

# Legislative Procedure

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## I'm Just a Bill

- <https://www.youtube.com/watch?v=FFroMQIKiag>

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## Themes of this Workshop

- I am a political scientist, not a lobbyist or legislator
- If you ask a political scientist to give a workshop on legislative process, you actually want to learn more about legislative organization.
- County officials could be effective advocates for their communities at the state or federal level, but often only when they work together.

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## Strategic Considerations for County Officials

- Many county officials are elected
  - I think, but don't definitely know, that the incumbency advantage is high for county officials because of local government's halo
- Many counties are too big or too small to be effectively represented by one rep who cares a lot about the county as a whole
  - For example, each representative in the Michigan House has fewer than 100,000 constituents.
  - There are two Michigan counties with more than 1 million people, and 25 counties with fewer than 25,000 people
- There are issues that unite and divide county officials across counties
  - Surprisingly to me, support for the arts tends to unite counties in SE Michigan
  - While support for mass transit tends to divide counties in the region

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## Quiz Questions

- On what matter do virtually all members of Congress agree?
- What is the most important function of the committee system in Congress?
- According to the rules of the House of Representatives, in what order are issues taken up?
- Which chamber of Congress has more open amendment procedures, the House of Representatives or the Senate?
- What category of issue brought the Senate's use of filibusters to public prominence?

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## Legislative Organization

Definition: Legislative organization refers to the allocation of resources and assignment of parliamentary rights to individual legislators or groups of legislators. This includes:

- The right to propose legislation
- The right to amend legislation proposed by others
- The right to employ staff to help study and draft legislation and amendments.
- The right to advance legislation towards final passage

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# The Constitution and Legislative Organization

Article I, Section 2, Clause 5. "The House of Representatives shall chuse their Speaker and other officers."

Article I, Section 3, Clause 4. The Vice President shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Article I, Section 3, Clause 5. The Senate shall chuse their other Officers, and also a President pro tempore.

Article I, Section 5, Clause 2. "Each House may determine the Rules of is Proceedings."

Article I, Section 5, Clause 3. "Each House shall keep a Journal of its Proceedings."

Article I, Section 6, Clause 2. All bills for raising revenue shall be introduced in the House of Representatives

Article 2 Section 2: He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

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# Efficiency in the Policy-Making Process

- Prevent dilatory tactics: Dilatory tactics are efforts by legislators to slow the legislative process so as to prevent policies from getting passed or to annoy the majority (e.g. disappearing quorum).
- Good policy choices require expert opinion
- Avoid problems of "social choice" (cases where majority rule fails to yield a stable outcome).
  - Consider a situation where legislators A, B, and C cast "pairwise" votes over three different policies, X, Y, and Z.

Legislator	Top Choice	Second Choice	Third Choice
A	X	Y	Z
B	Z	X	Y
C	Y	Z	X

- In pairwise votes between X and Y: A and B vote for X, C votes for Y. X wins.
- In pairwise votes between X and Z: A votes for X, B and C votes for Z. Z wins.
- In pairwise votes between Y and Z: A and votes for Y, B votes for Z. Y wins.
- But, X defeats Y. We have a "voting cycle."

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## Distributional Concerns

- Avoid the over-production of pork
  - Democratic legislatures face a problem similar to the “tragedy of the commons” where multiple individuals, acting independently in their own self-interest, will destroy a shared resource
  - Consider the following example where cell values indicate legislators utility from the passage of three different bills.

Legislator	Bill X	Bill Y	Bill Z
A	4	3	-9
B	3	-9	4
C	-9	4	3

- All three bills pass if people vote sincerely. They would be mutually better-off if nothing passed.
- Suppress proposals that divide the majority party

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## Obtaining Information

- Suppose you wanted to make area in some important public policy area and you wanted policy experts.
  - What is involved in the regulation of nuclear power plants?
  - How much cyanide should we allow in our drinking water?
  - How do we provide price supports for farmers that ensure them a minimum standard of living in good years and prevent national famines in bad years
- Who would be the legislators who would acquire that policy expertise most willingly?
  - High demanders.
  - Do you want high demanders making policy? No.
  - How do you address that problem?

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## Winning Reelection

- **Advertising:** Increasing name recognition and promoting a favorable image without taking an issue position
  - Why would you, perhaps, not want to take clear stances on the issues?
- **Credit-Claiming:** The ability to credibly claim credit on some piece of legislation
  - What types of legislation can individual legislators credibly take credit for?
- **Position-Taking:** Taking a public position on some issue
  - On what types of issues would politicians seemingly benefit most from taking a public position?

