

# Senate Countermajoritarianism

C. LAWRENCE EVANS *William & Mary, United States*

*This article is the first comprehensive treatment of countermajoritarian roll call outcomes in the U.S. Senate, 1789–2022. Divergences from majoritarian principles are rooted in part in malapportionment and equal representation by state. Roll calls where a majority of the chamber votes one way while the other side represents most of the U.S. population are frequent across Senate history, depending on the proportion of the population covered by the majority party and the degree of conflict in the agenda. Other departures from majoritarian principles derive from the presence of supermajority requirements within the chamber. Such decision thresholds likewise are prevalent across Senate history, with significant increases since the 1970s. Although the two sources of countermajoritarian potential tend to be mutually reinforcing, under certain conditions they work against one another. The partisan impact varies over time, but in the modern chamber, Republicans have benefited more from Senate counter-majoritarianism than have Democrats.*


The countermajoritarian potential of the U.S. Senate is a perennial concern for congressional observers and reformers alike. In a classic treatise, Dahl (2003, 49) wrote that, across Western democracies, “the degree of unequal representation in the U.S. Senate is by far the most extreme [and a] profound violation of the democratic idea of political equality among citizens.” More recently, Jentleson (2021, 9) claimed that the chamber has evolved into a bastion of countermajoritarian distortion, and as a result, “Minority rule is a defining feature of our era.” In a bestselling treatise, Levitsky and Ziblatt (2023, 171) portray the Senate as integral to an institutional order that routinely enables a political minority to thwart majority rule: “Today,” they observe, “Republicans are predominantly the party of sparsely populated regions, while Democrats are the party of the cities. As a result, the Constitution’s small-state bias, which became a rural bias in the twentieth century, has become a partisan bias in the twenty-first century. We are experiencing our own form of ‘creeping counter-majoritarianism.’”

According to these critiques, the main sources of the chamber’s anti-democratic bias are twofold, one external and the other internal. First, the Senate’s apportionment scheme based on states rather than population produces an enormous small-state advantage that now tilts party margins and legislation toward the GOP. The other source of problematic counter-majoritarianism is the filibuster, which enables a minority of the chamber to block action unless cloture can be invoked, or the underlying question is considered subject to expedited procedures like reconciliation. These

two sources of countermajoritarian tendency, so the standard argument goes, make fundamental structural reforms a necessity.<sup>1</sup>

Political theorists might agree. Majority rule should not be sacrosanct, of course, and diverging from it to protect individual rights or to better capture preference intensities can be beneficial (Hill 2022). Indeed, within both chambers of Congress, the early stages of law-making often weigh heavily the interests of political minorities. Members self-select onto committees with jurisdictions they care about, which gives them disproportionate say during that stage of the process and potentially advances the interests of minority factions. In the Senate, the obstructionist potential created by the filibuster can likewise empower minority coalitions throughout the legislative game. So, prior to floor action, significant divergences from the majoritarian principle shape much of the congressional process and may protect the interests of political minorities. However, as May (1952) famously demonstrated, majority rule is the only mode of preference aggregation that is generally fair. Dahl (1956) likewise concluded that the majority principle is critical to the exercise of political equality. In short, although the formative stages of the legislative process may function in part to protect the interests of political minorities, when decisions are made on the chamber floor, a strong normative case can be made for outcomes that are majoritarian.

The countermajoritarian potential of the Senate, then, is troubling and merits systematic attention. Most important, we need to evaluate whether the critics are right. Does the *potential* for countermajoritarianism routinely become a *reality* during chamber decision-

Corresponding author: C. Lawrence Evans , Newton Family Professor of Government, Department of Government, William & Mary, United States, [clevan@wm.edu](mailto:clevan@wm.edu).

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<sup>1</sup> The first scholar to distinguish between the external and internal forms of Senate countermajoritarianism is Eidelson (2013). See also Gould, Shepsle, and Stephenson (2021), Gray and Jenkins (2020), and Wirls (2021).

making? To date, we lack the systematic empirical evidence necessary to address the question across the long arc of American political development. This article is an attempt to provide that grounding, covering the entirety of Senate history, 1789–2022. Since divergences from the majoritarian principle are especially troubling toward the end of the lawmaking process, our primary lens is roll calls cast on the floor.

First is an examination of countermajoritarian potential in an external sense, rooted in malapportionment and equal representation by state. I begin by reviewing what scholars have already taught us about the normative implications of malapportionment and extend their work by identifying conditions under which this potential may become a reality. Next is a multivariate analysis of the incidence of external countermajoritarianism in the Senate roll call record, 1789–2022. The incidence varies substantially over time, you will see, depending on the underlying partisan and demographic contexts. Next, my attention turns to countermajoritarian potential in an internal sense, or how chamber rules and supermajority thresholds may distort Senate outcomes. More concretely, I explore the linkages that exist between malapportionment and internal procedures by examining how often the filibuster can both enhance or counteract distortions rooted in the unequal distribution of population across states. Interestingly, the two sources of countermajoritarian potential often work in different directions. The penultimate section considers the partisan and legislative consequences of Senate countermajoritarianism, with an emphasis on the modern chamber. The consequences are particularly apparent prior to final passage motions, with Republicans disproportionately on the winning side of externally countermajoritarian roll calls. I close by discussing the implications for our normative understanding of the Senate.

## EXTERNAL COUNTERMAJORITARIANISM

The Framers' decision to structure the upper chamber of the national legislature around states has shaped representational relations since the very first congress. According to the 1790 Census, for instance, state populations ranged from a low of 59,096 for Delaware to a high of 821,287 in Virginia, and a voting majority could be mustered from states that together encompassed just 27% of the national population.<sup>2</sup> From the onset, then, the apportionment of Senate seats by state had significant potential consequences for the distribution of power within Congress.

The importance of state boundaries only increased with the territorial expansion of the U.S. From the early additions of Vermont, Kentucky, and Tennessee in the 1790s, through the integration of the Louisiana

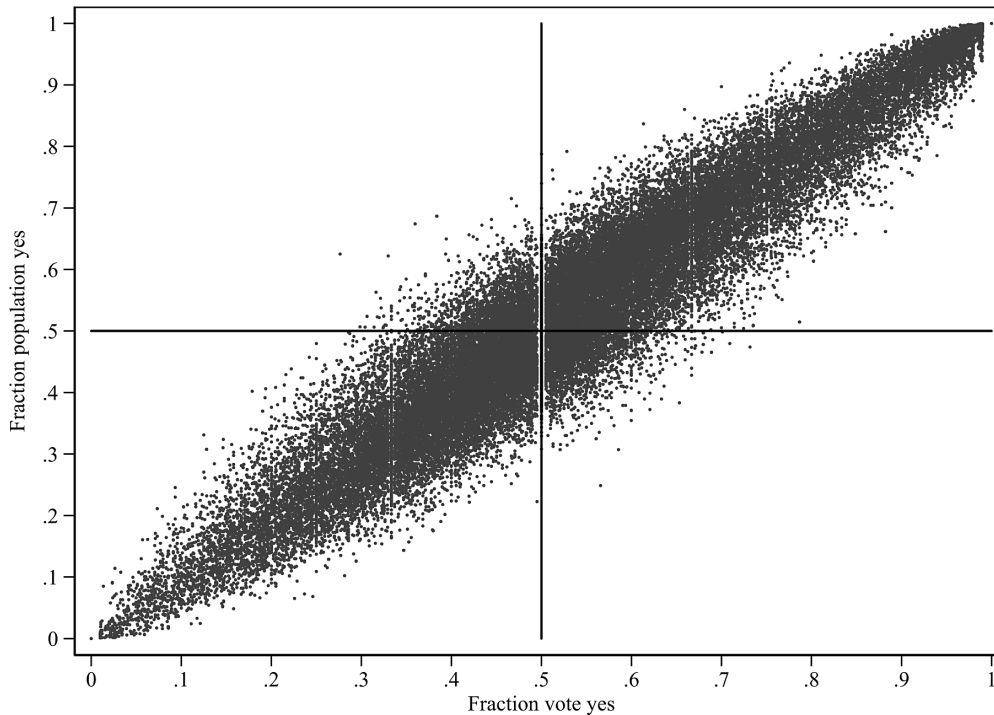
Territory and new states in the Midwest during the antebellum period, to the contentious admissions of Arizona and New Mexico in 1912, the best scholarship shows that the proponents of expansion envisioned an essentially white republic, made possible by the careful delineation of territorial and state boundaries and other instruments of population management (Frymer 2017). The employment of such instruments was highly tactical and inseparable from party politics and sectional divisions over slavery and Jim Crow. Throughout the nineteenth century, decisions about whether to grant statehood were structured in part by “balancing” principles (Stewart and Weingast 1992). Prior to the Civil War, free versus slave states were generally added together to maintain the southern veto in the Senate over abolition. Within the Congress, in other words, discrete decisions about statehood turned on short-term jockeying for power by the key voting blocs of the time. As late as the 1950s, the decisions about whether and when to admit Alaska and Hawaii to the union were based on the likely consequences for party ratios in what was then an equally divided Senate. The potential distortions from Senate apportionment, in other words, are about more than population disparities and derive also from politically motivated state boundaries and the strategic construction of constituencies (Bateman 2018).

The movement of U.S. citizens toward urban areas has also shaped how apportionment translates into voting power within the Senate. While most Americans lived in rural places as late as 1900, the migration toward cities steadily reduced that percentage, so that by 2020 only about 46 million Americans were rural residents, or about 14% of the population.<sup>3</sup> As the New Deal realignment frayed, the political interests of rural and urban dwellers diverged on an expanding range of issues. Rodden (2019) demonstrates that in the twenty-first century support for progressive priorities has shifted toward urban areas, while rural and exurban residents now are more likely to favor the politicians and parties of the ideological right. In the modern Senate, many scholars claim, the small state advantage primarily benefits Republicans and conservatives (Lee and Oppenheimer 1999).<sup>4</sup> Ideological liberals, African Americans (for a time), and Latino voters (increasingly) have disproportionately resided in larger states and thus may have received less voting weight in the Senate than their percentage of the population (Malhotra and Raso 2007). Indeed, Senators representing small states have been less supportive of policies advocated by major civil rights groups (Griffin 2006). Urban interests are significantly underrepresented in the modern Senate (Ross 1996). And there is compelling evidence that small states can use their disproportionate voting power in the chamber to secure a larger share of federal expenditures than they

<sup>2</sup> The population attributed to Virginia during the First Senate also includes Census estimates for what is now West Virginia and Kentucky because the state encompassed those areas at the time.

