



“Senate Floor Procedures”

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 POLS 4620E
 Lecture #20
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Senate Introduction



There will often be a Senate companion bill introduced around the same time as the House.

Generally though, the Senate will wait for the House bill before it moves out of Committee.

Committee consideration can be bypassed in the Senate via Rule XIV.

Senate Committee/Subcommittee



Referred by the Majority Leader (with assistance). This can also be complicated. Additionally, the Majority Leader can put a bill directly on the calendar (bypassing the committee stage).

Similar to House Committee consideration...It may go to a subcommittee as well. Committee marks up the bill, holds hearing, invites witnesses.

Full text substitutes are common.

Getting Before the Chamber

AGRICULTURAL ACT OF 1977

Mr. FOLEY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7171) to establish more responsive programs for the benefit of farmers and consumers of farm products; to extend and improve the programs conducted under the Agricultural Trade Development and Assistance Act of 1954, as amended; and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. Foley).

The motion was agreed to.

DEPARTMENT OF AGRICULTURE APPROPRIATIONS, 1954

Mr. KNOWLAND. Mr. President, I move that the Senate proceed to the consideration of House bill 5227, and that it be made the unfinished business of the Senate. This is the bill making appropriations for the Department of Agriculture. I may say that the effect of this motion, if agreed to, will be to have the Department of Agriculture appropriation bill take the place of Senate bill 1946, which is at present the unfinished business.

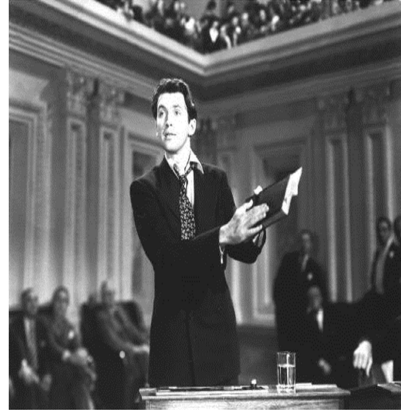
The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 5227) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1954, and for other purposes.

Senate Floor

Here's where the process generally gets weird.

No feature comparable to the House Rules Committee. Lack of a simple-majoritarian method for ending debate makes the Senate extremely unique. So how does a bill get to the Senate floor? Leader will offer a motion to proceed. But ending debate on that is difficult.



Primarily two options:

(1) Cloture. 60 votes and extremely time-consuming. May need cloture on the motion to proceed and then on the bill itself.

(2) Unanimous Consent. Necessitates even more compromises than cloture.

UCA Example

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now resume consideration of S. 919, the national service bill; that the cloture vote scheduled today on the Kennedy-Durenberger substitute amendment to the bill be vitiated; that the Kennedy-Durenberger amendment be agreed to...

[T]hat the committee substitute, as amended, be further amendable notwithstanding the adoption of the Kennedy-Durenberger substitute; that the following be the only first-degree amendments remaining in order to the bill and that these amendments must be relevant; that they be subject to relevant second-degree amendments; that all amendments must be offered by the close of business today or they will no longer be in order; that just prior to the close of business today the committee substitute, as amended, be agreed to and the bill be read a third time...

[T]hat at 9:45 a.m. on Tuesday, August 3, the Senate resume consideration of S. 919; that there be 15 minutes for debate equally divided in the usual form at that time; and that at 10 a.m. on Tuesday, August 3, the Senate proceed to the immediate consideration of H.R. 2010, the House companion, that all after the enacting clause be stricken and the text of S. 919, as amended, be inserted in lieu thereof and a vote on passage of the bill occur without any intervening action or debate; that immediately upon the conclusion of that vote the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees, and that S. 919 then be indefinitely postponed...



Above: Former Senate Majority Leader George Mitchell (D-ME)

UCA Example



Above: Former Senate Majority Leader Bob Dole (R-KS) at the funeral of former Senator Daniel Inouye (D-HI)

Mr. DOLE. Reserving the right to object, and I shall not object, I think we have a satisfactory arrangement. Let me just make the record clear, we did not have the votes to prevent cloture. We had five of our colleagues who would have voted for cloture today, and we would have been one vote short. I commend the solidarity on the other side. I wish we could have it on this side, but we did not have it on this particular issue. I still hope before they finish the debate this afternoon there can be some adjustment on funding.