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## Key Elements of the Organization of Congress

- **The Scheduling Power of the House Speaker and Senate Majority Leader**
  - Prevents voting cycles
  - Limits opportunities for dilatory tactics
  - “Negative Agenda Control” to protect the majority party’s interests
- **The Control Committees in the House (Rules, Ways and Means, Budget)**
  - Prevent the over-production of pork
  - The Rules Committee chooses the protocol that is to be followed regarding amendments to legislation on the House floor
- **The Committee System:** Much of the work of Congress (studying and amending legislation) is done in committees
  - Promotes policy specialization
  - Encourages “universalism”
  - Creates opportunities for credit-claiming

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## Types of Committees

(Standing, select, joint, conference)

- *Standing*: Permanent committees (last from year to year); agriculture, appropriations, armed services, budget
  - Process bulk of legislation
- *Select (or Special)*:
  - Temporary, usually lasting only 2 years
  - Usually don't have legislative authority, but study bills and make recommendations
  - Coordinate legislation that overlaps jurisdiction of several standing committees (Select committee on homeland security)
- *Joint*: Include members of both chambers (House and Senate)
  - Economic, Library, Printing, Taxation
- *Conference*: Reconcile differences between similar measures passed by both chambers (legislation must be identical before signed by president)
  - Composed of members of both houses

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## Committee Leadership

- Leaders are chairmen and ranking minority party members
  - Chairmen have similar role over committee as Speaker has over House (a mini-legislature)
  - Can set agendas, allocate funds, arrange hearings
  - Can kill a bill by refusing to schedule it for a hearing or convening meetings when opponents are absent
  - 1970s era: Subcommittee Bill of Rights
  - 1990s: GOP centralization of committees

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## Committees as workshops

- When a bill is introduced in the House or Senate, it is usually referred to the committee with jurisdiction over its particular policy area
- Committees allow for a division of legislative labor, enabling the 100 Senators and 435 House members to consider approximately 5,000 bills and 50,000 nominations a year
- Means by which Congress “sifts through an otherwise impossible jumble of bills, proposals and issues.”

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## Factors affecting legislative organization across states

- Number of members per chamber and even number of chambers
- Level of professionalization (full- or part-time, salaries)
- Mode of election
- Term limits
- Key question: Do factors like term limits effectively transfer power and influence from elected officials to legislative staff and interest groups?

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## Legislative Process

- The legislative process is the procedure that Congress follows when formulating legislation, including bills and resolutions, and moving that legislation toward passage or rejection (including abandonment).
- Constitutional text
  - The Constitution is largely silent on the legislative process.
  - Article 1 Section 7.
    - Clause 1. All bills for raising Revenue shall originate in the House, but the Senate may propose or concur with Amendments as on other wills.
    - Clause 2. The Presidential Veto and veto over-ride with a 2/3 vote of the House and Senate.
    - Clause 3. All actions having the force of law must be presented to the President for his signature or veto.
  - Note: The Constitution doesn't mention the filibuster

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**Key Fact:** Only about 10% of all bills introduced in Congress are eventually passed.

- Explanation 1. Duplicate bills get introduced
  - Bill introduction provides a signaling function about a specific aspect of an on-going debate that is important to a Member of Congress.
- Explanation 2. Getting bills passed is hard because of the number of veto players.
- Explanation 3. Bill length is inversely related to the number of bills that pass.
- Note: Divided government does not matter as much as one might think.

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## 2. Getting a bill passed is hard work

<b>Major hurdle</b>		
<i>Minor hurdle</i>	<i>House detail</i>	<i>Senate detail</i>
<b>Introduction</b>	House originates tax bills	Senate exclusively considers executive matters
<b>Reference to committee</b>	Done by Speaker, no right of appeal	Done by presiding officer, w/right of appeal
<b>Committee consideration (subcommittee nested)</b>		
Hearing, Mark-up, Report		
<b>Scheduling</b>	Combo of Rules & leadership	Leadership-centered negotiations
Getting on the calendar	Multitude of calendars (union, House, correction, private, DC, discharge)	Two calendars (general orders, executive)
Getting off the calendar	Simple: suspension; Complex: rules	Simple: suspension; Complex: unan. consent
Setting the parameters of consideration	Rules Committee	Unanimous consent under threat of filibuster
<b>Floor consideration</b>	Committee of the Whole	
Debate	Constrained	Cloture
Amendment	Germaneness rules strong	Germaneness weak
Reconciling differences		

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The most important thing about bill referral is that it usually determines who the bill's murderer is.

As a rule, a bill committed is a bill doomed. When it goes from the Clerk's desk to a committee-room it crosses a parliamentary bridge of sighs to dim dungeons of silence when it will never return. The means and time of its death are unknown but its friends never see it again.

