The U.S. Senate

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Senate Parties and Party Leadership, 1960–2010

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Were the senators of the early 1960s to revisit their old haunt, they would find a legislative chamber that was not much different in terms of its rules and much of its internal structure, especially its committee system—and yet, one that functions in an almost unrecognizable way. Of course, the United States itself has changed enormously over the course of these fifty years, and the many societal, economic, and technological changes have in major or minor ways impacted the Senate. Everything from the number of women in the Senate to the ubiquitous Blackberry would likely surprise the Dirksens and the Mansfields, but perhaps most of all they would be taken aback by the altered role of the political parties in the chamber and how that has influenced the legislative process.

Here I examine Senate parties and party leadership, how they have changed since 1960 and how the legislative process has been affected. Senate parties are shaped by the political environment external to the chamber as well by internal rules and arrangements. Senate party leadership is itself shaped by the character of the leaders' party membership and the character of the Senate as an institution at a given point in time; at minimum these factors constrain the leaders' styles and set the basics of their task. In this essay, I first describe how the Senate parties and their memberships have changed over this fifty-year period using quantitative data. Next I examine how the Senate as a legislature has changed, with special emphases on the job of its leaders and the challenges they face. I conclude by discussing the contemporary Senate in more depth.

The Senate Parties and Their Memberships, 1960–2010: A Quantitative Portrait

The 1960s began with big Democratic majorities in the Senate; the Senate membership of the 87th Congress (1961–62) consisted of sixty-four Democrats and thirty-six Republicans. This was, however, a Democratic Party that was sharply split between a conservative and senior southern contingent and a larger, more liberal but junior northern group (Sinclair 1989). The Republican membership was ideologically diverse as well, with its

midwesterners, especially those from the upper Midwest and Plains states, tending toward the conservative end of the spectrum and coastal senators from both the East and West leaning moderate. A few Republicans, like Jacob Javits of New York, were clear liberals. By 2010 Democrats again had a sizeable majority—sixty before the special election in Massachusetts—but this was now a different Democratic Party. Although far from monolithic, the Senate Democratic Party of 2010 is not split into distinct wings and is considerably more ideologically homogeneous than its 1960s counterpart. And the opposition Republican Party is even more homogeneously conservative. The result is a Senate membership that is polarized along coinciding partisan and ideological lines, with a liberal and moderate Democratic membership and a Republican membership ranging from moderately to extremely conservative.

Examining the evolution of Senate parties over this fifty-year period is important in providing the essential background for understanding the changing impact of parties on how the Senate has come to function.

Size matters in American legislatures; the majority party organizes the chamber and, other things being equal, a big majority has a better chance of passing its agenda than a small one. From the breakthrough elections of 1958 until the 1980 elections (86th through the 96th Congresses), Senate Democrats had large majorities, averaging sixty-one members; in only two congresses in the early 1970s did the number of Democrats fall below fifty-eight (54 in the 92nd and 56 in the 93rd).

To the surprise of most political observers and the shock of Democrats, the 1980 elections that saw Ronald Reagan win the presidency also brought in a GOP majority in the Senate, with Republicans holding fifty-four seats. A period of narrower margins followed, even after Democrats won back the majority in 1986; the average size of the majority from 1981 through 1990 was fifty-four. The size of Democratic majorities crept up in the early 1990s to fifty-seven in the 103rd Congress (1993–94), President Bill Clinton's first Congress.[1]

The 1994 elections again ushered in a Republican majority and another period of narrow margins. The GOP held the Senate majority from 1995 through 2006, with the exception of a year and a half (June 2001–end of 2002) when Jim Jeffords' party switch gave the Democrats a 51–49 margin. During this period, the average size of the majority was only fifty-three. When Democrats took back the majority in 2006, they had just fifty-one members; in the 2008 elections they increased their majority substantially (first to 58; to 59 when Arlen Specter switched parties; to 60

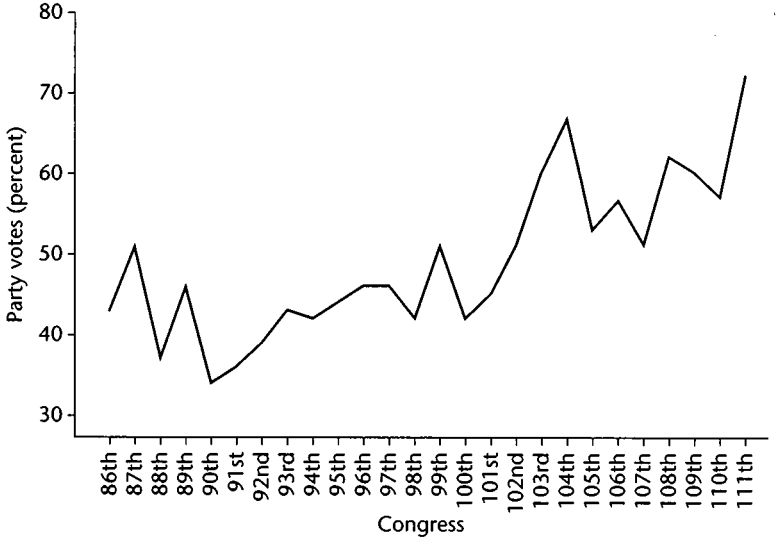
1. Data are from Norman Ornstein, Thomas Mann, and Michael Malbin (2002) and *CQ Almanac*, various years. Senators elected as Independents or from third parties are counted as part of the major party with which they caucus.

when Al Franken was seated after the Minnesota recount; and then back to 59 when Republican Scott Brown won the seat previously held by Democrat Ted Kennedy). These fifty years, then, have seen large and small majorities, Democratic and Republican ones. By and large, majorities since 1980 have been smaller than those in the 1960–1980 period.

In addition to size, the like-mindedness of the majority and the minority matter as well. An ideologically homogeneous majority will more likely agree on a legislative agenda and more likely pass it through the chamber; on the other hand, an ideologically homogeneous minority that opposes the majority is more likely to be able to make use of the extraordinary prerogatives that Senate rules give individual senators, as we shall see.