<sup>3</sup> <https://www.ers.usda.gov/webdocs/publications/102576/eib-230.pdf>.

<sup>4</sup> Of course, all states with relatively small populations are not rural or conservative (e.g., Rhode Island and Delaware) nor do all high-population areas tilt blue (Florida and Texas).

**FIGURE 1. Votes and Population on the Senate Floor, 1789–2022**

Note: Each point is a roll call and reflects the fraction voting yes and the proportion of the national population that those members represented.

would receive based on population (Ansolabehere, Gerber, and Snyder 2002; Lee 1998).

Still, generalizations about the impact of Senate apportionment on roll calls and other decisions need to be leavened by the nationalization of American politics, the lopsided nature of many floor votes, and the changes that have occurred in the underlying partisan context over time. American politics has grown increasingly nationalized, with high levels of partisan polarization apparent across the country. Differences across states may not matter as much as they once did (Hopkins 2018). Curry and Lee (2020) show that passage votes in both the House and Senate have not narrowed with the rise of partisan polarization. The need to clear multiple procedural hurdles in the bicameral legislative process can produce supermajority coalitions that dampen the effects of state size and composition on the construction of Senate majorities. And the likelihood of countermajoritarian outcomes on the floor may depend on which party is organizing the Senate. In the contemporary era, for instance, if smaller states disproportionately support the GOP, countermajoritarian roll calls may primarily characterize periods when Republicans are in control.

To begin identifying the linkages between Senate apportionment and the roll call record, consider Figure 1, which is a scatterplot juxtaposing the fraction of the chamber voting yes on a question and the fraction of the population covered by the states of those

members, encompassing all roll call votes, 1789–2022.<sup>5</sup> Each point reflects the votes-population combination for a single roll call. Not surprisingly, the points cluster around the 45-degree line, indicating rough parity between votes cast and population covered. But considerable spread also exists around that line, especially toward the center where closer votes are located. For a large share of the Senate roll call record, considerable disparity is apparent between the size of a voting coalition within the chamber and the proportion of the national population that it covered. Even when the majority of votes and most of the population covered are on the same side of a question, this disparity may indicate the presence of malapportionment-induced distortions elsewhere in the legislative process, for instance, as alternatives are constructed and coalitions formed. Of particular normative interest, however, are those outcomes located in the quadrants in the upper left and lower right of the figure. For these roll

<sup>5</sup> Roll call data are from [voteview.com](http://voteview.com). For 1900–2022, annual population data by state, based on the U.S. Census, are from the database maintained by the St. Louis Fed (<https://fred.stlouisfed.org>). For these congresses, I used population levels for the first session. Prior to 1900, annual population estimates were less available. Here, decennial census data were accessed via *Social Explorer*, and between censuses I imposed a linear projection across two-year congresses. All data and command files used to prepare this article are available in the *APSR Dataverse* (see Evans 2024).

calls, the majority coalition within the chamber represented a minority of the population.

Interestingly, the relationship between Senate malapportionment and roll call outcomes has attracted only limited attention from scholars. Moffett (1895) considered final passage votes on 22 landmark measures, ranging from the Alien and Sedition Laws to the Sherman Act, and concluded that the outcomes were not influenced all that much by the small state advantage. Woody (1926) provided a more systematic analysis, finding that the small state bias did have modest effects on partisan control and legislative outcomes. Six decades later, McCrone (1990) devised a creative weighting scheme in which all states were guaranteed at least one seat within a notional Senate, with the remainder allocated based on state population. He applied the scheme to a sample of major votes conducted during the Reagan administration and found that the outcomes of more than a third of these roll calls changed. More recently, Johnson and Miller (2022) applied the McCrone approach to more than 800 votes categorized as “key” by *Congressional Quarterly*, 1961–2019, and found that over 17% of key vote outcomes would have flipped in a reweighted Senate. The reversals primarily would have benefited Democrats and the effects were strongest on highly divisive issues like gun control and abortion.

Although these studies are instructive, we lack comprehensive analyses of counter-majoritarian decisions across the entirety of Senate history. The Moffett and Woody studies focus on relatively small subsets of the roll call record and select congresses. The McCrone and Johnson/Miller approach offers a valuable glimpse at counter-majoritarianism since the early 1960s, but their method may underestimate the phenomenon by placing a floor on Senate representation regardless of how small the state population is. Moreover, the reweighing of votes is a counterfactual exercise that cannot account for the likely changes in the agenda and even partisan control that would accompany a notional Senate reconfigured in such a fashion.

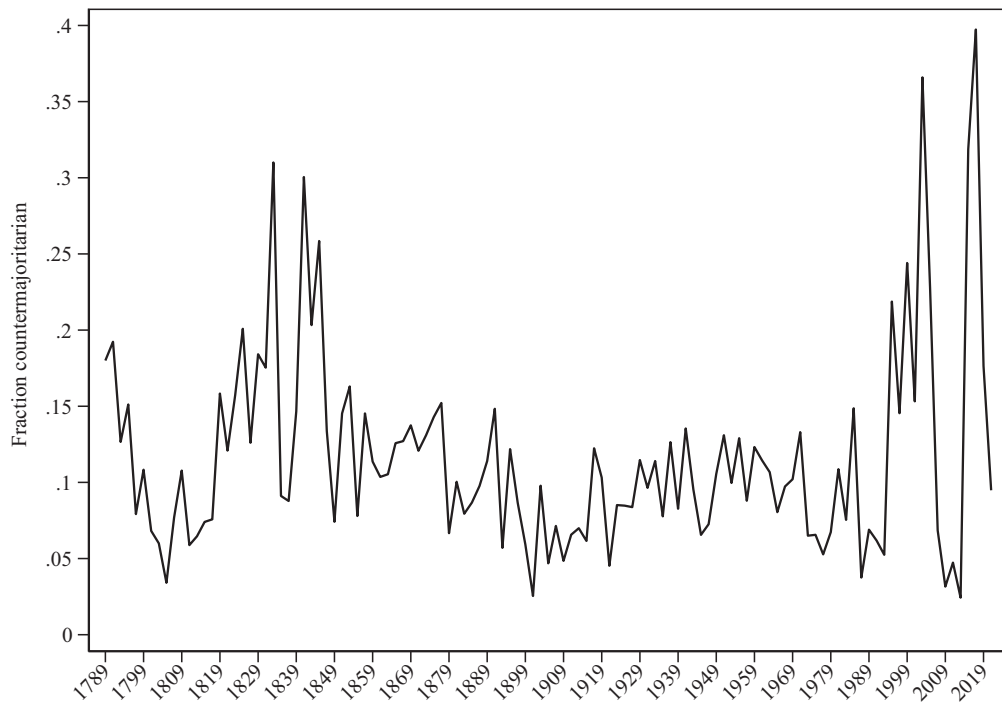
The best approach for gauging external counter-majoritarianism in the Senate may be the most straightforward—identify all roll calls in which most Senators voted one way, but together represented a smaller share of the U.S. population than did the members on the other side. For the purposes of analysis, then, a roll call can be characterized as externally counter-majoritarian if (1) the yeas outnumbered the nays, but the nays represented a larger share of the population, or (2) the nays equal or exceeded the yeas, but the yeas covered a larger portion of the American people. More concretely, for each roll call cast by a member, I assign to that individual one-half of the state population at the time. So, if both Senators from a state voted the same way, the entire population was added to the population tally for that position. If the delegation split on the matter, one-half of the population was allocated to each side. For each roll call, the population numbers associated with yeas or nays are aggregated to produce totals. All instances when the yeas outnumbered the nays but the population total for the nay side exceeded the total

for the yeas were identified. Likewise, cases where the nay votes equaled or exceeded the number of yeas and the population total was higher on the yeas side were picked out. If either condition was met, the roll call was categorized as counter-majoritarian in an external sense.

The proportion of roll calls fitting this categorization per two-year congress is summarized in Figure 2.<sup>6</sup> For now, it should be emphasized, supermajority requirements within the chamber are not integrated. If the motion is on cloture, for instance, only a simple majority of the chamber votes affirmatively, and most of the population is on the “nay” side, the outcome is treated as counter-majoritarian even though the opponents prevailed. The reason is that my primary aim at this point is to isolate the impact of malapportionment and equal state representation separate from the effects of internal mechanisms. The consequences of elevated thresholds will be addressed in succeeding sections.

As shown in Figure 2, the proportion over Senate history ranged from a minimum of 0.02 during the Democratically organized 113th Congress (2013–14) to a high of nearly 0.40 during the 115th Congress (2017–18), when Republicans formed the majority. Overall, across 1789–2022, the mean was just under 0.12, or about 12% of all Senate roll calls. Noteworthy shifts by period are apparent, with relatively high levels of counter-majoritarianism during the first six congresses (1789–1800); from roughly 1820 until the beginning of the Civil War; and during the modern era of high partisan polarization. But even within periods where counter-majoritarian roll calls were prevalent, certain congresses exhibited relatively low numbers. During 1835–37, majority control shifted from a coalition based on opposition to Andrew Jackson to a coalition in favor of the president. Party margins were tight, but the Jacksonian faction covered a substantial majority of the U.S. population at the time and counter-majoritarian outcomes were rare. In recent years, the incidence of such roll calls has also varied substantially, depending on which party is in power. When Democrats were in control from 2007 to 2014, the rate was low, but when Republicans organized the chamber during 2003–06 and 2015–20 it was almost a third of all votes. With the shift back to a Democratic Senate in 2021, the rate fell to just 9%. Also notice that for the long period extending from the Civil War to the modern era, the measure hovered around 0.1, but the notable variance is apparent from congress to congress. Externally counter-majoritarian roll calls, in other words, have been a regular feature of Senate history, with significant differences over time. What might explain these differences?