--Woodrow Wilson, *Congressional Government*

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## What happens in committees? 3 standard steps

**Hearings:** committee listens to a wide variety of witnesses

- Explore need for legislation
- Provide a forum for citizen grievances
- Raise visibility of issue
- Educate lawmakers and public

**Markups:** members decide on bill's actual language, conceptualize the bill

- Outside pressures often intense during markup
- *Government in the Sunshine Act (1977)* rules all markup sessions conducted in public (except Nat'l Security, some commerce, a few others)
- After markup, if in a subcommittee, recommendations sent to full committee, which votes to ratify, conduct its own markup, return to subcommittee, or do nothing

**Reports:** If committee votes to send bill to floor, the staff prepares a full report summarizing results of committee research

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## Getting bills to the House floor is a two-track process

- Formally, bills move from the committees to calendars, from which they are called up in order
- Non-controversial bills are in practice considered under "suspension of the rules"
- Controversial bills are in practice considered under a "rule."

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## The four major types of rules,

- **Open:** Permits general debate for a specified period of time and allows any member to offer an amendment that complies with the standing rules of the House.
- **Closed:** Permits general debate for a specified period of time but generally permits no amendments
- **Modified closed:** Permits general debate for a specified period of time, but limits amendments to those designated in the special rule or the House Rules Committee report accompanying the special rule. May preclude amendments to particular portions of a bill.
- **Waiver:** A special rule in the House that waives points of order against a measure or an amendment.

<http://www.thecapitol.net/glossary/>

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## A Rule: H.Res. 36

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 554) to establish a program, coordinated by the National Transportation Safety Board, of assistance to families of passengers involved in rail passenger accidents. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure. After general debate the bill shall be considered for amendment under the five-minute rule. Each section of the bill shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

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## A Closed Rule: H.Res.311

**Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes. The bill shall be considered as read for amendment. The amendment recommended by the Committee on House Administration now printed in the bill, modified by the amendment printed in the report of the Committee on Rules accompanying this resolution, shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on House Administration; and (2) one motion to recommit with or without instructions.**

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## A very complicated Rule: H.Res. 100

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the concurrent resolution (H. Con. Res. 83) establishing the congressional budget for the United States Government for fiscal year 2002, revising the congressional budget for the United States Government for fiscal year 2001, and setting forth appropriate budgetary levels for each of fiscal years 2003 through 2011. The first reading of the concurrent resolution shall be dispensed with. All points of order against consideration of the concurrent resolution are waived. The period of debate on the subject of the concurrent resolution on the budget for fiscal year 2002 that occurred on March 27, 2001, pursuant to the order of the House of March 22, 2001, shall be considered to have been debate on House Concurrent Resolution 83, and the time for debate prescribed in section 305 of the Congressional Budget Act of 1974 shall be considered to have expired. A further period of general debate shall be confined to the concurrent resolution and shall not exceed 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. After such further general debate, the concurrent resolution shall be considered for amendment under the five-minute rule. The amendment specified in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. The current resolution, as amended, shall be considered as read. No further amendment shall be in order except those printed in part B of the report of the Committee on Rules. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment. All points of order against the amendments printed in part B of the report are waived except that the adoption of an amendment in the nature of a substitute shall constitute the conclusion of consideration of the concurrent resolution for amendment. After the conclusion of consideration of the concurrent resolution for amendment and a final period of general debate, which shall not exceed 10 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the Committee shall rise and report the concurrent resolution, as amended, to the House with such further amendment as may have been adopted. The previous question shall be considered as ordered on the concurrent resolution and amendments thereto to final adoption without intervening motion except amendments offered by the chairman of the Committee on the Budget pursuant to section 305(a)(5) of the Congressional Budget Act of 1974 to achieve mathematical consistency. The concurrent resolution shall not be subject to a demand for division of the question of its adoption.

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The substantive consideration of bills in the House is in Committee of the Whole

- Advantages
  - Smaller quorum
  - Debate easier (under the 5-minute rule)
    - A debate-limiting rule of the House that is invoked when the House sits as the Committee of the Whole. Under the rule, a member offering an amendment is allowed to speak five minutes in its favor, and an opponent of the amendment is allowed to speak five minutes in opposition. Debate is then closed. In practice, amendments regularly are debated more than 10 minutes, with members gaining the floor by offering pro forma amendments or obtaining unanimous consent to speak longer than five minutes.
- Technically, not the House
  - Presided over by a rank-and-file member, so the Speaker can participate in debate
  - All amendments that pass must be approved again by the House

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The Senate differs from the House in being looser

- Getting to the floor is easier and more varied
- Debate need not be germane
- Amendments need not be germane
- Filibuster the 800 pound gorilla

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## 10. Scheduling in the Senate by Complex Unanimous Consent Agreements

(e.g., during consideration of the Better Education for Students and Teachers Act (6/6/01))

Mr. REID. Mr. President, I know there are a number of Senators we have danced round today trying to figure out a time to vote. Prior to this unanimous consent agreement, which will require beginning 5 minutes of discussion at 5:10, the Senator from Delaware, Mr. *Biden*, wishes to speak for about 15 minutes of the approximately 30 minutes that we have on this Dodd amendment.

