues.¹¹⁸ The Tea Party largely consists of the most economically conservative Republicans, but these voters and activists felt no need to go the route of Reform Party in Canada, instead fighting for control of Republican Party in primaries and caucuses.¹¹⁹

All sorts of movements have decided to get involved in intraparty democracy that would in other places considered 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).¹²⁰ Rich environmentalists like Tom Steyer do

¹¹⁶ See SETH E. MASKET, *NO MIDDLE GROUND: HOW INFORMAL PARTY ORGANIZATIONS CONTROL NOMINATIONS AND POLARIZE LEGISLATURES* 9 (2009) (interest groups, incumbents, and organized groups take advantage of low-information, low turnout primaries and push for candidates far from mainstream).

¹¹⁷ Nicholas Confessore, *Quixotic '80 Campaign Gave Birth to Kochs' Powerful Network*, N.Y. Times, May 17, 2014

¹¹⁸ 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?*, New Yorker, October 6, 2014 (discussing Ron Paul's political trajectory).

¹¹⁹ Patrick Fisher, *The Tea Party Gap within the Republican Party*, Draft Paper 2014 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2453334

¹²⁰ Jarrett Murphy, *Inside the Working Families Party's Deal With Governor Cuomo*, Nation, June 2, 2014 (describing union support for Working Families Party and the

not fund the Green Party, as might elsewhere, but instead back specific Democratic candidates.¹²¹ Anti-immigration activists are heavily involved in Republican primaries rather than backing their own parties.¹²² And so on.

The openness of our parties leads to groups with radical, fundamentalist or expressive ends seeking to win primaries rather than forming new parties or supporting existing third-party options. This creates polarization rather than other forms of democratic disfunction.

Leading scholars like Rick Pildes and Seth Masket are right to argue that electoral engineering is unlikely to fundamentally change American polarization.¹²³ 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 disfunction that have arisen in European democracies can be understood as having a common cause, the rise of swathes 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

effect of fusion laws on its success); Chad Skelton and Lori Culbert, Unions dominate list of NDP's biggest donors, *Van. Sun.* March 21, 2014 (Unions biggest donors to NDP); Julian Zelizer, *Why Democrats Need Labor Unions*, CNN, July 17, 2012, <http://www.cnn.com/2012/07/17/opinion/zelizer-labor-democrats/index.html> (describing long-term support of labor unions for the Democratic Party),

¹²¹ Andrew Restuccia and Kenneth P. Vogel, *Anti-Keystone billionaire rattles Democrats*, *Politico* April 3, 2013, <http://www.politico.com/story/2013/04/tom-steyer-anti-keystone-billionaire-rattles-democrats-89591.html#ixzz3GG8CpHBU> (describing Steyer's political activity).

¹²² W. James Antle III, *How Immigration Topples GOP Incumbents*, *Amer. Conserv.* June 16, 2014 (crowding about how support for immigration reform costs Republican candidates in primaries)

¹²³ See note _.

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 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 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.¹²⁴ 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 removes the problem. Lawyers and constitution drawers can overrate the power of the tools they have as methods of solving problems.¹²⁵ 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 belief that the common man knows what he wants. And deserves to get it, good and hard.”

¹²⁴ Downs, *supra* note 1, at 120

¹²⁵ 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. Josep M. Colmer, *It’s the Parties That Choose the Electoral System (or Duverger’s Law Upside Down)*, 53 Pol. Studies 1 (2005).