PATTERNS AND DYNAMICS OF CONGRESSIONAL CHANGE

PART I

1

THE U.S. SENATE AND THE MEANING OF DYSFUNCTION

C. Lawrence Evans

College of William and Mary

and

Wendy J. Schiller

Brown University

The contemporary U.S. Senate routinely is portrayed as dysfunctional. As indicators, Senate critics often point to an excessive centralization of power at the leadership level, deeply divided parties, rampant obstructionism, and highly restricted opportunities for ordinary members to participate in the legislative process. Rather than signs that the Senate is broken, however, such features of the modern chamber also can be viewed as functional adaptations to a remarkably altered and deeply challenging political environment. This essay traces how the alleged manifestations of Senate dysfunction have emerged over the past several decades and the consequences for chamber leaders and rank-and-file members. These new processes facilitate the passage of legislation

amid intense partisan polarization and 21st century communications practices and, in that sense, are more functional than not. But when our focus shifts to the chamber's capacity to deliberate and otherwise manage the major policy challenges of the day, the case for dysfunction grows stronger.

I n 2020, during the fourth year of the Donald J. Trump administration, the U.S. Senate often appeared to be mired in dysfunction. Long heralded as the "greatest deliberative body in the world," the upper chamber of Congress has been a vital arena for considering and often acting on the major issues of the day. From Webster and Clay to McCain and Kennedy, the most respected lawmakers in American history have been included among its ranks. By the late 2010s, however, the Senate seemed roiled with partisan obstructionism and unable to grapple with pressing policy challenges. Senators and observers alike routinely characterized the chamber as broken. In February 2020, for example, a bipartisan group of seventy former senators cosigned a remarkable open letter to current members claiming that the chamber had "abdicated" its constitutional responsibilities. "Our concern is that the legislative process is no longer working in the Senate," they wrote. "Senate committees have lost responsibility for writing legislation. Rules allowing extended debate, a feature of the Senate that is essential to protecting the rights of minorities, have been abused as the filibuster and cloture have shut down action on the Senate floor…. Neither in committee nor on the floor do rank-and-file members have reasonable opportunities to advance their positions by voting on legislation."[1]

To be sure, some trends within the Senate have been applauded. The current membership, for example, is more diverse than was the case in prior decades. In 1985, there were only two female senators, zero African Americans, and no Latinx members. By 2019–2020, in contrast, those numbers were 26, 3, and 5, respectively.[2] Moreover, in times of significant crisis, such as the Covid-19 outbreak in Spring 2020, the Senate eventually has acted. But the standard view is that these and other positive developments are overshadowed by the chamber's broader descent into dysfunction.

For many, the Senate's failure in 2018 to pass meaningful immigration reform illustrates precisely what's wrong with the contemporary chamber. To secure the Democratic support necessary to open the government after a brief shutdown, GOP majority leader Mitch McConnell, R-Ky., agreed to schedule floor votes on immigration issues in February of that year. A key goal was to clarify the status of "Dreamers," or undocumented immigrants who were brought to the country as minors. After years of legislative gridlock, President Obama issued a June 2012 executive order to provide roughly 1.7 million of the Dreamers with protections against deportation and a path to citizenship. In September 2017, the Trump administration repealed the program, effective in March 2018, unless the Congress provided a legislative remedy. Over the months that followed, the

parties negotiated over the fate of the Dreamers, with Democrats generally favoring clean legislation to extend the Obama program, called the Deferred Action for Childhood Arrivals (or DACA, for short), and Republicans attempting to tie such proposals to funding for Trump's border wall and certain restrictions on legal immigration.

Although McConnell promised that "immigration week" would begin on Tuesday, February 12, and that deliberations would be "open and freewheeling," no commitment was made about the contents of the agenda. Rather than bring to the floor legislation produced via the Senate committee process, McConnell relied on an unrelated measure as the base bill for floor consideration, with the adoption of any amendments requiring 60 votes, the threshold required to invoke cloture and end a filibuster, rather than a majority of members voting.

The procedural maneuvering may seem arcane, but it was part of a profoundly important struggle over a central party-defining issue of the day. According to surveys, most Americans favored the comprehensive reform of U.S. immigration law, but Republicans and Democrats disagreed sharply about the details. Overwhelming majorities of both parties supported allowing the Dreamers to stay in the country. But at the same time, about 40 percent of Americans viewed immigrants and refugees as a "critical threat." For Republicans, the proportion was two thirds, while among Democrats it was only 20 percent.[3] Over 80 percent of Republicans supported President Trump's signature proposal to expand the border wall, but the vast majority of Democratic voters were opposed.[4] Depending in part on how questions were worded, surveys also indicated that most Americans favored restrictions on legal immigration, including limits on family-based entry and lotteries that randomly select immigrants to promote diversity.[5] And there was strong opposition overall to so-called sanctuary cities, where local officials refuse to report illegal immigrants to federal authorities.[6]

As often occurs in the modern Senate, the competing frames and partisan differences apparent in public opinion polls drove the agenda-setting tactics of chamber leaders. Both parties sought to structure the agenda to enhance their reputations with interest groups and voters. That week on the Senate floor, the focus was on four main alternatives: a narrow proposal offered by Republican Pat Toomey, Pa., clamping down on sanctuary cities; a bill authored by John McCain, R-Ariz., and Chris Coons, D-Del., that traded wall money for DACA; a somewhat broader proposal (called the "common sense plan") developed by a bipartisan working group of about twenty senators; and the White House position, offered by Charles Grassley, R-Iowa, that included restrictions on chain migration and the diversity lottery, along with DACA and money for the wall.

On the first day of debate, McConnell asked unanimous consent that floor action begin with the Toomey proposal, which polled favorably for the Republicans but unfavorably for the Democrats.[7] McConnell hoped to follow that vote with a roll call on one of the proposals capable of securing bipartisan support and then end with a clean, up-or-down vote on the Grassley proposal backed by the White House. If the other amendments failed to secure 60 votes, he reasoned,

then the final choice for members would be between his own most preferred outcome—the Grassley proposal—or nothing at all. Minority Leader Chuck Schumer, D-N.Y., and the Democrats, on the other hand, viewed the Toomey proposal as a public relations stunt by the GOP, and they blocked the majority leader's opening gambit. Democrats wanted a floor process where the sanctuary cities issue was not highlighted at all and to instead begin with the "common sense" amendment paired against the Grassley proposal, with the expectation that the bipartisan measure would get more support.

As the procedural standoff deepened, McConnell filed for cloture on each of the four main proposals. In the Senate, of course, cloture is the main vehicle for shutting down a potential filibuster, but it requires 60 votes to be invoked. At the end of the week, unable to a strike a consensus agreement on process, McConnell called for a cloture vote on each alternative, and in rapid succession, all four motions failed, largely along party lines. As the voting proceeded, almost no debate occurred on the underlying substantive issues. The bipartisan "common sense" plan came the closest to 60. But as the yeas and nays were called and it became clear that their side would fall short, three liberal Democrats who had withheld their votes answered "no" and the final tally was 54-45. The succession of failed cloture votes meant that there was no base immigration bill that could serve as the vehicle for further amendment, so McConnell pulled the issue from the floor. For the foreseeable future, the Senate would not act on immigration reform, and the fate of the Dreamers would depend on the courts and President Donald Trump.[8]

Importantly, the ingredients of a workable deal were fully apparent in public opinion surveys and the positions of senators—combine DACA with increased funding for the wall. The vast majority of Americans supported such an outcome. But the emergent compromise never percolated in a committee of the Senate, nor did it serve as the basis for further deliberation on the floor. Partisan posturing was prioritized over the passage of legislation. The traditional benefits attributed to the filibuster—forcing compromise and facilitating consensus—were turned on their head, as the leadership used the 60-vote threshold to stifle debate. How and why did the modern Senate come to operate in this fashion? What are the implications for chamber leaders and rank-and-file members? Is the Senate really as broken as the critics claim? These are the questions addressed in this chapter.

THE ROOTS OF DYSFUNCTION

The contemporary Senate, it bears emphasizing, still operates within the structural framework created by the constitutional compromises of 1787.[9] In contrast to House members, the framers provided senators with six-year terms; states rather than districts as constituencies; election by state legislature (rather than directly by voters); dual representational responsibilities (two senators per state); marginally

elevated age requirements for membership (a minimum of 30, as opposed to 25 in the House); and special responsibilities for the ratification of treaties and the confirmation of judicial and administrative nominees. Importantly, the stipulation of two lawmakers per state results in a smaller membership than is the case for the U.S. House and most other western legislatures.

Over time, some of these structural foundations have been set aside (since 1913, senators have been popularly elected) or turned out to be only marginally important for the character of the body (the age requirement).[10] But the other decisions of 1787—especially as regards apportionment and chamber size, term lengths, dual representation, and the power over treaties and nominations—continue to shape Senate campaigns and the internal operations of the body. Because states generally have larger and more diverse populations than House districts, for example, Senate elections are more expensive, media oriented, and competitive. Six-year terms can free up senators to prioritize party over constituency when reelection is distant. The smaller membership has made the Senate less committee oriented than the larger House, which requires a more refined division of labor to function. And together, smaller size and state-based representation have facilitated the broad distribution of power within the Senate, relatively weak party leaders, and floor procedures that are highly permissive. Apportionment by state rather than population also affects the partisan composition of the chamber and the content of legislation.[11] These structural and behavioral consequences of 1787 helped determine the institutional development of the chamber and continue to shape the Senate of the 2020s.