With that in mind, I ask unanimous consent that at 5:10 p.m. the Senate resume consideration of Bingaman amendment No. 791, that the Bingaman amendment be modified to be a first-degree amendment, and that following 5 minutes of closing debate, equally divided in the usual form, the Senate vote in relation to the Bingaman amendment at 5:15.

Further, following disposition of the Bingaman amendment, there be 4 minutes of debate divided in the usual form on the Voinovich amendment No. 389, as modified, followed by a vote in relation to the Voinovich amendment.

Further, that no second-degree amendments be in order to these amendments. I say to everybody within the sound of my voice that we will have two votes, first at 5:15, and the other following that.

Mr. GREGG. Reserving the right to object, did the Democratic assistant leader decide he didn't want to do the Reed amendment?

Mr. REID. Yes. We are going to try in the morning to dispose of the Dodd and Reed amendments. We are unable to do that because of the lateness of the hour.

Mr. GREGG. I have no objection.

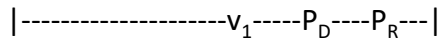
The PRESIDING OFFICER. Without objection, it is so ordered.

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## Median Voter Logic

- The median voter theorem is the result of a deductive model based on the tenets of rational choice theory
- Voters and politicians are assumed to be utility-maximizers
  - Politicians are assumed to be motivated to win office.
  - In seeking office, they announce platforms representing where they stand along a left-right ideological continuum.
    - $P_D$  = Democratic candidate's platform,  $P_R$  = Republicans
  - Voters get utility from the election of a candidate based on the distance between their ideology located at point  $V_i$  and that of the candidate.
    - Voter  $i$ 's utility for candidate D is  $U_i(D) = -(v_i - P_D)^2$
    - Voter  $i$ 's utility for candidate R is  $U_i(R) = -(v_i - P_R)^2$

Example 1: who does voter 1 prefer?



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## Median Voter Theorem

Example 1: who does voter 1 prefer?

|-----v<sub>1</sub>-----P<sub>D</sub>-----P<sub>R</sub>-----|

Example 2: who does voter 1 prefer?

|--P<sub>D</sub>-----v<sub>1</sub>-----P<sub>R</sub>-----|

Example 3: Who wins in the electoral district with 3 voters with ideal points  $v_1$ ,  $v_2$ , and  $v_3$ .

|-----v<sub>1</sub>-----P<sub>D</sub>-----v<sub>2</sub>-----v<sub>3</sub>-----P<sub>R</sub>-----|

What should  $P_R$  do in order to improve his electoral prospects?

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## The Setter Model

- Suppose an agenda-setter has the power to offer a “take it or leave it” motion.
  - Let  $q$  denote the status quo, or reversion point
  - Let  $m$  denote the median voter’s ideal point
  - Let  $S$  denote the ideal point of the agenda-setter
- We have already seen the possible power of the agenda-setter
  - In choices along one-dimension, however, the median voter seemingly calls the shots.
- Under what circumstances, can the agenda-setter really drive choices for the group?

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## The Setter Model

- Key Inference from the Setter Model: If the reversion point is sufficiently bad, even extreme Setters can get outcomes they like.
- Example: Congress has to pass a budget and appropriations bill[s] each year to keep the government open.
  - Nobody wants the government to actually shut-down.
  - The threat of a government shut-down is an extreme reversion point.
  - If there is an agenda-setter, she more or less gets to call the shots.

|Q-----M-----|-----S-----|  
 |-----This whole range is the win set-----|

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## Application of setter models to congressional committees

- Congressional committees have considerable agenda-setting power
  - Because of their expertise in particular areas and the desire to let everyone (at least in the majority party) to share the wealth, there is considerable deference to committees.
  - There is also a presumption among the electorate of self-selection onto committees (i.e., they are made-up of high-demanders)
  - If committees get to make “take it or leave it” proposals, then we expect extreme outcomes
- Problems with this view.
  - Empirical evidence mixed, especially with regard to the question of high demanders
  - There are lots of amendment opportunities, especially in the Senate
  - The Status Quo is rarely that extreme.