It might make a significant difference in the number of Republicans supporting the bill. As I understood the President in our conversation, he would like to have broad bipartisan support. But in any event, I think this is a good resolution. It avoids a cloture vote. We do not have the postcloture situation. All of these amendments are, I think, germane and relevant.

Nobody is trying to slip anything in. I commend the majority leader for his patience, and I still hope we can work out a funding level that might be satisfactory to the distinguished Senator from Massachusetts later on today (103rd Congress, Congressional Record, July 30, 1993, S9938).

Senate Floor

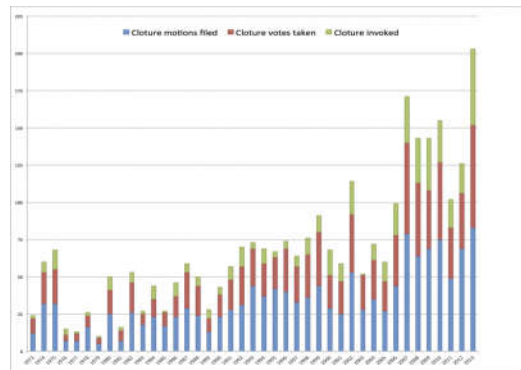
Understanding the filibuster

The Senate “filibuster” is not a rule in the Senate (sorry, Mr. President). It owes its existence to the absence of a rule allowing a simple majority to end a debate.

Rule XXII, or cloture, established in 1917, provides for a supermajority to end debate.

Historically, floor time is so valuable in the Senate that measures subject to filibusters are not brought to the floor and cloture votes are not taken.

Because of this, determining when a filibuster has taken place—or providing a count of filibusters—is almost completely arbitrary.



Senate Floor



Understanding the filibuster

Often times, obstruction through long speeches on the Senate floor are for “show.” See recent speeches by Senators Paul (R-KY), Cruz (R-TX) and Merkley (D-OR).



Even when cloture is not invoked, the Senate’s debate rules have an effect on policy output. See Senator Tom Coburn (R-OK) and the Zadroga Health Compensation Act of 2010.

Because of workload and time demands, the modern U.S. Senate is largely run by unanimous consent.

Want a longer discussion? E-mail me...

Senate Floor

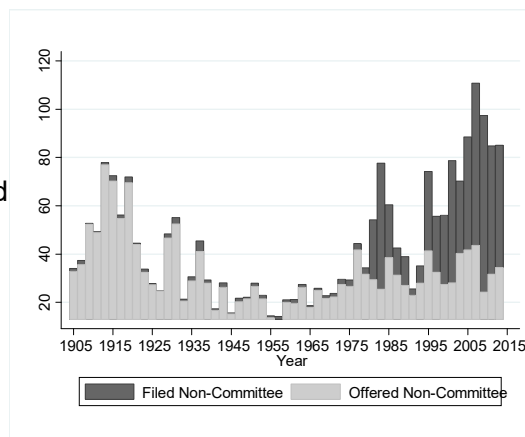
The amending process on the Senate floor is crazy.

Individual members have a great deal of leverage, so we see a large number of amendments offered and voted on in the Senate.

Most are of the position-taking variety. Why do this?

Some will be bills offered “as amendments.”

Can be offered as motions to strike, strike and insert, etc....A major job for staffers and interns is summarizing amendments and writing vote recommendations for their members. Unlike bills, where members have a great deal of notice and information from committee mark-ups, introductory speeches, lobbyists and party leaders, amendments are often offered with no supplemental information and very little time to process.



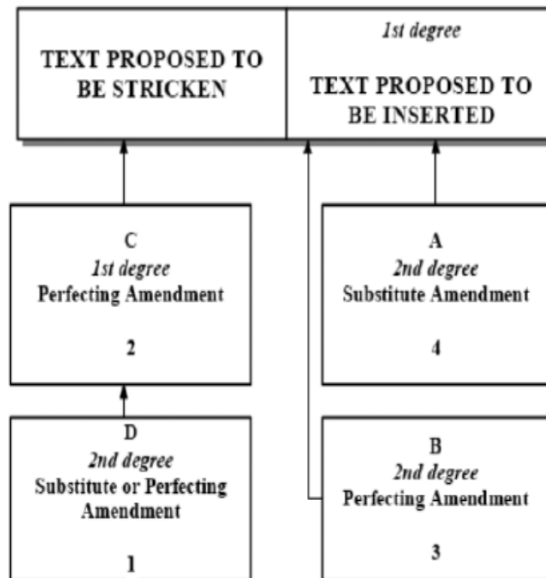
Amendment Tree

Depending on the kinds of amendments that members offer and the order in which they are recognized to offer their amendments, members can offer anywhere from three to 11 amendments before the Senate has to vote on any of them.

