

**Reforming Congress Project
Sunwater Institute
Interview with Sarah Binder**

CHERVENAK: Professor Binder, thank you so much for joining us.

BINDER: Great, thanks for having me.

CHERVENAK: Why don't we start with your background? Where did you start, what's been the arc of your career so far, and where are you now?

BINDER: Sure, so I grew up in New Haven, Connecticut. I spent many, many years there. I went to college there. I needed to find a major when I was in college and we used to say everybody majored in history if you didn't know what to major in, so I majored in history, learned a bit about mostly about the United States, American history, 19th century, mostly. Graduated, needed a job, come to Washington because that's what you do as a history major who didn't really have a plan. Somehow I ended up on Capitol Hill. I ended up working for Congressman Lee Hamilton from southern Indiana. I started there in 1986, so I was there '86 through '90. I used to remind Lee, although he wasn't too pleased with the reminder, that I was born just a week or two after he was first elected in 1964.

And so he had been there a very long time. He was probably among the most respected of members. I got a sort of warped view of Congress because of so hard working person and knowledgeable, an expert, and just absorbed information, so I could have spent my career on Capitol Hill, but I decided I really was actually pretty interested in Congress, so I went off to grad school in Minnesota. Ended up writing a dissertation about congressional rules and their evolution. Ended up in Washington, first at the Brookings Institution and then, wanting a 10-year home in an academic department, I ended up also going to GW, and somehow 25 plus years later, I have a home or a foot in both GW political science and Brookings. So that's me in a nutshell.

CHERVENAK: You know, we talked to Larry Evans earlier on the program, and I think Lee Hamilton was one of his big influences as well, so Lee Hamilton reaches through the whole scholarship at this point, I guess.

BINDER: He does. Every year he took an American Political Science Association, APSA, Congressional Fellow, so I was first meeting fellows in 1980s, long before I went to grad school and even knew what the APSA was, but it was emblematic of Lee's kind of like looking and pulling for expertise in places that he wasn't an expert in.

CHERVENAK: Great, well why don't you talk a little bit just broadly speaking, what are your high-level interests, and then we'll dig more deeper into Congress, but generally speaking what is it that captures your attention when it comes to political systems more generally speaking?

BINDER: So, I'm a student of institutions, obviously of political institutions. I'm most interested in where they come from, both as organizations, as sets of rules, from congressional mandates and so forth. Where do they come from? How do they evolve? Why do they evolve? Why are some parts of institutions easy to change? Why do other parts linger on, right, long after the coalition that put them into place, when the coalition is gone? And then harder to do, but why or in what ways or under what conditions do institutions and rules matter? For whom do they matter? How do we know they matter? Do they affect behavior? Do they affect policy outcomes, gridlock, and so forth?

CHERVENAK: So why don't we talk more specifically, then, about Congress, and I know one of your books is about majorities and minorities, right? "Minority Rights, Majority Rule," I think is the title, and you know, maybe we can start off the conversation there, you know, and I'd like to come at it from a perspective of someone thinking through the members of Congress and thinking all of them should have, well why not, why don't they all exactly have the same power, and how can there be majority rights or minority rights? Aren't there just rights?

BINDER: So it's a great way to think about what we think of as the House and Senate at least in terms of the formal roles, right, there's a whole world of informal rules or norms we can come to, but in terms of the formal rules of the game, if you bury your head into the House Rules Manual, which is really fat, and the Senate Rules Manual, like a pamphlet, for reasons we could come to, if you bury yourself into the rules, what you'll find is an awful lot of the rules are really about what you asked about, individual rights. What are the protections for individuals? What are the parliamentary advantages that are afforded or protected for individuals?

Even when you look at notions of like what the opposition gets or what majorities get, it is very rare that the rules specify something about party, right, so, and, which is a surprise to me when I first began and began digging into the rule book to try to sort out individual rights, coalition rights, and party rights. So first, there are relatively few specifically, explicitly partisan rights. We can come to the other question about why are there majorities, right, why do coalitions get advantages over individuals, we'll come to that one in a moment.

In terms of majorities versus majority parties, the real issue here is the rules get written in 1789, but obviously, you know, Congress isn't frozen, and so as parties emerge, first in Congress and then by the 1830s, 1840s, right, once you get electoral parties outside the institution, the pressure's on Congress and lawmakers to use the rules in different ways. That is how we begin to emerge to see party rights, what looks like party rights, even though the rule that technically the rules are not empowering the majority party.

So again, it's this issue that rules in one context empower certain groups, rules as that context change, even though the rules don't change, have different effects on who's given procedural rights in in the chamber. Yeah. And now the harder question is at the root of your questions, like why are there advantages given to groups over individuals in the first place? And I think some of that is a process of learning over time, but it's also processed certainly as we see it

clearly in the House, as parties emerge outside the institution, there's a battle to take advantage of the rules to whoever's in the majority party.

Now, if lawmakers cared about the future, they probably would not empower majorities, right, quite so clearly, certainly as we see in the House, right, because you might think, well I'm going to be in the minority, I should be protecting individual rights and I shouldn't be empowering who's in the majority. But lawmakers, not today and not then back in the 19th century, they think about the here and now, right, they think about what their party can achieve and what rules do they need to get there.

So over time the dynamic, sometimes we call it path dependent, right, a choice is made, go down one branch, and then once you go to that branch with a particular rule, that empowers you to make additional rules, you end up with really powerful majorities. That tends to serve the interests of the party that's making the rules. So I think that's probably why, although individual rights remain, why it's easy for me to step back and write a book about the rights and the rules that empower majorities.

CHERVENAK: So, what are these kinds of rules, norms, you know, habits, if you will, whatever it is, what are the kinds of, I guess, institutional systems that are in place that give the majority some extra power or give the minority some extra power, you know, in any context either on the floor or in committee or what have you?