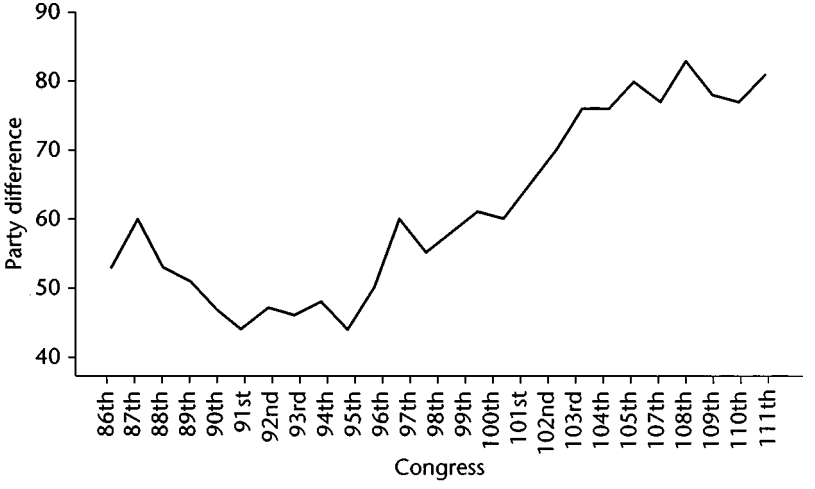
To portray the change over time in party polarization, I use several measures. Party votes are those recorded votes on which a majority of Democrats vote against a majority of Republicans. Figure 5.1 shows that the proportion of roll calls that were party votes declined a bit from the early 1960s to the early 1970s; more striking is the large increase from the late 1980s on. The party support score measures the percent of party votes on which a party member voted with his or her party colleagues. The average support score for party members in a particular congress provides an indicator of how cohesive the party is on party votes and indicates the

Figure 5.1 The Increase in Party Votes in the Senate, 1959–2009



Source: *CQ Weekly* and *CQ Almanac*, various dates.

Figure 5.2 The Increasing Distance between Parties in the Senate, 1959–2009



Note: Party difference = Democratic mean party support–Republican mean party support.

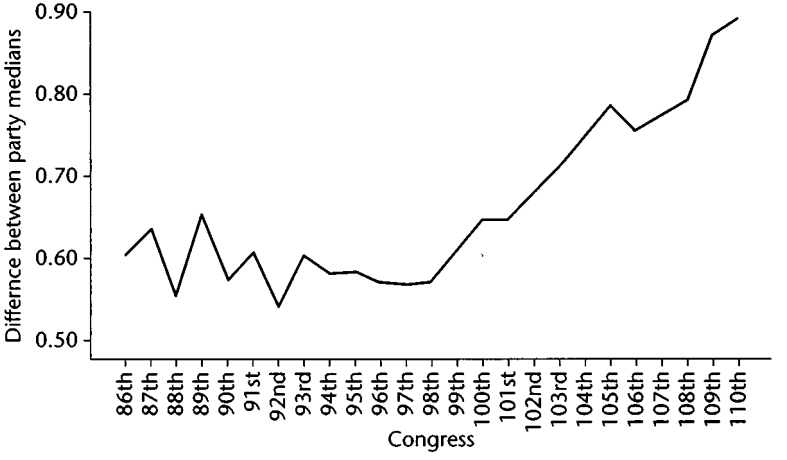
Source: Computed by the author from CQ Party Support Scores from *CQ Weekly* and *CQ Almannac*, various dates.

distance between the parties on party votes. Figure 5.2 displays this measure of the distance between the parties from the 86th Congress (1959–60) through 2009, the first session of the 111th. The pattern is similar, though even more dramatic than that of the percent of party votes; there is a decrease from the early 1960s to the early 1970s, a low plateau through much of the 1970s, and then a steady, quite dramatic increase to a much higher level from the late 1980s on. These two figures in combination show that a majority of Democrats now much more frequently votes in opposition to a majority of Republicans than in the past and, when such party votes occur, most Democrats vote together in opposition to most Republicans.

A final indicator is the Pool-Rosenthal DW-Nominate score, which is based on all non-unanimous roll calls and can be interpreted as a measure of liberalism-conservatism (Poole and Rosenthal 1997).[2] Its range is from–1 on the liberal end of the spectrum to +1 on the conservative end. Figure 5.3 shows the difference in the median score of Democrats and Republicans

2. Data come from Keith Poole's Voteview website at www.voteview.com.

Figure 5.3 The Growing Ideological Distance between the Senate Parties, 1959–2008



Note: Values computed from Poole-Rosenthal DW-Nominate data.

Source: Computed by the author using data from Keith Poole's Voteview Website at www.voteview.com.

over time and can be interpreted as a measure of the ideological distance between the parties. Again the pattern is similar; from relatively modest differences between the centers of the two parties in the 1960s and 1970s, the distance rises steeply through the 1990s and 2000s.

All these measures tell essentially the same story. The parties were not very polarized in the 1960s, they actually became less so through the early to mid-1970s, but from the late 1980s on polarization rises enormously.

An important cause of the polarization, though not the only one by any means, is a change in the composition of the two parties' memberships as a result of changing regional voting patters. As Figure 5.4 shows, there were no Republican senators from the South in 1960; over the next fifty years, GOP fortunes improved greatly in that region.[3] Thus, over time, conservative southern Democrats were replaced, most often when they retired, with still more conservative Republicans. The proportion of the total Democratic Senate membership from the South has fallen to only around 10 percent, while southerners now make up the single largest regional subset of Senate Republicans, over 30 percent in recent congresses. Among the consequences

3. The South is defined as the states of the old Confederacy minus Tennessee.

Figure 5.4 The South Becomes More Republican in the Senate, 1959–2009

Note: The South consists of the states of the old Confederacy minus Tennessee.

Source: Compiled by the author from data from Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress 2001–2002* (Washington, D.C.: American Enterprise Institute, 2002), and *CQ Almanac*, various dates.

of this regional shift are a more liberal Democratic Party and a more conservative Republican Party.

A similar sorting of voters, with those who think of themselves as conservatives increasingly identifying as Republicans while liberals and many moderates increasingly think of themselves as Democrats, occurred in other parts of the country as well; this too contributed to partisan polarization (Abramowitz 2006 and Chapter 2 in this volume; Jacobson 2006; Sinclair 2006). The core voters who elect Republicans even outside the South are likely to be quite conservative. They expect their senators to act and vote consistent with their preferences; similarly, though perhaps to a lesser extent, Democratic core voters in many parts of the country are likely to expect their senators to reflect their liberal inclinations.