<sup>6</sup> The reliance on total population, of course, is normatively problematic for much of Senate history. Prior to 1870, African Americans could not vote in federal elections, and during the Jim Crow years, their access to the ballot was severely restricted. Female suffrage was not nationalized until 1920. Restrictions based on property and immigrant status were commonplace during the early years of the Republic. See Supplementary Material for an exploration of how disenfranchisement may affect measures of counter-majoritarianism.

**FIGURE 2. Externally Countermajoritarian Roll Calls by Two-Year Senate, 1789–2022**

Note: A vote is categorized as externally countermajoritarian if most members voted one way, but these members together represented less than half of the national population.

Three possible conditions are key: population dispersion across states, the level of conflict in the Senate agenda, and the proportion of the U.S. population represented by members of the majority party or coalition. First, as the nation grew from the original 13 states, the degree to which the population was concentrated in relatively large states has varied, which potentially affects the likelihood of countermajoritarian results in the Senate. One method for gauging population concentration across states is to calculate Gini coefficients by two-year congress. The Gini coefficient is a measure of the degree of inequality between observations within a frequency distribution and is regularly utilized by economists to capture the degree of wealth inequality in a nation. A value of zero indicates perfect equality, with no differences in wealth across people, while a value of 1 indicates complete inequality, with a single individual owning everything. Here, I calculate Gini coefficients across states for each congress, where the underlying distribution concerns population rather than income. A population-based Gini coefficient of zero during a particular congress would occur if all states included the same number of people, while values closer to one indicate that the national population is mostly concentrated in a small number of states.

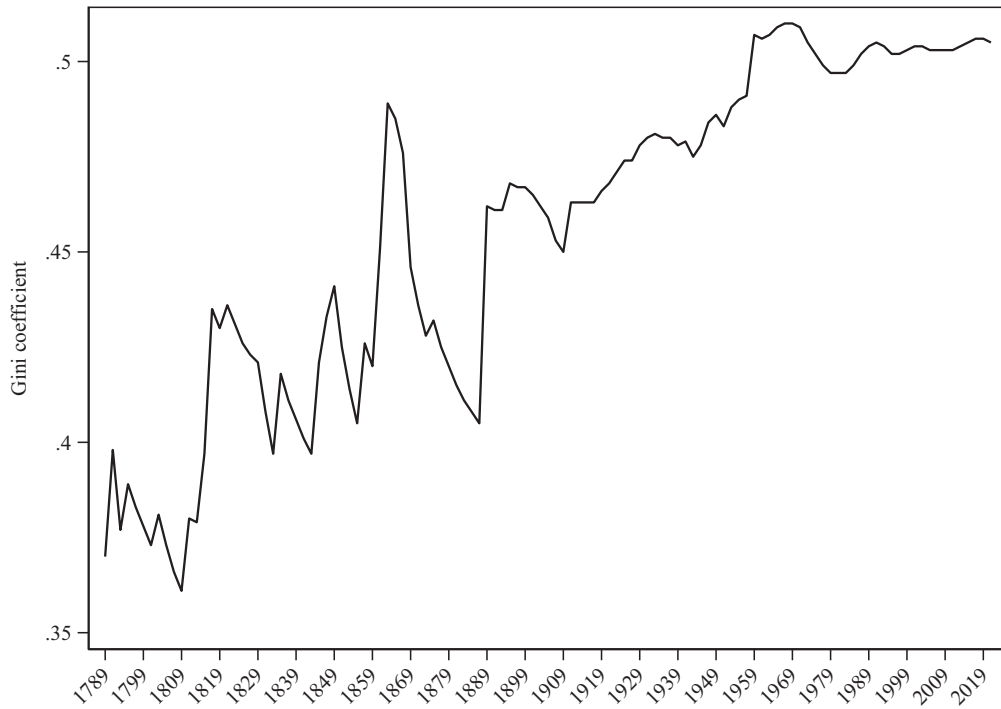
Figure 3 shows these values by congress from 1789 through the current period. In the early years, the population was widely dispersed across states. As states were added to the Union over the nineteenth century,

the distribution grew more concentrated with the Gini coefficient rising to about 0.5. A sharp drop occurred around the time of the Civil War when southern states left the Union, but overall, population disparities increased throughout the 1800s. Primarily due to rural–urban migration, the coefficient continued to rise during the twentieth century, albeit at a slower rate. Certain of the shifts apparent in Figure 2, then, may derive entirely from changes in the dispersion of population across states.

Good reasons also exist to expect that the contents of the issue agenda and the distribution of partisan support across geographic areas are responsible for much of the variance in Figure 2. For one, everything else the same, countermajoritarianism should rise with the level of conflict in the roll call record. The likelihood that the Senators voting yes will represent only a minority of the U.S. population should be small if a vote is relatively consensual. Conversely, when the level of disagreement is greater and the membership more evenly split, the probability of a coalition achieving majority size while representing fewer people than the opposition should rise.

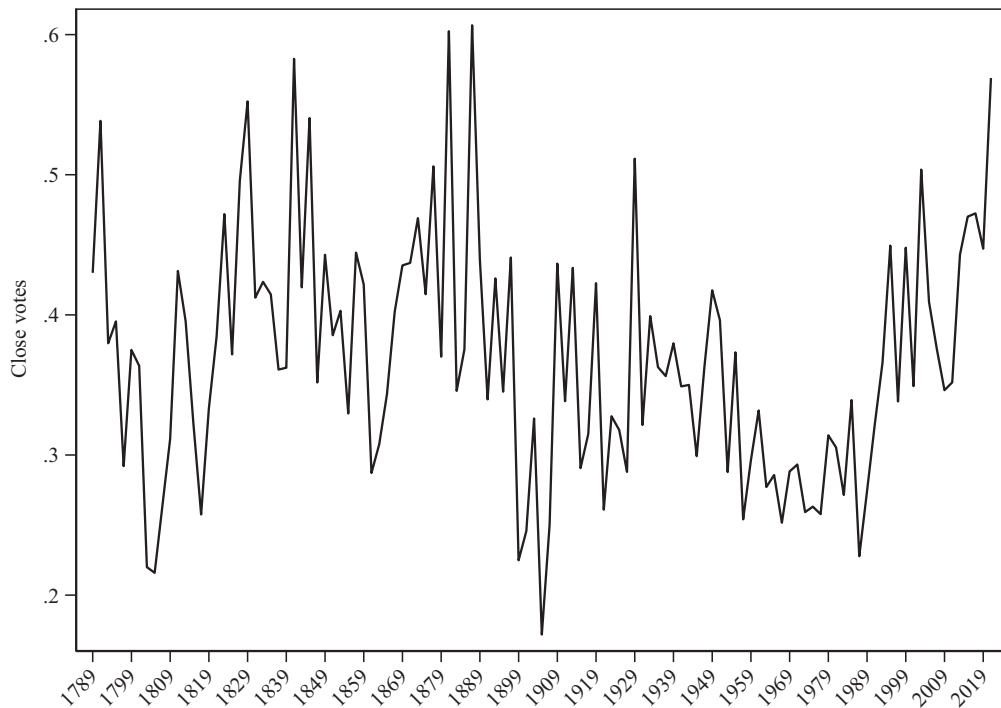
One approach to gauging conflict is to calculate the proportion of roll calls during a congress where the difference between the two sides was less than 20%. The over-time rate of close votes in the Senate, so defined, is portrayed in Figure 4. Not surprisingly, the level is high in recent years, reflecting the substantial increase in partisan polarization since the early 1980s.

**FIGURE 3. State Population Gini Coefficient, 1789–2022**

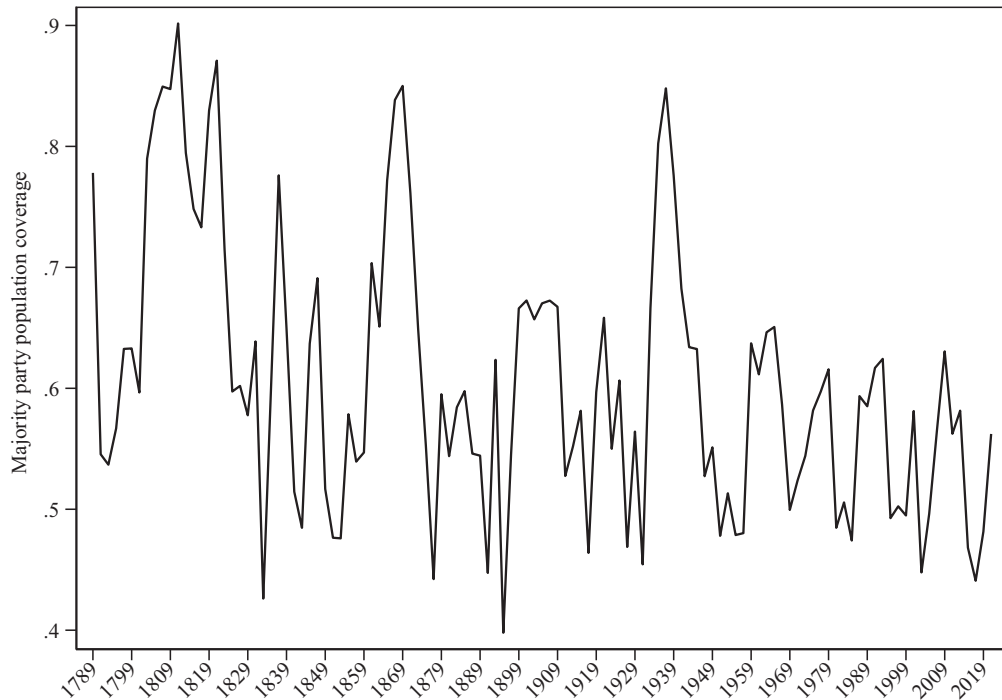


Note: Population Gini coefficients range from 0 (all states have equal population) to 1 (everyone resides in a single state).