Yet constitutional foundations aside, the chamber has been transformed over the past several decades. Figure 1-1 provides one indicator—the incidence of amendments subject to a roll-call vote on the floor from 1961 to 2019 (for perspective, the total number of floor votes is also provided). Amendment votes are an informative portal for several reasons. On the Senate floor, the details of legislation traditionally have been forged through the offering and consideration of amendments. Unlike the House, Senate rules include no general requirement that amendments be "germane," or substantively relevant, to the underlying measure, which makes the floor a superb venue for individual lawmakers to advance their personal agendas. The amendments subject to a roll call tend to be the most substantively and politically consequential. As a result, scholars often rely on floor amendment votes as a measure of legislative activism within the chamber.[12]

As you can see, the number of floor amendments subject to a roll call averaged about 175 per year during the 1960s and then increased markedly during the 1970s, reaching a maximum of over 450 in 1977. From 1978 onward, the level of floor amendments has generally declined.[13] Indeed, only 25 amendments were the subject of roll-call votes during all of 2019 in the Republican Senate led by Mitch McConnell. But also notice that this implosion of activity was apparent in 2014, when Democrats under the leadership of Harry Reid, Nev., were the majority and only 24 amendment votes took place.[14] Why has this happened, and what does it

> **FIGURE 1-1 ■ Number of Amendment Votes on the Senate Floor by Year, 1961–2019**
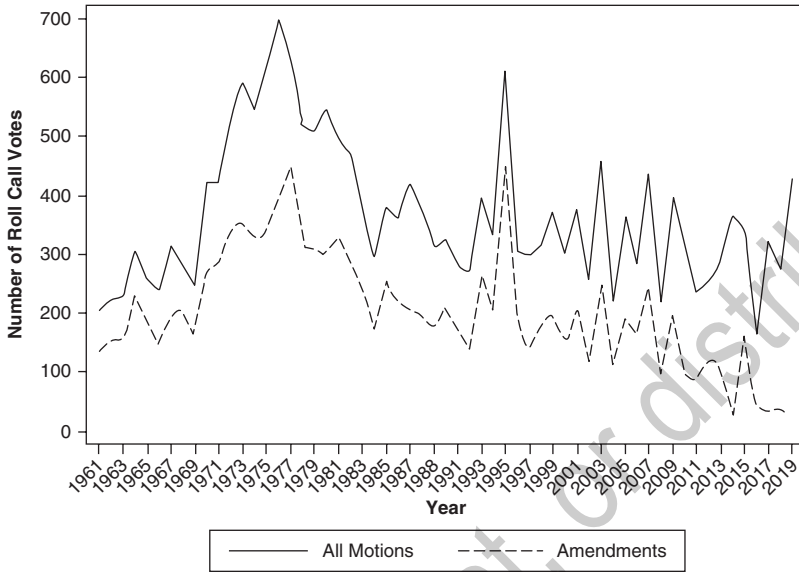
Source: For 1969–2019: Jason Roberts, David Rohde, and Michael H. Crespin, Political Institutions and Public Choice Senate Roll-Call Database. For 1961–1968, compiled by the authors.

mean? To explain the institutional development of Congress, scholars often point to factors like the ebbs and flows of party polarization, the size of party margins, or the presence or absence of unified partisan control across the branches.[15] Perhaps because formal rules and other structural characteristics are less important on the Senate side of the Capitol, we need to probe more deeply and consider the changing *substance* of political discourse and *contents* of the policy agenda. Of particular importance are the enhanced involvement of the national government in the daily lives of Americans that occurred in the 1960s and 1970s and the conservative countermobilization that followed.[16]

The Activist Seventies

By all accounts, the 1960s and 1970s marked an historic shift toward "big government" in the United States.[17] With the enactment of Medicare and Medicaid in 1965, for example, the federal government began to play a major role in healthcare. Passage of The Elementary and Secondary Education Act that same year created an important new federal role in public education. The expansion of federal activity continued during the 1970s, as policy makers turned their attention

toward the regulatory arena. Environmental issues are an example. The Clean Air Act, The Clean Water Act, The Safe Drinking Water Act, The Endangered Species Act, Superfund—all were enacted or significantly revised between 1970 and 1980—and with considerable bipartisan support. By the eighties, the role of the federal government had expanded greatly across most policy domains.

The rise of the liberal, activist state was facilitated by underlying changes in the partisan-electoral environment. From the end of the second world war to the 1960s, the Senate had been dominated by a conservative coalition of Southern Democrats and Republicans. For Southern Democrats of the era, opposition to desegregation and civil rights was an electoral litmus test. The grip of this "inner club" began to break in 1958, when a large class of liberal Democrats from other regions was elected to the Senate.[18] Steadily over the 1960s, the majority Democratic Caucus became less Southern and more supportive of civil rights and federal engagement more generally. The enactment of the Voting Rights Act in 1965 enfranchised black voters throughout the South, and many Southerners at the mass and elite levels moved from the Democratic party to the GOP. Northeastern Republicans shifted their allegiances toward the Democrats.[19] As a result, party caucuses within the Senate and House became more internally homogeneous and more differentiated from the policy stances of colleagues on the other side of the aisle. This period also saw an explosive growth in the number of interest groups lobbying in Washington. More loosely organized social movements advocating for civil rights, the environment, and the equality of women likewise grew more active and influential.[20] The freewheeling Senates of the 1970s, in other words, both reflected and reinforced important changes in the advocacy community and a vast expansion in the scope of government.[21]

Importantly, the heightened member activism captured in Figure 1-1 was accompanied by a significant increase in obstructionist behavior. In the Senate, the absence of a "motion on the previous question" makes possible the tactic of the filibuster, where one or more senators can delay or block a vote.[22] Before the 1970s, the filibuster was used only sparingly and generally on issues that touched on civil rights. With the expansion of government, all that changed. The number of members using dilatory tactics increased markedly, and a much broader range of issues were targeted.[23] The rise of "cloture" activity is an indicator. During the 19th century, senators lacked formal mechanisms for cutting off filibusters, but in 1917, the chamber adopted the cloture rule, whereby a supermajority of members can end debate. The threshold for cloture was first set at two thirds of voting members and, after several adjustments, was fixed at sixty in 1975. Figure 1-2 shows the number of cloture filings per congress, 1961–2019.[24] The cloture threshold for administrative and lower-court judicial nominations was reduced to a simple majority of members voting in November 2013, and a similar change was implemented for Supreme Court nominations in 2017. Since the obstructionist potential of cloture is different when the threshold is lower, we distinguish between the two kinds of filings in the figure. As you can see, prior to the 1970s, leaders

seldom felt the need to file for cloture—obstructionist behavior was limited. But during that decade, the average number of cloture filings per Congress jumped to over 30 and then to about 40 per Congress in the 1980s and over 70 in the 1990s. Yet another temporal break is apparent in 2007, when Harry Reid became leader of the Democratic majority and Republican Mitch McConnell became minority leader. From 2007 onward, cloture filings per Congress generally exceeded 130, and what has come to be called "the 60-vote Senate" was fully in force.

Cloture filings, it should be emphasized, are just the tip of the obstructionist iceberg that began to take form in the 1970s Senate. Legislative time in the Senate is sharply constrained by the calendar, periodic recesses when members work from their constituencies, and the modern practice where senators are only physically in Washington from Tuesday to Thursday when the chamber is in session.[25] Especially toward the end of a session or as a scheduled recess neared, even the threat of delay could preclude floor action unless the matter was a leadership priority. In the Senate, the majority leadership lacks the formal powers that House leaders have over the floor agenda—indeed, the primary procedural advantage of the Senate majority leader is the right of priority recognition on the floor. Basically, if multiple senators want to speak, the majority leader gets to go first. As a result, the

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FIGURE 1-2 ■ Number of Cloture Motions Filed by Two-Year Congress, 1961–2019
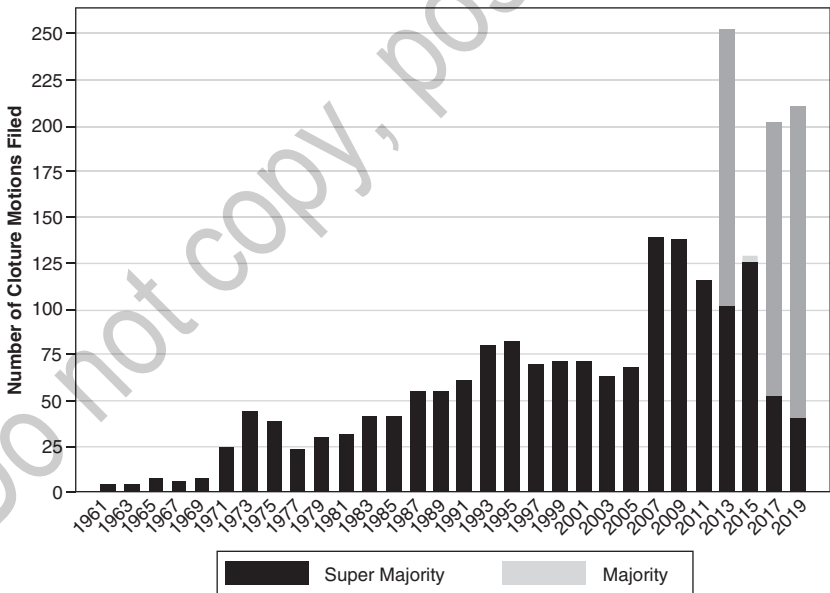
Source: Compiled by the authors from the U.S. Senate website.