The Transformation of the Senate

The Senate of the 1950s has often been portrayed as the domain of an inner club that ran the institution and enforced the Senate folkways of apprenticeship, specialization, the restrained use of prerogatives, and institutional patriotism (White 1957; see also Matthews 1960 for a more measured analysis). Although the journalists' portrait is certainly an exaggeration, the Senate was, in fact, a body in which conservative southern Democrats held a disproportionate share of the positions of influence (see Chapter 1). Legislative decision making was decentralized in committees, and committee chairs, who were most often southerners, tended to work with their Republican ranking members, who were not so distant from them in policy preferences. Lyndon Johnson, now legendary as a Senate majority leader of unparallel clout, nevertheless held his position by leave of powerful southerners such as Richard Russell (Caro 2002; Shuman 1991).

Mansfield and the Individualist Senate

By 1960 this Senate had already begun to change. The 1958 elections brought into the Senate a big class of new senators with different policy goals and reelection needs than the generally conservative and electorally secure members who had dominated the chamber. Mostly northern Democrats, they were activist liberals, and most had been elected in highly competitive contests, in many of those defeating incumbents. Both their policy goals and their reelection needs dictated a more activist style than prescribed by Senate folkways. And, as subsequent elections brought in more and more such members, they became increasingly unwilling to defer to senior southern conservatives or support internal arrangements that did so.

Mike Mansfield (D-Mont.) succeeded Johnson as majority leader in 1961. Both his own inclinations and the political context led Mansfield to a very different style of leadership, almost antithetical to Johnson's. For Mansfield, the Senate was an assembly of equals (R. Baker 1991: 277); as his long-time aide Frank Valeo (1999) put it, "he believed in the concept, he expressed it again and again, and he lived it" (37). According to Maine senator Edmund Muskie, Mansfield "felt that the way to make the Senate effective was simply to let it work its will" (R. Baker 1991: 276). Mansfield's light hand was also dictated by his members' changing expectations; junior and more liberal senators had grown resentful of Johnson's hard-charging style and, in the 86th Congress (1959–60), Johnson's last as majority leader and the one in which he had by far his largest majority, the legislative product had been meager. Furthermore, Mansfield was acutely aware that his caucus was deeply split on many major issues and "had given him no carte blanche to put forth a 'Senate Democratic position'" (Valeo 1999: 35). "As Democratic leader in the Senate," Valeo writes, "Mansfield

saw his role as harmonizing the various viewpoints held by Senate Democrats. When full orchestration was not feasible, as was often the case, he refused to choose from among the various positions to champion in the name of the leadership" (35).

Mansfield responded to liberals' complaints and made the party committees—the Policy Committee, charged with scheduling legislation, and the Steering Committee, which makes committee assignments—more representative. In the 1950s they had been dominated by senior southern senators. At Mansfield's insistence, both committees operated in a more collegial fashion than under Johnson. He revived the Democratic Conference—often known as the Caucus—that had seldom met when Johnson was leader. For a time it became a forum for policy and political discussion, but attendance gradually declined and it played little role of significance (R. Baker 1991: 277–279).

How the Senate functioned legislatively changed greatly during the 1960s and early 1970s. The Senate floor became a more important decision-making arena as senators became much more active on the floor, offering more amendments to a wider range of bills. No longer were senators content to work in their committees behind closed doors or restrict themselves to the issues within their committees' jurisdictions. Senators exploited extended debate to a much greater extent, and the frequency of filibusters shot up (Binder and Smith 1997; Oppenheimer 1985; Sinclair 1989).

Junior northern Democratic liberals were prominent among these activists, but they were by no means the only senators who began to exploit more fully the prerogatives the Senate gave its members. In the 1960s, the political environment began a transformation that made an activist style attractive to most senators. A host of new issues rose to prominence—first civil rights, then environmental issues and consumer rights; the war in Vietnam and related questions about American foreign and defense policy; women's rights and women's liberation; the rights of other ethnic groups, especially Latinos and Native Americans; the rights of the poor and the disabled; and, by the early 1970s, gay rights. These were issues that engaged, often intensely, many ordinary citizens, and politics became more highly charged. The interest group community exploded in size and became more diverse; many of the social movements of the 1960s acted as or spawned interest groups. So a plethora of environmental groups, consumer groups, women's groups, and other liberal social welfare and civil rights groups joined the Washington political community and made it more diverse. Then, in response to some of these groups' policy successes, for example, on environmental legislation, the business community mobilized. In the 1970s, many more businesses established a permanent presence in Washington, and specialized trade associations proliferated. Finally, the media—especially television—became a much bigger player in politics.

This new environment offered tempting new opportunities to senators (Loomis 1988; Sinclair 1989). The myriad interest groups needed champions and spokesmen, and the media needed credible sources to represent issue positions and provide commentary. Because of the small size and prestige of the Senate, its members fit the bill. The opportunity for senators to become significant players on a broader stage with possible policy, power, reelection, or higher-office payoffs was there, but to take advantage of the opportunity senators needed to change their behavior and their institution.

From the mid-1960s through the mid-1970s, senators did just that. Working through the leadership, they increased the number of positions on good committees and the number of subcommittee leadership positions and distributed them much more broadly. Staff too was greatly expanded and made available to junior as well as senior senators. Senators were consequently able to involve themselves in a much broader range of issues, and they did so. The media became an increasingly important arena for participation and a significant resource for senators in the pursuit of their policy, power, and reelection goals.

By the mid-1970s the individualist Senate had fully emerged. The Senate had become a body in which every member, regardless of seniority, felt entitled to participate on any constituency or policy issue. Senators took for granted that they—and their colleagues—would regularly exploit the powers the Senate rules gave them. Senators became increasingly outward-directed, focusing on their links with interest groups, policy communities, and the media more than on their ties to one another. Mansfield's leadership style facilitated this transformation but, clearly, greater forces were at work.

How did a legislative chamber, so lightly led and with a majority party deeply split, produce a mass of significant legislation? Enormously consequential legislation on civil rights, aid to education, and health care for the elderly passed in the mid-1960s and much environmental and consumer protection legislation in the late 1960s and early 1970s. Large majorities, a sense of mandate, and, during the 1960s, effective presidential leadership were important factors. In Mansfield's view, the Senate majority leader's job did not entail pressuring committees and their chairs to report the president's program. He "made it clear" to the Kennedy administration that "if they were impatient for a measure still in committee, it was their responsibility to persuade the chairman to move it" (Valeo 1999: 40). He did, however, move both Kennedy's and Johnson's priorities to the floor expeditiously once they had been reported. And he was more than willing to delegate the tasks of negotiating needed compromises and of legislative floor leadership to others with the requisite skill and desire, as he did with Hubert Humphrey on the 1964 civil rights bill. The Senate Democratic leadership did

not perform whip counts, leaving that task to the administration (R. Baker 1991: 278; Valeo 1999).

