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The Past and Future of the Supermajority Senate

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Abstract

The distinguishing feature of the modern U.S. Senate is the ability of any senator to block legislation and nominations, forcing the rest of the chamber to limit debate using a slow process that requires a 60-vote supermajority. This article explains the development of this new and powerful veto in the legislative process, its use as a minority party veto, and then reviews options for restoring the balance between governance and deliberation.

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Over the last fifty years, there has been a slow revolution in American politics.[1] While members of the U.S. Senate have always had the ability to filibuster legislation—that is, to delay decisions through open-ended "discussion"—they rarely did so before 1960. Filibustering has skyrocketed since then, from an annual average of 3.2 filibusters during 1951–1960 to 16.5 between 1981 and 2004. But this statistic tells only half the story: obstruction is so *institutionalized* in the modern Senate that labeling some action a "filibuster" is like handing out speeding tickets at the Indy 500. As a Senate leadership aide explained: "Obstructionism is woven into the fabric of things. The [party] leadership deals with it on a day-to-day, even a minute-to-minute basis. … You can't underestimate the importance of it. There are offshoots of obstructionism every day."[2]

Filibustering—and the sixty votes required to limit debate using the Senate cloture rule—is so embedded in the way the Senate sets the agenda, writes legislation, and considers nominations that scholars label it the "sixty-vote Senate" and treat the filibuster as a veto point on par with the Presidential veto (Sinclair 2002, Krehbiel 1998, Tsebelis 2002). This change has had far-reaching effects: filibustering empowers individual senators to pursue their personal agendas, and it gives the minority party the ability to block majority party proposals. How did the Senate transform into a supermajority legislature? To answer this question, we must have a clear understanding of what filibustering was like before 1960, and why senators abandoned that system.

I begin with some definitions and a quick historical survey, and then explain the emergence of the sixty-vote Senate. I conclude by reviewing options to reform the Senate and the package of revisions adopted in January 2011.

Filibustering: Theory and Practice

Filibustering is delay, or the threat of delay, in a legislative chamber to prevent a final outcome for strategic gain. Filibustering occurs in many legislative settings, not just the Senate. While collecting data on Senate obstruction, I also found references to filibustering in twenty state legislatures, nineteen foreign countries, and the United Nations.

Tactics. There are lots of ways to kill legislative time. We might associate filibustering with long speeches, but this is a historical coincidence; the stereotypical Southern senators blocking civil rights favored speaking as the most defensible form of obstruction. Legislators can also delay by calling for

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[1] Portions of this essay were previously published by the author in the Legislative Studies Section Newsletter in an article entitled "The Rise of the 60-Vote Senate."
[2] Quoted in Evans and Lapinski 2005.

unnecessary roll-call votes, e.g., on motions to adjourn or dozens of amendments. Another classic technique is refusing to vote in the hopes of "breaking" a quorum, also known as a "disappearing quorum." The U.S. Constitution requires a simple majority to be in the chamber in order for a vote to be valid. So, if attendance is low, a minority of those present can block a decision by NOT voting.

Responses. There are several ways to respond to a filibuster: voting to end debate (if an effective rule exists), changing the rules of the game, bargaining, and attrition. For anyone who wants to understand the history of filibustering in Congress, the last option is the most important. "Attrition" means that the majority simply waits until the obstructionist is exhausted. If there were several senators willing to filibuster, they would take turns while the majority sat silently, day and night, ensuring a quorum was present for the marathon.

While this may sound somewhat juvenile, the patience of the majority ensured that any filibuster would be conducted openly, so that the obstructionists could be held accountable. It also ensured that obstructionists paid a real, physical toll for their illegitimate veto: standing and talking for hours can be exhausting. However, the senators on the other side paid a price as well, since they had to be in or near the Senate chamber day and night as long as the battle of attrition lasted. This tactic is illustrated fairly accurately in the 1939 film, *Mr. Smith Goes to Washington*, in which Mr. Smith eventually collapses on the Senate floor, sleep-deprived and exhausted.