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majority leadership is forced to manage most floor business through an elaborate process of unanimous consent. A member stands on the floor and requests that some aspect of Senate procedure be set aside in order to expedite proceedings. Such arrangements, called unanimous consent agreement (UCAs), are the vehicle through which the lion's share of floor business is conducted. Action on a single bill can feature hundreds of discrete UCAs, encompassing most aspects of chamber consideration. As implied by the terminology, UCAs are only enforced if no member objects. As a result, obstructionist inclinations by even a single member can make floor action via the consent process infeasible, and backers of the measure may need to file for cloture to move ahead.

During the early 1970s, the leaders of both parties developed early warning systems through which potential filibusters and objections to UCAs could be communicated to leaders. The process remains in place and is known as the "hold." Through a letter or verbal communication, a senator informs his or her party leadership of the intention to object to a UCA when the matter is brought before the full body. A hold may relate to specific provisions within a bill or reflect opposition to the entire measure. Often, holds are unambiguous threats to filibuster. Other holds demand that certain modifications be made in a measure before the objection is lifted. Or a hold may simply request that backers of the bill consult with them before floor action starts. Holds, it should be emphasized, are a form of tactical intelligence and not generally publicized. But based on archival evidence, hundreds of holds are placed within each party every two-year Congress.[26] Cloture filings, then, are only the most visible manifestation of a deeper obstructionism that began during the expansion of legislative activity in the 1970s Senate.

Surging Partisanship and the New Centralization

Not surprisingly, the expansion of government produced a strong counter-mobilization among conservatives.[27] After the Watergate scandal and Republican electoral losses in 1974 and 1976, the Republican National Committee embraced innovative new communications and fundraising tactics. Beginning in the late 1970s, a host of think tanks and advocacy organizations, including the American Enterprise Institute and the Heritage Foundation, emerged as important sources of conservative policy ideas. During this period, conservative intellectuals popularized the concept of "supply-side economics," which claims that large tax cuts can promote growth with only limited effects on revenue. The supply-side doctrine would drive the GOP domestic policy agenda for the next fifty years. Following the Supreme Court's pro-choice decision in the 1973 *Roe v. Wade* case, right-to-life forces mobilized in opposition, which opened up major new cleavages on abortion and social issues that increasingly sorted Americans by party. And in 1980, Ronald Reagan harnessed these forces to win the presidency and shift the national policy agenda toward the right.

Figure 1-3 summarizes the consequences for roll-call behavior in the Senate. The figure shows the percentage of votes where a majority of one party voted differently than a majority of the other. Since 1980, the level of party voting has increased steadily over time and reached historic levels by the 2010s. Whereas only one third of Senate roll calls were party line in the late 1960s, by the 2010 peak, that fraction had doubled. Partisan behavior was especially pronounced on amendment and cloture roll calls. Whereas obstructionism in the 1970s had largely focused on the parochial priorities of individual members, by the 1990s, it generally was organized by the minority leadership and aimed at delaying or blocking the policy program of the majority party.[28] As the figure shows, entire bills and nominations have to clear so many hurdles to even arrive at final passage that when such votes occur, there often is ample cross-partisan support.[29] Amendments, in contrast, target specific provisions within a broader measure and are thus more likely to generate conflict of all forms. The fact that so many bills pass with bipartisan support, in other words, should not mask the over-time growth in Senate partisanship.

The conservative countermobilization produced a marked shift to the right in certain policy areas. Major GOP tax cuts in 1981, 2001, and 2017 have restricted federal revenue and, in the eyes of economic conservatives, partially "starved the

FIGURE 1-3   ■   Party-Line Divisions by Motion Type, 1969–2019
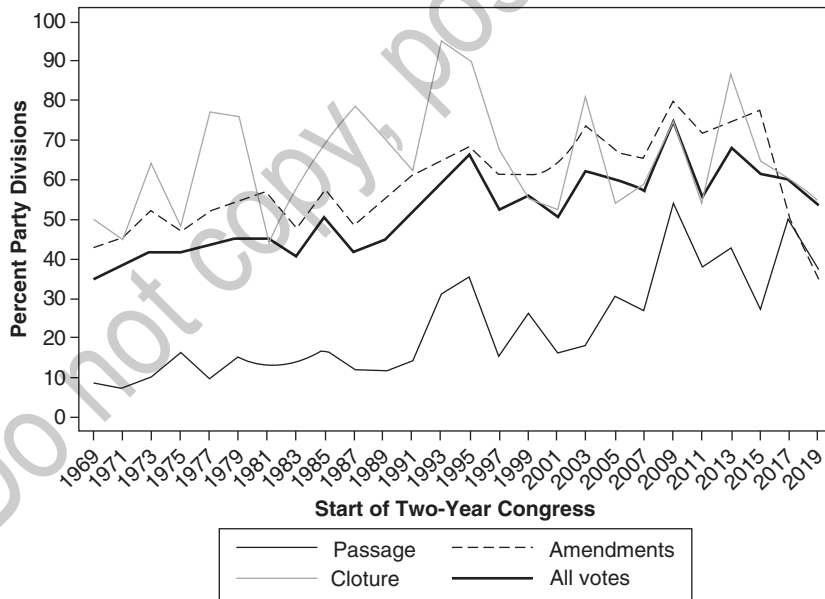
Source: Compiled by the authors from Jason Roberts, David Rohde, and Michael H. Crespin, *Political Institutions and Public Choice Senate Roll-Call Database.*

beast" of big government. But the new programs and other progressive policy changes of the 1960s and 1970s have mostly endured, and in terms of policy impact, the countermobilization was only marginally successful.[30] Indeed, in the decades to come, major new domestic programs were enacted that significantly expanded the scope of government—the 2003 addition of prescription drug coverage to Medicare and the 2010 passage of the Affordable Care Act are just two of the most prominent examples. Politically, however, the conservative countermobilization resulted in growing disagreement over policy between the two parties and increased polarization at all levels. While the Democrats continued to be a coalition of disparate constituencies focused on the delivery of government services, the GOP evolved into a more overtly ideological party composed of economic and social conservatives united in opposition to the leftward drift of policy.[31] By 2020 in the age of Trump, moderate Republicans were virtually extinct. Not surprisingly, rising party polarization mostly derives from GOP shifts to the conservative extreme rather than Democratic movements in the other direction.[32]

As the agenda turned partisan, individual senators were less driven to shape policy with a flurry of floor amendments. For one, there was a reduction in the number of amendable measures brought to the floor. More and more, legislation was considered via large omnibus packages rather than piecemeal as separate bills. One reason was budgetary reforms adopted in 1974 that created a new "reconciliation" process, which in the 1980s became a vehicle for enacting a wide range of policy changes. Under the rules, budget measures cannot be filibustered, and the emergence of reconciliation as perhaps the central legislative initiative of the year reinforced the tendency toward fewer, larger bills and a more constrained set of amendment targets. Increasingly, key decisions were made at the leadership level.

Structural changes to the federal budget reinforced the turn toward centralization and reduced member activism.[33] The successive rounds of GOP tax cuts helped create an enduring era of fiscal stress and deficit politics that limited the funds necessary to propose new spending and made passage of the annual appropriations bills used to fund the discretionary portions of the budget more difficult. Indeed, as early as the late 1990s, most of the freestanding spending measures failed to clear the Senate, and the Congress instead was forced to rely on massive continuing resolutions and omnibus spending packages to fund the government. The striking growth of "entitlement" programs, such as Social Security and Medicare, also had consequences for Senate operations. In the late 1960s, roughly a third of federal expenditures were for entitlements, but by the early 1980s, that portion was about fifty percent and by the 2010s had reached 60 percent. Changes to the larger entitlement programs are generally made through the reconciliation process as opposed to periodic reauthorizations or annual appropriations, which reinforced the shift toward fewer, larger bills, centralized decision making, and more partisanship.[34]

Finally, beginning in the 1990s, these trends were exacerbated by the advent of *message politics*. Party messages are the "issues, themes, and policy symbols that legislators believe will generate a positive response to their party among voters." And

message politics refers to "the interrelated set of electoral, communications, and legislative strategies that congressional parties employ to advance their respective messages."[35] The heightened policy agreement within each party facilitated coordinated messaging, as did innovations in communications technology and practice, especially the decision to televise floor proceedings (1979 in the House and 1986 in the Senate). Party margins within both chambers also tightened during this period. As members came to believe that majority control of the Senate and House was up for grabs, the payoff to promoting the party message increased.[36] In the Senate, the majority leadership responded with a range of tactical maneuvers aimed at limiting message amendments from the minority party—we explore such tactics in the section that follows.