An important Mansfield contribution to these enormous legislative achievements was the relationship he established with the minority and its leader, Everett Dirksen. Mansfield's "all senators are equal" philosophy extended to the minority party. His even-handedness, eschewing of procedural tricks, willingness to shift the spotlight, and consequent good working relationship with Dirksen facilitated the key role Dirksen played on the civil rights bill.

Dirksen's own leadership style contributed as well, of course (Loomis 1991, passim). Although toward the conservative side of the GOP spectrum, he maintained cordial and often close working relationships with Democratic presidents and with Democratic senators; the role of the minority as he saw it was to participate in legislating, getting the best deal they could, not simply to oppose.

The political parties in the Senate were much less polarized than they were to become later in the century, as Figures 5.1–5.3 showed. Most of the major legislation enacted passed with considerable support from Senate Republicans—at least on the final passage vote (Mayhew 1991: 122). To be sure, in a number of these cases Senate Republicans voted for weakening amendments but then voted for the bill on final passage whether or not their amendments had won. In some instances, then, some Republicans' votes for final passage probably indicated electoral calculation rather than policy support. However, that itself is indicative of a distribution of voter policy attitudes less polarized along partisan lines than is the case today. Dirksen as Republican leader displayed a restrained partisanship in part because, in Valeo's estimation, "he had a good sense of what could be done and what could not be done by a political opposition and what the public would and would not tolerate in politics on serious national issues" (1999: 45). In sum, the Dirksen style was in considerable part a response to the character of his membership and of the Republican Party of the day.

The Senate in Transition

Mansfield left the Senate at the end of 1976 and was succeeded by Robert Byrd (D-W.Va.), who had been bearing the bulk of the floor oversight burden since his election as whip in 1971. Hugh Scott (R-Penn.) was elected minority leader in the fall of 1969 after Dirksen's death and was himself succeeded by Howard Baker (R-Tenn.) in 1977. When, surprisingly, Republicans won control of the Senate in the 1980 elections, Baker became majority leader.

This was a period of transition for the Senate and its parties. The Senate was still an arena of 100 individualists, each of whom considered himself entitled to pursue his own agenda and to participate on any issue that

interested him. Still, the election of Ronald Reagan as president in 1980 signaled a more ideological turn in American politics, and Senate Republicans, in the majority for the first time in a generation, felt a mandate to deliver policy results. Furthermore, the 1980 elections accelerated the regional realignment of the parties, with the GOP Senate membership becoming more southern and the Democratic membership less so.

Baker, who famously analogized leading the Senate to "herding cats," faced the task of orchestrating the passage of Reagan's program. Although he did not originate the strategy, Baker used reconciliation under the Budget Act to pass Reagan's domestic spending cuts. (See Gold 2003: 44–46; and Chapter 7 in this volume for more on reconciliation.) Doing so made it possible to package the various Reagan proposals into one bill, thus keeping the focus on the whole and not on individual, often unpopular, parts. It also prevented delaying tactics by the minority, though none were threatened. As the first use of reconciliation to effectuate major policy change, the effort set an important precedent. The big Reagan tax cuts passed without the aid of reconciliation. On both of these signature Reagan bills, Democrats offered amendments to meliorate their effect but, even though most were defeated, they voted for passage by considerable margins. The more conservative segment of the Democratic Party, which still had a significant presence, undoubtedly agreed with the legislation's thrust; other Democrats were shell shocked by their loss of the majority and feared for their electoral futures.

Senate Republicans supported Reagan at then-unprecedented levels (*CQ Almanac* 1981). "They were so tickled to be in the majority and gave so much credit to Reagan for helping to put them there," explained Marty Gold (2003, 44), a contemporary Senate GOP staffer. Yet these same senators were unwilling to make rules changes that would increase the power of the majority in the Senate. Gold reports that when Baker first became majority leader his staff prepared a list of options for enhancing majority power. Baker had his staff then consult several prominent Republican senators, who were adamantly opposed. Baker as leader never proposed rules changes (46).

Yet Baker and the other leaders of this era did enhance their own capabilities and that of their parties in other ways. Mansfield and Dirksen had kept their own leadership staffs and those of the party policy committees small. Byrd on the Democratic side and Scott and then Baker on the Republican side expanded the staffs significantly. In 1981 Baker had fifteen leadership aides, compared with two to five for his predecessors; the Policy Committee and the Conference together had twenty-nine, a legacy of Scott's expansion. Over the course of the 1980s both leadership and party committee staffs continued to grow. The Democratic leader chaired the Policy Committee and controlled its staff. Byrd concentrated staff

increases at the Policy Committee; in 1975, near the end of Mansfield's tenure, the combined staff totaled nine; by 1981 it had grown to twenty-five and by 1985 to thirty-six (all data from Smith 1993: 275). Staff resources increased the leaders' capacity to participate in policy matters, as was increasingly required of them. With more senators involving themselves on major issues and committees less able to pass their legislation without change, the party leaders more often had to broker agreements on substance as well as process.

The increase in staff resources also made it possible to greatly expand the services the party committees provide to members. Issue research in the form of issue briefs and longer papers, floor schedule information, and media assistance in a variety of forms came to be among the services made available on a routine basis.

The party committees as member organizations did not, however, become consistently more active. Dirksen together with the chair of the Republican Policy Committee had convened weekly lunch meetings to which the full Republican membership was invited, but these were not policymaking meetings. Baker in 1981 turned the committee into a council of standing committee chairs and often used the weekly meetings to push chairs to move the Reagan program. Under Byrd's leadership, the Democratic Policy Committee seldom met, although he did consult its members individually.

The majority leaders of the 1970s and succeeding decades were confronted with leading—or attempting to lead—a chamber that operated, in Howard Baker's words, "under rules that encourage polite anarchy and embolden people who find majority rule a dubious proposition at best" (H. Baker 1998). Furthermore, the senators of the 1970s and succeeding decades were more inclined than those of the 1950s and early 1960s to exploit those rules aggressively. As filibusters became more frequent, the character of the filibusterers and of the targeted legislation broadened. By the 1970s, with major civil rights legislation on the books, southerners no longer needed to protect the filibuster for their one overriding issue of segregation and using extended debate was no longer a badge of racism. Liberals as well as conservatives frequently used this weapon, and senators used it on all sorts of legislation, parochial as well as momentous.