BINDER: So at least in terms of sort of the formal angle, then we come back. I think it's important to think about why it might be somewhere different in terms of these informal norms or practices or behaviors. At least in terms of the formal roles it, and put the caveat, political scientists, we all disagree, my view from looking at the evolution of these rules, the one rule that certainly makes a tremendous difference, and we can see it by looking at the historical path back the House takes in the historical very different historical path the Senate takes even though they start really from the same rule book, a core rule here, a consequential rule is what we call in the House today, the previous question motion, right, which is just a fancy way of a majority looking out, or anyone looking out of the chamber and asking, are we ready to take a vote.

The House version of that today allows a simple majority to cut off debate, and of course once the House gets that rule and interprets it in a way that advantages majorities in the early 19th century, well then they can use that rule to cut off debate by simple majority on other rules that empower the majority party. So that over the course of House history and certainly of the 19th century, you end up with an enormous set of powers given to the majority party, largely in my account because they have, weaponized might be too strong, but they've honed, if not weaponized, the previous question motion to cut off debate on rules that further empower themselves.

Senate, for a set of historical reasons, drops its version of the previous question motion. They hadn't used it yet, the House hadn't figured it out yet. Early, early 19th century, and sure

enough once it's gone, they're fine for a little while till partisanship heats up, till sexual debates over slavery heats up, and then leaders look in the rule book basically and say, uh oh. They can see what majorities are doing in the other chamber, the other chamber has a previous question motion to cut off debate, the Senate lacks that that rule, which means every time they try to put one into the rulebook, i.e., to ban filibusters, somebody filibusters the motion, right, to create a rule to ban filibusters.

And that takes its own again quasi-path-dependent past, right, the heart, it's technically as we know now, it's technically possible to cut off debate, what we call the nuclear option, but if you're following the rules it's politically difficult to do that. So that rule leaves the Senate today basically at the whims of individuals and not the minority of large, large minority coalitions. In the House, right, we can see speakers exploit the rules to the majority's advantage.

CHERVENAK: So, the previous question seems to be the key one for the House, and the lack of that issue in the Senate determines the nature. Both of these are floor-related rules, right, what about in terms of the committees? You look at the committees and you know there's different resources for the majority, minority party, which, you know, I think is kind of hard to justify if you look at the original formation of Congress. How did those kinds of advantages for the majority crop up and also in terms of the rules of the committees themselves?

BINDER: Well to some degree, I mean we have, we do have periods, and maybe this is the sort of instructive way to think about it, we do have periods of commercial history with pretty strong congressional committees, that is, committees having resources, committees having procedural advantages on the floor, deference to committee, so informal power afforded them by their colleagues, but we never get strong committees like that and strong parties at the same time.

So, in periods of congressional history where the parties are ideologically diverse and thus don't want to empower their leaders or for other reasons, we might have a weak-kneed or one weak-kneed party, in those periods you see strong committees. But once you go into periods with strong parties, we tend to see more centralized decision making, and that is a move to draw resources away from committees or even if they have resources, like there's a deference to leaders on the part of committee chairs because their agendas are set by leaders, and of course committee chairs won't defer to leaders if they thought leaders weren't acting in their own, in committee chairs, interests, so again the rise and the reshaping and emergence of political parties, it reshapes the institutions, who has advantages, who has perhaps power, and thus and we think sort of the policy outcomes that emerge from that.

CHERVENAK: What about in terms of the coalitions you mentioned earlier, so non-party groups either in the House or the Senate? You know I think we had some previous guests talk about either the caucuses or the rise of certain, you know the Blue Dogs, or you know there are different groups that have come up that are not necessarily party aligned, but, and presumably they don't have any rule advantages but still can get things done. What's, how do you treat those in your framework?

BINDER: Right, well a couple ways. First, we do see factions as we usually call them over House and over Senate history. I think sometimes it's helpful to distinguish between those that are, if let's say I'm in the Republican party, those are on the moderate, the left side of the Republican party, and those on the far right, and ditto for on the Democratic side. So these centrist factions, they can make a difference really by finding common cause, either with a minority party in their own chamber, or, that's probably the easiest way to think about it right because they're sort of closest, a moderate Democrat 30 years ago might be quite close to the most liberal Republican, so those types of non-partisan caucuses can make a difference by basically challenging the leadership of their own party, and using it with the heft that comes from having votes from across the aisle.

So, and we do see periods of time that emerges, certainly 1970s probably the latest time, a little bit in the 80s, but as the parties have kind of sorted themselves into liberal and conservative camps, there really isn't anyone left in the middle for those types of caucuses. We see it a little bit in the Senate. They call themselves gangs, that might emerge on an issue and basically put pressure on the leadership to build a bipartisan coalition. We see factors on the far left and the far right. Those lead to different types of dynamics that we saw with the Freedom Caucus on our House Republican majorities, almost really taking that leadership hostage for demands that often leadership couldn't meet, which often left to basically sort of walking into a canyon and leaving the party there. So, it's hard for those extremist parties in a system that prioritizes large bipartisan super majorities to work to overcome vetoes, to overcome filibusters, is hard for those outside factions to do much besides block, but that's often what their goal is.

CHERVENAK: Yeah, so it sounds like some kind of coalition can only gain extra power if it's able to kind of co-opt some of those majority party institutions or infrastructure, otherwise they're no better off than they would be as individuals.

BINDER: Yeah, I mean there's no constitutional and there's no necessary reason why these majorities have always been partisan majorities, right, we can imagine a world where there are regional majorities, or competing regional majorities, but that hasn't happened, right. The most, as I think of it, the most common coalition, the most common winning coalition, is based on party, and so that just feeds itself over time. If you want advantages within the institution, you typically do it through the party in some way, unless you're part of a successful faction of the, you know party leaders and parties have resources. They can raise money for you. They have a lot of carrots, sticks not so much, but a lot of carrots.

And that just reaffirms and fuels, so long as the parties are working and their members in their interests, that just fuels the power of party as the most common winning coalition, which really, really starves the oxygen out of potential rival coalitions.