As a general rule, a measure being considered on the House or Senate floor is open to amendment in only two degrees.

Amendment trees are the graphic ways of depicting these possible situations.

One such tree is presented in the adjacent Figure.



News—Filling the Amendment Tree

[Roll Call 10/27/14](#)— Senate Majority Leader Harry Reid's decision to avoid tough votes this year has backfired in one respect — it gave his vulnerable incumbents few opportunities to show off any independence from President Barack Obama.

As senior writer Shawn Zeller writes in this week's CQ Weekly cover story, Democrats who have been distancing themselves from Obama on the campaign trail not in votes on the Senate floor — whether it be Mark Udall of Colorado, Mark Pryor of Arkansas or Mary L. Landrieu of Louisiana:



Udall disagreed just once, on a Pennsylvania state judge's nomination to a federal district court. Pryor parted with Obama three times, and Landrieu four, but only one of those votes was on a policy matter. In July, Landrieu voted against Obama's request for \$2.7 billion to deal with the surge of Latin American children entering the U.S. illegally.

Indeed, all of the most vulnerable Democrats voted with President Obama at least 96 percent of the time on the 120 votes on which Obama has urged a "yes" or "no" vote. Reid clamped down on amendments more than ever this year and the bills he brought to the floor were aimed at unifying Democrats and putting Republicans on defense — like a minimum wage hike, an unemployment extension, pay equity or refinancing student loans — rather than bills that would lead to Democratic defections.

News—Filling the Amendment Tree



As a result, there are only 18 legislative votes involved in the scoring this year. The vast majority (102) were nomination votes. That's the most lopsided ratio since CQ began keeping records on the ratio in 1988....

Republicans have insisted on roll call votes on a whole slew of traditionally non-controversial nominations, a move that's had the bonus effect for them of raising presidential support scores for Democrats.

On Thursday, the National Republican Senatorial Committee issued separate releases targeting Democrats citing the figures. Those releases are virtually identical, with NRSC spokeswoman Brook Hougesen offering quotes that differ only in the name of the senator being targeted and the voting percentage figures from CQ Roll Call.

"Mark Begich is no independent; this year he actually voted for President Obama's agenda an astounding 98% of the time," Hougesen said in the Alaska version of the releases. "President Obama is right, a vote for Mark Begich is a vote for his policies."

Assorted Floor Process Terms

Priority Recognition

Rule XIV

Lame Duck

Reconciliation

Vote-a-Rama



Questions, Concerns, Angry Rants?



Next: History of the Senate

Sources: Harry Reid Sleeping With Mitch McConnell's Wife In 1986 At Core Of Senate Gridlock

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“Senate: Origins and Development”

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Evolution of Senate Rules

5/26/20

I. The Nuclear Option in the Senate

- Gorsuch and the Nuclear Option
- The Nuclear Option in 2013

II. Procedure Basics

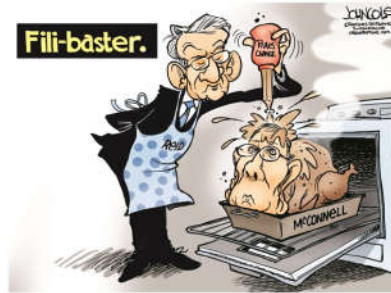
- Why rules?
- Always a limit to rules
- Everyone is a hypocrite

III. Understanding the Senate

- The filibuster is not a rule
- How do we count them?
- Workhorses v. Showhorses
- Unanimous Consent

IV. How Did We Get Here?

- The Constitution/Founders
- Majority Will
- Path Dependency



V. Obstruction in the Senate

- Early Senate
- Bank Bill of 1841
- Force Bill of 1891
- Eleven Willful Men
- Richard Russell and Civil Rights
- Post-Russell Senate

VI. Where Are We Going?

- Concluding Thoughts

The Nuclear Option in the Senate



- On April 6, 2017, Senate Republicans created a new precedent that formally ended the prospect of “filibusters” on Supreme Court nominations.
- Claimed it was a necessary response to an unprecedented use of obstruction on a Supreme Court nominee.
- Democrats argued it violated the intent of the founders in establishing the Senate and damaged one of the “pillars of Democracy.”