Senators often operated as individuals or in small groups to pursue their own agendas regardless of the sentiments of their party or party leadership. For example, liberal Democrat Howard Metzenbaum (Ohio) so regularly objected to otherwise noncontroversial bills, which he considered corporate giveaways, that Baker's staff took to consulting him on a routine basis before bringing legislation to the floor (see Gold 2003). Nor did all the trouble come from minority party members. Whether in the majority or the minority, Jesse Helms (R-N.C.) used the Senate's permissive amending

rules to offer non-germane amendments and force innumerable votes in every Congress on hot-button issues such as abortion, pornography, and school prayer. And it was his own majority leader, Howard Baker, whom Helms and his North Carolina Republican colleague John East defied when, in 1982, they filibustered a gas tax increase deep into what was supposed to be the Christmas recess.

"Holds"—notices to the party leader that a senator objects to the scheduling of a bill or nomination before being consulted—became an increasing problem. Baker and later majority leaders Robert Dole (R-Kan.) and George Mitchell (D-Maine) publicly announced and then reiterated their position that when a senator placed a hold it entitled him only to notification before the leader scheduled the matter. Thus, a hold was not a veto. Yet the leaders had difficultly making that understanding stick. In a chamber that conducts most of its business through unanimous consent, one member's objection can cause havoc on an often overcrowded floor schedule. Holds were often treated as threats to filibuster and, unless the matter at issue was of great importance, served as individual vetoes. Leading the individualist Senate had become a complex and often frustrating enterprise.

The Partisan Senate

George Mitchell, elected Democratic leader by his colleagues in late 1988, two years after Democrats had regained the majority, began his tenure by spreading party leadership positions and duties more broadly. He reactivated the Policy Committee as a forum for discussion among senators—all Democrats were invited—and appointed a junior member, Tom Daschle (D-S.D.), as co-chair. Daschle was given control over the domestic and services staffs, thereby allowing the committee to become more active. Unlike his predecessor, Byrd, who had spent most of his time on the floor, Mitchell shared floor oversight duties with party colleagues. Following Byrd's lead, he appointed party task forces on a variety of issues; these groups were variously charged with developing policy proposals that most Democratic senators could support, working out and implementing message strategies, or resolving legislative differences among Democrats. Under Mitchell's guidance, Senate Democrats began to develop explicit policy agendas (Smith 1993; DPC 2007).

These moves were prompted not only by Mitchell's understanding of the requirements of effective leadership in the Senate but also by increasing demands from junior members for more concerted party efforts and for more opportunities to participate. The partisan polarization that was developing in the late 1980s and accelerated in the 1990s made participation through their parties more attractive to senators than it had been when the respective parties were more heterogeneous and the ideological distance

between them less. Wise leaders not only gave their members the chance to participate, but also used their efforts to the party's advantage.

Senate Republicans have long spread their party leadership positions broadly. The chairs of the Conference, the Policy Committee, and the Committee on Committees are held by different senators, not by the leader. Robert Dole as majority and minority leader was a harder-edged partisan than Baker had been. Majority leader in the 99th Congress (1985–86), minority leader from the 100th through the 103rd Congresses (1987–1994), and then majority leader again in the 104th Congress (1995–96), Dole led an increasingly conservative membership. Dole was, however, a consummate deal maker, and he and Mitchell regularly worked together to keep the Senate functioning. As Dole explained, "[Mitchell] would catch hell from his conference that 'you're always doing what Bob Dole wants to do,' and I would catch hell: 'Why are you always doing what Mitchell wants to do?' And we knew what we were doing, . . . we'd worked it out" (Rogers 2009b).

Given the Senate's permissive rules, the chamber only works smoothly if the majority leader and the minority leader cooperate—and not always then. The Senate has long done most of its work through unanimous consent agreements (UCAs), negotiated by the leaders or their staffs. Legislation is brought to the floor, debated, and amended and eventually voted on under UCAs, often a series of piecemeal UCAs. In the contemporary Senate, floor scheduling and floor management are necessarily exercises in broad and, in the end, bipartisan accommodation (Davidson 1985; Smith 1993; Sinclair 1989). A single senator can upset the majority leader's legislative plans by refusing to accede to a unanimous consent request, which is why majority leaders so often respect "holds."

With the acceleration of partisan polarization in the early 1990s, it was the minority party that most often exploited Senate prerogatives. In the 103rd Congress (1993–94), the Dole-led minority Republicans explicitly set out to deprive President Bill Clinton and the majority Democrats of policy successes and employed actual and threatened filibusters to do so, seemingly the first time the strategy was used in such a blanket fashion. Clinton's economic stimulus package; campaign finance and lobbying reform bills; and bills revamping the Superfund program, revising clean drinking water regulations, overhauling outdated telecommunications law, and applying federal labor laws to Congress were among the casualties. When they could not kill legislation, Republicans often extracted concessions. The major policy success of the 103rd Congress, the budget package, was accomplished through reconciliation, and the need for a super-majority in the Senate contributed to the demise of the Clinton health care reform effort.

The 1994 elections were read by the Washington political community as showing that this delaying strategy paid off "big time," held the promise of enormous benefits, and entailed little risk of backfiring. Democrats, after losing their majority in the 1994 elections, employed extended debate to kill many Republican priorities, including ambitious regulatory overhaul legislation and far-reaching property rights bills; they used the same strategy to force concessions on much other legislation. To a large extent, partisan use of the Senate's permissive rules has become standard operating procedure for the minority party, with the frequency and intensity having ratcheted up since the early 1990s.

The increasing polarization of the Senate parties combined with frequent switches in party control changed members' expectations of their leaders. As party leaders, they had always been expected to promote the party's reputation, but now members' expectations that leaders pursue partisan advantage and promote their collective partisan interests intensified. With Democrats and Republicans holding highly divergent views as to what constitutes good public policy, policy compromise became ever more difficult.

Trent Lott's rise in the Senate Republican leadership signaled the change. After the 1994 elections, Lott took on and defeated the incumbent whip Alan Simpson (R-Wyo.), Bob Dole's choice. The victory confirmed that "a new generation of aggressively conservative Republicans is exercising more and more influence in the chamber" (*Politics in America* 1995: 721). As Dole himself stated, "if you don't want to carry the flag for the party, there's 20 guys behind you that would grab it" (Rogers 2009b), and carrying the flag required a harder-nosed, more uncompromising approach. Over the following years, junior conservative Republicans made a series of moves aimed at forcing their senior and often more moderate colleagues to toe the party line; they obtained changes in conference rules that required a secret ballot vote on committee chairs both in committee and in the full conference, imposed term limits on committee leaders, and gave the Republican leader more influence over committee assignments. When moderate senators were in line to chair important committees—Jim Jeffords in 1997 and Arlen Specter in 2005—conservative members successfully pressed their leaders to extract promises of good behavior in return for their appointments (Sinclair 2006: chap. 6). (Eventually, both Jeffords and Specter left the Republican Party.)