CHERVENAK: So, I'm curious your perspective, then, on this concept of two parties. You would think that, I mean I guess it stands to reason that, if the parties are able to put some kind of

rules or institutions in Congress that reinforce their control, that that's going to lock out other parties from emerging. Is that your perspective on why there aren't more parties, or are there other reasons that you think are the core drivers?

BINDER: So, I think that's an important part of it, but it's buttressed by an American political system, an American party system, and a set of legal rules that also advantage the two major parties. So I mean at a most narrow level, right, if you think about getting onto the ballot in a state, right, the majority party and the minority party, typically right if you have five percent of the vote, you get automatic ballot access.

Well one of the major parties is not going to slip below five percent, so you're automatically on. You're on the third party in the Green party or running as an independent, you can have a pretty high threshold of getting signatures and the legwork needed to get on the ballot, and that's written into state law, right, the part the two parties are advantaged in state law. So that's one element, but also just think, how do you win the presidency? You need to win a majority electoral college vote. It doesn't matter if you are a regionally strong party. Unless you can form a majority from across the electoral college, well then your party's not going to go anywhere, and you're not going to attract more people into your party because you know politicians are ambitious, and they're rational. They want to go where they can win, and if the deck is stacked in the interest of the two major parties, it's really, really hard to break through that in any sustained way that would allow you to win the presidency and all the resources that that come with that.

CHERVENAK: If we go back to committees for a second, within the committees we've talked about the rule system inside committees, committees have this role of gatekeeper, and how does that play out when it comes to majority or minority kind of privilege, if you will, of having that chairmanship versus 49 percent of the members on the committee?

BINDER: Oh, well I guess first a caveat because legislative scholars debate everything, we also debate whether committees in fact are gatekeepers in that if the median, if the middle person, usually in the majority party, but if the middle person in the floor, in the chamber, were upset that a bill was being bottled up by a committee or committee chair, there are mechanisms in the rules for forcing those issues onto the floor. And we do see it over time, right, issues that the majority party through its committees doesn't want to legislate on, immigration reform, a central one over the last decade, before that, campaign finance reform over two decades ago. Now maybe those are exceptions that prove the rule that committees gatekeep, but it's also a sign that committees and parties are, they know where their butter, where their bread is buttered. They are probably more responsive to currents within their party at least, then, than meets the eye.

So, I think it's a little hard to say that committees have extraordinary powers today. They have some procedural rights, but if there's a threat that they would lose control of an issue, that's often sufficient, typically sufficient, to generate an issue and push it onto the, pull it out of committee.

CHERVENAK: All right, well let's move on to, then, the Senate a little bit. You've done a lot of work on the Senate, and you know maybe we can start it off just as a comparison on this majority/minority issue on the size. To me the key difference is the number of members, right, and you know there's this Dunbar's number, I don't know if you're familiar with, where you know, a person can only maintain relationships with so many other people. You max out, and you can't remember their names, you don't know their marital status or how many kids they have, and that I think the Dunbar number is around 105 or something like that, and so the Senate's right on that edge where everybody can know everybody else. The House is way over that number, and that would require specialization, it requires a new kind of organization. So I'm wondering how that concept of number of members is important in the organization of the body and of this majority/minority split in the way they treat each other. Is it driven primarily, do you think, by just the number of members, or is it something more, something different? Are there other factors driving them?

BINDER: So I mean on the one hand you could imagine an account of the Senate today and its evolution and its resistance to the types of party empowering rules that we see on the House side, and we can read that as a body, as you said, that their personal relationships are social relationships that are constraining the interest in accumulating, allowing others to accumulate power as opposed to keeping it spread out across members.

The caveat about thinking about the Senate that way is that the rules of the game in fact really do empower individual senators in ways that they can use to block coalitions from their, even from their own party, and so, and at the same time there are all these partisan pressures within the majority party that have over time chipped away at those individual and minority rights, right, and so I when I step back and look at the Senate, despite the closeness of many of those relationships, I see the sentence like this long, slow, sometimes fast, slow, I know this punctuated equilibrium right, we, something happens, we resolve it, something happens, right, long march towards majority rule, right.

It's not like they go the other way around, right. One senator a couple years ago said, look you know, once you squeeze the toothpaste out of the tube, it's really hard to get it back in. And so I would be hesitant to say that the Senate has really resisted the type of accumulation of parliamentary rights, although certainly they're far more widespread today than they are for sure in the House.

CHERVENAK: So you think it's just a matter of time before the Senate becomes the House?

BINDER: A matter of time, yes, although if I had to put a number on it, I couldn't. I do think there, and I guess this is another sort of, an issue for, or a challenge for political scientists who try to understand the institution, which it is very, well, it's hard for us to truly, what's the fairest way to put it? One way to put it is that we really discount the importance of individuals, right, in part because we can't get to them, and so it's harder for us to observe what these social relations are doing in terms of how they affect the distribution of power and what the Senate is

doing, but there's no doubt that these relationships matter, right. You can see it, well you can certainly see it when we see successful episodes of deal making, right, where a chair and a ranking member, they have worked together so long they know what the other side wants in a deal, and most congressional deals aren't zero sum, right, they don't usually divide up a pie say, we get three pieces, you get two. It's more like, let's enlarge the pie, right, you get a peach pie, I'll get an apple pie, and we'll call it omnibus pie, right.

And, but you can't make those types of deal [] either side wants, and when we talk about these Senate gangs, I think that part of what it is, that's part of what they're capturing is they know each other enough, they can tolerate each other enough, and they know what the other side wants or at least are willing to listen to what the other side wants. And those types of deals, we have them historically in the House, but we don't have them very much today because there's absolutely almost, right, no crossing the partisan aisle there.

CHERVENAK: So, can you talk a little bit more about the Senate and how it works? I mean, you already mentioned the filibuster a little bit, but if you can go through your perspective on the Senate, where it is, how it evolved, the role of the parliamentarian, for instance, I know you've done some work on. Can you talk through that a little bit and what's important to really know about the Senate and how it evolved?