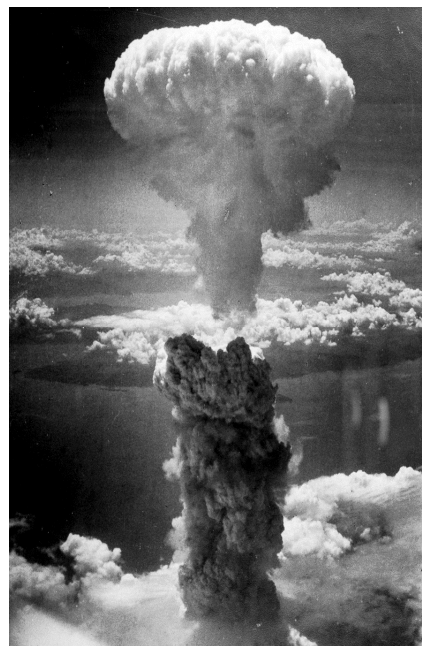
The Nuclear Option in the Senate



- Republicans cited a precedent created on November 20, 2013, by Senate Democrats under Harry Reid (D-NV). That decision established that executive and lower court nominations no longer needed to clear a supermajority cloture threshold.
- “More than half of the Nation's population lives in parts of the country that have been declared a `judicial emergency.’” – Majority Leader Harry Reid (D-NV)
- “Just sit down, shut up, and rubber stamp everything, everyone the president sends up here.” Minority Leader Mitch McConnell (R-KY)

The Nuclear Option in the Senate

- The *Washington Post* argued it “change[d] how the nation is governed in a significant way.”
- The *New York Times* dubbed it “the most fundamental alteration of its rules in more than a generation”
- Steven S. Smith listed it as “among the three or four most important events in the procedural history of the Senate.”
- Why? How does the Senate operate and how has it changed?



The Nuclear Option in the Senate

The “Nuclear Option” action was controversial in part because the Senate accomplished it not by amending its rules, but instead by overturning, on appeal, a decision of the chair. The decision held that Senate rules required a super-majority of three fifths of the full chamber to impose limits on consideration.



By its vote on the appeal, the Senate established a parliamentary precedent under which the vote of a simple majority can limit consideration of any nomination except one to the Supreme Court. Formally, this action represented a re-interpretation by the Senate of its existing rules, determining that those rules empower a simple majority to limit consideration of the specified nominations.



The Nuclear Option in the Senate

Sources: Harry Reid Sleeping With Mitch McConnell's Wife In 1986 At Core Of Senate Gridlock

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Senate Majority Leader Harry Reid (D-NV) argued there was ample precedent for the maneuver. Reid, citing to a memo circulated by Senator Jeff Merkley (D-OR), noted “the Senate has changed its rules 18 times, by sustaining or overturning the ruling of the Presiding Officer, in the last 36 years...”

Minority Party Republicans disagreed. Senator Chuck Grassley (R-IA) dubbed it a “naked power grab and nothing more than a power grab”. Senator John McCain (R-AZ) argued that “if only a majority can change the rules, then there are no rules.” And Minority Leader Mitch McConnell (R-KY) accused Reid and Senate Democrats of “break[ing] the rules of the Senate in order to change the rules of the Senate.”

Basics of Legislative Procedure



"...it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding..." – Thomas Jefferson, Jefferson's Manual of Parliamentary Practice

- Why rules? Protect minority rights.
- They can temper passions from factions.
- Lawmaking is often dependent on continuity.
- Protect majorities from themselves.

Basics of Legislative Procedure

- There are always limits to rules and precedents.
- On one extreme these limits can be imposed by violence.
- Less extreme limits can come from altering endogenous rules by majority vote.
- Regardless, such changes do impose costs on majority and individuals within majority coalitions.

Basics of Legislative Procedure



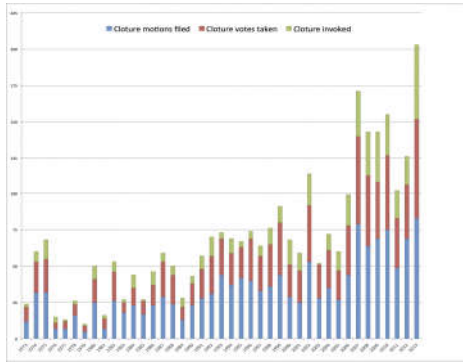
- Everyone is a hypocrite when it comes to legislative procedure.
- Politicians do not get elected because they care about the motion to recommit, or the filibuster, or congressional debate rules. And these issues do not resonant with voters.