Party Wars in the Contemporary Senate

The Senate now often appears to be an arena for partisan warriors, with the party teams willing to use all the available procedural and public relations tools without restraint. As Table 5.1 shows, the frequency of filibusters has

skyrocketed.[4] Senators use actual or threatened filibusters for a variety of purposes. Their aim may be to kill legislation, but it may also be to extract substantive concessions on a bill. Presidential nominations as well as legislation may be targeted. Holding up one measure in order to extract concessions on another, sometimes known as hostage taking, has become an increasingly frequent use of extended debate (Sinclair 2009). The impact on the legislative process on major legislation is enormous.[5] If holds and threatened filibusters as well as actual blocking action on the floor are counted, then major legislation is highly likely to encounter an extended debate-related problem in the Senate. In the 1960s only 8 percent of major measures subject to a filibuster, in fact, encountered such a problem; this increased to 27 percent in the 1970s through the1980s, to 51 percent in the 1990s through the mid-2000s, and to 70 percent in the period 2007–2008. Thus, the frequency increased substantially as the individualist Senate developed; then, as the Senate parties grew more polarized, this sort of trouble for major legislation in the Senate became essentially routine.

The Senate's permissive amending rules have become a party weapon as well. In the 1990s exploiting Senate prerogatives to attempt to seize agenda control from the majority party became a key minority party strategy. The lack of a germaneness requirement for amendments to most bills severely weakens the majority party's ability to control the floor agenda. If the majority leader refuses to bring a bill to the floor, its supporters can offer it as an amendment to most legislation the leader does bring to the floor. The majority leader can make a motion to table the amendment, which is non-debatable. That does, however, require his or her members to vote on the issue, albeit in a procedural guise, and the leader may want to avoid that because minority party amendments are often framed to require some majority senators to cast politically perilous votes. Furthermore, even after

4. For a discussion of the cautions with which these data should be regarded, see Richard Beth (1995); also, see Barbara Sinclair (1997: 47–49). Sources for the data are given in the note to Table 5.1. The House Democratic Study Group publication relies on data supplied by Congressional Research Service experts; these experts' judgments about what constitutes a filibuster are not limited to instances in which cloture was sought. For the 103rd through 110th Congresses, instances in which cloture was sought are used as the basis of the "filibuster" estimate. One can argue that this overestimates because in some cases cloture was sought for reasons other than a fear of extended debate (a test vote or to impose germaneness); however, one can also argue that it underestimates because those cases in which cloture was not sought—perhaps because it was known to be out of reach—are not counted. For an estimate based on a different methodology, see below.

5. Major measures are defined as those measures in lists of major legislation published in the *CQ Almanac* and the *CQ Weekly* plus those measures on which key votes occurred, again according to Congressional Quarterly. This yields forty to sixty measures per Congress. Thus, although truly minor legislation is excluded, the listing is not restricted to only the most contentious and highly salient issues.

Table 5.1 The Increase in Filibusters and Cloture Votes, 1957–2009

Year	Congress	Filibusters (per Congress)	Cloture votes (per Congress)	Successful cloture votes (per Congress)
1951–1960	82nd–86th	1.0	.4	0
1961–1970	87th–91st	4.6	5.2	.8
1971–1980	92nd–96th	11.2	22.4	8.6
1981–1986	97th–99th	16.7	23.0	10.0
1987–1992	100th–102nd	26.7	39.0	15.3
1993–1998	103rd–105th	28.0	48.3	13.7
1999–2002	106th–107th	32.0	59.0	30.5
2003–2004	108th	27	49	12
2005–2006	109th	36	56	36
2007–2008	110th	54	112	61
2009	111th	25	39	35

Source: Data for 82nd–102nd Congresses: column 3, Congressional Research Service, comp., "A Look ar the Senate Filibuster," in Democratic Studies Group Special Report, June 13, 1994, app. B; columns 4–5, Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress 1993–1994* (Washington, D.C.: CQ Press, 1994), 162. Data for 103rd Congress: Richard S.Beth, "Cloture in the Senate, 103rd Congress," memorandum, Congressional Research Service, June 23, 1995. Data for 104th–107th Congresses: *CQ Almanac* for the years 1995–2007 (Washington, D.C.: Congressional Quarterly). Data for 108th–111th Congresses: CQ Online.

its amendment has been tabled, the minority can continue to offer other amendments, including even individual parts of the original amendment, and can block a vote on the underlying bill the majority party wants to pass. The leader can, of course, file a cloture petition and try to shut off debate, but he or she needs sixty votes to do so.

The minority party can use this strategy to bring its agenda to the floor and, if accompanied by a sophisticated public relations campaign (which the Senate parties are increasingly capable of orchestrating), can gain favorable publicity and sometimes pressure enough majority party members into supporting the bill to pass it. In 1996 Senate Democrats used the strategy to enact a minimum wage increase; since then, when they were in the minority, they forced highly visible floor debate on tobacco regulation, campaign finance reform, gun control, managed care reform, the minimum wage, and the Bush administration's attempt to change overtime rules to decrease eligibility—all issues the Republican majority would have preferred to avoid. In 2001 campaign finance legislation passed the Senate before the Democrats took control of the chamber. John McCain (R-Ariz.) and the Democrats had threatened to use the add-it-as-an-amendment-to-everything strategy,

which would have wreaked havoc with the consideration of President George W. Bush's program. Furthermore, Republicans knew that the cost of trying to stop campaign finance from being considered would be terrible publicity. So the Senate Republican leadership capitulated and agreed to bring it to the floor. Since they lost their majority in 2006, Republicans have forced Democrats to vote on all sorts of difficult issues, from bringing Guantanamo inmates to the United States to expanding gun rights.