BINDER: So again, with the caveat that legislative scholars disagree about the dynamics that have generated today's Senate, I do put an awful lot of stake into the disbanding of the previous question motion. And I think it's also just important technically to understand why that matters so much today, right. If you are a leader and you want to put a bill or a procedural motion on the floor and obviously you want to have a vote on it, that leader has two options.

He or she can say, I ask unanimous consent to vote on this bill, on this motion that's going to put a bill on the floor. Unanimous consent, right, 100 senators, every single one of them has to agree, and if you disagree, if you want to object, you don't even have to go to the floor, you just tell your leader on your side, hey when they ask for consent, I'd like you to object on my behalf. And that's all systematized, right. In my days on the Hill, a phone call went out for the bat phone. Today there's an email, right, we're going to try to get this onto the floor.

So, one option is you need unanimous consent. Well that's almost, I mean that's it's absurd that all 100 senators have to agree on whether or not to hold a vote, right, and not on final passage, just on whether we should put a bill on the floor. And if you can't get unanimous consent, well then we go through this rigorous rule that we call cloture. In today's version of cloture, you need 60 votes. And what do we know about Senate majority parties over the last several decades if we chart their size? They're getting smaller and smaller.

And so we live in a world in the Senate where parties are smaller, majority parties are smaller, the rule's stuck at 60, the parties are increasingly at odds with one each other for strategic reasons if not ideological reasons, and so nothing gets done. You can't get unanimous consent, and you can't get to 60. So that to me right in the absence of a majority cloture motion, except

in some circumstances, it paralyzes the Senate, and it gives rise to hostage-taking. It gives rise to I would call legislative terrorism, right, taking one would think important things like can the government, you know, issue enough debt to cover its obligations, shutting down the government. It's not a healthy body, it's not a healthy institution, and the difficulties of figuring how the Senate is going to figure its way out of these holes, let alone think about how to solving problems, right, these are just like the extreme cases, but on a day-to-day basis.

We know there are major problems in the United States. We know the parties disagree about how to solve them, but the rules of the game here really stymie the ability of parties to figure out [how] to come to come to any agreement.

CHERVENAK: So if 60 is the number, I mean, it could be 51, it could be 60, it could be 75, you would still think there should be, you know, trading mechanism for them to get over that number, right? It's like you said about the pies, right? Is the majority just not giving the minority enough of their pie to get over that amount, or is there some other kind of issue at play here where the minority is going to, you know, shoot it down no matter what kind of pie they're offered?

BINDER: So I think the issue here, you have to be willing to go both parties or coalitions, whatever the pivotal groups are, both or more have to be willing to go to the bargaining table in the first place, and so if your leader or your party thinks like what are the costs if I just say no, like what, how bad could things be, how bad is the status quo, or what if we just keep on living with the status quo? Well, oftentimes, especially in a world of such intense partisanship where the battle for partisan advantage just so you can gain control, it's so intense that we often answer, leaders will often answer that question, what are the costs of saying no? Not so bad.

In fact my party, my base outside Congress in fact might reward me for refusing to go to the bargaining table. So I think that's part of the issue here, is it's not just they can't get to the requisite size that they can't actually execute a deal, is that oftentimes one party or the other doesn't actually want a deal and think they're better off, if not no worse off, right, not going to the negotiating table in the first place. And that's how you obviously get the status quo becomes, you know, can fester, and of course sometimes when you do nothing, things improve, right.

If you don't, if you index something to inflation and you do nothing, well you're not worse off, probably if you don't index up inflation like minimum wage and suddenly minimum wage is going down over time, well then you might make a case that you're worse off by failing, by allowing this policy just to drift, drift on its own.

CHERVENAK: So in your mind this concept of 60, is that the key stumbling block to a more functional Senate, or is it some other issue?

BINDER: So I think it's pretty, a core stumbling block in the issue. The issue really is, to be clear, it's not because I think the Senate is strictly not getting a particular sets of policy outcomes, the

problem is you can't vote, right. If you can't vote because you can't get to 60, then what is the legislature doing, and how do you hold it accountable other than to realize that they're not. They're not even casting votes. Now, forced to go online to cast a vote, well granted, sometimes opponents, they'll still be opponents to an issue, but other times putting something on the floor in fact might be broadly popular and the cost of voting against it for a lawmaker might be quite steep, and lawmakers like to vote for popular things at the end of the day, right. I don't want to be on the opposing side.

CHERVENAK: So you're against the 60 to bring it to the floor but not against the 60 for the actual vote.

BINDER: No, I mean, I mean I'm against a high threshold for allowing a vote on anything that makes sense, right. Even if you want to call up a measure on the floor, you need 60 for that procedural motion. Well that seems nuts to me. In a legislature where, at a representative legislature, where we're sending people to act on our behalf, typically a vote in a large organization is how you get to there, right. It's too large just to have individual discussion consensus, right, what we think of as kind of participatory democracy. We live in a, the Senate is adversary democracy, right. You have to vote in order to register preferences to know where people stand, and that to me is the downside, the pernicious downside of the filibuster, is you never get to the vote.

CHERVENAK: So it sounds like, for instance, if you had let's just say a co-sponsor threshold of 50, right, you get 50 co-sponsors on a bill, automatically goes to the floor, automatically gets voted on. Now the question then becomes, that would solve I guess most of the problems you're talking about. Now the issue here comes into the ultimate minority, right, here which is the filibuster. Now the filibuster can be conceived of as a veto, you know, or it can, and I'm talking about an individual senator here rather than a group of senators, right, but an individual senator could have a veto on a legislation. You could set up a system that way, or you could give them five minutes to filibuster, and that would cause a certain amount of pain to everybody, or you could give them two days' worth to talk through, so when you think through just that question on the single senator's so-called, you know, I wouldn't call it a minority right. I'll just call it a right to talk, right. Where do you come down on that question? If this idea of getting it to the floor were solved, if the idea of voting on it were solved at a majority, except you have this, you know, would you give an individual senator a veto right, or would you give them a right for one minute to talk, or where in between would you fall for individual senators' rights?

