

Exceptions to the Rule: Majoritarian Procedures and Majority Party Power in the United States Senate

by

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ability of a simple majority of a committee to prevent a measure from coming to the floor. When a committee is automatically discharged, or when the protected legislation is placed directly on the calendar, no number of votes can prevent a proposal that changes the status quo from coming to the floor. For the exceptions that include a privileged motion to discharge, meanwhile, rather than a simple majority of the committee being able to prevent a proposal to change the status quo from making it out of committee, a floor majority must be formed to vote down the discharge petition. Decisions about when exceptions should be created and used, then, are shaped by the fact that it will be more difficult to engage in future obstruction on the underlying legislation.

The second goal of majoritarian exceptions, I argue, is to deliver benefits to the Senate's majority party; this applies to both the rules' creation and to their use. Much of the contemporary literature on the Senate portrays the chamber as the home of two competing partisan 'teams' that work together to achieve shared goals as the expense of their partisan opponents (e.g. Koger 2010; Lee 2009). The majority team attempts to pass legislation it favors, while the minority team works to obstruct those initiatives. For proponents of this account, it would follow that making obstruction more difficult—as majoritarian exceptions do—should help the majority party achieve its policy goals. At the same time, however, if the Senate's parties are weak and/or diverse, the simple majorities empowered by majoritarian exceptions may not be composed of co-partisans working together to achieve shared goals (Krehbiel 1993).

Here, I come down in favor of the former characterization of the Senate. To build my argument about exactly *how* majoritarian exceptions advantage the majority party, I rely on several familiar assumptions. First, I assume that the individual members that comprise the majority caucus are seekers of re-election (Mayhew 1974). Second, I assume that the majority party acts as a procedural cartel (Cox and McCubbins 1993, 2005); that is, rank-and-file members delegate some of their power to the leaders of their party, who, in turn, assume fiduciary responsibility for acting in the party's favor. In this context, leaders must satisfy this fiduciary responsibility both when new rules are created, as well as when they are used. Finally, I assume that the proximate shared goal of majority party senators is for their party to maintain its majority status (Cox and McCubbins 1993, 2005; Aldrich and Rohde 2000; Balla, et. al. 2002; Lee 2009); the benefits to a party's members of having their party hold majority status are well-documented empirically (Albouy 2013; Cox and Magar 1999). Convincing voters to return majority party members to office requires both collaboration between co-partisans to enact a

explored widely, with an emphasis on how member behavior on highly salient issues increases the probability that constituents reward or punish the representative for his contributions to a given decision (e.g. Kingdon 1984). Fiorina (1974) argues that issue salience is especially important when some or all of a legislator's constituents are likely to oppose his action on an issue—just as we would expect here, where the perceptible effects of solving a collective action problem are, on average, negative.

How might this play out in the case of delegation exceptions? Take, for example, the procedures, created in December 2001, that facilitated an additional round of military base closings. Enacted shortly after the terrorist attacks of September 11, 2001, defense issues were highly salient among the public; between October and November 2001, the average share of respondents in the monthly Gallup poll rating “defense” issues as the most important problem facing the country stood at 43 percent. In addition, reducing expenditures on the military was an unpopular policy position. In one October 2001 survey, only 7 percent of respondents indicated that spending on national defense should be cut back (Pew Research Center 2001). Embedding an unpopular policy choice in a highly salient issue domain within a delegation exception, then, was especially attractive in terms of minimizing the traceability of the action. For popular reforms, however, the opposite should be true. If a decision is both highly salient AND highly popular, legislators will prefer to make their actions more, not less, public in order to lay the groundwork for future credit-claiming. We can summarize these two observations as follows:

Salience Hypothesis: If a proposed delegation exception facilitates an unpopular policy change, the probability that it is enacted into law increases when the issue is more salient. If a proposed delegation exception facilitates a popular policy change, the probability that it is enacted into law decreases when the issue is more salient.

These two features of an issue—the content of the public's preferences about it and the salience among those voters of it—help us understand when individual, re-election-minded legislators will prefer to see proposed delegation exceptions enacted into law. Recall, however, that we also expect the shared interests of congressional parties to affect the success of these prospective changes to the rules. Both parties are attempting to gain or maintain majority status—the benefits of which are well-documented (Albouy 2013; Cox and Magar 1999). To

McCubbins 1993, 2005; Aldrich and Rohde 2000); the benefits of holding such status are well-documented empirically (Albouy 2013; Cox and Magar 1999).

Previous work on how cartelized majority parties seek to remain as such focuses on the House of Representatives, emphasizing the need to create a positive shared brand that bolsters the reputation of all members equally (Cox and McCubbins 1993, 2005). In the House, to retain the majority, party leaders must defend all the seats they currently hold; a common reputation of legislative accomplishment represents an efficient way to bolster the fortunes of the entire coalition. The Senate—the chamber in which reconciliation reshuffles the procedural deck to the majority party’s advantage—has an entirely different electoral structure. The chamber’s staggered, six-year terms mean that the specific building blocks of a continued majority vary across elections, both in terms of the number of contested seats and the particular characteristics of the critical constituents. Indeed, we know that this electoral structure has consequences for the issues on which individual members are active (Sulkin 2005). From the perspective of the party as a whole, the crucial voters in the *next* election may look very different from their counterparts in the *following* contest in many ways. In a given election, for example, the Senate majority party may be defending seats in states with many friendly voters or with relatively few. Figure 5.1 illustrates this variance; it displays the mean share of co-partisans (as measured by the share of the two-party vote received by the Senate majority party’s presidential candidate in the previous election) in the states where the majority party is defending seats in the next election. Even two senators from the same state, moreover, running in consecutive elections, may have distinctive electoral bases to which they must appeal (Schiller 2000). In addition, the complicated dynamics of challenger entry and incumbent retirement decisions that transpire over the six years of a Senate electoral cycle (King 2013) make it exceedingly difficult to predict exactly which seats are likely to be the most competitive more than two years in the future. This uncertainty, coupled with the election-specific variation in constituency factors, means that the Senate majority party is best served by a specific and individualized focus on the seats it holds that are being contested in the next election.

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