The majority party and its agent, the majority leader, are not without weapons to combat this strategy. The majority leader's right of first recognition allows him or her to use a tactic called "filling the amendment tree"—that is, offering amendments in all the parliamentarily permissible slots, thus preventing other senators from offering their amendments, and then usually filing for cloture (see Beth et al. 2009). The problem with this maneuver is that, to get to a vote on the underlying measure, the minority must acquiesce or cloture must be invoked. So the result may well be gridlock. Trent Lott used this tactic in the 1990s; when he could not achieve cloture, which was frequently the case, he simply pulled the bill off the floor. Once Bush was elected president, however, Lott needed to pass the Republican administration's legislation and seldom used the ploy.

Under special circumstances the amendment-tree tactic can work. Bill Frist (R-Tenn.) employed it on a gun maker liability bill in 2005. The bill had the support of more than sixty senators, but in the previous congress Democratic opponents had blocked it by offering "killer" amendments—that is, amendments that were anathema to the bill's strongest supporters. By filling the amendment tree, Frist made that tactic impossible. In early 2007, Harry Reid (D-Nev.) filled the amendment tree on the continuing resolution (CR) necessary because Republicans had not passed most of the appropriations bill for FY07; he then filed for cloture, a vote Democrats won. The result was that the CR passed the Senate quickly and in a form identical to the House bill. Reid was able to succeed with such aggressive tactics because the CR was must-pass legislation, the deadline was imminent, and Republicans were leery about calling attention to their own dereliction. Later in the 110th Congress, Reid filled the amendment tree a number of times; doing so allowed him to bring to the floor bills Democrats wanted to spotlight but at the same time protected his members from tough votes on Republican amendments. If cloture failed, as it often did, he would pull the bill from the floor. Little was lost because, even if the bill had passed, President Bush would have vetoed it. But once the president was of his own party, the need to pass legislation constrained Reid's use of the procedure, though not to the same extent it had Lott's in 2001. Reid had a considerably larger majority.

To counter what is now routine obstructionism by the minority party, the contemporary majority leader has limited procedural options. He or she

can, of course, file for cloture; if able to muster the necessary sixty votes, he or she can force an up-or-down vote and also bar all non-germane amendments, since Senate rules require that after cloture is invoked all amendments be germane. During the 109th Congress (2005–06), the Senate voted on cloture fifty-nine times; in the 110th Congress (2007–08), the Senate voted on cloture motions 112 times, far more than in any previous Congress. In 2009 the number was thirty-nine. This is the result, Democrats argued, of Republicans' unwillingness to come to unanimous consent agreements of the sort the Senate usually functions under. Republicans contend that Democrats are unwilling to take the time for full debate and amending activity. Cloture was invoked on 64 percent of the cloture votes in the 109th Congress and on 55 percent in the 110th Congress. In both congresses, however, a bipartisan deal usually preceded a successful cloture vote; seldom could the majority party invoke cloture when a majority of the minority party was opposed. With their larger majority in the 111th Congress, Democrats won thirty-five of the thirty-nine cloture votes in 2009, but still often had to make concessions.

The minority party now frequently forces the majority party to muster sixty votes simply to bring a bill to the floor (Sinclair 2008). Unless a unanimous consent agreement is reached, getting a bill to the floor requires a successful motion to proceed to consider the bill, and this motion can be filibustered. In the 109th Congress (2005–06), minority Democrats blocked a number of Republican priorities by this means—most notably, several bills capping malpractice awards and repealing the estate tax. In the 110th Congress (2007–08), fifty-four of the 112 cloture votes were on motions to proceed. These included a bill allowing Medicare to negotiate prescription drug prices; a bill making labor organizing easier; one giving the District of Columbia voting representation in the House; another overturning a Supreme Court decision severely narrowing plaintiffs' ability to sue in job discrimination cases; the Dream Act, which essentially legalized the children of undocumented workers who had graduated from high school in the United States and had never been in legal trouble; and an auto company bailout. All of these died when Republicans filibustered the motion to proceed. In other cases, the majority party had to make significant substantive concessions to get its bills to the floor. The Democrats' bigger margin in the 111th Congress (2009–10) deterred Republicans from using the tactic as frequently; still, in 2009 Republicans used the time-wasting device on eight important bills.

The minority party's ability to maintain high cohesion on cloture votes has emboldened the minority leader to demand that unanimous consent agreements set a sixty-vote requirement to bring bills to the floor and to pass amendments or bills. CRS experts report that sixty-vote requirements can be found in UCAs going back to the early 1990s, but they have

become much more frequent in recent years. Because invoking cloture and then getting to a vote on the substance takes time—a cloture petition with sixteen senators' signatures must be filed, it must lay over for a day before it can be voted on, and the possibility looms of up to thirty hours of debate after a successful cloture vote—recent majority leaders have acquiesced in a number of cases. Frist did so in at least nine instances over the course of the 109th Congress, including on two stem cell research funding bills (*CQ Weekly,* August 14, 2006: 2214). In 2007 the stem cell bill again came to the floor under a UCA specifying a sixty-vote requirement. In the 110th and 111th Congresses, Republican leader Mitch McConnell (Ky.) was very aggressive in seeking sixty-vote thresholds. During the 109th Congress (2007–08), with Bush still in the White House, Republicans refused to allow any of the Democrats' Iraq-related amendments to be decided by simple majority votes. In early 2009, the UCA negotiated by Reid on the Lilly Ledbetter Wage Discrimination Act specified that passage would require fifty-nine votes (three-fifths of the total number of senators sworn, which at that time was 98). Democrats were eager to chalk up a legislative accomplishment quickly and had a big agenda awaiting action, so McConnell had considerable bargaining power. For Democrats, the cost was a weaker bill than had passed the House.

The combination of highly polarized parties and chamber rules requiring super-majorities for most significant decisions makes legislating difficult and majority party leadership a thankless task. Most Senate Republicans sincerely oppose most of the Democrats' agenda and decided early in 2009 that Democratic failure to enact their agenda would benefit the Republican party electorally. Consequently, Reid could expect little help from the Republican leadership on major Democratic priorities. Democrats, for their part, believe that Republicans have been "slow walking" business in the Senate. Democrats contend that Republicans are tardy in responding to unanimous consent agreement offers from Democrats, thus slowing the process of reaching agreements. Republicans have placed "holds" not just on legislation but on many of Barack Obama's executive branch and judicial nominations, delaying the staffing of those branches to a crawl. On the floor, they insist on offering multitudinous amendments. Thus bills that have in the past been noncontroversial, such as the transportation appropriations bill, take days on the Senate floor.