BINDER: So I'm all in favor of, there are lots of gradations or iterations or versions of filibuster reform, right. Some of it is time based. Let's give them a day, let's give them a week, let's give two weeks. I don't have terrible problems with changing the ways in which the, we get to a vote, right, so long as eventually if a majority is in favor of voting, I believe there should be a vote. I mean another way to do it is say, well you start at 60, and after three days you go to 57, and then you go to 54, and 51. Now you know maybe you just say well that's just reductionist, we know it's going to 51, so everybody's strategies is keyed to 51. But part of the argument of

senators and others who favor keeping the filibuster is that the opposition or individuals should be able to make their case to try to change minds.

Well if that's the case, then fine. I'll give you two weeks. But oftentimes the goal is veto power, not in exchange for, not even just holding something hostage but just blocking all together. Well, if you can make the case and convince enough people to vote something down, all the power to you. I don't really see the, I don't, in the world we're in today, where the rules are used to take things hostage and veto for good, and it doesn't generate negotiations that typically yield bipartisan agreements, if that's really a rarity, well that's obviously not just the follow the rules, right, it's a function of the nature of the parties. But I think the day is kind of eclipsed in which the Senate can afford not to solve, not to ever take votes, because it doesn't really address any of these issues.

CHERVENAK: So it sounds like you're against individual member veto, but you're for them giving the chance to talk, you just don't know what period of time that is, whether it's five minutes or five days.

BINDER: Yeah I mean, if I thought there was a chance that that the current Senate would actually get off the dime, make more changes, I'd think a little bit more about it, but I think generally like if you think in terms of how the rules today basically have these built in, in essence, 48 hour windows, might be fine like starting at 60, two days, 67, two days, right, so you can imagine a series where you're at a two week mark. I mean some issues Congress might want to act faster, but if the point is to hear out alternative voices, I'd go for two week rule.

CHERVENAK: And what about this concept of this parallel track, you know the whole concept of the floor in my mind is this serial step-by-step process, right. You can't break it into multiple streams, and yet that's what they've done I think for this filibuster in a way. What are your thoughts on that process? Should you put it back into a single stream, and then that's really creating costs for the minority, or the majority. What are your thoughts there?

BINDER: So, I mean you put your finger on it. Any change, but especially that change, of not allowing like letting the pressure off and moving on to a second track, imposes costs, and I think the issue here is that majorities, it really imposes more costs probably off the majority, right, because it's their agenda. If they have, in a world of larger agendas and so forth, it's more of their agenda that gets caught in the vice there. Minorities, but you might find that minorities, when you hold their feet to the fire, will they fold? We don't we don't have a lot of contemporary episodes where when majorities have tried to hold the minority's feet to the fire, well they just don't, they wear boots, so they don't mind the heat, right.

And majorities typically give up because there are other things on their agenda. So yeah, conceptually, a single track, conceptually, might help, but I think in practice probably there'd be such pressure to move on to the second track that majorities would simply abandon the first one.

CHERVENAK: All right, well I'd like to move on to another subject, which is a little bit of work you did around the study of those who study Congress. This concept of studying Congress as a scholar, right, and just the, we've talked a lot of scholars obviously on this program, so I'm curious about when you've looked at scholarship on Congress over time, what are the, what have you seen, how has it evolved, and what are the any particular issues that are making the scholarship more interesting ,or less interesting, you know, what comes up in your mind as where this whole kind of group of people is moving?

BINDER: Well, so I think what's sort of almost astonishing to me is how long it took, well with the caveat, the political science itself is, I don't know, if it's young right, it's just over 100 years old, it took quite a long time, at least until probably early 1980s at the beginnings of it into the 90s, before you get sort of serious undertaking of looking at congressional development that there wasn't really perhaps at its origins, well in the early 1900s it was, it was history, all right there's a, sort of the origins were in the nature of these institutions, but that's not where the field goes for all sorts of reasons.

So the study of congressional history, not because we're historians, oh there are lots of reasons one might study congressional history. One is just data, right. We don't have a lot of vari—we have a single Congress, unless you study the states. And so if you want variation, you need to go back in time, so that's one reason you might study history. Others is just more if you're a comparativist, right, and so we want to, you know, have multiple time periods in which to make judgments about today or to test theory in different areas.

But the other reason to study history because we're actually interested in the evolution of decision making rules, the conditions under which they foster types of outcomes that they foster and what does it take to change institutions. That's a relatively recent phenomenon for legislative scholars and for political scientists. Where's it going? I think we certainly know a lot more today about the historical evolution of the House and the Senate and Congress at large than we did 20, 30 years ago.

I think it runs into, in any profession you like they're what we think of as, well a little pejorative, right, mythological fads, right, they're methodological approaches that gain credence and others that fall by the wayside, and we know it because we see the types of methods that get your research published and so forth. Well for students of congressional history today or Congress as a political institution, the challenge is what in political scientists and economists call causal inference, like how do we design studies in order to really nail down whether or not something matters causally as opposed to just, right, a correlation?

I changed the rules, we got a certain different set of outcomes, which might not be because of the rules, right. In fact we might change the rules because of the types of things that lead to those outcomes, so the challenge today is, how do you, how do folks who want to study and explain congressional evolution institutions, how do you meet the moment for showing causality, and that's a hard thing with history, right. The political prize today in political science

is for field experiments, it's for randomized controlled studies, quasi experiments, causing natural experiments. That's really hard historically, and for the obvious reasons we can't go into the lab and we can't give—we can't design studies for things that have already happened.

There are very clever ways to look for those types of relationships, but at the end of the day, right, that looking for causality, it's very helpful for looking at the effects of an intervention. X happened. Did y happen, and why? But it's not so useful for explaining sort of on the other side like, why do things evolve, right. What are the dynamics that are put in place that yield particular outcomes? That's, I think, is quite different than what's the independent effect of, right, of redistricting on electoral outcomes, right, as opposed to where did the process of redistricting come from in the first place, and why does it take the form that it does today? Those types of questions are really not amenable, I think, to our modern techniques of causal inference. So there's a challenge there for folks who study institutions, study them historically, but there seems to be still a fair amount of interest across legislative scholars for kind of figuring out how we got here and how it might be different.