Consider a classic example of attrition. Scholars often cite the fact that Strom Thurmond's 24-hour filibuster against the conference report for the 1957 Civil Rights Act was the longest one-person filibuster in Senate history, but the other side of that factoid is that the rest of the Senate did not file a cloture petition to shut him up. The other senators waited for the limits of human endurance to catch up with Senator Thurmond and then calmly approved the bill after Thurmond was finished. There were two necessary ingredients for this anecdote to play out: one or more senators with intense interests—in this case, an intense interest in position-taking—and a majority willing to devote enough of the Senate's time *and their own personal time* to wait out the obstructionist, while believing that patience was a better response than filing for cloture.

When the majority is able and willing to wage a war of attrition, then filibustering is a contest of endurance, with each side paying a price for the length of the contest. As such, classic obstruction was similar to a labor strike or a war, and models of bargaining developed for these cases may be applied to filibustering.

Filibustering in the Historical Congress

While the modern Senate filibuster is as important as (or more important than) the Presidential veto to the lawmaking process, it is not specified in the U.S. Constitution that members of Congress may filibuster, nor would it be accurate to say that the authors of the Constitution endorsed parliamentary obstruction (Binder and Smith 1997). Article 1 of the Constitution does, however, codify two rights that have been used to filibuster: the requirement that a simple majority be present to constitute a quorum, and the right of any legislator to request a roll-call vote with the consent of one-fifth of those present. These provisions were included with the understanding that they could be used to filibuster, but that is not their purpose. Most importantly, Section 5 specifies that "Each house may determine the rules of its proceedings," so each chamber has the authority to revise and reinterpret its rules as circumstances change (Koger 2010).

Both the U.S. House and the Senate began with the same Constitution and similar rules, but one chamber gradually became prone to filibustering, culminating in paralysis at the hands of an obstructionist minority party and a period of institutional crisis. I am referring, of course, to the U.S. House of Representatives. Whether one measures the number of disappearing quorums, dilatory motions, bills that faced a significant level of obstruction, or references to filibustering in the *New York Times*, there was during the 19th century roughly twice as much filibustering in the House of Representatives as in the Senate, with a trend toward increasing obstruction over time in both chambers (Koger 2010).

This period came to an end after the House Republicans imposed new precedents (subsequently incorporated into the rules of the U.S. House) limiting the use of dilatory motions and disappearing quorums in 1890. After four years of contention, House Democrats accepted the reign of the majority in 1894. This sequence dispels the notions that the House's "previous question" motion inoculated the chamber from filibustering, that filibustering is uniquely a Senate tradition, and that a filibustering minority can frustrate any effort by a majority to impose reforms that reduce obstruction. A determined and creative majority can always defeat obstruction if it is willing to break with parliamentary orthodoxy.

## The Rise of Filibustering in the 20th Century Senate

In a recent book, *Filibustering*, I measure the number of filibusters and threatened filibusters in the 20th century Senate by combing through the *New York Times*, *Time*, and some Congressional Quarterly publications.[3] I find a dramatic increase

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[3] Recent commentators have focused on the number of cloture petitions and votes as a measure of obstruction. This is a reasonable measure of the majority party's frustration with filibustering over

in Senate obstruction beginning during the 1960s, as shown in Figure 1. Filibusters were rare in the early 20th century Senate. During this period, filibustering senators would usually have to stay on the Senate floor for hours or days on end, enduring physically exhaustion and possible retaliation from other senators. These costs usually exceeded the benefits of obstruction.