Understanding the Senate

- The Senate and the House evolved in two drastically different ways. Since the 1890s, the House has been a majoritarian body dominated by the Speaker and Rules Committee.
- The Senate never granted its leadership the same strong, formal powers the House did.
- Its governed by both formal rules and precedents, which have been remarkably stable since its creation.
- With the ability to offer non-germane amendments, the ability of senators to "filibuster" is one of the most recognizable features of the chamber.



Understanding the Senate



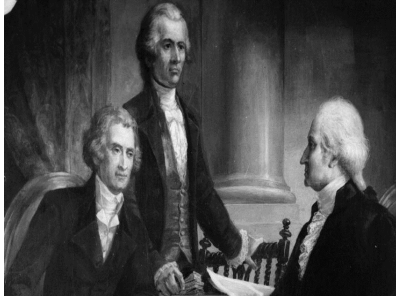
- The Senate “filibuster” is not a rule in the Senate. It owes its existence to the absence of a rule allowing a simple majority to end a debate.
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- However, historically, floor time is so valuable in the Senate that measures subject to filibusters are not brought to the floor and cloture votes are not taken.
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- Often times, obstruction through long speeches on the Senate floor are for “show.” See recent speeches by Senators Paul (R-KY), Cruz (R-TX) and Merkley (D-OR).
- Even when cloture is not invoked, the Senate’s debate rules have an effect on policy output. See Senator Tom Coburn (R-OK) and the Zadroga Health Compensation Act of 2010.
- Because of workload and time demands, the modern U.S. Senate is largely run by unanimous consent.



How Did We Get Here?



"Why," asked Washington, "did you just now pour that coffee into your saucer, before drinking?"

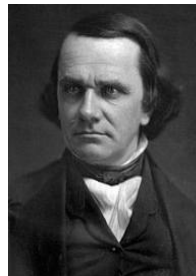
"To cool it," answered Jefferson, "my throat is not made of brass."

"Even so," rejoined Washington, "we pour our legislation into the senatorial saucer to cool it."

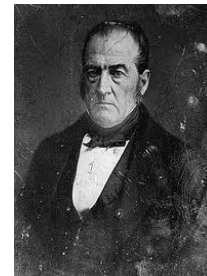
- Several alternative hypotheses: Majority will, path dependency, deference to the founders.
- Easy to reject "deference to the founders."
- Little evidence suggesting the founder support supermajority rule in the chamber. Several wrote pieces explicitly opposed.
- Constitution says very little about congressional rules. Article 1, Section 5, Clause 2 states that "Each House may determine the Rules of its Proceedings."

How Did We Get Here?

- Majority will: Minorities have reined in their dilatory behavior in the face of threats of "going nuclear" by majorities and norms of restraint.
- Weaker support for this claim as well.
- Senate majorities are not fixed and rarely enjoy universally high levels of support across issues.
- While successful minority obstruction was rare in the 19th and early 20th century, this was likely due to a product of low workload and high environmental costs.
- Sidenote: You might be asking: Is that the creepiest photo of Vice President John C. Breckinridge?



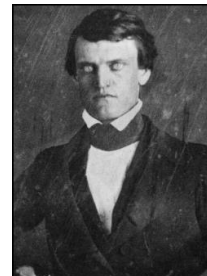
Senator Stephen A. Douglas (D-IL)



Former Senator John Bell (CU-TN)



Former Representative and vampire hunter, Abraham Lincoln (R-IL)



ice President John C. Breckinridge (SD-KY)

How Did We Get Here?



No it is not.

How Did We Get Here?

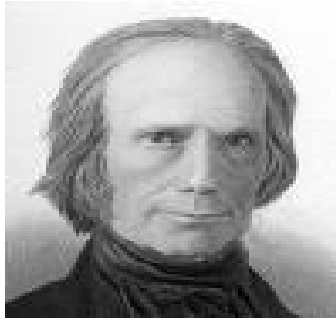
- Path dependency: Minorities have exploited existing rules to frustrate potential reforms. In this view, the modern Senate is not what majorities have wanted but what they have been forced to accept.