CHERVENAK: Well it's interesting, you know, in a lot of the political science work at least that I've read there's several different strands, it seems. One is more institutional as you're discussing. The other is the hero version of history, where it's basically just a list of speakers and what they did and how they changed the rules, and so the speaker seems to be the key, or a few people seem to be the key drivers of change in Congress. That's another strand that I've seen, and then there's this more quantitative piece that you're talking about, where you know we're looking for correlations and which of those might be causations, right, and you know in particular when it comes to individual votes on individual things, where you track the votes of a member, you know, is their vote being caused, or is it, you know, by some element is very difficult to untangle, I would assume. And I mean and maybe it's never clear-cut, even to the member, so that's a key challenge I assume in the field.

BINDER: For sure, and I mean it comes up certainly in the questions sort of a core question about what difference does money make, what difference do PACS make, what difference do lobbyists make, right. Do members do things, or do lawmakers do things, i.e., vote certain ways that they would not in the absence of those prods, and oftentimes it turns out for the most high tech of those studies, that the arrow often goes in the other direction, which is that members get rewarded, for instance, by lobbyists or PACS, for taking certain votes. That is, the money follows the votes, rather than the other way around, that the money causes the votes.

But, and we can distinguish that in a statistical sense, but it's a little hard in the world really to know chicken and egg, like what exactly, right, certain members get elected from certain places where constituencies may favor on gun rights and so forth, attracts money. Is it really the case that it's rewarding? Is someone anticipating, or is someone rationally anticipating being rewarded? Those are messy for sure and certainly hard to sort out.

CHERVENAK: But certainly the party seems to be a causative agent in the decision making, right?

BINDER: Yeah, and I think the question is, it's typically at the margins at least, right, that it's hard to distinguish, if we think that partisans share a certain set of policy views, then how do we know if whether it's they identify with the party, or they have their arm twisted, right. But it's often the case it's a little more sophisticated than that, that party leaders structure the choices that you have, right. Party leaders are pretty good at taking certain options off the table so that you can't vote on them, so there's certainly party effects here, and again obviously subject to debate amongst legislative scholars for decades.

CHERVENAK: So I guess I'd like to talk about one other area with you on your Congress work, which is before we get into our other questions, which is around oversight. Now you've done a whole book on the Fed and Congress. I'd like to get your opinion on oversight. We've talked to others on the program whose oversight is typically more oriented towards investigations and that type of oversight, which is very interesting, very necessary, but then there's this other view, you know more like board of directors overseeing an agency and is it operating effectively. There's that kind of oversight, and then there's something else maybe that you're getting at with the Fed. So can you talk through your perspective on oversight, particularly of these rule-making agencies?

BINDER: Sure, so I guess the caveat is the Fed is a really weird beast. Even though if we lined up you know 200 plus independent agencies, we could put it on the line of other independent agencies: FDA, SEC, right, and so forth, so I don't want to say it's like an alien descended from Mars, but it is quite unusual in that it's two main spheres of influence and power, right, monetary policy, roughly financial stability in the setting of interest rates and so forth, versus regulatory power, supervising banks, writing, implementing Dodd-Frank, how much capital should banks hold, and so forth.

There's a presumption of, well put aside that the book argues that the independence is a myth, but on the monetary policy side, policymakers and lawmakers will claim that monetary policy is carved away, carved out, that lawmakers don't have direct oversight over monetary policy. Maybe, maybe not. On the regulatory side, there isn't any pretense of independence on the part of the Fed or lawmakers, right. Lawmakers freely legislate in the area of banking, certainly right, Dodd-Frank is the most visible recent example, or the CARES Act, right, the ways in which it directed what financial institutions should be doing.

So, what does oversight look like there? Well in some ways it's like oversight of other bodies, which is that Congress doesn't always really have a lot of incentives to put the effort and the resources into figuring out what is going on in the agencies. Often, as we say, oftentimes it takes outsiders to pull an alarm to generate that interest, but there are always interested lawmakers who, with the expertise often not a lot of them, who follow these issues carefully, so a Senator Warren on the Senate side on financial regulation, Pat Toomey on the other side of the ideological bench on the federal regulation, so.

But by and large I think there is, agencies end up with a very long leash, right, and lawmakers tend not to pay attention when things are going well. And that's certainly the case with the Fed. When things go south, lawmakers show up, they blame the Fed, and oftentimes they just turn around and give the Fed more responsibility. The wake of the financial crisis I think was pretty clear to many, many people, that the Fed had failed on financial stability and watching with the lending practices of banks. What was the solution? Well, we gave more power. We made them the system, the supervisor of very large systematically important financial institutions, even though they just failed, right.

What's going on there? That's lawmakers. They can't figure out a solution, they don't want to own the solution, so they give more power to the institution, and then they'll knowingly just try to hold them, blame them the next time they fail. So I don't know how widespread that is outside the Fed, but that's certainly the dynamic that you see when we're thinking about oversight on the Fed side.

CHERVENAK: And so, what do you think the appropriate oversight activities should be for Congress in relation to the Fed or any other agency? Should they be, should they take it all back and do it themselves? Should they watch, have meetings once a week to review what they're doing and look at their operations, should it be more like a quarterly meeting and monthly meeting? What would be your, after studying this, right, what would you say in a better way would be for Congress to oversee the Fed or other agencies?

BINDER: So I mean one solution that Congress uses, someone in the Fed and some in other regulatory agencies is really to delegate oversight, right, through with for instance inspector generals. And granted yes, at least the Board of Governors has an inspector general, I don't know about the rest of the reserve banks, right. So one way is to delegate with more kind of claws a little more powerful investigators who go and go into the agencies, and I think that model to the extent that these IGs have some independence, some, they can be fired, some independence, maybe you bolster the nature of the IGs so that it's harder to fire them without cause. I think that's one solution. I don't think you exhort, I mean short of exhorting members and, you know, getting members elected who care more about it, which seems unlikely, the other way probably is to impose more transparency rules on the agencies themselves so that at least others outside the institution who might care more can grab that information to make it easier to monitor what the agencies are doing.