**FIGURE 4. Proportion of “Close” Roll Calls by Two-Year Senate**



Note: Votes are treated as close if the margin between the two sides is less than 20%.

**FIGURE 5. Majority Party Population Coverage, 1789–2022**

Note: Majority population coverage is the fraction of the national population represented by members of the party or parties organizing the Senate.

But also note that conflict in the roll call record was high during 1929–31, with a GOP majority facing the outbreak of the Great Depression. In contrast, the Senates that occurred during the first decade of the 1900s featured relatively lopsided roll call outcomes. Noticeable and unsurprising dips in roll call conflict also took place during the Civil War years (no southern members), and the “Era of Good Feeling” that followed the War of 1812. Everything else the same, the more divisive the policy agenda, the greater the likelihood that the side with the most votes will not represent the bulk of the nation.

Along those lines, political parties have been at the center of congressional politics since the 1790s. Early on, parties were unorganized, but due to the institutional imperatives of lawmakers they quickly emerged as key features of the coalition-building process (Aldrich 2011). The first-party organizations were weak, and through the 1820s the Senate majority was often a coalition, rather than a single entity. Still, it is useful to identify a subset of Senators as forming the organizational majority throughout chamber history. Importantly, party strength has never been distributed randomly across states, nor has it been consistent over time. As the size of a party contingent within the Senate grows, the share of the U.S. population represented by that contingent should increase. Even holding margins constant, however, the population covered by the party organizing the Senate will vary, depending on how the main cleavages of the day mesh with state boundaries.

As mentioned, due to the distribution of population across states, current Republican majorities tend to represent fewer people overall than do Democratic majorities of similar size. In addition to considering geographic dispersion and the level of conflict in the Senate agenda, we also need to gauge the population coverage of the majority party within the chamber. The share of the population represented by members of the majority party is summarized in Figure 5.

Overall, the proportion of the U.S. population “covered” by the partisan majority has declined over the course of American history. The highpoint was during the 12th Congress, 1811–13, which was comprised of 30 Republicans and only six Federalists, one of the most lopsided party ratios in American history. The Federalists hailed from Connecticut, Delaware, Massachusetts, and Rhode Island, which together covered less than 10% of the U.S. population. In the 54th Congress of 1895–97, Republicans functioned as the partisan majority, but held only 44 of the 90 seats (the remainder included 40 Democrats, four populists, and two so-called “Silvers”). The population covered by the partisan majority was the smallest in Senate history, roughly 40%. More recently, from 1995 to 2022, the portion of the population covered by the Senate majority party dipped below 50% for seven congresses, each organized by Republicans. My expectation is that as the proportion of the population covered by the majority party falls (and especially as it dips below 0.5) the incidence of externally countermajoritarian roll calls will rise.

**TABLE 1. Explaining the Incidence of Externally Countermajoritarian Roll Calls**

Variables	(1)	(2)	(3)	(4)
Population Gini	-0.23 (0.59)			0.02 (0.50)
Close votes		0.26*** (0.06)		0.22*** (0.06)
Majority coverage			-0.34*** (0.06)	-0.31*** (0.06)
Constant	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)
Observations	116	116	116	116
R <sup>2</sup>	0.00	0.13	0.21	0.30

Note: The dependent variable is the fraction of roll calls that were countermajoritarian during a two-year congress. The estimator is ordinary least squares, with all variables differenced. Standard errors are in parentheses. \*\*\* $p < 0.01$ .

The results of a multivariate analysis that estimates the relationship between the proportion of countermajoritarian votes in a two-year congress, on the one hand, and the three explanatory factors (population Gini coefficient for a congress, the rate of close votes, and population coverage by the majority party), on the other, are reported in Table 1. The estimator is ordinary least squares, with all variables differenced by congress to minimize serial correlation and other problems commonly associated with time series evidence. So, for the 2nd Congress, the value of the dependent variable is the proportion of countermajoritarian roll calls associated with that two-year period minus the proportion associated with the 1st Congress, and so on over time and for the other variables that are included.<sup>7</sup> For further perspective, I also include bivariate regressions for each explanatory variable (columns 1–3), as well as results for the full analysis (column 4).

As you can see, the relationship between changes in the prevalence of close votes and the congress-to-congress growth in countermajoritarianism is strongly positive and statistically significant. Conflict in the roll call record is associated with a greater likelihood that the larger side on a vote will represent only a minority of the national population. Also consistent with expectations, as the proportion of the population covered by the majority party increases, the incidence of countermajoritarian results drops, and that relationship is also statistically significant. These relationships are large and precisely estimated in both the bivariate treatments and the full analysis. Interestingly, the Gini coefficient that taps population dispersion is not statistically significant—even when the effects are considered in isolation. By itself, population dispersion across states does not contribute to external countermajoritarian-

<sup>7</sup> With differencing, the Durbin–Watson statistic is within the acceptable range and the results of Dickey–Fuller tests allow us to reject the null hypothesis of non-stationarity in the data.

ism. Instead, the roll-call impact of Senate malapportionment is inseparable from the underlying political configuration.<sup>8</sup>

## INTERNAL COUNTERMAJORITARIANISM

The Senate, so critics claim, is also rife with countermajoritarian potential due to roll call thresholds that exceed a simple majority—internally induced countermajoritarianism, if you will. Certain of these supermajority requirements are rooted in the Constitution. Treaties, the Framers stipulated, must be ratified by a two-thirds vote in the Senate. The founding document mandates the same threshold for proposed constitutional amendments, verdicts in impeachment trials, expelling members for misbehavior, and efforts to override presidential vetoes. Other supermajority thresholds derive from Senate rules. Motions that would suspend the rules require a two-thirds vote. The threshold for invoking cloture, and thereby curbing filibusters and related obstructionist tactics, initially was two-thirds of members voting (1917–49), and then two-thirds of members sworn and serving (1949–59), before returning to two-thirds voting (1959–75), and eventually (since 1975) the current three-fifths of members sworn and serving, generally 60 votes.<sup>9</sup> Efforts to waive constraints associated with the Congressional Budget Act of 1974 (as amended over time) often require a three-fifths supermajority. In recent decades, orders of the Senate (more commonly referred to as “unanimous consent agreements”) also have placed supermajority requirements on amendments and other motions, mostly to avoid protracted battles over cloture (Smith 2014; Wallner 2017). Senators rely on these instruments to manage most chamber business. Their acceptance requires that no Senator object, but once in place they are binding on the membership.

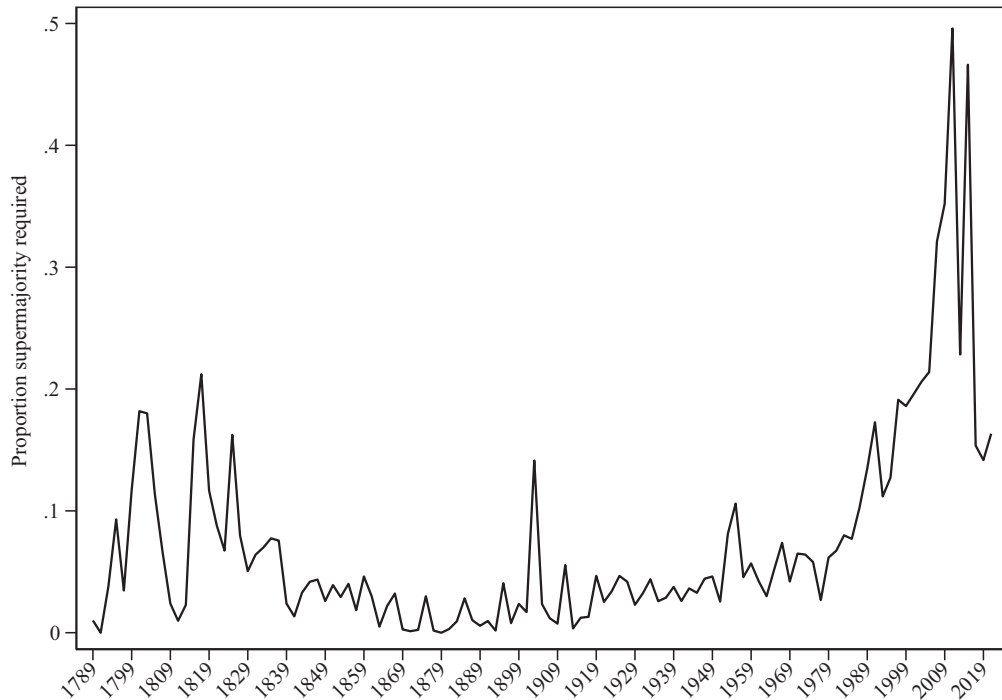
Figure 6 shows the proportion of Senate roll calls, 1789–2022, that had a decision threshold greater than a simple majority.<sup>10</sup> Such votes were common during the nineteenth century, largely because of the prevalence

<sup>8</sup> If the analysis is conducted without differencing, the takeaway is the same—population dispersion is insignificant, while close votes (positive relationship) and majority coverage (negative relationship) do achieve statistical significance. Supplementary Material explores the implications of using an alternative estimator, making a range of additional changes in how the models are specified, and altering the benchmark for characterizing a roll call as externally countermajoritarian. Importantly, such adjustments do not substantially alter the results reported here.

<sup>9</sup> Classic treatments of the filibuster and its offshoots include Binder and Smith (1996), Koger (2010), and Wawro and Schickler (2006).

<sup>10</sup> Supermajority motions were identified via keyword searches throughout the roll call record. These data were then cross-referenced for accuracy with motion identifiers included in Roberts, Rohde, and Crespin (2023); Lynch and Madonna (2019); a roll call archive provided by Gregory Koger; and the Senate website. The identification of roll calls with a supermajority requirement based on a unanimous consent agreement relies on information from congress.gov and the *Congressional Record*.