Figure 1. Filibusters and Cloture Votes 1901-2010
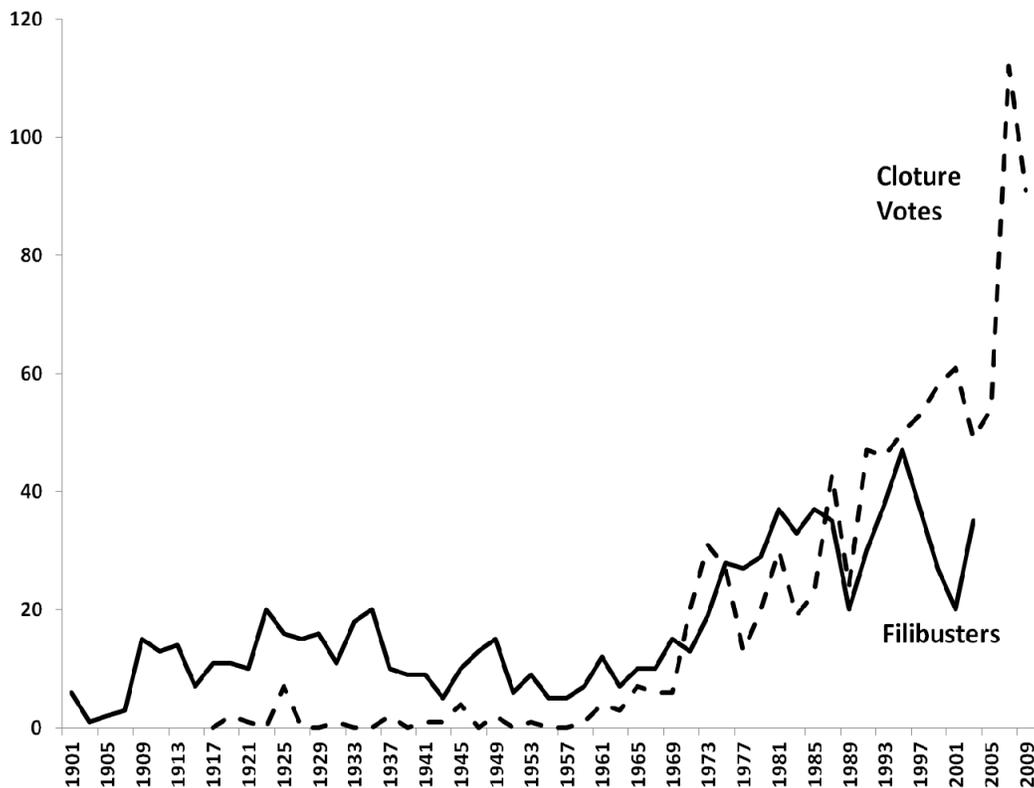
Source: Koger 2010 and www.senate.gov

Although attrition was generally effective when a majority was determined to win, in 1917 the Senate gave in to public pressure and adopted the "cloture" rule, which limited debate if a two-thirds majority vote of the senators agreed. This rule had little effect (Koger 2007, 2010; but also Wawro and Schickler 2006). Figure 1 shows that there were more filibusters than cloture votes during this era, which suggests that senators strongly preferred to resolve

the last two decades, but for the pre-1960 Senate it understates the level of obstruction because senators were less likely to attempt to invoke cloture against a filibuster.

filibusters without attempting or invoking cloture. Between 1927 and 1962, the Senate tried eleven times to invoke cloture but did not succeed once. Most of the time, senators found attrition to be a more effective and defensible response to the filibuster.

This era of attrition-based filibustering gave rise to the popular impression that Senate filibusters were rare (true) and reserved for "matters of great importance," which was somewhat true. Senators did occasionally wage war for petty causes, but usually it took an important and controversial issue to motivate a team of senators to hold the floor of the Senate indefinitely. One weakness of the "attrition" strategy in response was that at the end of each Congress, it was easier to filibuster because there would usually be a crush of pending legislation to pass and a finite amount of chamber time. These conditions made it easier to kill proposals and to hold others hostage. In these end-of-session jams, the new cloture rule was usually unworkable, since it takes several days to implement. Instead, the 20th amendment to the Constitution, adopted in 1933, revised the Congressional calendar to eliminate the post-election "short" session and reduced the problem of end-of-session obstruction.