Importantly, subsequent developments in the media environment reinforced the rise of message politics. Between 1996 and 2004, cable news emerged as a significant competitor to more established methods of communication, like network and local television. Fox and MSNBC helped lay the foundations for more partisan national news coverage and thus more opportunities for party leaders to communicate their messages. The development of internet-based interactive communications, such as email, texting, and blogging, and eventually social media, like Facebook and Twitter, further expanded the communications world of the Senate. Theoretically, the more open communications environment might have posed a challenge for leadership attempts to coordinate messaging across the relevant rank and file. But the proliferation of outlets has actually produced more consistent party messaging and, especially in the case of Twitter, served to amplify partisan polarization in the content of senators' communications with the public.[37]

LEADERS AND FOLLOWERS

In short, the disheartening sense that the contemporary Senate is broken is rooted in decades of transformation to its internal operations. Today, important decisions are often made at the leadership level, obstructionism is rampant and usually partisan, and opportunities for meaningful participation by rank-and-file members have plummeted. All too frequently, partisan posturing takes precedence over bargaining and compromise. But Senate leaders, we have emphasized, also lack formal agenda-setting powers, and chamber rules and traditions provide individual members of both political parties with ample opportunity to participate—if they so choose. Why, then, has the underlying procedural context not countervailed the striking trends outlined in the previous section? Put differently, how has such a procedurally impaired majority leadership managed to pull off this transition?

Leverage

Although constrained, the majority leadership still has important leverage. For one, leaders serve as agents for rank-and-file members of their party.[38] Individual

lawmakers expect them to promote the collective interests of their copartisans and manage the agenda. Even in a period marked by intense polarization, the two parties have internal divisions. Some are due to intraparty factions while others derive from the personal agendas of individual members. But because members perceive that their personal reelection prospects are linked somewhat to their party's performance within the Senate, there are incentives for them to defer to leaders—even though these leaders may not have abundant formal powers for forcing cooperation.

Senate leaders on both sides of the aisle also have important informational advantages. Both parties, for instance, have whip organizations that query individual members about their emergent positions on pending matters.[39] Whip operations in the Senate are smaller and less active than are their House counterparts. The permissiveness of Senate procedure makes chamber deliberations less predictable than the more scripted House, and it can be difficult to gauge which amendment votes to whip when the majority leadership has limited control over what gets considered. Yet for both the majority and minority parties, the whips provide leaders with significant political intelligence that can be used to promote the party program. In the Senate, information gathering often takes place during the weekly party lunches, where members meet in private to discuss strategy.

As mentioned, the most consequential formal power extended to the Senate majority leader is the right to first recognition on the floor. The ability to gain recognition enables the majority leader to exert a degree of *negative agenda control.*[40] Any member can propose that a bill or nomination be brought before the full body. But because the majority leader is recognized first, he or she can forestall such attempts and control which measures are considered. This blocking power is limited in scope—if a measure is not scheduled for floor action by the majority leader, backers may offer it as an amendment to another bill. And the lack of a general germaneness requirement in Senate rules can provide dissident lawmakers with multiple points of access on the floor. Still, in conjunction with certain additional tactics, the majority leader's ability to not call up a bill for floor action is an important source of leverage.

Along those lines, the right of first recognition also enables the majority leader to limit access to the floor amendment process once a measure has been placed on the schedule. Based on chamber precedent, at any point in time, only a limited number of amending opportunities, called "branches" to the amendment "tree," are available for the consideration of alternatives. As a result, the majority leader can preempt opportunities to offer amendments by filling in the slots permitted by chamber precedent with his or her own proposals.[41] Often, the ability to block amendments in this manner is only temporary. As the amendment process continues, additional slots may open for the consideration of alternatives. And if the majority leader pushes too far, the affected legislators can retaliate by filibustering. Still, such tactics provide the majority leadership with tactical advantages. Amendment votes are essentially pairwise comparisons—between, for instance, an amendment and the bill as introduced or between an amendment and a substitute

proposal offered by someone else. By selectively filling in amending opportunities, the majority leader can determine how competing proposals "pair off" on the floor and thus how the positions members take are portrayed to outside audiences.[42]

Cloture, of course, can be used by determined majorities to move legislation and nominations to passage. Although chamber leaders can use reconciliation to pass important, budget-related portions of the party agenda without having to adjust for dilatory behavior, on most other legislation, the minority can filibuster and cloture is the primary tactical response available to majority party leaders.[43] The 60 votes necessary to invoke cloture, however, sharply limits its utility for the majority leadership. Except during 2009, the size of the Senate majority has not been sixty or more since the 1970s, and in a polarized Senate, majority leaders cannot count on much support on cloture from the minority. Still, even in a Senate divided by party, there occasionally is sufficient cross-partisan support to clear the sixty-vote hurdle. And after cloture is invoked, only germane amendments that already have been filed are permissible. Successfully invoking cloture, in other words, does not just secure a vote on the contested question. It also provides stringent limitations on amending and debate that the majority leadership can exploit. In the 1990s, as the chamber grew more partisan, majority leaders responded by filing for cloture early in the process of floor consideration, often on the motion to proceed with a measure or nomination in the first place. By the 2000s, cloture filings disproportionately targeted motions to proceed.[44] If cloture can be invoked early in the decision-making process, access to the floor by individual senators is substantially restricted. And filling the amendment tree post-cloture can produce a floor process almost as controlled as decision making in the House.[45]

On the *minority* side of the aisle, then, chamber procedures often provide leaders with the leverage necessary to force concessions or even derail the policy program of the majority party. The systematic use of obstructionism as a partisan strategy can be traced to the minority leadership of Republican Robert J. Dole, Kan., during 1993–1994, when Democrats controlled both chambers of Congress and the White House. Indeed, the role of the Senate minority leader tends to be especially important during periods of unified party government. Under such conditions, the obstructionist potential of Senate rules provides the out-party with a critically important bargaining chip in the lawmaking process. While the minority leader in the House may be all but invisible during periods of unified partisan control, the role of the Senate minority leader is actually elevated because of the partisan filibuster. Often this individual becomes the public face of his or her party in Washington national politics.

In contrast, the primary leverage of majority party leaders in the modern Senate mostly derives from the deference they receive from the majority rank and file and the critical role they play in coordinating party strategy. Not surprisingly, the bargaining styles of majority leaders have varied substantially over time, largely in response to contextual considerations. Mike Mansfield, D-Mont., for example, majority leader during 1961–1976, decentralized power within the chamber and

facilitated the activist inclinations of his colleagues. Robert C. Byrd, D-W.Va., as majority leader during much of the 1970s and 1980s, was a skilled tactician who developed the scheduling innovations necessary to manage the activist agenda of the time. Among Republicans, Howard Baker, Tenn., was majority leader in the early years of the Reagan administration and used the power of persuasion to build support among his colleagues for the president's agenda. Trent Lott, Miss., who was GOP majority leader during 1996–2001, was a legislative pragmatist who focused on managing relations between party traditionalists and the emergent faction of conservative ideologues. As message politics became more common in the 1990s, he also made innovative use of the amendment process to better communicate the GOP agenda to important outside actors. Still, to understand the operations of the current Senate, by far the most important party leaders have been Democrat Harry Reid, majority leader during 2007–2014, and Republican Mitch McConnell, majority leader during 2015–2020. Together, their impact on the contemporary chamber has been profound.

Reid and McConnell

Harry Reid became majority leader when the Democrats secured majority status in the 2006 midterms. For the first two of his eight years in the position, Reid confronted the GOP administration of George W. Bush, and for the last six, fellow Democrat Barack Obama was president. The House was also in Democratic hands during 2007–2010 and then returned to GOP control after the 2010 midterms. As a result, Reid's time as majority leader corresponded with divergent partisan configurations in Washington. A continuity, however, was his attempt to harness the limited powers of his position to tighten controls over the floor and further centralize power within the Senate Democratic caucus. His historic move in 2013 to end filibusters on executive branch and lower court nominations is only the most prominent example of Reid's hardball behavior. In comparison to previous Democratic leaders, he was more inclined to insert himself into the substance of legislating, often before the committee process was complete. The Senate-passed version of the landmark "Obamacare" measure, for example, was largely negotiated in Reid's leadership office rather than the committees with jurisdiction over health. After Democrats lost their filibuster-proof majority in 2010, Reid ensured that the modifications necessary to conform the House- and Senate-passed versions were considered via reconciliation, and thus needed only a simple majority to pass.[46] On the historically important stimulus bill of 2009, Reid was principle author of the legislation in the Senate, and he played a pivotal role working with chamber centrists to implement the changes necessary for passage.[47]

Perhaps the most telling indicator of Reid's aggressive leadership was the frequency with which he filled the amendment tree to block alternatives. As mentioned, the increased use of the tactic by chamber leaders is associated with burgeoning partisan polarization in the chamber. But a closer look at the timing

and content of these events indicates that the Reid leadership was associated with a qualitative jump in "tree filling." Figure 1-4 shows the average number of times per Congress that the last eight majority leaders took steps to fill the tree.[48] While partisan polarization began in the early 1980s and increased steadily thereafter, a noticeable rise in amendment tree filling occurred during Reid's time as majority leader.