**FIGURE 6. The Proportion of Senate Roll Calls with a “Supermajority” Threshold, 1789–2022**

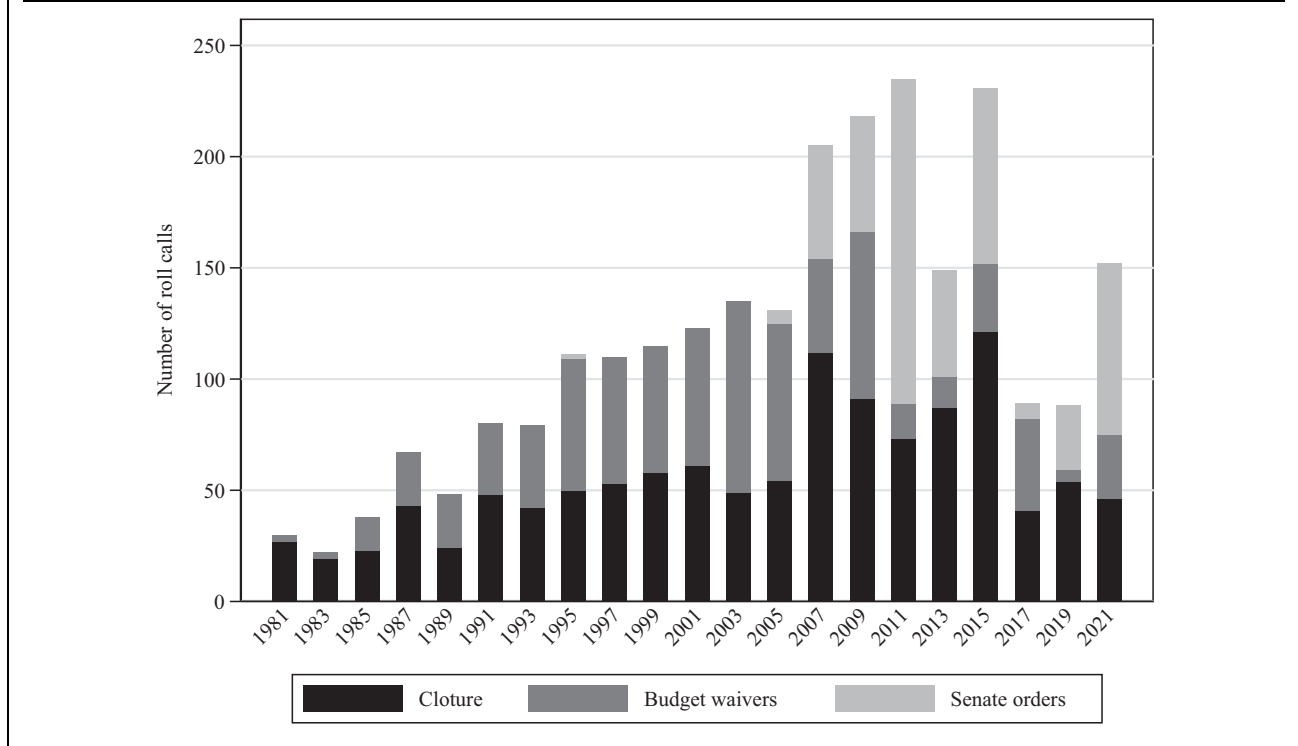
Note: Supermajority thresholds include those mandated by the Constitution (e.g., veto overrides, treaties, constitutional amendments, impeachments, expelling members) as well as those created by Senate rules and practice (e.g., cloture motions, budget waivers, suspension of the rules, Senate orders).

of treaty ratifications in the Senate agenda. Resolutions for the ratification of treaties and conventions usually produce lopsided votes in favor of passage. However, the importance of these resolutions and the associated thresholds should not be downplayed. Treaties were integrally related to the territorial expansion of the nation and its emergence over time as a world power, and in the case of agreements with Native Americans, had enormous implications for civil liberties and the process of westward expansion. Supermajority votes also occur regularly across Senate history because of presidential vetoes and associated attempts to override them. Likewise, efforts to suspend the rules, conduct impeachment trials, or expel members periodically produced supermajority thresholds over the decades.

After the antebellum period, the most notable pattern is the sharp rise in supermajority votes beginning in the late 1970s. One factor is the passage of the Budget Act in 1974, which placed restrictions on the floor amendments that members can offer during the legislative process. If a proposal would breach spending restrictions created by the Act (or budgetary legislation that amended it), a point of order against the proposal generally can only be overcome with a 60-vote supermajority (Reynolds 2017). For recent decades, however, the most important sources of heightened supermajority roll calls have been cloture and related orders of the Senate. Although the cloture process was first established in 1917, roll calls on cloture motions

were relatively infrequent until the 1970s, and beginning in the early 1980s, these fights turned increasingly partisan. The level of partisan obstructionism in the chamber took off during the 2000s and attempts to invoke cloture are now a pervasive feature of the floor agenda. As leaders sought ways to avert drawn-out struggles over cloture, the unanimous consent agreements they crafted increasingly included supermajority requirements. The result is the striking uptick in the figure over the past two decades. Now, as many as half of the recorded votes on the Senate floor can stipulate supermajority thresholds for adoption.

For further insight, consider Figure 7, which shows the incidence of the three leading sources of supermajority requirements over recent decades—cloture motions, budget waivers, and unanimous consent agreements worked out by the body. From 1981 to 2005, the number of roll call votes on proposals to waive budgetary restrictions or invoke cloture steadily increased. Beginning in 2005, we see a sharply rising number of amendments and related motions made subject to 60-vote requirements via unanimous consent. Indeed, these “order” based requirements are now a key driver of internal counter-majoritarianism within the chamber. The overall decline apparent for the last few congresses (back to Figure 6), it should be emphasized, mostly derives from the 2013 decision made by the Senate to impose only majority cloture on nominations. As the roll call agenda on legislation narrowed due to rampant obstructionism

**FIGURE 7. Main Sources of Supermajority Thresholds on Senate Roll Calls, 1981–2022**

within the chamber, a growing share of the votes occurring on the floor have concerned nominations (indeed, over 50% across 2013–22).

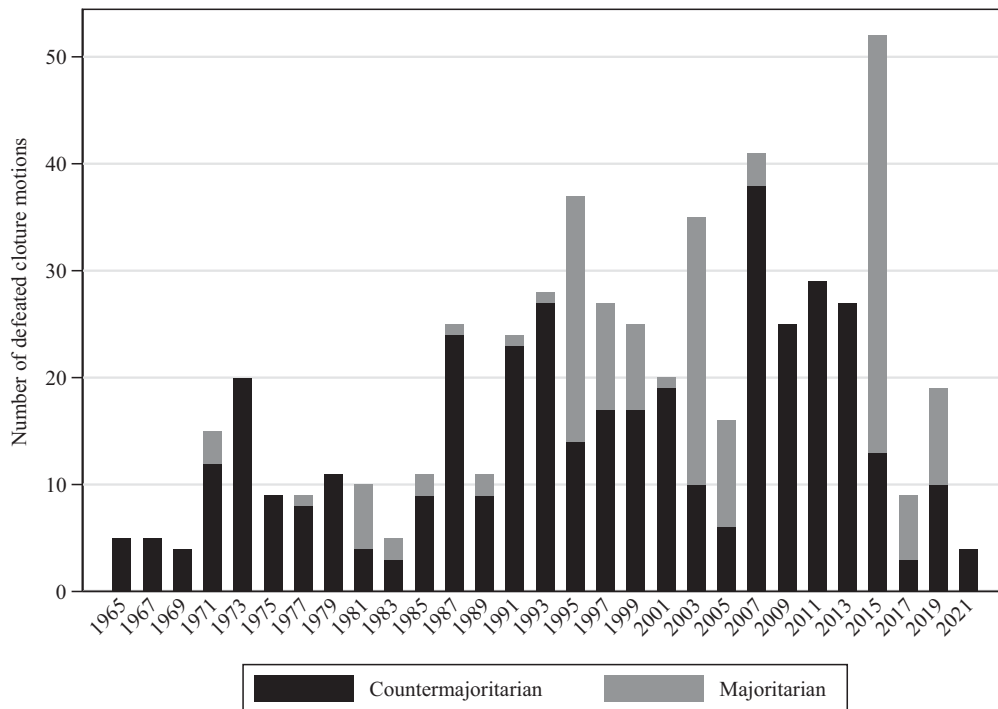
At this point, it is useful to look more closely at motions to invoke cloture. In an insightful law review article, Eidelson (2013) emphasizes that the two forms of countermajoritarian potential (internal and external) need to be considered together. Often, they should work in tandem, with the filibuster reinforcing the distortions produced by malapportionment. But, in other instances, the two sources of countermajoritarian potential may work against one another. For instance, a Senate minority that covers most of the population may use the filibuster and other forms of obstruction permissible under Senate rules to keep a majority (which covers less of the population) from passing legislation. Say, a Democratic minority uses the filibuster to derail a proposal put forth by Republicans representing only a minority of the country. Would that run contrary to majoritarian values writ large? From an “internal” perspective, the answer is “yes”—a minority of members is keeping most of the body from working its will. But from an “external” perspective, the Senators representing most of the population would prevail on the floor. In this instance, internal countermajoritarianism helps reduce external countermajoritarianism.<sup>11</sup> Normative critiques of the

Senate would benefit from systematic evidence of the actual relationship between the two forms of countermajoritarian potential.

In his article, Eidelson examines cloture motions considered by the chamber during 1991–2010, focusing on roll calls where there were more than 50 votes in support but fewer than the 60 necessary to invoke cloture. If less than a majority supported a cloture motion, we can infer that the outcome is consistent with majority rule within the chamber. And if 60 or more votes for cloture were secured and the procedure was invoked, the outcome again would be fully consistent with a majority of members carrying the day. But the intermediate range—a majority of the chamber supports cutting off debate, but not enough to avoid the proposal being blocked—yields a subset of decisions that were countermajoritarian in an internal fashion. Over the 1991–2010 period, Eidelson identified 173 cases where a cloture motion supported by most of the body failed to achieve the 60-vote threshold. Of these cases, roughly a third were situations where the Senators who supported cloture represented a minority of the U.S. population. Their opponents, who together represented more voters, were able to use internal countermajoritarianism to preclude an outcome that would have been countermajoritarian in an external sense.