Inherited Rule	Source	Consequence
Elimination of the Previous Question Motion	1806 Rules Codification	The Senate no longer had a formal method of ending debate by a simple majority.
Staggered Senate Terms	U.S. Constitution	The Senate is a "continuing body" and does not adopt new rules at the start of each Congress.
The Vice President's Status as the President of the Senate	U.S. Constitution	Centralized chamber power could be wielded by a member that does not share the interests of the Senate majority

How Did We Get Here?

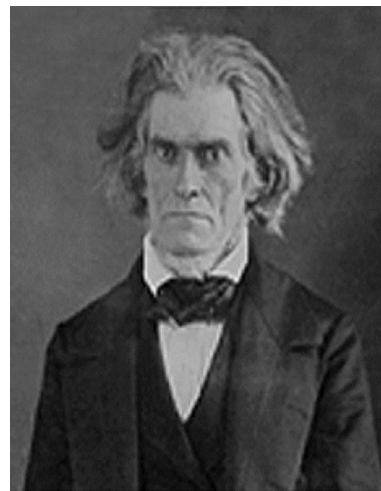


- Presidential election of 1824 (the “corrupt bargain”).
- John Randolph (Jacksonian-Democrat) begins filibustering against the Adams administration.
- The President wants Vice President Calhoun to end the practice and call Randolph to order.



How Did We Get Here?

- Calhoun refused.
- “Mark the consequences! If the Vice-President should belong to the same party or interest which brought the President into power, or if he be dependent of him for his political standing or advancement, you will virtually place the control over the freedom of debate in the hands of the Executive.”- *Vice President John C. Calhoun, 1826.*



Obstruction in the Senate



- Alexis de Tocqueville characterized senators as “eloquent advocates, distinguished generals, wise magistrates, and statesmen of note whose arguments would do honor to see the most remarkable parliamentary debates of Europe.”
- Political scientists have demonstrated that laudatory praise of the Senate’s ‘Golden Age’ has largely overstated debate and behavior in the era.

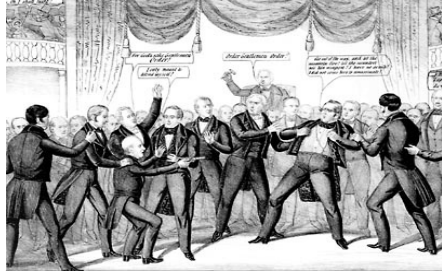
Obstruction in the Senate



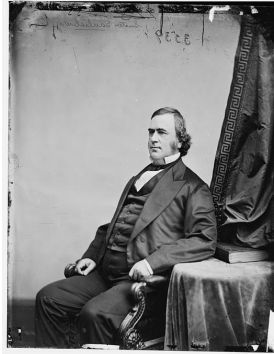
1856: Representative Preston Brooks (D-SC) beats Senator Charles Sumner (R-MA) into a coma on the Senate Floor.

- The early Senate was a miserable place to debate. Senators were frequently in bad health, which was exacerbated by a poorly ventilated building which made the air was difficult to breath.
- Travel conditions were equally onerous and members were usually forced to abandon families for lengthy periods of time.
- Whiskey was sold in the capitol and intoxication was tolerated on the floor of the Senate during this period. Duels and violence was relatively commonplace in the era.

Obstruction in the Senate



1850: Senator Henry Foote (D-MS) pulls a pistol on Senator Thomas Hart Benton (D-MO), who charges towards him.



1863: An intoxicated Senator Willard Saulsbury (D-DE) pulls a pistol on the Senate sergeant at arms after being called to order.



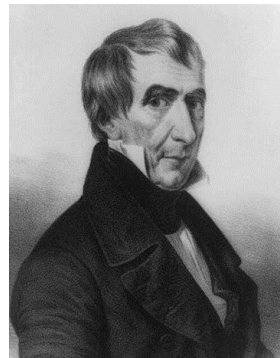
1902: Senator "Pitchfork" Ben Tillman (D-SC) coldcocks Senator John McLaurin (D-SC) on the chamber floor.



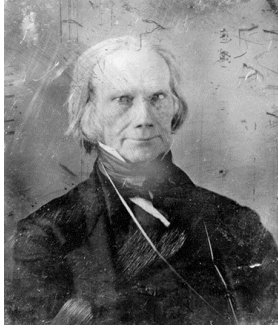
1859: Senator David Broderick (D-CA) is killed in a duel by an ally of Senator William Gwin (D-CA). He is the first and only senator to die this way.