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## Veto-Players in the Legislative Process

- Key Idea: Absent Congressional action, public policy will always “revert” to something.
- When Congress and the President consider new legislation, they are choosing between an alternative to the reversion outcome and the reversion outcome.
- The Constitution and the rules of Congress create a number of important veto players in the legislative process.
  - The “median voter” in the House and Senate
  - The President
    - The Veto-Over Ride Coalition (that most likely includes members of the President’s Party)
    - The Filibuster Coalition (that most likely include members of the Out-Party)

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## The median voter as veto player

- Median Voter = M
- Reversion point (status quo) = Q
- Proposed Bill = B
- Agenda-Setter (think Nancy Pelosi or a committee chairperson in this example) = A

Does the Proposed Bill Pass?

|--A-----B-----Q-----M-----|

What about this time?

|--A-----Q--B--M-----|

What about this time?

|--A-----Q-----M-----B-----|

Given the stylized treatment, can any bill pass without the support of the median voter?

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## Adding the President as Veto-Player

- Median Voter = M
- Reversion point (status quo) = Q
- Proposed Bill = B
- Agenda-Setter (think Paul Ryan in this example) = A
- President = P

If you are A, what do you propose? Why?

|--A-----P-----M-----Q-----|

Let's move Q. If you are A, what do you propose? Why?

|--A-----P-----Q-----M-----|

When does our agenda-setter have the most flexibility?

When does our agenda-setter confront almost certain gridlock?

The legislative process is largely determined by Congress.

- The median voter should be calling the shots with respect to the rules.
- How does the median voter protect herself from an extremist agenda-setter?

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## Adding the filibuster pivot

- Median Voter = M
- Reversion point (status quo) = Q
- Proposed Bill = B
- Agenda-Setter (think Nancy Pelosi in this example) = A
- President = P
- Filibuster Pivot (2/5 of legislators are to your right) = F

If you are A, what do you propose? Why?

|--A-----P-----M-----Q-----F-----|

If you are A, what do you propose? Why?

|--A-----P-----M-----F-----Q-----|

What is the effect of the filibuster?

Gridlock? Moderation? Under what conditions do you observe each?

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## Implications for the legislative process

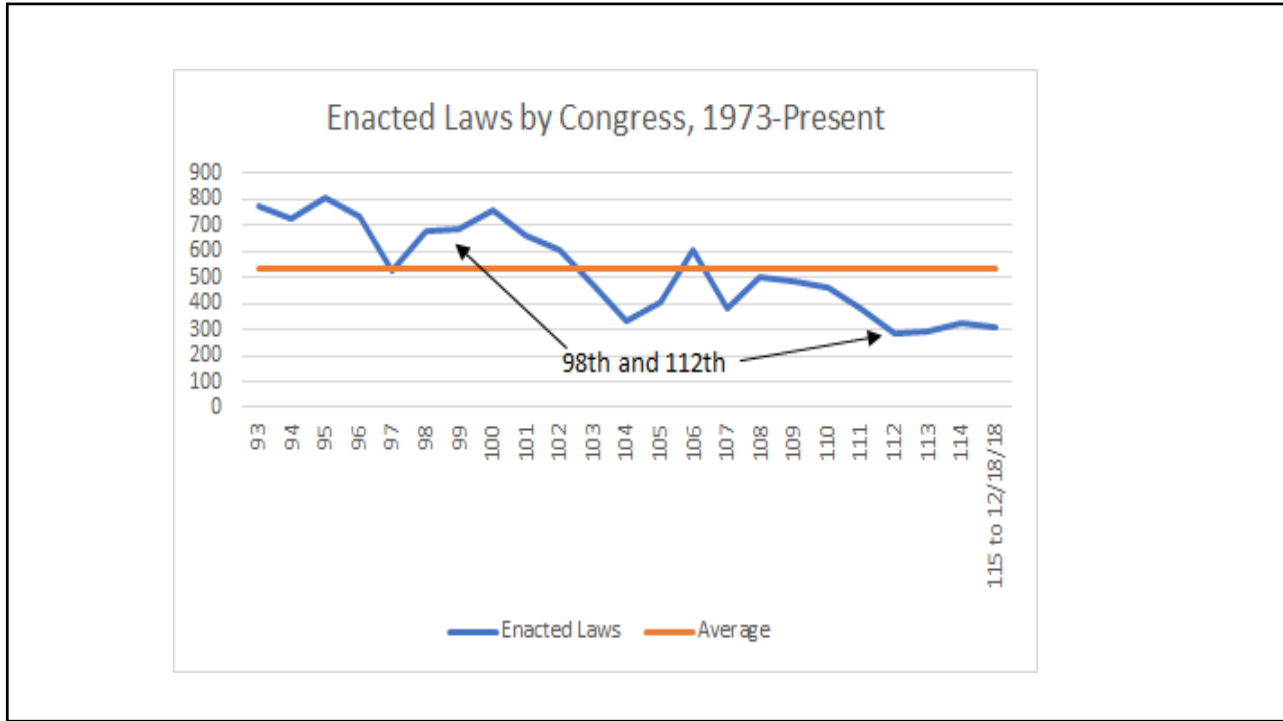
- Unless the status quo is extreme, it is difficult to legislatively make large-scale changes in public policy
- Negative agenda control: The agenda-setting power of the Speaker of the House and committee chairs is, arguably, most important in the prevention of legislation from coming to the floor.
  - The Hastert Rule