Eidelson’s empirics only cover a 20-year time span that excludes the high levels of external countermajoritarianism in recent congresses, as well as cloture motions considered by the Senate between 1917 (when the procedure was established) and 1991. Here,

<sup>11</sup> When Senators debated filibuster reform in the decades following World War II, members opposed to reducing the cloture threshold often urged their pro-reform colleagues from more populous states to consider how they themselves could use the tactic to block outcomes that would be externally countermajoritarian (Wirks 2021, 157–9).

**FIGURE 8. Majoritarian and Countermajoritarian Consequences of Cloture, 1965–2022**

Note: Included are all cloture motions where more than 50% voted yes, but fewer than the threshold for passage. A cloture vote is characterized as “countermajoritarian” if the yes side represented most of the population, and obstructionism served to block what otherwise would have been an externally majoritarian result. A cloture vote is deemed “majoritarian” if the nays represented most of the people, and obstruction blocked a measure that otherwise would have been countermajoritarian in an external sense.

I expand that analysis by considering all cloture votes that occurred in the Senate, 1917–2022. During those years, there were over 2,000 discrete roll calls on cloture motions. To gauge the interactions that may exist between internal and external countermajoritarianism, the data are restricted to failed attempts to invoke cloture, but where more than 50% of the votes cast on the Senate floor were in the affirmative.<sup>12</sup> This allows us to focus on instances where the failure to overcome obstructionism blocked the passage of a measure or nomination that otherwise presumably would have passed. We cannot know for sure, of course. Sometimes members support cloture on a bill or nomination that they oppose because of general views they might hold about obstructionism, or for some strategic reason. But for the purposes of analysis, the premise that the underlying proposals likely would have passed if more than half of voting Senators were recorded as yea on cloture seems reasonable.

Of the 2,000 plus cloture votes that occurred in the Senate, 1917–2022, 570 produced outcomes where cloture was not invoked, but a majority of the votes were

cast in favor. Again, these are instances where the members who voted nay together *may* have represented most of the U.S. population, and thus used the filibuster to block an outcome that otherwise would have been countermajoritarian in an external sense—or a “majoritarian filibuster,” in Eidelson’s words.<sup>13</sup> Of the 570 roll calls, such an outcome occurred on 153, or about 27% of the total. The remainder (about 73%) were instances where the two forms of countermajoritarianism reinforced one another—resulting in a “countermajoritarian filibuster,” if you will.<sup>14</sup>

Figure 8 portrays the evidence graphically for congresses since 1965 (before then, votes on cloture occurred only sporadically and none implied a majoritarian filibuster). As you can see, there are clear differences depending on which party organized the Senate. Especially since the early 1990s, when Democrats have been the majority party, the consequences of internal obstructionism largely also have been countermajoritarian in an external sense. Under these conditions, the minority Republicans, who tend to hail from less populated states, used their procedural

<sup>12</sup> Eidelson only includes one cloture vote per underlying measure and treats nonvoters as having voted no. Here, I treat each roll call as a separate observation and nonvoters are dropped from the calculations.

<sup>13</sup> See also Gray and Jenkins (2020).

<sup>14</sup> No instances arise where supermajority cloture was invoked and the outcome was externally countermajoritarian. The higher threshold necessitates a lopsided margin in support, sharply reducing the likelihood that most of the population will be on the losing side.

prerogatives to stymie majority coalitions that represented a larger share of the U.S. population. But when Republicans organized the chamber, Democrats were able to use chamber rules to block items backed by a majority GOP coalition that nonetheless covered less than half the country. Under such conditions, counter-majoritarianism within the chamber counteracted the distortions associated with malapportionment, and internal and external countermajoritarianism worked against one another.

Further light on the complexities of Senate counter-majoritarianism can be gleaned from recent nominations, which since 2013 have been decided by majority cloture.<sup>15</sup> As mentioned, the number of cloture votes on nominations increased substantially from 2013 onward—from just 11 during 2011–12 to a high of 244 in 2019–20. For this reason, it is instructive to consider cloture votes on nominations where a majority supported confirmation, but less than the 60 that would have been required prior to the procedural change. These nominations were supported by a majority of voting members but *potentially* would have been blocked under the old rules. As always, we need to be careful. Under the old procedure, many of the nominations considered “post-reform” likely would not have been subjected to a roll call, or the support levels would have been higher. The advent of pervasive majority cloture on nominations—in combination with the partisan procedural warfare that has come to dominate the Senate—has fueled conflict over confirmations. Still, singling out this subset of nomination votes can inform our understanding of the consequences of reforms aimed at curbing internal countermajoritarianism.

Table 2 summarizes cloture votes on nominations post-reform where a simple majority voted in favor, but less than the 60 that would have been required to overcome a filibuster before 2013. A total of 441 cloture roll calls met the criteria. For 102 of them (a little less than one-quarter), the aggregate population represented by the Senators voting nay exceeded the aggregate population represented by the Senators voting in favor. These are cases where the internal countermajoritarianism associated with Senate confirmations *pre-procedural change* potentially could have countervailed an outcome that was countermajoritarian in an external sense. For the other three-quarters of the cases, however, the side covering more of the population was now able to work its will via the lower vote threshold. Here, the procedural change appears to have countered the externally countermajoritarian potential from malapportionment and internal rules. Not surprisingly, the relative size of the two effects varies by party. During 2017–20, with a Republican president and GOP Senate, the move to majority cloture facilitated the confirmation of scores of nominees over the opposition of Democrats representing far more people. During

**TABLE 2. Cloture Votes on Nominations Following the 2013 Change, Where a Majority Voted Yes but Fewer than the 60 Previously Required to Close Debate**

Congress	Party control	Population on nay side > population on yea side	Population on yea side > population on nay side	Total
2013–2014	Democrats	0	104	104
2015–2016	Republicans	0	0	0
2017–2018	Republicans	59	4	63
2019–2020	Republicans	43	74	117
2021–2022	Democrats	0	157	157
Total		102	339	441

*Note:* If the population on the nay side exceeded the population on the yea side, under the pre-2013 cloture threshold of 60, the nays potentially could have used the filibuster to block an externally countermajoritarian result. If the population on the yea side exceeded the population represented by the nay side, under the old rules the minority potentially could have used the filibuster to block a majoritarian outcome.

2013–14 and 2021–22, in contrast, with Democrats in the White House and organizing the Senate, the new rules had the opposite effect—majority cloture made possible externally majoritarian outcomes that otherwise may have been derailed by minority Republicans who represented only a minority of the population. To properly gauge the consequences of procedural change, in other words, both forms of countermajoritarian potential merit consideration. In particular, the interactions that can occur between internal and external countermajoritarianism need to be front and center in discourse about filibuster reform.<sup>16</sup>

## MINORITY RULE

For many, the prevalence of Senate countermajoritarianism will raise the specter of some form of minority rule within the chamber, and perhaps more generally within American national politics (Balz, Morse, and Mourtopalas 2023; Levitsky and Ziblatt 2023). But to gauge the full meaning of the results presented so far, we need to delve more into the partisan and legislative consequences. A full treatment, of course, is beyond the scope of this article, but for now, we can focus on the years since World War II. That era began with several decades of muted partisan conflict within the Senate and relatively modest levels of internal and external countermajoritarianism. The decades that followed featured the rise of intense partisan polarization and the heightened countermajoritarianism that now characterize the chamber and are the fodder for so much normative concern.

<sup>15</sup> Although the change was not implemented for Supreme Court nominations until 2017, no confirmations to the high court occurred between 2013 and that year.

<sup>16</sup> On this point, see also Gould, Shepsle, and Stephenson (2021).

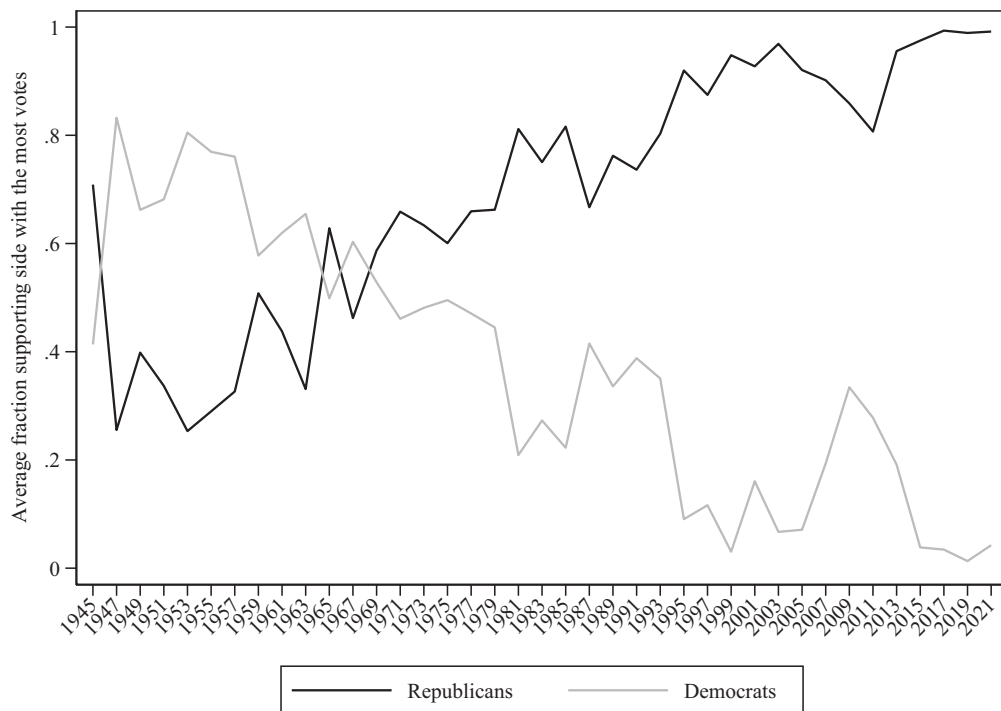
**FIGURE 9. Fraction of Democrats and Republicans Supporting the Side with the Most Votes on Externally Countermajoritarian Roll Calls, 1945–2022**

Figure 9 summarizes the partisan gainers and losers on roll calls that were externally countermajoritarian, 1945–2022. For each of these outcomes, the fraction of Democrats and Republicans that supported the side with the most votes (and thus a minority of the population) was determined and the average by party was calculated across all relevant roll calls per two-year congress. Prior to the late 1960s, the figure shows, the fraction of Democrats supporting the externally countermajoritarian position was generally larger than the fraction for Republican members, but keep in mind that the overall incidence of countermajoritarianism was also much lower during these years. In contrast, from the late 1960s onward, Republicans have been the primary beneficiaries from malapportionment, and since the mid-1990s, the differences have been stark. Importantly, the incidence of externally countermajoritarian roll calls also spiked at precisely this point in recent Senate history. In the contemporary Senate, then, external countermajoritarianism benefits the GOP.