A glance back at the cloture evidence of Figure 1-2 provides the reason. During 2007–2008, the first Congress in which Reid served as majority leader, the number of cloture filings nearly doubled and remained at this elevated level in the years that followed. The uptick in cloture attempts resulted from the highly obstructionist leadership style embraced by Mitch McConnell, who became GOP minority leader at the beginning of 2007. Indeed, McConnell made obstructionism the centerpiece of Republican strategy in the chamber and significantly stepped up use of the filibuster. When Barack Obama became president, McConnell was especially active in blocking consideration of judicial and administrative nominations. In December 2012, he even filibustered one of his own bills, which he had introduced to force Democrats to cast difficult votes on one of their proposals. Reid called the bluff, and McConnell reversed course and blocked action.[49]

FIGURE 1-4 ■ Majority Leadership Attempts to Fill the Floor Amendment Tree, 1985–2019
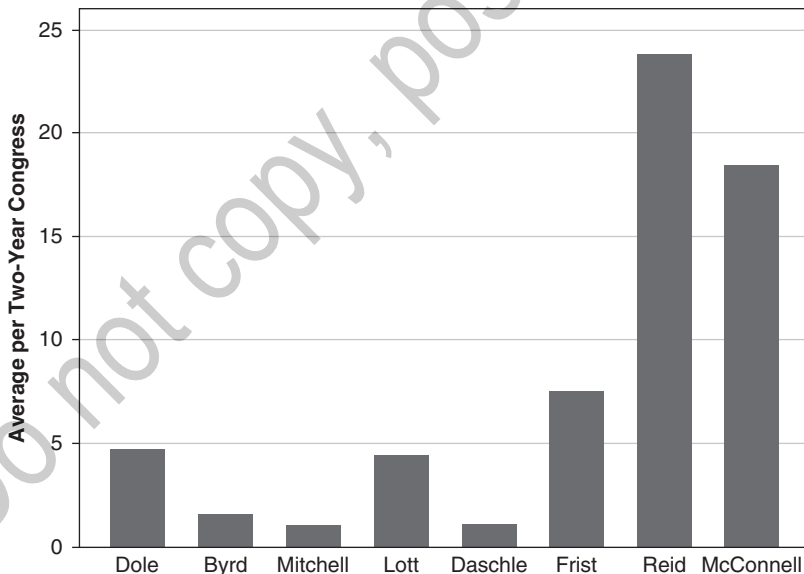
Source: Compiled by the authors from data provided by Christopher M. Davis, Congressional Research Service.

To be sure, McConnell's hyper-obstructionism meshed with the intense polarization of the era and the difficulty of forging the bipartisan compromises necessary to proceed with unanimous consent. But once again, it also is critical to consider the nature of the substantive disagreements between the parties. With the rise of movement conservatism during the 1980s and 1990s, the Republicans became the party of limited government, at least on programs that would primarily benefit Democrats, while Democrats continued to emphasize the distribution of governmental services. The more ideological foundations of the GOP coalition were reinforced by the burgeoning populist sentiment that would erupt in the Tea Party movement.[50] Survey evidence indicates that Republican voters place a greater priority on ideological purity over compromise than do citizens who affiliate with the Democrats.[51] And GOP members of the House and Senate are likewise more inclined to dig in and refuse to compromise than are their Democratic counterparts.[52] As a result, the scorched-earth tactics adopted by McConnell as minority leader and the hard bargaining that characterized his tenure as majority leader reflected the party's turn to the right and the rise of conservative populism. Reid responded by ramping up his own efforts to control the floor agenda.[53] The sharp increase in attempts to restrict the amendment process was an indicator, as was his 2013 decision to restrict the filibuster on nominations.

In 2014, Republicans won majority control of the Senate and McConnell became majority leader. The GOP also controlled the House, but Democrat Barack Obama remained as president. As the cloture data in Figure 1-2 indicate, the minority Democrats adopted the McConnell game plan and used actual and threatened filibusters to block majority party initiatives. And like Reid before him, McConnell made extensive use of cloture, attempts to fill the amendment tree, and other tactics aimed at retaining control of the floor. On Obama priorities, he used the negative agenda control made possible by priority recognition to block floor action. Most prominently, in 2016, when the administration nominated moderate jurist Merrick Garland to the U.S. Supreme Court, McConnell refused to allow consideration in the Judiciary Committee or action by the full Senate, citing a nonexistent tradition that Supreme Court nominees should not be confirmed in the last year of a presidential term.

During 2017–2018, Republican Donald Trump was president and the GOP had majority status in both the Senate and House. Faced with unified Republican control in Washington, Senate Democrats, now led by Minority Leader Chuck Schumer, relied on their obstructionist prerogatives to delay or block the Republican agenda. After Trump nominated Neil Gorsuch to fill the empty Supreme Court seat, McConnell and the Republican majority quickly ended filibusters on nominations to the high court and confirmed Gorsuch by a near party line vote. After months of negotiations, McConnell and House Speaker Paul Ryan, R-Wis., were able to pass major tax reductions through the reconciliation process, which of course precluded a Democratic filibuster. On many other issues, however, the main challenges confronting McConnell originated from within his own

conference rather than chamber Democrats. He was integrally involved in crafting legislation to repeal Obamacare, but even though the legislation was considered according to reconciliation procedures, it still went down in defeat when John McCain cast the pivotal vote in opposition.[54] And as mentioned in the illustration that opened this chapter, Senate Republicans were unable to advance immigration reform during 2018.

That November, Democrats won majority control of the House, and the strategic context confronting McConnell shifted yet again. House Democrats, under the leadership of Speaker Nancy Pelosi, Calif., passed over a hundred significant measures during 2019. Included were bills dealing with gun control, prescription drug pricing, climate change, pension reform, and paycheck fairness, among other Democratic priorities. McConnell used his first recognition rights to block chamber action on the House measures. In theory, individual members could have forced any of these items onto the agenda, but Republicans backed McConnell's tactics and there were few opportunities to advance the proposals as nongermane amendments to other legislation. Instead, the majority leader and his GOP colleagues concentrated on confirming scores of Trump-backed judicial nominees.[55] Democrats responded with party messages aimed at publicizing McConnell's behavior. In December, for instance, they took staged photos of a massive stack of House-passed bills that were languishing in the Senate. "This is the pile of House-passed bills, 90% bipartisan, dead on Mitch McConnell's desk in the Senate #LegislativeGraveyeard," tweeted Sheldon Whitehouse, D-R.I., along with a photo of the aforementioned pile.[56] McConnell himself characterized his role as the "Grim Reaper" for progressive legislation.[57] It is not unusual, of course, for legislation passed by the House to die in the Senate.[58] Still, the measures passed by House Democrats in 2019 only to languish on McConnell's desk were substantively important. And while they mostly united Democrats, many would have divided the Republican Conference. Rank-and-file members of the partisan majority expect their leaders to block from the agenda proposals that would be opposed by a majority of their party.[59] As a result, McConnell's influence over the floor agenda resonated with the goals of most members on his side of the aisle. Although the aggressive tactics embraced by Reid and McConnell are a departure from Senate tradition, in other words, they reflect the needs and demands of contemporary members and, for this reason, constitute the "new normal" for Senate operations.

This new normal was on full display during the impeachment trial of Donald Trump in early 2020. Polls indicated that about 93 percent of Republicans opposed conviction, and McConnell fully recognized that the Senate GOP would have to acquit the president.[60] Initially, his preference was for a speedy trial or even a vote to dismiss the evidence without any trial at all. Republicans, however, were defending 23 seats in the upcoming elections; at least four of which were in states considered to be electorally competitive.[61] As a result, McConnell had to construct a process that allowed endangered Republicans to tell their constituents they had at least considered the charges. From the beginning, the pivotal procedural question

was whether or not to subpoena witnesses and documents. McConnell, the White House, and most GOP members opposed subpoenas, while Democrats were united in favor. To maintain unity within the Republican Conference, McConnell agreed to a vote about the matter, to occur after the presentation of evidence and a 16-hour question period. On the last day of January, the Senate voted along near party lines against allowing subpoenas. Among Republicans, only Susan Collins of Maine and Mitt Romney of Utah broke with McConnell on the roll call and voted with the Democrats, who were unanimous in support of allowing new evidence. The next week, once again dividing by party, the Senate found Trump "not guilty" on the charges of abuse of power and obstruction of justice. This time, the only defection from the party position was by Romney on the obstruction charge. Importantly, McConnell's vise-like grip over the impeachment process meshed almost perfectly with the goals of rank-and-file Republicans, who mostly wanted to acquit and move on. And although Romney's break drew a twitterstorm of abuse from Trump and his backers, McConnell emphasized that there would be no retribution from the leadership. "I think Senator Romney has been largely supportive of most everything we've tried to accomplish," the majority leader observed. "The most important vote is the next vote."[62]

THE MEANING OF DYSFUNCTION

Overall, what should we make of the contemporary Senate? Should the practices we have described be viewed as primarily dysfunctional or as a series of functional adaptations to an altered political environment? The answer is more complicated and nuanced than many Senate critics claim and depends in part on how "dysfunction" is defined.