Now it's possible the lack of oversight reflects that sometimes these agencies are working well, so it would be a, you don't want to go overboard here, and one size might not fit all, but I think at least in terms of the Fed, the greater transparency and perhaps muscling up IGs might in fact make a difference for other if not agencies if not the Fed.

CHERVENAK: And the point of that oversight that you're mentioning, whether it's the, you know, whether it's through transparency, which is basically outsourcing it to special interests in the public, or whether it's through these individuals who are, you know, looking for more, it sounds more like an auditing function than it does really, you know, let's see how our policies

are working out going through this agency, is it achieving its mission, is there high turnover in the agency, are people satisfied with the with the day-to-day operations of the agency, I mean these would be things that, you know, if it were a business and I were on the board, I would want to know these things, right? You know, is this thing doing its job, is it doing so efficiently, could it do so, the same thing, with less resources, is it falling short here or there? Whereas a lot of what seems to be talked about as oversight is more like identifying a scandal or you know really more exciting kinds of things rather than this mundane kind of business as usual, is it achieving its original objectives. So what do you think about that version of oversight and how that should be accomplished?

CHERVENAK: Well I mean, and we sort of call this the distinction with between in political science terms, police patrols versus fire alarms. And so the question is like, what do the police patrols look like, and is it possible to delegate those police patrols into the agencies themselves? So, and I do think some inspector generals are doing more, are sort of cop on the beat, but I think you're right, that mostly it's a response to crisis.

The GAO that is a, in essence a legislative organization, short staffed for sure, one possibility is to restaff it, right, make, find ways to see that it can do that sort of cop on the beat, and typically that's in the form Congress passes statute and includes around a range of like GAO studies often because they couldn't agree on whether or not a legislative change was, a statutory change, was necessary.

I do think there this, the ways in which either through GAO or through IGs, beefing them up, could potentially produce that type of cop on the beat study, and that's in the absence of Congress or chambers that have, are willing to put resources into doing it themselves. But of course, lawmakers, we live in a polarized world where the lawmakers don't really agree, and they certainly don't always agree on how statutes should be implemented, how regulations should be written, and so treating Congress as this unitary actor with a single set of preferences, that's often a non-starting point as well.

And so the real I think the question is how do you do that type of continuous watchfulness if the people doing the watching or who hire the watchers, the agents, disagree on what they should be looking for. And I think that that's even more complicated.

CHERVENAK: Yeah, it just depends on whether there is that core set of shared values and what the agency is doing, and the more that erodes, the harder that that job will be.

BINDER: Sure.

CHERVENAK: So all right, well I think it's time for us to move on to the common questions I ask all of our guests, if you're ready to move on to the lightning round.

BINDER: Sure.

CHERVENAK: So the first question here is actually quite related to everything we've discussed, which is, you know, or underlies it, so what do you think congressional representation should mean?

BINDER: I'm not even sure. There's so many ways to think about it. I actually typically have in mind sort of a substantive representation. I think demographics I think are important, sort of a descriptive representation. It would be good if Congress looked like America. I think that. I think that's something to be worked on, to be improved. But I also think there's some world of representation that we, the members who are lawmakers, who are sent, have some sense of conflicting views and values that they're called on to represent, so not purely policy, not purely descriptive, I guess I'd like an ideal mix of both.

CHERVENAK: So maybe I can get at it a little bit through the, I think what you're describing here is the beliefs. There's the beliefs and judgments, right, and, you know, does a member represent the beliefs of his district, or her district, or are they making judgments based upon what their best interests are? I guess that's one fundamental way to look at the question.

BINDER: Yeah, I mean I think at the end because some districts or states will find a commonality of interest and often more likely you get a conflicting beliefs and values, the question is for representation [to] happen, do voters trust, right, do they trust the member, do they give them some leeway on some issues, do they reign them in on other issues? And ideally a lawmaker can figure out what are the interests, what are the most intensely held interests, what are the ones in which he or she needs to hew more closely to voices that they hear back home, and what are those on which law voters will trust them, as you said, to sort of substitute judgment.

CHERVENAK: So it sounds like you believe in a mix, some belief style and some judgment, some where the where the member has to judge.

BINDER: Yeah, I mean it's, inevitably we have elections, in theory if they were competitive, in order to let that experiment play out, right, so lawmakers would know whether they've strayed too far towards judgment or a closer reflection of views back home.

CHERVENAK: And the views that you're talking about, you know, when someone's elected, are you talking about they represent, you know, that primary group, or do they represent the party, the voters who elected them, or do they represent the whole district, everyone in there, what is your perspective? This is a personal question, by the way, it's not an empirical one.

BINDER: Well I think the, I just think it's hard. I don't think you're going to find a one size fits all there. I just think it would almost be impossible to have somebody that we're thinking about, sort of the geographic set of voters, or non-voters. I just think it would be almost impossible both because of voter indifference, citizen indifference on a lot of issues, obviously many don't have well-formed policy views because they're complex and don't have the information or interest and figure them out, conflicting sets of values. I think it's almost impossible to think that they're going to represent the geographic area. So somewhere shy of that, perhaps the re-

election constituency like those views that are necessary, and when you meet them perhaps that gets you, keeps, is what helps explain why you keep that job.

CHERVENAK: All right, so the next question is, how would your ideal Congress allocate its time, and by that I mean D.C. versus the district, you know, the legislation versus oversight, how much time for campaigning, you know, these kinds of questions.

BINDER: I don't, I mean I really don't think, I think the ideal type is the one where problems are being solved. I don't think there's much problem that citizens, district residents' interests aren't being addressed when they raise them, right, you might think, well that requiring more people in the district. I think lawmakers are pretty good about servicing their districts. They don't, obviously there are biases in how they serve with districts, but I would say generally there's, they understand and get and value district servicing.