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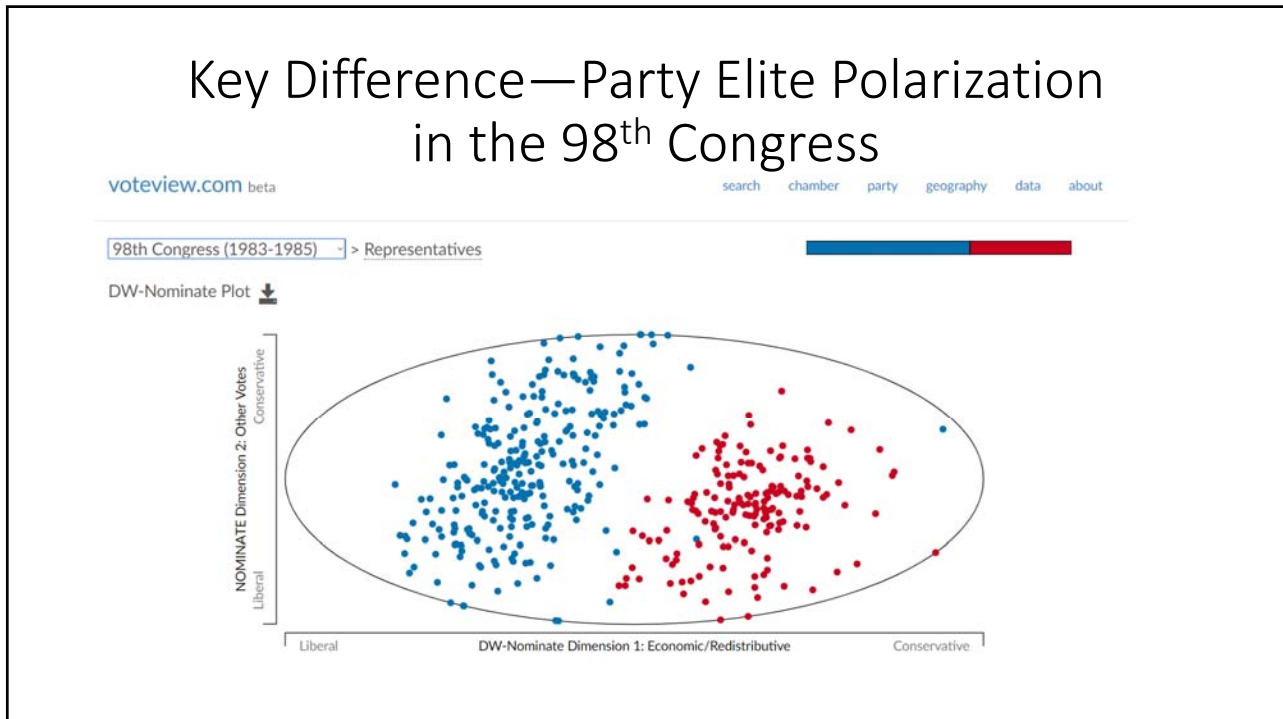
## Congress Today in Historical Context

- Arguably, the most similar post-war Congress' to the present one were the 98<sup>th</sup> (1983-1984) and the 112<sup>th</sup> (2011-2012).
  - The president was running for election
  - A majority in the Senate belonged to the same party as the president
  - The House was controlled by the opposition party
- The 98<sup>th</sup> Congress is remembered for its bipartisanship
  - the declaration Martin Luther King's birthday as a federal holiday;
  - amendments to Social Security that increased taxes and cut benefits to preserve the pension system's solvency;
  - a crime bill; and
  - a package of spending cuts and tax hikes to reduce the deficit.
- The 112<sup>th</sup> Congress was one of the most dysfunctional in American history
  - partisan brinkmanship over debts and deficits that led to the down-grading of the United States' credit rating.