To gauge the consequences of all this for chamber decision-making, however, we also need to consider *where* in the process countermajoritarianism surfaces and *how much*. Other than singling out cloture motions, I have yet to distinguish between different kinds of motions, or between major decisions and matters that may be more mundane. We can begin by identifying five broad categories of motion type: (1) motions that concern entire measures (both initial

and final passage); (2) amendments of all sorts; (3) cloture motions; (4) motions to waive budgetary rules; and (5) a residual category (mostly procedural or otherwise concerned with the process). Since the choices that members confront on nominations are different from those they face on legislation (nominees cannot be “amended,” for instance), all motions that relate to nominations are collapsed into a separate category.<sup>17</sup>

Table 3 summarizes the incidence of countermajoritarian results across the different motion types, 1945–2022. Included are columns for the total number of occurrences, the percentage of all countermajoritarian votes that fell in each category, and the proportion of roll calls within each motion type where voting and population majorities diverged. For additional insight, Table 3 also reports this information for the subset of roll calls identified as key votes by *Congressional Quarterly* (CQ). Across the time span covered by the table, the organization identified 10–15 roll calls per year as key in part because of their importance to the country.

There are two main takeaways from the table. First, across motion types, the likelihood of an externally countermajoritarian result is generally higher for the subset of key votes than for the roll call record taken as

<sup>17</sup> The categorization of motions relies on sources referenced in Footnote 10.

**TABLE 3. Externally Countermajoritarian (CM) Roll Calls by Motion Type, 1945–2022**

Motion type	All votes			CQ key votes		
	Number of roll calls	Percent of CM occurrences	Percent CM within motion type	Number of roll calls	Percent of CM occurrences	Percent CM within motion type
Entire measures	132	4.4	3.0	31	17.6	9.0
Amendments	1,813	59.9	13.1	91	51.7	20.0
Cloture	178	5.9	14.7	24	13.6	24.2
Budget waivers	253	8.4	31.8	2	1.1	15.4
Process/Misc	345	11.4	14.8	17	9.7	37.8
Nominations (all motions)	304	10.1	11.0	11	6.3	25.0
Total	3,025	100	12.0	176	100	17.6

*Note:* Nomination-related roll calls are treated as a separate category, including votes directly on confirmation, cloture votes on nominations, and other procedural motions used during the confirmation process. “Entire measures” refers to passage motions on legislation and resolutions (both initial and final), conference reports, veto overrides, and the ratification of treaties. Amendments include first- and second-degree proposals, as well as motions to table amendments. The remaining categories are straightforward.

a whole.<sup>18</sup> For instance, while the proportion of amendment motions that were countermajoritarian, overall, was 13.1%, the rate for amendment roll calls designated as “key” was 20%. For cloture motions, the overall rate was just under 15%, while for the key votes that occurred on cloture, it was about 24%. In part because the stakes are greater, key votes are more likely than other roll calls to result in close outcomes, and as we have seen, close votes are strongly associated with countermajoritarianism.

The other major takeaway is that external countermajoritarianism is rare at the passage stage. For the full roll call record, just 4.4% of the countermajoritarian outcomes fell in this category, and the countermajoritarian rate among passage motions was only 3%. For the key vote subset, passage motions make up a larger percentage of countermajoritarian outcomes, and here the within-category rate rises to 9%. But overall, countermajoritarianism is significantly less prevalent on passage than for other kinds of motions. The primary reason is that passage motions usually produce lopsided divisions. Over 1945–2022, a little over one-third of all votes were deemed close based on the definition in this article, and across the motion categories in the table, by far the lowest level was for motions on passage (just 10%).

Of course, the paucity of close votes on passage is an enduring feature of congressional politics (Curry and Lee 2020; Roberts and Smith 2003). Passage motions confront a member with a choice between two alternatives, the full measure under consideration and what will occur if that measure fails. Confronted with such a choice, even lawmakers whose preferences sharply diverge from the contents of a proposal often vote yes, because a flawed bill is viewed as better than no bill at all. Moreover, to arrive at the passage stage,

initiatives must clear multiple hurdles, which makes close votes rare. Almost by definition, the recent emergence of what scholars call the “60-vote Senate” precludes externally countermajoritarian outcomes at the passage stage.<sup>19</sup> Instead, they primarily surface prior to passage, as alternatives take form, agendas are set, and important decisions are made about which proposals will advance and which will be derailed. Indeed, the prevalence of countermajoritarian outcomes on cloture and within the miscellaneous “process” category implies that the main impact of external countermajoritarianism is on what is blocked from consideration, rather than what is enacted.<sup>20</sup>

The importance of the passage items in Table 3 should not be completely discounted. Major budgetary legislation and other measures not subject to the filibuster make up the bulk of these initiatives—they can be advanced with less than 60 votes, which in turn makes close votes more likely. Consider, for example, the landmark Trump tax cuts of 2017, which narrowly passed with most of the population represented by the Democrats who were on the losing side of the vote.<sup>21</sup> But overall, the rampant *internal* countermajoritarianism that shapes decision-making in the modern Senate necessitates that we mostly look elsewhere in the roll call record to identify how *external* countermajoritarianism matters.

For these reasons, it also is informative to look more holistically at the bills and nominations that were associated with at least one *CQ* key vote, rather than just the key votes themselves. In total, 911 measures were associated with key votes at some stage of the process,

<sup>19</sup> Among others, Sinclair (2006) and Smith (2014) coined the term.

<sup>20</sup> The importance of the broader array of motions to decision-making in the modern Senate is underscored by the distribution of key votes, where only about a third concerned passage.

<sup>21</sup> The final Senate roll call on the Trump tax package occurred on a motion to recede from disagreement with the House, but it constituted the functional equivalent of a vote on enactment.

<sup>18</sup> The glaring exception is budget waivers, but that probably is idiosyncratic due to the small number selected as key votes.

**TABLE 4. Countermajoritarian Presence on CQ Key Vote Measures, 2021–2022**

<b>Limited to none</b>	
Certification of electors	Bipartisan consensus
Gun violence	Bipartisan consensus
Semiconductor incentives	Bipartisan consensus
Same sex marriage	Bipartisan consensus
Ukraine/disaster relief	Bipartisan consensus
Jackson (DC circuit)	Partisan, majority cloture
Jackson (Supreme Court)	Partisan, majority cloture
<b>Externally countermajoritarian due to malapportionment</b>	
Vaccine–test mandates	Adopted 52–48 due to Democratic defections, with most of the population on the nay side
Voting rights (I)	Critical motion was to overturn a ruling of the chair, and population majority side lost 48–52 when Manchin (W.Va.) and Sinema (Ariz.) voted with the GOP
Access to abortion	Failed 49–51, with losing yes side covering more population. Cloture, so if a few votes had switched would have been countermajoritarian due to procedure
Defense authorization	Cloture initially failed 47–47 due to inclusion of an energy initiative, with population majority on losing side. Stripped off, the bill passed 83–11
Infrastructure	Bipartisan on passage, but Democrats representing more population failed to secure chamber majorities for stronger versions
<b>Externally countermajoritarian due to internal countermajoritarianism</b>	
Domestic terrorism	Cloture failed 47–47, but really 48–46 due to strategic vote cast by Schumer (N.Y.) to allow reconsideration. Countermajoritarian due to procedure
Trump impeachment	“Yes” side had most votes and population covered, but the two-thirds requirement not met, countermajoritarian due to the constitutional requirement
January 6th Commission	“Yes” side had most votes and population covered, but the 60–vote requirement not met, countermajoritarian due to cloture threshold
Voting rights (II)	“Yes” side had most votes and population covered, but the 60–vote requirement not met, countermajoritarian due to cloture threshold
Debt limit	Bipartisan at final stages, but a procedurally empowered GOP thwarted the population majority Democrats on a long-term hike due to cloture threshold
<b>Externally majoritarian due to internal countermajoritarianism</b>	
VA toxic chemicals	GOP amendment was 48–47, with population majority on “no” side, but blocked due to elevated threshold, precluding externally countermajoritarian result
Inflation Reduction Act	Passed with Vice President’s tiebreaker. Three budget waivers had majority support with most population on “no” side but failed due to 60–vote threshold
<b>Mixed</b>	
American Rescue Plan	Passage narrowly majoritarian. On amendments, external countermajoritarianism rooted in malapportionment. Also, waiver thresholds that blocked such outcomes

1945–2022. Included are some of the most consequential initiatives considered on Capitol Hill since World War II.<sup>22</sup> Of these items, indications of countermajoritarianism are apparent at some stage of the decision-making process on 438 (almost half).