From the centralization of activity at the leadership level to the decline of the amendment process and the spread of party-based obstruction, all of the defining characteristics of the contemporary Senate serve a purpose and, to some extent, can be viewed as functional.[63] Centralized decision making is rooted in changes to the policy agenda and the budget that date to the 1970s. When more decisions are made on fewer, larger bills, activity almost naturally gravitates upward to the leadership level, and the opportunities for rank-and-file activism decline. As a result of heightened partisan polarization and the rise of message politics, it makes perfect sense that members would rely more on leaders to construct the party program and coordinate strategy. In fact, the rise of message politics may make centralized decision making a requirement for advancing legislation. Often, the only way to secure the concessions and bargains necessary for passage is to conduct these negotiations outside the public eye, under leadership direction, and via massive, take-it-or-leave-it, legislative packages.

Even the soaring levels of party-based obstructionism are not necessarily tantamount to dysfunction. For one, significant legislation continues to advance

through the chamber. During 2017–2018, for example, amid widespread complaints that the Senate was broken, it still managed to pass major tax cuts, significant budgetary changes, several disaster relief measures, legislation to combat the opioid crisis, criminal justice reform, and a major farm bill. Most of these measures also had considerable support from chamber Democrats on passage, in part due to the cross-partisan incentives that the filibuster creates.[64] And even when the result is gridlock, the posturing and position taking of message politics may still clarify what the parties stand for in the minds of voters and thereby help them hold accountable their elected representatives.[65]

If our focus primarily is on the construction and passage of legislation in a narrow sense, then the contemporary Senate is more functional than not. Indeed, Senate action in March 2020 in response to the Covid-19 crisis can serve as a "bookend" of sorts with the immigration illustration that opened this chapter. The social distancing policies put in place to contain the epidemic, of course, produced a dramatic contraction of economic activity, which in turn created enormous pressure on the Congress to quickly take steps to shore up the economy. That month, the legislative centerpiece was the largest stimulus package in American history, called the "CARES Act," which passed the Senate on March 25, 2020, by a 96-0 vote. One week earlier, McConnell had introduced a trillion-dollar package, equally divided between direct aid to individuals, on the one hand, and assistance for small business and major corporations, on the other. As bipartisan negotiations over the McConnell proposal ensued, the package doubled in size to $2 trillion. And to secure Democratic support, increased funding was directed to health care and unemployment, and oversight over the corporate bailout portion was tightened considerably. By most accounts, the rapid enactment of the 880-page legislation constituted an historic success for the Senate.

Importantly, this achievement was made possible by the same institutional practices routinely singled out as signs of Senate dysfunction.[66] There was no committee stage to speak of on the measure, and instead, key decisions were made privately at the leadership level. As with immigration reform, the base bill brought before the body was an unrelated shell, which was supplanted on the floor by the massive stimulus package. Throughout, partisan obstruction played a critical role. To force McConnell to respond to concerns raised by Senate Democrats, as well as Democrats in the House, Schumer repeatedly denied the majority leader the 60 votes he needed to invoke cloture and bring the legislation to a vote. As action within the Senate stalled, the stock market plummeted and infighting between the parties turned corrosive. But for a brief moment, the severity of the underlying crisis brought the parties together, and a "breakthrough" was announced by McConnell in the Senate chamber at 1:30 in the morning. In the case of the Covid-19 crisis, majority party leadership domination, backroom deal making, limited participation by the rank-and-file, and the minority's ability to leverage concessions with obstruction produced policy responsiveness by the Senate that had not been seen in quite some time.

However, if we consider more conventional issue environments and legislation or shift our attention away from the production of legislation and toward the Senate's capacity for deliberation, then the case for dysfunction grows stronger.[67] By "deliberation," we are referring to the information gathering, negotiation, and bargaining through which a legislative body articulates and integrates the diversity of interests and viewpoints that it confronts. Deliberation concerns *process* and not solely the production of passable bills, and by most accounts, it is fostered when decision making occurs across multiple junctures, some public, where a wide range of members can participate, offer alternatives, and secure votes. As Lee Hamilton, a venerable former member of Congress, once explained, "Every stage is designed to allow [the Senate and House] to explore all aspects of a problem, accommodate different interests, reduce points of friction and difference, and build a consensus in support of a bill. This is how Congress knocks out bad ideas and proposals, and adjusts good ideas to make them better laws."[68]

Negative agenda control, we have seen, is at the very heart of party politics in the contemporary Senate. The majority leadership keeps certain items off the agenda because near unity within the party is not feasible or because such items might divide the majority party and produce the politically difficult votes that can accompany message politics. Senate minorities, for their part, use threatened and actual filibusters to block chamber action unless their priorities are accommodated. By design, the conflict that results is structured along partisan lines, which can distort and truncate the legislative agenda. Major issues go unaddressed. There are fewer opportunities for rank-and-file members to innovate and devise proposals that do not divide their colleagues by party. The base of expertise upon which the chamber can draw narrows accordingly. And although there is evidence that message politics and the centralization of legislative responsibility can help voters draw distinctions between the parties, it is not at all clear that the end result is "clarification." Instead, the main effect may be to obscure the potential for common ground.

The dominant roles played by party leaders in crafting the Covid-19 response, for example, resulted in an opaque and highly scripted legislative process, with limited reliance on the substantive expertise of committee members. Not surprisingly, even though both chambers quickly passed legislation, the process of consideration failed to "refine and enlarge the public view," which James Madison portrayed as the *sine qua non* of effective lawmaking. Even though a broad consensus existed among scientists and other informed analysts that major changes in policy and behavior were necessary because of the virus, troubling partisan divisions were apparent among activists and voters. According to public opinion polls conducted around the time of Senate action on CARES, nearly 70 percent of Democrats feared that they or a family member might contract Covid-19, but the analogous rate among GOP identifiers was just 40 percent. While more than 60 percent of Democrats planned to avoid large gatherings, only 30 percent of Republicans felt the same way.[69] By most accounts, this divide derived in part from

divergent messaging about the pandemic by party elites, with Democratic leaders generally embracing the scientific consensus and Republicans more inclined to express skepticism or focus on shifting responsibility from the Trump administration.[70] Message politics may divide, but it does not necessarily inform.

In the end, then, it is the remarkable ability of leaders and rank-and-file members to adjust to recent developments in American politics that points to the real meaning of Senate dysfunction. Especially in the presence of crisis or when the demands for action are otherwise strong or when issues do not mesh cleanly with one or both of the party agendas, the chamber is fully capable of producing major legislative enactments and does so periodically. However, the many adaptations that senators have embraced in recent decades both reflect and reinforce broader forces that encourage posturing, polarization, and the merger of party campaigning with governance, which in turn undermines their capacity to deliberate. There are signs that the sharp limits that have been placed on rank-and-file participation may produce a backlash within the chamber, and the potential benefits of additional restrictions on the filibuster have been actively discussed for years. But the transformations that have occurred within the Senate help members achieve their personal goals, and major change is unlikely absent significant alterations in the political environment.

The main argument of this essay is that institutional developments within the Senate are rooted in the substance of partisan discourse and the contents of the policy agenda. The remarkable legislative activism of the 1970s, we have seen, was inseparable from the expansion of government that occurred around that time. The conservative countermobilization that followed, deficit politics, and the durability of "big government" liberalism helped produce the intense partisan polarization and centralization of power that Senate critics now portray as dysfunction. In Spring 2020, there were signs that major recalibrations in political discourse and the scope of government might be underway, with potential implications for the internal operations of the Senate. The CARES Act alone constituted a government intervention in the market that was unprecedented in magnitude. Together, federal and state government shut down much of the U.S. economy to mitigate spread of the virus. For many, the daily news coverage of infections and death underscored major holes in the health care system, the social safety net, and public investment more generally. Concluded one observer, "The pandemic has exposed crippling weaknesses in the federal government and troubling vulnerabilities in society that will be more difficult to ignore when the crisis begins to ease. For the first time, many Americans are looking to government for their very economic survival. In time, that could make them look at government differently."[71]

If so, one consequence might be a dampening of partisan polarization throughout the country and in Washington, as Democrats and Republicans alike confront a common threat to their physical and economic well-being. Along those lines, the crisis could elevate popular respect for expertise and science and reduce the political payoffs to messaging and spin. Among voters, support for government

could broaden and deepen. And the sheer complexity of developing a long-term response might activate the entrepreneurial impulses of rank-and-file lawmakers on Capitol Hill. The wrenching events of 2020, in other words, might create new incentives for senators to work in public across party lines, rely less on party leaders and more on committee-based expertise, and engage in legislative activism akin to the patterns we observed during the governmental expansions of the 1960s and 1970s.

On the other hand, if the public health and economic recoveries from the pandemic turn out to be V-shaped, as many predict, and the disruptions of 2020 are massive but short-lived, the prospects for seismic shifts in the political and policy environments fall accordingly. Dysfunctional or not, under such circumstances, the signature characteristics of the contemporary Senate would probably continue for the foreseeable future. But either way, the troubling events of 2020 demonstrate just how critical a properly functioning Senate can be to the welfare of the nation. Taken to their extremes, partisan posturing, a disinclination to accept middle ground, and a dearth of informed public deliberation eventually could impede the country's ability to confront dire national emergencies. And contrary to Mitch McConnell's adage, if such a crisis of government ever occurs, the most important vote for senators may no longer be the next vote but the one they just cast.