I don't think there's enough resources, expertise, attention to solving problems, whether they're current problems or whether they are long-term problems, especially where lawmakers seem to have no electoral interest in thinking about the future. I think if there were to be a way to harness members' attention and to plow resources into thinking about long-term problems, I think that to me would be closer to an ideal Congress.

CHERVENAK: So this problem element you mentioned seems to be, like it has to be done in Washington, so if we, because that's where they have to talk to each other and work on the floor and on committee, so would you, how much time would you put them in D.C. versus home? Are you okay with the Tuesday to Thursday? Do you like the two weeks on, one week off, to three weeks on, one week off? Where do you come down on that?

BINDER: So I, conceptually, the, for a while the Senate had, we may still have, a three week on, one week off. Certainly the Tuesday-Thursday club, the House norm, seems like an awful short amount of time to get to know your fellow lawmakers in a way that would help you to try to legislate because you, these, you don't know who they are, you can't figure out what to give them when you're giving out and designing those pieces of pieces of pie. So, more time in Washington for sure, you know especially with Zoom, these lawmakers can find a way to speak to voters I think without actually having to be present there.

CHERVENAK: And do you have an opinion on the legislation versus oversight, or do you see that as one continuum?

BINDER: I don't have a strong view. I think we know that oversight is underproduced, and yeah I mean more of everything, but you know, it can't have more of everything, so I just think in, I would put the resources into these legislative problem-solving, more policy-focused people, fewer communications-focused people, on more people into commercial research service and into GAO and so forth. And some of that is going to spill over into oversight, for sure. I mean because that inherently becomes part of the authorization process or reauthorization process,

how, whether or not laws are working, right, so it's both legislating and it's oversight. A little less inclined to divide them up strictly.

CHERVENAK: All right, well next question is, how should debate, deliberation, or dialogue occur or be structured in Congress?

BINDER: So, this is going to sound like pretty anti-democratic, but I think there's too much in the public. I actually see the value of closing the doors more often, at least at the initial part of trying to form solutions, right, so I mean there are ample examples, some examples of late where gangs have gone behind closed doors, have negotiated agreements, and then not open the doors until as we say, right, nothing's agreed to until everything's agreed to. In a world where party bases like will penalize you for giving something away, I think those like not opening the doors until you have some core agreement, I think that's really necessary.

Otherwise, one party will say look, the cost of me saying no, saying no here, there's not a lot of costs here. The cost of saying yes, it's going to cost me a lot. Close the door, and so everybody sees the final package, assuming then that that final package is then, you know, tested perhaps in committee but certainly on the floor and subject to more transparency. That's obviously the reverse way of at least in terms of sort of generationally, right, the 1970s and 80s moving towards more sunshine, solving other problems, but I think having solved the problems of back rooms, unrepresented back rooms, there's a way to design those closed spaces that are a bit more representative.

CHERVENAK: And so again in committee, or is that, you know, again right now, it's mostly leaders' offices, right. That's where there's no, the least transparency, so that's where those things would naturally move. Should it be somewhere else, should it be in committee, should it be some other kind of forum?

BINDER: So I'm not an absolutist on either way here. I, we do see somewhere these pairings and closed doors happens through committee leaders or committee chairs and rank and files. We see others more often, as you suggested, through leadership organizations. Again, it gets back to our sort of earlier discussions. You don't really see strong committees and strong parties at the same time, and so I am happy enough that the, if the goal is generating a range of policy solutions, I would take it from a leadership or leadership group, or take it from a committee group. And obviously they have to stand right, they have to make it under current rules to pretty high super majorities in the Senate, so I worry less about creating packages that are so biased by closing the doors, right, or by only letting leadership do these negotiations. So if they're good enough to stand the test of super majority support or the future world majority support, then I'm indifferent whether it's in committee or leadership offices.

CHERVENKA: All right, well next question is, what fundamental institutional improvement should Congress make within 50 years?

BINDER: Well, as we talked about, I think the curtailing of super majority rules in the Senate, granted all reforms have unintended consequences. I can't tell you precisely what will happen if you lower the rules or carve out exceptions to the filibuster, but I think compared to what you get today might well be an improvement.

CHERVENAK: Next question is, what book or article most shaped your thinking with respect to this congressional reform ideas?

BINDER: So, 1977 was a book "Congress Against Itself" by Davidson and Oleszek, sort of two greats from the long past, the 70s as well. What it did was to kind of examine this moment of reform in Congress in the 70s, both early 70s, mid 70s, and again failed episodes as well as successful episodes, and thinking about the coalitions that make reform possible. What are the motivations for reformers? How do reformers build packages? How do they advantage multiple missions or multiple goals, both kind of broadly speaking but also down in the trenches? It's just a great, great book for kind of setting forth the patterns for how do we think about reform, how do we think about the rules of the game.

CHERVENAK: All right well the last question is really about your personal work, where is it going in the future, are you working on any new books, any new areas of research, what's coming in the future for you?

BINDER: So I have some interest in thinking a little more carefully about norms, about unwritten rules, about practices, about where, again, where they come from, what does it take to break them, what sustains them, why is norm observing seem to be breaking down not just in Congress but sort of rule following generally is not really a high priority? So I, and I'm interested in both in terms of thinking about, you know, things like the Senate parliamentarian, like where does he or she get that power, why is there a deference, when is there deference, what difference does that advice coming from the parliamentarian, how does that sort of non-partisan norm, like has it survived in a really partisan institution? And then more broadly, I mean, even just the example of the Fed, right, the norm that we used to think there's an order of hands off the Fed, but recent Presidents have been, and old, old Presidents were happy to intervene [in] monetary policies, break that norm. Where did it come from the first place, and what's its future? So, I think there's lots of room there for thinking about the conditions that like generate healthy institutions and those that bring them to their, bring them to their knees, so that's what I got on my plate.

CHERVENAK: Great, well Professor Binder, thank you so much for joining us. It's been a pleasure and best of luck with that work.

BINDER: Great, thank you so much for having me in your series. This is awesome.

CHERVENAK: Thank you.

BINDER: Thank you, yep.

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