The Rise of the Silent Filibuster

While the 20th Amendment helped to restore balance between majority governance and minority rights, attrition became a less viable response to filibustering as time progressed (Oppenheimer 1985). This failure was most evident in the area of civil rights; from 1937 to 1960, civil rights legislation was repeatedly defeated or weakened by determined and well-organized Southern senators. The difficulty in passing civil rights legislation led to outside pressure to change Senate rules, leading to minor reforms in 1949 and 1959 (Zelizer 2004).

The critical problem was that it was too easy for obstructionists to outlast a majority of the Senate. For the Senate collectively, the days or weeks spent on filibusters were a luxury they could ill afford as the role of the federal government increased during the Great Depression, World War II, and the Cold War. For individual senators, the time spent in the chamber was time taken away from family, from fund-raising, and from travel. In particular, the advent of trains and planes that could take senators back to their states, to audiences in major cities, and around the globe made a prolonged battle on the Senate floor a tremendous distraction from their travel schedules.

One way to measure the value of senators' time is to trace the emergence of the Tuesday to Thursday club in the Senate. This is shown in Figure 2, which shows a) the percentage of all days with at least one roll-call vote that were Tuesday, Wednesday, or Thursday, and b) the percentage of all votes that occur on Tuesday, Wednesday, or Thursday. By either measure, there is a steady trend

toward clustering the work of the Senate into the midweek, freeing senators to travel on the weekend. In particular, the trend accelerates in the 1940s so that by the year 2000 about 80 percent of all votes occur in the middle of the week.

Figure 2. The Emergence of the Tuesday-Thursday Club in the Senate
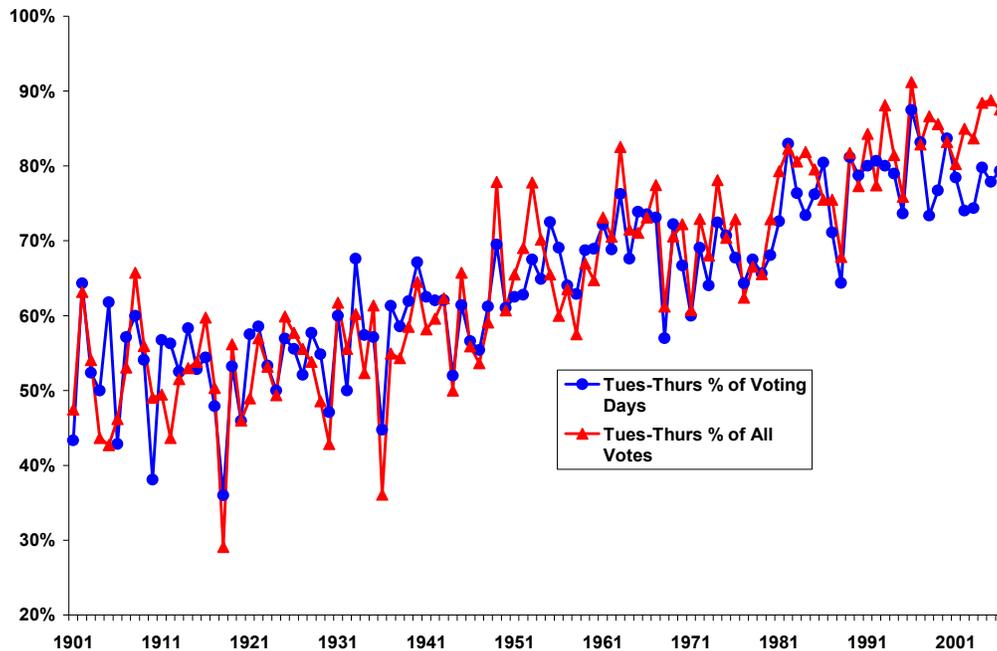
The more value senators attached to their own time, and the greater the backlog of legislation waiting for Senate floor action, the more costly an attrition battle was for all senators, but especially for the silent majority. The turning point occurred in 1960. Majority Leader Lyndon Johnson led a determined effort to outlast Southern opposition to the 1960 Civil Rights Act while resisting attempts to invoke cloture. This effort failed on both counts (Koger 2012). By the end of 1960, Johnson had been elected as vice president and the job of majority leader fell to Mike Mansfield of Montana.