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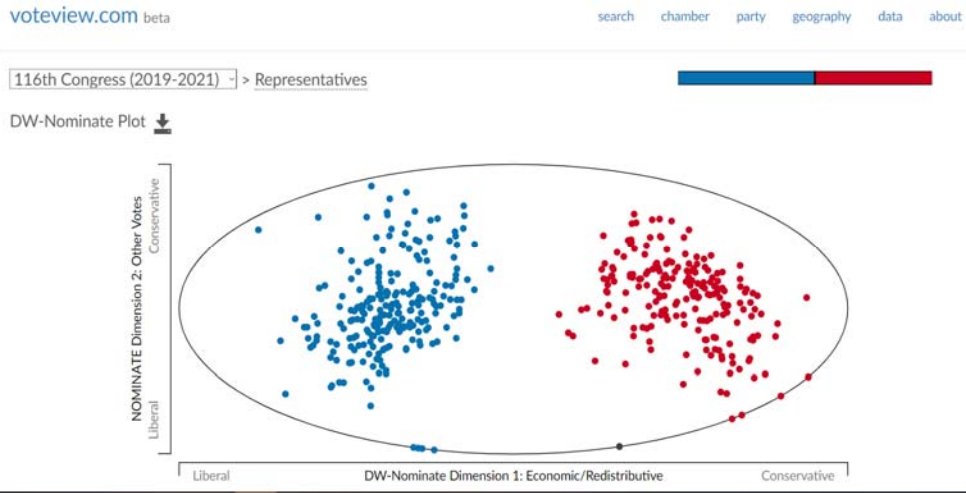


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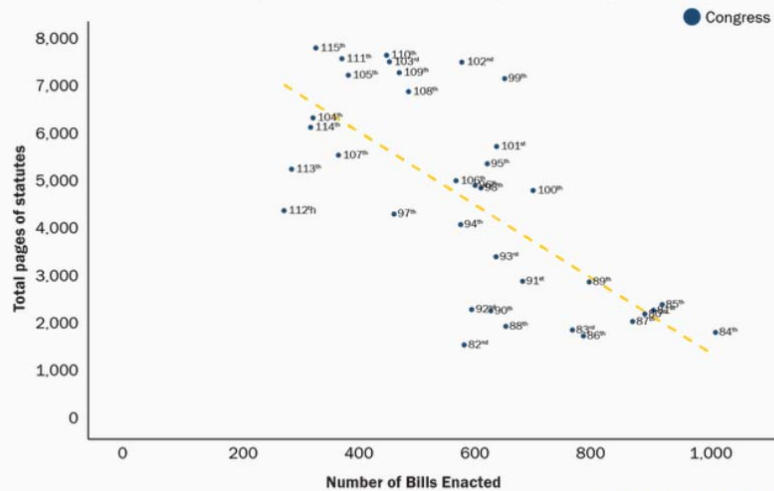
# Party Elite Polarization Today



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# But, bills are also becoming a bit longer

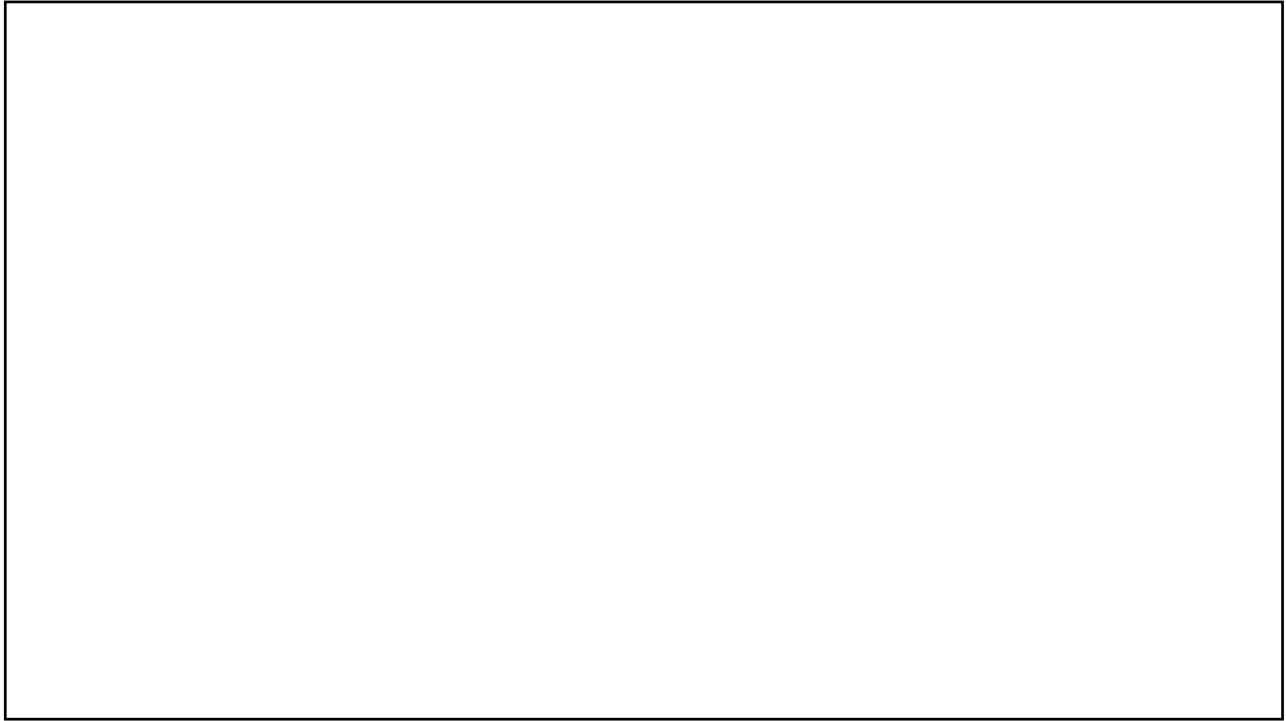
As fewer laws are enacted, individual bills tend to grow in length