Notes

1. 70 former U.S. Senators, "The Senate Is Failing to Perform Its Constitutional Duties," *The Washington Post,* February 25, 2020.

2. Jennifer Manning, "Membership of the 116th Congress: A Profile," Congressional Research Service, https://crsreports.congress.gov/product/pdf/R/R45583.

3. Scott Clement and Dan Balz, "Partisan Divisions Over Immigration Widen After a Year of Turmoil at Border," *The Washington Post*, September 9, 2019, https://www.washingtonpost.com/politics/partisan-divisions-over-immigration-widen-after-a-year-of-turmoil-at-border/2019/09/09/2b4e6482-cfdf-11e9-8c1c-7c8ee785b855_story.html.

4. "Most Border Wall Opponents, Supporters Say Shutdown Concessions Are Unacceptable," *Pew Research Center*, January 16, 2019, https://www.people-press.org/2019/01/16/most-border-wall-opponents-supporters-say-shutdown-concessions-are-unacceptable/.

5. Danielle Kurtzleben, "What the Latest Immigration Polls Do (And Don't) Say," NPR, January 23, 2018, https://www.npr.org/2018/01/23/580037717/what-the-latest-immigration-polls-do-and-dont-say.

6. Jonathan Easley, "Poll: Americans Overwhelmingly Oppose Sanctuary Cities," *The Hill*, February 21, 2017, https://thehill.com/homenews/administration/320487-poll-americans-overwhelmingly-oppose-sanctuary-cities.

7. For a discussion of the first UCA request, consult *The Congressional Record*, February 13, 2018, p. S894. Discussion of the second request occurs around p. S903.

8. Trump's decision to issue a veto threat on the centrist alternative, as well as the proposal's uncertain prospects in the House, further undermined its chances on the Senate floor. Still, advancing an immigration reform package through the Senate likely would have increased pressure on the White House and Republicans on the other side of the Capitol to work toward a final compromise.

9. For a summary, consult Richard F. Fenno Jr., *The United States Senate: A Bicameral Perspective* (Washington, DC: The American Enterprise Institute, 1982).

10. On the implications of popular election, see Wendy J. Schiller and Charles Stewart III, *Electing the Senate: Indirect Democracy Before the Seventeenth Amendment* (Princeton: Princeton University Press, 2015).

11. Frances E. Lee and Bruce I. Oppenheimer, *Sizing Up the Senate: The Unequal Consequences of Equal Representation* (Chicago: University of Chicago Press, 1999).

12. Prominent examples include Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore: Johns Hopkins University Press, 1989); Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, DC: Brookings Institution Press, 1989); and Frances E. Lee., *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016).

13. One exception was 1995, right after the switch to Republican majorities in both chambers and the emergence of Newt Gingrich, R-Ga., as House speaker. That year, the agenda of the new Republican majority was broad and controversial, and legislative activity ramped up on both sides of the Capitol.

14. More precisely, during 2019, twenty amendments were the subject of a direct roll call on the Senate floor and another five were the subject of votes on cloture. In 2014, the analogous numbers were twenty-one and three.

15. On the institutional consequences of polarization, see especially David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991). For a treatment of the importance of electoral margins, consult Frances E. Lee, *Insecure Majorities*. And a discussion of the inter-branch context is provided by Gisela Sin, *Separation of Powers and Legislative Organization* (New York: Cambridge University Press, 2015).

16. The relevant scholarship is vast, but for a start consult, Sinclair, *The Transformation of the U.S. Senate*; Lawrence C. Dodd, *Thinking About Congress* (New York: Routledge, 2012); Paul Pierson and Theda Skocpol, eds., *The Transformation of American Politics: Activist Government and the Rise of Conservatism* (Princeton: Princeton University Press, 2007); and Bryan D. Jones, Sean Theriault, and Michelle Whyman, *The Great Broadening: How the Vast Expansion of the Policymaking Agenda Transformed American Politics* (Chicago: University of Chicago Press, 2019).

17. On the importance of the 1970s for understanding current American politics, see Edward D. Berkowitz, *Something Happened* (New York: Columbia University Press, 2006); and Julian E. Zelizer, *On Capitol Hill: The Struggle to Reform Congress and Its Consequences, 1948-2000* (New York: Cambridge University Press, 2004).

18. David W. Rohde, Norman J. Ornstein, and Robert L. Peabody, "Political Change and Legislative Norms in the U.S. Senate, 1957–74," in *Studies of Congress*, ed. Glenn R. Parker (Washington, DC: CQ Press, 1985).

19. James L. Sundquist, *Dynamics of the Party System: Alignment and Realignment of Political Parties in the United States,* 2nd ed. (Washington, DC: Brookings Institution Press, 1983).

20. Samuel Huntington, *American Politics: The Promise of Disharmony*, Cambridge: Harvard University Press, 1981); Julian E. Zelizer, *On Capitol Hill.*

21. Jack Walker, *Mobilizing Interest Groups in America: Patrons, Professions, and Social Movements* (Ann Arbor: University of Michigan Press, 1991).

22. Sarah Binder, *Minority Rights, Majority Rule* (New York: Cambridge University Press, 1997).

23. Sinclair, *The Transformation of the U.S. Senate.*

24. Data for the 116th Congress are only for the first session, 2019.

25. Bruce I. Oppenheimer, "Changing Time Constraints on Congress: Historical Perspectives on the Use of Cloture," in *Congress Reconsidered,* 3rd ed., ed. B. Oppenheimer and L. Dodd (Washington, DC: CQ Press, 1985).

26. For evidence about the incidence of GOP holds during the 1970s and early 1980s, see C. Lawrence Evans and Daniel Lipinski, 2005, "Obstruction and Leadership in the U.S. Senate," in *Congress Reconsidered,* 8th ed., ed. L. Dodd and B. Oppenheimer (Washington, DC: CQ Press, 2005). Analogous evidence for the late 1980s and early 1990s is provided by Nicholas O. Howard and Jason M. Roberts, "The Politics of Obstruction: Republican Holds in the U.S. Senate," *Legislative Studies Quarterly* 40 (2015): 273–94. Although sometimes treated as a type of hold by leadership staff, simple requests for notification

about some aspect of floor action on a measure are not included in the hold totals referenced in this chapter. According to conversations with Democratic staff, hold activity on that side of the aisle is roughly commensurate.

27. On the conservative counter mobilization, see especially Geoffrey Kabaservice, *Rule and Ruin* (New York: Oxford University Press, 2012); and Barbara Sinclair, *Party Wars: Polarization and the Politics of National Policy Making* (Norman: University of Oklahoma Press, 2006).

28. Steven S. Smith, 2014, *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate* (Norman, OK: University of Oklahoma Press, 2014).

29. In Figure 1-3, the category for final passage roll calls is broadly defined and includes the passage of bills, resolutions, treaties, and also conference reports. Cloture votes on amendments are included in the "cloture" category rather than the category for amendments. Alternative approaches would not alter the substantive interpretations.

30. See especially Steven Teles, 2007, "Conservative Mobilization Against Entrenched Liberalism," in *The Transformation of American Politics: Activist Government and the Rise of Conservatism*, ed. P. Pierson and T. Skocpol (Princeton: Princeton University Press, 2007).

31. Matt Grossmann and Daniel Hopkins, *Asymmetric Politics: Ideological Republicans and Group Interest Democrats* (New York: Oxford University Press, 2016).

32. Nolan McCarty, *Polarization: What Everyone Needs to Know* (New York: Oxford University Press, 2019).

33. Roger Davidson, "The New Centralization on Capitol Hill," *The Review of Politics* 50 (1988): 345–64.

34. Massive budget deficits also meant that entitlement policy changes might necessarily include reductions of some form. The major entitlement programs are highly popular with voters, and individual senators are not inclined to offer such proposals as floor amendments that can be blamed on them as individuals. Instead, entitlement "reforms" are generally crafted at the leadership level and included in the base bills brought before the full body.

35. C. Lawrence Evans, "Committees, Leaders, and Message Politics," in *Congress Reconsidered,* 7th ed., ed. L. Dodd and B. Oppenheimer (Washington, DC: CQ Press, 2001). Organized party messaging originated in the House during the late 1980s under the leadership of then GOP whip Newt Gingrich. House Democrats quickly adopted the innovation, and by the mid 1990s, the tactic had spread to the Senate. For background, consult Sean

Theriault, *The Gingrich Senators: The Roots of Partisan Warfare in Congress* (New York: Oxford University Press, 2013).

36.   See especially Frances E. Lee., *Insecure Majorities.*

37.   Jason Gainous and Kevin M. Wagner, *Tweeting to Power: The Social Media Revolution in American Politics* (New York: Oxford University Press, 2014); Matthew E. Glassman, Jacob R. Strauss, and Colleen J. Shogan, "Social Networking and Constituent Communication: Member Use of Twitter During a Two-Week Period in the 111th Congress," Congressional Research Service, 2010, https://fas.org/sgp/crs/misc/R41066.pdf; Justin Grimmer, *Representational Style in Congress: What Legislators Say and Why It Matters* (New York: Cambridge University Press, 2013); Annelise Russell, "U.S. Senators on Twitter: Asymmetric Party Rhetoric in 140 Characters," *American Politics Research* 46 (2017): 695–723.