Mansfield was chagrined at the spectacle of the 1960 civil rights filibuster and determined not to repeat it. Mansfield advocated using the previously dormant cloture process to limit filibustering instead. Over the next decade, senators gradually accepted the necessity of voting for cloture—first on the Communications Satellite Act of 1962, then on the 1964 Civil Rights Act (Koger

2010). From 1961 to the present, cloture votes have risen dramatically: there were two from 1951 to 1960, but 111 during the 110th Congress (2007-2008) alone.

This tactical shift from attrition to cloture led to the dramatic increase in filibustering. While attrition had become an ineffective response, the adoption of cloture had the unintended consequence of dramatically reducing the costs of filibustering. Obstructionists lost no more hours of physical effort—now a senator merely threatens to filibuster with the expectation that Senate leaders will respond with bargaining or a cloture petition instead of calling his bluff. And since modern filibusters are less visible (and more boring for the media), senators are less accountable for their obstruction. This is especially true for low-salience bills and nominations for which the costs of overcoming a filibuster exceed the benefits of winning, so a simple threat of a filibuster (public or private) is sufficient to keep them off the Senate floor.

The gradual adoption of cloture as the dominant response to filibustering is evident in Figure 1, as the number of cloture votes lags behind the number of filibusters until around 1971. Since the mid-1990s, the number of cloture votes has instead exceeded the number of filibusters mentioned in the media. This increase in filibustering since 1960 has coincided with an increase in partisanship in Congress, leading some to conclude that partisanship has caused the increase. Parties do influence the character of the filibusters that occur. As Binder and Smith (1997) show, voting on cloture has increasingly broken down along party lines. In the 111th Congress, cloture votes on the stimulus bill, financial regulation, and other key issues hinged on whether *any* senators would cross party lines.

Still, as I show in Koger (2010), it is doubtful that increasing partisanship has *caused* the increase in filibustering. The necessary condition for the partisan filibustering we observe is a Senate in which filibustering is easy, effective, and accepted. When the Senate was similarly polarized during the Gilded Age, we did not observe the level of filibustering we see today, because senators were still willing to combat obstruction with patience.

Institutionalizing the Sixty-Vote Senate

As senators began to use the cloture process in earnest in the 1960s, they also adapted the rule and their standard operating procedures to reflect this switch. The cloture rule was made more effective, and Senate leaders developed a system for collecting and sharing information about potential filibusters.

Cloture Rule. From 1949 to 1975, the Senate cloture rule was the target of almost biennial attempts to reform the rule. Minimal reforms in 1949 and 1959 retained the two-thirds threshold for cloture, with liberals clamoring for some form of simple majority (Zelizer 2004). Initially, liberals sought to change the rule

to ease the passage of civil rights bills. After major civil rights legislation passed in 1964 and 1965, however, senators still attempted to change the rules in 1967, 1969, 1971, and 1975, using a complex strategy to obtain a simple majority vote on rules changes. They challenged the notion that the Senate is a "standing body," i.e., that its rules continue from one Congress to the next without the need to re-adopt them. They hoped that, by declaring that the Senate starts *de novo* after each election, they would have a chance to debate and revise Senate rules by simple majority vote.

In 1975, they finally won a key procedural vote on their strategy and, aided by Vice President Nelson Rockefeller who was presiding over the Senate, seemed capable of making significant reforms in the cloture rule. Instead, the reformers traded their advantage for a slight reduction in the cloture threshold, from two-thirds of those voting (the 1959 rule) to three-fifths of the entire Senate. The 1975 rule essentially ended the long contest over the cloture threshold. Subsequent reforms in 1979 and 1986 limited overall debate and limited dilatory amendments after cloture is invoked, but did not alter the three-fifths threshold. A proposal by Tom Harkin (D-IA) to allow majority cloture was defeated by wide margins in 1995 and 2011. The sixty-vote Senate is here to stay.