During 2021–22, for example, the most recent Congress encompassed by the evidence, 20 distinct bills and nominations were the subject of at least one *CQ* key

vote.<sup>23</sup> That Senate was organized by Democrats representing a population majority of 56%, but the partisan division was 50–50 (with Vice President Kamala Harris breaking ties) and a relatively large proportion of floor votes were close. Together, the narrow margin, intense polarization, and prevalence of tight outcomes were conducive to significant countermajoritarianism, even though Democrats representing most of the population had organizational control.<sup>24</sup> A list of the initiatives for

<sup>22</sup> One benefit of focusing on *CQ* key vote measures is that they also include significant items that failed, and thus are missing on lists of major enactments. Still, the overlap between the *CQ* list and the best inventories of major enactments is substantial. For example, over 60% of the major enactments identified by Mayhew (2005, as updated) are included. Nominations also are part of the *CQ* list, but account for only a small fraction of the measures.

<sup>23</sup> Two of the key votes singled out by *CQ* for 2021 concerned objections to the certification of electoral votes for Arizona and Pennsylvania. They are treated as a single item here due to their substantive importance.

<sup>24</sup> About 9.5% of all votes during 2021–2022 were externally countermajoritarian, somewhat less than the average across chamber history, but higher than what occurred for other recent Senates organized by Democrats.

2021–22 and a summary of what happened is provided in Table 4, with items categorized based on the varieties of external and internal countermajoritarianism underscored in this article. For the first seven of the items, it merits emphasis, not much countermajoritarian impact can be detected. The phenomenon is common within the chamber, but not unceasing, even on major initiatives.

The second category features five measures with clear signs of external countermajoritarianism rooted in Senate malapportionment. The first is a GOP-backed resolution overturning an administrative rule providing for a vaccine-or-test mandate for large employers. Considered subject to the Congressional Review Act, adoption required only a simple majority, and the measure passed narrowly when two Democrats sided with the GOP for the win. Most of the population was represented by Senators on the losing side.

The next two items also constituted major defeats for the majority Democrats on pressing issues of the day. In January 2022, the Senate attempted to advance a compromise measure to restore provisions of the Voting Rights Act that had been struck by a 2013 Supreme Court decision. The pivotal motion would have reduced the cloture threshold for the measure to a simple majority, but it failed when two Democrats voted with the GOP and the bill died. The side representing the most population went down in defeat. The next item would have codified federal access to abortion services following the Supreme Court decision overturning *Roe v. Wade*. It also failed, 49–51. The motion was directly on cloture, but the Democratic coalition voting yes, and representing most of the population, was unable to muster even majority support within the chamber. In contrast, the defense authorization and the far-reaching infrastructure measure passed the Senate with strong bipartisan support. But in both cases, chamber Democrats earlier had attempted to advance stronger measures and failed to secure majorities within the chamber. Once again, the key votes occurred on cloture, but the primary source of the countermajoritarianism that resulted was external—voting and population majorities were on different sides of the matter.

The third and fourth categories in Table 4 underscore the importance of the interactions that can occur between external and internal countermajoritarianism. For legislation aimed at curbing domestic terrorism, the impeachment of President Donald Trump, a resolution to establish a January 6 commission, and a preliminary voting rights measure considered by the Senate in fall 2021, the positions embraced by Senate Democrats drew majority support within the chamber, and together those coalitions represented most of the population. But in each case, a supermajority threshold precluded passage (either the 60 votes necessary for cloture or the two-thirds requirement for guilt in an impeachment trial). For these items, malapportionment alone was not the culprit—voting and population majorities were on the same side. However, an externally majoritarian result was blocked by the internal countermajoritarianism

that often structures decision-making within the body. Along those lines, in December 2021, the Senate passed by a wide margin a measure to create a one-time exemption from the filibuster to raise the federal debt limit. But the majoritarianism that characterized the final roll calls only came after a unified Democratic Caucus repeatedly failed to pass a clean debt limit increase due to GOP dilatory tactics. For much of the bargaining process, then, Senators representing a population and chamber minority were able to block action.

As we have seen, under the right conditions internal countermajoritarianism can counteract the external countermajoritarianism rooted in malapportionment. In the modern Senate, such instances typically occur when Republicans are the majority party, so we would not expect to see much of that here. Yet, on two of the key vote bills—a measure to assist veterans who had been exposed to burn pits and other toxic substances, and the landmark Inflation Reduction Act—Democrats relied on supermajority thresholds to block amendments that otherwise would have passed and been externally countermajoritarian.

Finally, multiple varieties of the phenomenon surfaced during chamber consideration of the “American Rescue Plan,” the \$1.9 trillion pandemic relief package that cleared the Senate in March 2021, with Democrats prevailing narrowly on a party-line vote of 50–49. As a reconciliation bill, only a simple majority was required for passage, and the winning side represented most of the population. Given the massive scope of the measure, it is tempting to stop right there. But narrow margins and the limits of majority party strength call for a closer look at how the final package was put together. For one, the chamber initially accepted a major GOP amendment regarding unemployment compensation, with Democrat Joe Manchin of West Virginia joining chamber Republicans for the win. Most of the U.S. population, of course, resided in the states of the other Democrats who favored the provision in the bill and voted no. After the amendment passed, Democratic leaders held open a follow-up vote for nine full hours, the longest roll call in recent memory, as they convinced the West Virginian to accept a scaled-back modification (Cochran 2021).

Analogous dynamics surfaced on a proposal to raise the federal minimum wage to \$15 per hour, which had been included in the House version of the legislation and was backed by the Biden administration and most Senate Democrats. The initiative was dropped from the Senate bill, ostensibly because it ran afoul of budget procedures and a ruling of the parliamentarian. But an underlying cause was malapportionment. An attempt to waive the rule and allow adoption failed to achieve even majority support within the chamber, although most of the population was represented by Senators voting in favor. Two other amendments that required the waiver of budget rules won the support of voting majorities but failed to meet the three-fifths threshold. In both cases, the members voting nay represented a larger share of the population, so here internal countermajoritarianism blocked outcomes that otherwise



would have been externally countermajoritarian. Overall, then, the consequences of countermajoritarianism during 2021–22 reflect the core claims of this article. Both the external and internal forms often surfaced due to the underlying partisan configuration and the level of conflict in the floor agenda. And while the two varieties of countermajoritarianism usually reinforced one another, under the right conditions supermajority requirements within the chamber helped produce outcomes that were majoritarian in an external sense.

## CONCLUSION

The analysis in this article informs our understanding of Senate countermajoritarianism in significant ways. Externally countermajoritarian roll calls are prevalent throughout Senate history, with normative consequences for representation. The incidence was high during the antebellum period, and especially during the intensely polarized Senates of the modern era. Much of the temporal variance can be explained by just two factors—one tapping the level of conflict in the roll call record and the other measuring the share of the U.S. population represented by the Senate majority party.

Interestingly, the overall level of population dispersion across states does not appear to exert much of an impact independent of these two more overtly political variables. We cannot evaluate the impact of structural features separate from the underlying configuration of interests and views within the Senate chamber and in the country. A lot of ink has been spilled of late about the need to reform or restructure the U.S. Senate. The constitutional and procedural foundations of the Senate, some observers claim, contribute to a form of minority rule in American national politics. But from malapportionment to the filibuster, the institutional ills that critics cite vary over time in predictable ways. Sometimes they matter a lot, other times not so much. And under certain conditions, the effects may balance one another out. The obstructionist potential of Senate rules, for example, can be countermajoritarian in an internal sense, but majoritarian when we consider other distortions emanating from malapportionment—an observation that has been largely missing from contemporary debates about filibuster reform.

Much of the impact of Senate countermajoritarianism, it appears, concerns the processes through which the floor agenda is set, and legislative alternatives are constructed. Often, it takes the form of nondecisions and negative agenda control (Cox and McCubbins 2005; Den Hartog and Monroe 2011). At least during the modern era, major enactments seldom pass based on supporting coalitions that represent only a population minority. Instead, external countermajoritarianism is especially prevalent when significant initiatives backed by coalitions representing most of the country are unable to muster the supermajority support necessary to clear the multiple hurdles that comprise the Senate legislative process. Again, the two forms of countermajoritarianism—external and internal—can

counteract one another, but most of the time, they appear to work in tandem.

This article, of course, raises as many questions as it answers. Further research would inform our understanding of countermajoritarianism during the nineteenth century, especially the antebellum years when it was rife. Particularly for this era, we need to explore how the restrictions that were in place on citizenship rights affect how countermajoritarianism is measured and evaluated. Along those lines, when questions that produce countermajoritarian roll calls in the Senate come before the House, do outcomes differ across chambers? Currently, malapportionment primarily benefits Senate Republicans, but the best research about House constituencies highlights certain GOP advantages on that side of the Capitol as well, because Democratic voters are heavily packed into urban districts. When considering the potential distortions created by state-based constituencies in the upper chamber, what precisely is the appropriate benchmark for comparison? Extending this research to the House might help address the question.

Based on demographic and political projections, Senate countermajoritarianism is likely to grow more entrenched in the years ahead, further fueling the widespread skepticism that exists about the legitimacy of the chamber. Yet, as we have seen, the magnitude and impact should vary in ways that reflect the political configurations of the day. Even in the contemporary chamber, large portions of the agenda do not appear to be shaped all that much by malapportionment, and broad claims about minority tyranny are excessive. Senate countermajoritarianism is troubling but *contingent*. And as observers reflect on options for structural change and otherwise cast normative judgment, they should keep such contingencies firmly in mind.

## SUPPLEMENTARY MATERIAL

To view supplementary material for this article, please visit <http://doi.org/10.1017/S0003055424000510>.

## DATA AVAILABILITY STATEMENT

Research documentation and data that support the findings of this study are openly available at the American Political Science Review Dataverse: <http://doi.org/10.7910/DVN/BXIRYE>.

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## CONFLICT OF INTEREST

The author declares no ethical issues or conflicts of interest in this research.

## ETHICAL STANDARDS

The author affirms this research did not involve human participants.

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