38.   Barbara Sinclair, *The Transformation of the U.S. Senate.*

39.   C. Lawrence Evans, *The Whips: Building Party Coalitions in Congress* (Ann Arbor: University of Michigan Press, 2018).

40.   Chris Den Hartog and Nathan W. Monroe, *Agenda Setting in the U.S. Senate: Costly Consideration and Majority Party Advantage,* (New York: Cambridge University Press, 2011).

41.   Wendy J. Schiller, "Trent Lott's New Regime: Filling the Amendment Tree to Centralize Power in the U.S. Senate" (presentation at the annual meeting of the American Political Science Association, Washington, DC, 2000); Steven S. Smith, *The Senate Syndrome.*

42.   Some scholars claim that majority leaders also use "motions to table" to secure a degree of negative agenda control during the floor amendment process, but the best evidence indicates that the main impact is streamlined decision making, as opposed to majority party advantage. See Steven S. Smith, Ian Ostrander, and Christopher M. Pope, "Majority Party Power and Procedural Motions in the U.S. Senate," *Legislative Studies Quarterly* 38 (2013): 205–36.

43.   In the Senate, the "Byrd Rule" limits amendments on reconciliation bills to items that alter spending or taxing, do not increase the deficit within the duration of the measure, and do not affect Social Security.

44.   James I. Wallner, 2017, *On Parliamentary War: Partisan Conflict and Procedural Change in the U.S. Senate* (Ann Arbor: University of Michigan Press, 2017).

45.   In recent years, the majority leadership has regularly used UCAs that include a 60-vote requirement for passing motions covered by the agreement. Setting the relevant threshold via a UCA means that the associated roll call

will concern the substantive question itself rather than a procedural motion about cloture. For messaging purposes, party leaders often prefer that votes occur directly on the policy proposal in dispute rather than a cloture motion that is one step removed. Cloture votes also take time. Especially on must-pass measures, leaders on both sides of the aisle may prefer to set the elevated passage threshold via a UCA.

46. Glenn Kessler, "How the Democrats Pushed Obamacare Through the Senate, *The Washington Post*, July 22, 2017, https://www.washingtonpost.com/news/ fact-checker/wp/2017/06/22/history-lesson-how-the-democrats-pushed- obamacare-through-the-senate/.

47. Alexander Bolton, "An Imperial Majority Leader?" *The Hill*, May 21, 2014, https://thehill.com/homenews/senate/206733-an-imperial-majority-leader- reid-trumps-forebears-power.

48. The averages included in Figure 1-4 take into account that two Congresses included in the time series featured two majority leaders—one for the first session and another for the second. So the number of tree filling incidents for Robert Dole is divided by 1.5, reflecting his service as leader during the entirety of the 99th Congress but only the first year of the 104th. Along those lines, in calculating the average for McConnell, the denominator is 2.5 rather than 3 because the time series ends in 2019, midway through the 116th Congress.

49. Greg Sargent, "Dem Unity Forces McConnell to Filibuster His Own Proposal," *The Washington Post*, December 6, 2012, https://www.washingtonpost.com/ blogs/plum-line/wp/2012/12/06/dem-unity-forces-mcconnell-to-filibuster- his-own-proposal/.

50. Theda Skocpol and Vanessa Williamson, *The Tea Party and the Remaking of Republican Conservatism* (New York: Oxford University Press, 2016).

51. Grossmann and Hopkins, *Asymmetric Politics.*

52. C. Lawrence Evans, "Bob Michel, Newt Gingrich and the Republican Leadership Dilemma," in *Robert H. Michel: Leading the Republican House Minority,* ed. F. Mackaman and S. Kelly (Lawrence, KS: University of Kansas Press, 2019).

53. Smith, *The Senate Syndrome*, refers to this ratcheting effect as "obstruct and restrict."

54. Thomas Kaplan and Eileen Sullivan, "Health Care Vote: Senate Rejects Repeal Without Replace," *The New York Times,* July 26, 2017, https://www.nytimes .com/2017/07/26/us/politics/health-care-senate-vote.html.

55. McConnell's focus on advancing Trump judicial nominees resulted in the confirmation of nearly 200 conservative jurists by early 2020. However, even though Senate leaders changed precedent in 2013 and 2017 to lower

the threshold for cloture on judicial and administrative nominees, the confirmation process remained rife with delay and intensely partisan. See Heather Ba, Christian Cmehil-Warnm, and Terry Sullivan, "The Nuclear Option Has Fizzled Again," LEGBRANCH.org, January 17, 2020, https://www.legbranch.org/the-nuclear-option-has-fizzled-again/.

56. Aris Folley, "Democratic Senators Tweet Photos of Pile of House-Passed Bills 'Dead on Mitch McConnell's Desk,'" *The Hill*, December 19, 2019, https://thehill.com/homenews/senate/475346-democratic-senators-tweet-photos-of-pile-of-house-passed-bills-dead-on-mitch.

57. Linda Feldmann, "Trump and McConnell, Political Odd Couple Turned Powerful Partnership," *The Christian Science Monitor*, January 22, 2020, https://www.csmonitor.com/USA/Politics/2020/0122/Trump-and-McConnell-Political-odd-couple-turned-powerful-partnership.

58. Sarah A. Binder, *Stalemate: Causes and Consequences of Legislative Gridlock* (Washington, DC: Brookings Institute Press, 2003). During the 1970s and 1980s, roughly 300 bills per Congress passed the House and failed to clear the Senate, and during the 2000s, that number generally has been close to 400. Indeed, in 2009–2010, with Democrats in control of both chambers and the White House, over 700 House-passed measures failed in the Senate. For details, see Philip Bump, "Yes, the Senate Is Ignoring Hundreds of Bills Passed by the GOP House, But It's Always That Way," *The Washington Post*, August 8, 2014, https://www.washingtonpost.com/news/the-fix/wp/2014/08/08/yes-the-senate-is-ignoring-hundreds-of-bills-passed-by-the-gop-house-but-its-always-that-way/. Finally, just because a House-passed bill itself fails to secure passage does not mean that the relevant language was not enacted via a different piece of legislation.

59. Den Hartog and Monroe, *Agenda Setting in the U.S. Senate.*

60. Jeffrey M. Jones, "As Senate Trial Begins, 44% Approve of Trump," *Gallup*, January 20, 2020, https://news.gallup.com/poll/283364/senate-trial-begins-approve-trump.aspx.

61. James Wallner, "How Mitch McConnell Masters the Senate," *LEGBRANCH.org*, February 22, 2020, https://www.legbranch.org/how-mitch-mcconnell-masters-the-senate/.

62. Jordan Carney, "GOP Senators Reject Punishing Romney for Impeachment Vote," *The Hill*, February 5, 2020, https://thehill.com/homenews/senate/481710-gop-senators-reject-punishing-romney-over-impeachment-vote.

63. For a careful and compelling statement of this view, see James M. Curry and Frances E. Lee, "Non-Party Government: Lawmaking and Party Power in Congress," *Perspective on Politics 17* (2019): 47–65.

64. David R. Mayhew, *List of Important Enactments 2017–18*, http://campuspress .yale.edu/davidmayhew/datasets-divided-we-govern/.

65. James M. Curry and Frances E. Lee, "Congress at Work: Legislative Capacity and Entrepreneurship in the Contemporary Congress," in *Can America Govern Itself?*, ed. F. Lee and N. McCarty (New York: Cambridge University Press, 2019).

66. Carl Hulse and Emily Cochrane, "As Coronavirus Spread, Largest Stimulus in History United a Polarized Senate," *The New York Times*, March 26, 2020, https://www.nytimes.com/2020/03/26/us/coronavirus-senate-stimulus-package.html.

67. On the decline of Senate deliberation, see Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006); Burdett A. Loomis, ed., *The U.S. Senate: From Deliberation to Dysfunction* (Washington, DC: CQ Press, 2012); James I. Wallner, *The Death of Deliberation: Partisanship and Polarization in the United States Senate* (Lanham, MD: Lexington Books, 2013).

68. Lee H. Hamilton, *Strengthening Congress* (Bloomington: Indiana University Press, 2009).

69. Hart Research Associate/Public Opinion Strategies, *Study #200149, NBC New/Wall Street Journal Survey*, March 2020, https://pos.org/wp-content/uploads/2020/03/200149-NBCWSJ-March-Poll-Final-3-14-20-Release.pdf.

70. In an April 2020 strategy memo, the Senate GOP Campaign Committee urged its candidates to orient their messaging about the pandemic around a two-pronged attack—blame China for causing it and claim that Democrats are "soft on China." Alex Isenstadt, "GOP Memo Urges Anti-China Assault Over Coronavirus," *Politico*, April 24, 2020, https://www.politico.com/news/2020/04/24/gop-memo-anti-china-coronavirus-207244.

71. Dan Balz, "Government Is Everywhere Now. Where Does It Go Next?" *The Washington Post*, April 19, 2020, https://www.washingtonpost.com/graphics/2020/politics/pandemic-government-role/?itid=ap_danbalz.