Obstruction in the Senate

- An early example of effective obstruction in the Senate occurred during consideration of the Bank Bill of 1841.
- The United States was in the midst of a substantial economic depression in 1840. Since the financial panic of 1837, a substantial number of chartered banks failed, stock prices dropped dramatically and investment growth plummeted.
- The Whigs criticized the Democrats for not being aggressive enough in combating the depression. They ran on a platform that called for an increase in government intervention.
- The election of 1840 produced a resounding victory for the Whig party. But Harrison dies shortly after taking office.



Obstruction in the Senate



- The bill passes the House, but is delayed in the Senate. Clay (W-KY) proposes a rules change to “give to the majority the control of the business of the Senate,” and facilitate the passage of the Bank Bill.
- William Rufus King (D-AL) replies that, “Senator [Clay] may make his arrangements at his boarding house for the winter.”
- Clay retreats from the rules change proposal. And the bill passes after nearly two months. The delay turned fatal, as during that period President Tyler turned against the measure and vetoed it.

Obstruction in the Senate



- Other measures include the Oregon Territory Bill of 1846; Nebraska Act of 1853; Kansas-Nebraska Act of 1854; Kansas Statehood Bill of 1856; Lecompton Act of 1858; Cuba Acquisition Act of 1858; Habeas Corpus Indemnification Act of 1862.
- The Federal Elections Bill, introduced in 1890, aimed to make federal circuit courts – rather than state governors - the final arbiter of congressional election procedures.
- The conventional wisdom is that it represented the earliest episode where major legislation was killed by Senate obstruction.

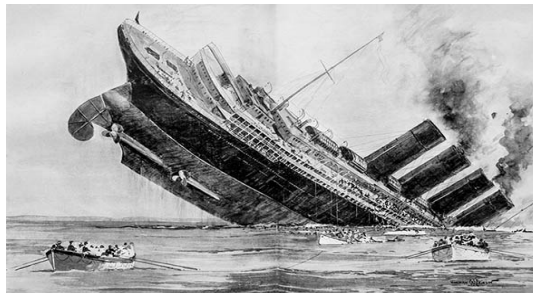
Obstruction in the Senate

- The filibuster forced an ambitious Republican Party to pick and choose between the Federal Elections Bill, the Tariff Bill, and other major legislation.
- It exasperated divisions within the Republican Party on these issues and forced bill managers to make compromises on legislation.
- Finally, by refusing to debate Senate Democrats and prolong the filibuster, the Republicans were forced to cede the filibusterers a monopoly in presenting their views against the bill.



"There is not a Republican Senator here who does not know that between now and December time enough can not be found to pass both the tariff bill and an election bill."
 William Pierce Frye (R-ME).

Obstruction in the Senate



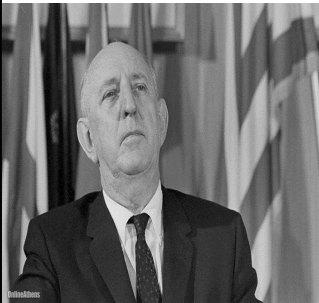
- A formal cloture rule was not established until 1917, after extreme circumstances.
- Southern Democrats and Progressive Republicans filibuster a measure providing for the arming of merchant ships considered in a lame duck Congress.
- President Wilson aggressively criticized the obstructing senators, labeling them a "little group of eleven willful men."
- A rule providing for two-thirds cloture was then adopted 76-3.

Obstruction in the Senate



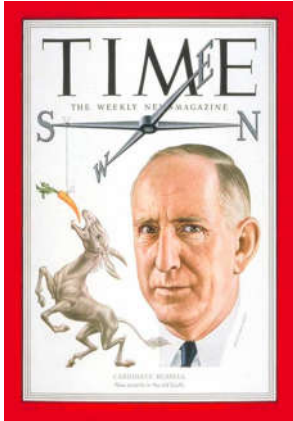
- Cloture was rarely employed in the early 20th century.
- Throughout the century, obstruction was rare and largely reserved to Civil Rights legislation. Played a role in defeating Anti-Lynching legislation in 1922, 1935 and 1938; Anti-poll tax legislation in 1946; Fair employment bills in 1946; 1950; a right to work measure and open housing legislation in 1966.
- Attempts to bypass the filibuster by reforming Senate rules were made in 1967, 1969 and 1971 but defeated by Southerners, led by Senator Richard Russell (D-GA).