From mid-summer 2009 when Al Franken was seated until a Republican won the Massachusetts Senate seat vacated by Ted Kennedy's death in early 2010, Democrats had sixty members and so, theoretically, could cut off debate at will. And this was a Senate Democratic Party that was better organized, more ideologically like-minded, and more inclined to joint action than its predecessor of the early 1990s—as was its GOP counterpart. The party committees and leadership offices are now generously

funded, well staffed, and consequently the providers of an increasingly wide range of services and activities (Lee 2009: 15–16). Tasks previously performed informally have been delegated to newly constituted entities. For example, the Democratic Steering and Outreach Committee, formerly the Steering Committee and then the Steering and Coordination Committee, is charged with acting as a liaison with outside groups in order to build support for key Democratic legislative proposals as well as with its traditional committee assignment function. The number of secondary leadership positions has increased so, on both sides of the aisle, a larger proportion of the membership is a part of its party leadership; in 2009, at least sixteen senators on each side held such a position, and this does not count simple membership on party committees. The whips meet to talk strategy and actually do whip counts (Evans, Husband, and Minnichelli 2009). And senators meet as party groups on a frequent basis. Every Tuesday that the Senate is in session, Democrats and Republicans each meet for lunch; these senator-only lunches (staff are usually barred) have become forums for wide-ranging strategy discussions. Republicans meet under the auspices of their Policy Committee; Democrats meet as a caucus. The Democratic Policy Committee also sponsors weekly lunches to which guests—Obama administration cabinet members, for example—are invited. On Wednesday, Republicans have a lunch sponsored by the Senate Steering Committee, a conservative member group, to which all Republicans are invited. When the regular meetings are combined with the many spontaneous one-party-only meetings, senators now spend much of their Washington time with their party colleagues rather than in bipartisan settings. Like-mindedness and a sense of shared electoral fate were major foundations for these developments, but more intra-party interaction also feeds back to breed more like-mindedness.

Still, with the minority forcing the majority to routinely produce sixty votes from its own ranks for action on almost everything, Democrats needed to hold every member; even with more cohesive parties, that was a tall order. Furthermore, a situation in which every member is key is an invitation to Senate individualism, which still exists alongside the partisan warfare. Lacking big carrots or sticks, Reid relies heavily on eliciting cooperation through negotiation and persuasion, especially from his fellow Democrats. Reid generally defers to his committee chairs, though in the end on the agenda items of the highest priority he has had to get deeply and substantively involved, as he did on the health care reform bill in the fall of 2009. Through innumerable meetings with Democratic senators one-on-one, in small groups, and in weekly caucus lunches, Reid keeps members informed and elicits feedback. He tries to reach decisions that all members of the caucus can live with and clears important ones with the caucus before they are finalized.

Yet, even in a period of high partisan warfare, and even when the majority is large, the Senate majority leader has no choice but to deal with the minority leader on a continuous basis. McConnell could make Senate Democrats' lives considerably more difficult by not agreeing to unanimous consent agreements at all. Even now, the Senate does a large part of its business through unanimous consent. While reaching agreements takes more time than previously, and may be tortuous on major legislation, the lack of agreement would bring the Senate to a total halt. Passing the health care reform bill took twenty-five days on the floor of the Senate and five successful cloture votes. That cannot be done regularly. In fact, floor consideration of health care reform—both the big bill in December 2009 and the reconciliation bill "fix" in March 2010—was governed by innumerable unanimous consent agreements that provided some structure and predictability to what seemed on the surface a no-holds-barred battle.

The incentives for the majority leader to reach unanimous consent agreements to allow the business of the Senate to go forward are obvious. If the Senate is paralyzed, the majority party appears incompetent. The committees are controlled by the majority party so the bills they report almost always enjoy majority support; much of the majority leader's efforts are aimed at advancing the party's agenda. So, even if policy concessions to the minority must be made to reach agreements or minority senators must be given the opportunity to offer amendments that some majority senators would prefer to avoid, an agreement to move a bill is almost always a net benefit to the majority party.

Why then does the minority leader agree to unanimous consent agreements? James Wallner, a political scientist and senior Senate aide, argues that "the majority and minority party leaders generally serve a moderating function in the Senate by acting within certain bounds to ameliorate the conflict and instability inherent in the institution" (2010: 16) and calls this pattern of decision making "structured consent" (16). The minority leader is willing to reach agreements because the two parties' and their leaders' goals are "not always mutually exclusive" (16). When the parties were much less ideologically polarized than they are today, the distance between what the median Republican and the median Democrat considered good public policy was considerably narrower and compromise cost less; now more frequently the minority prefers on policy grounds the status quo to any compromise the majority would sign on to. When the parties were more diverse, individual senators, especially minority party senators, were more likely to see a significant advantage in working with the opposition, so the minority leader could not count on holding party members together. It was better to make a deal himself or herself rather than have party mavericks undercut him or her. In addition, the minority leaders of Dirksen's day believed that

the public would punish a party that severely and blatantly obstructed the legislative process; with the public—and particularly the activist bases of the parties—more polarized, the minority leaders of today often see an electoral benefit—not a cost—in obstruction.

Yet contemporary minority leaders do not use their prerogatives to create unmitigated obstruction and, in fact, as Wallner points out, often work to prevent their most hard-line members from doing so. It seems reasonable to assume that some of the same incentives for cooperation operate, just at a different point. McConnell needs to protect his party's reputation, so he does not want to chance its being seen as responsible for a complete breakdown. Blocking legislation unpopular with the activist base of the Republican Party may pay off electorally, but if the less-committed partisans and independents come to perceive the Republican Party as the "party of no," the electoral effect may be negative. A Jim Bunning (R-Ky.) blocking the extension of unemployment insurance does not make the Republican Party look good. On an issue such as financial regulation reform, for example, indefinitely blocking legislation and thus risking being seen as on the side of Wall Street was just not tenable; the risk to the party's reputation was too great. Moreover, McConnell could not count on holding enough of his members to prevent consideration much longer than he did. The more ideologically homogeneous parties of today are still not monolithic; if a minority leader cannot make good on a threat to prevent cloture, he or she loses bargaining clout. The minority leader must often calibrate how far to go and what can be gotten from members in terms of policy concessions, or even just votes on so-called message amendments, and then make a deal. Furthermore, his or her members have legislative goals quite apart from the big issues that separate the parties and accomplishing them requires that the Senate be able to function.

Overall, in the Senate, much more than in the contemporary House, advantage goes to those opposed to action. Strong parties that have made it possible for the House to legislate with dispatch have made it harder for the Senate to do so.

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