One of the surprising findings of my research is that, for all the efforts senators have invested in debating the threshold for invoking cloture, *changing the cloture threshold has <u>not</u> reduced filibustering*. The adoption of the cloture rule in 1917 had essentially zero effect on final passage margins or appropriations bills or on the number of filibusters. Subsequent reforms in 1949 and 1959 had minimal effects on the number of filibusters, while the 1975 revision to lower the cloture threshold from 2/3 of voting senators to 3/5 of the chamber may have actually *increased* the number of filibusters (Koger 2010). Unless senators impose simple and immediate majority rule, any further reductions in the cloture threshold will likely lead to senators filibustering *more often* to regain any leverage they lost due the reform.

Holds. Behind the scenes, senators and their leaders have institutionalized the right to filibuster and the use of supermajority thresholds. First, and most important, during the 1950s Senate leaders began recognizing the right to "hold" legislation off the Senate floor for a period of time. In their benign form, these holds were just temporary favors to enable senators to study legislation and prepare amendments, or to balance their travel schedules with their legislative duties. In their malicious form, holds are explicitly or implicitly a threat to filibuster a bill or nomination. Some hold requests are made by sending letters to party leaders, but senators may also make verbal requests to a party leader, or contact the party cloakroom off the Senate floor (Koger 2010, 173-6).

In a sense, senators do a *favor* to party leaders by communicating their threats to filibuster ahead of time. When leaders know which measures face

threatened filibusters, they can avoid wasting the time of the chamber and other senators on measures that will be stalled on the Senate floor. And if leaders know who is strongly interested in a measure, they can promote the amicable negotiation of legislative compromises and debate agreements before a measure comes to the Senate floor.

The hold system has been controversial, however. First, for some measures, a threat to filibuster is tantamount to a veto by a single senator. This occurs when a bill or nomination is low-salience: there are minimal benefits to their approval, and few senators are invested in their success. For low-salience measures, the time and effort required to overcome a filibuster—including one or more votes on cloture followed by up to thirty hours of debate after each vote— exceed the benefits, even if only a single senator is forcing the Senate to go through the procedural hurdles required to overcome a filibuster.

Second, since the hold system evolved from communication between party leaders and their caucus members, holds have long been confidential. Members communicate their requests to leaders, and leaders honor those requests and object to efforts to act on measures that are subject to a hold. Senators have made repeated efforts to ensure that holds are made publicly, so everyone knows who is blocking a measure and why. In 2007 and 2011, senators adopted formal rules to require that holds be made public under certain conditions (see below). Even if these reforms succeed in bringing holds into the sunshine, however, they leave in place a system that allows individual senators a *de facto* veto over low salience measures.

Third, just as filibusters are used for a wide range of strategic purposes, senators now place holds for a variety of reasons other than simply objecting to the merits of the bill or nomination. Senators often place holds to force executive agencies to heed their personal priorities. They also place holds to retaliate against frivolous holds by other senators! This reduces the overall efficiency of the Senate and the fairness of the nomination process, while significantly increasing the power and effectiveness of individual senators.

How Can the Senate Restore the Classic Balance of Power?

The high level of obstruction by the minority party during the 111th Congress made the U.S. Senate the primary hurdle for President Obama and Democratic majorities in Congress. The resulting frustration led many observers to call for major changes in the way the Senate works, leading to a series of hearings on reform proposals by the Senate Rules Committee and a limited package of reforms in January of 2011.

The January reform debate was carefully managed. A few senators, most prominently Tom Udall (D-NM), wanted to attempt the classic "Senate-is-not-a-

standing-body" approach, despite its long track record of failure. Instead, Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) agreed to the terms of a debate, which allowed votes on two consensus proposals (on holds and reading amendments aloud) whose passage required and received a *three-fifths* majority, and votes on three controversial measures which needed a *two-thirds* majority to pass. Additionally, Reid and McConnell made a "gentleman's agreement" on agenda-setting and a promise to reduce the number of executive positions subject to Senate approval.