Obstruction in the Senate



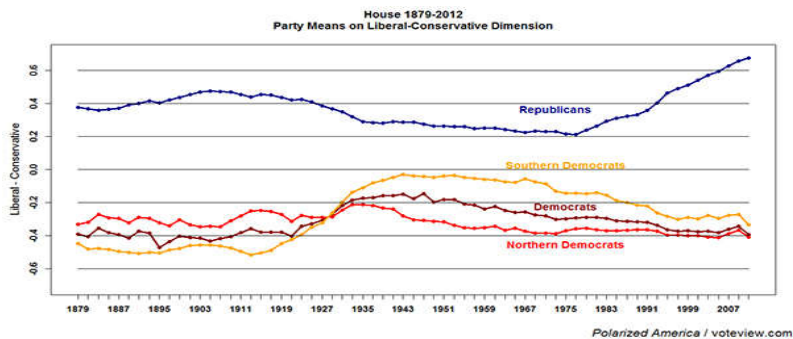
- Senator Richard Russell (R-GA) was generally viewed as the General of the Southern Senators. He served for nearly 40 years (1932-1971).
- Supported most New Deal programs—co-authored the National School Lunch Act of 1946.
- Aggressive opponent of Civil Rights.
- Not an advocate of violence and refrained from using incendiary language. Highly respected and skilled legislator. Appreciated by supporters and opponents alike.
- Master of Senate procedure. When Russell died a reporter was to say, ‘a thousand Senate secrets would die with him.’

Obstruction in the Senate



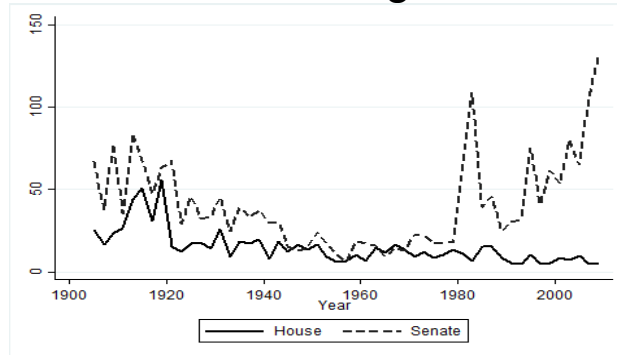
- 1949: Russell led the fight to change the cloture rule to require two-thirds of the whole Senate to cut-off debate, instead of present and voting.
- 1954: Drafted the Southern Manifesto declaring *Brown v. the Board of Education* “a clear abuse of judicial power.”
- 1957: Denounced the Civil Rights Act even after it had been substantially weakened under his leadership.
- Worked to block changes to Senate filibuster rules in 1953 and 1959.
- “In the debate over the 1960 civil rights bill, he organized his three squads of southerners to break the back of the exhausted civil rights supporters, block cloture and gut the legislation.” -- Purdum

Obstruction in the Historical Senate



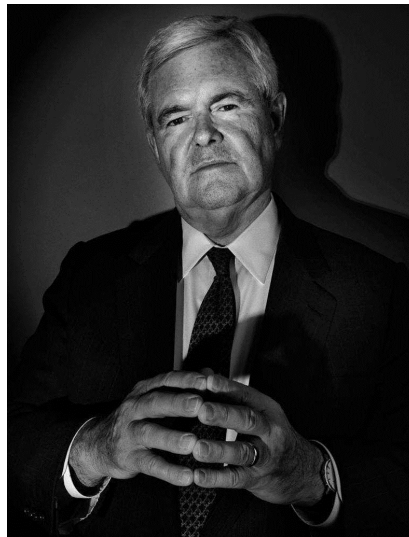
- After the adopted of substantive civil rights legislation and Russell's death, obstruction in the chamber significantly increased.
- Coincided as well with an increase in workload, political polarization electoral competitiveness.
- Issues like nominations, which hadn't been political, are now tracked by interest groups.

Where are We Going?



- Legislative filibuster unlikely to be substantially altered. Doing so would involve substantial policy concessions by centrist majority party members.
- Carve-outs are a greater threat to its long-term existence.
- The increase in messaging amendments has further threatened the stability of Senate rules, though substantial reform in this area is also unlikely in the short-term.

Questions, Concerns, Angry Rants?



Tomorrow: The Amending Process in the Senate