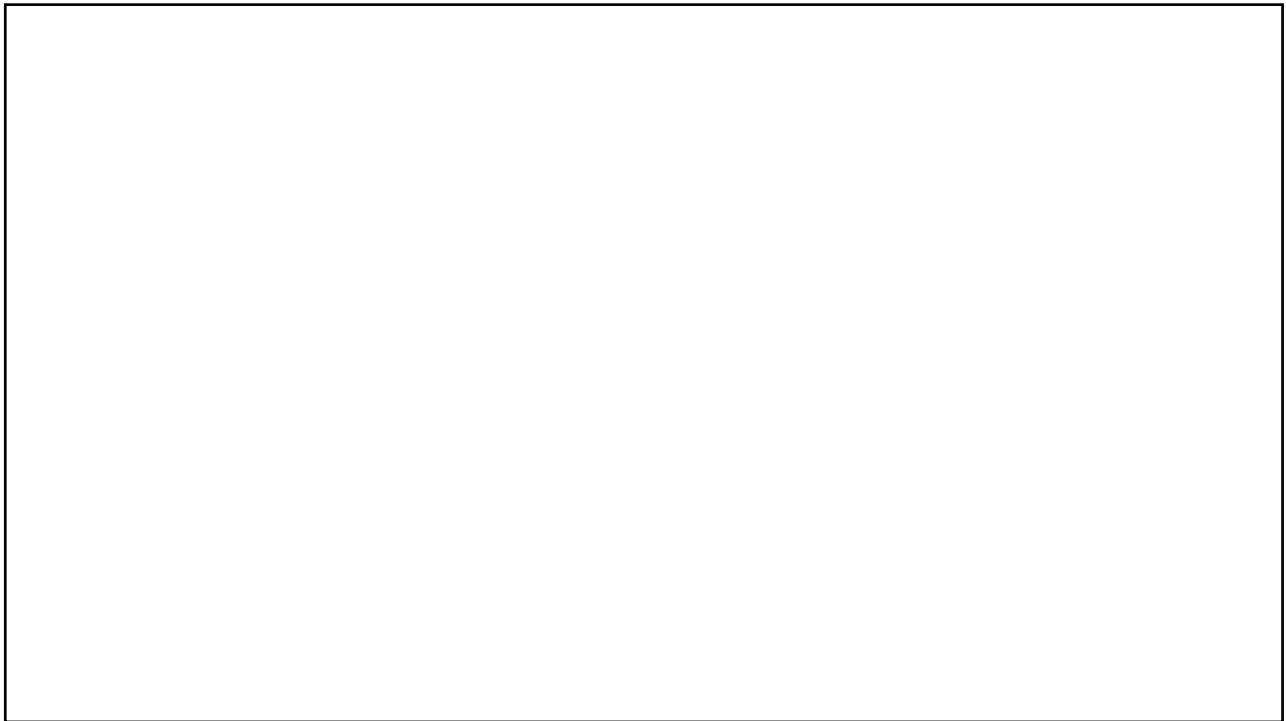
Source: The Brookings Institution. 2019. Vital Statistics on Congress [Table 6-4].

BROOKINGS

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