Lowering the Cloture Threshold

Even though, as noted above, lowering the threshold for cloture has had little effect (or a *positive* effect) on the incidence of Senate obstruction, one of the most common proposals has been to decrease the share of the chamber required to invoke cloture. In January of 2011, this impulse took the form of a proposal by Senator Tom Harkin. Harkin's S.Res. 8 would have lowered the threshold for cloture on a particular motion/amendment/bill from 60/100 on the first attempt to 57, 54, and 51 on each successive attempt, with a full two-day wait in-between each attempt. This proposal came up for a vote in 1995 (when it was co-sponsored Joe Lieberman) and was rejected 19-76 (R 0-53, D 19-23). It did even worse in 2011, failing 12-84 (R 0-45, D 12-39).

Why did Harkin's proposal fail? First and simply, not many senators really want to make decisions by simple majority vote. Individually and collectively, they benefit a great deal from the current system, with all its frustrations. Second, even if senators did want to adopt simple majority cloture, this is an impractical approach. While the Harkin proposal would seem to enable a bare majority to pass a Very Important Bill (like the 2009-10 healthcare reform proposal) after four to twelve cloture votes, it does not guarantee that this bill would ever make it to the Senate floor. If the rule was adopted, the likely response of the minority party (or other organized factions) would be to obstruct *every* vulnerable motion and proposal, thereby forcing (multiple) cloture votes on a vast assortment of hostage proposals. By doing so, a minority could so delay the Senate that the majority party is forced to barter in order to make any legislative progress—just like the status quo, but with more cloture votes.

Eliminating Filibusters on Agenda-Setting Motions

A more promising option is to eliminate obstruction against a "motion to proceed," an agenda-setting that requires a simple majority but is usually vulnerable to a separate filibuster. This proposal dates back to (at least) 1979, when then-majority leader Robert Byrd proposed it. The justification is that it is

absurd to allow multiple filibusters against a given bill; one should be enough. More subtly, if a bill gets to the floor, senators may develop the expectation that it will pass and/or have a chance to amend it into a form that can garner 60+ votes, so if the motion to proceed is immune from obstruction, the Senate would be more likely to act on major bills without losing the benefits of requiring a supermajority to bring the bill to a final vote.

In lieu of a formal rules change, Reid and McConnell in January of 2011 reached a "gentleman's agreement" to refrain from filibusters against motions to proceed, in exchange for Reid agreeing that he would not block Republicans from offering amendments (a tactic known as "filling the amendment tree"). Both leaders also agreed to refrain from majoritarian efforts to reshape Senate rules and procedure, sometimes called a "nuclear option."[4] This agreement lasted until October of 2011, when Reid filled the tree to stave off non-germane Republican amendments and then, after cloture was invoked, the Democrats adopted a new Senate precedent (51-48; R 0-47, D 51-1) which prevented motions to suspend the rules of the Senate after cloture was invoked.

Restore Attrition as a Response to Filibustering

Numerous pundits and bloggers urged Senate Democrats simply to revert to old-school attrition, as pundits still occasionally suggest. As discussed above, there were practical reasons that senators switched to a focus on cloture: time is scarce and valuable. As long as one speaking senator has the right to demand a quorum of his colleagues on the floor at any time, day or night, attrition will rarely be effective under the present rules. In order to restore some form of attrition—to make senators actually filibuster *on the Senate floor*—senators would have to address the strategic imbalance between the majority and minority embedded in the rules and practice of the Senate, including the delays embedded in the cloture rule. In general terms, there are three options:

- Ensure that filibustering senators are publicly responsible for their obstruction
- Require that senators invest time and effort into their filibusters
- Reduce the delays required to invoke cloture

During the reform debate in January of 2011, proposals by Udall (D-NMO) and Merkley (D-OR) included language to force senators to invest time in

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[4] For this author, the term "nuclear option" refers more specifically to the strategy floated by Republicans in 2005 to adopt a precedent stating that the constitutional obligation to "advise and consent" to judicial nominations implied the right to simple majority cloture. Many reporters, however, use the term more broadly to refer to proposals to increase the prerogatives of the majority by invoking new parliamentary precedents.

their filibusters. Udall's proposal provided for continuous debate in the event that a cloture vote fails. It failed 44-51 (R 0-45; D 44-6). Merkley's proposal would have provided for continuous debate if a majority supported cloture but it failed. Merkley's resolution failed 46-49 (R 0-45; D 46-4). Most Senate Democrats preferred this approach to Harkin's revision of the cloture threshold. One small reform that was adopted in January of 2011 (81-15) eliminated the option of any senator to force the reading of an amendment. Henceforth, reading is automatically waived if the text has been made publicly available.

One promising reform not considered by the Senate is to retain the three-fifths cloture threshold but reverse the presumption: cloture is invoked unless 41 or more senators vote against cloture to extend debate.[5] Absences would count *against* a filibuster. The impact might be limited for votes in the traditional Tuesday-Thursday window, but if the rule was adopted, the majority could make a habit of filing for cloture on Thursday or Friday and keeping the Senate open on Saturday and Sunday, so that obstructionists would have to stay in D.C. to vote against cloture. If this reform was combined with Krasno and Robinson's proposal to shorten the time between filing a cloture petition and voting on cloture (to five minutes, an hour, four hours), it would compel obstructionists actually to endure some inconvenience.

Restrict or Publicize Holds

If senators could reduce the number and effect of holds, this would help the Senate to be more efficient and transparent. One of the January 2011 reforms eliminated *anonymous* holds, where a senator covertly objects to bringing a bill or nomination to the floor by unanimous consent (Approved 92-4). While many reforms were contentious, there was a near-consensus that the power of one member to slow the Senate without repercussion was too great.

Will this reform work? Again, the essence of a hold is a refusal to go along with unanimous consent agreement (UCA) requests to set the Senate's agenda. Party leaders will often object to UCAs on behalf of members. So, in order to reform holds, one would need to change the behavior of leaders in both parties. Presumably, they wish to retain their positions as leaders and get their members re-elected. Divulging the identity of senators who prefer to obstruct covertly in order to avoid political repercussions does not seem to advance these

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[5] As far as I know, credit for the idea goes to our distinguished colleagues Jonathan Krasno and Gregory Robinson. "Krasno & Robinson: Fixing the Filibuster," Roll Call, January 29, 2010 http://www.rollcall.com/news/-42771-1.html

goals of party leaders. In the long run, it seems possible that senators will devise strategies to avoid the new disclosure requirement.

Even if the 2011 reform is honored, it is still possible for a single senator to doom a low-salience bill or nomination. The Senate has acted to reduce the number of nominations subject to this threat by passing S. 679, the Presidential Appointment Efficiency and Streamlining Act of 2011, on June 29, 2011. As of late December, this bill is pending in the U.S. House. A more drastic solution, however, would be to streamline the process for invoking cloture, e.g., by allowing a cloture petition to be filed and voted upon with shorter delays, while reducing post-cloture debate time significantly if cloture is invoked by a very wide margin. This would create an expedited procedure for low-salience bills similar to the U.S. House's motion to suspend the rules.

Conclusion

In the end, the modern Senate is dramatically different from the Senate of even the mid-20th century. While senators valued compromise and cooperation, the default practice was that a simple majority was sufficient to pass legislation. Filibusters were rare and spectacular exceptions. Now the default assumption is that a cloture-sized majority is necessary for any action. This system empowers legislative minorities to pursue a range of interests. Some proposals are blocked by filibusters, but others are forced onto the legislative agenda by minority hostage-taking. The result is that the Senate is a less efficient chamber than the U.S. House, but it is also likely to discuss and vote on a wider range of issues than the House will allow. The frustration that senators and outside actors feel at the slow pace of Senate action has led to calls for reform, but so far the response has been limited.

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